IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA, CASE NO. 2024-CF-790

v.

JERMAINE MANDELL WILLIAMS SR,

Defendant.

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9 MOTION TO EXCLUDE EVIDENCE OR ARGUMENT DESIGNED TO CREATE SYMPATHY FOR THE DECEASED

COMES NOW the Defendant, Jermaine Mandell Williams Sr., by and through the undersigned attorney and hereby moves this Honorable Court to prohibit evidence or argument designed to create sympathy for the deceased, including, but not limited to, the impact of the offense on the friends and/or family of the deceased, the impact of the offense on the community, the life history of the deceased, or any personal characteristics of the deceased. He would further move the Court to prohibit such evidence or argument in the guilty-not guilty phase, the penalty phase before the jury, and sentencing before the judge. As grounds, he would state:

1. Florida law has consistently held that evidence designed to create sympathy for the deceased is inadmissible in the guilty/not guilty phase. The Florida Supreme Court recently reaffirmed this line of cases in ***Jones v. State***, 569 So.2d 1234 (Fla. 1990). See also ***Lewis v. State***, 377 So.2d 640 (Fla. 1979); ***Rowe v. State***, 120 Fla. 649, 163 So.22 (1985); ***Ashmore v. State***, 214 So.2d 67 (Fla.1st DCA 1968); ***Hathaway v. State***, 100 50.2d 682 (Fla. 3d DCA 1958). Florida law has consistently prohibited such

evidence in the guilt-innocence phase of any trial (capital or otherwise). This type of evidence is not relevant to any issue in the guilty-not guilty phase. It is virtually always highly inflammatory and prejudicial. Assuming ***arguendo***, that such evidence is relevant, its prejudice outweighs any possible probative value. ***Fla. Stat***. 90.403. The admission of such evidence would violate McKenzie's fundamental rights pursuant to Article I, Sections 2, 9, 16 and 17 of the Florida Constitution and the Fifth, Sixth, Eighth, and fourteenth Amendments to the United States Constitution.

2. The admission of evidence concerning the deceased or the circumstances of the offense are also inadmissible under Florida law at the penalty phase or before the judge. ***Fla. Stat***. 921.141 specifically limits the prosecution to the aggravating circumstances listed in the statute. None of these aggravating circumstances related to the character or personal characteristics of the deceased or the impact of the death on the friends and family of the deceased. The Florida Supreme Court has recognized that the statutory limit on aggravating circumstances forbids the introduction of this kind of evidence. ***Grossman v. State***, 525 So.2d 833 (Fla. 1988).

> Florida's death penalty statute, section 921.141, limits the aggravating circumstances on which a sentence of death may be imposed to the circumstances listed in the statute. §921.141(5). The impact of the murder on family members and friends is not one of these aggravating circumstances. Thus, victim impact is a non-statutory aggravating circumstance which would not be an appropriate circumstance on which to base a death sentence**. Blair v. State**, 406 So.2d 1103 (Fla.1981); **Miller v. State**, 373 50.2d 882 (Fla.1979); **Riley v. State**, 366 So.2d 19 (Fla.1978).525 So.2d at 842

This type of evidence is inadmissible, as it does not fall within any of the statutory aggravating circumstances.

3. The Florida Supreme Court has specifically disapproved the introduction of this kind of evidence before the judge alone. ***Grossman, supra; Patterson v. State***, 513 So.2d 1257, 1263 (Fla. 1978); ***Owen v. State***, 560 So.2d 207, 211 (Fla.l990).

4. ***Fla. Stat***. 921.143 does not allow this type of evidence in capital cases. Although this statute allows the victim or next of kin to speak at sentencing, the Florida Supreme Court has specifically held in ***Grossman, supra***, that this statute does not apply to capital cases. 525 So.2d at 842. The Court stated:

> Accordingly, we hold that the provisions of section 921.143 are invalid insofar as they permit the introduction of victim impact evidence as an aggravating factor in death sentencing. Id. (Footnotes omitted).

5. The prosecution may attempt to argue that ***Payne v. Tennessee***, 111 S.Ct. 2597 (1991) somehow authorizes the introduction of this type of evidence. Nothing could be further from the truth. First, it must be noted that ***Payne*** only deals with whether "the Eighth Amendment bars victim impact evidence during the penalty phase of a capital trial." Id. at 2601. There is nothing in the opinion that indicates that the admission of such evidence in the guilt-innocence phase would not violate the Due Process Clause of the Fourteenth Amendment. Indeed, ***Payne*** itself states that in some specific circumstances the evidence can be "so unduly prejudicial" that its introduction in either phase violates the Due Process Clause of the Fourteenth Amendment. 111 S.Ct. at 2608. Secondly, ***Payne*** itself continues to prohibit "the admission of a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence." Id. at 2611 n.2. Finally, ***Payne***, like any United States Supreme Court decision, merely deals with the question of whether the practice at issue violates

the United States Constitution. Neither ***Payne***, nor any other United States Supreme Court case, deals with the question of whether such evidence is admissible under state law.

6. Victim sympathy evidence is clearly inadmissible under Florida law. A longline of Florida cases, as detailed in ***Jones, supra***, prohibits such evidence in the guilt-innocence phase. The introduction of such evidence in the penalty phase, or before the judge, would violate the clear limits on aggravating circumstances imposed by ***Fla. Stat***. 921.141. ***Grossman, supra***.

7. The Florida Supreme Court has implicitly recognized that ***Payne, supra***, has no impact on cases such as ***Jones*** and ***Grossman*** as they are based on Florida law. In ***Taylor v. State***, 583 So.2d 323 (Fla.l991), the Florida Supreme Court reversed for a new penalty phase due to the prosecutor making an argument designed to invoke sympathy for the deceased. 583 So.2d at 329-330. The Court relied on its prior opinion in ***Hudson v. State***, 522 50.2d 802 (Fla. 1988), in which it held such argument to be improper "because it urged consideration of factors outside the scope of the jury's deliberation. 522 So.2d at 809. The opinion in ***Taylor*** was issued on June 27, 1991, the same day as ***Payne, supra***. Compare 583 So.2d 323 with 111 S.Ct. 2597. The Florida Supreme Court denied rehearing without modifying the opinion, on August 20, 1991, well after Payne. Id. at 323. This is an implicit recognition that Florida law continues to prohibit this type of evidence at both phases and at sentencing.

8. The recent addition of ***Florida Statute*** 921.141(7) does not allow the introduction of this type of evidence. This is true for three separate reasons. (l) This

evidence is still irrelevant to the statutory aggravating factors. Thus, it is inadmissible as irrelevant. (2) The statute is unconstitutional under the Florida and United States Constitutions. This is true in three respects. (A) The Legislature had no authority to pass such a law as it violates the exclusive right of the Florida Supreme Court to regulate practice and procedure, pursuant to Article V, Section 2 of the Florida Constitution. (B) The statute is unconstitutional pursuant to Article I, Sections 2, 9, 17, and 21 of the Florida Constitution and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. (C) The statute is violative of the Florida and United States Constitutions as vague and overbroad. (3) The admission of this type of evidence would render Florida's capital felony statute unconstitutional under the Florida and United States Constitutions, as it would leave the jury without any guidance as to how to evaluate this very emotional type of evidence. ***Fla. Stat***. 921.141(7) does not change the traditional rule that evidence must be relevant to be admissible. The statute states:

> *(*8) *VICTIM IMPACT EVIDENCE Once the prosecution has provided evidence of the existence of one or more aggravating* factor*s as described in subsection (6). the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence*.

This section must be read in conjunction with Section 6 of the same statute which states: "Aggravating factors shall be limited to the following" and then lists the statutory aggravators. The Florida Supreme Court has consistently held that the prosecution is limited to the statutory aggravating factors. ***Elledge v. State***, 346 So.2d 998, 1002-1003

(Fla. 1977). The United States Supreme Court relied, in part, on this limitation in upholding the Florida Statute in ***Proffitt v. Florida***, 96 S.Ct. 2960 (Fla. 1975). The evidence described is clearly not an aggravating circumstance. Aggravating factors are listed in a different section and this section makes clear that this evidence is admissible only after the introduction of evidence that shows an aggravating factor. The only way to read Section 8 to be consistent with Section 6 is to read it to mean that the evidence described in Section 8 is admissible *if it is relevant* to prove an aggravating factor. Any other reading would be contrary to the plain language of Section 6, an extensive body of Florida law, and the United States Supreme Court's opinion in ***Proffitt***.

The reasoning of ***Grossman, supra*** that Florida Statute 921.143 does not authorize the introduction of this evidence, as it is irrelevant to any statutory aggravating factor applies equally to Section 8. As the Court stated in ***Grossman***:

> Florida's death penalty statute, section 921.141, limits the aggravating circumstances on which a sentence of death may be imposed to the circumstances listed in the statute. §921.141(5). The impact of the murder on family members and friends is not one of these aggravating circumstances. Thus, victim impact is a non-statutory aggravating circumstance which would not be an appropriate circumstance on which to base a death sentence. Blair v. State, 406 so.2d 1103 (Fla. 1981); Miller v. State, 373 So.2d 882 (Fla.1979); Riley v. state, 366 So.2d 19 (Fla. 1978). 525 So.2d at 842

This reading of the amended version of the statute is also consistent with well-established principles of statutory construction. It is an established rule of construction that the legislature is presumed to be aware of prior interpretations of a statute. ***Burdick v. State***, 594 50.2d 267,271 (Fla. 1992). The legislature is also presumed to have "at least tacitly approved" the prior interpretation. Id. at 271. Thus, we must presume that the

legislature was aware that the Florida Supreme Court had consistently held that the prosecution is limited to the aggravating factors listed in Section 6. We must also presume that the "legislature at least tacitly approved" of this interpretation. The only way to interpret Section 8 and fulfill this principle is to interpret it to hold that it merely makes this evidence admissible if it is relevant to prove an aggravating factor or to rebut a mitigating circumstance introduced by the defense. This interpretation is also consistent with the general rule that any ambiguities in statutory construction "must be construed in the manner most favorable to the accused." ***Perkins v. State***, 576 So.2d 1310, 1312 (Fla. 1991).

This evidence is not relevant to any aggravating factor. The only aggravating factor that this type of evidence could even arguably be relevant to is 921.141(6) (h) the "especially heinous, atrocious, or cruel" aggravating circumstance. However, the Florida Supreme Court has specifically rejected this argument.

> *Moreover, the trial court justified its finding that the murder was especially cruel by reference to a plurality of patently improper factors. These factors included the fact that the victim was married; ran the store alone; had led an honest and good life; would be missed by the community; was an immigrant who had made a good life; and was a kind and likeable man. The trial court erred by considering these factors. The lifestyle, character traits, and community standing of the victim are not relevant to the determination of whether a given homicide was especially heinous, atrocious, or cruel. In light of the facts revealed in the record on appeal, we conclude that there is no evidentiary basis for a finding that the murder was especially heinous, atrocious, or cruel.*

Jackson v. State, 498 So.2d 906, 910 (Fla. 1986). It must also be noted that the opinion in ***Jackson*** was decided before the decision in ***Booth v. Maryland***, 482 U.S. 496 (1987).

The opinion was solely based on traditional state law relevancy grounds and was not based on the U.S. Constitution.

Section 8 is also unconstitutional on a variety of grounds. First, the legislature had no authority to pass this statute as it violates Article V, Section 2(a) of the Florida Constitution. It states, in part, "The Supreme Court shall adopt rules for the practice and procedure in all courts." The Florida Supreme Court has consistently held that this provision is exclusive and that any statute that invades this prerogative is invalid. ***R.J.A. v. Florence Foster,* Judge** _____So.2d, _____ 17 F.L.W. S327 (Fla. June 4, 1992); ***Haven Federal Savings and Loan Association v. Kirian***, 579 So.2d 730 (Fla. 1991); ***State v. Garcia***, 229 So.2d 236 (Fla. 1969).

The matters at issue in Section 8 are clearly procedural.

> Practice and procedure "encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. 'Practice and procedure' may be described as the machinery of the judicial process as opposed to the product thereof. "***In* re *Florida Rules of Criminal Procedure***, 272 So.2d 65, 66 (Fla. 1972) (Adkins, J., concurring). It is the method of conducting litigation involving rights and corresponding defenses. ***Skinner v. City of Eustis***, 147 Fla. 22, 2 So.2d 116 (1941). ***Haven, supra***, 579 So.2d at 730.

The Florida Supreme Court has also recently stated: "how (a lawsuit) is to be tried in an orderly manner is procedural." ***R.J.A., supra*** at 5328. The Florida Supreme Court has relied on these principles to invalidate a wide variety of statutes, involving such topics as juvenile speedy trial (***R.J.A., supra***), severance of trials involving counterclaims against foreclosing mortgagee (***Haven, supra***), waiver of a jury trial in a capital case (Garcia, supra), and the regulation of voir dire examination (In Re

Clarification of Florida Rules of Practice and Procedure, 281 So.2d 204, 205 (Fla. 1973). The statute at issue here is an attempt to regulate "practice and procedure". It deals with "the method of conducting litigation", just as surely as the regulation of voir dire, waiver of jury trial, or severance. ***Haven, supra*** at 732. The Florida Supreme Court has recognized that rules of evidence "may be procedural" and thus the sole responsibility of the Florida Supreme Court. ***In Re Evidence Code***, 372 So.2d 1369. The Florida Supreme Court adopted the evidence code as a rule of procedure out of its concern for this constitutional provision.

Section 8 violates this provision and is unconstitutional.

The Florida Constitution also requires that this type of evidence be prohibited, as it provides broader protection than the United States Constitution for the rights of a capital defendant. The Florida Supreme Court has recently noted that Article I, Section 17 of the Florida Constitution prohibits "cruel ***or*** unusual punishment." ***Tillman v. State***, 591 So.2d 167, 169 (Fla. 1991). (This wording is in sharp contrast to the ban on "cruel ***and*** unusual punishment" in the Eighth Amendment to the United States Constitution.) The Court in ***Tillman*** explicitly held that a punishment, in a given case, is unconstitutional under the Florida Constitution if it is "unusual" due to the procedures involved. The allowance of this sort of victim sympathy evidence would violate Article I, Section 17. The existence of this evidence would be totally random, depending upon the extent of the deceased's family and friends, and their willingness to testify. The strength of this evidence would also depend on the articulateness of the friends and family.

The admission of this evidence would also violate the Due Process Clause of

Article I, Section 9 of the Florida Constitution. In ***Tillman, supra***, the Court states that Article I, Section 9 holds "that death is a uniquely irrevocable penalty, requiring a more intensive level of judicial scrutiny or process than lesser penalties." Id. at 169. The Florida Supreme Court's recent opinion in ***Tillman*** is clear indication that this type of evidence violates Article I, Sections 9 and 17 in a capital case, even if it is permitted in other cases.

The admission of this evidence violates Article I, Sections 9 and 17 for four interrelated reasons. First, such evidence intrudes into the penalty decision considerations that have no rational bearing on any legitimate aim of capital sentencing. Second, this proof is highly emotional and inflammatory, subverting the reasoned and objective inquiry that the courts have required to guide and regularize the choice between death and lesser punishments. Third, victim impact evidence cannot conceivably be received without opening the door to proof of a similar nature in rebuttal or in mitigation, further upsetting the delicate balance the courts have painstakingly achieved in this area. Fourth, the evidence invites the jury to impose death sentence on the basis of race, class, and other clearly impermissible grounds.

This type of evidence portrays grief-stricken relatives expressing their extreme sorrow, sense of loss, and anger over their bereavement -- often in highly emotion terms. They relate somatic and psychological symptoms of distress attributed by them to the murder, such as physical ailments, effects on pregnancy, lack of appetite, sleeplessness, nightmares, fears, and depression. Frequently, too, the adult survivors describe these conditions in their children. This event has no bearing on the circumstances of the crime or the defendant. Frequently, family members were not present at the time of the killing

and have no relationship with the killer. Hence, they tend to dwell upon general good character traits and achievements of the deceased.

Unintended physical, emotional, and psychological after-effects on relatives do not increase the moral blameworthiness of the killer beyond the onus he already bears for committing the murder and are irrelevant. Allowing this type of evidence would inevitably make the entire system freakish and arbitrary and thus violative of Article I, Sections 9 and 17. Allowing victim impact evidence would necessarily expand the scope of future penalty trials beyond all reason.

Take as an instance the subject of the victim's character. What principle of logic or fairness could deem it relevant that the deceased was a good person and at the same time irrelevant that he or she was bad? Were the state permitted to prove that a victim was educated and hardworking, a defendant should be permitted to show that a victim was a sixth-grade dropout, who never worked a day in his life. Similarly, if it "matters" in the context of capital sentencing that one victim left a family who loved her, it also "matters" that another was hated by surviving relatives -- or, indeed, left no family at all. Does having a victim with a “bad" character somehow become a mitigating circumstance? The admission of this type of evidence inevitably leads to and highlights the race and class status of the victim.

This will be true because the family and friends of the deceased will inevitably tend to be of the same race and class as the deceased and this will inevitably lead to more educated and articulate white, middle class victim family members having more impact on judge and jury than poorer, minority, and less educated victim's family members.

Thus, this statue violates Article I, Sections 9 and 17.

The statute at issue here is also unconstitutional under the Eighth and Fourteenth Amendments to the U.S. Constitution. In ***Payne v. Tennessee***, 111 S.Ct. 2597 (1991) the Court overruled its prior opinion in ***Booth v. Maryland***, in very limited circumstances.

> "We thus hold that if the State chooses to permit the admission of victim impact evidence and prosecutorial evidence on that subject, the Eight Amendment erects no ***Per se*** bar. A State may legitimately conclude that evidence about the impact of the murder on the victim's family is relevant." Id. at 2609.

The Court also stated that even this generally permitted evidence may be so "unduly prejudicial" that it violates the Due Process Clause of the Fourteenth Amendment. Id. at 2608. There is nothing in ***Payne*** that permits evidence concerning such unlimited and undefined evidence as that designed to show "uniqueness as a human being" and "loss to the community". This goes way beyond the scope of ***Payne*** and violates the Eighth and Fourteenth Amendments.

It must also be noted that Section 8 is far broader and vaguer than ***Fla. State***. 921.143 that the Florida Supreme Court has held does not apply to capital sentencing. ***Grossman v. State***, 525 50.2d 833, 842 (Fla. 1988). 921.143 limits the testimony to the victim's family. Section 7 states: "such evidence shall be designed to demonstrate the victim's uniqueness as a human being and the resultant loss to the community."

This sets absolutely no limit as to *who* can testify or *to what they can testify*. The phrase "loss to the community" contains no definition of community or limits on its membership. This could lead to anyone testifying or even to death sentencing by petition or public opinion poll. The phrase "uniqueness as a human being" place absolutely no

limit on the evidence. This statute clearly does not meet the higher standard of due process in capital cases required by Article I, Sections 9 and 17.

The terms of Section 8 are vague and overbroad and are capable of a wide variety of clearly impermissible uses. This section gives a defendant virtually no notice of the type of evidence that he is to defend against.

The introduction of this type of evidence would render the entire statutory scheme unconstitutional. The admission of this type of evidence would leave the judge and jury without any guidance as to how to use this evidence. As noted previously, this evidence does *not* constitute an aggravating factor. The jury is told that they are limited to the statutory aggravating circumstances. **See** Standard Jury Instructions In Criminal Cases. They are then told that they are told to weigh this evidence against that presented in mitigation. **Id.** This evidence clearly is not mitigating and it is within the statutory aggravating factors. Thus, neither the judge nor jury is left with any guidance as to how to weigh this evidence.

The admission of this evidence without any guidance as to how to use it is unconstitutional pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 2,9,16, and 17 of the Florida Constitution. The failure to sufficiently guide discretion, with the possibility of arbitrary and discriminatory results, was a theme running throughout the opinions in ***Furman v. Georgia***, 92 S.Ct. 2726 (1972). The guiding of the judge and jury's discretion was a critical factor to both the Florida Supreme Court and the United States Supreme Court in upholding the facial constitutionality of the Florida statute. ***Proffitt v. Florida***, 96 S.Ct.

2960, 2969 (1976). ***State v. Dixon***. 283 So.2d 1 (Fla. 1973).

The United States Supreme Court has reversed several cases for jury instructions that fail to sufficiently define an aggravating factor. ***Espinosa v. Florida***, U.S., 6. F.L.W. Fed.S662 (June 29, 1992); ***Shell v. Mississippi***, 111 S.Ct. 313 (1990); ***Maynard v. Cartwright***, 108 S.Ct. 1853 (1988) (all three cases reversing for failure to adequately define the "heinous, atrocious, or cruel" aggravating factor). In ***Mills v. Maryland*** 108 S.Ct. 1860 (1988) the Court reversed because there was a "substantial possibility" the jury would misunderstand how to consider mitigating evidence. Id. at 1867. The jury is given absolutely no guidance on how to manage this highly explosive and emotional evidence. This is far worse than merely being given inadequate guidance as to an aggravator as in ***Espinosa, Shell***, and ***Maynard***. This is unconstitutional under the Florida and United States Constitutions.

9. The prejudice from this evidence would virtually always outweigh its probative value, thus violating ***Fla. Stat***. 90.403. This type of evidence is almost always a tearful, emotional recounting of the loss of a friend or loved one. As previously noted, this type of evidence has no relevance to any statutory aggravating factor. It will inevitably shift the judge's and jury's attention away from a reasoned weighing of aggravating factors and mitigating circumstances to a naked cry for vengeance.

WHEREFORE, Defendant, Jermaine Mandell Williams Sr., hereby moves this Honorable Court to issue its order to prohibit evidence or argument designed to create sympathy for the deceased; including, but not limited to, the impact of the offense on the friends and/or family of the deceased, the loss to the community, the life history of the

deceased, or any personal characteristics of the deceased, in the guilt-innocence phase, the penalty phase before the jury, and sentencing before the judge.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished by electronic mail to The Office of the State Attorney, this 21st day of April, 2025.

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