

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

CASE NO.

68845

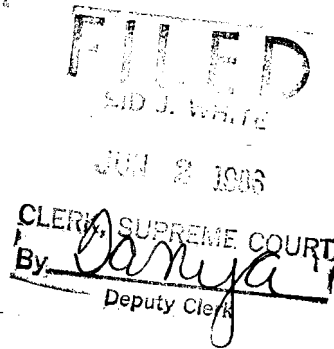
TOMMY SANDS GROOVER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.



APPEAL FROM THE TRIAL COURT'S
ACTIONS DENYING A STAY, A HEARING
ON DEFENDANT'S 3.850 MOTION, AND DENYING
THE RELIEF REQUESTED THEREIN, AND MEMORANDUM
IN SUPPORT OF DEFENDANT'S REQUEST TO THIS COURT
TO ENTER A STAY OF EXECUTION

LARRY HELM SPALDING
Capital Collateral Representative

MARK EVAN OLIVE
Litigation Director

MICHAEL A. MELLO
Assistant Capital Collateral
Representative

DAVID ADAM REISER
Of Counsel

OFFICE OF THE CAPITAL
COLLATERAL REPRESENTATIVE
Independent Life Building
225 West Jefferson Street
Tallahassee, Florida 32301
(904) 487-4376

COUNSEL FOR APPELLANT

Tommy Groover was tried, convicted of first degree murder, and sentenced to death while he was improperly drugged by the State of Florida. He is mentally retarded, neurologically dysfunctional, has an I.Q. of 64, and has been brain damaged since birth. Jail personnel improperly administered to Tommy massive quantities of Mellaril, a powerful anti-psychotic drug, during critical pre-trial, trial, and capital sentencing proceedings. Tommy Groover is brain damaged, not psychotic. The improper state drugging voided what little intellectual capacity brain-damaged Tommy Groover could normally muster.

Tommy Groover was prepared to demonstrate below that he was tried while he was incompetent. He also offered to prove that defense counsel was ineffective for failing to conduct a reasonable investigation into Tommy's background, which would have uncovered substantial evidence in mitigation of punishment. No psychiatric or psychological evaluation was conducted at trial, and the judge and jury were thus denied the compelling mitigation information that Tommy's actions were not entirely volitional. The court below summarily denied relief, without conducting an evidentiary hearing. The denial of this and every other claim presented was on the merits of the claims.

In this brief, Appellant will present three of the claims presented to the court below, and will show that summary denial was improper. The claims presented here are 1) that Tommy Groover is entitled to an evidentiary hearing on his claim that

he was incompetent to stand trial and that trial counsel unreasonably failed to discover it; 2) that he is entitled to an evidentiary hearing on his claim that he was denied effective assistance of counsel at sentencing; and 3) that he is entitled to an evidentiary hearing on his claim that the state violated his due process rights and provided an unfair trial by not revealing cash payments made by prosecutor Ralph Greene to virtually all the state's trial witnesses. The denial of all other claims presented in the Rule 3.850 Motion and supporting memorandum filed in the trial court is also appealed, and each of the claims for relief contained in the 3.850 Motion and the corresponding sections of the Motion and Memorandum in Support of Application for Stay of Execution are incorporated in this brief by specific reference. Appellant does not intend to waive any claims; time simply does not permit the inclusion of every claim in this brief.

SUMMARY DISMISSAL ERROR

I.

THIS COURT SHOULD STAY MR. GROOVER'S
EXECUTION SO AS TO ALLOW AN EVIDENTIARY
HEARING ON HIS CLAIM THAT HE WAS INCOMPETENT
TO STAND TRIAL, AND HIS CLAIM THAT TRIAL AND
PRE-TRIAL COUNSEL RENDERED INEFFECTIVE
ASSISTANCE OF COUNSEL REGARDING MENTAL HEALTH
ISSUES

A movant is entitled to an evidentiary hearing on claims raised in a Rule 3.850 proceeding unless "the files and records in the case conclusively show that the prisoner is entitled to no relief. . . ." Rule 3.850, Florida Rules of Criminal Procedure; O'Callaghan v. State, 461 So.2d 1354, 1355 (Fla. 1984) (copy attached as Appendix 1). As this Court noted in Jones v. State, ___ So.2d ___ (Fla. 1985) (copy attached as Appendix 2), the disposition of an incompetency claim in post-conviction is governed by the rule:

Jones has filed affidavits . . . from various doctors opining that he suffers from organic brain damage and was and is incompetent to stand trial. The state urges that these affidavits are refuted by the trial record which shows that Jones was competent to stand trial and that the trial court did not err in denying the motion without an evidentiary hearing. Whatever the ultimate merits of the respective positions, we do not agree that the motion, files, and records conclusively show that Jones is not entitled to any relief. We reverse and remand . . . [for] an evidentiary hearing.

Tommy Groover, like R. L. Jones, was denied his right to an evidentiary hearing. A stay is proper.

A. RIGHT TO BE TRIED WHILE COMPETENT

"A person accused of a crime who is mentally incompetent to stand trial shall not be proceeded against while he is incompetent." Fla. R. Crim. P. 3.210. It is simply unfair to try someone when the person has no ability to meaningfully participate in proceedings which will subject him to a loss of liberty or, as here, life. This fundamental unfairness is prohibited by the fifth, sixth, eighth and fourteenth amendments to the United States Constitution, and by parallel state constitutional provisions.

The constitutional test for incompetency is articulated in Dusky v. United States, 362 U.S. 402 (1960), and is well known to, and oft quoted by, this Court:

[T]he "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him."

Id. See also Drope v. Mississippi, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375 (1966); Bishop v. United States, 350 U.S. 961 (1956). Florida decisions regularly analyze and apply this test, and decisions from this Court reflect an especially vigilant concern for protecting the rights of incompetents. See, e.g., Florida v. W.S.L., No. 67,282 (Fla. March 27, 1986); Jones v. State, 478 So. 2d 346 (Fla. 1985); Hill v. State, 473 So. 2d 1253 (Fla. 1985) (copy attached as Appendix 3); Gibson v. State,

474 So. 2d 1183 (Fla. 1985); Christopher v. State, 416 So. 2d 450 (Fla. 1982); Lane v. State, 388 So. 2d 1022 (Fla. 1980). Cf. Johnson v. Feder, No. 66,554 (Fla. March 20, 1986) (judicial hearing required for continued commitment of one found not guilty by reason of insanity). See also ABA Mental Health Standards, Part IV, Competence to Stand Trial, 7-4.1.

The Dusky test is applied by evaluating numerous subjective and objective criteria, many (but not all) of which have been incorporated into statutes and rules. See A.B.A. Mental Health Standard 7-4.1 and Commentary. Such nonexclusive criteria are contained in Florida Rules of Criminal Procedure 3.210 and 3.211:

In considering the issue of competence to stand trial, the examining experts should consider and include in their report, but are not limited to, an analysis of the mental condition of the defendant as it affects each of the following factors:

- (i) Defendant's appreciation of the charges;
- (ii) Defendant's appreciation of the range and nature of possible penalties;
- (iii) Defendant's understanding of the adversary nature of the legal process;
- (iv) Defendant's capacity to disclose to attorney pertinent facts surrounding the alleged offense;
- (v) Defendant's ability to relate to attorney;
- (vi) Defendant's ability to assist attorney in planning defense;
- (vii) Defendant's capacity to realistically challenge prosecution witnesses;
- (viii) Defendant's ability to manifest appropriate courtroom behavior;
- (ix) Defendant's capacity to testify relevantly;
- (x) Defendant's motivation to help himself in the legal process;

(xi) Defendant's capacity to cope with the stress of incarceration prior to trial.

In Lane, this Court discussed other relevant factors, based upon Pate v. Robinson:

Evidence of a defendant's mental behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient.

388 So. 2d at 1025.

State procedures which fail to provide adequate resolution of competency issues violate the due process clause of the fourteenth amendment. Pate v. Robinson, 383 U.S. 375 (1966). If an incompetency issue, which has not been adequately resolved, is properly raised, an evidentiary hearing is mandatory. Hill, supra.

This Court has held that retroactive determinations of incompetency are impractical, as they fail to adequately protect a defendant's due process rights. "Such a hearing should be conducted contemporaneously with the trial." Hill, 473 So. 2d at 1259. Thus, whether the procedural failure is found on direct appeal, State v. W.S.L.; Gibson v. State, or in post-conviction, Hill, the remedy is to "vacate the conviction and sentence and remand with directions that the State may proceed to re-prosecute the defendant after it has been determined that he is competent to stand trial." Hill, 473 So. 2d at 1260; see also W.S.L., slip op. at 2 ("Such a hearing must be conducted contemporaneously

with the trial."); Gibson, 474 So. 2d at 1184.

This is true because competency is flatly nonwaivable: "it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial." Pate, 383 U.S. at 384. For whatever reason competency is not adequately resolved pretrial, if a bona fide question of competency is raised later, an adequate Pate hearing must occur.

B. THE QUESTION OF MR. GROOVER'S INCOMPETENCE
HAS BEEN FAIRLY RAISED BUT IMPROPERLY RESOLVED

No question of competency was raised at trial. No mental health evaluation occurred at all. The trial court's sentencing order emphasizes that no mental health issue was ever raised or ever became a part of the record at trial or sentencing.

The post-conviction record is not so silent. As will be shown, incompetency was fairly raised by the 3.850 Motion. With nothing in the trial court record at all, much less information to demonstrate conclusively the meritlessness of the claim, an evidentiary hearing is necessary. The lower court did not explain why the records were so conclusive, but Appellant will assume that it is because no issue or evidence of incompetency appeared at trial. This catch-22 will be discussed below.

1. Tommy Groover's Brain is Damaged and He Was Drugged at Trial
Tommy Groover's brain has never worked right. His

lifelong cerebral dysfunction was initiated by his alcoholic father's merciless, repetitive beatings of Tommy's mother (and, consequently, Tommy), when she was two months' pregnant with Tommy. Birth was similarly damaging, as Tommy was pulled from the womb with forceps which literally flattened his skull and mashed his brain. This rude entry into the world made Tommy understandably "different," and he failed from the first at the simplest children's games and most basic socializing tasks. He still cannot read or write. His damaged brain took more and more abuse as Tommy grew physically, and he was led and fell into use of deadly organic solvents. "Huffing" toluene and model airplane glue, gasoline, and other readily available central nervous system destroyers, 9-year-old Tommy unwittingly contributed to his own mental demise. He ultimately and naturally moved on to perhaps the worst of all possible illicit drugs: PCP. His addiction to this recognized producer of organic mental disorder finished the job begun in the womb: Tommy Groover is fundamentally addled, severely brain damaged, and neurologically dysfunctional.

The trial court knew none of this in 1982-83, except that Tommy was illiterate. Also unknown and equally disquieting is that the State functionally lobotomized Tommy by administering massive doses of Mellaril to him throughout critical pretrial and trial proceedings, which completely robbed him of what little ability he had to think and function at the barest minimal level.

Thus mentally crippled, Tommy Groover was allowed to proceed to trial, and to make "decisions" about such axiomatic but complex constitutional guarantees as the rights to plead, confess, withdraw a plea, and testify. An evidentiary hearing is necessary to demonstrate the following:

Life History: The single common and consistent thread running through Tommy Groover's life is the thread of neurological impairment. The limited chance for normalcy imposed by his brutal prenatal treatment and traumatic birth was dashed by subsequent events in childhood and adolescence, events beyond this already brain-damaged individual's control. A relatively simple and direct investigation of Tommy Groover's background would have produced the following:

a. Tommy was born April 3, 1958, in Jacksonville, Florida. His mother, Lois Hancock, was separated from Tommy's father, Daniel Groover, at the time of Tommy's birth, having broken free of his alcoholic tantrums which frequently left her badly beaten. She was forced to fend for herself by the time of Tommy's birth, much as her own mother had struggled, alone and destitute, to raise Lois and her five siblings in North Carolina -- Lois never even met her own father until she was eleven years old. (Affidavit of Lois Hancock, App. I).

b. Lois Hancock was first married to Thomas Harrington when she was fourteen years old, and her first child, Katie, was born shortly thereafter. This marriage ended in

divorce, Katie was given to Lois's ex-husband's sister, and Lois moved from North Carolina to Florida, where she met Daniel Groover. They were immediately married, and as it turned out, young Lois had moved from a bad marriage to a nightmare marriage. Daniel Groover was a sick, alcoholic, wife-abuser, who ultimately drove Lois out of her second marriage after four years, at age 19. Lois describes the abuse:

When Tommy was born in April, his father and I were not together anymore. I had to leave Daniel before I even knew I was pregnant with Tommy because I just couldn't take his abuse any longer. We always had trouble because of his drinking. He would drink at a bar or somewhere and then come home and beat up on me. I never knew why he did that. It just seemed like he would get mad about something while he was out and then come home and take it out on me. When I was pregnant with Lee, he beat me up so bad that he almost killed me. He'd jump on me and tear me up. I was afraid if I didn't take it, that he would go after one of the kids. Finally, I couldn't take it any more, so I left.

Id.

c. Pearl Williams, Lois's landlord during the ill-fated Groover union, describes Daniel Groover as the source of all Lois's and her children's problems, because he was "an alcoholic and mean as a snake. I never saw him sober. He was away from home most of the time and did not help Lois care for or support" the family. (Affidavit of Pearl Williams, App. J). Even after they were separated, beatings continued. One beating that left both Lois and Tommy scarred was particularly hellish,

and is well documented:

Lois and the children were in such need that she finally decided she had to go to court to try to get child support from Daniel Groover. She couldn't handle doing that on her own, so I had to help her fill out papers and go before Judge Dorcas Drake. I went with her to the hearing, and I shall never forget what she looked like that day. She was black and blue over her entire body from a beating Daniel Groover had given her. Lois showed me all the places he had hit her and all the bruises. Her buttocks were dark blue, almost black. Daniel Groover had struck blows with his fists to her head, face, neck, breasts and abdomen. When he had finished that, he'd thrown her down the entire flight of outside stairs that led down from their second-story apartment to the ground below. The neighbors who lived below them saw him do it and told me about it.

The most frightening thing was that Lois was pregnant with Tommy at the time of this beating. I don't know how she survived it, and I was horrified to think about what it would do to the baby.

Id.

d. Lois describes two beatings in her early pregnancy with Tommy:

When I left Daniel, I was about two months pregnant with Tommy. I had been pregnant while I was still with Daniel, and he had beaten me at least twice in that time. He would tie me down on the bed, sit on my stomach, and beat me real bad on the face and head. I was terrified of what that did to the baby I was carrying. After Tommy was born and it was obvious that he was different from other children his age, I thought his father's beating me while I was pregnant had damaged Tommy.

(App. I.)

e. The rest of Lois's pregnancy with Tommy was difficult as well. Illnesses during the pregnancy complicated birth, and Tommy suffered the damaging consequences:

My pregnancy with Tommy was not easy. About seven and a half months into pregnancy, I had low hemoglobin and had to have a pint of blood every week. Then, three or four weeks before Tommy was born, I had a kidney infection and my feet and legs swelled up real bad. I was going to a County Clinic for checkups. The clinic just had nurses and to see a doctor, I had to go to the hospital. The nurses at the clinic told me I should go to the hospital and see a doctor to get the problem cleared up. I didn't go to the hospital, but tried to take care of the problem by myself. Tommy was supposed to be born on March 27, but I didn't go into labor until April 3. I always thought that the terrible swelling kept me from going into labor. Once labor started, it didn't last that long, but it was very difficult. There were at least two nurses and three doctors in the delivery room. There was so much commotion in the room that I couldn't tell what was going on or what the problem was. People were running around trying to get blood for me, but getting the wrong kind and having to go get more. Every time Tommy seemed ready to be born, he would turn a different direction and wouldn't come out. Finally, the doctors had to pull him out with forceps.

Id.

f. Consequently, Tommy's head was "flat as a fritter" at birth, and stayed that way for months. Id. Lois massaged Tommy's head during this period, trying to get it "normal," a process which in itself may have exacerbated the birth-related brain defect. During this period, Tommy could not hold food and constantly threw up milk. When he got over the milk problem,

Lois recognized a character trait that stalked Tommy all of his life: "He was a lot different from other baby boys I had been around -- much quieter." Id. This uncharacteristic infant quietness was symptomatic of the brain damage which shaped Tommy's life.

g. Lois was required to exist and manage in a manner known and suffered only by abused, abandoned, and ignored single mothers, rejected by society and tortured by social service agencies and hapless domestic relation courts. She was destitute with a family, and while neighbors tried to help, public assistance was not forthcoming, and she strictly fended for herself. (Apps. I, J.) She had to get a job working at night in a nursing home and to try to raise three children during the day. She lived with her sister and her sister's five children for a short period. They were so destitute, they "were lucky if [they] got a peanut butter sandwich everyday.")Affidavit of Penny Lee Groover, App. H.) Tommy's teeth were very bad as a result of this nutritional abyss and the lack of monies for proper medical and dental care. Id. Their father absolutely refused to pay any support, and came around only to sexually abuse Tommy's sisters, Sabrina Groover and Penny Lee Groover, "breathing his horrible beer breath." (Apps. G, H.) This abuse began when Sabrina was two years old, but no one believed it or acted to stop it. (App. G.)

h. When Tommy was nine months old, the "family" moved in

with Roy Brooks. He was the only real father the children knew, but he was never around either. He worked as a truck driver, and was away for extended periods of time. Lois and Roy had two children who had to be given away due to the impossible financial conditions. (Apps. G and H.)

i. When Tommy was three years old, he ran a high and sustained fever for about a week. After it continued unabated, Lois finally took him to a doctor who treated the fever, and it subsided.

j. Evidence of Tommy's brain damage surfaced early. All who were around him acknowledge that Tommy was "different" as an infant and toddler. (Apps. G, H, I and J.) He had difficulty even conceptualizing children's games and because of his inability to play right, the other children would complain and harass him. (App. J.) This childhood hazing foreshadowed the complete rejection and ridicule Tommy was to receive as he later failed miserably in school. Pearl Williams, harkening back to the in utero beating that was to haunt Tommy, watched Tommy's struggle with secret dread: "I explained to the children that [Tommy] would learn ... eventually, though I feared privately that he never would, knowing, as I did of the injuries his mother had sustained during her pregnancy." (App. J.)

k. Tommy was in fact programmed not to learn, and school did nothing to break his inherent limitations. As school records indicate, see Appendix M, Tommy's achievement in first

grade was abysmal, and subsequent grades were worse. The following is a sampling from the records:

(1) Three months into first grade, Tommy was described as "not yet doing first grade work. I'm sure that he will have to repeat first grade." The problem was that his "[p]rogress is poor in all areas," as he had trouble following directions and organizing time. Nevertheless, with "D" and "F" grades, he was "socially promoted" to the second grade.

(2) In the second grade, Tommy predictably could not do second grade work. He consistently performed way below his peers, and was retained in the second grade. An evaluation of his social and personal assets graded out at the lowest possible score. He was then pushed through the third grade with "unsatisfactory" and "failing" scores. Fourth and fifth grades were the same, with continued low marks all around, but with complete abdication of responsibility by teachers and counselors. Tommy continued to be socially promoted and could not read or write the simplest sentence. He was "totally unprepared for the fifth grade," with a teacher determining "not [to] force[] Tommy to attempt work which he is not able to do." He was later socially promoted to the seventh grade, socially promoted to the ninth grade, and retained in the ninth grade.

(3) The reasons for his ineptitude became partially apparent to school officials in the seventh grade, but they did nothing but ignore the issue. He was referred to and tested by

school psychological services. Background information confirmed that he "has not performed at grade level for many years." Upon psychological testing, it was discovered that Tommy was mentally retarded, and placement in an "educable mentally retarded" program was recommended, but did not occur. "His language development seems to be somewhat impaired by the inability to call to consciousness an interpretation of facts and experiences which he should have gained from surrounding environment." Of course, his "surrounding environment" had unjustifiably promoted him at school, and ignored him at home. In a classic understatement of testing results, the school psychiatrist opined: "Tommy's Bender record indicates a perceptual lag."

1. Family members witnessed the incredible psychological turmoil created by Tommy's brain-damaged attempt to deal with unyielding school bureaucracy and the school system's utter failure to help Tommy learn. Tommy's sister, Penny Lee, explains it:

From the time he first started school, he couldn't handle the school work. He was just very, very slow. His problems got worse in the third grade. He had a teacher, Miss Pope, who I had had for the third grade too. I was a good student, and Miss Pope expected Tommy to be as good as I was. She would get real mad at Tommy and yell, "Why can't you be like your sister?" That's not what Tommy needed. He needed patience and understanding, and he got real frustrated with Miss Pope. She'd call him a worthless bum, and it just broke his heart. He didn't know what to do or how to learn. I always thought he needed special help, but the

schools didn't help him and our father wouldn't give any money to get Tommy the help he needed.

Tommy went through school to about the ninth or tenth grade without ever learning to read or write. He was put from the seventh grade right into the ninth grade just because of his age, not because he could do the school work. People humiliated him so bad about not being able to read and write that Tommy sometimes skipped school. He was frustrated and embarrassed and very hurt that people said mean things to him. People would say something like, "We could write you a nasty letter and you would not even know what it said."

(App. H.) Sister Sabrina agrees:

Tommy had always had problems ever since I can remember. From the first grade, he couldn't do school work. He could not learn to read or write. Sometimes, schools put him in slower groups, but that didn't help him either. He didn't learn, but he kept getting put forward in school. He'd get promoted just because of his age, not because he could do the work. When Tommy was in his early 20's, he couldn't even spell words like "cat," "rat," or "go," and he didn't know his ABC's.

(App. G.) Mom saw it too:

Tommy always had problems in school. He had always been different from other children and slower about learning things. He had to repeat the second grade, and then in the third grade he suddenly couldn't do anything. He forgot everything he had learned. At least in the second grade, he was trying to learn his ABC's and could write "cat" and "dog", but in the third grade, he couldn't do that anymore. He got very nervous and fidgety about school work. When I sat him down at the table to try to help him with his homework, he would get more and more nervous. It finally got so he didn't bring home any homework. I'd ask him what he'd been doing

in school or if he had homework, and he'd say, "I don't know." He couldn't understand anything that was going on at school, and so he didn't know what to do at home.

(App. I.) As Lois recalls, the school problems led to home problems, which led to more school problems, and ultimately to unsuccessful psychiatric treatment:

About this same time -- when Tommy was about nine years old -- he was having other problems too. He got so frustrated with school that he skipped sometimes. A couple of times I had him put in a juvenile shelter for skipping or staying away from home. Tommy also started wetting the bed when he was about nine years old. He hadn't done that since he was a little baby. Tommy was very uptight about school and his step-father would get on him about it, whipping Tommy. When I asked Tommy why he wet the bed, he said, "Momma, Daddy makes me wet the bed. He yells at me all the time." Poor Tommy would sit up all night trying not to wet the bed, but would finally wet the bed anyway just before it was time to get up. The school said we should go to a child psychiatrist, so for a time Tommy, his step-father and I went to see the psychiatrist once a week. The psychiatrist would talk to Tommy for a while and then to us. None of that seemed to be doing Tommy any good, so I stopped taking him.

Tommy never did get anywhere with learning. He kept getting passed on to the next grade, but not because he was learning anything. He needed to be in slow classes, but nobody seemed interested in helping him, so he went up in the grades without learning anything. By the time he left school, Tommy still couldn't read or write.

Id.

Because Lois Hancock worked constantly in an attempt to

manage an almost inherently unmanageable family situation, it was not easy for her to observe and control the ignorant and mean-spirited actions by others to which Tommy was susceptible and subjected. Lois noticed that Tommy started "having other problems too" at age 9, App. I, but she did not know what Tommy's sisters, and a couple of friends knew -- at age 9, Tommy was seduced into huffing glue by a demented and disabled 24-year-old veteran. This sickening spectre spoiled any chance Tommy may have had to simply survive in his already brain-damaged condition.

a. Sister Penny relates the tragedy that began with Tommy's simple-minded fascination with model toys:

Even though he couldn't do school work, Tommy was real good at working with his hands. His favorite thing was putting together models of things like cars and airplanes. They were his pride and joy, and he covered his bedroom with them. Tommy put a model together every day. As soon as he finished one, he'd go out and get another one. We never had a problem knowing what to get him for his birthday or for Christmas -- we always got him models. If Sabrina got mad at Tommy, she knew she wasn't supposed to hit him, so she would break one of his models. He was so proud of them, that was the easiest way for her to take her anger out on him.

When Tommy was about 9 years old, a man named Billy Hersch got Tommy to start huffing toluene, lacquer thinner, and the glue that came with the models. Billy was about 24 years old and a disabled veteran. Billy would say to Tommy, "The hell with those model cars. Let's put the glue in a bag and sniff it." He showed Tommy how to put toluene or glue in a plastic bag like a bread bag and then put his head in the bag and

breathe the fumes. When I saw Tommy after he had huffed something, he would drool and couldn't talk. I would ask him where he had gotten the stuff and who was getting him to do this, and he would mumble in a little baby voice, "Bilwy." I could smell the stuff all over his breath. He always smelled like gasoline or kerosene. Another boy, Danny Sheffield, showed Tommy how to do this with gold paint, too. They'd put that in a bread bag and huff it too. This went on just about every day for at least two years, and maybe three years. It just ate Tommy's brain up. He had never had a good mind, but after he started huffing toluene, his mind got worse and worse.

(App. H.)

b. Sister Sabrina knew it too:

Tommy always was real good with his hands. His favorite thing was putting models together. He figured out how to do that all by himself because he couldn't read the directions that came with the models. When he was 9, 10, and 11 years old, Tommy was putting together 2 or 3 models every day.

About that same time, a guy named Billy Hersch, who was older than Tommy, got Tommy involved in sniffing things like toluene and paint thinner. Billy had Tommy doing that all the time. When I would see Tommy after he'd been huffing toluene, he'd be spaced out, he couldn't walk, and he didn't know where he was. After he'd done it for a while, even when he wasn't high on the toluene, you could tell it had damaged him. He wasn't himself anymore. He had always been slow mentally, but he got even worse.

(App. G.)

c. The most graphic and saddening description of Tommy's toluene abuse comes from his childhood friend and step-brother, Jimmy Brooks:

When Tommy was about 8 or 9 years old, he would climb up a tree in the yard with his tube of glue and a sack every day. He would fall out of the tree because he was so buzzed he didn't know what he was doing. When he would land, he was already so stoned he would just get up and walk off like nothing had happened. I thought it was funny. I sniffed some glue and paint, too, but never like Tommy did. He did it all the time. Looking back on it, he might have learned to sniff glue from me, but I was not the one that taught him the other stuff he did after that.

At about age 9 or 10, he really got into paint thinner. I don't know where he picked up that habit, but he had a group of friends and that's all they did for a couple of years. I heard them call it "toolene," but to me it's still paint thinner, or the same stuff that's in it. They would use a soaked rag inside a bag or a can they had cut in two and then put back together, and huff the fumes. Tommy did that every day, at least three or four times a day until he was 13 or 14.

I remember when Tommy was about 11 he put his bed up in the garage. He sniffed so often, the garage smelled like a body shop. Tommy started smoking grass about the same time he went from glue to paint thinner and kept that up from then on. It's a wonder the garage didn't blow up.

(App. F.)

d. These toxic substances unquestionably damaged Tommy's already incomplete brain. Scientific literature has long recognized and warned of the dangerous neurological damaging aspects of organic solvent abuse. See articles contained in Appendix T: Knox, J., and Melson, J., "Permanent Encephalopathy from Toluene Inhalation," New England Journal of Medicine vol. 275 (26), pp. 1494-6 (1966); Grabski, P., "Toluene Sniffing

Producing Cerebellar Degeneration," The American Journal of Psychiatry, Vol. 18, pp. 461-2 (1961) ("Toluene can produce irreversible cerebral degeneration"); Strub, R., Organic Brain Syndrome: An Introduction to Neurobehavioral Disorders, F.A. Davis Co., Philadelphia, 1981 ("[M]any investigators in this field are convinced that irreversible central nervous system damage does occur in young people who clinically misuse these solvents"); Kaplan, H., and Sadock, B., "Drug Dependence," Comprehensive Textbook of Psychiatry/IV, p. 1012 (1985). Experts contacted by current counsel verify the scientific literature:

The inhalation of glue and toluene in large doses regularly causes irreversible brain damage, especially when used by younger individuals.

(Affidavit of Samuel I. Greenberg, M.D., App. C.)

The prolonged daily use of toluene can slow thinking and is associated with organic brain damage.

The medical and scientific community recognized the causal relationship between toluene use and brain damage in the 1970's. Research, reports and literature documenting the phenomenon were available through medical and mental health professionals throughout the nation at the time of Mr. Groover's trial in 1982.

(Affidavit of Herbert Schaumburg, M.D., App. D. See also Affidavit of Benjamin David Greenberg, Ph.D., App. E.)

Toluene led Tommy naturally to the abuse of illicit drugs. His weakened mental make-up made him malleable to others, like Billy Hersch, who pushed and prodded him into ignorant self-

abuse. Tommy literally ended with an addiction to PCP, one of the most physically destructive illicit drugs known. Those around him provide the gruesome evidence, and experts recently contacted by current counsel supply the grim diagnosis: Tommy Groover further destroyed parts of his brain through his socially and congenitally-produced proclivity for drug abuse.

a. Sister Penny details the easy step from toluene to

PCP:

Tommy had been retarded all his life, and after he got started on the toluene, he was on drugs all the time too. The toluene started Tommy's drug problems, and from then on, someone was always giving him some kind of drug, and he stayed high every day. Tommy didn't know what drugs were until he met Billy Hersch. Once when Tommy was about 13, Billy gave him some acid. Tommy came home with his head all shaved. He felt really stupid, and said Billy had given him the acid and then shaved his hair off. Billy or somebody else was always getting drugs and then getting Tommy to come along with them. Billy would say, "This ain't gonna hurt you," and Tommy didn't know any better than to go along with him and do what Billy wanted him to do. Over the years Tommy used every kind of drug there was, including marijuana, acid, cocaine, speed and quaaludes. Tommy also drank a lot of alcohol. Once, Danny Sheffield and Tommy took my car, and when they brought it back there was an empty beer keg in the back.

Tommy's problems with the toluene and the drugs all got started because he was so easily influenced by other people. He was easy to talk into things and couldn't say "no" to people. Billy Hersch and Danny Sheffield were just two of the people who got Tommy to do things that weren't good for him.

(App. H.)

b. Sister Sabrina saw it also:

Ever since he started huffing toluene, I've hardly seen Tommy straight a day in his life. He was high on something every day. A couple times he tried to get out of that life, but it never worked. When he got married, he thought his life would change for the better and he could get away from the drugs, but his wife was a drug addict and kept him involved in drugs. One time, Tommy decided to go to a drug rehabilitation center in Jacksonville, so my husband and I took him there. Tommy was supposed to stay there for 30 days, but he left after no more than a week or two. He was too messed up to be able to do anything for himself.

All of Tommy's problems, first with the toluene and then with the drugs, happened because he was always getting led into things by other people. Because he was mentally slow, it was easy for other people to get him into things. Just like when he signed his son away for adoption -- he was too trusting and didn't know how to tell when people were doing something that would hurt him. And he didn't have the common sense to know what to do or how to avoid following other people around and doing what they wanted him to do.

(App. G.)

c. Lois Hancock was especially aware that her son was easily led into self-destructive activities by pitiless peers out for their own self-interested "highs":

Tommy never seemed to be around people his own age. His buddies were always people older than him. And that caused him problems. Tommy would be at home, doing something on his own and somebody would come along and get him to go somewhere with them. I didn't know it at the time, but what was happening is that people were getting Tommy

involved with things he shouldn't do, like drugs. People thought they could use Tommy -- I guess because he was slow and couldn't read or write -- and so they kept messing with him. Tommy didn't know what to do. He trusted and loved everybody and didn't see any fault in other people. He worried all the time about not being able to read and write and didn't have a lot of self-confidence. Tommy wanted people to like him, so he'd go along with what they wanted from him. Tommy got pretty messed up on drugs and one time went to a drug rehabilitation center to try to straighten out. He had gotten on some "T", got in pretty bad shape, and decided he didn't want to be like that. After he came home from the drug rehabilitation center, he stayed around the house. But some guys came looking for him to get him into drugs again. They'd use some line on him like their car was broken down and they needed his help, and Tommy would go along with them. This happened over and over again. Tommy wasn't able to say "no" to these people and was too slow and trusting to understand that they weren't doing him any good.

(App. I.)

d. Step-brother Jimmy Brooks saw the PCP:

Tommy started hard stuff when he was about 14: cocaine, PCP, heroin, quaaludes, uppers, downers, whiskey, beer, mushrooms, LSD, Delaudid, hash, whatever he could get his hands on. His mother left my father in 1974, but Tommy stayed with my dad for a while after the separation. Tommy was shooting PCP in his arm every day by the time of the separation, as well as all the other things, including speed, that I've said here.

I know all this because I saw it as it happened.

(App. F.)

e. The trial record is replete with anti-drug

rhetoric, and drenched with evidence of Tommy's own drug addiction. Tommy's half-brother, Malcolm Johns, further underscores the nightmare Tommy was going through at the time of the offense:

I am Tommy Groover's half-brother. I was born 12/19/62. My natural mother was Lois Groover Brooks. I was reared by foster-parents from birth and I did not meet Tommy or my natural mother until the summer of 1979. At the time Tommy was already shooting PCP every day. He was also doing LSD, quaaludes, cocaine, heroin, marijuana, hash, liquor and beer.

On the evening before the day of the killings occurred, Tommy Groover took a syringe, U-100 I think, and injected what looked like between 35 and 40 cc's of rocket fuel into his left arm. I was on his right side and could see the needle, and the syringe going into his left arm. His veins were out, so he didn't need any tourniquet or pantyhose or anybody's hand to bring up the vein.

Rocket fuel is like a synethic heroin, that I understand is used as horse tranquilizer. It is called T for PCP. He put a quarter in a teaspoon (a quarter is \$25), stuck the needle in a cup of water, drew up maybe 30 cc's of water and squirted it in the spoon with the T. My sister says a quarter's worth of T is about the same size as a half teaspoon of sugar. Tommy used a Marlboro cigarette filter to filter out the trash when he was drawing the stuff back out of the spoon. He shot that into his arm. He and I were drinking Canadian Lord Calvert and Wild Turkey 101 out of glasses, mixed with a little Coke and ice. There was just the two of us, and he and I drank the whole liter bottle of Calvert. I left when the Calvert bottle was half gone, and I am sure he finished it by himself after I left, because when Tommy got to drinking like that he couldn't quit.

I was with him from 10:15 a.m. until 2:30 p.m. Later on about 5 p.m. we got together again at the Sugar Shack, where Tim Nugent had brought him. We went out behind the building and smoked four joints among six people. This was about 5:45 p.m. I understand that Tim and Tommy were together the rest of the evening.

Tommy is the kind of guy who will do whatever anyone else is doing with drugs. He's like that with other things too -- he's always been easy to get to do what other people want him to do. I suppose it's because he's retarded and slow.

(Affidavit of Malcolm Johns, App. M.)

All of these family members would have told the trial court, the sentencing jury, defense counsel, and the State any and all of this information about Tommy at the time of trial. No one asked. Jimmy Brooks came from Tennessee to Jacksonville to attend the trial, and sat silent because no one asked. The trial court roundly condemned drug abusers in the sentencing order, without any knowledge of Tommy's singularly nonvolitional addiction.

The drugs Tommy became addicted to, especially PCP, further destroyed his brain and produced violent behavior where none had existed before. Scientific literature, and the opinions of recently contacted experts, reveal the self-damage caused by PCP.

(1) PCP "appears to trap individuals who abuse it on a chronic basis . . . [and] may produce a prolonged organic brain disorder, which may or may not leave permanent residual cognitive impairment." Fauman and Fauman, "Chronic

Phencyclidine (PCP) Abuse: A Psychiatric Perspective," Journal of Psychedelic Drugs, vol. 12 (3-4), Dec. 1980, pp. 307, 313-17. See also American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 3d edition, Washington, D.C., A.P.A., 1980; Michael Fauman, Ph.D., M.D., and Beverly Fauman, M.D., "Chronic Phencyclidine (PCP) Abuse: A Psychiatric Perspective-Part I: General Aspects and Violence," Psychopharmacology Bulletin, Vol. 16 (4), pp. 70-72 (1980); Michael Fauman, Ph.D., M.D., and Beverly Fauman, M.D., "Chronic Phencyclidine (PCP) Abuse: A Psychiatric Perspective-Part II: Psychosis," Psychopharmacology Bulletin, vol. 16 (4), pp. 72-73 (1980); Greenberg, B.D., Segal, D.S., and Jacobs, B.L., "Hallucinogens: Phencyclidine," in Psychopharmacology 2, Part 1: Preclinical Psychopharmacology, Elsevier Science Publishers, 1985; Kaplan, Harold I., M.D., Sadock, Benjamin I., M.D. (editors), "Drug Dependence," in Comprehensive Textbook of Psychiatry/IV, Williams and Wilkens, Baltimore, 1985; and Ronald K. Siegel, Ph.D., "PCP and Violent Crime: The People vs. Peace," Journal of Psychedelic Drugs, vol. 12 (3-4), pp. 317-29 (1980); collated at Appendix Y. Without question, PCP causes brain damage and uncontrollable, uncharacteristic violence.

(2) Experts recently contacted by current counsel confirm the literature:

Scientific literature and research report that PCP abuse is associated with bizarre and unpremeditated violent behavior. PCP-related violent behavior has been observed in a

variety of settings from controlled experiments to hospital emergency rooms. Repeated PCP ingestion increases the probability of psychotic reactions in humans and can cause a schizophrenic-like state. PCP causes pronounced alterations in perceptions of reality and disordered thought, which result in a significantly lessened ability to conform conduct to the requirements of the law.

In one study, researchers reported that violence associated with PCP ingestion had no consistent relation to a history of aggressive behavior in the absence of PCP or other drug use. Michael Fauman, Ph.D., M.D., and Beverly Fauman, M.D., "Chronic Phencyclidine (PCP) Abuse: A Psychiatric Perspective," Journal of Psychedelic Drugs, Vol. 12 (3-4), pp. 307-15 (1980).

The associative relationship between PCP and violent behavior is conclusively documented in the literature and has been well known to mental health professionals and research scientists for over a decade.

(Affidavit of Benjamin Greenberg, Ph.D., App. E.)

Mellaril: The trial court, counsel for the State, and even defense counsel, made remarkable statements complimentary of Mr. Groover's purported mental activity ("Sharp as a tack," according to Prosecutor Greene; "[A]ge in terms of maturity and experience were far beyond" age 24, said the trial court in the sentencing order), and the Court made critical legal decisions based upon the alleged absence of any mental problems suffered by Tommy Groover. Right under everyone's nose was red-flag evidence that someone thought Tommy had problems: he was prescribed (improperly) massive doses of Mellaril, a powerful anti-psychotic drug, throughout his pretrial and trial incarceration. He was

medicated by the State. Record evidence of this comes from Tommy Groover's deposition. Nonrecord evidence is supplied by jail records and by the nurse who obtained the medication for Tommy. A recently-contacted expert examined this and all the other aforementioned materials and concluded that the massive improper doses of Mellaril completely stupefied Mr. Groover:

a. Record Evidence: At a pretrial deposition, Mr. Groover revealed, in the presence of the State, that he was on this heavy duty anti-psychotic leveler. The deposition was unusual enough without this revelation. Tommy had pled guilty to first-degree murder, but had not been sentenced. Co-defendants' attorneys were to question Tommy, who was present at the deposition and was being "protected" by the State (Mark Arnold) -- his own attorney was inexplicably absent. Mr. Arnold asked for a brief recess, and Tommy was then medicated:

MR. ARNOLD: Excuse me. Can we go off the record for a second?

MR. LINK: Sure.

(Off-the-record discussion)

BY MR. LINK:

Q: Mr. Groover, we just had a recess so that you could take some medication. As long as we're talking about it, what kind of medication are you taking?

A: Mellaril.

Q: And what dosage?

A: Five -- I can't remember what they call it, that much (indicating), a teaspoon full.

Q: How often do you take the Mellaril?

A: Three times a day. I take a stomach medication, and I take medication for my back.

Q: What kind of medication do you take for your stomach and your back?

A: I can't remember the name of either one of them. It's some kind of green liquid for my stomach and white pills for the back.

Q: How long have you been taking Mellaril?

A: Since about two weeks after I got in jail.

Q: Who prescribed it for you?

A: The doctor over there.

Q: The jail doctor?

A: Yes. Marilyn. Mental health lady over there had me go see some doctor over there on Friday. He prescribed it for me. I was having problems sleeping and stuff.

Q: Does any of the medication that you're taking interfere with your ability to think clearly?

A: No.

Q: Does it interfere with your ability to

understand what I'm asking you or understand what you're saying?

A: No.

Q: You said you needed something other than water to chase your medication; you have a coke there?

A: Yes.

Q: Who bought the coke for you?

A: Him. (Pointing)

Q: The State Attorney?

A: Yes.

(Deposition conducted July 9, 1982, excerpted in Appendix S, pp. 15-18.) Later in the deposition, Mr. Link returned to the medication issue, and its obvious mental health implications. The State, there to protect someone who was evidently their client, actually objected:

BY MR. LINK:

Q: Why are you taking medication?

A: Why am I taking my medication?

MR. ARNOLD: We've already been through this already; haven't we?

THE WITNESS: For my nerves and to sleep at night.

BY MR. LINK:

Q: Is that your understanding of why you are taking it?

A: Yeah.

Q: Did your doctor give you a diagnosis as to what was wrong with you, why you couldn't

sleep and what kind of nerve problems you had?

A: No.

Q: Have you ever been treated for mental illness before?

MR. ARNOLD: Object.

THE WITNESS: No. Not really, no.

BY MR. LINK:

Q: Okay. Not really, no?

A: No.

Q: Have you ever been seen by a psychiatrist before?

A: I can't recall if I have.

Q: You don't know whether you have or not?

A: No. I don't think I've talked to any of them.

Q: How about a psychologist?

A: No.

Q: Have you ever been treated for drug abuse or alcohol abuse?

A: No. I ain't never been treated for it.

Id. at 187-88.

b. Jail Records: Jail records maintained for Tommy's pretrial and trial incarceration period reflect that he was constantly given massive quantities of Mellaril. The records are collated in Appendix N. In subsection 2, infra, Petitioner presents an expert's evaluation of these records and presents

the evidence that the Mellaril had a special disabling impact on Tommy.

c. Nurse: The jailhouse nurse who arranged for Tommy to receive the Mellaril taken during the deposition and at all other times has been contacted by current counsel, and verifies the jailhouse drug usage:

I have been a nurse at Duval County Jail since about 1979 and I worked there when Tommy Groover was in the jail from February 1982 to January 1983. At that time I passed out medicine to the prisoners. It was also my job to make recommendations to the mental health counselors at the jail when I thought a prisoner needed to see them. The counselors at that time were Marilyn Fowler and Gwendolyn Hamilton.

When Tommy first came in, he was awfully nervous, jittery, and withdrawn. My impression was that he had been on drugs and had been messed up on the outside. I recommended that the counselors see Tommy and they referred him to Dr. Innocent who prescribed drugs for him.

. . .

Tommy was on his medication throughout his jail stay. I believe he was still on the mezanine when he left the jail. That's an area where prisoners on medication stay. So, as I recall, Tommy was still on the prescribed drugs when he left.

(Affidavit of Annie Mainor, App. O.)

d. Mellaril is a powerful anti-psychotic drug which, when used to combat "restlessness" rather than psychosis, must be carefully and guardedly administered. For anxiety,

The usual starting dose is 25 mg three times a day. Dosage ranges from 10 mg two to four

times a day in milder cases to 50 mg three or four times a day for more severely disturbed patients. The total daily dosage range is from 20 mg to a maximum of 200 mg.

(Physician's Desk Reference 1985, pp. 1804-05, contained at App. X; see also Kaplan and Sadock, App. V.) If "patients are participating in activities requiring complete mental alertness . . . it is advisable to administer [Mellaril] cautiously" Id.

Tommy was not a severely mentally disturbed patient. He was brain damaged. He required every ounce of mental alertness available to his feeble brain. The State's narcotizing response was counterproductive, at least to Tommy:

Records from the Duval County Jail indicate that Mr. Groover was receiving large doses of Mellaril, an anti-psychotic drug, over an extended period of time. Although high dosages of Mellaril could be appropriate for treating active psychosis, there is nothing in Mr. Groover's medical charts to indicate that he was psychotic. The failure to perform any diagnostic work-up before administering such large amounts of Mellaril is unusual, and creates the risk of causing an unnecessary reaction to a drug that may not be indicated. The doses given Mr. Groover were large and in excess of the amount normally administered to a nonpsychotic patient to treat agitation or restlessness. Usually, a nonpsychotic patient exhibiting agitation or restlessness would receive 25-50 mg. of Mellaril two or three times a day. Mr. Groover apparently received 100 mg. three times per day and an additional 200 mg. at bedtime.

In a nonpsychotic individual, Mellaril has sedative effects. Massive quantities of this drug would impair an individual's ability to think and to express himself.

(Affidavit of Samuel Greenberg, M.D., App. C.)

2. Tommy Groover Was Incompetent

The upshot of all this information is that Tommy Groover was incompetent during trial and critical pretrial proceedings. This conclusion comes from two recently contacted experts who agree:

a. First, Harry Krop, Ph.D., a licensed clinical psychologist, performed a battery of psychological and neuropsychological tests, took a background history, relied upon a host of other documents and opinions, and came to a scientific conclusion of incompetency. Strikingly, he first observed that which laypersons should be able to observe: Tommy's "thinking was obviously retarded. . . ." (App. A.)

Psychological and Neuropsychological Testing

The psychological testing reveals that Mr. Groover is functioning in the mild range of mental retardation or in the lower 2% of the total population. His verbal IQ of 64 suggests a somewhat inflated estimate of his overall ability due to a significantly high score on one subtest (arithmetic) while all other verbal functions are in the moderate range of mental retardation. In this regard, Mr. Groover earned only scores of 2 or 3 (range = 1 to 19) on all tasks reflecting verbal reasoning, abstract thinking, conceptualization, and judgment. For example, Mr. Groover was unable to define the purpose of a thermometer and could not state four recent presidents. He could not define words such as "fabric," "assemble," and "enormous." He was unable to state the common features of a dog and a lion or a coat and a suit. Other findings on the neuropsychological testing reveal impaired memory (MQ = 63) as Mr. Groover has

significant memory deficit in logical memory, visual reproduction, and associate learning. His reading and spelling levels are equivalent to second grade ability. He has good perceptual motor skills and has relatively strong hand-eye motor coordination.

Overall, the results of the neuropsychological testing are consistent with organic brain damage with primary deficit being seen in the areas of memory, verbal reasoning, and judgment. Individuals with such deficits become easily confused, show impaired decision-making processes, and have difficulty understanding and processing even simple verbally presented material. These abilities would be compromised even more so under stress, or if the individual's mental state is otherwise impaired further by alcohol or drugs, prescribed or illicit.

Conclusion

In conclusion, this is an individual who suffers from an extensive history of alcohol and drug abuse which may have been precipitated by his inability to make rational decisions because of his preexisting neurological dysfunction. Conversely, his drug use has most likely exacerbated the organicity. His etiology is probably related to birth trauma and/or elevated fever as a youth. He is functioning in the mild range of mental retardation with extremely compromised abstract thinking and reasoning skills. His personality evaluation reflects a passive, non-assertive individual who is easily influenced by others.

Because of Mr. Groover's limited cognitive processes, he has been easily influenced by others, including peers who are more dominant in their personality. There are no deeply entrenched violent tendencies and, to the contrary, Mr. Groover would be more likely to avoid confrontation whenever possible. He is easily intimidated and succumbs to pressure easily, particularly

when under the influence of intoxicants.

Based on this evaluation, it is this examiner's opinion, to a reasonable psychological certainty, that there is substantial evidence that Mr. Groover was incompetent to be tried and sentenced due to his limited intellectual ability and his organic brain damage.

I am familiar with the legal test for incompetency expressed in cases such as Dusky v. United States, 362 U.S. 402 (1960), and with the criteria in Florida which are helpful in assessing the competency issue. (Rules 3.210 and 3.211, Florida Rules of Criminal Procedure). Mr. Groover would have great difficulty assisting his attorney in planning his defense and realistically challenging prosecution witnesses and would have severe problems relating to an attorney. It is clear that Tommy Groover did not have a full appreciation of the range and nature of the real penalties, and he is unable to have a true understanding of the adversarial nature of the legal process. There is also evidence to suggest that he had difficulty coping with the stress of pretrial incarceration. I would also be concerned that Mr. Groover's hearing deficit interfered with his ability to challenge prosecution witnesses.

In discussing Mr. Groover's understanding of the plea negotiations (i.e., the proceedings involving the decision to plea, give a statement, enter and withdraw the guilty plea) or of waiving his rights in an intelligent manner, it is clear that he could have intelligently done so only with considerable difficulty. Insofar as Mr. Groover was heavily medicated on psychotropic medications (i.e., Mellaril), it is plain that this patient would have had even more difficulty thinking in a logical, rational, and coherent manner at the time of these and other trial proceedings.

Doctor Samuel Greenberg also evaluated copious materials

provided by current counsel. His expert opinion is also that Tommy was incompetent at trial:

I am a psychiatrist licensed to practice in the State of Florida, and certified by the American Board of Psychiatry and Neurology. One of my present positions is Chief, Mental Hygiene Clinic, Veterans' Administration Hospital in Gainesville, Florida. I am also a clinical professor of psychiatry at the University of Florida Medical School. I have been practicing psychiatry for 35 years, and graduated from the University of Chicago Medical School in 1936. My curriculum vitae is attached.

I have reviewed the following records provided to me by the attorneys for Tommy S. Groover:

- a. Trial excerpts and statements regarding drugs taken by the defendant the day of the offense and the day before.
- b. Plea colloquy -- guilty plea and subsequent withdrawal.
- c. Drug time and dosage line.
- d. Jail records (Duval and Clay counties).
- e. School Records.
- f. Family Report.
- g. Florida Supreme Court opinion affirming conviction.
- h. Clemency Memo by Quentin T. Till.
- i. Trial Court Findings of Fact.
- j. Arguments by Prosecution and Defense concerning Defendant's Mental Status.
- k. PSI and DOC Reports Concerning Mental Status.

- 1. Transcript of Clemency Hearing.
- m. Medical Records.
- n. Rules on Competency to Stand Trial.

Records from the Duval County Jail indicate that Mr. Groover was receiving large doses of Mellaril, an antipsychotic drug, over an extended period of time. Although high dosages of Mellaril could be appropriate for treating active psychosis, there is nothing in Mr. Groover's medical charts to indicate that he was psychotic. The failure to perform any diagnostic work-up before administering such large amounts of Mellaril is unusual, and creates the risk of causing an unnecessary reaction to a drug that may not be indicated. The doses given Mr. Groover were large and in excess of the amount normally administered to a nonpsychotic patient to treat agitation or restlessness. Usually, a nonpsychotic patient exhibiting agitation or restlessness would receive 25-50 mg. of Mellaril two or three times a day. Mr. Groover apparently received 100 mg. three times per day and an additional 200 mg. at bedtime.

In a nonpsychotic individual, Mellaril has sedative effects. Massive quantities of this drug would impair an individual's ability to think and to express himself.

Mr. Groover's intelligence level and medical and psycho-social history may well impair his ability to concentrate, comprehend and express himself. In a pressure situation, he would exhibit irrational behavior and exercise poor judgment. He would be easily led and dominated by others, whether in a courtroom or on the street. The intelligence test performed by a school psychologist indicates a discrepancy between verbal and performance aspects of personality. The test results are consistent with a specific impairment in the ability to comprehend and

express himself.

Consistent with organic brain syndrome in Mr. Groover would be the history of his mother's pregnancy, during which she was assaulted, a difficult labor, a forceps delivery, a malformation of the head persisting for many months after birth and poor academic achievement. All of the above point to probable organic brain damage. Consistent with this diagnosis is his use of alcohol, street drugs, and glue and toluene. The inhalation of glue and toluene in large doses regularly causes irreversible brain damage, especially when used by younger individuals.

Based upon these factors, it is my opinion, to a reasonable medical certainty, that Mr. Groover was not competent to stand trial, or to understand the earlier proceedings involving the entry and withdrawal of a guilty plea. I have reviewed the criteria set forth in Fla. R. Crim. P. 3.211(a). In my professional opinion, Mr. Groover could not:

- a. appreciate the charges against him;
- b. appreciate the range and nature of the possible penalties;
- c. understand the adversary legal process;
- d. relate to his attorney;
- e. assist his attorney in planning a defense;
- f. realistically challenge prosecution witnesses;
- g. be motivated to help himself in the legal process;
- h. withstand the stress of incarceration prior to trial.

For these same reasons, in my opinion,

although Mr. Groover would have been able to testify "relevantly" -- in the sense that he was speaking about the right subject -- he was not able to testify in a way which would relate to a theory of defense or which would advance his own interests. His intellectual impairments were such that he could not understand what his role or position in the courtroom was, or how his testimony would relate to the jury's determination of the facts.

Because of his lack of understanding of the proceedings against him, Mr. Groover would be especially vulnerable to manipulation by others. His agreement to questions put to him may reflect nothing more than the submission to authority of an individual who is intellectually incapable of understanding the question he is asked to decide. People with this level of impairment will say "yes" to be compliant, or to relieve anxiety or embarrassment. In my opinion, Mr. Groover did not understand the nature and consequences of withdrawing his guilty plea because of his lack of understanding of the legal process.

A claim of incompetency can be raised in a 3.850 proceeding because an incompetent defendant cannot waive his or her right to assert the fact -- they are incompetent. Similarly, Tommy could not waive the right to raise other issues because of his brain-damaged and Mellaril-induced incompetency. Many of the issues in the Petition involve his mental condition and an evidentiary hearing is necessary to resolve the fact-based claims.

3. Trial Record Evidence Does Not Show Conclusively That the Post-Conviction Record is Wrong

The failure by counsel to raise a competency claim at trial cannot be dispositive of the merits of the incompetency claim: incompetency is cognizable in post-conviction proceedings

precisely because the issue was not raised, or properly resolved, at trial.

In the 3.850 proceeding, the state praised Tommy's lucidity at trial. Pate is tellingly on point. As discussed in Hill, apparent defendant understanding is not controlling:

The Court rejected the reasoning of the Illinois Supreme Court that the evidence "was not sufficient to require a hearing in light of the mental alertness and understanding displayed in Robinson's 'colloquies' with the trial judge." In its opinion, the Court stated that, although "Robinson's demeanor at trial might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to dispense with a hearing on that very issue."

Hill, 473 So.2d at 1257-58, discussing Pate v. Robinson.

An even stronger case of apparent competence fell to due process requirements in Bishop v. United States, 350 U.S. 961 (1956). Again, Hill offers the best perspective:

The trial court found that Bishop testified coherently and was adroit in explaining eye-witness testimony; that he withstood severe and long cross-examination, and that approximately one month before the trial a psychiatric evaluation determined that Bishop had no mental disorder. On the basis of this evidence, the court of appeals held that there was substantial evidence upon which the trial court could find that Bishop was competent to stand trial. The United States Supreme Court, however, found this evidence insufficient. . . . This decision stands for the principle that the trial court must conduct a hearing on the issue of a defendant's competency to stand trial where there are reasonable grounds to suggest incompetency.

Hill, 473 So.2d at 1256. Tommy's appearance at trial while, as we now know, he was drugged with Mellaril, does not control the competency issue. A hearing is required.

II.

AN EVIDENTIARY HEARING IS REQUIRED TO RESOLVE TOMMY'S CLAIMS THAT THROUGH UNREASONABLE ATTORNEY OMISSIONS, HE WAS PREJUDICIALLY DENIED HIS EIGHTH AND FOURTEENTH AMENDMENT RIGHTS TO THE ASSISTANCE OF AN INDEPENDENT, COMPETENT MENTAL HEALTH EXPERT AND TO A RELIABLE INDIVIDUALIZED CAPITAL SENTENCING PROCEEDING

A. RIGHT TO COMPETENT MENTAL HEALTH EXPERT

A defendant is entitled to expert psychiatric assistance when the state makes his or her mental state relevant to guilt/innocence or sentencing. Ake v. Oklahoma, 105 S. Ct. 1087 (1985). What is required is an "adequate psychiatric evaluation of his state of mind." Blake v. Kemp, 758 F. 2d 523, 529 (11th Cir. 1985). Counsel must assume responsibility for obtaining the assistance of such experts.

There is a "particularly critical interrelation between expert psychiatric assistance and minimally effective representation of counsel." United States v. Fessel, 531 F. 2d 1278, 1279 (5th Cir. 1979). "[W]hen it appears to counsel that the accused is mentally ill and that he cannot afford to consult a psychiatrist, it is counsel's duty to inform the court of this situation and move for a psychiatric examination." Proffitt v. United States, 582 F. 2d 854, 859 (4th Cir. 1979).

Counsel has the duty to conduct a minimally competent independent investigation, Goodwin v. Balkcom, 684 F. 2d 794, 805 (11th Cir. 1982), in order to discover any organic or psychiatric mental problems of his or her client and to understand the legal impact of such problems on competency, sanity, waivers, specific intent, and mitigating circumstances. See Hill v. State, 473 So. 2d 1253 (Fla. 1985); R. L. Jones v. State, ___ So. 2d ___ (Fla. 1985).

Tommy Groover needed help -- expert help. He is brain damaged, retarded, and unable to fend for himself. The state "protected" him (temporarily) with one hand at a deposition, by objecting to questions about his mental health history, and slapped him with the other hand by doping him with massive quantities of Mellaril.

Defense counsel apparently saw none of this. The family, previous doctors, school personnel, friends, jail personnel, and state attorney all knew Tommy had a problem. Defense counsel only had to look. Depositions were stopped so the State could drug Tommy, but counsel did not attend. Jailers were constantly hopping to provide him drugs. People were in attendance at trial who knew the relevant history. Letters to schools, hospitals, and friends would have revealed the source of Tommy's problem: organic brain damage.

Tommy fell out of trees while huffing toluene when he was 9 years old. Regularly. He was beaten while in the womb. He is

mentally retarded, with an IQ of 64, inflated because of one high score. He does not think right, through no fault of his own.

This information was not hard to find. It's relevant in Florida, and Tommy was entitled to Ake's protection. Florida law makes mental condition relevant to criminal responsibility and sentencing in many ways: (a) competency at trial and sentencing, (b) specific intent to commit first-degree murder, either premeditation, or the specific intent required for underlying felonies in felony murder, (c) legal insanity at the time of the offense, (d) statutory mitigating factors contained in Fla. Stat. secs. 921.141(6)(b), (e) and (f); and (e) myriad nonstatutory mitigating circumstances relevant at sentencing. Consequently, Tommy Groover was entitled to competent medical assistance.

Florida statute, at the time of Tommy's trial, allowed for psychiatric/psychological examination upon motion of counsel. Rule 3.210, 3.211, Florida Rules of Criminal Procedure. With the slightest investigation, defense counsel would have known that Tommy was brain damaged. The family would have provided a history that strongly suggested it, school records would have confirmed it, and pre-offense medical records, where Tommy was referred by a physician for neuropsychological evaluation, would have proved it. App. M. If counsel knew that information, a competent and constitutionally effective attorney would have conducted more investigation and arranged for evaluation,

diagnosis and assistance. Allowing the client to be duped with Mellaril is inexcusable. The Mellaril red-flag should have alerted counsel, if nothing else, and counsel was grossly ineffective for failing to obtain, and thereby denying Tommy's constitutional right to, competent psychiatric/psychological assistance.

The experts recently contacted have confirmed how critical a psychiatrist/psychologist would have been in 1982-83:

Considering the life history indication of organic brain damage, EMR placement in early schooling, organic solvent abuse, drug and alcohol abuse, especially PCP, and the nature of the offense, a detailed psychological evaluation performed competently by a competent psychiatrist or psychologist is crucial to a proper understanding and explanation of Tommy Groover's mental processes and abilities.

App. B.

For example:

a. Competency: In Claim I, mental health experts have offered their expert opinions that Tommy was incompetent to stand trial, based on organic brain damage and Mellaril stupefication. Tommy was denied this assistance in 1982-83.

b. Sanity/Specific Intent: Based on Tommy's background, his brain damage, and his personality, the influence of drugs at the time of the offense could readily have rendered him legally insane, and certainly affected his ability to form specific intent:

Scientific literature and research report that PCP abuse is associated with bizarre and unpremeditated violent behavior. PCP-related violent behavior has been observed in a variety of settings from controlled experiments to hospital emergency rooms. Repeated PCP ingestion increases the probability of psychotic reactions in humans and can cause a schizophrenic-like state. PCP causes pronounced alterations in perceptions of reality and disordered thought, which result in a significantly lessened ability to conform conduct to the requirements of the law.

App. E.

C. Mitigating Circumstances: Mental condition is particularly relevant at capital sentencing. Tommy was deprived of assistance like the following:

Even if sane at the time of the offense, Mr. Groover was acting under extreme duress and under the substantial domination of others involved. It is also my opinion that Mr. Groover was under the influence of extreme emotional disturbance in that he was heavily intoxicated and feared for his life. He was also functioning with a mental age equivalent of a 14-year-old individual compared to a person with average intelligence. Mr. Groover's background also reveals that at least the following nonstatutory mitigating facts should be considered in understanding his behavior at the time of the offenses:

1. Mental retardation
2. Organic brain syndrome
3. Drug and alcohol abuse
4. Specific learning disability
5. Sensory deficit (hearing loss and speech impediment);

6. Lack of history of violence;
7. Physical abuse by parents;
8. Sexual abuse by nonfamily adult;
9. Impaired self-concept due to academic and vocational failures, inability to read, and peer ridicule.

App. A. Other compelling nonstatutory mitigating circumstances are outlined in Claim I.

d. Waivers: Tommy purportedly waived himself into the electric chair. He withdrew a plea that would save his life, and incredibly damaging statements were introduced against him which he did not know the significance of when he gave them. All the experts readily agree that Tommy's mental limitations and Mellaril intoxication significantly hampered his abilities to fully comprehend his "waivers" of constitutional rights.

Because of the complete lack of psychiatric/psychological assistance, the Court absolutely failed to find any relevant mitigating circumstances. The Court actually opined that Tommy was intelligent beyond his 24 years. Whether through defense counsel's sixth amendment error, State fourteenth amendment due process error, or unconstitutional Court indifference, compelling mental health proof went unnoticed. This denied Petitioner's sixth, eighth and fourteenth amendment rights. Due process requires that a defendant like Tommy not be denied an adequate defense simply because he does not have the money and thus the tools to marshal the defense. Tommy had a lawyer, and the

lawyer simply did not look.

B. RIGHT TO EFFECTIVE ASSISTANCE AT CAPITAL SENTENCING

"A capital sentencing proceeding . . . is sufficiently like a trial in its adversarial format and in the existence of standards for decision. . . . [C]ounsel's role in the proceeding is comparable to counsel's role at trial -- to assure that the adversarial testing process works to procure a just result under the standards governing decisions." Strickland v. Washington, 104 S. Ct. 2052, 2064 (1984). When confronted "with both the intricacies of the law and the advocacy of the public prosecutor," United States v. Ash, 413 U.S. 300, 303 (1970), a defendant is entitled to counsel who will "bring to bear such skill and knowledge as will render the trial a reliable testing process." Strickland, 104 S. Ct. at 2065. The constitutional right is violated when the "counsel's performance as a whole," United States v. Cronin, 104 S. Ct. 2039, 1046 n.20, or through individual errors, Strickland, 104 S. Ct. 2064, falls below an objective standard of reasonableness and when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 2062. Petitioner must plead and prove 1) unreasonable attorney conduct, and 2) prejudice. Mr. Groover has.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom, 684 F. 2d 794, 805 (11th Cir. 1982). Both the Eleventh Circuit

and the Florida Supreme Court have imposed strict standards of performance on attorneys undertaking the penalty phase of a capital case. In O'Callaghan v. State, 461 So. 2d 1354 (Fla. 1984), the Florida Supreme Court granted a stay of execution and remanded the case for an evidentiary hearing where there were allegations that trial counsel conducted an inadequate investigation into mitigating circumstances for sentencing. The Florida Supreme Court examined allegations there that trial counsel never had a mental status examination of his client performed, did not contact the defendant's family, did not discover physical and psychological problems of the defendant as a child, and failed to uncover "a family history of mental illness." 461 So. 2d at 1355. There, as here, mental health experts' affidavits were proffered in postconviction suggesting that the defendant exhibited likely evidence of brain damage and mental illness. The court concluded that a 3.850 hearing was proper upon those allegations. Mr. Groover has provided this Court with an enormous amount of information concerning his background, medical and mental history, drug problems, and drugged condition in jail. See Claim 1.

In King v. Strickland, 714 F. 2d 1481 (11th Cir.), vacated and remanded for reconsideration, 104 S. Ct. 2051 (1984), adhered to on remand, 748 F. 2d 1402 (11th Cir. 1984), cert denied, ___ U.S.L.W. ___ (1985), the Eleventh Circuit vacated a sentence of death for the failure of trial counsel to adequately investigate

the existence of mitigating circumstances. The same action was taken in Douglas v. Wainwright, 714 F. 2d 1532 (11th Cir.), vacated and remanded, 104 S. Ct. 3575, adhered to on remand, 739 F. 2d 531 (1984), cert. denied, ___ U.S.L.W. ___ (1985). Accord Tyler v. Kemp, Case No. 84-8213 (11th Cir. Feb. 23, 1985). In Tyler, the court likewise held that trial counsel must thoroughly investigate, prepare, and present a full mitigation defense in capital cases, stating:

In Lockett v. Ohio, 438 U.S. 586, 98 S. Ct. 2954, 57 L.Ed. 2d 973 (1978), the Court held that a defendant has the right to introduce virtually any evidence in mitigation at the penalty phase. The evolution of the nature of the penalty phase of a capital trial indicates the importance of the jury receiving adequate and accurate information regarding the defendant. Without that information, a jury cannot make the life/death decision in a rational and individualized manner. Here the jury was given no information to aid them in the penalty phase. The death penalty that resulted was thus robbed of the reliability essential to assure confidence in that decision.

Tyler, slip op. at 10.

Mr. Groover's lawyer knew nothing of his client's background and history. It would have made a difference. Claim I presents the incredibly sad and tragic story of Tommy's predestined failure. Counsel's failure to present the story robbed the sentencing determination of the reliability required by the eighth and fourteenth amendments.

III

AN EVIDENTIARY HEARING IS REQUIRED ON APPELLANT'S CLAIM THAT THE PROSECUTION CONCEALED PAYMENTS, MONEY AND SERVICES FROM "UNCLE RALPH" TO STATE WITNESSES, DESPITE A SPECIFIC DEFENSE REQUEST FOR DISCLOSURE OF ANY CONSIDERATION FURNISHED TO A WITNESS, IN VIOLATION OF THE RULE OF BRADY v. MARYLAND.

Brady claims, like claims of ineffective assistance of counsel, are cognizable in post-conviction proceedings because they necessarily involve facts that were never brought out at trial. Brady v. Maryland, 373 U.S. 83, 87 (1963), holds "that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution." Recently, in United States v. Bagley, 473 U.S. _____, 87 L.Ed.2d 481 (1985), the United States Supreme Court clarified "the standard of materiality to be applied in determining whether a conviction should be reversed because the prosecutor failed to disclose requested evidence that could have been used to impeach Government witnesses." Bagley holds that reversal for a new trial is required if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." 87 L.Ed.2d at 494.

Bagley applies the same standard to evidence useful for impeachment -- such as proof that illicit cash payments were made

to witnesses -- as to other exculpatory evidence. 87 L.Ed. at 490. See Brown v. Wainwright, ---- F.2d ----, Docket No. 85-3217 (11th Cir. March 17, 1986) slip op. note 9 at 17. (Bagley casts doubt on former Fifth Circuit decision applying different standard to impeachment evidence.) Bagley is directly on point here. In Bagley, as here, the defense filed a written request for "all deals, promises or inducements made to witnesses in exchange for their testimony." 87 L.Ed.2d at 486. In Bagley, "the prosecutor's response to [defendant's] discovery motion misleadingly induced defense counsel to believe that [the Government witnesses] could not be impeached on the basis of bias or interest" arising from payments by the Government. 87 L.Ed.2d at 495.

In this case, the prosecution's largesse extended to nearly all of the state's civilian witnesses. It could hardly have escaped the jury's notice that, according to the state's theory, friends of the state witnesses were willing to kill for \$50.00. Had defense counsel known of the payments made by the state, he could have used this evidence in a powerful attack on the credibility of the entire prosecution case. Witnesses with no apparent motive to curry favor with the state -- like Carl Barton and Spencer Hance -- could have been shown to have a powerful incentive to provide the State Attorney with the testimony he wanted and would pay for. Moreover, disclosure of these payments would have undermined the prosecution's use of his own credibility to bolster that of his witnesses. If the jury had

known that Ralph Greene was passing bundles of cash to his witnesses, it would have given little credence to his promises that the witnesses were all telling the truth.

Other benefits were received by Billy Long. Incredibly, the person who prosecuted and dealt with Mr. Long, Ralph Greene, is now in private practice and is representing Long in parole proceedings, trying to obtain his early release. Ed Austin, State Attorney, is also trying to obtain Mr. Long's release. These efforts were not foreshadowed by what this Court, defense counsel, and the jury were told:

Direct Exam by Greene

A: (Long) "The arrangement was I pleaded guilty to second degree murder in behalf to testify for the State they would drop my charge from first.

Q: "Let you plead guilty to second degree murder?"

A: "Yes, sir.

Q: "Okay. Were you promised anything other than your pleading guilty to second degree murder?"

A: "No, sir.

Q: "What were you charged with?"

A: "First degree murder.

Q: "How many counts?"

A: "One.

Q: "Have you been sentenced?"

A: "No, sir.

Q: "And what are you facing as a potential sentence?"

A: "Life sentence."

(R. 765).

Cross-Examination

A: "I was charged on the morning of the 11th with conspiracy to commit murder and later on that afternoon they found out that I was involved in it, and then they changed the charge to first degree the same afternoon."

Q: "Do you know what the penalty is for first?"

Q: "Yes, sir, I do."

Q: "What is it?"

A: "Life imprisonment or the electric chair."

Q: "And you've entered a plea of guilty to murder in second degree, correct?"

A: "Yes, sir, I did."

Q: "Okay. When did you do that?"

A: "That was Friday -- repeat that again."

Q: "When did you enter your plea of guilty to murder in second degree?"

A: "I believe that was several months after the accident -- after the incident."

Q: "Okay. Now, you mentioned also that there were two drug charges pending against you."

A: "Yes, sir."

Q: "When you were arrested, right?"

A: "Yes, sir, four drug charges."

Q: "Dropped both charges?"

A: "They dropped the charges when I pleaded guilty to second degree to testify for the State.

Q: "So you are no longer facing those charges because you pled guilty, right?"

A: "Yes, sir.

Q: "And that was part of your agreement with the State, was it not.

A: "Yes, sir.

Q: "What were you charged with?"

AA: "Sale and possession of quaaludes and sale and possession of cocaine.

(R. 852-53).

Redirect

Q: "You told Mr. Shore that you had been arrested -- at the time you were charged with these murders you were also charged with sale and possession of drugs.

A: "Yes, sir.

Q: "And that those were dropped in return -- those were dropped when you pled guilty to second degree murder in return for your cooperation.

A: "Yes, sir.

Q: "You are facing life imprisonment on a second degree murder, aren't you?"

A: "Yes, sir.

Q: "Mr. Shore asked you what the penalty was for drugs, the penalty for second degree murder is a lot more than it is for those drugs, isn't it?"

A: "Yes, sir.

Recross

Q: "Mr. Long, Mr. Greene asked you about your murder charge and your drug charges?

A: "Yes, sir.

Q: "Okay. Have you been sentenced yet?

A: "No, sir, I haven't.

Q: "Why not?

A: "I don't know.

Q: "Well, let me ask you this: do you expect that maybe your sentence might depend on what you say here today?

A: "No, sir.

Q: "Do you expect any better treatment?

A: "No, sir.

Q: "Or better sentence for your testimony?

A: "No, sir, I don't.

Q: "Not at all?

A: "No, sir.

The clear impact of this testimony was that Mr. Long faced life in prison, and the State was going to do nothing to change that possibility. In fact, however, the State later asked this Court to impose a 10-year sentence, but the Court imposed 30 years. Within a year, Ralph Greene was before the parole commission as personal private counsel for Long, and Ed Austin was writing begging letters, to obtain "early release." (App.

W). In Greene's letters to the Commission, Long was referred to by his earlier adversary as "a victim" who had "never demonstrated any traits of violence" and who "comes from a good family." Id. Ed Austin had similar high praise for their murderer. Id. They even enlisted the aid of the lead detective in the case, who applauded the efforts by Long, which this Court saw through. Id.

Counsel has a tape of the parole proceeding at which Mr. Greene appeared on behalf of Mr. Long. Time has not permitted its transcription, but it will be presented at a hearing on this motion. At that proceeding, Mr. Greene revealed the degree of his commitment to William Long. It was far different from what the jury heard.

An evidentiary hearing is required so that Mr. Groover can prove that a Brady violation occurred.

CONCLUSION

For the reasons stated above, and in the 3.850 Motion and Memorandum of Law in Support of Motion for Stay of Execution filed below, Tommy Groover requests a stay of execution, and vacation of his judgments and sentences.

Respectfully submitted,

LARRY HELM SPALDING
Capital Collateral Representative

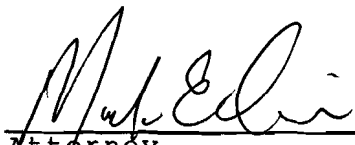
MARK EVAN OLIVE
Litigation Director

MICHAEL A. MELLO
Assistant Capital Collateral
Representative

DAVID ADAM REISER
Of Counsel

OFFICE OF THE CAPITAL
COLLATERAL REPRESENTATIVE
Independent Life Building
225 West Jefferson Building
Tallahassee, FL 32301
(904) 487-4376

COUNSEL FOR APPELLANT

By: 

Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
foregoing has been furnished by hand delivery to the Office of
the Attorney General, Elliot Building, 401 S. Monroe Street,
Tallahassee, Florida, 32301, this 20th day of June, 1986.



Attorney