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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

: CASE NO. 69,976

Petitioner,

v.

RONNIE S. LAW,

Respondent,

FILED

SID J. WHITE

JUL 2 1987

CLERK, SUPREME COURT

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RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND OF THE FACTS

IN THIS APPEAL, your Respondent, RONNIE S. LAW, will be referred to as "Ronnie". All references to the record will be indicated by "R", followed by the page number on which it can be found.

Although the Petitioner's Brief on the Merits contains many truthful facts presented in the light most favorable to the verdict! it also contains numerous inaccuracies and omits several uncontradicted facts. Therefore, in order to present a cogent and understandable analysis, the facts must be completely restated.

On June 5, 1985, RONNIE LAW was indicted by a grand jury on one count of homicide in the first degree or felony murder caused during the commission of an aggravated child abuse in violation of Fla.Stat. §782.04 (1985) (R 890). These charges stemmed from the death of Louis James Dees, IV, the three year old son of Ronnie's former girlfriend, Carol Free (R 890, 122). Ronnie pled "not guilty" and the matter went to a three and one half day jury trial, with jury selection commencing on October 14, 1985, and opening arguments on October 16, 1985.

After the prosecution presented its case, Respondent moved for judgment of acquittal on the

grounds that the evidence presented by the State was entirely circumstantial and lacked the sufficiency to sustain a verdict of "guilty" (R 483). Said motion was denied (R 484). At the conclusion of the trial the defense renewed its motion on the same grounds which was, again, denied (R 795). After seven hours of deliberation the jury returned a verdict of "guilty" of the lesser included offense of murder in the second degree (R 887), and he was sentenced to a term of seventeen years imprisonment (R 970). On appeal, the First District Court of Appeals reversed and remanded to the trial court for Ronnie's release. See Law v. State, 502 So.2d 471 (Fla. 1st DCA 1987).

The testimony at trial, as presented by the prosecution and the uncontradicted testimony of the defense witnesses, revealed that in mid-1984 Ronnie met Carol Free at the Oakcrest Bar in Pensacola, Florida (R 122, 686). That same night, Mrs. Free invited Ronnie to her home for the night while her husband was working offshore (R 173). This meeting spawned a continuing affair which was later discovered by Carol Free's husband who, in turn, promptly evicted her and her three children, Robert Hornbrook, age 9, from her first marriage; Amanda Dees, age 6, and Louis James Dees, IV, age 3, both from her second marriage (R 122). From

there, Carol Free and her three children moved in with Ronnie who, at that time, was living with his brother, Danny Law (R 567). They lived there until January 1, 1985, when Ronnie, Carol, and her three children moved to a house in Innerarity, Escambia County, Florida (R 123). The five continued to live at said house until the death of the youngest child, Louis James Dees, IV [hereinafter referred to as Little Jim] on February 10, 1985.

During this six week period, from January 1 to February 10, Ronnie would routinely feed and clothe the three children and drop them off at Donna Cook's house, the babysitter, in the mornings on the way to the Naval Air Station, where he was employed as a mechanic (R 299, 307, 490). The mother, Carol Free, was employed at Circle K convenience store with the night and evening shifts (R 123, 124, 296).

As far as all of the witnesses for the prosecution could determine, the five lived in a normal family setting in which Ronnie played and wrestled with the kids and disciplined them with occasional spankings on the buttocks (R 122, 125, 128, 134, 164, 171, 180, 181, 218-221, 230-235, 246, 253, 297, 306). Carol Free never played with the children, but usually bathed Little Jim and disciplined Robert by spanking and Little Jim by

tapping his head (R 223, 244, 305, 309).

Before relating the events that occurred shortly before Little Jim's death, it is necessary to explain the cause of death. The prosecution introduced two pathologists, Dr. Everett Havard and Dr. Ronald Reeves, to testify as to Little Jim's cause of death (R 319, 373). Dr. Havard actually performed the autopsy on February 11, 1985, at approximately 11:30 a.m. (R 321). Dr. Havard determined that the cause of death was a subdural hematoma which resulted from trauma from a blunt instrument (R 330, 338). He determined that lividity appeared fixed and that rigor mortis had set in and, therefore, the child must have died sometime before 4:00 a.m. on February 11, 1985 (R 322, 323, 358) and possibly as early as 10:30 p.m. the night before. Dr. Havard counted twenty five separate bruises on the body and, based upon the pattern of these bruises and the degree of injury to the head, concluded, over defense objection, that the manner of death was "homicide" (R 326, 339). He counted three bruises on the scalp, one of which was the fatal injury, and the rest of the bruises on the arms, chest, back and buttocks (R 326-329). Two of the bruises on the scalp appeared fresh: the third, however, was older (R 329, 330). Additionally, Dr. Havard found hydrocortisone in the child's urine which,

he concluded, was the biological result of stress, respiratory infections, or hydrocortisone shot or cream applied topically (R 337, 345, 346). He also found a respiratory infection causing the child's nostrils to be totally occluded (R 324, 347). Dr. Havard further determined that the subdural hematoma which caused the death could have resulted from an impact to Little Jim's head as long as two days before death (R 349, 365, 369). The majority of the other bruises were also determined to be less than two days old (R 359, 364). No fractures or external bleeding were observed on the body (R 351, 360).

Dr. Havard, on cross examination, admitted that he was not aware of certain accidental falls and blows to the head which may have explained the bruises and the subdural hematoma and conceded that the accidental blow to the head, which was caused by the child's falling onto a barbell within a two day period, could have caused the subdural hematoma (R 349-351, 363). Dr. Havard also conceded that the symmetrical bruises on each side of the child's chest appeared to have been made by a thumb and fingers and it was reasonable to conclude that this could have happened by someone awkwardly catching the decedent after being tossed in the air (R 351-356). He also testified that the

abrasions and scrapes on the body could have been caused by falling on dirt, sand, concrete, or on a rug (R 356). The doctor's conclusion of "homicide", however, was made without the benefit of these explanations which he deemed to be reasonable explanations of the deceased's injuries (R 349).

Dr. Havard testified that he extracted the eyes from the deceased and sent them to Dr. Ronald Reeves, a forensic pathologist, for his analysis. Also sent to Reeves were a letter from Dr. Havard requesting him to examine the eyes, Havard's preliminary report, the police investigator's report, the field officer's notes, identification reports, polygraph reports from the Sheriff's Department, a memorandum from the State Attorney's Office, and forty five photographs taken at the autopsy (R 397, 398). Dr. Reeves received no other information and based his opinion solely on these materials (R 398, 399, 450).

After receiving the eyes, Dr. Reeves conducted a test to determine whether or not the retinas were hemorrhaged in order to show what type of impact or abuse which this child may have suffered (R 394, 395). According to Dr. Reeves a retinal hemorrhage is often present when children are abused by whiplash, shaking type mechanisms, or being swung around into objects (R

459). Dr. Reeves found no evidence of retinal hemorrhage and concluded that the only evidence which he had that may have damaged the eyes was through the blunt trauma to the head (R 396, 459).

After reviewing the letters, pictures, and reports Dr. Reeves also concluded, over defense counsel's objection, that Little Jim was a victim of a "homicide" and that to a reasonable medical certainty, the injuries were inflicted "especially where there is no explanation" otherwise (R 401, 416). Reeves basically summed up his conclusion of "homicide" and "inflicted" injuries by stating that "the injuries speak for themselves" (R 447).

Reeves initially concluded that there was no conceivable way that these injuries could have been accidental and later, on cross examination, rejected all possible alternative explanations as being implausible, except one (R 430). Reeves did, however, state on several occasions, when asked about specific explanations as to accidental causes of the injuries, that, "anything is possible" or that, "anything can happen" (R 438, 458, 464).

The prosecution's other witnesses, and the defense witnesses, to the extent they did not contradict the prosecution's version, further explained the factual

events leading to the February 10, 1985, death as follows:

Ronnie observed Little Jim fall backwards off the top of a bunkbed onto a carpeted concrete floor on Friday, February 8, 1985 (R 714). On Saturday, the day before Little Jim's death, his brother, Robert threw a body block at him and caused his head to strike against a set of barbell weights (R 234, 235, 718). Carol Free testified that he hit the barbells on two separate occasions and also fell off the bunkbed but she did not think that these happened on Friday or Saturday. She, however, does not know when it happened (R 157, 161).

In the early evening hours of Saturday, February 9, 1985, Ronnie, Carol Free, and the children went to Audrey Miller's house, wherein she noticed scrapes on the deceased's nose and face (R 598, 599). Ronnie testified that this occurred on Thursday when he was playfully swinging Robert around and accidentally hit Little Jim, causing him to fall (R 720).

On Sunday, February 10, 1987, the day Little Jim died, the five went to the beach at approximately 1:30 to 2:00 p.m. (R 133). Carol Free had been drinking that day and continued to do so throughout the day (R 133). Robert testified that, while at the beach, Little Jim fell and rolled over (R 234). Upon returning from the

beach, Ronnie took the children out into the yard and began raking leaves with Robert assisting with the raking and Little Jim and Amanda picking up piles of leaves (R 133). During this time, Ronnie began playing with Little Jim by tossing him into the air and catching him (R 134, 163, 164). On one toss, however, Little Jim became frightened and twisted his body in midair, causing Ronnie to catch him in an awkward position in the chest area (R 134, 727).

At around 7:00 p.m. Sunday evening Carol had had so much to drink that she was getting sick and decided to go to bed (R 134, 774). While Carol Free was asleep the children bathed themselves and started watching "Knight Rider" on television (R 732, 733). While Robert and Amanda were watching television, Robert observed Ronnie and Little Jim laughing and playing in the other room (R 240, 241). At this time, Ronnie told Little Jim to pick up his toys and teddy bears, to which Little Jim responded that he did not want to and became "cranky" (R 241, 733). Little Jim, incidentally, had also been unnaturally crying and whining that entire day and appeared sluggish (R 164, 166, 167, 241, 785). Because of Little Jim's belligerence, Ronnie began spanking Little Jim's buttocks with his hand while holding on to his arm with the other hand so that Little Jim could not

run away (R 220-222, 240, 241). During the spanking Ronnie noticed that Robert was watching and he, therefore, closed the door (R 221). After the spanking Little Jim seemed depressed so, in order to cheer him up, Ronnie began playing with him by swinging him around with his hands (R 734). It was at this time that Ronnie lost his footing or his grip and caused Little Jim to fall down to the floor where he either hit his head on the bed or the floor (R 734, 735). After checking to see if Little Jim was hurt and apparently finding that he was okay Ronnie went into the kitchen for a glass of water as Little Jim began picking up his teddy bears and cleaning up his room (R 736, 737). Robert also testified that he witnessed Little Jim picking up the teddy bears and cleaning up his room after the spanking (R 243, 244). A short time thereafter, Ronnie told Robert to go to bed and when Robert walked into the room he found that Little Jim was already in bed, apparently sleeping, with the overhead light on in the room (R 245, 738, 775, 776). When Robert saw Little Jim in the bed he told Ronnie that Little Jim sometimes liked to play like he was asleep sometimes and Ronnie responded that maybe "he was just playing asleep" (R 245, 776).

After the children went to sleep, Ronnie went into the kitchen to drink some tea and Carol came walking in

the kitchen from the bedroom where she had been sleeping off her drunkenness (R 135). At this time Ronnie told Carol that he had noticed Little Jim was making a wheezing noise and asked her to check on him (R 135). According to Carol Free she only stuck her head in the room to listen for any noises, but she later admitted that she walked close to the bed, leaned over, and looked at him and determined that he was fine (R 168-170). Carol, however, was not suprised that Little Jim may have been wheezing because he had been quite congested that day (R 167). According to Carol Free, she then left the room and told Ronnie he was not making any wheezing noise (R 136). Carol then testified that Ronnie then walked back into the room, leaving the door cracked for about fifteen minutes, while she waited outside in the kitchen (R 137). Ronnie testified that the reason he went back into the room was that he had to check the back door to make sure it was locked and, in order to do **so** it is necessary to walk through the kids' room (R 738). After checking the back door Ronnie went on to bed and Carol stayed up to watch television until 11:15 or 11:30 (R 138). Ronnie testified that she was very irritable, supposedly because she was hungover (R 756).

Shortly after going to bed, Ronnie **was** awakened by Little Jim's crying and he rolled over to see if Carol

was in bed and saw that she was not (R 741). The next thing Ronnie remembers is that the baby cried for a little while and then stopped (R 757). Shortly thereafter Carol came to bed (R 742, 757).

The next morning Ronnie got up and went to work a little after 6:00 a.m. (R 766). Since he usually drops the children off at Donna Cook's house between 5:40 a.m. and 5:50 a.m. he was running a little late that morning (R 299). There, however, was no need for him to take the children to the babysitter's house on this morning because Carol Free was home. She had had Ronnie call her in sick the night before (Sunday) because she was too drunk to go in (R 138).

After Ronnie left for work Carol Free discovered that Little Jim's body was stiff and started shaking him (R 141, 142). In hysteria, she went next door to Corinne Mitchell's house who, in turn, called Ronnie at work stating that there was an emergency and that he needed to come home right away (R 251). Corinne testified that Ronnie asked to speak to Carol and that she would not let him (R 251). Corinne then hung the phone up (R 251). Corinne Mitchell **also** testified that she noticed a cut under Little Jim's nose the day before (R 251).

After the telephone call from Corinne Mitchell, Ronnie searched for his supervisor, Gerald Struck, in

order to get permission to leave work (R 491, 492, 745). Ronnie was very upset and concerned and was under the impression that the child was at a hospital but did not know which one he was in (R 492). His supervisor then told Ronnie to wait and get better information before going to any hospital (R 492).

Five minutes later Decca Matthews, from the Volunteer Fire Department, then called, stating that there was an emergency at his home and that his girlfriend's baby was dead (R 493, 258). Ronnie responded by saying, "What?" and hung up the phone (R 258). After Ronnie expressed great concern to leave, Mr. Struck instructed him to put up his tools and close his tool box (R 493, 494). Ronnie then left in a hurry (R 493, 494).

Later, when asked what happened to Little Jim, Carol free consistently told many people that Little Jim died from a series of accidents (R 157, 187, 579). Additionally, when Ronnie Law became a suspect, Carol Free repeatedly stated that Ronnie was sweet and good to the children and did not hurt them (R 147).

SUMMARY OF THE ARGUMENT

In prosecuting the charge of first degree murder against Ronnie S. Law, the State was held to a special standard of proof because the only evidence submitted was circumstantial. This special standard of proof does not conflict with the standard of proof in reviewing the denial of a motion for judgment of acquittal, Considering all evidence in a light most favorable to the verdict and requiring the State to exclude any reasonable hypothesis of innocence may be accomplished when the conflicting evidence is viewed in the light most favorable to the verdict, while still considering all uncontradicted and undisputed evidence that does not favor the verdict,

No matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence. The State's specially enhanced standard of proof was further complicated by the fact that it could not produce any motive for Ronnie Law to commit a homicide. The prosecution's evidence failed to overcome Ronnie's hypothesis of innocence. Furthermore, the prosecution failed to rebut Ronnie Law's preferred reasonable and uncontradicted explanations as to the possible cause of death of Little Jim, thereby failing to prove that the evidence was inconsistent with any reasonable hypothesis of innocence. The evidence was, therefore,

insufficient to sustain the guilty verdict *of* murder in any degree, and the First District Court of Appeal's ruling should be affirmed.

ARGUMENT

WHETHER THE FIRST DISTRICT COURT
OF APPEALS APPLIED THE CORRECT
STANDARD OF REVIEW IN REVERSING
THE TRIAL JUDGE'S DENIAL OF RONNIE
LAW'S MOTION FOR JUDGMENT OF ACQUITTAL

STANDARD OF REVIEW

In its initial brief on the merits, the Petitioner would have this Court retreat from the firmly established standard of review in circumstantial evidence cases (hereinafter discussed), because it is in apparent conflict with another firmly established standard of review for denial of a motion for judgment of acquittal. According to the State, it should not be required to exclude any reasonable hypothesis of innocence in a circumstantial evidence case when the evidence must be considered, on appeal of a conviction, in the light most favorable to the prosecution. This reasoning is, however, flawed and fails to take into account that when considering evidence in the light most favorable to the prevailing party, the reviewing Court does not merely absorb those facts that only benefit the prosecution, but, instead considers any conflicting evidence, and all reasonable inferences derived therefrom, in favor of the verdict. Tibbs v. State, 397 So.2d 1120 (Fla. 1981) aff'd 457 U.S. 31, 102, S.Ct. 2211, 72 L.Ed.2d 652 (1982); Buenoano v. State, 478

So.2d 387 (Fla. 1st DCA 1985): Bradford v. State, 460 So.2d 926 (Fla. 2d DCA 1984); Sellers v. State, 212 So.2d 659 (Fla. 3d DCA 1968) [emphasis supplied]. Even when considering evidence in the light most favorable to the verdict, the reviewing court cannot ignore evidence from which there is no contradiction or dispute, even if that evidence comes from an interested person and does not favor the verdict. Brannen v. State, 94 Fla. 656, 114 So. 429 (1927); Buenoano, supra; Bradford, supra. Thus, when incorporating this general standard of review with the standard of review in circumstantial evidence cases, there exists perfect harmony.

The State would then have this Court fashion a new standard of review in circumstantial evidence cases, stating that the Court's process in reviewing sufficiency of circumstantial-*evidence places an "impermissively onerous burden upon the State" (See Page 18 of Petitioner's Brief). This "burden" upon the State has, however, withstood the test of over 60 years of existence and the State has continued to overcome it by convicting the truly guilty criminal defendants.

The State's case against Ronnie Law was based entirely upon circumstantial evidence. In contrast to direct evidence, circumstantial evidence is proof of certain facts or circumstances from which the trier of

fact may infer that the ultimate facts in dispute existed or do not exist. Davis v. State, 90 So.2d 629, 631 (Fla. 1956). Where the State relies entirely upon circumstantial evidence to establish a charged crime, as here, Florida Law has long imposed a special and strict standard of proof which the State's evidence must satisfy in order to survive a defense motion for judgment of acquittal at trial. In McArthur v. State, 351 So.2d 972 (Fla. 1977), this Court reiterated the applicable standard in circumstantial evidence cases as "[W]here the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt the conviction cannot be sustained unless evidence is inconsistent with any reasonable hypothesis of innocence." McArthur, supra, at 976; see also, Wilson v. State, 493 So.2d 1019 (Fla. 1986); Ross v. State, 474 So.2d 1170 (Fla. 1985); Jarimillo v. State, 417 So.2d 257 (Fla. 1982). In applying this standard, the version of the events related by the defense must be believed if circumstances do not show that version to be false. Peek v. State, 395 So.2d 942 (Fla. 1980), cert.den. 451 U.S. 964, 101 S.Ct. 2036, 68 L.Ed.2d 342 (1981), vacated and remanded on other grounds 488 So.2d 52 (Fla. 1986); McArthur, supra, at 976; Mayo v. State, 71 So.2d 899 (Fla. 1954); Holton v. State, 87 Fla. 65, 99 So. 244

(1924); Fowler v. State, 492 So.2d 1344 (Fla. 1st DCA 1986); rev.den. Sup.Ct. Case Number 69,431 (Fla. Feb. 9, 1987); Bradford, *supra*, at 931.

Even if the circumstantial evidence is sufficient to suggest a probability of guilt! it is not sufficient to support a conviction if it is likewise consistent with any reasonable hypothesis of innocence. McArthur, *supra*; Weeks v. State, 492 So.2d 719 (Fla. 1st DCA 1986); Paz v. State, 480 So.2d 701 (Fla. 3d DCA 1985). Not only must every reasonable hypothesis of innocence be excluded for there to be a conviction based upon circumstantial evidence, the evidence submitted by the State must be **so** convincing as to permit findings beyond a reasonable doubt of Defendant's guilt. Therefore, the lack of evidence to overcome reasonable doubt will also fail to overcome any hypothesis of innocence. Davis, *supra*; Head v. State, 62 So.2d 41 (Fla. 1952); Kimbler v. State, 360 So.2d 1270 (Fla. 1st DCA 1978). It is for this reason that it has been endlessly stated that "circumstantial evidence must not only be consistent with the Defendant's guilt, but must be inconsistent with any reasonable hypothesis of innocence." Peavy v. State, 442 So.2d 200, 201 (Fla. 1983); Fox v. State, 469 So.2d 800 (Fla. 1st DCA 1985). When considering a motion for judgment of acquittal the trial judge is bound by

and in reviewing his ruling, its enforcement is incumbent upon the appellate courts. Davis, supra; Head, supra; Brown v. State, 369 So.2d 91 (Fla. 1st DCA 1979); Kimbler, supra.^{1/}

The State attempts to use this Court's recent opinions in Lincoln v. State, 459 So.2d 1030 (Fla. 1984); Heiney v. State, 447 So.2d 210 (Fla. 1984); and Rose v. State, 425 So.2d 521 (Fla. 1983), to conclude that the question of whether the evidence fails to exclude any reasonable hypothesis of innocence is for the jury alone to determine. This position is partially correct in that the jury does make this determination, but it does so only after the trial judge has properly determined that there is substantial, competent evidence to support a jury verdict. In order to find "substantial and competent evidence", a threshold analysis must be made by the trial judge. Although the state may claim that there exists a contradiction between the instant case and Heiney, Lincoln, and

^{1/} For an exhaustive historical analysis of the application of the standard of review in circumstantial evidence cases see Jones v. State, 466 So.2d 301, 318-326 (Fla. 3d DCA 1985).

Rose as upon whom the decision rests in applying the standard of review, there actually exists no real contradiction. As explained in Judge Zehmer's excellent exposition of this apparent but not real contradiction in these cases:

As we read the opinions in Rose, Williams, and Heiney, the Supreme Court is merely recognizing the jury's right to determine whether the State has disproved the Defendant's hypothesis of innocence in those cases **where there is evidence presented by the State that contradicts the Defendant's story.** In such cases, it becomes the jury's duty, as finders of fact, to determine what evidence is credible and whether the 'credible circumstantial evidence that is "inconsistent with the Defendant's hypothesis of innocence" is sufficient to "exclude" every reasonable hypothesis of innocence beyond a reasonable doubt. It is our responsibility on this appeal, therefore, to review the evidence as a whole and determine whether the State has presented sufficient, competent evidence impeaching Defendant's story to allow the jury to resolve the disputed issues of material fact.

Fowler, supra, at 1347 (emphasis added); see also Cockett v. State, 12 FLW 1402, 1404 (Fla. 4th DCA June 12, 1987).

As Judge Zehmer further stated in Fowler, supra:

Our opinion did not fashion a new standard of appellate review for circumstantial evidence cases. Rather, it is the State that seeks to apply a new standard by insisting that Spinkellink, Lincoln, Heiney, and Allen require a trial Court to submit a circumstantial evidence case to the jury whenever both inferences of guilt and innocence may be reasonably drawn from the evidence, even though the State's evidence fails to dispute the inferences of innocence and thereby create a question of fact for the jury. In each of the cases cited by the State

in support of this contention, the State's evidence was sufficient to dispute the factual inferences of innocence relied on by Defendant, and those decisions are, therefore, distinguishable from this case. Our review of the evidence in this case led us to conclude that the State's evidence not only failed to dispute the reasonable hypothesis of innocence urged by Fowler but did not prove the State's theory of the case and was, in part, corroborative of Defendant's explanation. Thus, applying the usual standard of review, the State's evidence was legally insufficient to withstand defendant's motion for judgment of acquittal.

Fowler, supra, at 1353.

APPLICATION OF FACTS TO THE
STANDARD OF REVIEW

Turning now to the facts, your Respondent respectfully requests that this Court be aware of the State's bold language in asserting facts that are either unsupported by the record or exaggerated, Furthermore, your Petitioner chose to ignore certain facts introduced by their own witnesses which would minimize or defeat the State's audacious conclusions, Because the circumstances surrounding Little Jim's death were mysterious, Ronnie Law was forced to offer alternative theories to the State's theory that he murdered the child, Each of these theories, which will be independently discussed herein, result in separate, reasonable hypotheses of innocence of which the prosecution was duty bound to contradict. Rather than contradict, the State's witnesses substantially

supported Ronnie Law's hypotheses with facts and testimony that this Court should not ignore. Each of the uncontradicted explanations are consistent with a reasonable hypothesis of innocence. However, not only are Ronnie Law's uncontradicted explanations consistent with several reasonable hypotheses of innocence, but the entire case presented by the prosecution, in and of itself, failed to overcome Ronnie Law's presumption of innocence.

Before analyzing each of Ronnie's proposed explanations of Little Jim's death, the prosecution's case must be analyzed in order to determine whether it has overcome its specially enhanced duty. Through entirely circumstantial evidence, the prosecution attempted to paint a picture of Ronnie Law as a tyrannical maniac who ruthlessly beat and tortured this three year old child. Not even one of the prosecution's witnesses, however, which even consisted of two of the members of the same household, were able to testify that Ronnie struck the decedent on any other part of Little Jim's body besides the buttocks in the ordinary course of discipline. Carol Free, the child's mother, testified that she observed Ronnie spanking Little Jim only once (R 124). She then stated she could not remember whether he spanked him more than that, finally deciding that she

observed Ronnie spanking Little Jim no more than twice (R 128, 181). The area of spanking was always and only on the buttocks (R 181). She further stated that there was always a reason for Little Jim to receive the spanking (R 181). Carol Free further testified that on one occasion Ronnie spanked Little Jim and left bruises (R 181). Carol did not see the particular spanking that caused the bruises on Little Jim's buttocks, however, another prosecution's witness, Donna Cook, the babysitter, did witness this particular spanking (R 306). Donna Cook testified that Ronnie was out in the yard raking with the help of the children and when Little Jim would wander off from his duties Ronnie would swat him across the butt a couple of times (R 297). She testified that he did this three times on this occasion (R 297). She further stated that She was not alarmed at all when she saw Ronnie spanking Little Jim, indicating that there appeared to be no abuse (R 306). The next day, Carol Free showed the bruises to Donna Cook and it was only at that time that Ms. Cook became alarmed and angered. Donna Cook also testified that Ronnie played and wrestled with the kids and that they all seemed to have a very good time together and that she had no reason to believe that Defendant was abusing any of the children (R 306).

The prosecution_r through Carol Free_r also attempted to paint a picture of Ronnie spanking Little Jim **so** hard that he bounced off the wall. In direct examination_r the prosecutor led Ms. Free to agree that Ronnie pushed Little Jim into a corner once and spanked him **so** hard that he bounced off the wall (R 128). Carol Free **later**, on cross examination_r however_r admitted that Little Jim only received one spanking that she considered too hard and that the particular spanking where Little Jim was placed into the corner and allegedly bouncing off the wall, was not a hard one (R 170, 128). Mrs. Free then stated that Ronnie spanked Little Jim and then put him in the corner (R 171, 172). She further testified that Ronnie just stuck him the corner (R 208). Finally_r Carol Free admitted that the Defendant did not push Little Jim in the corner "he just put him in the corner" and nothing else (R 171, 172).

Little Jim's elder brother of six years, Robert Hornbrook, also testified for the prosecution. He stated that he always liked Ronnie Law even when he was spanked and when Little Jim was spanked (R 227). He then testified that he did not like Ronnie anymore because his mother told him that Ronnie killed his little brother (R 227, 228). With regard to spanking_r Robert testified that Ronnie would only spank Little Jim with

his hand and only on his buttocks (R 241, 246). He demonstrated that Ronnie would hold Little Jim by one arm and spank him on the buttocks with his hand (R 242). He did, however, state that Ronnie has pushed Little Jim into the corner and that sometimes his head would hit the wall in the process, but he also testified that this occurred sometime in the past and not on the Saturday or Sunday before Little Jim's death (R 246, 248). He further stated that there was always a reason for the spankings because Little Jim would get "cranky" (R 241, 249).

More importantly, Robert testified that he observed the spanking on the night of Little Jim's death, which was characterized by the prosecutor as a brutal beating (R 219). Robert testified that Ronnie and Little Jim were playing and wrestling in a playful manner when Little Jim started to get "cranky" again (R 219, 233). Robert then observed Ronnie spanking Little Jim in the same manner as he ordinarily spanked, namely holding Little Jim by one arm and spanking Little Jim on the buttocks with his hand (R 221, 240-242, 246). Immediately after the spanking, Robert testified that Ronnie told Little Jim to pick up his teddy bears and clean up his room (R 219-222). Little Jim complied with this order and picked up his room and teddy bears (R

220). According to Robert, Ronnie then told all of the children to go to bed (R 220). Little Jim went to bed first and Robert waited until 9:00 p.m. when the television show "Knight Rider" went off, at which time he went to bed (R 220).

No matter how hard the prosecutor tried, he could not, with his own witnesses, make Ronnie Law out to be a brutal baby killer. Ronnie's past conduct indicated a normal disciplinary pattern except for some occasional harsher treatment. More importantly, however, Robert actually witnessed the spanking that occurred on the night of Little Jim's death and he physically observed Little Jim cleaning **up** his room after this alleged brutal beating occurred,

It is interesting to note that every witness who spoke on the subject testified that Ronnie Law only spanked Little Jim on the buttocks with his hand. However, Robert testified that when Carol Free punished Little Jim she would "tap him on the head" (R 223).

Every witness for the prosecution who had any knowledge whatsoever of this family surrounding testified that Ronnie played with the children, including Little Jim, and cared for them as though he was their father (R 131, 147, 156, 180, 229-233, 241, 253, 306, 307).

The prosecution then called two different pathologists to the stand, who agreed that Little Jim died from a subdural hematoma caused by trauma from a blunt instrument (R 338, 400). Dr. Havard testified that he was the one who actually performed the autopsy on the body (R 321), The only portion of the body that Dr. Reeves actually studied was the eyes and he testified that he did not perform any autopsy on the body itself (R 393, 396). Based upon his autopsy, without any other information as to any possible explanation of the cause of death, Dr. Havard concluded, over defense objection, that Little Jim's cause of death was "homicide" (R 339). Dr. Reeves concluded the same after having only reviewed Dr. Havard's letter asking him to examine the eyes. Dr. Havard's preliminary report, the Sheriff Department's investigative reports, the field officer's notes, the identification and polygraph reports from the Sheriff's Department, a memo from the State Attorney's Office, and forty five photographs taken at the autopsy (R 397-401). Reeves, at the time he rendered this opinion and conclusion of "homicide", also had not had the benefit of any explanations as to the cause of death (R 398, 399).

Dr. Havard concluded that the fatal blow to the head could have been inflicted as long as two days

before death (R 349, 365, 369). He explained this, stating that a subdural hematoma occurs immediately or it may collect over a period of time (R 350). He further stated that the bleeding can be fairly slow or can be relatively brisk, concluding that it is conceivable that a blow to the head occurring on Friday, two days before death, could have created a subdural hematoma that would have built up pressure that could have caused death on Sunday night (R 351). This was consistent with Carol Free's and Robert Hornbrook's testimony that Little Jim had been unnaturally crying and whining all day on the Sunday before death (R 164-167, 241).

Dr. Reeves disagreed with Dr. Havard's conclusion that the injury could have occurred within 48 hours of death, but he failed to give any time period parameters within which this subdural hematoma could have formed so as to compare to Dr. Havard's prognosis (R 451). After stating that he had never lost a case, Dr. Reeves engaged in a series of statements that were so absurd as to shock the common sense of a reasonable man (R 392). For example, Dr. Reeves stated that children falling free fall even onto hard surfaces rarely sustain any significant injuries whatsoever (R 402): that he could determine with reasonable medical certainty that these injuries were inflicted, especially where there is no

explanation_r while stating this at a time when he had not even entertained any of the proposed explanations (R 416, 417): that children do not fall backwards and that when skull fractures are located in the occipital areas it doesn't occur accidentally (R 437); that the distribution of the bruises causes the injuries to "speak for themselves", yet even if the child had no bruises Dr. Reeves concluded that his determination of the cause of death would not change (R 446, 447); and that playfully throwing a child into the air and catching it is "abusive" in and of itself (R 462). Dr. Reeves did, however! qualify his statements on occasion by stating that "anything is possible" or that "anything can happen" (R 438, 458, 464). Even Dr. Reeves_r however_r could not rule out all of the reasonable explanations that could erase Ronnie Law's hypothesis of innocence.

Whether the two prosecution's pathologists could competently conclude that a "homicide" occurred was one of the issues on the appeal of this case with the First District Court of Appeal which was rendered moot due to its decision on the insufficiency of the evidence, Assuming arguendo that such a conclusion was proper_r then these doctors still could not possibly identify Ronnie Law as the murderer and the factual witnesses failed to do so also. At this point in the prosecution_r

it may have seemed probable that Ronnie Law committed the acts which resulted in Little Jim's death. The evidence, however! lacks the sufficiency to overcome the hypothesis of innocence.

RONNIE LAW'S PROPOSED EXPLANATION

Because Ronnie has maintained his innocence throughout these proceedings he can only guess on the possible explanations of the causes of Little Jim's death. These possible explanations were set forth at trial as follows:

1. One of Little Jim's many accidental falls caused his demise.

2. Carol Free inflicted the blow that caused the subdural hematoma.

3. Robert Hornbrook's rough playing caused the subdural hematoma.

4, Ronnie accidentally caused the injury while playing with Little Jim.

Keeping in mind that when the prosecution's case is based entirely on circumstantial evidence, then the Defendant's version must be believed where it has not been proven false. The Respondent will now separately address each possible explanation to show that the verdict was inconsistent with Ronnie's reasonable hypothesis of innocence,

One Of Little Jim's Many
Accidental Falls Caused His Demise

A thorough review of the record readily indicates that Little Jim was extremely accident prone. A few examples of the accidents which Little Jim sustained in a relatively short period of time were:

1. Falling backwards off a bunkbed and hitting his head on a carpet covered concrete floor (R 157, 714):

2. Receiving a concussion from a fall from a bicycle (R 237, 556);

3. Being pushed by Robert and hitting his head into the barbells (R 157, 160, 191);

4. Being pushed again by Robert and hitting his head on the barbells (R 161);

5. Falling down from the force of a medicine ball that was thrown at him by Robert (R 594, 718);

6. Falling and cutting his face (R 598);

7. Being exposed to bug spray and requiring hospital treatment (R 637):

8. Falling and rolling over at the beach (R 234).

Because Little Jim has been accident prone, however, does not necessarily mean that he was not abused. But the cause of his death only came from one blow to the head and any other bruises and abrasions on the body did not or were very unlikely to have caused death (R 348, 389). Dr. Havard found that the blow that

caused death could have occurred from the fall from the bunk bed on Friday afternoon or the fall against the barbell weights on Saturday around noon (R 350, 351). Although Dr. Reeves ruled out the fall from the bunkbed he did not rule out the possibility of the death blow being when Little Jim's head struck the barbell weights after Robert pushed him on Saturday afternoon, as long as he hit the flat surface of the weight (R 455-458). Again, regardless of whether this child received these numerous bruises from overly harsh discipline, the fact remains he died from a single blow to the head, causing subdural hematoma and the accident occurring on Saturday afternoon, less than 48 hours before death, could have produced Little Jim's demise.

Carol Free Inflicted the Injuries

This explanation was uncontradicted. Carol Free testified that she had been drinking so heavily on the afternoon of Little Jim's death that she had to go to bed by around 7:00 p.m. (R 134, 774). Both Ronnie and Carol also testified that Carol woke up that same evening between 9:30 and 10:30 p.m. (R 135, 774). They also testified that after Carol got up Ronnie went to bed while Carol stayed up to watch television (R 138, 774). Ronnie testified that when Carol got up she was very irritable (R 756). This is consistent with Carol

having a hangover from the admittedly drunken state that she was in when she went to bed (R 134). Ronnie then testified that he was awakened sometime between 10:30 and 11:00 p.m. by Little Jim's crying and he rolled over to see if Carol was in bed and found that she was not (R 741). He then testified that he noticed Little Jim had stopped crying and he therefore went back to sleep (R 792). Carol then went to bed shortly after the crying ceased. This was undisputedly when everybody else was in bed except for this hungover mother with her crying three year old son. The evidence, therefore, shows that Carol Free was the last to be with Little Jim alive while she was in a hungover and irritable state and while the child was crying. It is also noteworthy that Carol's mother, Lucy Pearl Worley, testified that her daughter, Carol, had told her that she suffers from occasional blackouts and lapses of memory (R 626, 627). Also noteworthy is the fact that Carol's oldest son, Robert, testified that her method of punishment for Little Jim was "tapping on the head" (R 223). There then appears to exist a favorable atmosphere for abuse by Carol, with a loud, crying child and an irritated! hungover mother. It is not inconsistent then to surmise that her frustration turned to a "tap on the head" into a forceful blow in order to quell the crying. Had this

not been the truth, then it would have been very easy for the prosecution to call Carol Free to the stand on rebuttal (who had already testified and was still available) to refute this version of events. However, the prosecution chose not to do so. Without Carol taking the stand to refute this, and without any other contradicting evidence this Court is historically bound to accept this reasonable hypothesis of innocence. Peek, supra,

Robert, Little Jim's Older Brother,
Inflicted the Blow Which Killed Him

There is little doubt that these children played, tumbled, and wrestled in a very aggressive manner. Robert, however, at the age of nine, was six years older than Little Jim and towered over him (R 704). Throughout his life, Robert's mother, Carol, never paid much attention to him and never bothered to teach him some of the basic fundamentals, even one as rudimentary as bathing (R 703). As Robert was unquestionably of superior physical stature compared to Little Jim and undoubtedly possessed superior strength, this uncontrolled child was allowed to inflict much injury upon Little Jim; (see R 157, 160, 161, 594, 718). In fact, Little Jim's collision with the barbells on Saturday was caused by a push from Robert and it is this blow to the head that both Drs, Havard and Reeves

indicate could have been the cause of the subdural hematoma which resulted in his death.

Ronnie Law Accidentally Caused
The Fatal Blow To Little Jim's
Head While Playing With Him

The last uncontroverted, reasonable explanation of Little Jim's subdural hematoma was that it was accidentally caused by Ronnie Law while they were playing. Ronnie testified that on Sunday night, February 10, 1985, he was swinging Little Jim around by his arms and that he either lost his footing ,or Little Jim slipped out of his hands, causing Little Jim to fall to the floor (R 735). At this time, Little Jim's head hit something but Ronnie does not know whether it was the bunkbed or the floor (R 735). He indicated that Little Jim did not seem to be hurt, however, the floor and portions of the bed contained flat surfaces and it is a possibility that Little Jim struck one of them (R 734, 735). Dr. Havard certainly agreed that the side of the bunkbed was a flat surface which could have caused the subdural hematoma (R 363).

STATE'S EVIDENCE THAT SUPPORTS
REASONABLE HYPOTHESIS OF INNOCENCE

Rather than contradict, the State's witnesses substantially supported Ronnie Law's hypothesis of innocence with facts and testimony that this Court should not ignore. The State's principal witness, Robert

Hornbrook, agreed with and verified Ronnie's testimony that he only struck Little Jim on the buttocks and nowhere else (R 241, 246); that Little Jim had many accidents (R 234, 235, 237), specifically a severe blow to the head against a set of barbells on Saturday, the day before his death (R 235); that the spanking that occurred the Sunday night of his death was just a normal disciplinary spanking on the buttocks (R 242): that the Defendant was playing with Little Jim just before the spanking (R 241); that Little Jim was cleaning up his room just after the "alleged beating" (R 243); and that Ronnie Law loved and played with **all** of the children (R 229-233, 241).

The State's other key witness, Carol Free, also testified that the only discipline Ronnie ever bestowed on Little Jim was spanking him on the buttocks with his hand and putting (not shoving) him in a corner (R 171, 172, 181). She also verified the many accidents and blows to the head that Little Jim received (R 157, 158, 160, 161, 191, 192), and the awkward way in which Ronnie caught Little Jim in the chest when they were playing on Sunday afternoon before death (R 134). More importantly, Carol Free verified Ronnie's testimony that she had been drinking heavily and had gone to bed around sundown Sunday night (R 135), that **she** got **up** between 10:30 and

10:45 p.m. (R 135) and stayed up until 11:15 or 11:30 p.m. (R 138). This testimony concurs with Ronnie's testimony that she was not in bed between 10:30 and 11:00 p.m. when he was awakened by Little Jim's crying (R 741). Additionally, Officer Bruzzechesi verified that Carol Free told him that she went in to see Little Jim at 11:00 p.m. (R 279, 280). Robert Hornbrook's testimony of Carol Free's method of punishment, specifically, tapping on Little Jim's head, is also consistent with a minor version of the manner in which this injury was inflicted upon Little Jim (R 223).

Dr. Havard's testimony that the trauma to the head could have occurred within 48 hours of death is consistent with Robert Hornbrook's and Ronnie's testimony concerning the barbell incident on Saturday, the day before his death (R 365, 235, 718). Additionally, Dr. Havard agreed that the bruises on the chest looked like fingerprints (R 353-356), which is consistent with Free's and Ronnie's account of Ronnie catching the child in an awkward position while playing (R 134, 727). The wheezing noise which Carol Free said that Ronnie alerted her to on the night of Little Jim's death is also consistent with Dr. Havard's testimony that this child had a respiratory infection (R 135, 347). The three bruises that Dr. Havard counted on

Little Jim's **skull** (R 326, 329), one of which caused death, are consistent with Ronnie's and Robert Hornbrook's account of three different blows to the head, namely Friday's fall off the bunkbed (R 714), Saturday's fall into the bar bells (R 235), and Sunday night's fall into the bunkbed or onto the floor (R 735). Dr. Havard testified that one of the bruises was over 48 hours old and the other two were fresh (R 329). The bunkbed fall was more than 48 hours before death and the other two falls were within 48 hours of death. Robert Hornbrook's testimony that Little Jim's lips were discolored when he went to bed are also consistent with Dr. Havard's testimony that because of his respiratory infection he was breathing through his mouth which, in turn, would cause the lips to be dry and discolored (R 347, 348). Dr. Havard also agreed with the possible explanations of other bruises about the body (R 356).

THE STATE'S INTRODUCTION OF
AMBIGUOUS! COLLATERAL! AND NON-PROBATIVE EVIDENCE

Because the State's substantive evidence was feeble, it attempted to convict Ronnie on other collateral and non-probative evidence. Such evidence, however, may make one suspicious but such suspicion is not enough to result in a conviction. Mayo, supra, at 904. The State here attempted to prove guilt in Ronnie by drawing inferences on collateral and ambiguous

occurrences. First the Respondent, at page 29 of its brief, suggests that because of Carol Free's and Ronnie's isolated discussion regarding responsibility of disciplining Little Jim and the fact that Ronnie did not like Little Jim's whining, then Ronnie must have been so tortured by the child that he killed Little Jim to put himself out of misery. Such a presumption by the State is, of course, ludicrous.

Secondly, the State distorts the events that took place after death. Your Petitioner infers, at Page 30, that Ronnie did not care for this child because of his brief and ambiguous conversations with Corinne Mitchell and Decca Matthews in their attempts to bring Ronnie home from work on the morning of the death. The State, however, fails to recognize the unambiguous testimony of Ronnie's employer, Gerald Struck, who testified that he would not let Ronnie leave immediately, but required him to first wait and find out what was going on (R 492). Struck also testified that Ronnie was upset, worried and concerned, and wanted to leave work immediately (R 492, 495).

Thirdly, the Petitioner, at Pages 9 and 10, would have this Court believe that Ronnie intimidated and threatened Robert Hornbrook while the children were waiting at Mary Roundy's house after the death. The State infers this by Ronnie whispering to him and Robert becoming upset as a result. This inference, however, is unreasonable because of the ready availability of direct evidence on this point. Had Ronnie actually said something incriminating to Robert then it would have been very easy for the prosecutor to just ask Robert on the stand what Ronnie had said to him and it is inconceivable that the prosecutor did not ask him on the day before trial when he was alone with the prosecutor in his office (R 225, 226). To then infer that Ronnie said something threatening when the actual words, if threatening, could have easily been produced from the witness stand, would be absurd.

The Petitioner also fails to establish evidence of any conflicting stories with regard to any probative matters. If Little Jim had not been crying in the middle of the night when Ronnie was in bed then the prosecutor should have asked his own witness, Carol Free, on rebuttal if she, in fact, subdued and quelled Little Jim's crying. Secondly, your Petitioner attempts, at Pages 27 and 28, to create conflict in Ronnie's

testimony with regard to his playing with Little Jim on the night of his death. According to Petitioner, wrestling on the floor and swinging Little Jim around are inconsistent versions of his story, however the State fails to realize that these are cumulative events, not an inconsistent singular event,

The Petitioner has even gone as far as to manufacture testimony that does not exist. At Page 26 the State assumes and attempts to support the belief that there was an absence of any bruises that would be consistent with a fall against the barbells. The record is devoid of such testimony, but in fact, reveals that Dr. Havard's testimony conflicts with the State's assumptions, At Page 28, Petitioner states that both experts testified that the symmetry of the bruises on the child's chest did not indicate that they were sustained in some type of play. Dr. Reeves said this, but Dr. Havard, however, testified just the opposite and found it to be perfectly reasonable that the bruises on the chest were caused by catching the child in an awkward position (R 352-355). Further down the page your Petitioner states that Robert Hornbrook witnessed nothing further after Appellant closed the bedroom door, This, however, is totally untrue and ignores the undisputed fact that Robert Hornbrook observed Little

Jim cleaning up his room immediately after the alleged "brutal beating" (R 219-221, 243). At Page 29, the Petitioner states that Robert Hornbrook testified that the Appellant pushed Little Jim into the flat surface of the wall. This obvious attempt to equate flat surface of the wall with a blunt instrument is unfounded and unsupported in the record. Finally, in a last ditch effort to discredit Ronnie, the Petitioner inferred Ronnie was lying as to Little Jim's crying between 10:30 and 11:00 p.m. while Carol Free was up, by his failure to tell the police of these events. The inference of guilt by his silence, however, is an improper method of impeachment and cannot be construed as being in conflict with the testimony. Rodriguez v. State, 494 So.2d 496 (Fla. 4th DCA 1986). Furthermore, the Petitioner's version of Ronnie's silence is inaccurate. Ronnie testified that the police only questioned him on certain things and kept cutting him off and never really gave him a chance to tell them (R 260). He did, however, testify that he told this to his mother and his lawyer shortly after it occurred and the State failed in every way to contradict this testimony (R 760).

Without direct evidence of a Defendant's guilt, this Court has historically and consistently accepted the Defendant's explanation of the crime charged

hypothesis unless there is a force of proof which excludes it. As this Court stated:

Circumstantial evidence is always insufficient where assuming all to be proved which the evidence is to prove, some other hypothesis may still be true, for it is the actual exclusion of every other hypothesis that invests mere circumstances with a force of proof. Frank v. State, 121 Fla. 53, 163 So. 223 (1935); Heiney v. State, 447 So.2d 210 (Fla. 1984).

LACK OF MOTIVE

Although motive is not an essential element of this alleged crime, when the only evidence submitted by the State is circumstantial, then the want of motive becomes important. Coco v. State, 80 So.2d 346, 349 (Fla. en banc) cert. den., 75 S.Ct. 774 (1955). Thus, when attempting to prove guilt by circumstantial evidence the lack of motive renders the State's burden even more difficult than it would ordinarily be. Daniels v. State, 108 So.2d 755 (Fla. 1959). The testimony of every one of the State's witnesses who possessed any personal knowledge of Ronnie's treatment of these three children, especially Little Jim, testified that he loved, fed, played with, took care of, and sometimes bathed these children (R 134, 164, 180, 229-233, 241, 253, 299, 306). In fact, Ronnie Law's principal accuser at trial, Carol Free, believed and told numerous people that she knew that Ronnie had nothing to do with her child's death (R

147, 156, 202, 612). There was absolutely no reason or motive whatsoever for Ronnie to impose any brutal beating upon the deceased. Efforts by the State to prove motive by attempting to create a stressful atmosphere are preposterous. Even if the atmosphere in which these people lived was stressful, the circumstances do not provide motive or reason for a brutal beating, it just provides possible favorable circumstances for added tension. There is no proven linkage that added stress or tension causes violence in Ronnie Law, Just as the State alleges, without proof, that stress may have caused Ronnie to lose his temper, the same can readily be said for Carol Free who was stressed and turmoiled by a disastrous life. Dr. Reeves even characterized her life by saying, ". . . it sure the hell would be stressful, you know! to go through all that it, sure would." (R 481).

Both Carol Free and her mother testified that Ronnie, at all times, was just "trying to be a good father to these children" (R 130, 638, 639). Punishment and discipline were historically shown as spanking confined to the buttocks or any other area of the body. Spanking on the buttocks, even if it produces bruises and causes one to hit a wall cannot reasonable be expected to kill or do serious bodily injury and is not

of such a nature to indicate indifference to human life. To the contrary, the location of ~~all~~ previous spankings of Little Jim indicate a total regard for his safety. Therefore, the entirely circumstantial evidence cannot support a verdict of guilty of second degree homicide. Marasa v. State, 394 So.2d 544 (Fla. 5th DCA 1981).

CONCLUSION

The jury based its verdict on mere probability which was fueled by insufficient circumstantial evidence. Ronnie's hypotheses cannot be ignored unless properly excluded by competent evidence. Moreover, even if Ronnie's hypotheses of innocence had been overcome the State's burden of proving his guilt beyond a reasonable doubt was not sustained by competent evidence since the circumstantial evidence was not sufficient to erase the reasonable doubt which the jury must have possessed. It was not the jury's duty to pick the most probable killer here, it was for the State to prove beyond a reasonable doubt that Ronnie Law was the killer. No weapon was found, no scientific examinations were made to link Ronnie as the killer and no motive has been shown for the killing. The circumstantial evidence in this case simply did not eliminate every reasonable hypothesis of innocence.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail to Gregory G. Costas, Assistant Attorney General, #210285, Department of Legal Affairs, The Capitol, Tallahassee, Florida, 32399-1050, this 30th day of June, 1987.

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