IN THE

SUPREME COURT OF FLORIDA

CASE NO. 72,776

WILLIAM MICHAEL SQUIRES,

Appellant,

versus

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

LARRY HELM SPALDING
Capital Collateral Representative
Fla. Bar #0125540

BILLY H. NOLAS
TIMOTHY D. SCHROEDER

OFFICE OF THE CAPITAL COLLATERAL
REPRESENTATIVE
1533 South Monroe Street
Tallahassee, Florida 32301
(904) 487-4376

COUNSEL FOR APPELLANT

PRELIMINARY STATEMENT

After the circuit court summarily denied Mr. Squires' motion for Rule 3.850 relief this Court reversed and remanded for an evidentiary hearing. Squires v. State, 513 So. 2d 138 (Fla. 1987). The circuit court conducted evidentiary proceedings and thereafter again denied relief. Notice of appeal was timely filed. The substantive facts of the alleged offense and the trial were set out in great detail in Mr. Squires' previous brief to this Court, on appeal from the circuit court's summary dismissal of the Rule 3.850 motion. In the interests of brevity that discussion will not be reiterated again herein. In this regard, Mr. Squires respectfully refers the Court to his prior brief.

Those facts salient to the instant appeal will be discussed at length within the body of this brief, as they relate to the claims herein presented. The exhibits presented at the evidentiary hearing before the lower court are pertinent to the claims at issue. Although the circuit court's clerk's office originally omitted them from the record on appeal, this Court granted Mr. Squires' motion to supplement the record, and the exhibits should now be part of the supplemented record before this Court.

The following symbols will be used to designate references to the record in the instant cause:

"R" -- Record on Direct Appeal to this Court;

"PC" -- Record on Appeal of the initial trial court order summarily denying Mr. Squires' Motion to Vacate Judgment and Sentence;

"PC II" -- Record on Appeal of trial court order denying Mr. Squires' Motion to Vacate Judgment and Sentence after this Court's remand.

"Ex." -- The exhibits which should be part of the supplemental record before this Court.

All other citations will be self-explanatory or will be otherwise explained.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Mr. Squires was convicted of the murder of Jesse Albritton on March 5, 1982. Penalty phase proceedings comnenced immediately after the jury's verdict of guilt, counsel presented no mitigating evidence, and the jury thereafter recomnended death. The trial judge imposed a death sentence on that sane date, immediately after the jury was discharged, and entered a written order on March 15, 1982. This Court affirmed the conviction and sentence on direct appeal. Squires v. State, 450 So. 2d 208 (1984).

On December 3, 1985, Mr. Squires, proceeding ~~pro se~~, filed a Motion for Post-Conviction Relief Pursuant to Rule 3.850 in the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida (PC 1). On February 14, 1986, the Office of the Capital Collateral Representative (CCR) was appointed to represent Mr. Squires (PC 14). Mr. Squires' ~~pro se~~ Motion was withdrawn, and a Motion to Vacate Judgment and Sentence and supporting documents were filed on his behalf by CCR on April 11, 1986 (PC 17). That Motion was summarily denied by the trial court on June 4, 1986.

On the appeal of the trial court's sumnary denial of Mr. Squires' Motion to Vacate, this Court reversed and remanded for an evidentiary hearing to determine whether Mr. Squires' trial counsel rendered ineffective assistance with reference to counsel's failure to investigate and interview a po entially critical defense witness, Donald Hynes, and his failure to challenge any of Mr. Squires' pretrial statements. Squires v. State, 513 So. 2d 138, 139 Fla. 1987). The Court additionally directed that the evidentiary hearing encompass the questions of whether the deposition statements of Detective George Peterson were misleading, and whether police reports relating the pretrial statements of Donald Hynes should have been or were provided to the defense prior to trial. Id. With respect to the remainder of the issues presented in Mr. Squires' Motion to Vacate, this Court affirmed the trial court's summary denial. Id.

An evidentiary hearing was held in the circuit court, pursuant to this Court's mandate, on April 8 and April 11-13, 1988. The facts adduced at that hearing are discussed at length in the following sections of this brief as they relate to the individual claims contained therein. On June 8, 1988, the circuit court entered an order denying relief (PC II 524). The instant appeal is founded upon that order.

SUMMARY OF ARGUMENT

1. Trial counsel for Mr. Squires, through no tactic or strategy, unreasonably failed to investigate a critical witness (Donal Hynes) whose testimony would not only have exculpated Mr. Squires, but would also have irrefutably rebutted the testimony of the State's key witnesses and thoroughly undermined the State's case as a whole. The State had argued, and the State's witnesses had testified, that Donald Hynes had been present at and witnessed the murder for which Mr. Squires had been tried, convicted, and sentenced to death, but did not introduce or attempt to introduce his testimony at the trial. Mr. Hynes testified at the hearing below, as he would have at trial, that he was not with Mr. Squires on the date in question, and that he had neither witnessed nor was aware of any murder. Trial counsel also testified at that hearing, and could provide no reasonable tactic or strategy for failing to even investigate, much less present, this crucial exculpatory evidence.

Trial counsel also unreasonably failed, through no tactic or strategy, to investigate the circumstances underlying Mr. Squires' pretrial statements. Had he done *so,* he would have learned that all of those statements were elicited from Mr. Squires while he was being administered a regimen of mind-numbing narcotic drugs to control the chronic and debilitating pain caused by a near-fatal bullet wound, and that those statements were therefore involuntary and inadmissible. Trial counsel, however, did no investigation in this regard, and as a result made no attempt to challenge the admission of any of the statements, although all were eminently suppressible.

Mr. Squires proved at the hearing below that trial counsel's performance was unreasonably deficient, and that he was severely prejudiced as a result. He was thus deprived of his sixth, eighth, and fourteenth amendment rights to the effective assistance of counsel. The Rule 3.850 court's order denying him relief with respect to this claim was thus contrary to the facts established at the hearing and erroneous as a matter of law.

2. A crucial State law enforcement witness testified falsely in his pretrial deposition, deliberately misleading and deceiving the defense. The State knew that his deposition testimony was false, or at least was chargeable with such knowledge, yet failed to make any attempts to alert the defense or otherwise correct the testimony. Such misconduct on the part of the State deprived Mr. Squires of due process of law and his constitutional rights to a fair and reliable capital sentencing determination, in violation of the fifth, sixth, eighth, and fourteenth amendments, and the trial court's order denying relief with respect to this claim was erroneous as a matter of fact and law.

ARGUMENT

CLAIM I

MR. SQUIRES WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court held that counsel has "a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." 466 U.S. at 688 (citation omitted). Strickland v. Washington requires a petitioner to plead and demonstrate: 1) unreasonable attorney performance, and 2) prejudice. As this Court recognized, Mr. Squires' allegations in this regard, if true, entitled him to relief, and an evidentiary hearing was therefore ordered. As discussed below, the lower court evidentiary hearing record demonstrates that Mr. Squires has proven his allegations.

The trial court's order denying post-conviction relief was therefore erroneous as a matter of fact and law.

Courts have repeatedly pronounced that "[a]n attorney does not provide effective assistance if he fails to investigate sources of evidence which may be helpful to the defense." Davis v. Alabama, 596 F.2d 1214, 1217 (5th Cir. 1979); see also Beavers v. Balkcom, 636 F.2d 114, 116 (5th Cir. 1981); Runnel v. Estelle, 590 F.2d 103, 104-105 (5th Cir. 1979); Gaines v. Hopper, 575 F.2d 1147, 1148-50 (5th Cir. 1978); Goodwin v. Balkcorn, 684 F.2d 794, 805 (11th Cir. 1982)("[a]t the heart of effective representation is the independent duty to investigate and prepare"). In fact, the duty to properly and fully investigate is the paramount duty which an attorney owes his or her client. See Kimmelman v. Morrison, 106 S. Ct. 2574, 2588-89 (1986); Code v. Montgomery, 799 F.2d 1481, 1483 (11th Cir. 1986)(failure to interview potential alibi witness); Gomez v. Beto, 462 F.2d 596 (5th Cir. 1972)(same). This Court has likewise recognized the paramount importance of independent investigation and has granted relief on ineffective assistance grounds where trial attorneys have neglected that overarching duty. See Bassett v. State, No. 71,130 (Fla., Jan. 12, 1989); see also State v. Michael, 530 So. 2d 929 (Fla. 1988). As will be discussed below, it is that paramount duty which was violated in this case by defense counsel's unreasonable failure to undertake pretrial investigation regarding a key, available, known, witness -- Donald Hynes -- who would have undermined the State's very theory of prosecution, or to investigate the circumstances surrounding the pretrial statements given by Mr. Squires.

No tactical decision can be ascribed to attorney actions premised on a failure to investigate. Counsel's deficiency in this regard was unreasonable and prejudicial: the central aspect of the State's case was never challenged. Counsel's failure in this regard is sufficient to undermine confidence in the outcome of these proceedings, for the law is also clear that even if an attorney provides effective assistance in *some* areas, counsel may still be ineffective in his or her performance

in other aspects of the proceedings. Washington v. Watkins, 655 F.2d 1346, 1355, rehearing denied with opinion, 662 F.2d 1116 (5th Cir. 1981), cert, denied, 456 U.S. 949 (1982). See also Kimmelman v. Morrison, 106 S. Ct. 2574 (1986). Even a single error by counsel may be sufficient to establish the defendant's entitlement to relief. Nelson v. Estelle 642 F.2d 903, 906 (5th cir. 1981) (counsel may be held to be ineffective due to single error where the basis of the error is of constitutional dimension); Nero v. Blackburn, 597 F.2d 991, 994 (5th Cir. 1979)("sometimes a single error is *so* substantial that it alone causes the attorney's assistance to fall below the Sixth Amendment standard"); Strickland v. Washington, supra; Kimmelman v. Morrison, supra.

Here, counsel's failure to properly investigate evidence regarding Donald Hynes, or to even undertake proper efforts to interview this key witness was standing alone deficient attorney performance sufficient to establish Mr. Squires' entitlement to relief. As discussed below, Hynes' critical importance was not difficult to discern pretrial; his whereabouts were accessible to counsel; his account of the events would have undermined and refuted the false version of the events provided by Terry and Charlotte Chambliss, the witnesses on whose account the State rested its theory of prosecution. Nevertheless, although Donald Hynes' importance was evident from the outset and apparent even from the face of the probable cause affidavit (see PC 11, Defense Exhibit 8), counsel undertook absolutely no reasonable efforts to interview him. The key defense witness who would have established Mr. Squires' defense was ignored. The State's case was thus left essentially unchallenged. This was prejudicially deficient assistance, and Mr. Squires is entitled to Rule 3.850 relief on this basis alone.

Counsel's deficient performance, however, did not stop with his fatal omission regarding Donald Hynes: there was more, as is detailed below. This Court found the allegations of ineffective assistance contained in Mr. Squires' motion to vacate sufficient to require an evidentiary hearing. See Squires, supra, 513 *So.* 2d at 139.

As discussed below, at the hearing, Mr. Squires demonstrated unreasonable attorney conduct and prejudice with respect to those specific areas of deficient performance identified by this Court. See id. The trial court's denial of relief was error.

A. Counsel's Unreasonable Failure to Investigate (Donald Hynes)

> Terry and Charlotte Chambliss . . . will tell you on the night of September 2, 1986, he [Mike Squires] returned and he returned around 10:00 p.m. at night, and when he returned he was driving his Camaro and he was accompanied by Donald Hines again.
>
> They will tell you that he rushed into the yard in his car, he got Terry Chambliss to get out of the house and tear down a piece of his fence and the Defendant told Terry Chambliss he needed to hide my black Camaro in the back of your house. I have got to get it off the street. It may be hot. Terry went along with it, tore down the fence. They put the car in the back yard behind the house so you can't see the car from the street.
>
> The Defendant then asked Terry Chambliss to take Donald Hines home, that he didn't want to be on the street in his car, so if Terry Chambliss wouldn't mind taking Donald Hines home. Terry Chambliss did that and Terry Chambliss will tell you that on the way home Donald Hines did not say one word, that he acted like he had seen a ghost. He sat in that seat like a statute in that car, didn't utter one word.
>
> When he returned shortly after dropping Donald Hines off, returned inside the house, his wife Charlotte was also there. She will testify to the same events.
>
> . . . .
>
> At that time, the Defendant William Michael Squires told Terry Chambliss and Charlotte Chambliss overheard him, because she was sitting a few feet away in the living room, that he had run into trouble and that he had to dust somebody but not to worry because he didn't leave any witnesses.

(R. 426–28; Trial Prosecutor's Opening Statement).

> I tell you why he [Donald Hines] acted like he had seen a ghost. . . . Because he had just seen that man [Mike Squires] pump four shots in Jesse Albritton's head.

(R. 975; Trial Prosecutor's Closing Argument).

> There is a common theme, ladies and gentlemen, that runs in this case and the common theme is William Michael Squires and Donald Hynes. The Defendant was with Donald Hynes when he came into Chambliss' house. . . . He told Chambliss, 'We are going to teach Hines how to make a living by robbing.'' Remember this is what Chambliss told you.

(Id.).

This was indeed the "theme" of the case as presented by the State: Mike Squires and Donald Hynes together robbed and killed Jesse Albritton on the night of September 2, 1980. As the trial prosecutor told the jury at the outset, this is what the key state-witness testimony at trial, that of of Terry and Charlotte Chambliss, was all about.

Terry Chambliss testified at trial that he was spending a pleasant evening at home on the night of September 2, 1980, watching television with his wife Charlotte, when Mike Squires pulled up in his yard in his black Camaro, with Donald Hynes in to (R. 604). Mr. Squires asked Chambliss if he could conceal his car in Chambliss' back yard, because the car was "hot," and Chambliss assisted Mr. Squires in pushing the car behind the house (R. 605). Chambliss then agreed, at Mr. Squires' request, to take Donald Hynes home. On the way home, Hynes "acted like he seen a ghost. He wouldn't talk. He sit right on the edge of his seat and his hands were all scrunched up like that and he never said a word." (Id.) Of course, as the prosecutor later told the jury, Hynes' odd behavior was attributable to the fact that Hynes "had just seen that man [Mr. Squires] pump four shots into Jesse Albritton's head" (R. 975). As will be discussed, the Assistant State Attorney's account was as untrue as Terry Chambliss' own testimony. As will also be discussed, trial counsel had the tools which would have proven the falsity of the State's theory of prosecution, but unreasonably and ineffectively failed to investigate and, ultimately, to use those "tools". Indeed, those tools (Donald Hynes) were readily available.

Terry Chambliss provided other "details" which fit within the State's carefully detailed "common theme." For example, he testified that Mr. Squires had been at his house a week or so earlier, in the latter part of August 1981, in the company of

Donald Hynes, whom, he told Chambliss, he was going to "teach . . . how to make some money by robbing people" (R, 603). Chambliss also testified that Mike Squires, on the night of September 2, 1980, gave him a sawed off shotgun which had "jammed up," and asked him to get rid of it (R, 606). Chambliss testified that he threw the shotgun in a pond the next day (R, 608). According to Chambliss, the shotgun was recovered by law enforcement over four months later, with the assistance of Terry Chambliss (R. 609).

Charlotte Chambliss, Terry Chambliss' wife, also echoed the "common theme" established by the State. Mrs. Chambliss, like her husband, testified that Mike Squires came to their house on September 2, 1980, in the company of Donald Hynes, and hid his car in their backyard (R. 551-54). Mrs. Chambliss also repeated the story regarding the shotgun (R. 554-55). The testimony of Terry and Charlotte Chambliss was the State's case; what they said was the State's theory of prosecution, as the trial prosecutor readily admitted in his arguments to the jury.

Donald Hynes, the mystery man who had purportedly "seen [Mike Squires] pump four bullets into Jesse Albritton's head," was never called at trial. It would at first glance seem incredible that the prosecution would not call Hynes to testify, much less charge him for his involvement in the murder of Jesse Albritton -- after all, he was, according to the Assistant State Attorney, with Mr. Squires on the night of the offense and was thus the only eyewitness to the murder of Jesse Albritton. As is obvious, if the Chamblisses' account and the prosecutor's theory in this regard were true, Donald Hynes would have indeed been a powerful witness for the prosecution. As demonstrated at the evidentiary hearing before the circuit court, however, the account given by the Chamblisses, and therefore the prosecution's entire "theory", was patently false.

It is now painfully clear why the prosecution did not call Donald Hynes to testify: Hynes was not with Mr. Squires on September 2nd, did not go to the Chambliss' home that night, never committed a murder with Mr. Squires, and in fact

knew nothing about the instant offense. The State knew this, and had known it for more than a year prior Mr. Squires' trial. As police reports contained in the State's and defense counsel's file showed (reports which defense counsel inexplicably failed to use[1]), law enforcement had cleared Hynes of any involvement in the murder of Jesse Albritton as early as January of 1981:

> UNITED "500" SERVICE STATION
> 7301 Rowlette Park Drive...
>
> The u/signed made contact with DONALD HINES with the assistance of HC Detective Nelms at his trailer, which is THE OLD PALMETTO BEACH TRAILER PARK, located in Palmetto Beach.
>
> WM HINES was talked to and he told the u/signed detectives that he was told by WM SQUIRES on approx 7 Sept 80, that a WM known only to him as ED, who was with WM SQUIRES had committed a murder and that SQUIRES wanted to get rid of WM ED. When asked how this all happened, WM HINES states that he had received a call at his mother's house from W/M SQUIRES on the morning of 7 Sept 80. He at that time made arrangements to meet with SQUIRES at the SHELL STATION located at Westshore Blvd., and Kennedy Blvd. He states on that morning he did meet with SQUIRES and at that time, he had with him another WM whom
>
> SQUIRES introduced to him as ED. He stated that SQUIRES wanted to go someplace where it was quiet and cool so that they could talk, and he at that time, referred them to a park, they both driving their separate vehicles to this park.
>
> HINES states that the park was PHILLIPPE PARK, located out in Oldsmar and upon their arrival there, he stated that SQUIRES and he left their separate vehicles, leaving ED at SQUIRES vehicle and walked into the park where they smoked some marijuana and drank a couple of beers. He stated at this time is when SQUIRES told him that ED had shot and murdered somebody and that his car had been used and that he didn't know what to do, whether to just get rid of ED and he was asking WM HINES what he thought he should do. HINES at that time told him, not to kill the guy, but just drop him off somewhere and forget him. HINES stated that they then left the park, drove to the Hillsborough Theater on

---

[1] Indeed, defense counsel made no reasonable effort to interview Hynes, although his address was listed on the police report, quoted immediately below, a report contained in counsel's file.

Hillsborough at Lincoln, where ED left the car and he and WM SQUIRES went to another friend's house, that of TERRY CHAMBLISS, located at 1803 West Sligh. He stated that SQUIRES stayed at CHAMBLISS' house while he and his wife went to get a pizza. A short time later, that evening, he responded back to SQUIRES and CHAMBLISS' house where they talked for awhile and then he left and went home. He stated, that was all he knew about this particular murder. He stated that he did not know what murder ED had committed, other than the fact of what SQUIRES HAD TOLD HIM.

The u/signed and DET. NELMS arranged for WM DONALD HINES to take a polygraph examination with AL DAYTON in the PAM AM BANK BUILDING located on Sitka near the Interstate. WM HINES was given a polygraph examination by AL Dayton, the results of this polygraph examination were to the effect that, DONALD HINES was telling the truth in as much as his information about the murder and was told to him by SQUIRES.

It is to be noted that a service station robbery, located on Water Ave., was Exceptionally Cleared to WM WILLIAM MALCOLM SQUIRES and that during this polygraph examination, it was shown that the WM HINES, was in fact, the second person involved in this robbery and not ED FOWLER, whom SQUIRES had told the u/signed had committed the robbery with him. This particular polygraph examination was conducted by ALLEN H. DAYTON, on 15 Jan 81 with WM SUBJECT, DONALD ROSS HYNES, Add: 108 S. 28th Street, Lot 17, Tampa, Fla.

The report received by the u/signed from AL DAYTON noted in the last two (2) paragraphs was that WM DONALD ROSS HYNES was in fact, telling the truth on the questions that he was given, prior to taking the examination.

THOSE QUESTIONS ARE AS FOLLOWS:
QUESTION NO 1.
DO YOU INTEND TO DELIBERATELY LIE TO ME DURING THIS TEST CONCERNING THIS MATTER WE DISCUSSED?

ANSWER: NO

QUESTION NO. 2
DID YOU ACTUALLY MEET WITH SQUIRES IN PHILLIPPE PARK AS YOU STATED IN THE MONTH OF SEPTEMBER 1980?

ANSWER: YES

QUESTION NO. 3
DURING YOUR MEETING WITH SQUIRES IN PHILLIPPE PARK, DID HE TELL YOU THAT HIS COMPANION, ED, HAD KILLED SOMEONE?

ANSWER: YES

QUESTION NO. 4
WERE YOU ACTUALLY PRESENT WHEN JESSE ALBRITTON WAS SHOT?

ANSWER: NO

QUESTION NO. 5
HAVE YOU BEEN COMPLETELY TRUTHFUL WITH DET. PETERSON REGARDING THIS MATTER UNDER INVESTIGATION?

ANSWER: YES

As noted in this supplement, WM HYNES was truthful about these particular questions.

(PC 11, Defense Exh. 6 [Report of Detective George L. Peterson, 2/16/81])(emphas *s* added).

Donald Hynes had admitted to committing a robbery with Mr. Squires (~~see~~ Peterson report, supra). This robbery, however, was absolutely unrelated to the murder: it was a robbery of a Thoni station, not the "United 500" station, and it occurred on September 7, 1980, not September 2, 1980 (~~See id.~~) Mr. Squires had earlier also admitted to committing this robbery, in the company of another, and law enforcement had "exceptionally cleared" that offense to him (Id.) Neither Hynes nor Mr. Squires, however, were ever charged with the Thoni robbery.

The State's reasons for not calling Donald Hynes to testify at Mr. Squires' trial are now readily apparent: his testimony would have revealed that the "common theme'' theory on which the prosecution was based was nothing more than a sham; his testimony would have absolutely destroyed the testimony of the Chamblisses, and thus the entire case against Mr. Squires. As Mr. Hynes testified at the evidentiary hearing before the circuit court (and as he would have at trial), he was not with Mr. Squires on September 2nd. He did commit a robbery with Mike Squires, as reflected in the above-quoted police report, after which they did conceal Mike Squires' car in the Chamblisses' backyard, but that robbery occurred on September 7th, five days after the Albritton offense. Donald Hynes knew nothing of the Albritton offense, was not involved in it, and was of course never charged. Donald Hynes never saw anyone "pump four bullets" into the victim, much less *so* Mr. Squires.

Donald Hynes' testimony at the hearing, testimony which he could and would have provided at trial, was wholly consistent with Mike Squires' version of the events,

and wholly inconsistent with the "common theme" established by the State with the complicity of the Chamblisses."[2] The true Donald Hynes would have established Mr. Squires' innocence, and wholly undermined the version which came from the "phantom" Donald Hynes portrayed by the Chamblisses at trial:

> Q. [By Counsel for Mr. Squires] Do you recall the robbery of a Thoni Gas Station, service station?
>
> A. [By Donald Hynes] Yes, sir.
>
> Q. Tell me what you recall of that.
>
> A. Of the robbery?
>
> Q. Yes.
>
> A. Not much. Just that we, after the robbery, we pushed a car behind Terry Chambliss' house, and that me and Mike left. I drove the car.
>
> . . . .
>
> Q. Do you have any independent recollection of the date this occurred?
>
> A. This date?
>
> Q. Yes.
>
> A. The only way I know the date, because I really don't know the day. All I know, it was the same day as Thoni Station robbery.
>
> . . . .
>
> A. I took Mike to Terry Chambliss' house.
>
> Q. What did you do at Terry Chambliss' house?

---

[2] Mr. Squires' defense at trial was alibi, and he provided names, addresses, and specific facts to counsel establishing this defense. As defense counsel's investigator testified at the evidentiary hearing, every fact provided by Mr. Squires regarding the alibi defense was corroborated by independent witnesses and records. Indeed, the defense was handed to counsel by the client -- and the defense was the truth; it "checked out." Counsel, however, unreasonably failed to investigate, i.e., to "check out," the key witness to Mr. Squires' defense -- Donald Hynes.

A. Sat around, kicked it around a little bit, partied. Terry's wife didn't like me too much, didn't like me being there, you know?

Q. I take it Mr. Chambliss had been released from prison?

A. Yes, sir.

Q. And this was in Tampa?

A. Yes, sir.

Q. What happened then?

A. Well, Terry's wife didn't want me around. I was more or less staying outside. It was, like, a rush thing; right? There was, like, tension in the air. Mike needed some money. Terry didn't have no money. Mike was going to go -- Terry had said something about the Thoni Station being easy to rob right around the corner. Mike was going to rob the Thoni station. So that is what happened. We left.

Q. Okay.

A. We went to Thoni Station, robbed the Thoni Station.

Q. You say say there was tension in the air in Chambliss' house.

A, Terry's wife, okay. Mike had told me previous about Terry having some doings with some robberies. You know? And about an insurance book or a, you know, settlement book that told the whereabouts the addresses, how much it was worth, and everything. And that Terry was was doing there robberies, or setting them up. I don't known if he was doing them or setting them up.

And then Mike wasn't supposed to tell me this. It was, like, Mike was supposed to keep this to himself. He told me anyway, And I knew this at that time. And I thought that that is why Terry didn't want me around, because they were going this with these robberies, doing about it because I would, I am liable to spill the beans, you know get them in trouble. They didn't want to me to know anything about it.

Q. Okay. At some point in time, then, the plan was for Mr. Squires to go to the Thoni Station. What was your involvement supposed to be?

A. Well, at first, you know, I really wasn't going, I didn't want, I don't know. It's like, it happened so quick, my involvement was, I was there. I drove the car. I was a nervous wreck, you know. I was, so many things were going through my mind at the same time that, you know, what was

said, I jumped, you know? I was, you know I was jumpy, real jumpy. You know, it's the first that that has ever happened to me. First time I was ever involved in anything like that. It scared me.

Q. All right. Whose car did you have that day?

A. I had Mike's Camaro.

. . . .

Q. Okay. Do you recall what time you left for the Thoni Station?

A. Dusk–dark.

Q. How far away was it?

A. A few blocks. Four or five blocks.
Q. How long did it take you to get there?

A. Five minutes. Less than five minutes.

Q. What happened?

A. When?

Q. At the Thoni Station?

A. It was robbed.

Q. How long did that take?

A. Oh, that was just moments.

Q. What happened after that?

A. I was driving the car. I was such a nervous wreck that I was trying to pull out I stalled the car three times, you know, before we ever left the scene. I was driving down the road. I couldn't even hold my foot on the gas pedal it, it was jumping so much. I was a nervous wreck. I probably was driving like a wild man because, you know, it was, like, whew! I was, I was scared.

Q. Where did you go?

A, Back to Terry's.

Q. What happened at Terry's house?

A. We went inside. Mike counted the money out, now. I ended up with 30–samething bucks, you know, out of the deal. We had to hide the car. Terry said we could push the car behind his house. So me, Mike, and Terry pushed the car between some trees behind a fence in Terry's backyard.

Q. Then what happened?

A. Terry took me home. Mike asked Terry to take me home. I went home.

(PC II 18-28).

Law enforcement did its best to "pin" the Albritton offense on Hynes, but ultimately determined, contrary to the State's and Chamblisses' trial account, that he simply was not involved (and, a fortiori, that the Chamblisses were lying):

Q. Now, sometime after the Thoni robbery, you had contact with the police?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

. . . .

Q. Do you remember their names?

A. Nelson, Nelms and Peterson, I think it was. Nelms and Peterson.

Q. So, when they took you downtown, then, did they interview you?

A. Yes, sir.

Q. What was the interview about?

A. Mike Squires.

Q. What did they want to know?

A. They wanted me to tell, they wanted to know all about the murder; right? They had pictures of this guy, you know, shotgun. You know, all kinds of stuff. They read, they sat me down for about two hours, started reading me these books, showing me where Mike was, that he had done this, done that, you know, this and that, you know? Right? They kept telling me that they already know that I was involved with the murder. They know that Mike committed the murder. They know I was with him.

They pressured me for about, anywhere from four to six hours, trying to make me admit I was with Mike the day of the murder. They even went so far as sending another man in, saying, you know, "He is guilty. Look at his face. WE know he is guilty. Lock him up," you know?

> And they said, "you got to take a lie detector test." I knew I had nothing to do with no murder. And I told them, they says, "Yeah, we got you for armed robbery, aiding and abetting an escaped convict, first-degree murder. You are facing life. You are going, you know? Tell us, Admit it, you know? It'll go light on you." I didn't know anything. I kept telling them, "I don't know. I don't know. I don't know. I don't know nothing." And they kept insisting that I did.
>
> After a few hours they finally give me a card, went and booked me for murder, and robbery, and aiding and abetting an escaped convict, and stuck me in a cell.
>
> I sat there until the next afternoon, and then I called them, told them that, you know, that I would take a lie detector test. Told them I wanted to talk to them. They came to me and they told me that if I passed the lie detector test, that they would file this robbery off, they would file the aiding and abetting an escaped convict and murder off, if I passed. If I didn't pass, I am history.
>
> I knew I wasn't guilty. So I went for it. I says, "Yes." I says, "I will take the lie detector test. But if I pass, you know, you just" -- you know, the deal was that they just shuffle the papers and that the robbery, I wouldn't be charged with robbery, my parole wouldn't be violated for aiding, abetting an escaped convict and that I could home. I went and took the lie detector test. And they let me go home. They took me to my door step.
>
> Q. Did they tell you the results of the lie detector test?
>
> A. Yes, sir,
>
> Q. What did they tell you?
>
> A. That I was telling the truth. But I knew that already.

(PC II 34-38). Donald Hynes' testimony in this regard is supported by Dectives Peterson's and Nelms' police reports, which defense counsel had (See PC 11, Defense Exh. 6).

The State's reasons for not calling Donald Hynes are now clear: he was not at the Chamblisses' house on September 2nd, he knew nothing about the instant offense, he never comnitted a murder on September 2nd with Mr. Squires, and he thus would have absolutely undermined the testimony of the State's key witnesses -- Terry and

Charlotte Chambliss. Moreover, his appearance would have deprived the State of its phantom eyewitness -- the man who, according to the prosecutor, "had seen [Mike Squires] pump four shots in Jesse Albritton's head" (R. 975).

Defense counsel's reasons for not calling Donald Hynes as a witness for Mr. Squires are now also apparent: he simply failed to conduct any investigation in this regard, and hence had no idea what Donald Hynes could say. We now know what Donald Hynes really had to say (as did the prosecution at the time of trial), and that knowledge conclusively demonstrates his importance to the defense, and, consequently, the glaring deficiencies of trial counsel's conduct in this regard. Trial counsel's "reasons" for failing to conduct any investigation of Hynes or of evidence relating to Hynes prior to trial, however, are not at all apparent. As discussed above, Hynes' testimony would have demonstrated that the testimony of Terry and Charlotte Chambliss was patently false. It would have also supported the alibi defense presented at trial, and Mr. Squires' own testimony. It would have deprived the State of its phantom eyewitness. There can be no legitimate reason for Donald Hynes' absence from Mike Squires' capital trial, other than the unreasonable, ineffective, and inexcusable omission of trial counsel, an mission based on the failure to properly investigate prior to trial.

There is now no longer any doubt that trial counsel should have been aware of Donald Hynes' critical importance to the case, long before trial. The charging affidavit, which trial counsel and his investigator had in their possession when they first became involved, specifically mentioned Hynes:

> WM Donald Roas Hines [sic] related Squires told him on 7 Sept 80 that Ed Fowler had robbed and murdered a service station attendant on 2 Sep 80. Squires sought Hines' advice on whether or not Squires should kill Fowler or simply put him out of the car and drive away. Acting on Hines' advice, Squires put Fowler out and drove away.

(PC 11, Defense Exh. 8). Moreover, the defense investigator discussed these allegations with Mr. Squires at their first meeting, and Mr. Squires told the investigator that he was indeed with Donald Hynes on September 7, 1980 (PC II 416),

and that the affidavit's account regarding the September 2nd homicide was a lie -- as Donald Hynes would have corroborated. Neither trial counsel nor the investigator made any effort to investigate any of this, or to contact Hynes. Had they done so, there would have been nothing left of the Chamblisses' story or the State's case. Counsel, however, failed his client.

More importantly, and more incredibly, defense counsel had within his possession the police reports which demonstrated that law enforcement had early on determined that Mr. Hynes had no involvement in the Albritton offense, and was in fact not with Mike Squires on the night of September 2nd (See PC II 144, 203; Peterson Report, supra; Defense Exh. 6). Trial counsel thus knew, or should have known, that the testimony of Terry and Charlotte Chambliss was patently and demonstrably false (as were the State's opening and closing arguments). In short, counsel had access to evidence which would have conclusively demonstrated the falsity of the State's theory, yet sat idly by while the Chamblisses lied. His conduct in this regard was unreasonable, and patently ineffective.

No reasonable legitimate tactical or strategic reason can be advanced for the failure to investigate or to even take reasonable steps to attempt to interview a key witness such as Donald Hynes. No tactical decision can be ascribed to attorney conduct based on the failure to investigate. See Kimmelman v. Morrison, 106 S. Ct. 2574, 2588-89 (1986). Such actions and omissions are unreasonable and ineffective. Id. Defense counsel's failures here fell far below the sixth amendment's standard. Nevertheless, at the evidentiary hearing, Mr. Squires' former defense counsel -- the attorney who failed to investigate Hynes' account in the first instance -- attempted to advance several "reasons" for his failures. Defense counsel Edwards' expressed justifications for his omissions in this regard were that he "felt" that Hynes "in no way could help" (EC II 210), and that he thought that Hynes might "bring out something that might be detrimental to our alibi defense" (PC II 206). The record, in its entirety, refutes such assertions. Indeed, counsel's after-the-fact

assertions make no sense: since he never investigate Hynes, he had no basis upon which to make such a decision. A decision based on a lack of investigation -- on ignorance -- is no decision at all. Here, as in Kimmelman v. Morrison, "[t]he justifications *[Mr.* Squires] attorney offered for his omission betray a startling ignorance . . . or a weak attempt to shift blame for inadequate preparation." 106 S. Ct. at 2588-89. Reasonably effective assistance mandates that counsel only make such a "decision" after reasonable investigation, i.e., after interviewing the witness. It is patently unreasonable to ignore and *so* easily dismiss a witness, especially one as critical as Donald Hynes, until the witness is spoken to.

Mr. Edwards testified that he was "concerned" that Hynes might say something that would place Mr. Squires in the Tampa area on September 2nd, contrary to the alibi defense presented at trial (PC II 210). This too is patently refuted: had Hynes been properly investigated, as required by the most minimal standards of effective representation, it would have been obvious that Hynes would have provided no such "harmful" testimony. Again, however, counsel based his reasoning on ignorance -- on his sheer guesswork resulting from the failure to investigate. Indeed, the question of how a pretrial interview of Hynes would have in any way hurt the defense is a question counsel could not answer at the evidentiary hearing.

Mr. Edwards further testified that he did not interview Hynes (PC II 208), that he believed that Hynes "didn't come into the picture" until September 4 (PC II 211), and that Hynes and Mr. Squires committed the Thoni robbery together on September 7th (PC II 209). Thus, even counsel's own further testimony refuted the "concerns" and "fears" which he himself had earlier expressed. On the facts of this case none of Mr. Edwards' after-the-fact explanations (explanations which he himself later refuted) made any sense. It is not surprising that they did not -- they were based on ignorance and on the failure to properly investigate. Cf. Kimmelman v. Morrison, 106 S. Ct. at 2588-89.

In short, none of the "reasons" advanced by Edwards for neglecting to interview

Donald Hynes can be viewed as valid "tactical" or "strategic" choices. Mr. Edwards admitted that he did not know what Hynes would say (although he did have in his possession the police reports demonstrating that Hynes was not with Mr. Squires on September 2nd) and that he had not contacted or interviewed Hynes. It is plainly apparent that trial counsel's conduct was not based on any reasonable "tactical" or "strategic" consideration. As demonstrated by his own testimony, counsel's "decision" not to interview or otherwise investigate Donal Hynes was premised on an unarticulated "fear" that Hynes could say something "damaging." His "fears" were, however, based on sheer ignorance. Since he did not investigate, he had no facts upon which to base his speculative "concerns." His "fears" would have dissipated had he reviewed, considered, or even read the materials in his own files (i.e., the police reports provided through discovery). But counsel did not even take this most rudimentary of prepatory steps, much less independently investigate. Because counsel did nothing, he had no idea of the critical testimony which Donald Hynes could have provided. We now know that counsel's "fears" were wholly unfounded, and based on sheer ignorance. Counsel in ignorance, "decided" to remain in ignorance.

As stated, it is axiomatic that no "tactical" or "strategic" motive can be ascribed to an attorney whose omissions are based on ignorance, or on a failure to investigate or prepare. See, e.g., Kimmelman v. Morrison, 106 S. Ct. at 2588-89 (failure to request discovery based on mistaken belief State obliged to hand over evidence); Code v. Montgomery, 799 F.2d 1481, 1483 (11th Cir. 1986)(failure to interview potential alibi witnesses); Thomas V. Kemp, 796 F.2d 1322, 1324 (11th Cir. 1986)(little effort to obtain mitigating evidence); Aldrich v. Wainwright, 777 F.2d 630, 633 (11th Cir. 1985)(failure to depose any of the State's witnesses); King v. Strickland, 748 F.2d 1462, 1464 (11th Cir. 1984)(failure to present additional character witnesses was not the result of a strategic decision made after reasonable investigation); Gaines V. Hopper, 575 F.2d 1147 (5th Cir. 1978)(failure to investigate evidence of provocation); Gomez V. Beto, 462 F.2d 596 (5th Cir.

1972)(failure to interview alibi witnesses); ~~see also~~ Nealy v. Cabana, 764 F.2d 1173 1178 (5th Cir. 1985)(counsel did not pursue a strategy, but "simply failed to make the effort to investigate"), Here, as in Code and Gomez, counsel's failure to even interview a critical alibi witness before deciding whether or not to call the witness was prejudicial ineffective assistance. Here, as in Kimmelman v. Morrison, counsel acted on the basis of ignorance. Here, as in each of the cases cited above, counsel's failure to investigate was inexcusable.

Counsel's fears regarding what Hynes might say were based on no more than his failure to speak to and ask Hynes himself what he had to say (PC II 206, 210). Had he contacted and interviewed Hynes, or even reviewed the police reports contained in his own files, he would have known that Hynes would have "said," as Hynes had said to the police, that he was not with Mike Squires on the 2nd and that the two comnitted no murder. Far from being detrimental to the alibi defense, this would have established it. Hynes' testimony would have been perfectly consistent with the alibi defense, with Mr. Squires' testimony, and with the version of events related by Mr. Squires from the very outset. It would have absolutely undermined the State's case, a case based on what the Chamblisses said. Counsel was "afraid" of what Hynes might say because he didn't know what Hynes could say or what he had already said. He did not know because he did not investigate, He did not even know what the police reports in his own files related.

In passing, counsel also intimated at the evidentiary hearing that he did not want to put Hynes on the stand because of Hynes' criminal history (PC II 233), although he never expressly stated that this was the basis for his failure to interview Hynes. This "explanation" was bizarre at best: counsel testified that he would not have hesitated to put Ed Fowler (another individual purportedly involved)[3]

[3]Fowler was never called by the State, and never arrested, although the State was aware of his whereabouts at the time. Fowler's pretrial statements to law enforcement in no way incriminated Mr. Squires in the murder.

on the stand if Fowler would have testified that he and Squires did not commit the murder (PC II 239). This is exactly what Donald Hynes would have said, and Donald Hynes, in contrast to Ed Fowler, was actually portrayed by the State as a participant in the murder. Fowler, of course, also had a criminal record, and one far worse than Hynes. Again, counsel's failure in this regard can be attributable only to ignorance and/or the failure to investigate and prepare; i.e., unreasonable attorney conduct. Again, counsel's illogical after-the-fact explanation "betray{s} a startling ignorance." Kimmelman, supra, 106 S. Ct. at 2588-89.

Mr. Edwards testified that he did not contact or investigate Donald Hynes because he "felt" Hynes could "in no way help" Mr. Squires' defense (PC II 211), a feeling founded on ignorance. He also testified, in contradiction to the above statement, that he investigated the Chamblisses because he "wanted to find out if they really had a real knowledge of what they were talking about" (PC II 214), and that if he had "had access to evidence that would have undermined the testimony of Terry and Charlotte Chambliss, [he] would have used it" (PC II 218; ~~see also~~ 249). He did have "access" to such evidence -- Donald Hynes. Minimal investigation of Hynes, even an examination of the discovery materials provided by the State, would have demonstrated that Hynes would indeed have "helped" the defense, as he would have absolutely undermined the testimony of the Chamblisses. Counsel's statement that Hynes could not help, like his other attempts at explanations, were, again, based on ignorance and the failure to properly investigate. Again, as a matter of sixth amendment law, explanation based on ignorance are as good as no explanation at all: no tactic can be ascribed to an attorney who fails to investigate and prepare. Kimmelman v. Morrison, supra; Code v. Montgomery, supra.

Counsel recognized that the Chamblisses were the most critical of the State's witnesses. As he readily testified, he would have used any evidence that would have undermined their testimony, "if such evidence had been provided to [him], or if [he] had recognized it, been aware of it, Mr. Benito [the trial prosecutor] had given it

to [him], or whatever" (PC II 249). As discussed, Donald Hynes would have virtually destroyed their testimony, and Hynes had been "given" to trial counsel. Counsel nevertheless neglected the evidence which Hynes would have provided, and his own testimony demonstrates his ineffectiveness in this regard.

Trial counsel's investigator, Mr. Ed Kane, also testified at the evidentiary hearing regarding his investigative efforts. According to Mr. Kane, he received all of his investigative leads from Mr. Squires, rather than from defense counsel Mr. Edwards. Mr. Kane attempted to follow up on everything Mr. Squires told him with regard to the time period surrounding the offense (see PC II 399, 414). According to Mr. Kane, Mr. Squires was consistently accurate, and he [Kane] was able to confirm almost all of the information received from Mr. Squires through independent sources (PC II 414). Mr. Squires did tell him early on about Hynes and his contacts with Hynes in late August and early September of 1980 (see PC II 423; Defense Exhibit 7), but Kane made no attempt at that time to contact Hynes, and was not directed by Mr. Edwards to do so.

Mr. Kane did testify that he made an attempt to contact Hynes shortly before trial (PC II 417). His attempt proved fruitless, however, because he used an inaccurate address (PC II 420). This "effort" was far too little, far too late. Hynes' importance was obvious from counsel's initial involvement in the case -- waiting until the eve of trial, and then undertaking but one less-than-minimal effort to attempt to reach a witness as important as this one simply makes no sense. Even that non-effort was quickly abandoned.[4]

The fruitless, last-minute effort to locate Hynes demonstrates defense counsel's woeful failure to adequately prepare and investigate. Counsel had in his files an

---

[4] Of course, this last-minute weak effort to find Hynes belies counsel's earlier testimony regarding his "fears" and "concerns" about interviewing the witness, as discussed below.

accurate address for Donald Hynes, as well as the address of Hynes' parents (See Peterson Report, supra). This information had been provided months prior to trial; no effort was made earlier, and during the investigator's feeble last minute effort the right address was inexplicably ignored. Moreover, Detective Peterson testified that he was aware of Hynes' whereabouts at all times, and would have provided this information to the defense, had he been asked. (Detective Peterson was in fact deposed prior to trial.) Additionally, Linda Crutchfield, Terry Chambliss' parole officer and a defense witness at trial, was also Hynes' parole officer, and had monthly contact with him. She too was never asked. The most minimal of efforts on the part of the defense would have revealed Hynes' whereabouts. Counsel's own files reflected police reports and other documents turned over by the State which provided Donald Hynes' true whereabouts, but counsel did not even attempt to use those accurate addresses during the sparse eve-of-trial noneffort to locate Hynes. Counsel was not even aware of the contents of his own files.

The trial court denied relief on this claim, holding that trial counsel's "reasons for not interviewing and deposing Donald Hines [sic] were reasonable; and reflected a recognition by the defense that such inquiry could have done more harm than good." (PC II 524). The trial court's ruling ignores the obvious, and is directly contrary to well established law -- counsel did not know, because he was inexcusably negligent, what Donald Hynes would have said: he therefore could have made no reasonable "strategic" or "tactical" decision with regard to Hynes. His failures in this regard were patently ineffective: because counsel did not investigate, no "strategy" can be ascribed to any decisions that may have been made, see Strickland v. Washington, 466 U.S. 668, 691 (1984); Kimmelman v. Morrison, 106 S. Ct. at 2588-89; see also Stephens v. Kemp, 846 F.2d 642 (11th Cir. 1988), notwithstanding defense counsel's after-the-fact efforts to provide reasons for his non-actions. Indeed, the reasons now ascribed by counsel are largely inconsistent with each other, and wholly inconsistent with the facts of this case and the

evidentiary hearing record. As a matter of law, Kimmelman, supra; Strickland v. Washington, supra, they are plainly insufficent to undermine Mr. Squires' entitlement to relief.

There is simply no reasonable explanation for counsel's failures with regard to Donald Hynes. Counsel came up with none. Information within his possession demonstrated the critical importance of Donald Hynes. Indeed, counsel testified at the hearing below that he would have used any evidence which would have undermined the testimony of the Chamblisses, had he been aware of or had access to such evidence. He did, but inexplicably did not use it. Counsel's investigator's unguided, fumbling, single last minute attempt to locate Hynes also belies counsel's testimony that he believed Hynes had nothing to add to the case, and demonstrates his woeful unpreparedness and outright ignorance of the facts. The justifications now offered by trial counsel for his unreasonable and inexplicable omissions "betray a startling ignorance . . . or a weak attempt to shift blame for inadequate preparation." *See* Kimmelman v. Morrison, supra, 106 S. Ct. at 2588-89. Here, as in Kimmelman, counsel failed to properly investigate and prepare, and "counsel offered only implausible explanations'' for his failures. 106 S. Ct. at 2589. "At the time *[Mr.* Squires'] lawyer decided not to [investigate Hynes'],[5] he did not -- and, because he did not ask, could not -- know what [Hynes' account] would be." Id. at 2589. Here as in Kimmelman, deficient performance has been established, as has prejudice.

There was even more evidence, independent of that which would have been provided by Hynes, which would have "undermined" the Chamblisses' testimony, but which counsel unreasonably and inexplicably neglected to use. For example, although counsel did elicit on cross-examination the fact that the Chamblisses received a $2,000 reward for their part in Mr. Squires' arrest, he did not elicit the circumstances under

[5] As stated, trial counsel's later testimony was contradictory to his account that such a "decision" had ever even been made.

which the reward was obtained. As the discussion below demonstrates, this omission severely prejudiced Mr. Squires.

According to Tampa Police Department Detective George Peterson, the Chamblisses "negotiated" with law enforcement with regard to revealing their knowledge of Mike Squires' whereabouts, and did *so* only after determining the existence of and obtaining reward monies:

> The u/signed had been in negotiations with a W/M TERRY EDWARD CHAMBLISS since the first part of December, reference to a W/M MICHAEL SQUIRES, who had escaped from Carrollton, Georgia Jail on 9 December 1980. W/M CHAMBLISS resides at 1803 West Sligh Ave., and a DOB: 11 Apr 53, phone: 932-3368 with a TPD#197916.
>
> The reason the u/signed was in negotiations with TERRY CHAMBLISS, was that the u/signed along with SGT. J. T. FELTMAN had been notified by LT. HOSEY of the Carrollton Georgia PD that TERRY CHAMBLISS had written a letter to W/M MICHAEL SQUIRES and soon thereafter W/M SQUIRES had escaped from their City Jail. The u/signed had been talking to TERRY CHAMBLISS and his wife, CHARLOTTE in ref. to the letter which had been received from them in Carrollton, Georgia. Both TERRY and CHARLOTTE CHAMBLISS explained that they had first received a letter from SQUIRES and the letter they wrote was in answer to the letter that they had received from SQUIRES.
>
> During the time that we negotiated the whereabouts of W/M MICHAEL SQUIRES who had escaped from the Carrollton Georgia Jail, TERRY & CHARLOTTE requested the u/signed find out how much monies or reward would be posted by Carrollton and Fla. Department of Criminal Law Enforcement. The u/signed then left the SQUIRES residence and made contact with the Carrollton Georgia PD, LT. HOSEY and AGENT BOBBY KINSEY of the FDLE in Live Oak, Fla. This was done through SGT. J. T. FELTMAN, who explained to the u/signed that Carrollton, Ga., would offer $1,000 in that the FDLE would match that with an additional $1,000 for the information leading to the arrest of W/M MICHAEL SQUIRES.
>
> Approx 1530 hrs., 24 Dec 80
> The u/signed received a call from TERRY CHAMBLISS, explaining to the u/signed that he had *some* valuable information and that the u/signed should come by and see him and that the u/signed should be there at 7:00 PM. The u/signed then responded to 1803 W. Sligh, the residence of TERRY and CHARLOTTE CHAMBLISS. Upon arrival, TERRY and CHARLOTTE CHAMBLISS asked the u/signed, how much monies they would receive, the u/signed telling them that Carrollton, Ga., would offer $1,000 and that it was believed that an additional $1,000 would be brought up by the FDLE AGENT

BOBBY KINSEY which brought the total to $2,000.

It was at that time that TERRY **CHAMBLISS** explained to the u/signed that he had received several phone calls from **SQUIRES,** asking him to try and get him ***some*** antibiotics and he was yet expecting another call, because he had told WM SQUIRES that he needed ***some*** time to get the pills for him. That is when he states he called the u/signed and asked the u/signed to respond to his residence. He states, if we could come to some kind of agreement, that he would try and get SQUIRES to give him a location where he was hiding. It was at this time, the u/signed called SGT. FELTMAN, appraising him of the situation and he, in turn, calling the Telephone Op., in an attempt to place a tracer on the telephone of TERRY CHAMBLISS. Shortly thereafter, there was a telephone call with WM CHAMBLISS, nodding his head in the affirmative motion, that this was in fact, SQUIRES, who had called again. He then told SQUIRES that he had to go to Brandon to pick up the pills from a doctor, but he did have the pills and where did he want him to meet him. He then took down the directions and the directions stated:

> North on 75 to Highway 54, instead of going right, take a left and you will see the place and I will meet you in room **#143.**

(PC II, Defense Exh. **6** [Report of George Peterson, 12/30/80]) (emphasis added). Counsel had this report in his files as well (see PC II **144, 203),** but did not use it to impeach the Chamblisses or Peterson. Mr. Squires' jury knew only that the Chamblisses had received a reward -- they did not know, however, that the Chamblisses had withheld information from the police, "negotiating" for reward money, and provided information only after securing a promise of cash. This information was critical: it showed that the Chamblisses' fabricated account was only obtained after the State had given them exactly what they wanted. It showed, inter alia, that these were far from disinterested witnesses who were gratuitously given a reward (as the State argued), but that they were very, very interested in extracting all they could in return for giving the State what it needed to make a case. Again, counsel's failure to use this information to undercut the testimony of Charlotte and Terry Chambliss was patently ineffective.

There was still more evidence which would have significantly undermined the Chamblisses' testimony and which counsel had access to but did not use. On February 26, 1981, Terry Chambliss was given a lie detector test at the insistence of the

police. Some six weeks prior to that date, Chambliss had helped the police recover a shotgun which according to him Mike Squires had given to him on the night of September 2 with instructions to dispose of it because it had just been used in a crime (*See* R. 600). The conclusion of the polygraph examiner was that

> he was sure that TERRY CHAMBLISS was lying in respect to having knowledge of this offense, having knowledge that a murder had been committed and also having knowledge that the weapon which he had, a sawed off shotgun and disposed of by him was used in this robbery/murder.

(*See* PC 11, Defense Exh. 6) After learning of the examiner's conclusions, Detectives Nelms and Peterson dismissed Chambliss, telling him they would contact him if they needed him (~~See id.~~). They eventually decided that they did need him, despite their determination that he had been lying with respect to his knowledge of Mike Squires' involvement in the instant offense. Again, counsel had been provided with this information through discovery, but did not use it to impeach Terry Chambliss or the detectives. Counsel never even requested to be provided with what the questions and answers were which were elicited during the course of the Chambliss' polygraph. Whatever the admissibility of the polygraph results at trial,[6] the account of law enforcement officers that they did not believe Chambliss' original story (the story he later gave at trial) would have been admissible, and would have surely undermined the State's case in the eyes of the jury. Counsel, however, unreasonably failed to ask any questions of the detectives in this regard, and failed to investigate these matters. Again, his failure in this regard was patently ineffective.

Prejudice

Much of the prejudice to Mr. Squires resulting from counsel's unreasonable omissions was discussed above. As demonstrated herein, the prejudice to Mr. Squires was indeed real and substantial.

---

[6] At sentencing, the eighth amendment countenances the introduction of such favorable evidence by the defense. Cf. Lockett v. Ohio, 438 U.S. 586 (1978).

Mr. Squires presented a detailed, documented alibi defense at his trial intended to demonstrate that he did not and could not have committed the instant offense as he was not in Tampa on September 2, 1980. The facts supporting Mr, Squires' defense "checked out," as former defense counsel's investigator testified at the Rule 3.850 hearing. As discussed above, incomprehensibly, the one area defense counsel failed to "check out" was the most important area: the account of Donald Hynes.

Mr. Squires established his whereabouts on the days preceding and following the crime, as well as the day of the crime itself, through both testimony and documentary evidence. Although admittedly engaged in a series of robberies throughout the Southeast, in the company of Ed Fowler, Mr. Squires did not, indeed could not have, comnitted the crime in question.

The documentary evidence establishing Mr. Squires' alibi defense was in the form of credit card receipts from a series of gasoline purchases made by him with stolen credit cards. The State stipulated to the fact that Mr. Squires had these cards in his possession and used them on the dates for which receipts were presented (R. 787).

On August 26, 1980, Mr. Squires purchased gasoline in Haddisburg, Mississippi, with a credit card belonging to an A.F. Petit (R. 786). On the following day, August 27, 1986, he was in Biloxi, Mississippi, as evidenced by the receipt from a purchase made with a card belonging to one David Locke (R. 789). The 28th was spent in transit from Biloxi to Bowden Junction, Georgia, as evidenced by receipts from Pascagoula, Mississippi, Spanish Fort, Mississippi, Fort Deposit, Alabama, and Auburn, Alabama (R. 790).

The 29th and 30th of August were spent in Bowden Junction, Georgia, as evidenced by the testimony of Rayford Chambers, with whom Mr. Squires and Fowler stayed during their visit there (See R. 728-732). On the 31st, Mr. Squires and Fowler journeyed to South Carolina, as evidenced by charge card receipts from Fort Wintworth, South Carolina, and Earhardt, South Carolina (R. 734).

Even more compelling evidence of their presence in the state of South Carolina

in the latter part of August and the early days of September, 1980, was presented in the form of testimony by the victims of various crimes in that state comnitted by Fowler and Mr. Squires. Neil Hughes testified that he and three companions were robbed by a man whom he had prior to trial identified Mr, Squires and an unidentified man whom he heard Mr. Squires refer to as "Ed." (R. 665-70). This robbery occurred in Foley Beach, South Carolina, shortly after sunset on August 31, 1986 (Id.). Among the items taken were a gold Boliva Accutron watch and a credit card belonging to James Bitner (Id.).

In the early morning of September 1, 1980, Officer Harry Kinnard of the Earhart, South Carolina, Police Department was abducted at gunpoint when he pulled over a car during a traffic stop. Officer Kinnard testified at trial, and identified Mike Squires as one of the men who abducted him that night (R. 679). Officer Kinnard also testified that the other man, whom Mike Squires prevented from killing him, was named "Ed." (680).

After abducting Officer Kinnard in Earhart, Mr. Squires and Fowler headed for Dothan, Alabama. Their progress was documented by credit card receipts from purchases in Hardeeville, South Carolina, Midway, Georgia, and Valdosta, Georgia (R. 809-10). Upon arriving in Dothan, the pair checked into the Walker Motel, with Ed Fowler paying for the room and signing the register (R, 696, 811). While in Dothan on September 1, 1980, Mr. Squires discovered that his car would not start, and attempted to call a wrecker to tow it to a service station (R. 812). Charles Barr, operator of a nearby service station, responded to Mr. Squires' telephone call and came to the Walker Motel to look at his car (R. 689, 812). Barr, who later identified Mr. Squires through a photo array (R. 688, 698), inspected the car and told Mr. Squires to bring it to the station the next day, September 2, 1980 (R. 689, 812). Mr. Squires brought his car to Mr. Barr's service station on the 2nd, as they had previously arranged, and waited while Mr. Barr performed the necessary repairs (R. 690, 813).

Mr. Squires and Fowler stayed over in Dothan on the night of the 2nd, again at the Walker Motel (R. 697, 817), leaving on the morning of the September 3rd (R. 817). Later on the 3rd, Mr. Squires and Fowler sold the gold Accutron watch stolen earlier from Neil Hughes to Mr. Lloyd Carlton at his pawnshop in Marianna, Florida (R. 703). Although Mr. Carlton could not remember the exact date of this sale, he did have good reascn to remember Mr. Squires -- Carlton testified that Mike Squires robbed his store at gunpoint on September 18, 1980, approximately two weeks after he had bought the watch from Mr. Squires and Fowler (R. 702, 705). An employee of Carlton's, Timothy Stevens, who had been present in the pawn shop when Mr. Squires and Fowler made their first appearance there, testified that the date of that initial visit was the 3rd of September, a date he remember because of its proximity to Labor Day and the day on which Mr. Carltcn received a monthly check (R. 710-11).

After selling the merchandise in Marianna, the pair headed back to Tampa, purchasing gas in Perry, Florida, on September 3rd with the credit card stolen earlier from James Bitner (R. 821). They arrived in Tampa on the 4th, as evidenced by their next documented credit card purchase on that day (R. 822). Sometime that day (September 4th), the Mr. Squires and Ed Fowler parted, and Mr. Squires took up with Donald Hynes (R. 829).

During this stay in Tampa, Mr. Squires did stay with the Chamblisses, sleeping there on the nights of the 4th, 5th, and 6th of September (R. 823). He left on the morning of the 6th, and returned there on the afternoon of the 7th, this time in the company of Donald Hynes (R. 830). Sometime that evening, Mr. Squires and Hynes left the Chambliss house to rob a nearby Thoni service station that Terry Chambliss had told them about (R. 831).[7] Upon their return, Mr. Squires asked Chambliss to help him hide his car, which he now believed was "hot" because of the Thoni robbery he and

[7] Chambliss, who had a criminal history, was not exactly a law abiding citizen. Indeed, the logical inference is that he had been casing the Thoni station in anticipaticn of the robbery.

Hynes had just pulled off, in the backyard (R. 832). Chambliss helped him pull down part of the fence so they could pull the car into the backyard (R. Id.). At this point, Chambliss, at Mike Squires' request, took Hynes home while Mr. Squires stayed at the house (R. 832).

The only testimony refuting Mr. Squires' alibi was that of Terry and Charlotte Chambliss, who, as previously discussed, testified that they saw Mike Squires and Dcnald Hynes on the night of September 2nd. Based on this testimony, the trial prosecutor presented to the jury the State's theory that Donald Hynes was with Mike Squires during the robbery of the United 500 station, that they robbed it on September 2, 1980, and that Hynes watched Mr. Squires "pump four shots into Jesse Albritton's head" (R. 975). The Chamblisses' account was the State's theory. As is obvious from the State's arguments, it was that acount that convicted Mr. Squires. The account, however, was demonstrably false, and would have been shown to be false had counsel properly investigated Donald Hynes.[8]

Donald Hynes' version of the events has been consistent throughout: as he told the police in January, 1981, and as he would have testified at Mr. Squires' trial, he was not with Mike Squires on September 2nd. He was however, consistent with Mr. Squires' own testimony, with Mr. Squires on the 7th, when they robbed the Thoni Station and then concealed the car they had used in Terry Chambliss' backyard.

The strength of Donald Hynes' testimony would have gone far beyond mere impeachment -- the substantive evidence which would have been provided by Hynes' testimony would not only have virtually destroyed the testimony of the Chamblisses', it would have supported Mr. Squires' alibi defense. Indeed, it would have made the

---

[8] It is again worth noting, as the testimony of former defense counsel Edwards and investigator Kane ccnfirmed at the evidentiary hearing, that the defense in this case (dates, places, names, etc.) came from Mr. Squires. This was not a case where any effort was devoted by counsel into "developing" a defense -- the defense came from the client. Under such circumstances, it was even less excusable for counsel to neglect to pursue the account of the alibi witness who would have been the key to his client's defense.

defense virtually unassailable! Hynes would have been a far more credible witness than Chambliss: while Hynes did have a criminal record, it paled in comparison to that of Terry Chambliss. Moreover, Hynes had not asked for nor received any reward money; to the contrary, Hynes' testimony would have (and did, see PC II 159) exposed him to criminal liability for the Thoni robbery. In a contest of credibility, Hynes would have won hands down.

Even the impeachment value of Hynes' testimony alone would have been sufficient to change the outcome of Mr. Squires' trial. Because counsel did no investigation of Hynes, however, the "evidence was not used and the jury had no knowledge of it." Smith v. Wainwright, 799 F. 2d 1442, 1444 (11th Cir. 1986). Counsel's failure in this regard was patently ineffective, and entitles Mr. Squires to relief. Just as in Smith:

> The conviction rested upon the testimony of [the Chamblisses]. [Their] credibility was the central issue in the case. Available evidence would have had great weight in the assertion that [the Chamblisses'] testimony was not true. There is a reasonable probability that, had [Hynes' testimony] been used at trial, the result would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.23 674 (1984).

Smith v. Wainwright, 799 F.2d 1442, 1444 (11th Cir. 1986).

Mr. Squires has demonstrated that, but for counsel's unreasonable omissions, there is a reasonable probability that the outcome of his trial would have been different. Moreover, counsel's deficient performance at the guilt phase also in all probability affected the jury's sentencing decision. In Smith v. Wainwright, 741 F.2d 1248 (11th Cir. 1984), the Eleventh Circuit recognized the affect that evidence presented at the guilt/innocence phase of a capital trial could have on the jury's sentencing decision. There, in a case markedly similar to the instant, the Eleventh Circuit addressed a claim of ineffectiveness of counsel grounded on trial counsel's failure to impeach a critical state witness with a prior inconsistent statement. Not only could have such failure "affected the outcome of the guilt/innocence phase," held the Smith court, but "it also may have changed the outcome of the penalty

trial":

> As we have previously noted, jurors may well vote against the imposition of the death penalty due to the existence of "whimsical doubt." In rejecting the contention that the Constitution requires different juries at the penalty and guilt phases of capital trial, we stated:
>
> > The fact that jurors have determined guilt beyond a reasonable doubt does not necessarily mean that no juror entertained any doubt whatsoever. There may be no reasonable doubt-- doubt based upon reason-- and yet some genuine doubt exists. It may reflect a mere possibility; it may be but the whimsy of one juror or several. Yet this whimsical doubt-- this absence of absolute certainty-- can be real.
> >
> > The capital defendant whose guilt seems abundantly demonstrated may be neither obstructing justice nor engaged in an exercise in futility when his counsel mounts a vigorous defense on the merits. It may be proffered in the slight hope of unanticipated success; it might seek to persuade one or more to prevent unaminity for conviction; it is more likely to produce only whimsical doubt. Even the latter serves the defendant, for the juror entertaining doubt which does not rise to reasonable doubt can be expected to resist those who would impose the irremediable penalty of death.
>
> Smith v. Balkcom, 660 F.2d 573, 580-81 (5th Cir. Unit B 1981). . . In this case, use of [witnesses'] prior inconsistent statements might have created a whimsical doubt that would discourage the court and advisory jury from recommending the death penalty.

Smith v. Wainwright, 741 F.2d 1248 (1984). Thus, Mr. Squires' capital penalty proceeding, and the resulting sentence of death, was likewise rendered constitutionally unreliable by counsel's deficient performance. Cf. King v. Strickland, 748 F.2d 1462 (11th Cir. 1984); Magill v. Dugger, 824 F.2d 879 (11th Cir. 1987). The trial court's order with respect to this claim is thus contrary to fact and law, and Mr. Squires is now entitled to relief.

B. Counsel's Failure to Investigate the Circumstances Underlying Mr. Squires' Pretrial Statements and Challenge Their Admission into Evidence

Mr. Squires was seriously injured as the result of a "shoot-out" with police in Carrolton, Georgia, on November 11, 1980. During the course of that incident, he

received severe injuries to his leg and foot, which resulted in serious infection, gangrene and ultimately the amputation of his leg. Treatment of his injuries and resulting infection continued for months and included a regimen of powerful narcotics. During the period of his treatment, and while he was under the continued influence of narcotics, Mr. Squires made a series of conflicting statements, both inculpatory and exculpatory. These statements were introduced against Mr. Squires at his trial, with no objection nor any attempt to suppress on the part of defense counsel.

At the Rule 3.850 hearing, Mr. Squires presented voluminous medical records demonstrating the mind-numbing regimen of narcotics administered to him at all times relevant to the instant claim (see PC 232-668). At the evidentiary hearing, Mr. Squires also presented the testimony of a qualified medical expert regarding the debilitating effects of chronic severe pain and periods of intensive narcotic medication interspersed with periods of withheld medication on Mr. Squires, and his resulting inability to comprehend and validly waive constitutional rights. As the testimony reproduced below demonstrates, all of Mr. Squires' statements were suppressible, had trial counsel adequately researched and investigated:

> Q. Doctor Afield, have you had an opportunity to review any medical records with regard to Michael Squires?
>
> A. Yes, sir. I have reviewed extensive medical records, which include records from the Tanner Medical Clinic, Medical Center Hospital in Lake Butler, Florida, postsentence investigatians by the Department of Corrections, medical records from the Department of Correctians, reports from Doctor Halan Trailens, reports from Detective Peterson, and depositions from Detectives Allen Dayton, Rex Seimer, Robert Fain, George Peterson, Gerald Nelms, report from Sergeant Feltman in 1980. Report from Detective Peterson in February 16, 1981. Supplemental investigations January 11 of '81, February 19 and March 4 of '81, and reports of January 8, '81 from Detective Peterson and Feltman, report of January 7, '81 from Steven Millwee, who, I believe, was the polygraph expert.
>
> . . .
>
> Q. Doctor Afield, have you also had an opportunity to

interview Mr. Squires?

A. Yes, I did . . .

. . . .

Q. Now, what I would like you to do is to testify both in terms of the expert opinion that you can provide with regard to these issues, but also with regard to expert opinion that an expert applying recognized standards in the field could have provided had such an individual been consulted at the time of trial.

Does that make sense?

A. All right. What you are saying is, at the time of trial, all this information would be available to myself or somebody competent.

Q. Assuming the information was available, assuming a qualified expert had been contacted, I would also like you to answer the questicn wearing both hats, so to speak.

A. I understand.

Q. You are aware of the fact that Mr. Squires made a number of statements prior to this trial?

A. Yes, sir.

Q. And you have had an opportunity to review those?

A. Yes.

Q. Could you tell us initially whether you were able to formulate any opinicns with regard to the voluntariness of those statements?

A. Yes. I think there's a question about the voluntarily giving of these statements. He was asked to give them, and he gave them, so that is voluntary.

But under the influence of the medications, and the kind of things that were going on at the time, that was impaired.

Q. Let me break that down for you in a moment. But in addition to that, were you able to formulate an opinion as to whether the statements -- these may be technical legal terms, but I am sure you are familiar with them -- with regard to whether the statements were knowingly made, rationally made, intelligently made, whether they were of the type of statements made by an individual acting under the normal external influences, using normal, intellectual and emotional faculties?

A. No, I don't think they were.

Q. Could you describe why not?

A. Well, you have several problems with this man. The problem as I look at it, there are a variety of dates in question, but he was on large doses of a variety of medications, morphine, demerol, general anesthesia, Valium, antihistamines. He had a side reaction to me drug. Also be a situation where he was having, developing severe infectim and what we call septicemia or spread of infection, subsequent gangrene of the leg.

He also was in a rather serious acute distress in various points during some of these statements.

Some of the statements were given right after general anesthesia when he was *on* big doses *of* medicines that confuse you. Some were given an hour before, before he gave a statement. Others were given when he was having gangrene of his leg.

So there was an enormous disruption in the man's mental faculties and mental thinking during the time of these statements.

. . .

Q. Could you tell us during the first initial stages when his leg was first shot, what would be an individual's mental state during that period of time?

A. Well, shot is one thing. What we had here was an admission, essentially, to a hospital who had to do some surgery. The man was under some general anesthesia, was coming out *of* general anesthesai, was *on* some analgesic medication, the mental state there is confusion, disorganization, not full rationale, control of onesself. Very much like being drunk. He was *on* big doses of morphine, things like that. Not having all your faculties about you.

Q. Could you, and let me just ask if you agree with this statement: There are certain statements that Mr. Squires made during the period of time when he was *on* medication, and then certain statements made when he was off medication.

With regard to the statements made when he was *on* medication, could you tell us whether you were able to formulate an opinion as to whether those statements were voluntary, rational, intelligent?

A. I don't think they were voluntary, rational and intelligent when he was on medication.

Q. Could you describe why?

A. Again, as I indicated, you have two things going here. You have got medications which confuse. And you have an on-again off-again juggling of medications throughout the time frame of this man. One minute he is on sixty milligrams of codeine for a period of time, then he is off. Then he is on and he is off.

It's very much like a roller coaster ride. When he is on the medication, you don't have your full faculties. I mean, it's like taking eight or nine martinis. You may look pretty good and you may be able to talk very well, but you don't have your full faculties about you in terms of what are the facts, how to defend yourself, how to understand, well, you don't get the rationale. Something like a drunk.

Q. What about waiving one's rights or waiving one's right to, say, keep silent or to have an attorney present? Does the medication have an affect on that?

A. I think it would have a major effect and did on this situation, on this man.

Q. Could you specifically relay what type of effect, for example, morphine would have?

A. Well, morphine is probably the most powerful pain killers that we have. You can take a leg off with an amount of morphine he was on. This is the kind of thing you give somebody for serious pain. It causes some clouding of the sensory functions. Some clouding of your ability to use judgment, taking information in, processing it, and then giving information back out. It's a mood-altering drug. On the streets it's used illegally as mood-altering drug. In medical situations it's used to anesthesize somebody.

Q. What about demerol?

A. Same situation. Essentially, the same family.

Q. What about something like -- and remember, these were all, I assume, these were all given in conjunction, depending on the periods of time?

A. Yes.

Q. What about something like Percodan?

A. A little less powerful but still will cloud the sensorium, of and by itself.

Q. And codeine?

A. Same situation. That's a very strong addicting

pain killer also affecting sensorium or processing of information.

. . .

Q. Would it be fair to say that under the effects of such medication, Mr. Squires' judgment was impaired?

A. Yes.

Q. Could you, what about in terms of his ability to relate fact to fantasy, to understand rationale, what is going on about him, make rational choices, could you bring any light with regard to that?

A. It could be interfered with moderately or rather severely. Depends again on the time and situation. But these drugs do interfere with one's judgment.

Q. Did the medication here interfere with Mr. Squires' judgment?

A. Yes, it did. In my opinion it did.

Q. Would a lay person be able to recognize the affects of this type of medication?

A. Not, not really. And I am not sure even a physician would recognize it unless he was aware of the fact he was on medication, at least, this kind of a situation. He might pick up some things if he were looking, but mostly lay people would not find this and many doctors would not, either.

Q. Now, some of the other statements that Mr. Squires made were made during a period of time when he was not on medicatia?.

Could you relate to us whether you were able to form any expert opinion with regard to the effect of pain on his rational functioning, on the voluntariness of those statements?

A. Pain per se varies. I think if you would isolate that by itself, it becomes a little more difficult. It's there. And pain, depending on how severe it was, and this man was in rather severe pain, according to the records, it does interfere with your ability to sit down and get on with making some statements and getting on with things. It may not interfere with the truthfulness of the statements. But if you add to that infection, and the unusual septicemia or spreading of the infection through the blood, to that, then it complicates issues tremendously. You have changed the whole body chemistry, chemistry of the brain, so it does interfere. That is the kind of situation I saw here.

Q. Would it interfere with the ability to separate fact from fictcn?

A. Yes, it can.

Q. Would it interfere with the ability to distinguish voluntary acticns from, for example, saying what people want to hear?

A. Oh, absolutely.

Q. Would that also hold true for a person under the influence of medication?

A. Yes.

Q. You indicated that there are physiological affects. Could you relate to us what some of those affects maybe?

A. Well, the physiological affects you are talking in this man here? At various times there are combinations of things.

One, you put medicaticns which affect the brain. We don't know fully how they work but they do change the brain chemistry and the electrical activity of the brain, the chemicals that surround the brain.

You add an infection to it. That changes brain chemistry. You are very familiar with the child who hallucinates. Has a high temperature or at night developes Tonsillitis. All of a sudden he is hearing voices, seeing things, because it has changed the brain chemistry. And that is how you perceive things and how you use judgment and how you think, is the chemical activities that go on in your brain.

You add that and those two issues together, that is what changes the what we call the physiology and what is happening in the brain that would prevent you from thinking properly.

Q. Would a person such as Mr. Squires be able to mask the pain, mask the effects of medicaticn to the extent that a lay person would miss it? That is a possibility; correct?

A. That is possible, yes.

Q. Given the effects both of the leg injury and the medicaticn, the times when those things fell together, also, could you relate to us what a competent mental health professional would have told Mr. Squires' attorney at the time of trial had an opinion been requested with regard to the voluntariness of Mr. Squires' statements?

A. I think he would have told you the same thing I am

telling you right now.

(PC II 253-70).

Q. Does the fact that a person is advised of his rights render their mental state somehow rational, voluntary, or competent?

A. No, sir, it does not.

Q. You can advise a person who is patently psychotic of their rights; it doesn't cure the psychosis, does it?

A. That is correct.

Q. Would a person who is under the effect of medication, under the effect of paid, such as you described with regard to Mr. Squires, could such a person admit to something that they did not do?

A. Yes.

Q. Could they admit to something that they did not do, thinking that they could obtain some kind of favor or something out of it?

A. I think the favor would be drugs. More drugs, more relief of the pain.

"Let's get over it; let me get out of here." That is more the kind of thing they would be looking for.

Q. Now, when Mr. Squires was provided with the polygraph, Mr. Benito was asking you about he was off the medication, he had been off of codeine, Percodan, Darvocet, for approximately two days?

A. That is correct.

Q. Is that relevant to your opinion as to his mental state at that time?

A. Well, I have that data. I also have the data that immediately thereafter he was back on sixty milligrams of codeine, which is a rather large dose of codeine.

Q. What does that say?

A. To kill pain. He was in serious pain. That is an addicting, hard drug you give for serious pain. That had to be given to the man after the polygraph.

Q. Immediately after the polygraph; correct?

A. Yes, sir.

Q. Do your notes reflect, the medical notes, reflect that Mr. Squires himself had to ask for that medication?

A. Yes.

A. Does that say anything about his mental state at the time of the polygraph?

A. Well, I think he was in a lot of pain during the time of the polygraph.

Q. Was he acting voluntarily due to that pain?

A. I don't think so, sir.

Q. Is there any residual affect of withdrawal, so to speak, from the medication that would have affected his mental state, in addition to the pain?

A. Yes. He had been on big doses of codeine well over a month up until the time of the polygraph situation, then taken off of it, and than had to be put back on it. So there is a withdrawal affect.

Q. Now, Mr. Benito made it sound like somehow all the police officers who ever attempted to interview Mr. Squires saw him as completely rational.

From your review of the records can you relate, was that the case? In other words, there were officers that even they recognize they couldn't ask him any questions because of his condition?

A. Yes there were. I mean, some comments by one of them that the man was in a great deal of pain.

. . .

Q. Now, the fact that he asked for a veterinarian to cut his leg off, what does that tell you with regards to the amount of pain he was suffering?

A. Rather serious pain.

Q. Would that be the kind of thing that would cloud his mind and affect his mental state?

A. Yes, it would.

Q. Could a person appear to act rationally, although their mental state is not all there, so to speak?

A. Oh, absolutely. Absolutely. Happens all the time in hospitals. Somebody has a leg off or an arm off, or been through a horrendous accident, is on medication. They sit and carry on a conversation with you.

. . .

Q. Doctor Afield, is it at all relevant or helpful to your opinion that Mr. Squires was taken off of the medication so he can go and take the polygraph examination?

A. Well, I mean, he is taken off of it. Medication affects polygraphs. And the whole idea of the polygraph is to check your blood pressure, how it responds, how you respcnd to asking questions and whether there is a change in your, what we call autotomic nervous system's respcnse. That is how the polygraph works.

Q. Does the "on again, off again" thing effect polygraphs?

A. Absolutely. Absolutely.

Q. Now, from your review of the records here there is no indication he was taken off the medication because he was getting better; correct?

A. He was not getting any better. He was getting worse.

Q. Were you able to review police reports, contemporaneous notes, from the time of the incident firsthand accounts, medical records depositions, so on and so forth, with regards to this case?

A. Yes, yes, I was.

Q. Is there any information with regard to any of these statements that was not provided to you?

A. No.

Q. Any information with regard to his medical condition at the time take was not provided to you?

A. No.

(PC II 286-96).

Dr. Afield's expert testimony was unrebutted by any expert testimony or otner evidence presented by the State. Cf. Bertolotti v. Dugger, 514 So. 2d 1095 (Fla. 1987). Neither was the content of the records reflecting Mr. Squires' debilitating condition and severe narcotic medication rebutted.

As Dr. Afield's unrebutted testimony demonstrates, there was a substantial factual basis for suppression of the statements. There was also a sound legal basis:

It has long been recognized that the physical condition and treatment of the accused are relevant factors in determining the voluntariness of a confession, and the capacity of the accused to waive Miranda rights. If the accused has suffered wounds in the perpetration of the crime, in the course of his apprehension, or otherwise, any resulting pain has been recognized to play a part in the voluntariness of any statement or validity of any purported waiver. See United States ex rel. Cronan v. Mancusi, 444 F.2d 51 (2nd Cir. 1971), cert. denied 404 U.S. 1003 (1972). In fact, it has been long-settled that an accused's illness must be considered in determining the voluntariness of any statements made during the course of that illness. Ziang Sung Wan v. United States, 266 U.S. 1 (1926). Of course, the mental state of the accused at the time that statements are elicited by law enforcement, and any mental disabilities which interfere with the accused's capacity to form a knowing, intelligent, and voluntary waiver of Miranda rights, are always central issues to be resolved before any statements made by the accused can be deemed admissible. See Smith v. Zant, 855 F.2d 712, 716-19 (11th Cir. 1988). Here, as demonstrated above, Mr. Squires' capacity to form a valid waiver was sorely lacking, Smith, supra, and the statements should not have been admitted. Defense counsel, however, ineffectively failed to investigate these issues, and failed to even move to suppress the statements. See, e.g., Kimmelman v. Morrison, supra.

Of course, when the accused has received medical treatment, the voluntariness of any statements or validity of any purported waivers may be influenced by the effect of drugs. In Beecher v. Alabama, 408 U.S. 234 (1972), among the factors considered by the Court in finding the confession inadmissible was the fact that the accused was "in a 'kind of slumber' from his last morphine injection" administered to ease the severe pain resulting from a bullet wound to his leg inflicted during his apprehension. Id. at 238; see also Reddish v. State, 167 So. 2d 858 (Fla. 1964). Any use of drugs to induce the accused to confess will be viewed as a form of coercion. See Townsend v. Sain, 372 U.S. 293 (1963).

This Court has frequently addressed the voluntariness issue in similar contexts. In Nowlin v. State, 346 So. 2d 1020 (Fla. 1977), the Court held that before incriminating statements may be presented to the jury, they must be shown to be voluntary. In Nowlin, the defendant was questioned by the police while in the hospital, and made several incriminating statements. The court found that the defendant made the statements "under circumstances which appear . . . to raise some questions of whether the statements were voluntarily given," Id. at 1022, and held that before such statements could be admitted into evidence either in the case-in-chief or for impeachment purposes, the trial court was required to make an initial determination of voluntariness. Nowlin, supra, citing Jackson v. Denno, 378 U.S. 368 (1964). In such a proceeding the State has the burden of proving voluntariness by a prepcnderance of the evidence. Brewets v. State, 386 So. 2d 232 (Fla. 1980). Moreover, all reasonable inferences must be taken against the State on the question of an accused's waiver. See Miranda v. Arizona, 384 U.S. 436 (1966); see also Mincey v. Arizona, 437 U.S. 385 (1978).

In making a determination of voluntariness, the court must look to the "totality of the circumstances." Applying this principle, this Court held in Reddish v. State, 167 So. 2d 853 (Fla. 1967), that the admission into evidence of a defendant's confessicn was reversible error. The facts of Reddish bear marked similarity to Mr. Squires' case: the defendant there was hospitalized at the time the confessions were obtained; he had been given blood transfusions, and had also been administered both codeine and demoral thirty-five minutes before the State's interrogation. Only one doctor testified as to the effects of the drug and this testimony "left much to be desired on the . . . impact of the accumulated dosages on the man's mental capacity to give a free and voluntary confession that could send him to the electric chair, within the constitutional standards." Id. at 861-62. More recently, in DeConing v. State, 433 So. 2d 501 (Fla. 1983), the Court held that the defendant's statements were not made freely and voluntarily when the defendant was both hospitalized and

administered thorazin and valium prior t th police interrogation. Factors ich as those, factors involved in Mr. Squires' case render a defendant's statements inadmissible. Mincey, supra.

Trial counsel did nothing with regard to Mr. Squires' statements, although they were eminently challengeable, as the discussion above demonstrates. Counsel did no research or investigation, nor sought or obtained any of the critical medical records (see PC II 217, 426). Had he done so, Mr. Squires' statements could have been suppressed. Counsel's failures in this regard were prejudicially ineffective. See Smith v. Wainwright, 777 F.2d 609, 617 (11th Cir. 1985)("Because trial counsel failed to move to suppress the confessions, the state's case was not subjected to the meaningful adversarial testing which is required under our system of justice"), cf. Kimmelman v. Morrison, supra; Goodwin v. Balkcom, supra.

Trial counsel testified at the hearing before the lower court that he did not think that he could suppress all of the statements, so he thought it would be more efficacious to allow them all to come in. This bizarre view, of course, is far from sufficient to undermine Mr. Squires' entitlement to relief. Counsel never investigated the issue, never obtained the relevant medical records, never researched the issue, and never knew the true circumstances under which the statements were elicited. As discussed in the preceding sections of this brief, decisions based an such ignorance and failures to investigate are the same as no decisian at all. Again, no "tactic" or "strategy" can be ascribed to attorney conduct based on a lack of preparation and/or investigation. See, e.g., Kimmelman, supra; Strickland v. Washington, supra; Code v. Montgomery, supra; Thomas v. Kemp, supra. Because counsel did no investigation in this regard, his "decision" not to attempt to suppress any of the statements cannot be deemed "strategy" or "tactic"; rather, it was unreasonable attorney ccnduct. Moreover, the statements which even under counsel's admitted view could have been suppressed were the most damaging ones. Counsel's omission was bizarre indeed, and inexcusable.

Prejudice

The statements and admissions allegedly made by Mr. Squires were presented by the State at trial. Suppression would have changed the result, as they were the only evidence other than the testimony of the Chamblisses -- which we now know was false -- even remotely ccnnecting Mike Squires to the crime. In light of what the medical records and the facts adduced at the evidentiary hearing show, trial counsel's failure to seek out the records, obtain expert assistance, and file appropriate motions to suppress (or at least provide testimony at trial undermining the statements' reliability) ccnstitutes prejudicial ineffectiveness of counsel.

Even if suppression had not been granted, persuasive medical evidence -- which we know was available -- should have and could have been introduced by trial counsel as part of the substantive defense case. Such medical evidence would have corroborated Mr. Squires' testimony as to why he made admissions to law enforcement personnel in the first place, i.e., to get to Tampa where he would get better medical care than the lack of care afforded in the facility he was then incarcerated in (see R. **843-4,** 48-9). In addition, expert testimony that Mr. Squires' mind was clouded by pain and narcotics would have minimized any jury reliance on the various (and contradictory) statements made by Mr. Squires. The unreasonable omissions of trial counsel regarding Mr. Squires' statements are in and of themselves, even without regard to the other deficiencies discussed herein, sufficient to create "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding [both the guilt and sentencing proceedings, see Smith, supra] would be different," Strickland, supra; see also Kimmelman, supra (deficient performance based on unreasonable failure to move to suppress evidence), and Mr. Squires has thus made a sufficient showing to warrant relief. The trial court made absolutely no findings of fact with respect to this issue. The cnly factual findings that could have been made on the record were that counsel did no investigation with respect to the circumstance underlying Mr. Squires' statements, and thus had no idea that those

statements were suppressible; that because counsel did not investigate, he could not make any reasonable "tactical" choice; and that therefore counsel's performance was ineffective and prejudicial. Mr. Squires' allegations were sufficient to require an evidentiary hearing. At the hearing, he proved his allegations. He is thus entitled to the relief he seeks.

CLAIM II

MR. SQUIRES WAS DEPRIVED OF DUE PROCESS OF LAW AND A RELIABLE CAPITAL SENTENCING DETERMINATION WHEN HE WAS DELIBERATELY MISLED BY THE FALSE DEPOSITION TESTIMONY OF A LAW ENFORCEMENT WITNESS, AND HIS CONVICTION AND SENTENCE THUS VIOLATE THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

The State has a constitutional duty to alert the defense when a state witnesses gives false testimony. Mooney v. Holohan, 294 U.S. 103 (1935); Alcorta v. Texas, 355 U.S. 28 (1957); Napue v. Illinois, 360 U.S. 264 (1959); Giglio v. United States, 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1976); United States v. Bagley, 473 U.S. 667 (1985). This is so because of the unique position of the prosecutor in our system of justice, a position which transcends the role of mere advocate:

> The [state prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. . . He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 U.S. 78, 88 (1935).

Detective George Peterson testified in his pretrial deposition that he had never questioned Donald Hynes in connection with the murder of Jesse Albritton (See Deposition of George Peterson, p. 26 [Defense Exhibit 31). Peterson made absurd attempts to explain away this deliberate falsehood at the evidentiary hearing:

> **Q.** When you talked to Mr. Hynes . . . when you interviewed him, you were interviewing him with regard to

the Allbritton offense; correct?

A. Not so.

Q. Okay. What were you interviewing him with regards to?

A. We were interviewing Donald Hynes because Donald Hynes wasn't even a suspect at that time. We are talking about the last of January, February, of '81. We were trying to locate him. We did locate him, talked to Donald Hynes in regards to Squires and his involvement of any crimes in this area. Of course, we were looking at Squires for our robbery murder of Jesse Albritton.

At that time, counsel, Donald Hynes was not a suspect in any offense.

. . .

Mr. Hynes had never been spoken to and questioned by me as a suspect in the Jesse Albritton murder. I had talked to Mr. Hynes. He was polygraphed, the whole nine yards, as to this offense. But Mr. Hynes at the time I talked to him, January, February, was not a suspect in this murder.

Q. Okay.

A. That is why there seems to be a conflict on, well, "I have never spoken to Hynes about this murder," not as a suspect. I have never. Never have to this day.

Q. You spoke to him about the murder itself?

A. About the offense.

Q. That is the offense you were asking him about?

A. About the offense who was Squires.

Q. Why don't we get to that?

A. Certainly.

Q. I think it's at Pagge 26 of your deposition. I will just read it to you.

A. Okay.

Q. The question was with regard to Hynes, Mr. Edwards asked you, "Did he deny ever being in the car at the time of this murder -- Hynes?"

Your answer was: "I have never spoken to Hynes about this murder."

A. That is correct.

Q. Mr. Edwards then asked you: "Oh, you haven't?" Then your answer was: "No, sir."

A. Exactly the point in question. This deposition is the 23rd of September '81. Nine months earlier was the last time I had spoken to Donald Hynes. He was not a suspect in the murder at that time.

Q. But that wasn't the question.

A. No, that wasn't the question. But that was my answer in relation to the question. I had never questioned Donald Hynes about the murder, meaning, Hynes being a suspect with Squires and killing Jesse Albritton. That was the way my intended answer was supposed to be.

Q. At the top of your report it indicates the Five Hundred Service Station offense, the murder?

A. Yes.

Q. In that report itself you indicate one of the -- I won't go through the whole thing -- but one of the questions to Mr. Hynes was, "Were you actually present when Jesse Albritton was shot?"

His answer was: "No." That answer was truthful; correct?

A. That is correct.

Q. You are talking to him about the murder?

A. Yes, sir.

Q. When you interviewed Mr. Hynes?

A. Yes.

(PC II 318-22)(emphasis added).

It is difficult to determine exactly what Detective Peterson is now saying with regard to his deposition testimony. Whatever his explanation, it is plain that he deliberately misled the defense regarding Donald Hynes. His own account of his interview with Hynes, made shortly after that interview occurred, shows that he did indeed talk to Hynes about the Albritton murder (see Report of Detective George Peterson, 2/16/81 ["He [Donald Hynes] stated that was all he knew about this

particular murder"]) as does the report of Detective Nelms (see Report of Gerald Nelms, 2/19/81 ["Hynes denied being involved in the homicide of the gas staticn attendant"]), the hearing testimony of Gerald Nelms (see PC II 372-73), and the hearing testimony of Donald Hynes (see PC II 34-38). Detective Peterson simply lied in his sworn depositicn.

The defense was thus deliberately deceived by the prosecuticn itself. See Williams v. Griswald, 743 F.23 1533, 1542 (11th Cir. 1984)(knowledge and actions of police will be imputed to prosecutor). The deliberate deception was designed to divert the defense's efforts and attentions away from Donald Hynes. This type of state misconduct goes beyond the mere withholding of exculpatory evidence, see Brady v. Maryland, 373 U.S. 83 (1963) -- prosecutorial misconduct of this sort is "a violation more egregious than the mere passive, non-disclosure disapproved in Brady," Demps v. State, 416 So. 2d 808, 810 (Fla. 1982), because it involves "deliberate deception." Giglio, 404 U.S. at 153. The State's efforts to deceive should not be excused, Brown v. Wainwright, 785 F.23 1457, 1463 (11th Cir. 1986), and Mr. Squires' conviction and sentence of death should be reversed.

CONCLUSION

On the basis of all of the evidence presented to this Court during the course of these proceedings, and on the basis of the evidentiary hearing record, Mr. Squires respectfully submits that he has established his entitlement to Rule 3.850 relief, and respectfully urges that this Honorable Court set aside his unconstitutional conviction and sentence of death.

Respectfully submitted,

LARRY HELM SPALDING
Capital Collateral Representative
Fla. Bar #0125540

BILLY H. NOLAS
TIMOTHY D. SCHROEDER

OFFICE OF THE CAPITAL COLLATERAL
REPRESENTATIVE
1533 South Monroe Street
Tallahassee, FL 32301
(904) 487-4376

By: _____
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Peggy Quince and Candance Sunderland, Assistant Attorneys General, Office of the Attorney General, 1313 Tampa Street, Suite 804, Tampa, Florida 33602, this 23rd day of February, 1989.

_____
Attorney