IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,003

WILLIAM MICHAEL SQUIRES,
Appellant,
vs.
STATE OF FLORIDA,
Appellee.

REPLY BRIEF OF APPELLANT

LARRY HELM SPALDING
Capital Collateral Representative

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PRELIMINARY STATEMENT

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.

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

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

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ARGUMENT IN REPLY[1]

I.

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

A. Counsel's Unreasonable Failure to Investigate Donald Hynes

The Appellee boldly asserts that "the evidence presented during the evidentiary hearing shows conclusively" that counsel's uninformed failure to investigate and interview Donald Hynes, the man whom the prosecution represented as the only eyewitness to the murder for which Mr. Squires was tried, convicted, and sentenced to death, was a "tactical decision." (See Appellee's Brief, p.20). As discussed at length in Mr. Squires' intial brief before this Court, the evidence showed nothing of the sort: to the contrary, the evidence adduced at the hearing below conclusively demonstrated that counsel's failure in this regard was not and could not have been the result of any "tactical decision." Counsel's actions were, as discussed again below, the

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1. Counsel will not herein attempt to correct the inaccuracies reflected in the Appellee's "Statement of the Case." Rather, given the contested nature of the facts and legal questions at issue, undersigned counsel will respectfully rely on this Court's own independent review of the record, while hereby noting an objection to the Appellee's acount.

result of ignorance and an abject lack of investigation and preparation.

As is readily apparent from his testimony at the hearing below, counsel had no idea what Donald Hynes could and would say at the time of trial. (See, e.g. PC II 241). His "decision" not to use or even interview Hynes was based on no discernible or articulable information-- counsel simply "felt" that Hynes could be of little help, although counsel was, admittedly, wholly ignorant of the information which Hynes' could have provided.[2] Of course, no "tactic" or "strategy" can be ascribed to attorney conduct which is based on a failure to investigate and prepare. See, e.g., Kimmelman v. Morrison, 106 S. Ct. 2574, 2588-89 (1986);[3] 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

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[2]It should be noted, as the Appellee concedes (Appellee's Brief, p. 7), that the police reports provided to counsel pretrial showed that the information Donald Hynes provided the police exculpated Mr. Squires (contrary to what counsel may have felt), and that Donald Hynes passed his polygraph examination regarding this information. Defense counel had the police reports, yet did nothing with them. Neither former counsel below, nor the Appellee here, have attempted to explain this omission.

[3]The Appellee does not even cite, and much less so discusses, Kimmelman -- a United States Supreme Court case establishing Mr. Squires' entitlement to relief -- in its brief.

investigate favorable penalty phase evidence); Aldrich v. Wainwright, 777 F.2d 630, 633 (11th Cir. 1985)(failure to depose 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 but on the failure to interview the witnesses); Gaines v. Homer, 575 F.2d 1147 (5th Cir. 1978)(failure to investigate witnesses who could have provided evidence of provocation); Gomez v. Beto, 462 F.2d 596 (5th Cir. 1972)(failure to interview alibi witnesses); Cf. 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"); Caraway v. Beto, 421 F.2d 636 (5th Cir. 1970); see also O'Callaghan v. State, 461 So. 2d 1354 (Fla. 1984) (failure to investigate mental health mitigating evidence); Bassett v. State, 14 F.L.W. 31 (Fla. 1989) (failure to investigate defendant's background).[4]

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[4]In fact, the standards set forth by Florida's courts are consistent in this regard: were counsel fails to interview an exculpatory witness and this because of ignorance of what the witness may say fails to call the witness, ineffective assistance is established. See, e.g., Martin v. State, 363 So. 2d 403, 404 (Fla. 4th DCA 1978), citing Caraway v. Beto, 421 F.2d 636 (5th Cir. 1970); Warren v. State, 504 So. 2d 1371, 1372 (Fla. 1st DCA 1987)("An attorney's failure to at least interview an identified available witness whose testimony might exonerate her client can constitute ineffective assistance of counsel.")

Here, as in Code and Gomez, supra, counsel's failure to even interview the critical defense witness before deciding whether or not to call the witness was in and of itself deficient performance. It was this preliminary failure which constitutes the most egregious misconduct on the part of trial counsel, and it is this preliminary failure which now pretermits any assertions that the failure to actually call Hynes as a witness was somehow a **"tactical"** decision on the part of counsel. Counsel did no investigation of Hynes, did not know what Hynes could contribute to the case, and hence could have made no reasonable tactical or strategic decision in this regard. Here, as in Kimmelman v. Morrison, supra, counsel acted on the basis of ignorance. Here, as in each of the cases cited above (see also n.4, supra), counsel's failure to investigate was inexcusably unreasonable, and rendered his later conduct with regard to Hynes prejudicially ineffective.

Thus, while genuine tactical decisions on the part of trial counsel, i.e., informed decisions based on adequate and reasonable investigation and preparation, may be immune from ineffectiveness challenges (cf. Appellee's Brief, p. 20), attorney conduct which has no such informational basis, i.e., attorney conduct which is based on deliberate ignorance, such as the instant, is ineffective assistance of counsel. That is what the Supreme Court held in Kimmelman v. Morrison, supra. See also

Code v. Montgomery, supra; Gomez v. Beto, supra; Caraway v. beto, supra; Martin v. State, supra n.4; Warren v. State, supra n.4 (all involving ineffective assistance because of counsel's failure to investigate -- i.e., talk to the witness -- before any decisions were made). Indeed, even the the cases cited by the Appellee in support of its argument that counsel's failures with regard to Hynes were "tactical" and thus unassailable, support the well-established legal standard that "tactical" decisions must be informed, must be supported by and based upon adequate, reasonable investigation, and thus -- contrary to the Appellee's assertions -- support what Mr. Squires explained in his initial brief: that his attorney's failure to call Hynes as a witness could not have been a reasonable "tactical" decision. For example, in Arrowood v. Clusen, 732 F.2d 1364 (7th Cir. 1984), trial counsel's failure to to present the testimony of certain witnesses was challenged as unreasonable attorney conduct. Counsel's omission with regard to one of the witnesses was found not to be prejudicially ineffective because counsel had interviewed the witness prior to trial and knew exactly what she could contribute to the case before he made a decision not to call her. See Arrowood, supra, 732 F.2d at 1369 (Cf. Appellee's Brief, p. 20). With regard to the other witness whom petitioner's counsel had failed to call in Arrowood, the court found that because counsel had not interviewed that witness

before making a **"decision"** not to call her, counsel's "failure to present her testimony**...** was clearly negligent and not **tactical."** 732 F.2d at 1370; cf. United States v. Dyer, 784 F.2d 817 (7th Cir. 1986). Of course, Strickland v. Washinaton, 466 U.S. 668 (1984), also affirmed this fundamental principle. Id. at 691 ("counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary") (Cf. Appellee's Brief, p.20). Again, because counsel did no investigation with respect to Hynes, none of his decisions in this regard were or could have been **"tactical."** They were by their very nature not **"tactical",** for they were based on ignorance.

The Appellee apparently bases its bald allegation that the evidence **"conclusively"** showed that trial counsel's decisions with regard to Hynes were "tactical" on the testimony of trial counsel regarding his unarticulated **"fear"** that Hynes somehow would undermine Mr. Squires' alibi defense. (See PC II 207; cf. Apellee's Brief, p. 21). Of course, as discussed at length above and in Mr. Squires' intial brief, counsel had no idea whether or not Hynes would undermine the alibi defense because he had no idea what Hynes could and would have said. Hynes' testimony demonstrates that counsel's fears were entirely unfounded, as they were based on ignorance. Hynes' testimony would have in fact supported the alibi defense: trial counsel, however, did not

***** know this, because he did no investigation. It is this crucial failure which is central to the instant claim, which the Appellee shies from even discussing, and which entitles Mr. Squires to the relief he seeks.

Counsel provided (and the Appellee argued) a number of after-the-fact internally contradictory justifications for his failure to investigate Donald Hynes, all of which are refuted by the record.[5] Of course, as discussed in Mr. Squires initial

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[5] Ironically, the Appellee in its brief warns this Court against the effect of "the finely ground lens of 20/20 hindsight" on its ultimate decision. (See Appellee's Brief, P. 23). Mr. Squires agrees that counsel's performance must be assessed without the "distorting effects of hindsight," and evaluated "from counsel's perspective at the time." Strickland, 466 U.S. at 689. It is the Appellee, however, who is here ascribing tactical reasons to the unreasonable attorney conduct addressed herein based on information which was not known to trial counsel at the time of trial, just as did trial counsel himself when testifying in the court below. (See Appellee's Brief, P. 20-23). Again, trial counsel had no idea what Hynes would say, and any after-the-fact assertions of "tactical" considerations based on information which counsel did not know and made absolutely no effort to learn prior to trial are simply unsupportable. As a matter of law those assertions are insufficient to refute Mr. Squires' claim, for no "tactical" decision can be ascribed to attorney conduct based on ignorance -- Kimmelman v. Morrison holds as much. Here, as in Kimmelman, the justifications now offered by former counsel and the Appellee "betray a startling ignorance . . . or a weak attempt to shift the blame for inadequate prepartion." Id., 106 S. Ct. at 2588-89.

brief, Hynes' testimony absolutely supported Mr. Squires' alibi defense. Moreover, trial counsel's testimony belied his own initially asserted **"fears"** that Hynes would undermine the alibi--trial counsel originally testified that he feared that Hynes might place Mr. Squires in the Tampa area on September **2**, the date of the murder (PC **II 210**); he later testified, however, that he believed that Hynes "didn't come into the picture" until September **4**, and that Mr. Squires and Hynes committed the unrelated **"Thoni"** robbery on September 7. (PC **II 211**).[6] Trial counsel's last-minute, bumbling attempt to locate Hynes immediately prior to the commencement of trial (**See** PC **II 417-20**) likewise belies his earlier testimony regarding his **"fear"** that Hynes could somehow undermine the alibi defense, and indicates that by the eve of trial (well after investigation should have been completed), counsel he in fact did realize the importance of Donald Hynes' account, albeit far too late, to the defense case.

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[6] This was consistent with Mr. Squires' account. However, counsel did not even attempt to locate Hynes until the eve of trial, and then used the wrong address. (The right address for Hynes **and** his parents was included in police reports provided to defense counel through discovery long before trial.) This fumbling eve-of-trial effort to find Hynes undermines counsel's earlier testimony regarding his unarticulated **"fears"**, the very testimony upon which the Appellee now relies.

Trial counsel's testimony at the hearing below if anything demonstrates that Hynes' testimony would have fit perfectly within the defense stategy. As discussed above, it would have supported Mr. Squires' alibi defense. Moreover, it would have absolutely undercut the testimony of the state's chief witnesses, Terry and Charlotte Chambliss, as it would have demonstrated their trial testimony to be false. Trial counsel admitted that this-- i.e., impeachment of the Chamblisses-- was central to his own trial strategy, and that he would have used *any* evidence which would have undermined their testimony, had "such evidence been provided to [him], or if [he] had recognized it, been aware of it, Mr. Benito had given it to [him], or whatever." (PC II 249). Of course, such evidence had been "given" to counsel, in the form of Donald Hynes, but counsel failed to adequately investigate, to prepare, and, of course, to present this critical evidence.[7] Counsel's own testimony demonstrates his

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[7] As discussed at length in Mr. Squires' initial brief, there was much, much more evidence available which would have severely impeached and undermined the testimony of the Chamblisses, but which trial counsel ineffectively failed to discover, develop, and present. For example, shortly after initially providing information implicating Mr. Squires in the murder, Terry Chambliss was given a polygraph by the police and found to be lying with respect to having knowledge of Mr. Squires' involvement. Although Officer Dayton, the polygraph examiner, testified at the evidentiary hearing that he did not remember exactly what it was that Mr. Chambliss was lying about

(footnote continued on following page)

ineffectiveness in this regard.

As discussed at length in Mr. Squires' initial brief, on the facts of this case as adduced at the hearing below, none of trial counsel's belated explanations (many of which are refuted by his own testimony) are supportable. As is painfully apparent, trial counsel's after-the-fact rationalizations "betray a startling ignorance. . . or a weak attempt to shift the blame for

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(footnote continued from previous page)

(See PC II 110; cf. Appellee's Brief, p.5), the report he made at the time is clear. At the time of his initial contact with Chambliss, it was Officer Dayton's conclusion that

> he was sure that TERRY CHAMBLISS was lying with 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). In this regard, Mr. Squires takes strong exception to the Appellee's assertion that the report of Officer Dayton does not say what Chambliss was lying about or what his knowledge was. (See Appellee's Brief. p.5). The report speaks for itself. Law enforcement, relying on that report, early on believed that Chambliss was lying, and dismissed his **"assistance."** (See PC 11, Defense Exh. 6, supra). It was not until many months later, when Terry Chambliss called them with information regarding Mr. Squires' whereabouts and negotiated a $2,000 reward in exchange for that information, that law enforcement did an abrupt turnaround with respect to their previous assessments of Chambliss's credibility. (See id.). All of this evidence would have, of course, severely impeached the Chamblisses' testimony. None of it was used by trial counsel, because, as his testimony plainly demonstrates, he was (unreasonably) unaware of it. **As** in the case of the information which could have been provided by Donald Hynes, trial counsel was unaware of it because he did no, or woefully inadequate, investigation and preparation.

inadequate preparation." Kimmelman v. Morrison, supra, 106 S.Ct. at 2588-89. As in Kimmelman, Mr. Squires' trial counsel failed to adequately investigate and prepare, and "offered only implausible explanations for his failures." Id., 106 S.Ct. at 2589. "At the time [Mr. Squires'] lawyer decided not to [investigate Hynes] he did not-- and, because he did not ask, could not-- know what Hynes' account would be." Id. Here, as in Kimmelman, there can be no "tactical" or "strategic" reasons for counsel's failures. The Supreme Court has held as much. Kimmelman v. Morrison, supra. Deficient performance has been established, as has prejudice.

Mr. Squires discussed at length in his initial brief the severe prejudice emanating from trial counsel's unreasonable omissions with regard to Donald Hynes. We herein again re-emphasize that Donald Hynes, whom the prosecution portrayed as an eyewitness to and participant in the murder for which Mr. Squires was convicted and sentenced to death, could and would have provided testimony which would have virtually gutted the State's case against Mr. Squires, destroyed the testimony of the State's key witnesses, and consistently supported Mr. Squires' alibi defense. Under such circumstances, prejudice is manifestly obvious, as is Mr. Squires' entitlement to the relief he seeks.

The Appellee in its brief wholly ignores the effect Hynes testimony would have had on a reasonable juror, and in so doing

wholly ignores the prejudice prong of Mr. Squires' ineffective assistance of counsel claim. With regard to prejudice, the Appellee simply recites the same arguments it had earlier presented in support of its contention that trial counsel's failure to investigate Hynes was somehow **"tactical"** and that therefore Mr. Squires had not demonstrated deficient performance. (**See** Appellee's Brief, p. 22). Mr. Squires submits that **no** analysis of prejudice on the part of the Appellee, not even an analysis under the proper standard (which the Appellee shies from even attempting), could refute the showing of prejudice made by the evidence presented to the court below.

Mr. Squires in this regard would therefore rely on the argument and analysis presented in his previous submissions to this Court with regard to any matter not specifically discussed again herein.

B. Counsel's Failure to Investisate the Circumstances Underlying Mr. Squires' Pretrial Statements and Challense Their Admission Into Evidence

The same legal analysis discussed in the foregoing section applies with equal force to the instant: as the evidence and testimony adduced at the hearing below amply demonstrates, counsel never investigated the facts and circumstances underlying the elicitation of Mr. Squires' statements, never obtained the relevant medical records, never researched the issue, and never sought out expert assistance. Again, "decisions" based on such

ignorance and failures to investigate are the same as no decision at all: no **"tactic"** or **"strategy"** can be ascribed to attorney conduct, such as the instant, which is based on a lack of proper preparation and/or adequate 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 even attempt to suppress any of the statements cannot be deemed **"strategy"** or **"tactic";** rather, it was simply unreasonable attorney conduct.[8]

The Appellee argues in its brief that even had trial counsel conducted the requisite research and investigation, and moved to suppress the statements, any efforts in that regard would not have been successful (**see** Appellee's Brief, p. **23**). According to the Appellee, the decision of the United States Supreme Court in Colorado v. Conelly, **107** S.Ct. **515 (1986),** precludes relief with respect to the suppression issue, as **"in** the absence of coercive police activity, the medical condition of which Squires complains

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[8] Counsel testified at the hearing below that he did not think that he could suppress all of the statements, so he thought he would let them all come in. Of course, as discussed above, counsel also testified that he did not research or investigate the issue nor make any efforts to obtain any of the pertinent medical records. Moreover, the statements which even under trial counsel's uniformed view could have been suppressed were the most damaging ones. Counsel's omissions in this regard were patently unreasonable.

cannot render his confessions involuntary." (Appellee's Brief, p.24).

The facts of Connelly, supra, were markedly different than those underlying Mr. Squire's claim, and the Court's holding there has no application to the instant case: the Appellee's reliance on Connelly is thus fundamentally misplaced. In Connelly, the petitioner had approached the police and told them he wanted to talk about a murder he had committed. Connelly, 107 S.Ct. at 518. His subsequent confession was later challenged as involuntary, because petitioner had talked to the police at the instruction of "the voice of God," and his abnormal mental state thus interfered with his "free will." Id. Because there was no showing of "coercive police activity" in relation to the statements volunteered by the defendant -- at a time when he was not in custody -- the Court found that their use at the petitioner's trial did not violate the fifth or fourteenth amendments. Id., 107 S.Ct. at 522.

Here, by contrast, Mr. Squires was in custody, and was under the influence of chronic pain and a regimen of mind-numbing narcotic drugs (administered by representatives of the State) to treat that pain. Many of the statements were taken immediately or shortly after the administration of large doses of anasthetic drugs (See, e.g., PC II 260; see also PC 232-668). Other statements were taken after the drugs had been withheld from Mr.

Squires for some period of time, and the regimen was again resumed immediately after statements were elicited. (See PC II 288; cf. PC 232-668). More importantly, the law enforcement officers who elicited many of the statements were aware of, or were chargeable with the knowledge of, the fact that Mr. Squires was being administered drugs.[9] Here, law enforcement took advantage of Mr. Squires' condition, and it thus cannot be said that there was no "coercive police acitivity" within the meaning of the fifth and fourteenth amendments. See Connelly, supra (Cf. Appellee's Brief, p. 24).[10]

In closing, Mr. Squires would again emphasize that the expert testimony presented at the hearing below with respect to

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[9] In this regard it is important to note that Detective George Peterson testified that the first time he attempted to question Mr. Squires, he [Mr. Squires] was too incoherent to be talked to, and that he [Squires] was "a little better" the next day after having been administered drugs. (PC II 333).

[10] The potentially adverse effect of drugs and/or pain on the voluntariness of a criminally accused's statements has long been recognized by this and the federal courts. See, e.g., Mincey v. Arizona, 437 U.S. 385 (1978); Ziang Suns Wan v. United States, 266 U.S. 1 (1926); cf. Beecher v. Alabama, 408 U.S. 234 (1972). See also Reddish v. State, 167 So. 2d 858 (Fla. 1967); Nowlin v. State, 346 So. 2d 1020 (Fla. 1977); DeConing v. State, 433 So. 2d 501 (Fla. 1983). Of course, any use of drugs to procure a confession will be viewed as a from of coercion. See Townsend v. Sain, 372 U.S. 293 (1963). Colorado v. Connelly does not change this well-established line of case law, see id., 107 S.Ct. at 520, n.1, citing, inter alia, Mincey, supra; Greenwald v. Wisconsin, 390 U.S. 519 (1968); Beecher, supra, case law establishing Mr. Squires' entitlement to relief.

the effects of the chronic pain which Mr. Squires had been experiencing and the panolpy of narcotics administered to treat that pain on the voluntariness of his statements and validity of his waiver of rights, as well as the voluminous medical records demonstrating his condition, were entirely unrebutted by any testimony or evidence presented by the state. Cf. Bertolotti v. Dugger, 514 So. 2d 1095 (Fla. 1987). As demonstrated at that hearing, and as discussed at length herein and in Mr. Squires' initial brief, trial counsel did nothing with regard to Mr. Squires' statements: counsel did no research or investigation, nor sought or obtained any of the crucial records. Counsel's failure in this regard was patently ineffective, and Mr. Squires is entitled to the relief he now seeks. Cf. 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 subject to the meaningful adversarial testing which is required under our system of justice.").

Mr. Squires would rely on the argument and analysis presented in his previous submissions to this Court with regard to any matter not specifically discussed herein.

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 OF DEATH THUS VIOLATE THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS

The Appellee mispercieved the nature of the constitutional violation raised by this claim, and incorrectly based its legal analysis on the Bradv v. Maryland, **373** U.S. **83 (1963),** standard of review for the suppression of exculpatory evidence. **(See** Appellee's Brief, **p. 27).** This claim involves the prosecution's uncorrected use of false and misleading testimony. **See** 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 type **of** State misconduct goes beyond the mere withholding of exculpatory evidence, See Bradv, supra, because it involves "deliberate **deception."** Giglio, supra, **405** U.S. at **153;** See also Brown v. Wainwright, **785** F.2d **1457, 1463** (11th Cir. **1986);** Demps v. State, **416** So. 2d **808, 810** (Fla. **1982)** (prosecutorial misconduct of this sort is **"a** more violation more egregious than the mere passive, non-disclosure dissaproved in Brady").

The Appellee, not suprisingly, argues in its brief that Detective Peterson's deposition testimony was not misleading, and insists that Peterson was then telling the truth when he

testified that he had not talked to Hynes about the murder for which Mr. Squires was ultimately convicted and sentenced to death. (**See** Appellee's Brief, p. **30**). Mr. Squires will not herein again recite in detail those facts which conclusively demonstrate that Peterson's deposition testimony was false, but will simply refer this Court to his previous submissions and to the record now before this Court. That record speaks for itself: the report Detective Peterson prepared after his initial interview with Hynes, the reports of other law enforcement officers involved, and the testimony of Hynes and Detective Gerald Nelms at the hearing below all demonstrate that Peterson did, contrary to his sworn deposition testimony, question Donald Hynes at length about the murder in January of **1981**. His deposition testimony could only have been designed to deceive the defense and divert their attention away from Donald Hynes. There is a more than reasonable likelihood that his deliberate obfuscation worked, and Mr. Squires is thus entitled to the relief he seeks. **See** Bagley, supra, **105** S.Ct. at **3383**; Agurs, supra, **427** U.S. at 104.

Mr. Squires would rely on the argument and analysis presented in his previous submissions to this Court with regard to any matter not specifically discussed again herein.

CONCLUSION

On the basis of the evidence and testimony presented to the court below, and for all of the reasons stated herein and in Mr. Squires' previous submissions to this Court, he respectfully requests that this Court vacate his unconstitutional capital conviction and sentence of death.

RESPECTFULLY SUBMITTED,

LARRY HELM SPALDING
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded by United States Mail, first class, postage prepaid, to Candance Sunderland, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, Park Trammel Building, 1313 Tampa Street, Suite 804, Tampa, Florida, 33602, this 21st day of April, 1989.

_____
Attorney