

**FILED**

SID J. WHITE

MAY 29 1996

CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

CASE NO. 87,364

JOSEPH ROBERT SPAZIANO,

Appellee.  
\_\_\_\_\_

ON APPEAL FROM THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

The long and tortuous procedural history of this case began nineteen years ago. *Spaziano v. Singletary*, 36 F.3d 1028, 1030 (11th Cir. 1994).

Beverly Fink was Laura Lynn Harberts roommate (ROA 396). Fink had seen Spaziano before (ROA 397). He came to her door one afternoon on a weekend in July and said he wanted to talk to Laurie. He said he met her in Eola Park. Fink said she wasn't home. He asked if she knew when she would be back and Fink replied that she did not. Spaziano mentioned that he was a cook and was traveling (ROA 401-402). Jack Mallen, Fink's boyfriend, also identified the traveling cook as Spaziano at trial (ROA 471). He described him as having spaces between his teeth and a crooked mouth, long hair tied back and no beard (ROA 494-495;468;470). Saturday evening, about the 4th of August 1973, Fink and Mallen left the house. When they returned, Laurie was asleep on the couch. Someone knocked on the door around 3:00 a.m. (ROA 460). Laurie had Jack go to the door and tell the person she didn't want to talk to him as it was too late ( ROA 400). Laurie said not to open the door, just to tell him to go away (ROA 401). She said she was frightened, acted afraid and did not want to go to the door (ROA 448; 461). Mallen kept the chain on the door (ROA 462). The

person muttered obscenities and banged down the steps (ROA 466). The person was short, about the same height as the cook (ROA 464;477). He had a crooked mouth (ROA 493). Spaziano cocks his mouth to one side when he talks. The man also wore a denim jacket and had slightly bushy hair (ROA 464). Mallen could not determine if he had a beard (ROA 467). It could not have been the man Laurie had met as part of a couple in an auto accident that she was afraid of and whom she described as weird (ROA 501). It was not Joe Suarez from the hospital who was tall, lanky, and had light skin (ROA 502;505). Fink and Mallen last saw Laurie alive the next day, Sunday, August 5, 1973, around noon. She was talking on the phone. She said "Hold on a minute, Joe" and said goodbye to them (ROA 399; 458).

Henrietta Young testified in a videotaped deposition that was not admitted into evidence that she was the cashier at the Colony Theater in Winter Park on August 5, 1973 (ROA 509). That evening she noticed a woman with two men. The woman grabbed the manager and kissed him (ROA 510). She had worked for him at the theater at the plaza (ROA 526). They then walked toward the park (ROA 527). The woman was nineteen to twenty-one years old, dressed "hippie" and had blondish hair like Laura Harberts (ROA 513). She described one of the men as short, with sideburns and a goatee, about two to

three inches and kind of bushy, although not as thick as the picture she saw, with long black hair (ROA 515-516). Mike Ellis later testified that Spaziano had hair as long as his in August 1973 (ROA 598). Defense counsel objected because the line up did not approximate the description of the person Young gave (ROA 518). Yet she was able to pick Spaziano's picture, anyway (ROA 520). Counsel then objected on grounds of suggestiveness because the other photos did not resemble the person she described (ROA 543).

On August 22, 1973, the skeletal remains of two bodies were discovered at the Altamonte city dump in the southwest section of Seminole County (T 159). Charles W. Wehner, who was employed by the Seminole County Sheriff's Department, processing crime scenes and taking photos, testified at the evidentiary hearing below that he went to a dump area on a dirt road off Forest City Road (T 166-168;172). Several officers were already at the scene (T 171). He could smell the decomposed bodies at the site (T 173. He saw basket lids and cardboard laying on top of what appeared to be human remains (T 173). He testified at the evidentiary hearing below that the head appeared to be toward the south and the feet to the north (T 183). He did not recall if the body was laying face up or face down (T 187). Decomposition would be very rapid in August in central Florida (T 208). The bodies were in an advanced



state of decomposition and there was a great deal of maggot activity but there was still some flesh left on the bone structure (T 208). Animals had disturbed the remains and taken parts away so he initially thought there was only one body (T 174;208). He had the area roped off and had a systematic search and earth sifting for more remains done (T 175). When the area was searched, he found more bones ( 176). The remains were transported to the morgue at Seminole Memorial Hospital. He identified a series of thirty-three photographs, Spaziano's Composite Exhibit 81, as photographs taken by him of what he saw at the dump on August 22, 1973 (T 180). The identification on #31 indicates it is a view of the remains of two human lower jaws some thirty-five and thirty feet from the body (T 195). #32 reflects vertebrae segments located to the left of the body (T 195). He did not remember where the lower jawbone or the partial was found. The multiple lower jaws were the first indication that they had two bodies (T 194). The sketch and medical examiner's records were admitted into evidence as Spaziano Exhibits 82 and 102 (T 200). Mr. Wehner further testified that he would also have no way of knowing how the bodies were positioned one or two weeks prior to his inspection. There was only a general appearance that one body was laid on top of the remains of another. He would have no way of knowing if the defendant or anyone else had

gone back to the crime scene and repositioned or tried to secrete the bodies (T 209). Dr. Gray assembled the remains and put them together (T 177). The bodies were then transported to Region Four laboratory for further evaluation (T 178).

Sergeant Herbert M. Hartley Jr. took aerial photos under Wehner's supervision of the area slightly to the southwest of Lake Lotus off Highway 431 or Forest City Road in Seminole County. It was a little southwest of the intersection of State Road 431 and 436 (T 159;161). At the evidentiary hearing below Mr. Hartley identified Spaziano Exhibits 82a and 82b, original exhibits that came out of the court file that were placed in evidence as state exhibits in the trial in January 1976, as enlargements of the original photographs that he took. One was a close up of the area where the bodies were found (T 162). On cross examination Mr. Hartley acknowledged that there was a citrus grove and a lake near the area (T 163). Wehner could not recognize the photos (T 170).

On August 24, 1973, Dr. Carson S. Kendall determined through dental charts that the complete body was that of Laura Lynn Harberts. Spaziano Ex. 80(1).

Joseph Spaziano was charged with the murder of Harberts, and the principal witness for the state was Anthony DiLisio, a sixteen-year-old acquaintance of Spaziano. *Spaziano v. State*, 393 So.2d

1119, 1120 (Fla. 1981).

DiLisio testified at trial that he and Spaziano were friends (ROA 617). Around his sixteenth birthday (August 16) in 1973 he saw something unusual at a dump in Forest City (ROA 618). The trip began at Spaziano's apartment in Casselberry. DiLisio and another person went with Spaziano in his two-tone pickup truck (ROA 619-610). Spaziano had suggested that they all take a ride. They just drove around at first in Seminole County, and then went out to the dump (ROA 621). Before they arrived at the dump they crossed Interstate 4 and went down by the Ben White Raceway (ROA 622). They took a left after approximately a mile and a half and took a right just before the post office. They left paved roads and drove onto a dirt road then took a right onto another dirt road, like a big U-turn. Spaziano said "I am going to show you some of my girls." (ROA 623-624). A couple of days before DiLisio, Spaziano and some other people were at Spaziano's apartment in Casselberry smoking marijuana when Spaziano told DiLisio that he was going to "show him some of his girls that he had raped, stabbed, and cut their tits and cunts out." He said that he showed their vaginas to them and tortured them. DiLisio indicated that he had heard Spaziano talk like that several times before but he did not believe him (ROA 626-628). After they traveled down the U road they came

to a stop and the person sitting to the right of DiLisio walked around the truck for a minute. Spaziano was sitting to his left. DiLisio walked around the back of the truck, up to the front door of the truck on the driver's side and saw Spaziano sitting in the truck (ROA 629). He stayed there a couple of minutes then angled toward where the other person was standing. He walked about ten feet from the truck (ROA 630). The other person was standing over two bodies lying beside some trees. They were completely unclothed and the smell was very bad (ROA 631). The body closest to him was more decomposed than the other one. The least decomposed body had light brown hair and was covered with blood. There was quite a bit of blood on the upper part of the body and the face (ROA 632). He could tell that it was a female body by the breasts. It hadn't begun to decompose yet. It was all cut up (ROA 633). It was full of blood. He could see cuts in the breast, stomach and chest. DiLisio started walking back to the truck and Spaziano walked down to the bodies. DiLisio remembered asking him if they could leave (ROA 634). Spaziano told DiLisio "Go back to the truck and take some acid, take some drugs." DiLisio took some purple microdot acid and sat in the truck (ROA 635). He looked through the back window and saw Spaziano and the other person talking over the bodies. They got back in the truck (ROA 636). They drove around.

Spaziano said "Now you believe me when I tell you about my girls." DiLisio testified that he saw trash in the area including cardboard, a lot of newspaper, orange crates, tarpaper and round lids to baskets. (ROA 637). DiLisio further testified that he was not able to recall the incident when first asked about it because he just wanted to forget it and put it in the back of his mind as he had enough problems and was "into drugs really heavy." At that time DiLisio was friendly with Spaziano and liked him a lot. He looked up to him like an idol (ROA 639). DiLisio was able to identify the tarpaper that he had seen at the dump where he saw the dead bodies as well as an orange crate (ROA 645). He also identified cardboard and basket tops that looked like what he saw when he was at the dump (ROA 646). On cross-examination DiLisio indicated that he was interviewed by Lieutenant Abby when he was in Volusia Halfway House (ROA 647). DiLisio said that the first time he talked to Lieutenant Abby he did not even talk to him about this case (ROA 651). He further testified that he did not do acid until they had left (ROA 653). Prior to going there he had been ingesting acid regularly, smoking dope and snorting cocaine (ROA 655-656). He saw pink and purple cloth beside one of the bodies (ROA 666). At Ben White Race or Speedway they turned to the left and traveled approximately a quarter of a mile (ROA 667).

They then made a left turn (ROA 669). They traveled that route for a half mile to a mile and then just before the post office took a right (ROA 670). They went a mile, then around some curves in the road, and took a left onto a dirt road. There were orange groves on the left (ROA 673). DiLisio indicated that he disliked Spaziano (ROA 681). DiLisio started doing drugs in 1973 and did them regularly until the beginning of 1974. He also indicated that he had twice been convicted of a crime (ROA 682-683). The convictions were imposed when he was a juvenile. They were for possession of marijuana and a bomb threat (ROA 688-689). Spaziano was a source for his drugs (ROA 685). DiLisio indicated that he did not report seeing the dead bodies because he wanted to be an Outlaw (ROA 689).

The jury returned a verdict of guilty in 1976. At the conclusion of the penalty phase of trial, the jury recommended that Spaziano receive a sentence of life imprisonment. *Spaziano v. State*, 393 So.2d 1119, 1121 (Fla 1981). The trial court had sustained defense counsel's objection to the introduction of Spaziano's prior convictions for forcible carnal knowledge and aggravated assault so the jury, in recommending life, was essentially unaware of Spaziano's violent history toward women. At the penalty phase Spaziano took the stand and admitted to only a grand and petit larceny conviction and defense counsel argued in

mitigation his lack of involvement in violent crimes (ROA Resent. Pp. 50-51). The trial judge imposed the death penalty. The case was remanded back to comply with the dictates of *Gardner v. Florida*, 430 U.S. 349 (1977), which was decided after trial. *Spaziano v. State*, 393 So.2d 1119 (Fla. 1981).

Following remand, the trial judge ordered a new presentence investigation report and conducted a hearing to provide Spaziano the opportunity to respond to the report. Following this sentencing hearing the trial judge reimposed the death sentence, once again finding two aggravating and no mitigating circumstances. The two aggravating circumstances were (1) prior conviction of a violent felony and (2) the murder was heinous, atrocious or cruel. On direct appeal the Supreme Court of Florida affirmed the imposition of the death sentence. *Spaziano v. State*, 433 So.2d 508 (Fla. 1983). The United States Supreme Court granted certiorari and affirmed. *Spaziano v. Florida*, 468 U.S. 446 (1984).

Clemency was denied and on November 4, 1985, the governor signed a death warrant. Spaziano filed his first motion for post conviction relief on or about November 20, 1985. He complained that his trial counsel provided ineffective assistance in that counsel allegedly failed to discover that DiLisio's testimony was the product of grossly suggestive police hypnosis and to reveal the

incredibility of that testimony to the jury. All relief was denied on November 22, 1985. On November 25, 1985, the Supreme Court of Florida entered a stay of execution to consider an appeal. The Court ultimately affirmed the trial court's order denying the motion for post conviction relief and vacated the stay on May 22, 1986. In regard to the hypnosis claim this Court held that:

Spaziano next asserts that his counsel was ineffective because counsel failed to discover and reveal the suggestiveness of hypnosis performed on a key state witness. Nine years after Spaziano's trial took place, this Court held that, because hypnotically refreshed evidence has not yet been proved reliable, it is *per se* inadmissible in criminal trials. See *Bundy v. State*, 471 So.2d 9 (Fla. 1985). In effect, Spaziano is now claiming that his counsel was ineffective for failing to anticipate the *Bundy* decision. Spaziano contends that the state's use of this hypnotically refreshed testimony violated his right to a fair trial under the United States Constitution. The trial judge denied relief on this issue, finding that counsel's actions were strategic and noting that counsel was aware the witness had been hypnotized and objected at the time of the trial to any mention of hypnosis. We reject Spaziano's contention and find no valid claim of ineffective assistance of counsel under the standards set forth in *Knight v. State*, 394 So.2d 997 (Fla. 1981), and *Strickland v. Washington*, 466 U.S. 668 (1984).

*Spaziano v. State*, 489 So.2d 720, 721 (Fla. 1986). Spaziano then sought relief through several post conviction motions and habeas petitions. *Spaziano v. State*, 545 So.2d 843 (Fla. 1989); *Spaziano v. Dugger*, 557 So.2d 1372 (Fla. 1990); *Spaziano v. State*, 570 So.2d 289 (Fla. 1990); and *Spaziano v. Dugger*, 584 So.2d 1 (Fla.



1991).

Spaziano next filed a petition for writ of habeas corpus in the federal district court raising twenty-three claims, all of which were denied. *Spaziano v. Singletary*, No. 91-850-Civ-Orl-18. The District Court was unable to find any suggestiveness in the hypnosis sessions. Spaziano appealed to the United States Court of Appeals for the Eleventh Circuit which affirmed the district court's judgment denying the habeas petition. *Spaziano v. Singletary*, 36 F.3d 1028 (11th Cir. 1994). The Eleventh Circuit found that the substantive hypnosis claim raised by Spaziano was barred by *Teague v. Lane*, 489 U.S. 288 (1989).

A fourth death warrant was signed and Spaziano's execution was set for June 27, 1995. Spaziano's attorney, Michael Mello, convinced the Miami Herald to look into Spaziano's case (R 605). Because of Spaziano's claims of innocence and DiLisio's interviews Governor Chiles granted an indefinite stay of execution to look into matters further (R 604). Counsel for Spaziano indicated he would be willing to file a clemency petition on short notice (R 605).

In a June 16, 1995, letter to the governor Mello stated "I also want to register my strong objection to any attempt to polygraph Anthony DiLisio. My polygraph experts have informed me

that Mr. DiLisio is not an appropriate subject for a reliable polygraph examination, even if the testing is performed by objective, competent polygraphers." (R 606). In a June 20, 1995, letter Mello threatened the state with a wrongful death action (R 608-610).

Following the governor's signing of a fifth death warrant for Spaziano on August 4, 1995, Spaziano, through his same counsel, Mello, filed an out-of-time motion for rehearing of the first post conviction motion, the denial of which was affirmed by this Court in 1986, and an out-of-time motion for rehearing of the direct appeal on the sufficiency of the evidence. This Court concluded that under the unique circumstances of the case that the two motions and a supplemental affidavit of DiLisio should be treated as a successive Florida Rules of Criminal Procedure 3.850-3.851 motion based only on newly discovered evidence of the recantation of the testimony of Anthony DiLisio. The Court remanded the case to the circuit court for an evidentiary hearing. *Spaziano v. State*, 660 So.2d 1363 (Fla. 1995).

On September 12, 1995, the Chief Justice of the Supreme Court of Florida issued an order assigning the Honorable Robert B. McGregor to preside over Spaziano's evidentiary hearing (R 5). Judge McGregor ultimately recused himself and the case was

reassigned (R 30;40).

An evidentiary hearing was held on January 8-15, 1996, before a successor judge, the Honorable O.H. Eaton, Jr., Circuit Court judge. Joseph Spaziano was represented by the Holland & Knight law firm.

The lower court allowed two defense experts on repressed memory to sit in the courtroom over the objection of the State that the sole issue was the credibility of DiLisio's recantation and the hypnosis issue had been raised years ago, rejected, and was moot (T 13-14). Jerry L. Schwarz testified that he represented Spaziano on direct appeal to the Supreme Court of Florida (T 32). He also conducted a *Gardner v. Florida* resentencing before Judge McGregor (T 33). Judge McGregor resentenced Spaziano to death, which triggered another automatic direct appeal (T 33). At no time during the appellate process did Mr. Schwarz attempt to contact Anthony DiLisio, as one is limited to the record on direct appeal (T 34-35). Other than contacting the prison and confirming that Spaziano's prison record had been good no other investigation was undertaken. DiLisio was not contacted during the *Gardner* remand hearing (T 35).

Gerald Justine, an investigator for the public defender's office in West Palm Beach, testified that he interviewed DiLisio

on April 17, 1985, in Vista, California (T 39;41). He explained that he was working on the Spaziano case. DiLisio turned rather pale, became quite hostile, and emphatically asked him to leave. DiLisio said "I don't want any fucking thing to do with it." (T 42). In 1995 Mr. Justine located an address for DiLisio in Pensacola and forwarded it to CCR (T 46).

In July 1985 Mr. Justine spoke with Lieutenant George Abbgly's widow. He went to her residence and secured three tapes of the May 13th interview of DiLisio and the two hypnosis sessions of May 15 and 16, 1975. The May 13, 1975, tape was admitted as Spaziano Exhibit 72a, the transcript thereof as Spaziano Exhibit 30; the May 15, 1975, hypnosis tape was received as 72b, the transcript thereof as Spaziano Exhibit 31; and the May 16, 1975, hypnosis tape was admitted as 72c, the transcript thereof as Spaziano Exhibit 32 (T 47-51;286;108;294;303;790). The transcripts of the tapes were received from public agencies (T 108).

Edward Stafman testified that he began representing Spaziano in 1985 or 1986 (T 59). He was on the case until 1993 (T 60). He indicated that he had attempted to locate DiLisio at least twice. He recalled phoning DiLisio, probably in the Fall of 1989, in southern California (T 68). Stafman identified himself and attempted to interview him (T 64). DiLisio would not talk to him

about the substance of the facts (T 65). Stafman said he made it clear and had stressed to the person on the phone, who he believed to be DiLisio, that a man's life was at stake and that Spaziano was on death row (T 69). DiLisio does not recall even being approached by Mr. Stafman (T 429).

Timothy Michael Hummill, a CCR investigator, testified that he became involved in Spaziano's case in 1995. His first contact with DiLisio was on February 22, 1995, at DiLisio's residence in Pensacola, Florida. He testified that he told DiLisio that he was an investigator with CCR and gave him a card. He told him whom CCR represented. DiLisio testified, however, that he did not know Hummill represented Spaziano (T 344-345). He was afraid and just didn't want to talk to Hummill (T 344-345). Hummill testified that DiLisio was very surprised (T 74;77-78;79-81). He asked DiLisio how the police had contacted him (T 81). He was unsuccessful in getting DiLisio to talk about the events of 1973 concerning Spaziano (T 83). Because a hearsay objection was sustained, his conversation with DiLisio was proffered (T 83). Mr. Hummill testified that DiLisio had actually responded "I don't remember. It's been twenty years ago, you know. I have no idea." He asked DiLisio if he remembered being under hypnosis. DiLisio did not remember and responded "How am I supposed to remember that? It's

been twenty years. I was a scared sixteen-year-old drug addict kid." (T 84). DiLisio testified that he had not thought about the Spaziano case or his role in it for a very long time (T 429). Hummill further testified on a proffer that DiLisio had mentioned that his brother had passed away, which Hummill assumed was recent. Hummill told DiLisio that he was very sorry to hear that (T 86). He described DiLisio as friendly and personable (T 85). He told DiLisio to give him a call if he remembered anything (T 87). DiLisio testified that he threw Hummill's card on the ground. He was disturbed as an old can of worms had been opened. His mother told him to shut the door in Hummill's face (T 348-349).

After the governor had signed another warrant on May 24, 1995, Hummill and another CCR investigator, Rick Hays, went back to see DiLisio on May 26, 1995. Spaziano Ex. 54;(T 88;345). Hays had formerly been on the board of directors of Amnesty International which works to end executions (R 116). Hummill was dressed in a long-sleeve pullover shirt with a collar with a T-shirt underneath, jeans and boots. Hays is approximately 5'9" tall and weighs one hundred and sixty pounds (T 100). Hays had on jeans, a short T-shirt, and black cowboy boots (T 89,99,100). A tattoo was visible on his arm of a wizard (T 100;117). DiLisio was in the garage working when Hummill knocked on the gate. DiLisio asked "Who's

he?" referring to Hays. DiLisio thought Hays was a biker as he was dressed like one (T 430). He described Hays as a "rough looking guy with a moustache." (T 431). Hummill indicated that Hays was an investigator with his office. Hummill asked DiLisio if he had heard they had signed a warrant on "Joe" and that an execution date had been set (T 90-91). DiLisio said he was aware of the warrant but there was nothing he could do about it (T 112). Hummill claimed that DiLisio asked his view as to Spaziano's innocence and Hummill responded that he thought Spaziano was innocent (T 92). DiLisio mentioned that his father had just recently died (T 93;113). Hummill recalled that DiLisio's brother had also died some time in the last year. He testified that he and Hays were "sympathetic" (T 93). Hays then said to DiLisio "Well Tony, you know, if you can think of anything that can help, or, think of anything relating to this case, then no one else that you are close to has to die this year." Hays testified he was referring to the fact that Spaziano was to be executed (T 94). DiLisio testified instead, however, that Hays had actually said "Joe is going to be dying soon and it all rests in your hands. If you don't want anyone else to die that you know this year, you need to cooperate with us" (T 431). DiLisio had told Hummill at the earlier meeting the circumstances under which his brother had died (T 105). He had been found dead in a

motel room in Orlando. DiLisio still believes Nick could have been murdered by bikers. Nick, himself, was a biker (T 432). Hummill then told DiLisio "the man's blood is on your hands." (T 433). They told DiLisio he was a key witness, which DiLisio claimed surprised him since he thought he was just one of dozens of witnesses (T 347). They were very aggressive and would not take no for an answer (T 437). Hummill advised DiLisio there were four things he could do. First, DiLisio could say that everything he had said until then had been the truth (T 104) Second, he suggested that DiLisio could say that what he had said until then was not the truth, which was something Hummill would like to have heard. Third, he suggested to DiLisio that he could tell him that law enforcement officers had put him up to this or pressured him, which was also something Hummill would like to have heard (T 104-105; 121). Because of DiLisio's earlier alleged remarks that he could not believe the state would execute someone based on what a scared sixteen-year-old drug-addicted kid would say, Hummill testified that he asked DiLisio to "write it out" (T 105-106;114). DiLisio testified that Hummill told him he had been manipulated back then and wanted him to sign a statement.

On cross examination Hummill admitted that when he had located DiLisio earlier in 1995 he was relatively easy to find and had been



in Pensacola for a number of years (R 97).

Thomas H. Dunn, who has only been practicing law since 1983, and worked in the collateral defense of death row inmates, and is a regular speaker for the NAACP Legal Defense Fund's death penalty conference, testified as an "expert" on the standards of professional responsibility in "investigating post conviction capital cases." Dunn concluded that the various attorneys and investigators who worked on behalf of Spaziano had exercised due diligence in investigating his case (T 128;135;139;144).

Anthony Frank DiLisio lives in Pensacola and builds classic cars in a shop on the grounds of his home (T 212-213). He is known and "Brother Nitro" to the inmates at the Alabama prison where he preaches (T 454). At the evidentiary hearing below he recanted his testimony at Spaziano's 1976 murder trial.

DiLisio testified that he was in his early teens when his family came to central Florida. They lived on a lake in the Orlando area then moved to Deloraine Street (T 218). The family next moved to Shell Point East, Lake Maitland. He was fourteen years old (T 223).

DiLisio's father, Ralph, ran Maitland Marine on Lake of the Woods on 17-92 and worked on boats (T 219). DiLisio worked with him on weekends and in the summers (T 220-221;224). He became

acquainted with an employee, Mary Kepley Epton, known as "Keppie" (T 224). His father was having a relationship with her (T 227).

DiLisio claimed that in August 1973 Keppie also began a sexual relationship with him when he was fifteen years old (T 226). Prior to that time he had not had intercourse with any other woman (T 234). DiLisio testified that it continued until the day that Keppie married his father in December 1973, which would have been only some five months later (T 226). His father had moved out of the home on Shell Point East, divorced his mother and moved in with Keppie behind Maitland Marine in a duplex apartment (T 222). DiLisio also claimed, however, to have lived with them for two and a half years during which time he continued to have sex with Keppie on a regular basis (T 228). DiLisio's parents were divorced in September 1973. Spaziano Ex. 55; (T 228)

DiLisio also testified, in contrast to his trial testimony, that on his sixteenth birthday on August 16, 1973, the time frame in which he had testified that Spaziano had shown him the bodies at the dump, he actually went to Kingsford, Jamaica with his father and Keppie, who were not yet married, for around a week or ten days (T 231). He offered no documentary support for this assertion. DiLisio had previously claimed that he could have been locked up in a juvenile home between the time the victim disappeared and her

body was found (T 426).

DiLisio further testified that at this point in time he was smoking marijuana but wasn't doing hard drugs (T 232). He dropped out of school (T 232). He claimed that his father physically beat him and he had a devastating childhood (T 262). He did not want to return to school in the seventh grade because he was humiliated in P.E. because of the marks on his body from a razor strap (T 265). DiLisio also claimed his father treated his mother, brothers and sisters very badly (T 263).

DiLisio testified that at some point after the wedding he was no longer welcome in his father's home (T 256). He was thrown out because he used drugs and "he was just pushed out of the picture." He went to his mother's home on Lake Maitland but was kicked out of there too. He stayed with friends in Winter Park (T 257). DiLisio said that in the early winter and spring of 1974 he used all types of drugs as often as he could get them and was buying and selling (T 259). He lived on the street and under park benches (T 260)

DiLisio recounted that he got into trouble and was arrested with friends for phoning in a bomb threat to Maitland Junior High School (T 260). He was taken to the Orange County juvenile facility and prosecuted for making a bomb threat. He was put on probation in the summer of 1974 (T 261). He was then released into

the custody of his father and lived on Summerwood with him and Keppie. He worked at Maitland Marine (T 256;262).

DiLisio further testified that he did not have a relationship with Joseph Spaziano. Spaziano worked for his father or hung around the shop. He just saw him there (T 233). He denied any knowledge of where Spaziano lived in Casselberry and claimed he had never smoked marijuana there (T 246-247). He denied being in Spaziano's apartment in 1973 (T 233). This was in stark contrast to his trial testimony in which he indicated that he and Spaziano were friends and they were driving around together before they went to the dump (ROA 617;621). DiLisio was able to identify Spaziano in court (T 233). In a November 12, 1975, deposition DiLisio also testified that he and Spaziano were friends and they would go to Spaziano's apartment and various houses and take drugs. Spaziano

Ex. 80(10) p. 48

DiLisio admitted on cross-examination that when he was threatened by Joe Albotti his father spoke to Spaziano and DiLisio, a biker named Tall Paul, and Spaziano went to Albotti's house. Spaziano beat Albotti and told him to leave DiLisio alone (T 396-397). DiLisio also acknowledged traveling in a Volkswagen and riding on a motorcycle with Spaziano (T 397-398). DiLisio had previously told FDLE agents that Spaziano gave him pot (T 401). In

1973 DiLisio thought it was cool to belong to the Outlaws and carried a billfold with a chain like bikers (T 401). DiLisio also acknowledged that there was a friendship between Spaziano and his father. Spaziano attended his father's wedding to Keppie (T 252).

Darcie Lynn Fauss, who lived with Spaziano in November 1973 testified at the evidentiary hearing that DiLisio and Spaziano were very close. They were very good friends (T 747). They smoked pot together (T 744). DiLisio came to the duplex and to Spaziano's place on Ivanhoe (T 745). Spaziano had her take food to DiLisio on several occasions (T 745). She saw them together numerous times in the dark and light blue pickup with the camper top (T 746). She went to the Outlaws' clubhouse with Spaziano and DiLisio (T 747). When Ms. Fauss first came to Orlando with her son, she had no place to stay. Spaziano offered her his parents' duplex (T 743). In return, he ultimately got her a job as a stripper and forced her to have sex with him (T 750).

Donna Yonkin, DiLisio's younger sister, testified that it was not unusual to see Spaziano and her brother together. She even saw them in vehicles together (T 1073). Yonkin graduated from high school and was in the Coastguard for four years. She took care of children in her home for twelve years. She was never shown to have any kind of criminal background (T 1072).

In the fall of 1973 DiLisio said Keppie asked him if he would leave his father and go to California with her and Spaziano. He refused (T 253). He claimed it would have hurt his father (T 254). DiLisio testified he was very hurt because he had an emotional attachment to Keppie and thought he loved her (T 254). Despite DiLisio's concern for his father, however, his sexual relationship with Keppie continued up to and including the very afternoon of her wedding (T 254).

DiLisio testified that after his father married Keppie problems developed between his father and Spaziano. He indicated that his father found out that Spaziano had an affair with Keppie (T 266). He got out a gun. DiLisio never saw Spaziano at his father's house or business or in the company of Keppie after that. DiLisio indicated he later learned Keppie had accused Spaziano of raping her the day after Christmas, December 26, 1973 (T 267). His father talked in a derogatory manner about Spaziano. He called him Crazy Joe and said "Didn't he tell you he used to pick up niggers hitchhiking and cut off their dicks and pick up girls and cut off their tits?" DiLisio claimed he had never heard anything like that from Spaziano (T 269). His father also told him that Spaziano had raped Keppie (T 268).

In October 1974, when DiLisio was sixteen years old, he

stashed marijuana on the side of his father's house. DiLisio testified that his father learned of it and called the police (T 1074). DiLisio was upset with him and they physically fought (T 1074). DiLisio was arrested and put in a juvenile hall for several days (T 272). He was held without bail. He was charged with possession of marijuana.

DiLisio testified that while in the Seminole County Juvenile Detention Center police officers came to see him a couple of times (T 281). The officers could have been Lieutenant Abbgly and two Orange County detectives, Nazerchuck and Haggart (T 404). DiLisio claimed that his father told him to cooperate with them (T 281).

DiLisio told the detectives on October 7, 1974, that he was a friend of both Spaziano and Tall Paul (T 405). He told them Spaziano was responsible for raping and slitting the eye of a young girl in Orange County. He asked Spaziano about the bodies of the girls at the Altamonte dump and said "Why did you do that?" He told the officers Spaziano replied "Man, that's my style." (T 405-406). DiLisio explained that Crazy Joe and Tall Paul often picked up girls hitchhiking and took them to the Outlaw's clubhouse in Taft where the gang would "pull a train" on them. It was up to the person who brought the girl to turn her loose, keep her in the club or get rid of her. Spaziano Ex. 80(1). These statements were made

seven months prior to any hypnosis.

DiLisio was again interviewed the next day on October 8, 1974. He further related that Spaziano bragged about all the things he had done and bragged about the girl in Orlando. He also reiterated that Spaziano stated "That's my style" when asked about the girls in the Altamonte dump, although he now claimed Spaziano had not bragged about it. The police felt that DiLisio was holding back information and doubted that he would cooperate fully. Spaziano Ex. 80(1).

DiLisio was assigned to a drug rehabilitation center (T 273). He was sentenced to drug treatment and went to a place called "The Door." He testified he was only there a short time and ran away (T 274). He went with two other boys as far as New Jersey before he was apprehended and put in a juvenile detention center in Orlando (T 277).

By May 1975, DiLisio was placed in the Volusia House in Daytona beach for drug education and treatment. (T 281;283-284). On May 13, 1975, he was again visited by the police. DiLisio testified that his father had first alerted him to the expected visit and advised him to cooperate (T 282). Just before the police came to see him, Keppie had filed a rape charge against Spaziano for the December 1973 rape (T 283). The police questioned him about



Spaziano.

DiLisio told the police that he did not remember Spaziano specifically telling him about a dump murder just what he did to one and the way it was his style to cut breasts off and stab them with the knife he always wore, after the club had done what they wanted to them. Spaziano talked about picking up girls by Lake Eola. He remembered Spaziano talking about cutting their heels and stabbing their eyes. He thought he mentioned two girls in an orange grove, not a dump, which confused him. The area was near an orange grove. DiLisio indicated that he didn't understand why, if Spaziano wanted to kill someone, he would cut their breasts off, poke their eyes out, stab them and really make a disgusted mess of their face, and he asked Spaziano why he did it in that manner. Spaziano said it was his "style." That's the way he did it. DiLisio was fairly sure Spaziano put the bodies in an orange grove. Spaziano told him about the sixteen-year-old girl found with her eyes slashed, her throat cut, and left for dead in Orange County before he ever learned of it from the newspaper. He said some Outlaws and possibly a Pagan were with Spaziano. Spaziano picked up girls in his blue pickup. Spaziano said that when he got through with the girls in the clubhouse he brought them out to the orange grove and killed them. He always kept clothing or something to

brag about. He bragged about how many girls he had killed. Spaziano Ex. 80(3) The police made arrangements with DiLisio to undergo hypnosis (T 286). DiLisio testified at the evidentiary hearing that this statement to the police was not truthful (T 286).

DiLisio further testified that same evening a red-haired policewoman came to see him (T 287). DiLisio wrote out a sworn statement indicating that Spaziano told him he had stabbed a young good-looking girl's eyes out and raped her and said she was dead. Spaziano told him this before DiLisio heard about it at work. After DiLisio learned that the girl was not dead he talked to Spaziano about it and Spaziano said something like if he knew she was not dead he would have gone back and finished it off. Spaziano Ex. 80(4). DiLisio claimed this statement, as well, was false at the hearing below (T 288). The handwritten statement was admitted into evidence as Spaziano Exhibit 30A (T 288).

DiLisio admitted on cross-examination that he could have been afraid for his safety while at Volusia House (T 414). He could also have told his counselor Mr. O'Connell that he was good friends with Crazy Joe who had shown him the bodies (T 415).

On May 15, 1975, officers Abbgly and Martindale took DiLisio in a police car to the office of the hypnotist for a session about the case (T 290). DiLisio initially testified in regard to the

hypnosis that "I don't know if I was hypnotized. I don't know what being hypnotized is like. And the way I remember it, I was just in a slight trance, and if you pinched me, I still would have felt it." DiLisio recalled that he wasn't doing a very good job (T 291). He "noticed discouragement" in the men he was with. He was trying to do what they wanted him to do (T 292). He described himself as scared (T 292). DiLisio elaborated that:

I was emotionally experiencing some kind of mental trauma. I was just like a little sponge, or something. Things were suggested to me, and I just went along with it. I opened the door to really bad things from my mind. I was already an emotional mixed up young man starving for love, and these men -- I thought I was pleasing them.

(T 293). He testified that his impression was that he didn't please the police or cooperate sufficiently (T 294).

In the May 15, 1975, hypnotic session DiLisio stated that Spaziano put some girls by a lake in an orange grove somewhere in Forest City. Spaziano kept bras from some girls and different things from other girls to brag with and would sell the jewelry. During the last part of 1973 Spaziano showed him a pair of purple bikini underpants. Spaziano told him that he had cut a girl's breast off. Spaziano told him what he used to do with his girls. He "slashed their eyes, cut their eyes out, smashed their face up, cut their breasts off, cut their cunt out and showed it to them

while they were still alive." Then he would kill them or leave them there to die. Spaziano put the two girls that were found in Altamonte Springs by a lake and orange grove in Forest City. An awful lot of people told DiLisio about it. Spaziano told him about a young girl he had raped. He slashed her eyes and sliced her left breast. DiLisio was pretty sure they had been in a truck. Spaziano would call them "one of mine," meaning one he had killed or tortured. DiLisio would ask Spaziano why he did it like that and he would say "that's my style." Spaziano thought it was funny. Spaziano would scare the girl so she wouldn't turn him in. DiLisio asked the police to find out about a hooker named Chris he had slept with who was missing. Spaziano gave excuses for her whereabouts. DiLisio said Spaziano had never offered to show him the bodies but showed him a lake where he had put stolen bikes. Spaziano said something about putting a girl in the same lake. They went there with someone else in a truck. DiLisio described going to the lake by Ben White Raceway, crossing the railroad tracks, taking a right, passing a store and post office, orange grove, taking a left and going down a dirt road where you swing around a curve. The lake was on the left behind some trees. DiLisio thought if he started driving down he might be able to drive to it. Spaziano Ex. 80(5).

DiLisio next testified that he actually went with the police past Ben White Raceway out to the dump (T 295). Despite the directions he had given in the first hypnosis session, and the fact that the directions matched his trial testimony as to the place where the bodies were actually found, DiLisio claimed that it was the police who took him there. He denied giving them directions on how to get to the dump and testified that he had never been to that dump before in his life (T 296). In a November 12, 1975 deposition, however, and at trial under oath, DiLisio indicated that it was he who had directed the police to the dump (T 416). DiLisio testified that he observed trash. He professed to have seen lid covers, tar paper and cardboard (T 297). The officers exited the vehicle and walked over to some garbage and told him this was the scene where the bodies were found. DiLisio then testified, however, "We -- I don't remember any statements or sentences that were made while I was at the dump." (T 297). On cross examination DiLisio admitted that when the police officers were speaking to him between the two hypnosis sessions they were not purposefully suggesting things to him (T 411).

DiLisio testified that the next day, May 16, 1975, he went to lunch with the policemen, then back to the hypnotist's office (T 298). DiLisio elaborated that the police treated him well and told

him they were going to get him out of Volusia House (T 299). He indicated they told him they had things on him, robberies, breaking and entering, and they would take care of it if he cooperated. DiLisio described the second session as "like making a story or a movie...and it was like I started to feel like it was really happening and started to feel the trauma of really seeing dead bodies." (T 300). He was able to describe the situation in detail and complete a story. He described it as "falling into a game." If he cooperated, they would get him out of jail and he wouldn't be charged with B &E's. His father was really happy he was doing it. DiLisio further stated that "I can't sit here, and I can't put the blame on those detectives. I take the blame for myself, for what I did. But everything was suggested to me, to where it felt real to me." (T 301-302). When asked if he felt that he was lying to the police DiLisio responded:

Well, I knew it was a lie. I knew it, and it's, like, I got in so deep. I can remember, at one time, I didn't want it to keep going on. And I just wanted it to end, but I didn't know how to get out of it. Once I got in it, I didn't know how to get out of it, so I had to continue. And it got so deep, and it was a very emotional, traumatic thing for me, as a young man, to go through.

(T 302). Nevertheless, DiLisio also claimed he really believed that he saw dead bodies and experienced the trauma of seeing them (T

302). On cross examination he admitted, however, that he knew at the time that he was not telling the truth during the whole procedure. He knew he was lying to the police (T 408). In a November 15, 1995, interview with the state attorney's office DiLisio indicated he wasn't under hypnosis at all and was manipulating the hypnotist and police (T 409). He did not believe he was ever hypnotized (T 410). In a pretrial deposition DiLisio had indicated that his mind was not a blank prior to hypnosis. He remembered pictures. He also made a most remarkable statement that after the hypnosis "most of it, but not all of it, came back," which would be impossible for him to know unless he actually remembered all of it. Spaziano Ex. 80 (10) p.84. DiLisio further testified that the policemen were present at the hypnosis session and even asked him questions, in contrast to his testimony in a November 12, 1975, deposition that Lieutenant Abbggy was not even present at the session. Spaziano Ex. 80 (10)p. 83; (T 305).

In the second hypnosis session DiLisio described seeing a bloody body by a lake face up, unclothed. She had been stabbed. Spaziano wanted to show him the bodies. Spaziano talked about what he did to his girls. He wanted to stay there and kill her. Another person named Mark or Mike was with them. DiLisio described taking acid, getting drunk, and smoking some marijuana. This

occurred one to two years before. There was another more decayed body that smelled. One of the bodies had something on her head. Spaziano always tortured them. One girl was bloody. He cut her chest up. DiLisio never wanted to believe him and didn't want to stay. Spaziano had shown him where he put the bikes in a nearby lake next to a grove near where the bodies were found. They drove there in Spaziano's truck. DiLisio thought Spaziano had killed twenty people. DiLisio told the hypnotist "I don't want no more. I don't want to think about it no more. I want to kill him. I've been going crazy thinking about it. It's never going to stop bothering me." DiLisio indicated that he was scared to tell on Spaziano. He stated "I'm scared now. I'm afraid of him. Joe. Oh. Help me, please. Joe's crazy, he's told me so much what he did to girls..." DiLisio continued:

I just, oh, I want to get rid of this in my head. I want to forget these girls. I want to forget them forever. Just like I did way back. I did forget them. I want to forget. I will never forget it. I still see it. What can I do to get rid of it? I'm shaking.

Spaziano Ex. 80(6).

That evening DiLisio went with the police to the state attorney's office, was placed under oath and interviewed. A transcript thereof was introduced as Spaziano Exhibit 33 (T 304).

DiLisio next testified that on Sunday, May 18, 1975, he and



his father met the policemen for lunch (T 306). His father encouraged him to keep it up and told him he was doing well. DiLisio claimed he felt like he was on top of the world (T 307). DiLisio further indicated that they all went back to the dump (T 307). His father told him to stay in the car. They then went to Sanford and talked with the state attorneys (T 308). A transcript of that interview was admitted as Spaziano Exhibit 34. A copy of the police report pertaining thereto was admitted as Spaziano Exhibit 83 (T 309). DiLisio went back to Volusia House.

In the fall of 1975 DiLisio was subpoenaed to give a deposition by the lawyer for Spaziano. DiLisio testified that his father "started to back what he was saying as true." (T 316).

In August 1975, just before his eighteenth birthday, Martindale and Abby came to see him (T 310). They made arrangements for him to be released to another policeman who flew him to Tallahassee (T 311). He stayed there at a drug treatment facility for a few days then was driven by the man back to a jail in Longwood (T 312-313). The police wanted to protect him (T 416). Martindale met Abby and his father at Maitland Marine. They brought him to the courthouse in Orlando to testify at trial for the state (T 313). DiLisio was subpoenaed to appear as a witness for the state in Spaziano's murder trial in January 1976 (T 317).

DiLisio testified that his testimony was false. Shortly before he had been arrested for resisting arrest without violence, carrying a concealed weapon, and disorderly drunkenness. After his testimony and the jury verdict on June 29, 1976, those charges were settled out for a plea of guilty to disorderly drunkenness and a fine of twenty-five dollars, with the other two cases dismissed (T 319). He was then returned to Volusia House (T 315).

When he turned eighteen DiLisio was released. He testified that he was picked up by Keppie and dropped off at his mother's house. He experienced rejection because he did what his father wanted him to do but was "pushed out of the picture." (T 315).

DiLisio specifically denied that in August 1973 Spaziano had told him at his apartment that he would show him some of his girls that he had raped, stabbed, "cut their tits or cunt" or tortured (T 246-247). He also testified Spaziano had never made such statements earlier (T 247). DiLisio denied ever having gone to the dump site in August 1973 with Spaziano, or anyone else. He never took L.S.D. there (T 244-245). DiLisio indicated that between August 4th and 22nd 1973, he did not see a dead or mutilated female body or decomposing bodies or a skull or bones at the Forest City Road dump. He disavowed having seen orange crates, cardboard, basket lids or tar paper, as well (T 235-236;240-241). He denied

having ever been in the dump area (T 237-240). He reiterated that his testimony in the Spaziano murder trial in January 1976 concerning such issues was false (T 251).

DiLisio admitted on cross-examination, however, that in addition to telling the police and the hypnotist about seeing these bodies he had also told Mr. O'Connell while at Volusia House, the state attorney at the May 16, 1975, interview, the state attorney at the May 18, 1975, interview, Spaziano's lawyer in a November 12, 1975, deposition, the judge at trial under oath, Annette Jones, and Sandy Hill, while in a broom closet in juvenile hall (T 418-419). DiLisio did not deny that he never went back to a juvenile hall after May 13, 1975 (T 470).

DiLisio further testified that his father later moved to Connecticut with Keppie and his three younger brothers and sisters. His father and Keppie were divorced in 1987 (T 322).

DiLisio had settled in Pensacola and was in the car restoration business. In 1988 his younger brother Nick showed up on his doorstep with Keppie. They were having an affair. His brother told him Keppie had left his father (T 323).

In the early 1990's DiLisio became friends with an older gentleman, Elmer Leidig, who repaired his sewing machines (T 324-325). DiLisio testified he told him that when he was younger he

testified falsely in a murder trial and had repented but never seemed to get free of this sin (T 329). Mr. Leidig explained the concept of restitution to DiLisio (T 328). Mr. Leidig supposedly counseled him to be patient and wait for God to work in his life and provide a time and opportunity for restitution, and DiLisio followed his advice (T 330). DiLisio testified that the conversations with Leidig supposedly occurred around 1992 and more than a year before he met Lori Rozsa (T 471). Leidig, however, testified that it was hard to pin down dates (T 524). He indicated that DiLisio actually only told him the full details in the Spring of 1995 (T 525). Lori Rosa's June 11, 1995, article, however, reflects no memory on the part of DiLisio for the trial, his testimony, or the hypnosis. Leidig also testified that DiLisio told him he had been coached by the police and with or without hypnosis he would have said what he said (T 530). DiLisio has been born again for about ten years (T 328). DiLisio indicated he became a born again Christian in July 1985. Since that time he has licked his drug addiction (T 339).

In early March 1995, DiLisio's father died in Arizona. He visited with his father four hours before he died (T 350). When DiLisio was in California earlier, he called his father and told him the truth about him and Keppie. His father hung up on him. He

called him back. His father said that Keppie had told him that DiLisio had fondled her in the bathtub and that was why he threw him out of the house and would never let him back (T 352). As he lay dying, DiLisio claimed that he told his father that he loved him and his father responded "me too." (T 356). As he was holding his hand his father said "I forgive you, for you knew not what you did." (T 354). DiLisio believed the father died thinking that his fifteen-year-old son had seduced the twenty-seven-year-old Keppie (T 357). DiLisio testified that all his life he has longed for his father's approval (T 359). He now has a personal relationship with God, who is the father he never had (T 360).

From May 28, 1995, to May 30, 1995, after the visits by Hummill and Hays, DiLisio tried to contact his biker sister Anna in Texas. He finally reached her on May 31, 1995 (T 446). Anna rode with the Outlaws at one time and is still involved with bikers (T 447).

On June 8, 1995, Miami Herald reporter Lori Rozsa knocked on DiLisio's front door (T 362). She told him that she wanted to talk to him about the Spaziano case (T 363). DiLisio still wasn't ready to deal with it. He got rid of her, with some difficulty. She put her foot in his door and wouldn't take no for an answer. He threatened to call 911 and she finally removed her foot so he could

shut the door and lock it (T 363). DiLisio described her as "a real bitch" (T 448). DiLisio did not know that Spaziano's lawyer had somehow convinced the newspaper that Spaziano was innocent and had recruited the newspaper to investigate the case (T 449). Rozsa came back again the same day and bothered him a second time. She did not get her foot in the door, as he stepped outside. She returned yet a third time later that afternoon but he still would not talk to her. The next day, June 9, 1995, Rozsa knocked on his door again (T 368). He sent her away without talking to her. Rozsa returned a fifth time. He let her in (T 370). She showed him a book containing his statements or testimony (T 371). She explained to him there were loopholes in the case (T 450). She also told him that she felt that the police had manipulated him in May 1975 (T 450). She started to bring doubt to his mind (T 451). DiLisio testified, however, that he still didn't want to come clean with what he did and take the full blame so he agreed with Hummill's and Rozsa's statements that the police had manipulated him as a child (T 371-372). He testified that at that point he remembered more than he revealed (T 372). Rozsa was at his house two to three hours (T 449). DiLisio told Rozsa he couldn't "remember" Spaziano taking him to the dump to see the corpse, the hypnosis sessions, or even the trial (T 453). Rozsa quoted DiLisio

as saying "How do I know what I said back then was reliable? Especially if it came out under hypnosis?" DiLisio did not deny saying that (T 454). DiLisio admitted that it is true, as Rozsa reported, that he remembered being married at twenty-one but the years before that were a void. DiLisio explained that "a great deal of my teenage years was just a blank until recently." (T 455). Rozsa reported in a June 11, 1995, article that DiLisio was appalled that the police had hypnotized him when she confronted him with his testimony and told him of the details (T 455). DiLisio acknowledged that he was upset (T 455).

DiLisio spoke to Warren Holmes, who consults with Pulitzer Prize winning Miami Herald investigators, looking for miscarriage of justice cases, on the phone at Rozsa's request (T 374). In contrast to Rozsa's subsequent article reflecting DiLisio's lack of memory of the events concerning Spaziano, Holmes claimed DiLisio told him over the phone that Spaziano never took him to see two corpses (T 580).

The Miami Herald also interviewed Judge McGregor. An article quoted him as stating "The defense did their best to belittle the testimony of the youngster [DiLisio]. I didn't see any suggestion that the kid was making it up or fantasizing in any manner." The defense then filed a motion to disqualify Judge McGregor (R 4). On

September 25, 1995, Judge McGregor entered an order recusing himself (R 30).

On June 13, 1995, two FDLE agents contacted DiLisio (T 375). He claims the agents informed him that he could not be charged with perjury since there was a seven-year statute of limitation (T 376). DiLisio agreed to speak with them in their office (T 377).

On June 14, 1995, DiLisio went to the FDLE office with a lawyer and met with the agents. DiLisio claimed that Spaziano never took him to the dump site to show him the bodies (T 428). DiLisio claimed that the police gave him information prior to his being placed under hypnosis. He was then asked "So from the time the police came in contact with you, they started feeding you information about what took place during this crime?" DiLisio responded "Well, I don't know if you could say they fed me anything. You know, I can't-- I can't recall what they said to me. But I know that what I said had to come from somewhere." State's Ex. B p. 25. DiLisio indicated that he had received threats even before the trial and has had to watch over his shoulder all the time. P. 25. He also described his life as a living hell. He was always worried that someone would kill him. P. 8. They gave DiLisio a videotape of the interview (T 377). The videotape was admitted as Spaziano Exhibit 38 (T 477;541).



On September 5, 1995, DiLisio, accompanied by his lawyer, met again with Lori Rozsa, Holmes, and Miami Herald editor Tony Proscio at a conference room in the Pensacola airport. (T 379;585). DiLisio related that he had told them the truth (T 380). The testimony of Warren Holmes regarding this meeting was held to be inadmissible yet Judge Eaton listened to proffered testimony from Holmes on the stand (T 559-571). He would not, however, allow the state to proffer the testimony of its witnesses to "inflame the finder of fact." (T 778).

Within a day or two DiLisio signed an affidavit, Spaziano Exhibit 39, presented by his lawyers. (T 385). It stated that "I never under any circumstances went to the dump sight [sic] with Joseph Spaziano. I went there in the company of law enforcement investigators and only in the company of law enforcement investigators."

On November 15, 1995, DiLisio went to the State Attorney's office and gave a sworn statement. He now remembered testifying as a witness back in 1976. State's Ex. A p.3.

DiLisio further testified at the hearing below that he remained silent about this false testimony for almost twenty years because he lived in denial, he believed lies, and he wasn't ready to deal with it. He stated "I just had to come forward now. And

why I didn't before, I don't have an explanation for it." (T 382). DiLisio indicated that he was not recanting to save Spaziano from being electrocuted but stated that "my motive is to do what I believe that the Father, my God, wants me to do, to set the slate clean for what I did wrong then." (T 384)

DiLisio admitted on cross examination that after the trial he would not even go to parties with friends because of his fear of bikers (T 438). On February 28, 1978, DiLisio made a complaint to the Seminole County Sheriff's Office indicating that approximately three years before he had testified against Joe Spaziano, a member of the Outlaws, and yesterday his brother Nick was in Tampa and received information from associates of the Outlaws that Hammer, the chapter president, was to arrive in Orlando with other members to get rid of him and another person who testified against Joe. DiLisio further advised that twice in the last week he had observed a dark blue or black ....with suspicious persons prowling about the shop and next door looking him over, acting very strangely. State's Ex. 1. DiLisio testified further that his life was hell and he ended up leaving the state because he was worried about his life. This fear started at the time of trial and continued for a long time (T 438). DiLisio was always worried about being killed and carried a gun around with him because of his trial testimony (T

442). His fear played a role in moving place to place (T 443). At one time, the trunk of his car caught on fire. He believed it could very well have been a bomb (T 444). DiLisio's father told him that he had received a threat. His mother indicated that his brother said he had been threatened (T 440). His sister Anna hung out with bikers. One of her "boyfriends" had sex with their sister Fran under mysterious circumstances (T 440-441). When Darcy Fauss was interviewed by the authorities around the time of the murder Spaziano told her not to say anything about anyone he knew or anything that went on and threatened that he knew where her family lived (T 776).

DiLisio also admitted on cross examination that "my memory started coming back more, for me to be able to put the 'puzzle' together." (T 462). DiLisio was becoming a public figure. He talked to reporters. He appeared on national television on the Maury Povich show on October 24, 1995 (T 463). DiLisio, himself, called Hard Copy eight times, King World Productions three times, and also called and spoke to Jennifer Kay of the Geraldo show (T 465-467). In December 1995, DiLisio traveled to Orlando for three or four days to work on his testimony with Spaziano's lawyers (T 471).

The remainder of DiLisio's testimony was autobiographical and

largely devoted to revealing the sad saga of his life in recent years (T 330). DiLisio testified that in January 1994 his brother Nick was found dead in a motel room in Orlando. He was devastated (T 330-331). At the funeral he became reacquainted with a woman he had known named Cindy. They were married in January 1994 (T 332). He and his daughter Crystal and Cindy and her children settled into his home in Pensacola (T 333). They were subsequently involved in a car wreck which totaled the car he was driving (T 334). In August 1994 Cindy's house in Oviedo, which his sister was renting, caught on fire and part of the house burned down (T 333-334). He restored the whole house and did additions. His wife subsequently did not want to come home with him and stayed in the house (T 335). They are legally separated (T 336). His first wife also came and took his daughter from him, leaving him all alone (T 337). DiLisio revealed the final personal trauma for Judge Eaton: his boat sank offshore in the Gulf of Mexico and he almost died (T 341-342). He was in mental and physical shock and his eyes weren't dilating properly (T 343).

Dr. Barbara Ann Stine, a psychiatrist, was allowed to testify over the objection of the state regarding hypnosis and repressed memory (T 594- 674) Richard Ofshe, a sociology professor, was also permitted to testify over the objection of the state on the issue

of recovered memory (T 678-730) See Point I of the Argument herein.

The State called Timothy Loughrin. When Loughrin was around eighteen years old, he hung around with Anthony DiLisio regularly. Once at Shannondoah's house DiLisio told him that a guy named Crazy Joe had taken him to a dump out by I-4 and 436 and showed him a couple of bodies. He had never heard of a person called Crazy Joe before (T 805). He had never heard the name "Spaziano" before and did not know anything about a trial at which DiLisio may have testified ( T 806). Despite the fact that on cross-examination DiLisio had stated that he did not recall ever telling Loughrin this, the lower court refused to allow the State to elicit this testimony, except on proffer because, after twenty years, the State had not first called to DiLisio's attention the time and place that the statement was made, even though there was only one such statement (T 802-803).

Annette Jones was intimate with DiLisio when she was fifteen years old in 1975 (T 809). He asked to speak to her alone one day and they went down to Prairie Lake and sat on the seawall (T 810). He told her that he had become involved in some "serious stuff." A man named Joe had shown him two bodies. He had to leave. He was afraid for his life. He wanted her to stay away from him because he was scared and thought she would get hurt (T 813). She was not

using alcohol, marijuana, or T.H.C. when this occurred (T 858). Just like DiLisio, her use of drugs and alcohol caused her legal problems in later life (T 829). Although Judge Eaton would not hear the State's proffer, Mr. Russ was allowed to proffer collateral, inflammatory matters that her parents, maternal and paternal grandparents, and her older brother were alcoholics; that in January 1982 she was involved in alcohol related acts of violence with her husband and an arresting officer, long after the conversation with DiLisio; that in 1984 she was involved in the theft of twenty-nine pieces of stolen property; that drug and legal problems impacted upon her ability to transport herself; that her use of drugs and alcohol over twenty-three years has had a negative impact on her health; and that she is mentally unstable, has attempted suicide, attended AA and Narcotics Anonymous and has been in drug treatment programs (T 848;851;861;864;870).

Frances Lepine, DiLisio's sister testified that she read the June 11, 1995, Miami Herald article (T 899). She called DiLisio (T 900). She asked him why he was doing this (T 901). DiLisio said he had been harassed by the Outlaws, Spaziano's attorneys and the press (T 901). He indicated fear for his daughter Crystal's well-being. She often answered the phone and door. He said they could not even go to the store without being harassed (T 902). It was

not demonstrated below that this witness had any criminal record or background.

Edwin Householder was employed by Ralph DiLisio, Senior, in late 1972 to early 1973 in the service department of Maitland Marine. He lived in a duplex behind the service area (T 905-906). He was Anna DiLisio's boyfriend (T 907). He saw Tony DiLisio in the company of Spaziano six or eight times (T 908). They looked like good buddies (T 909). Householder has twice been convicted of a felony (T 910). On cross-examination testimony was elicited that the wild-looking, unkempt Spaziano not only looked like a derelict but like John the Baptist and Jesus Christ, as well (T 915).

Bill O'Connell was DiLisio's counselor at Volusia House (T 921). DiLisio complained to him that he was having trouble sleeping, before he underwent hypnosis (T 947). He just couldn't stop thinking about things (T 952). DiLisio complained of having memories or visions of dead bodies (T 953). He was in fear (T 954). One day DiLisio left Volusia House with the police (T 1062). After DiLisio returned that day he told O'Connell of taking the police to grave sites (T 1064). It was certainly never demonstrated that Mr. O'Connell had any kind of a criminal record.

Ralph Yannotta joined the Southern Florida Chapter of the Outlaws in August 1973. He became acquainted with Spaziano (T

960). Yannotta testified that on November 7, 1974, he was sent to Union Correctional Institute. He became reacquainted with Spaziano there in 1976 (T 962). Spaziano told him that he was doing life plus five for being involved in raping and beating up a girl and poking out her eyes with a pencil (T 964). Yannotta was similar to an Outlaw president in charge of what went on in prison (T 964). Spaziano's murder case was pending back in central Florida and Spaziano expressed concern to him about going back to court and being charged with these murders and about a certain young boy that he had shown the bodies to who would testify against him. He wanted to know what he could do about it. Spaziano identified the victims as a couple of young girls, one or both of whom were nurses (T 969-970). Yannotta further testified that:

He told me that he had taken the boy there to show the bodies to him, for whatever reason was his reason, but he was concerned about the boy, since he showed him and told him, that the boy was testifying. What could be done about it.

(T 971).

Yannotta indicated that he has been convicted of a felony six times or so, as well as three misdemeanors involving false statements or dishonesty. He is in a witness protection program. He has been out of prison thirteen months (T 972). He was under no obligation as part of parole to testify (T 974). In 1995 he spoke to F.B.I.



Agent Bob Brown about Spaziano. He had read nothing in the newspaper and heard nothing in the media and lived far from the area of circulation of the Miami Herald (T 973). Yannotta candidly admitted that he had lied in his own case because he wasn't going to admit he was involved in trying to kill anybody (T 963). He had earlier met with detectives on July 3, 1978, and told them that Buzzard or Stokes and also William Edson were with Crazy Joe, whose real name is Spaziano, when many females were killed in Orlando (T 995). He indicated he has testified without a promise of some sort of gain-- right now (T 1009). He made a special effort to be there because he felt that Joe had told him the truth (T 1010). He further testified "I really don't like being here, because I don't want to hurt Joe, but what he did wasn't right and I don't think he should be put out." (T 1011).

Michael Spaziano, Joseph Spaziano's brother testified that after Joseph Spaziano was arrested in 1975 or 1976 he received a phone call from him from Rochester, New York (T 1016). Michael further testified that during the phone call Spaziano talked about a young kid named DiLisio and indicated that if DiLisio told on him he would be telling on himself. In 1980 Michael received a letter from Spaziano while Spaziano was in prison (T 1018). Spaziano wrote that someone would be contacting him to talk about DiLisio.

Spaziano was trying to find out where he was (T 1025). Someone did subsequently contact him on behalf of Spaziano (T 1026). This witness has been convicted of a felony twice (T 1027).

At the conclusion of the testimony the lower court ruled that minor statements, objected to, to either CCR, Justine or Stafman were admissible not for the truth of it but for the fact that it was said (T 1078).

The lower court took judicial notice of the original trial transcripts and exhibits but not appellate documents (T 1084).

On January 22, 1996, Judge Eaton entered an order vacating Spaziano's judgment and sentence and set a trial date for the trial period commencing March 25, 1996 (T 3805-3813).

A notice of appeal was filed by the State on January 30, 1996 (R 3816) On February 20, 1996, an order was entered staying proceedings and extending speedy trial period (R 3850)

## SUMMARY OF THE ARGUMENT

1. Having improperly determined that DiLisio's trial testimony was come at by improper hypnotic process even though DiLisio revealed information before hypnosis, indicated he was never hypnotized and the experts testified that one can lie or willfully tell the truth under hypnosis, rendering such inquiry useless in the first place, the lower court, in derogation of the standards set forth by this Court in *Armstrong v. State*, 642 So.2d 730 (Fla. 1994), set about reconciling and discounting testimony below based on the premise DiLisio's trial testimony was fabricated.

2. Although the presumption of finality should be strongest on collateral attack and recanted testimony should be viewed with suspicion pursuant to *Armstrong v. State*, the lower court gave no presumption of validity to the original verdict, ignored the standards of *Armstrong* and assumed the recanting testimony was truthful and required the state to rebut it when there was overwhelming evidence that such testimony was untruthful. The court did not have to believe DiLisio's implausible testimony. He was contradicted by numerous witnesses as to his relationship with Spaziano and it is clear he was lying.

## ARGUMENT

### I. THE LOWER COURT ERRED IN ALLOWING AND THEN RELYING UPON THE TESTIMONY OF TWO EXPERTS ON REPRESSED MEMORY AND HYPNOTIC PROCEDURE.

Barbara Ann Stine, M.D., testified that she was guaranteed a total of two thousand and five hundred dollars for her testimony on behalf of Spaziano but the law firm of Holland & Knight promised to make every possible effort to ensure that her fees were paid by the court (T 609). Sociology professor Richard Ofshe testified that he was guaranteed expenses from the firm and the firm would diligently try to recover from the lower court his four thousand dollar court appearance fee as well as his customary consulting fee of two hundred and fifty dollars an hour (T 688).

These two experts have now submitted bills for their services to Seminole County in excess of fifty thousand dollars. Included in the appendix herein is a copy of Spaziano's request for "costs." Appellant would ask the Court to take judicial notice of the same as records of the circuit court relevant to this appeal. Alternatively, should the Court decline to do so, Appellant would hereby ask for supplementation of the record. The completely unexpected charges of these experts are relevant to their bias, ability to testify impartially, their obvious willingness to testify beyond their knowledge and expertise, and the credibility

of their entire testimony.

In both civil and criminal actions, the fact of a witness's interest in the outcome of the action, financial or otherwise, may be shown for the purpose of impeaching credibility. *Pittman v. State*, 51 Fla. 94, 41 So. 385 (1906). A party who offers a witness may show the interest of the witness in the presentation of its case in chief, which is what occurred in this case. *Davis v. Ivey*, 93 Fla. 387, 112 So. 264 (1927). When those representations are untrue or inaccurate, however, the state, relying on such, is thereby deprived of the opportunity of further inquiry into the truth of such facts on cross-examination, and the court, also having been misled, is not asked to exercise its discretion to allow such further inquiry on cross-examination. See, *Pandula v. Fonseca*, 145 Fla. 395, 199 So. 358 (1940); *Langston v. King*, 410 So.2d 179 (Fla. 4th DCA 1982). Parties should have the right to elicit the existence and terms of any agreement for compensation to be paid to an expert witness, since the trier of fact should know the extent of any financial arrangements made to secure his or her participation in the case. *Langston, supra*. Cross-examination of experts on relevant and material issues is especially important because experts can testify and express opinions without setting out in detail all of the predicates upon which their opinion or

testimony is based. If cross-examination is limited, an expert's views and their soundness may go largely untested. *Dempsey v. Shell Oil Co.* 589 So.2d 373 (Fla. 4th DCA 1991). While it is true, as Appellee will no doubt retort, that you cannot put a price tag on human life, it is also true, as Judge Eaton indicated in his findings of fact, that "trial judges are taught to determine the credibility of a witness and the weight to be given to testimony by considering the interest, if any, that the witness has in the outcome of the case." (T 3807).

These fees are something that Judge Eaton was entitled to know of before crediting and relying upon these experts' testimony in vacating a judgment and sentence two decades old. Compounding this misfortune is the fact that expert testimony was not only unauthorized by this Court but was unwarranted, unnecessary, and confusing in the first place.

Following the governor's signing of a fifth death warrant for Spaziano on August 4, 1995, Spaziano, through his counsel, Michael A. Mello, filed multiple motions and documents in this Court. The two principal motions were (1) an out-of-time motion for rehearing of a previous Florida Rule of Criminal Procedure 3.850 motion, which contained the issue of hypnosis, which was denied in the circuit court in 1985 and affirmed by this Court in 1986; and (2)

an out-of-time motion for rehearing of the direct appeal and judgment on the sufficiency of the evidence. *See, Spaziano v. State*, 489 So.2d 720 (Fla. 1986). In the aggregate, the motions filed sought to open by rehearing an appeal that was finalized more than thirteen years ago and a post conviction proceeding that was terminated with the denial of rehearing more than nine years ago. At that time counsel for Spaziano admitted that:

A plethora of procedural preclusions articulated by this court bar the instant action. As a motion [for] rehearing of an opinion by this court rendered in 1986, this motion is obviously untimely. Treated as a new claim for post conviction relief, this action is barred by the one year time limit on Rule 3.851 motions. There are claim and issue preclusion barriers, because all of the legal issues raised in this motion have been raised by Mr. Spaziano in the past; there has been no intervening change in law; there have been new facts recently discovered, but they may not be of the magnitude necessary, under this court's [precedents], to secure review. Finally, retroactivity principles bar this court from treating several aspects raised by Mr. Spaziano as issues cognizable at this time.

*Spaziano v. State*, 660 So.2d 1363, 1365 (Fla. 1995).

Counsel was most assuredly correct in his assessment. Unfortunately, new counsel pressed on, despite these admissions.

This Court did not authorize the lower court to entertain the previously raised issue of hypnosis in its opinion remanding the case, nor should it have under the doctrine of law of the case and all relevant procedural and time bars. *Despite the fact that the*

hypnosis issue was again raised and briefed by Spaziano, this Court concluded, under the unique circumstances of the case, only that the two out-of-time motions for rehearing, together with the supplemental affidavit of Anthony DiLisio, should be treated as a successive Rules of Criminal Procedure 3.850-3.851 motion based only on the newly discovered evidence of the recantation of the testimony of a significant witness. *Spaziano v. State*, 660 So.2d 1363, 1366 (Fla. 1995). When CCR attempted to broaden the scope of the evidentiary hearing this Court refused:

Finally, CCR asks that we broaden the scope of the evidentiary hearing. In our September 8 opinion, we limited the scope of the evidentiary hearing to "newly discovered evidence of the recantation of the testimony of a significant witness. We refuse to alter our ruling on this issue.

660 So.2d 1370.

In allowing the testimony of these pricey experts Judge Eaton ignored the doctrine of law of the case, the procedural and time bars of Florida Rule of Criminal Procedure 3.850 and went far beyond what he was authorized to do in the remanding opinion of this Court, with a devastating result.

The issue of repressed memory/hypnosis is simply a red herring interjected in the proceeding below to confuse matters. The experts' testimony and the lower court's ruling regarding the



hypnosis of DiLisio would impose a new obligation on the state and produce a result not dictated by precedent at the time Spaziano's conviction became final. *Teague v. Lane*, 489 U.S. 288 (1989); *Spaziano v. Singletary*, 36 F.3d 1028, 1041 (11th Cir. 1994). It is clear in Florida that "evolutionary refinements in the criminal law, affording new or different standards for the admissibility of evidence or for procedural fairness will not be recognized as grounds for collateral relief." *Witt v. State*, 387 So.2d 922 (Fla. 1980); *See also, Jones v. State*, 591 So.2d 911, 916 n.1 (Fla. 1991) (use of statement procedurally barred in subsequent post conviction proceeding where sought to be introduced in first proceeding on claim of ineffective assistance of counsel). Spaziano's experts should not have been allowed to speak to the propriety of procedures in 1975, some twenty years later.

Judge Eaton perceived his duty to be to determine whether DiLisio was telling the truth in his prior statements and testimony at trial or whether he is now telling the truth. The lower court felt that the defense claim that some of DiLisio's recollection was hypnotically refreshed under improper procedures gave the court "a peg to hang its hat on to determine whether or not he was telling

the truth at that time."<sup>1</sup> (T 602). Judge Eaton further stated:

The order that [I] have been given to do, is to determine whether or not there should be a new trial, based upon newly discovered evidence in the form of recanted testimony. I don't be [sic] how in the world I can judge the credibility of the second statement, if I don't have into evidence the facts surrounding how the first statement came about

(T 602). DiLisio, himself, however, provided such facts.

DiLisio had testified prior to the testimony of the experts that he had lied to the police and wrote out a false statement *prior* to any hypnosis session (T 286; 288). He told the police seven months *prior to any hypnosis* that Spaziano raped and slit the eye of a young girl in Orange County and that he asked Spaziano about the bodies of the girls at the Altamonte dump and further inquired "Why did you do that?" to which Spaziano replied "Man, that's my style." (T 405-406). DiLisio testified that he knew at the time that he was lying to the police and was not telling the truth during the whole procedure (T 408). He admitted that the

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It is clear that this "peg" was conceived of by the lower court from a reading of Justice Kogan's concurring opinion, which it cited in its order vacating judgment and sentence, that "Today we are presented with a grossly disturbing scenario: a man facing imminent execution ...with his conviction resting almost entirely on testimony tainted by a hypnotic procedure this Court has condemned." *Spaziano v. State*, 660 So.2d 1363, 1367 (Fla. 1995). It is questionable whether the lower court having that opinion available before any testimony, and having been so taken with it that it cited it in its order, could keep an open mind on the issue of whether DiLisio's trial testimony actually was tainted by hypnotic procedure.

officers did not purposefully suggest things to him between hypnosis sessions and he could not put the blame on the detectives (T 301-302;411). He never even believed he was hypnotized. He acknowledged stating in a November 15, 1995, interview in the state attorney's office that he wasn't really under hypnosis and was manipulating the hypnotist and the police (T 409-410). There is record support for this statement<sup>2</sup>. DiLisio also acknowledged that Lieutenant Abbgly was not present at the hypnosis and he did not recall the hypnotist suggesting events to him. Spaziano Ex. 80(10) p.83.

Thus, even as the evidence developed at the hearing below, it became clear that the sole issue for Judge Eaton to decide was whether DiLisio's recantation, in which he claims he lied in 1976,

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Lieutenant Abbgly felt that DiLisio was holding back information. Spaziano Ex. 80(1)&(2). The transcript of the May 13, 1975, interview with DiLisio at Daytona Beach Community College by Sergeant Martindale and Lieutenant Abbgly reflects that when asked if he had anything to do with the murders DiLisio responded "No. I never did that's what I'm saying, I go under hypnosis and you find out what I used to know that I don't know now." Spaziano Ex. 80(3) p.3. DiLisio also stated "If this isn't the orange grove, ya'll be able to find out for sure what he told me if I am under hypnosis." *Id.* In the second May 16, 1975, hypnosis interview DiLisio explained that he was scared to tell on Spaziano. Spaziano Ex. 80(6)p.14. In a November 12, 1975, deposition DiLisio further explained that he was not too sure about telling Lieutenant Abbgly what he knew about Spaziano when he was approached by Abbgly in October. He didn't trust him and didn't want to tell the whole truth, although he did not lie to him at all. Spaziano Ex. 80(10) p. 74-76. He told Abbgly a little more about what he knew when Abbgly visited him a second time in detention in 1975. *Id.* p. 78. DiLisio testified that his first reaction when he saw the bodies was that he was scared because he knew too much and would have gotten killed. *Id.* p. 85.

was truthful, which clearly had nothing to do with procedures employed by a hypnotist. The sole issue, whether DiLisio was lying in his recantation was put squarely on the shoulders of the lower court. The court, however, abdicated its responsibility in lieu of deference to experts on a subject not even relevant. The testimony of the experts themselves only drives home this fact. Dr. Stine testified that extensive literature did not support repressed memory as a result of seeing bodies (T 635). Dr. Ofshe testified essentially that it is not possible to repress knowledge of a traumatic event and then retrieve it through hypnosis (T 686). Ofshe further testified that hypnosis does not improve recall beyond that which can be accomplished through conscious effort (T 699). The person can pick and choose what they are willing to participate in and where they resist (T 705). Untrained individuals with no special knowledge of hypnosis are capable of simulating or faking hypnosis sufficiently well to deceive even experienced hypnotists. Individuals in deep hypnosis are able to exert considerable control over their statements and may either willfully lie or willfully tell the truth (T 706; 723). Thus, the critical issue, even according to the experts, was whether DiLisio had lied at the time of trial, not how his statements came about.

It is also clear that these experts testified far beyond their

knowledge and competence. They certainly could not know what information the police had prior to the hypnosis session. Dr. Stine testified that "The quality of the tapes was very poor. Part of the problem in this case, is we don't have a complete record of tests for trance or hypnosis." (T 670). It is for reasons just such as this that this Court has refused to apply *Bundy v. State*, 471 So.2d 9 (Fla. 1985), retroactively. Cf. *Sims v. State*, 602 So.2d 1253, 1256 (Fla. 1992) (No merit to claim fundamental constitutional law violated by use of hypnotically refreshed testimony. Exclusion of hypnotically refreshed testimony announced in *Bundy* was not premised on constitutional grounds, but on the possible unreliability of such evidence). Despite their lack of knowledge and materials, and despite the fact that DiLisio indicated that it was he who had manipulated the police and the hypnotist, these experts were allowed to testify not only that the hypnotic procedure was flawed, but also on the ultimate issue of whether DiLisio was lying or "confabulating", over the objection of the State (T 712; 715). Ofshe found confabulations based on his interpretation of the after-the-fact crime scene evidence (T 712-721). The testimony was also inherently contradictory since the experts' position *ab initio* was that DiLisio could not have suffered from repressed memory in the first place, and Ofshe's

crime scene analysis went far beyond his expertise.

The experts' opinions also lacked independent corroborative evidence. The experts simply assumed DiLisio had no personal knowledge of seeing the bodies at the dump and took him at his word. They also assumed he was, indeed, under hypnosis when he told of Spaziano showing him his handiwork based on incomplete, poor quality tapes. An opinion is worth no more than the reasons on which it is based. *Land v. State*, 156 So.2d 8 (Fla. 1963). The conclusion or opinion of an expert witness based on facts and inferences not supported by the evidence in a cause has no evidential value. 24A Fla. Jur. 2d, Evidence and Witnesses § 1065.

The experts also overlooked several crucial factors. DiLisio related Spaziano's statements about what he did to his girls and the fact there were bodies prior to hypnosis. The lower court also had no reason to question the veracity of DiLisio's drug counselor, who had no criminal history, and who testified DiLisio had visions of dead bodies prior to hypnosis. DiLisio also told others of the bodies prior to hypnosis. That leaves only the issue of the location of the bodies. The lower court did not even have to rely on Mr. O'Connell's testimony that after DiLisio had gone with the police he returned to Volusia House and said he had taken them to grave sites. Had the experts or the court looked at the first May

15, 1975, hypnosis transcript in evidence they would have noticed DiLisio straining to recall directions, without prompting or suggestions, to where Spaziano had put stolen bikes in a lake. They would further have noticed that the directions DiLisio gave matched the directions to the actual crime scene where the bodies were found that DiLisio testified to at trial. These directions were given prior to DiLisio going to the dump site with the police so his claim that the police led him there is absolutely false and his deposition testimony that it was he who gave the police landmarks, true. An expert's opinion must be based on facts in evidence or within his or her knowledge. *Stano v. State*, 473 So.2d 1282 (Fla. 1985).

For these same reasons expert testimony was unwarranted. Since DiLisio was able to reveal Spaziano's statements about how he tortured and killed women and the fact that there were bodies prior to the hypnosis, then whether a hypnotist later learned of this same information through suggestive or nonsuggestive technique would seem to be a rather useless inquiry. Who took who to the dump was not an issue of hypnosis/repressed memory at all that would be susceptible to elucidation by expert testimony.

The lower court found that "It is plain from the testimony of these two distinguished experts that the reliability of the

procedure used should be seriously doubted and that the information which was produced as a result was unreliable." (T 3810). Thus, a judgment and sentence that withstood twenty years of attack was vacated based largely upon the ruminations of a sociology professor, ignorant of many facts in evidence, that the crime scene did not match DiLisio's depiction of what he saw earlier despite the fact that there was testimony from the Seminole County Sheriff's Department that animals had disturbed the remains, and there was no way of knowing how the bodies were positioned one or two weeks earlier or whether the defendant, who was separately linked at trial to the dump apart from DiLisio's testimony, or anyone else had gone back to the crime scene and repositioned or tried to secrete the bodies (T 209).

The order entered by Judge Eaton in this case demonstrates that the testimony of these witnesses, far from being an aid to the lower court, merely engendered unnecessary confusion and became a tool for the unwarranted vacation of Spaziano's valid and well-deserved judgment and sentence. Without this testimony and applying the appropriate standard for judging the reliability of recanted testimony it is likely the lower court would have come to the more reasonable conclusion that hypnosis was also a tool in 1975 for this very willing subject and terrified witness to escape



the full wrath of the Outlaws for *deliberate* disloyalty, which would in no way call into question the judgment or sentence since DiLisio's credibility was fully tested on cross-examination and the hypnosis was not revealed to the jury by virtue of defense strategy.

**II. THE LOWER COURT ABUSED ITS DISCRETION IN ASSESSING THE TRUTHFULNESS OF RECANTATION TESTIMONY AND ERRED IN VACATING SPAZIANO'S JUDGMENT AND SENTENCE AND ORDERING A NEW TRIAL.**

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**I was not to say anything about anybody he [Spaziano] knew, or anything that ever went on, because if I did, he knew where my family lived, and he threatened me with my family's endangerment**

Darcy Fauss. January 11, 1996, testimony at evidentiary hearing, (T 776).

**"I was scared to tell on him. I was scared to tell all the time."**

Anthony DiLisio. May 18, 1975, hypnosis session. Spaziano Ex. 80(6) p. 14.

**"Oh. Help me, please. Joe's crazy, he's told me so much about what he did to girls."**

Anthony DiLisio. May 18, 1975, hypnosis session, after DiLisio had been told he didn't have to worry about Spaziano. Spaziano Ex. 80 (6) p. 16.

**"Scared. I was scared. I knew too much. I would have got killed."**

Anthony DiLisio. November 12, 1975, deposition. Spaziano Ex. 80 (10) p. 42.

**I received a phone call from my brother [ Spaziano] when he was in county jail. It was after he was arrested. I think it was in '75, '76. He called from Rochester, New York. He was talking about a young kid named DiLisio. He says if he tells on him, he's going to be telling on himself. He was upset.**

Michael Spaziano. January 13, 1996, testimony at evidentiary hearing (T 1016, 1018).

**We [he and Spaziano] were there [Ralford] together for a few months [In 1976]. He [Spaziano] was involved in raping and beating a girl, and poking out her eyes with a pencil. Spaziano was to be returned to central Florida to**

face a murder charge. He [Spaziano] was concerned about going back to court, being charged with these murders, and about a certain young boy that he had shown bodies to, to testify against him, and what could he do about it? He told me that he had taken the boy there to show the bodies to him, for whatever reason was his reason, but he was concerned about the boy, since he showed him and told him, that the boy was testifying. What could be done about it?

Ralph Yannotta. January 13, 1996, testimony at evidentiary hearing (T 962, 964, 967, 969).

Nobody ever took care of me, nobody ever put me up anywhere, and I was threatened back then-- at least I felt my life was threatened that I was gonna die from these Outlaws.

Anthony DiLisio. June 14, 1995, videotaped interview with FDLE. State Ex.B p.6.

She knows that I went through living hell because of it. My youngerest days, always moving, running, always worried about if somebody's going to kill me. Used to carry a gun around with me, you know, even when I was younger. I was only a kid.

Anthony DiLisio. *Id.* p.8; (T 443-443).

And I tell you, they didn't do nothing for me. I still ended up on the street. They never -- all the bikers were after me. Couldn't even go to parties with my friends. My life was hell. I ended up leaving the state. Still worried about my life because at the time this guy was a real big Outlaw. Okay. And this is bad.

Anthony DiLisio. *Id.* p.16; (T 438).

The only thing they did is get me out like they told me they would. They never took care of me. It was just a real bad time in my life. And it wasn't so bad then. When I think that when I went through it all, it wasn't really bad then. It didn't get bad till after it was over, when I had to watch over my shoulder all the time, couldn't go places, always lived in fear, that's when it got bad. I received threats even before trial. My dad used to walk around with a gun. He walked in the courtroom with a gun. They made a big scene of it. We were terrified. It got really big, crazy.

Anthony DiLisio. *Id.* p.38

He [DiLisio] advised that approximately three years ago he testified against Joe

Spaziano, a member of the Outlaws. Yesterday his brother Nick was in Tampa, Florida and received information through associates of the Outlaws that Hammer, the Outlaw head chapter president, is supposed to arrive in Orlando with other members and was supposed to get rid of him and another white female who testified against Joe. He [DiLisio] stated that for the past week twice he has observed a dark blue or black ....with suspicious persons prowling about the shop and go to stores next door, looking him over, acting very strangely.

February 28, 1978, report of Seminole County Sheriff's Department. State's Ex. 1, evidentiary hearing.

I received a letter from my brother [Spaziano] while he was in prison, I think 1980. It said someone was going to be getting ahold of me to talk to me about DiLisio, was trying to find out where he was at. The guy got ahold of me. They called me on the phone.

Michael Spaziano. January 13, 1996, testimony at evidentiary hearing (T 1018;1025-1026).

One time my car, they blew up my trunk, my car. In Orlando, in Maitland. That was when I moved. I moved to Missouri. I was moving anywhere and everywhere. I came back from Missouri, and a couple of people up there-- I was never going to come back to Florida, what a fool. I came back to Florida. I think I was maybe nineteen or twenty, and I was pulling into Johnny Stone's driveway and the car caught on fire and there was, I guess it was a bomb or whatever under the car, and it blew up.

Anthony DiLisio. June 14, 1995, videotaped interview with FDLE. State Ex. B p.40; (T 444).

Joe is going to be dying soon and it all rests in your hands. If you don't want anyone else to die that you know this year, you need to cooperate with us.

Rick Hays, CCR investigator, dressed like a biker, to DiLisio on May 26, 1995 (T 89; 99; 100; 430-431)

"I really haven't been myself for the last week or couple of weeks. Headaches and haven't been sleeping well."

Anthony DiLisio. June 14, 1995, videotaped interview with FDLE. State's Ex. B. p.2.

I mean, do I look like a man that could be intimidated very easily? I don't really care. You know, I really don't care. You can take my life, but you start fooling with my little girl I might get upset.

Anthony DiLisio. *Id.* p.48

I asked him [DiLisio] why he was doing this, why was it suddenly in the paper again. He told me that he had been thinking of his own death, as our father had recently passed away, and that he was concerned with going before the Lord, and said that he would have to pay for Spaziano's life himself when he died. He told me that he had been harassed and approached many times by Spaziano's people, the Outlaws, and attorneys, and the press, as well. He mentioned his daughter. I asked how she was and he said that she spent a lot of time-- that Crystal spent a lot of time with Tony, since Rita had another baby, and she often answered the phone and the door, to calls and approaches that had to relate to this. He said that they could not even go to the store without being harassed.

Frances Lepine. Sister of Anthony DiLisio. January 13, 1996, testimony at evidentiary hearing (T 898-902).

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No lengthy argument could demonstrate so concisely as the above out-takes that something went terribly wrong below. Against all odds and against the weight of all the evidence, including DiLisio's own statements, the lower court found that DiLisio had lied to the police to please his father, a man DiLisio fist-fought with when arrested;<sup>3</sup> a man for whom DiLisio had so little respect that he slept with his wife, and DiLisio's future stepmother, on

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The lower court found that the testimony of DiLisio's sister, Donna Yonkin, as to this altercation indirectly corroborated DiLisio's tale of physical abuse at the hands of his deceased father but it is clear this testimony was offered to show DiLisio's anger at his father for turning him into the police and bespeaks not to parental physical abuse but to disrespect toward one's parent (R 3808).

the day of his father's wedding. This is so unreasonable a construction of the evidence that it leaves one wondering if the order of the lower court and the record even pertain to the same case.

The Supreme Court of Florida set out the standards for dealing with recanted testimony in *Armstrong v. State*, 642 So.2d 730, 735 (Fla. 1994):

Recantation by a witness called on behalf of the prosecution does not necessarily entitle a defendant to a new trial. *Brown v. State*, 381 So.2d 690 (Fla. 1980), cert.denied, 449 U.S. 1118, 101 S.Ct. 931, 66 L.Ed.2d 847 (1981); *Bell v. State*, 90 So.2d 704 (Fla. 1956). In determining whether a new trial is warranted due to recantation of a witness's testimony, a trial judge is to examine all the circumstances of the case, including the testimony of the witnesses submitted on the motion for the new trial. *Bell*. "Moreover, recanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. Especially is this true where the recantation involves a confession of perjury." *Id.* At 705 (quoting *Henderson v. State*, 135 Fla. 548, 561, 185 So. 625, 630 (1938) (Brown, J., concurring specially)). Only when it appears that, on a new trial, the witness's testimony will change to such an extent as to render probable a different verdict will a new trial be granted. *Id.*

It is clear that such standards were not followed in this case.

First, the lower court never viewed the recanting testimony with the appropriate suspicion as required by *Armstrong* and *Henderson v. State*, 135 Fla. 548, 561, 185 So. 625, 630 (1938).

Rather, the court started with the presumption that DiLisio's present testimony retracting or recanting his trial testimony was reliable then looked for reasons to find the original trial testimony unreliable. The court first mistakenly latched onto the hypnosis peg then hung its hat on the most implausible of all reasons: that someone who became a juvenile delinquent and slept with his own father's mistress would care about his father enough to give false testimony as "the child" and then stick by such testimony for twenty years as "the man," as DiLisio would say, even after rebirth as a born again Christian. A trier of fact is not bound by even uncontroverted evidence if it is contrary to natural laws, inherently improbable or unreasonable, opposed to common knowledge, or inconsistent with other circumstances. *Estate of Wallace v. Fisher*, 567 So.2d 505 (Fla. 5th DCA 1990). Had the court, instead, attempted to first satisfy itself as to the truth of the recanting testimony, rather than turning *Armstrong* on its head, and examined all the circumstances of the case, including the testimony of the witnesses submitted at the hearing, in accordance with its duty, it could only have found such recanting testimony exceedingly unreliable, as is usually the case.

A trier of facts, in determining the probative force and effect of testimony, may consider not only the manner and demeanor

of the witness on the stand but also his interest, if any, in the result of the suit; and the reasonableness or unreasonableness of his statements. *Heitman v. Davis*, 127 Fla. 1, 172 So. 705 (1937). Judge Eaton never questioned DiLisio's motive for recanting despite a record that would cause one to wonder why the man had not recanted years ago. DiLisio's own statements and the statements he made to his sister, Frances Lepine, demonstrate long term and present fear of the Outlaws and concern for the safety of his daughter. Having perceived his life to be in danger and having had to watch his back for years, it would take little more than a state investigator urging him that "Joe's" blood would be on his hands and a misguided reporter providing him with loopholes for DiLisio to finally capitulate. The lower court never explored the issue of why DiLisio could be lying now and instead reconciled all the evidence to perfect a symmetry with presumed truthful recantation. This was error under *Armstrong*.

Pursuant to the dictates of *Bell v. State*, 90 So.2d 704 (Fla. 1956), in determining whether a new trial is warranted due to recantation of a witness's testimony, a trial judge is to examine all the circumstances of the case, including the testimony of the witnesses submitted on the motion for new trial. That was not done in the present case. Having determined at the outset that the



process itself was flawed the lower court simply set about finding other indicia of the supposed unreliability of the original trial testimony. In doing so, the lower court ignored its duty under *Bell* to examine *all* the circumstances and consider *all* the testimony. Had the court not inverted the duties required of it under *Armstrong* it would have followed the dictates of *Bell* and would have considered important facts that it overlooked.

The lower court never considered the fact that DiLisio stood by his trial testimony for twenty years even though he had become a born again Christian in 1985.

The court did not consider the fact that DiLisio lied about not having a relationship with Spaziano as evidenced by DiLisio's pretrial statements and trial testimony that Spaziano was a friend and drug source and a later statement to FDLE indicating the same and testimony from unimpeached witnesses with no criminal background or motive to lie, Donna Yonkin, DiLisio's own sister, and Bill O'Connell, his drug counselor, that Spaziano and DiLisio were often together and were friends.<sup>4</sup>

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For some unknown reason, the lower court focused on the sufficiency of the evidence to prove not that Spaziano and DiLisio were friends but whether they were "fast" friends and discounted not only the testimony of these witnesses but DiLisio's admission that as late as 1995 he had still claimed Spaziano was a friend and drug source in an FDLE interview.

The lower court completely overlooked the fact that DiLisio could not reveal one detail allegedly fed to him by the police.<sup>5</sup>

The court also failed to consider the fact that DiLisio provided no explanation as to how the police could have led him to where the bodies were found when the first hypnosis transcript reflects him giving directions, without suggestion, to an area where Spaziano put stolen bikes, which description just happens to match the route to the area of the grave sites which DiLisio described at trial. The court also did not consider the fact that DiLisio had indicated in a pretrial deposition and to Mr. O'Connell that it was he who had directed the police to where the bodies were found and that he had visions of bodies prior thereto which is entirely consistent with his trial testimony that even prior to hypnosis he had "pictures" if not words.

The court overlooked, as well, the fact that although DiLisio claimed to have made statements implicating Spaziano to the police to please his father no explanation was provided for volunteering the same information to others in a fearful manner or how revealing

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DiLisio inconsistently claimed that his original statements about what Spaziano did to his girls were derived from derogatory remarks concerning Spaziano made by his father. The lower court found the police had supplied DiLisio with bits of information prior to the hypnosis but like DiLisio could not say what the information actually was (R 3809).

the fact of seeing bodies to another juvenile in a broom close would be pleasing to his father.

The court also ignored the fact that the unimpeached testimony of DiLisio's sister, Frances Lepine, as to the fact that DiLisio was recanting out of fear or harassment, parallels and supports DiLisio's own statements regarding his life for the last two decades.<sup>6</sup> The court also failed to recognize that DiLisio had reason to fear his and his family's safety, which fact was fully supported by the convergent testimony of Ralph Yannotta and Spaziano's own brother, Michael, as to Spaziano's worry over DiLisio's forbidden knowledge and attempts to locate him. The lower court erroneously discounted this symmetrical evidence as coming from witnesses "who had major credibility problems themselves." (R 3810). This was a particularly arcane approach since such testimony supported DiLisio's own unimpeached testimony as to his fear of the Outlaws. It is widely recognized that parties to criminal proceedings cannot be expected to depend exclusively upon the virtuous. 24 Fla. Jur. 2d, Evidence and Witnesses § 651. The guilty should not be allowed to profit from

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Lepine was shown to have no criminal record or credibility problems, something that concerned the lower court in regard to the state's witnesses.

their own criminal associations. Moreover, there is no presumption that a witness who has been impeached by a prior conviction is any less credible than other witnesses or that the testimony of other witnesses is entitled to more weight. *Kelly v. State*, 281 So.2d 594 (Fla. 4th DCA 1973). The court also found that if Spaziano did express concern to Yannotta over a young boy whom he had taken to see some dead bodies, "It is likely that the defendant was discussing the testimony he had learned DiLisio was going to give at trial. That is the only way to reconcile the testimony with DiLisio's version of events without rejecting it as being untruthful." (R 3810-3811). That is clearly not what Yannotta said. Yannotta testified Spaziano told him he had actually taken the boy there to show bodies to him (T 971). Restructuring Yannotta's testimony because it conflicts with DiLisio's present testimony flies in the face of *Armstrong v. State*, 642 So. 2d 730 (Fla. 1994), and *Henderson v. State*, 135 Fla. 548, 561, 185 So. 625, 630 (1938), which caution as to the unreliability of recanting testimony and hardly mandate restructuring other testimony to bolster the recanting testimony. Thus, the lower court, rather than properly assessing DiLisio's present credibility and testimony, used DiLisio as a barometer in assessing the truthfulness of other witnesses' testimony. Yet again, the cart

was put before the horse. Even without these supporting reasons the fact still remains that the evidence adduced below demonstrates that for either rational or irrational reasons DiLisio spent most of his adult life in fear of the Outlaws and had indicated that such concerns were in part responsible for his decision to recant - a fact totally overlooked by the lower court, which goes to his entire credibility. Its disregard of the *Armstrong* standards led the lower court to overlook the sublime in pursuit of the ridiculous.

The remaining state witnesses were simply lumped into the category of the temporally disadvantaged and their testimony was given new time slots since it did not support DiLisio's claim of having lied in 1976, even though DiLisio acknowledged having made such statements (R 3811). Undisputed or uncontradicted evidence, however, cannot be arbitrarily disregarded by the trier of fact. *Roach v. CSX Transp. Inc.*, 598 So.2d 246 (Fla. 1st DCA 1992). Evidence which is neither impeached, discredited, controverted, contradictory within itself, or physically impossible, when properly admitted, must ordinarily be accepted as true. *State v. Fernandez*, 526 So.2d 192 (Fla. 3rd DCA 1988).

It is also questionable whether the testimony of the state's witnesses was considered in an impartial manner. Although Annette

Jones was not shown to have any relationship with or animosity toward Spaziano and the evidence did not establish that this witness appeared for any reason other than to tell the truth, the court allowed the witness to be vilified on proffer.<sup>7</sup> While it is clear that the lower court recognized the legal principles that inquiry into collateral matters should not be permitted on cross-examination unless there is reason to believe they may tend to promote the ends of justice and are essential to the true estimation of the testimony of a witness by the finder of fact, see, *Tully v. State*, 69 Fla. 662, 68 So. 934 (1915), and that habitual drunkenness and drug use cannot be used for impeachment absent a showing of intoxication at the time of the occurrence of the events or it is expressly shown by other relevant evidence that prior drug use affects the witness's ability to observe, remember and recount, see *Taylor v. State*, 139 Fla. 542, 190 So. 691 (1939); *Edwards v. State*, 548 So.2d 656 (Fla. 1989), in sustaining the

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The judge heard that this witness's parents, maternal and paternal grandparents, and her older brother were alcoholics; that in January 1982 she was involved in alcohol related acts of violence with her husband and an arresting officer, long after the conversation with DiLisio and too remote in time; that in 1984 she was involved in the theft of twenty-nine pieces of stolen property; that drug and legal problems impacted upon her ability to transport herself; that her use of drugs and alcohol over twenty-three years had a negative impact on her health; that she is mentally unstable, has attempted suicide, attended AA and Narcotics Anonymous and has been in drug treatment programs (T 848;851;861;864;870).

prior drug use affects the witness's ability to observe, remember and recount, see *Taylor v. State*, 139 Fla. 542, 190 So. 691 (1939); *Edwards v. State*, 548 So.2d 656 (Fla. 1989), in sustaining the objections, it is less clear that the court remained unaffected by the proffers. The court previously refused to hear a state proffer because it would "inflamm[e] the finder of fact," yet it listened to a multitude of inadmissible evidence put forth for the sole purpose of disgracing the witness on matters that did not affect credibility (T 778). It is not surprising that the court found that the state witnesses had major credibility problems.

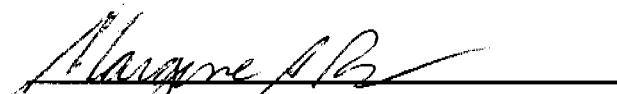
In finding that the newly discovered evidence could not have been discovered earlier through the exercise of due diligence the lower court also overlooked the fact that DiLisio indicated he had never been contacted by Mr. Stafman as well as the fact that Michael Mello, Spaziano's attorney in 1986 who raised the hypnosis issue, never appeared at the hearing to recount what efforts he made to contact DiLisio and obtain information. This would seem to be of importance since the hearing below seems to be nothing more than hypnosis again - second verse with the exception that the hypnotized witness has now been convinced of the unfairness of the procedure.

CONCLUSION

Based on the above and foregoing, the Appellant would ask this Court to set aside the order vacating judgment and sentence and set the case for a new hearing before a new judge.

Respectfully submitted,

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COUNSEL FOR APPELLANT



IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 75-430-CFA

JOSEPH R. SPAZIANO,

Petitioner/Defendant.

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**MR. SPAZIANO'S PETITION FOR REIMBURSEMENT OF COSTS**

Defendant Joseph R. Spaziano, by and through his undersigned counsel, hereby petitions this Court for a judgment providing for reimbursement by Seminole County for costs incurred in the course of an evidentiary hearing before this Court on January 8-11, 13, and 15, 1996, on Mr. Spaziano's motion for a new trial.

1. Mr. Spaziano was declared indigent in connection with these proceedings by order of this Court dated October 1995. Exh. A (order declaring Mr. Spaziano indigent).

2. Because Mr. Spaziano is indigent, his counsel is entitled to reimbursement of certain costs and expenses incurred in the course of representing him. This petition is submitted pursuant to the Florida Statutes and the Florida Rules of Criminal Procedure that authorize such reimbursement, for which appropriate citation is given in each instance and for which a request for reimbursement is detailed infra. These costs are itemized as required by section 939.08, Florida Statutes (1995), in Exhibit B. Mr. Spaziano respectfully asks this Court to enter a judgment against Seminole County that Mr. Spaziano's counsel

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may present to the county for payment of these costs and expenses.

3. Proof of the foregoing expense is attached to the affidavit of Gregg D. Thomas, sworn to on April 2, 1996 (hereafter "Thomas Aff."), which was submitted with this petition of April 4, 1996.

4. The total reimbursement sought is \$100,436.08. This amount does not represent all of the costs incurred in the course of the representation of Mr. Spaziano. (Thomas Aff. ¶ 4.) Counsel recognizes that as officers of the court who have elected to undertake pro bono representation of defendants, they should expect to bear some of the costs. The items for which reimbursement is sought are only those expenses that are plainly necessary to prepare for and attend the hearing. (Thomas Aff. ¶ 4.)

5. Mr. Spaziano's counsel incurred fees relative to the issuance of subpoenas in the amount of \$48 and service of subpoenas in the amount of \$399.63 to secure the attendance of witnesses at the evidentiary hearing. (Thomas Aff. ¶ 6.) These expenses should be reimbursed pursuant to Florida Rule of Criminal Procedure 3.220(o) and to sections 914.11 and 939.07, Florida Statutes (1995).

6. Mr. Spaziano's counsel incurred expenses involved in securing the attendance of witnesses at the evidentiary hearing totaling \$4,236.69. (Thomas Aff. ¶ 7.) These expenses should be reimbursed pursuant to Florida Rule of Criminal

Procedure 3.220(o) and to sections 914.11 and 939.07, Florida Statutes (1995).

7. Mr. Spaziano's counsel utilized three expert witnesses, two of whom charged fees for their services and appearances. The fees and costs for these two witnesses are:

Richard Ofshe	\$15,487.00
Barbara Stein	\$34,765.00
	<hr/>
	\$50,252.00

(Thomas Aff. ¶ 8.) Under an agreement between Mr. Spaziano's counsel and each of these two witnesses, Dr. Ofshe and Dr. Stein agreed to waive their fees subject to any reimbursement awarded by this Court.

A third expert witness did not charge a fee for his services, but incurred these costs and expenses to attend the evidentiary hearing:

Thomas Dunn	\$ 686.09
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(Thomas Aff. ¶ 8.)

These expenses should be reimbursed pursuant to Florida Rule of Criminal Procedure 3.220(o) and to sections 914.11 and 939.07, Florida Statutes (1995).

As part of this Petition for Reimbursement of Costs, Mr. Spaziano respectfully requests relief from the section of this Court's order of October 5, 1995, declaring him indigent and requiring this Court's approval before incurring expenses for expert witnesses. See Exh. A.

These proceedings were conducted on an expedited basis. The Florida Supreme Court initially ordered the evidentiary hearing in this matter to be held no later than September 15, 1995, which was just one week after the Court issued its decision in Spaziano v. State, 660 So. 2d 1363 (Fla. 1995). The Court moved the hearing to November 1995 and later rescheduled the hearing to begin on January 8, 1996.

Mr. Spaziano's present counsel was not involved in the case until September 1995. Counsel was nonetheless required to prepare for an evidentiary hearing on an expedited basis and based on facts that occurred twenty years earlier. Under the circumstances, while it theoretically was possible for counsel to petition the court before incurring expenses for expert witnesses, such action would likely have been futile because counsel was not in a position to make a good-faith estimate of the expenses we would incur. Given the large amount of data to assemble and the compressed time period in which to assemble it, counsel was continuously supplying data to expert witnesses. Any estimate of expenses for expert witnesses would have been an evolving figure that changed frequently during the course of these proceedings.

8. Mr. Spaziano's counsel incurred in-house expenses for postage, fax transmissions, photocopies, and long-distance telephone calls in the preparation of this matter, which involved the following:

Postage	\$ 130.87
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Fax Transmissions	\$1,773.64
Photocopies	\$7,320.35
Long-Distance Telephone Calls	\$1,464.79
	<hr/>
	\$10,689.65

(Thomas Aff. ¶ 9.) These costs should be paid pursuant to section 939.15, Florida Statutes (1995), which requires the county in which the crime was committed to pay allowable costs when the defendant has been adjudged insolvent by the circuit judge.

9. Mr. Spaziano's counsel incurred expenses for computerized legal research in the amount of \$976.15. (Thomas Aff. ¶ 10.) These costs should be paid pursuant to section 939.15, Florida Statutes (1995), which requires the county in which the crime was committed to pay allowable costs when the defendant has been adjudged insolvent by the circuit judge.

10. Mr. Spaziano's counsel incurred expenses for courier services and messenger expenses in the preparation of this matter, which involved the following:

Federal Express	\$ 508.15
Messenger Service	\$ 393.53
In-House Messenger Service	\$ 61.84
In-House Messenger Mileage	\$ 16.35
	<hr/>
	\$ 979.87

(Thomas Aff. ¶ 11.) These costs should be paid pursuant to section 939.15, Florida Statutes (1995), which requires the county in which the crime was committed to pay allowable costs when the defendant has been adjudged insolvent by the circuit judge.

11. Mr. Spaziano's counsel incurred expenses to obtain photocopies, including copies of public records obtained under Chapter 119, Florida Statutes, necessary for the preparation of this matter in the amount of \$1,239.80. (Thomas Aff. ¶ 12.) These costs should be paid pursuant to section 939.15, Florida Statutes (1995), which requires the county in which the crime was committed to pay allowable costs when the defendant has been adjudged insolvent by the circuit judge.

12. Mr. Spaziano's counsel incurred expenses of \$17,274.87 to conduct a background investigation. (Thomas Aff. ¶ 13.) This total includes costs and expenses for investigator Steve Gustat and the Capital Research Bureau. The Volunteer Lawyer's Resource Center has reimbursed counsel for \$10,551.30 of Mr. Gustat's costs. Thus, Mr. Spaziano's request for reimbursement from Seminole County in the amount of \$17,274.87 reflects the remaining costs and expenses incurred to conduct the background investigation.

As part of this Petition for Reimbursement of Costs, Mr. Spaziano respectfully requests relief from the section of this Court's order of October 5, 1995, declaring him indigent and

requiring this Court's approval before incurring expenses for an investigator. See Exh. A.

These proceedings were conducted on an expedited basis. The Florida Supreme Court initially ordered the evidentiary hearing in this matter to be held no later than September 15, 1995, which was just one week after the Court issued its decision in Spaziano v. State, 660 So. 2d 1363 (Fla. 1995). The Court moved the hearing to November 1995 and later rescheduled the hearing to begin on January 8, 1996.

Mr. Spaziano's present counsel was not involved in the case until September 1995. Counsel was nonetheless required to prepare for an evidentiary hearing on an expedited basis and based on facts that occurred twenty years earlier. Under the circumstances, while it theoretically was possible for counsel to petition the court before incurring expenses for an investigator, such action would likely have been futile because counsel was not in a position to make a good-faith estimate of the expenses we would incur. Given the large amount of data to assemble and the compressed time period in which to assemble it, counsel was continuously supplying data to an investigator. Any estimate of expenses for an investigator would have been an evolving figure that changed frequently during the course of these proceedings.

13. Mr. Spaziano's counsel and legal assistants incurred expenses for travel, lodging, and other costs in preparing and attending the hearing in this matter in the amount of \$11,125.47. (Thomas Aff. ¶ 14.) These costs should be paid

pursuant to section 939.15, Florida Statutes (1995), which requires the county in which the crime was committed to pay allowable costs when the defendant has been adjudged insolvent by the circuit judge.

14. Mr. Spaziano's counsel incurred miscellaneous costs in the preparation of this matter in the amount of \$561.08. (Thomas Aff. ¶ 15.) These costs should be paid pursuant to section 939.15, Florida Statutes (1995), which requires the county in which the crime was committed to pay allowable costs when the defendant has been adjudged insolvent by the circuit judge.



WHEREFORE, Mr. Spaziano respectfully requests that the Court enter a judgment against Seminole County in the amount of \$100,436.08 for costs to authorize payment of this amount to Mr. Spaziano's counsel.

Respectfully submitted,

HOLLAND & KNIGHT

By: 

Gregg D. Thomas, Esq.  
Florida Bar No. 223913  
Stephen F. Hanlon, Esq.  
Florida Bar No. 209430  
Post Office Box 1288  
Tampa, Florida 33601  
(813) 227-8500

LAW OFFICES OF JAMES M. RUSS, P.A.

James M. Russ, Esq.  
Florida Bar No. 069585  
Tinker Building  
18 West Pine Street  
Orlando, Florida 32801  
(407) 849-6050

Attorneys for Petitioner/Defendant  
JOSEPH R. SPAZIANO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery this 4<sup>th</sup> day of April, 1996, to Circuit Judge O.H. Eaton, Jr., 301 N. Park Avenue, Sanford, Florida 32271; to the Clerk of the Circuit Court, Seminole County, 301 N. Park Avenue, Sanford, Florida 32271; and to Thomas W. Hastings, Assistant State Attorney, Office of the State Attorney, 100 East First Street, Sanford, Florida 32271; and by United States Mail this 4<sup>th</sup> day of April,

1996, to Margene Roper, Assistant Attorney General, Office of the Attorney General, 444 Seabreeze Boulevard, Suite 500, Daytona Beach, Florida 32118; to Robert A. McMillan, County Attorney, 1101 E. First Street, Sanford, Florida 32271; and to Mark Van Bever, Office of the Court Administrator, Eighteenth Judicial Circuit, Government Center, 2725 St. Johns Street, Melbourne, Florida 32940.

HOLLAND & KNIGHT  
LAW OFFICES OF JAMES M. RUSS, P.A.

By:   
Attorney

TAL-78025

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 75-430-A

JOSEPH R. SPAZIANO,

Petitioner/Defendant.

---

**AFFIDAVIT OF GREGG D. THOMAS**

STATE OF FLORIDA                   :  
  :  
  : ss.:  
COUNTY OF HILLSBOROUGH        :

1. I, GREGG D. THOMAS, being first duly sworn, hereby state under oath:

2. I am familiar with the expenditures made in the course of preparation for and participation in an evidentiary hearing before this Court on January 8-11, 13, and 15, 1996.

3. This Court granted an order declaring Mr. Spaziano indigent on October 5, 1995. By terms of the order, the Court declared Mr. Spaziano indigent "for purposes of costs and expenses associated with the post-conviction proceeding now pending before this Court." A copy of that order is attached to this affidavit as Exhibit A.

4. The petition seeks reimbursement of costs and expenses totaling \$100,436.08. This does not represent all costs incurred by Mr. Spaziano's counsel in the course of the

representation. Mr. Spaziano's counsel seeks reimbursement only for those expenses that are plainly necessary to prepare for and to attend the evidentiary hearing.

5. The expenses for which reimbursement is sought are documented with receipts or invoices in every incident in which such documents are available. The receipts and invoices are collected in Exhibit B to this affidavit. To facilitate review, the documents have been placed behind numbered tabs and reference is herein made to the tab behind which the appropriate documentation is found in the form "Exh. B, Tab \_\_\_\_." By including an expense for reimbursement, I am certifying that Mr. Spaziano's counsel has already paid the amount stated. In those few instances in which a receipt or invoice is not available, I am certifying that Mr. Spaziano's counsel incurred and paid the amount stated.

There is one exception to my certification that Mr. Spaziano's counsel has paid the amount stated. Two of Mr. Spaziano's expert witnesses, Dr. Richard Ofshe and Dr. Barbara Stein, agreed to waive their fees subject to any reimbursement from Seminole County. Thus, Mr. Spaziano's counsel has not paid the fees of these two expert witnesses.

6. In paragraph 5 of the petition, Mr. Spaziano's counsel seeks reimbursement for reasonable costs incurred for the issuance of subpoenas and the service of subpoenas to secure the attendance of witnesses at the hearing. Mr. Spaziano's counsel

seeks reimbursement in the amounts of \$48 (issuance of subpoenas) and \$399.63 (service of subpoenas). Exh. B, Tabs 1 and 2.

7. In paragraph 6 of the petition, Mr. Spaziano's counsel seeks reimbursement for expenses totaling \$4,236.69 to secure the attendance of witnesses at the evidentiary hearing. This includes the witnesses' airfare or mileage, lodging, and meals. Exh. B, Tab 3.

8. In paragraph 7 of the petition, Mr. Spaziano's counsel seeks reimbursement for fees and/or expenses of expert witnesses utilized in Mr. Spaziano's case. The documentation associated with the expert witness testimony and/or services is found under Exhibit B, Tab 4.

Richard Ofshe	\$15,487.00
Barbara Stein	\$34,765.00
Thomas Dunn	\$ 686.09
	<hr/>
	\$50,938.09

9. As outlined in paragraph 8 of the petition, Mr. Spaziano's counsel incurred costs for postage, fax transmissions, photocopies, and long-distance telephone calls in the total amount of \$10,689.65. Exh. B, Tabs 5-8.

10. In paragraph 9 of the petition, Mr. Spaziano's counsel seeks reimbursement of \$976.15 for computerized legal research undertaken to prepare Mr. Spaziano's case. Exh. B, Tab 9.

11. As outlined in paragraph 10 of the petition, expenses for courier services were incurred in amounts totaling \$979.87.

Federal Express	\$	508.15
Messenger Service	\$	393.53
In-House Messenger Service	\$	61.84
In-House Messenger Mileage	\$	16.35

Exh. B, Tabs 10-13.

12. In paragraph 11 of the petition, Mr. Spaziano's counsel seeks reimbursement in the amount of \$1,239.80 for the cost of photocopies, including copies of public records obtained under Chapter 119, Florida Statutes. Exh. B, Tab 14.

13. In preparation for the evidentiary hearing, it was necessary to conduct a background investigation. Part of the costs of that investigation included a fee for an investigator, Steve Gustat, and Capital Research Bureau, as well as various costs and expenses incurred during the course of the investigation. The Volunteer Lawyers' Resource Center has reimbursed Mr. Spaziano's counsel \$10,551.30 for the expenses of Mr. Gustat and Capital Research Bureau. Counsel seeks reimbursement from Seminole County for \$17,274.87, which represents the remaining costs and expenses for the background investigation. Exh. B, Tab 15.

14. In paragraph 13 of the petition, Mr. Spaziano's counsel seeks reimbursement in the amount of \$11,125.47 for

counsel's travel and other expenses incurred to prepare for and attend Mr. Spaziano's evidentiary hearing. Exh. B, Tab 16.

15. In paragraph 14 of the petition, Mr. Spaziano's counsel seeks reimbursement of \$2,527.86 for miscellaneous expenses, including postage, copies of videotapes involving key witness Anthony DiLisio, and the purchase of a book written by expert witness Richard Ofshe. Exh. B, Tab 17.

16. For the reasons stated in the petition, all of the foregoing expenses for which reimbursement is sought are appropriate.

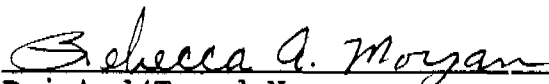
  
\_\_\_\_\_  
GREGG D. THOMAS

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing affidavit was acknowledged before me on April 2, 1996, by Gregg D. Thomas, who is personally known to me.

(SEAL)

  
\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number: \_\_\_\_\_

TAL-78034



REBECCA A. MORGAN  
MY COMMISSION # CC 185534 EXPIRES  
April 29, 1996  
BONDED THRU TROY FAIR INSURANCE, INC.

EXHIBIT A

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT, IN AND  
FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 75-430-CF-A

STATE OF FLORIDA,

Plaintiff,

v.

JOSEPH R. SPAZIANO,

Defendant.

10-9-95  
File

ORDER DECLARING MR. SPAZIANO INDIGENT

This Court, having considered the motion of JOSEPH R. SPAZIANO for a determination of indigency in connection with costs and expenses associated with the post-conviction proceeding now pending before this Court; and the Defendant having previously proceeded as an indigent in this Court, it is

ORDERED AND ADJUDGED that JOSEPH R. SPAZIANO is hereby declared to be indigent for purposes of costs and expenses associated with the post-conviction proceeding now pending before this Court. *Investigative and expert witness expenses must be approved before they are incurred.*

DONE AND ORDERED in Chambers at Sanford, Seminole County, Florida, this 5<sup>th</sup> day of October 1995.

*[Signature]*  
O. H. EATON, JR.  
JUDGE, CIRCUIT COURT

Copies furnished to:

OFFICE OF THE STATE ATTORNEY  
100 East First Street  
Sanford, Florida 32771

(continued on next page)



**OFFICE OF THE ATTORNEY GENERAL**  
444 Seabreeze Boulevard  
Suite 500  
Daytona Beach, Florida 32118

**STEPHEN F. HANLON, ESQUIRE**  
**HOLLAND & KNIGHT**  
315 South Calhoun Street  
Tallahassee, Florida 32301

**CLERK OF COURT**  
Seminole County  
301 North Park Avenue,  
Sanford, Florida 32771

**JAMES M. RUSS, ESQUIRE**  
**LAW OFFICES OF JAMES M. RUSS, P.A.**  
Tinker Building  
18 West Pine Street  
Orlando, Florida 32801

  
Judicial Assistant

Dated 10/5/95

**EXHIBIT B**

**SUMMARY**

<b>Tab No.</b>	<b>Category</b>	<b>Amount</b>
1	Subpoenas	\$ 48.00
2	Service of Process	399.63
3	Witness Expenses	4,236.69
4	Expert Witnesses	50,938.09
5	In-House Postage	130.87
6	In-House Fax Transmissions	1,773.64
7	In-House Photocopies	7,320.35
8	In-House Long-Distance Telephone Calls	1,464.79
9	Computer Research	976.15
10	Federal Express	508.15
11	Messenger Service	393.53
12	In-House Messenger Service	61.84
13	In-House Messenger Mileage	16.35
14	Outside Photocopies	1,239.80
15	Background Investigation	17,274.87
16	Attorney and Legal Assistant Expenses	11,125.47
17	Miscellaneous	2,527.86
<b>TOTAL COSTS AND EXPENSES</b>		<b>\$100,436.08</b>

TAL-79342

**RECEIVED**

ATTORNEY GENERAL'S OFFICE  
Daytona Beach, Florida

**EXHIBIT B****EXPERT WITNESSES****TAB 4**

<b>Date</b>	<b>Payee</b>	<b>Description</b>	<b>Check #</b>	<b>Amount</b>
01/19/96	Richard J. Ofshe, Inc.	Expert Witness - services rendered 12/95 - 1/11/96 -- plus travel expenses	Not paid	\$15,487.00
02/06/96	Barbara A. Stein, M.D., P.A.	Expert Witness - services rendered 12/21/95 - 1/10/96 -- plus travel expenses	Not paid	34,765.00
02/02/96	Thomas H. Dunn	Expert Witness - travel expenses 1/7/96 - 1/10/96	608636	686.09
<b>TOTAL</b>				<b>\$50,938.09</b>

TAL-79068

**Richard J. Ofshe, Inc.**Statement of Account  
(Tax ID # 94-2794016)January 19, 1995  
State of Florida v. Joseph Spaziano**Total Consultation, Court Time and Expenses = \$15,487.00**Consultation: 55 hours @ \$250.00/hour = \$13,750.00

December 1995	12.0 hours	Review transcripts of police interviews, hypnotic interviews, deposition and trial testimony of Mr. Dilisio. Review tape recordings of hypnotic interviews of Mr. Dilisio Review videotape recordings of Mr. Dilisio's interview by FDLE and appearance on the Maury Povich Show.
January 6, 1996	5.0 hours	Travel from St. John to Orlando
January 7, 1996	4.0 hours	Conference with Mr. Thomas: review and preparation for testimony
January 8, 1996	8.0 hours	Review additional transcript, police reports, medical examiner's reports and outline testimony Conference with Mr. Thomas
January 9, 1996	10.0 hours	Attend court. Particularly for the testimony of the crime scene investigator and Mr. Dilisio Conference with Mr. Thomas
January 10, 1996	8.0 hours	Attend court for the continuation of Mr. Dilisio's testimony Final testimony preparation with Mr. Thomas
January 11, 1996	8.0 hours	Travel from Orlando to San Francisco

Law Offices

# HOLLAND & KNIGHT

315 South Calhoun Street  
Suite 600  
P.O. Drawer 810 (ZIP 32302-0810)  
Tallahassee, Florida 32301  
904-224-7000  
FAX 904-224-8832

November 27, 1995

A Partnership Including Professional Corporations

Atlanta	Orlando
Fort Lauderdale	St. Petersburg
Jacksonville	Tampa
Lakeland	Washington, D.C.
Miami	West Palm Beach

**GREGG D. THOMAS**  
813-227-6616

VIA FEDERAL EXPRESS

Richard Ofshe, Ph.D.  
7112 Marlboro Terrace  
Berkeley, CA 94705

Re: Joseph Robert Spaziano

Dear Dr. Ofshe:

Enclosed are the materials that I promised I would send you. Other materials, including the video tapes, will be forwarded to you as soon as they are received by us.

Again, the trial is in Sanford, Florida (approximately 20 miles East of Orlando) to start on January 8 and continue through Wednesday, January 10, 1996. We are making room arrangements there and will alert you as to where we will all be staying. Please advise us as soon as possible about your costs related to your travel to the trial and we will forward you a check by overnight mail.

Also, this letter confirms that your hourly rate is \$250 an hour and \$4,000 a day plus expenses. Certainly, Holland & Knight will make every effort after the conclusion of this hearing to recover these expenses from the Circuit Court in Seminole County, Florida. Mr. Spaziano has already been declared indigent and we should be able to recover your fees and expenses with regard to this matter.

Sincerely,

HOLLAND & KNIGHT

Gregg D. Thomas

GDT:rm

Enclosures

Richard Ofshe, Ph.D.  
November 27, 1995  
Page 2

TPA2-308165

# BARBARA A. STEIN, M.D., P.A.

Psychiatry

Forensic Psychiatry

U.S. Highway 19 N.  
347  
Tampa Harbor, Florida 34684

(813) 789-0505  
FAX (813) 789-0405

February 5, 1996

Gregg D. Thomas, Esquire  
Holland and Knight  
400 North Ashley Drive  
Suite 2300  
P.O. Box 1288  
Tampa, Florida 33602-4300

RE: State of Florida v. Joseph R. Spaziano

## BILL FOR FORENSIC SERVICES

Record Review (includes prehypnotic and hypnotic transcripts, state attorney investigations, deposition, trial testimony, Diamond, Buckhout, and Ofshe's reports, audio taped sessions, FDLE interview, Maury Povich's show, 11/1 and 11/15/95 interviews of DiLiso)

12/21/95	0.50 hours
12/22/95	4.00 hours
12/23/95	3.00 hours
12/24/95	3.00 hours
12/25/95	3.00 hours
12/26/95	3.00 hours

### Telephone Contacts

12/21/95	0.25 hours (Mr. Thomas)
1/3/96	0.75 hours (Richard Ofshe, Ph.D., to St. John's)

### Meeting With Attorneys In Preparation For Hearing

1/6/96	3.00 hours
--------	------------

### Miscellaneous

1/7/96 (Sunday)	1.00 hours (xeroxing and faxing 45 pages to attorneys in Orlando)
-----------------	---

Diplomate, American Board of Psychiatry and Neurology, in Psychiatry  
Diplomate, American Board of Psychiatry and Neurology, in Forensic Psychiatry

Comprehensive Review Of Literature On Repressed Memories and  
 Suggestive Hypnosis and Traumatic Memory In Preparation For Testimony  
 Includes repressed memory and hypnosis case law, textbooks,  
 position statements of medical and psychological/psychiatric  
 organizations, journal articles, printed guidelines of standards)

12/28/95	7.00 hours
12/29/95	6.00 hours
12/30/95	5.00 hours
12/31/95	5.00 hours
1/1/96	3.00 hours
1/2/96	6.00 hours
1/3/96	6.00 hours
1/4/96	5.00 hours
1/5/96	5.00 hours
1/6/96	5.00 hours
1/7/96	8.00 hours
1/8/96	8.00 hours

**Courtroom Appearances/Testimony**

1/9/96	*\$4000.00 (full day with overnight stay and observation of others' testimony)
1/10/96	*\$3500.00 (actual testimony, not overnight)

**Travel Expenses**

1/9/96	\$115.00 Hotel accommodations at Hilton Altamonte Springs (includes tax)
--------	--

=====

90.5 hr @ \$300/hr\* - \$ 27,150

=====

Amount Due	\$27,150.00
	7,500.00 (Courtroom Appearances Testimony)
	<u>115.00</u> (room)

**Total Due \$34,765.00**

\*Usual fee



Law Offices

# HOLLAND & KNIGHT

A Partnership Including Professional Corporations

315 South Calhoun Street  
Suite 600  
P.O. Drawer 810 (ZIP 32302-0810)  
Tallahassee, Florida 32301

904-224-7000  
FAX 904-224-8832

November 27, 1995

Atlanta	Orlando
Fort Lauderdale	St. Petersburg
Jacksonville	Tampa
Lakeland	Washington, D.C.
Miami	West Palm Beach

**GREGG D. THOMAS**  
813-227-6616

VIA FEDERAL EXPRESS

Barbara A. Stein, M.D., P.A.  
33920 U.S. Highway 19 N.  
Suite 347  
Palm Harbor, Florida 34684

Re: Joseph Robert Spaziano

Dear Dr. Stein:

Enclosed are the materials that I promised I would send you. Other materials, including the video tapes, will be forwarded to you as soon as they are received by us.

Again, the trial is in Sanford, Florida (approximately 20 miles East of Orlando) to start on January 8 and continue through Wednesday, January 10, 1996. We are making room arrangements there and will alert you as to where we will all be staying.

Holland & Knight will make every effort after the conclusion of this hearing to recover expenses from the Circuit Court in Seminole County, Florida. Mr. Spaziano has already been declared indigent and we should be able to recover your fees and expenses with regard to this matter.

Sincerely,

HOLLAND & KNIGHT

Gregg D. Thomas

GDT:rm

Enclosures

TPA2-308249

LAW OFFICES  
**HOLLAND & KNIGHT**  
 P.O. BOX 32092  
 LAKELAND, FLORIDA 33802  
 813/682-1161

NATIONS BANK  
 TAMPA, FLORIDA

63-27  
 631

No. **608636**

PAY  
**SIX HUNDRED EIGHTY-SIX AND 09/100**

DATE	AMOUNT
02/22/1996	\$686.09

TWO SIGNATURES REQUIRED FOR AMOUNTS OVER \$2500.00

VOID AFTER 180 DAYS

TO THE ORDER OF  
 Thomas H Dunn  
 Capital Defenders Office  
 277 Alexander Street Ste 201  
 Rochester, NY 14607

**NON NEGOTIABLE**

⑈00608636⑈ ⑆063100277⑆ 3502107027⑈

AUTHORIZED REPRESENTATIVES

LAW OFFICES  
**HOLLAND & KNIGHT**

VENDOR NO. 1008132

No. 608636

INVOICE DATE	INVOICE NO.	DESCRIPTION	NET AMOUNT
02/21/96	AA	00001.94 Attendance at Spazianno hearing	686.09

GRAND TOTAL

686.09

**HOLLAND & KNIGHT  
EXPENSE VOUCHER**

Amount of expense incurred: 686.09  
 Total amount to be reimbursed: 686.09

Date Incurred: 1/7-10/96  
 Date Submitted: 2/16/96  
 Location Of Event: Orlando, FL  
 Pay to: Thomas H. Dunn

Description of Event or expense and business purpose as required by IRS Section 1.274-5(c)(2):

Attendance at Spaziano hearing.

*Capt Dept Office  
 277 Alexand St.  
 Suite 201  
 Rochester NY 14607*

Expense Voucher Chart	
Meals	\$ 8.67
Mileage	\$
Airfare	\$ 677.42
Lodging	\$
Car Rental	\$
Parking	\$
Cab Fare	\$
Other	\$
Less Advance Received CK#	\$
Less Amount Charged H&K Direct	\$
<b>TOTAL</b>	<b>\$ 686.09</b>

Client Name: Spaziano ✓  
 Client File & Matter #: 80001-94

RECEIPTS MUST BE ATTACHED FOR ALL EXPENSES.

Approved By

\_\_\_\_\_  
 Practice Development Partner

\_\_\_\_\_  
 Practice Area Leader

\_\_\_\_\_  
 Department Head

Stephen F. Hanlon  
 PRINT name of person requesting reimbursement

*[Signature]*  
 SIGNATURE of person requesting reimbursement

**NOTE: NAME AND BUSINESS RELATION OF PERSONS ENTERTAINED MUST BE SHOWN. APPROVED ACTIVITIES AND CLE MUST BE APPROVED BY YOUR PRACTICE AREA LEADER AND DEPARTMENT HEAD. PROMOTIONAL EXPENSES MUST BE APPROVED BY YOUR PRACTICE DEVELOPMENT PARTNER.**

Voucher No.: AA

Create your own Voucher No.  
 including Attorney/Staff initials

FEB 21 1996

For Accounting Use Only:

Vendor No.:

Location:

1. THE PASSENGER TICKET AND BAGGAGE CHECK  
SUBJECT TO CONDITIONS OF CONTRACT  
AND TRANSPORTATION

PASSENGER RECEIPT

~~DELTA AIR LINES INC~~ **ARC** ~~XXXX~~ **XXXXX**  
~~DUCKETT TNL INC~~ **ROCHESTER**  
~~THOMAS MR~~ **SCUPEP/AA 67MSTB**  
NOT VALID FOR **TRTS 15** YOUR RECEIPT  
TRANSPORTATION

FP AX378362302192008\*0696/  
DL ORL334.80 DL X/ATL Q1.82 DL ROC334.808/MS10 671  
.42 END XFCV63MCO3

USD 671.42  
XF 6.80  
USD 677.42

BOOKING NO. 17 888  
64443069250  
0 006 1208396810 1

011199 0031001 A14  
XXXXXXXXXX

DUCKETT THOMAS MR

ROC  
TCVG 01901 B 003AM/MS10  
ORC0 01979 B 003AM/MS10  
YATL 01121 B 103AM/MS10  
ROC 01700 B 103AM/MS10

NOT VALID FOR TRAVEL  
0 006 1208396810 1  
AA33712033

**GOODY  
GOODIES**  
MONROE COUNTY AIRPORT  
ROCHESTER, NY

01-07-96 14:06  
C001 155649

CASH \$5.50

HOST MARRIOTT BURGER KING  
ORLANDO INT'L AIRPORT

1094 David

---

1330 JAN10 '96 7:00AM

---

1 BREAKFAST COMBO	2.99
Cash	5.00
Tax	0.18
Am't Paid	<b>3.17</b>
Change Due	1.83

THANK YOU  
HOST MARRIOTT BURGER KING  
ORLANDO INT'L AIRPORT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Initial Brief of Appellant has been furnished by U.S. Mail to James M. Russ, Esq., 18 West Pine Street, Orlando, FL 32801; Stephen F. Hanlon, Esq., Holland & Knight, 315 South Calhoun Street, Tallahassee, FL 32301; and Gregg Thomas, Esq., Holland & Knight, 400 North Ashley Drive, Suite 2300, Post Office Box 1288, Tampa, FL 33602, on this 29 day of May, 1996.

  
\_\_\_\_\_  
MARGENE A. ROPER