IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v. **CASE NO. 96,216**

JOHN STEVEN HUGGINS,

Appellee.

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ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

INITIAL BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KENNETH S. NUNNELLEY
Assistant Attorney General
Fla. Bar #0998818
444 Seabreeze Blvd. 5th FL
Daytona Beach, FL 32118
(904) 238-4990

CERTIFICATE OF FONT

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STATEMENT OF THE CASE

Huggins was indicted by an Orange County, Florida, grand jury on May 28, 1998, for the first degree murder of Carla Larson.[1] Huggins' motion for change of venue was granted, and the matter was transferred to Duval County, Florida, where trial began on January 25, 1999 (SR Vol 1). Huggins was convicted on the four counts charged in the indictment on February 3, 1999. (SR1605-08). The advisory jury recommended death[2] by a vote of eight to four, and, on February 26, 1999, the trial court followed that recommendation and sentenced Huggins to death for the murder of Carla Larson.(SR2072).

Huggins filed a petition for writ of habeas corpus in the Orange County Circuit Court on March 25, 1999, which claimed that the State had suppressed favorable evidence in violation of *Brady v. Maryland.* (R467). The trial court conducted a hearing on March 26, 1999, and, at the conclusion of that hearing, determined that an evidentiary hearing on the allegations contained in the petition was necessary. (R470-472). That hearing was conducted on May 21, 1999. (R24-383). On July 21, 1999, the trial court entered an order finding that the State had violated *Brady* and granting a new trial. (R808-827). The State gave notice of appeal on July 27, 1999. The

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[1]The indictment charged Huggins with First Degree Murder, Carjacking, Robbery, and Kidnaping. (R440).

[2]The jury returned its recommendation on February 10, 1999. (SR1947-48).

record was transmitted on December 22, 1999. On January 3, 2000, the State filed a motion to supplement the record to include the transcript of the testimony from Huggins' trial so that this Court would be able to properly evaluate the "favorable" evidence allegedly suppressed by the State.

STATEMENT OF THE FACTS

In order to understand and properly evaluate the issues contained in the habeas petition, familiarity with certain guilt phase facts is necessary. Those facts are discussed below.[3]

THE GUILT PHASE FACTS

Carla Larson, the victim in this case, was employed by the Centex-Rooney construction company, and was assigned to the *Coronado Springs Resort* construction project on Walt Disney World property. (SR410). On June 10, 1997, Ms. Larson left her job site during her lunch hour to pick up some food items for a meeting scheduled for later that afternoon. (SR440-41). Another employee of Centex-Rooney gave Ms. Larson directions to the Publix grocery store located at the intersection of Highway 192 and International Drive. (SR441). A Publix receipt (which was stipulated into evidence) established that Ms. Larson made purchases at the

[3]For reasons that will be discussed at length, the whereabouts of witness Angel Huggins and the white Ford *Explorer* belonging to the victim are highly significant to this Court's review of the order granting relief because those facts, which are not controverted, conclusively establish that the allegedly "favorable" evidence simply cannot be true.

International Drive Publix at 12:12 PM on June 10, 1997. (SR456).

Ms. Larson drove a white Ford *Explorer* with leather seats, a radar detector permanently wired into it (*ie*: "hardwired"), a luggage rack, a wind deflector (or bug guard), running boards, and air conditioning controls in the back seat area. (SR416-18, 423). At least two people saw Ms. Larson leave the Coronado Springs job site driving that vehicle around lunch time on June 10, 1997; she was seen driving east on Highway 192, and was seen turning into the Publix parking lot. (SR446, 449-50, 598-99). When Ms. Larson did not attend the afternoon meeting, her fellow employees began to search for her. (SR598).[4]

Over the lunch hour, a white Ford *Explorer* matching the description of Ms. Larson's truck was seen on the Osceola Parkway, which is very close to the area of Highway 192 and International Drive. (SR416-17, 423, 588). Between 12:30 and 1:15 PM on June 10, 1997, a white Ford *Explorer* was seen hurriedly leaving the wooded area where Ms. Larson's body was eventually found. (SR461, 465, 472-73, 542, 547, 548-9, 584-85). The person seen driving the vehicle was described as a white male, with a dark tan and dark hair. (SR466, 469, 533-34, 542-44, 559). Ms. Larson's purse and its contents were later found on the highway right-of-way on a deserted part of Osceola Parkway where that roadway becomes World Drive --

[4]At about 2:30 PM, various Centex-Rooney employees were heard talking on two-way radios about the fact that Ms. Larson was missing. (SR598).

this is the area where the *Explorer* was last seen. (SR421, 568-69, 571-74, 577).

On June 12, 1997, Ms. Larson's body was found wrapped in a blue towel, lying 80-100 feet off of the Osceola Parkway. (R603-10).[5] Ms. Larson died as a result of strangulation, and pre-mortem injuries were observed that were consistent with attempted or actual sexual battery, (SR756-58, 762-63, 779). No "drag" marks or defensive wounds were present on her body, and all of her jewelry was missing. (SR761-62, 767-69, 414).[6]

On June 8, 1997 (two days before Ms. Larson's disappearance), the defendant, John Huggins, his estranged wife, Angel, and their four children visited Gatorland in Kissimmee, Florida. (SR499-500, 644-45, 650, 1071). The Huggins family traveled in Angel Huggins' white Geo *Storm*, and stayed two nights in a hotel on Highway 192, a short distance from the Publix Ms. Larson went to on June 10, 1997. (SR499-501). Huggins and Angel got into an argument during the evening of June 9, and at about 9:45 AM on the morning of June

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[5]This was the area where Ms. Larson's co-workers had been searching for her. Aerial photographs were introduced showing the route Ms. Larson traveled, the area in which her vehicle was later seen, and the proximity of the crime scene to Huggins' hotel. (SR786, 801, 827).

[6]Ms. Larson's jewelry was eventually recovered from a storage shed located on the property of Huggins' former mother-in-law. Huggins had regular access to this out-building, and used it for storage. The jewelry was found in an electrical outlet box. (SR415-16, 425, 792, 1080, 1086, 1088).

10[7], Huggins left the hotel on foot and did not return until after 2:00 PM. (SR503, 507, 510). When Huggins returned to the hotel room, he had a red bump or scratch on his forehead, was sweating and winded, and looked like he had been running. (SR633). Huggins cleaned up, and again left the hotel room on foot. (SR633-35). Angel Huggins and the children then left the hotel and drove back to Ms. Huggins' residence in Melbourne, Florida. (SR634-35, 652-53). Shortly after they arrived home in Melbourne, Huggins arrived at about 5:00 PM, driving a white Ford *Explorer* with a wind deflector on the front. (SR673, 416-17, 1071-73).

On the evenings of June 10 and June 11, 1997, Huggins stayed in hotels in the Melbourne area. (TR294). On either June 10 and 11, or June 11 and 12, Annette Moore, Angel Huggins' neighbor, saw a white Ford *Explorer* in the driveway of the Huggins' residence. (SR949-52, 957-58). Ms. Larson's vehicle was eventually recovered on June 26, 1997 -- it had been sloppily painted black at some point in time before it was intentionally set on fire. (SR904, 907). Derek Hillyard, another neighbor, observed an *Explorer* with a poor black paint job in the Huggins' driveway on June 11, 1997 -- that vehicle was similar to a white *Explorer* he had seen a day or two earlier. (SR958-59). One of Huggins' friends, Kevin Smith, allowed Huggins to park a white *Explorer* at Smith's house for a few days beginning on June 12, 1997. (SR985, 990, 992, 1046-47). That

[7]The day of Ms. Larson's disappearance.

vehicle had a radar detector that was permanently wired into the vehicle (as did Ms. Larson's *Explorer*), and had a wind deflector mounted on the front. (SR987). That radar detector was later recovered from near Smith's house, and was traced back to the *Explorer.* (SR992, 995, 1022, 1007-08). On the day that the *Explorer* was burned, Huggins was staying with two friends in a condominium some 9 miles from the arson scene, and was absent from that location when the truck was set on fire. (SR970-74, 1038). Huggins' son reported riding in a black or dark-colored truck with a leather interior and which had air conditioning and radio controls in the back seat. (SR654-57).

After Huggins was arrested, a court order allowing the State to obtain head and pubic hair samples was issued -- Huggins shaved his head and pubic area, thus precluding any meaningful sampling. (SR1149-53). In a press interview, Huggins did not admit killing Ms. Larson -- however, he never denied the murder, and made several excuses for his inability to remember his whereabouts at the time Ms. Larson disappeared. (SR1159).

The jury returned its verdict on February 10, 1999, finding Huggins guilty of First Degree Murder, Carjacking, Robbery and Kidnapping. (R1948; SR2047). The jury recommended that he be sentenced to death, and, on February 26, 1999, the trial court imposed that sentence. (SR2072).

THE EVIDENTIARY HEARING FACTS

At the May 21, 1999 evidentiary hearing on the habeas petition, the following evidence was presented:

John Natto[8] is employed at the Holiday Inn on International Drive in Orlando, Florida, as an accounting clerk. (TR51). He identified two registration cards which indicated that Angel Huggins checked in to the motel on June 14, 1997, and checked out on June 15, 1997. (TR53).

Dolores Ann Smith is a secretary with the Orange County State Attorney's Office. (TR70-71). She testified that she sent various e-mails to the trial prosecutors during the course of this case. (TR72-73).

Ronald Weyland is a crime scene investigator with the Orange County Sheriff's Office who was involved in the Huggins case. (TR78-79). He explained the difference between the typed "tip sheets" and the handwritten "lead sheets". (TR81). The witness recalled a request by Huggins' attorneys to review the physical evidence (TR79), but the typed or handwritten tip and lead sheets are not a part of the "evidence" that this witness would produce to counsel for the defendant. (TR81).[9] Huggins' attorneys never asked to see the lead sheets. (TR83).

Pat Guice is an investigator for the Orange County State

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[8]The first seven witnesses were called by Huggins.

[9]Reports prepared by investigators are not part of the evidence, anyway. (TR84).

Attorney's Office. (TR85-86). He was assigned to the Huggins case, and, on February 1, 1999, met with Preston Ausley and took a tape-recorded statement from him. (TR87-89). That statement was transcribed, and the transcript is accurate. (TR90). Investigator Guice asked Ausley to return to the State Attorney's Office at 8:30 a.m. the next day (February 2, 1999) in case the trial attorneys needed to talk to him. (TR92).[10] Ausley again appeared at the State Attorney's Office at 9:45 a.m. on February 2, and eventually spoke with one of the prosecutors involved in the trial[11]. (TR94; 96). Ausley said that he came forward because he saw Angel Huggins on television on January 30, 1999[12]. (TR100; 108).

Dan Nazarchuk was an investigator with the Orange County Sheriff's Office who was involved in the Huggins investigation. (TR113-114). During cross-examination by the State, Detective Nazarchuk identified the handwritten lead sheet (lead sheet 302) that was generated by him as a result of his June 16, 1997 interview of Ausley. (TR118-121). During that interview, Ausley described the driver of a white Ford *Explorer* as a white male in

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[10]The statement was taken in Orlando, where Ausley was employed, and where the Orange County State Attorney's Office is located. The case was being tried in Jacksonville (Duval County), and the trial was in progress at the time Ausley's statement was taken.

[11]Ausley later testified that he was told to return at 10:00 on the following day. (TR225).

[12]The January 30, 1999, date is based upon Ausley's statement, when interviewed on February 1, 1999, that he had seen Angel Huggins on television the "day before yesterday". (TR110).

his mid-to-late twenties with straight blonde hair above the shoulder. (TR124). Ausley did not report seeing the driver of the *Explorer* wearing sunglasses, and stated that he had seen the driver's left profile in the *Explorer's* left outside rear-view mirror. (TR124). Ausley reported that he saw the vehicle on June 12, 1997, and called law enforcement after seeing a news report about the crime (which apparently included a photo of a vehicle similar to the victim's) on June 14, 1997. (TR125). Ausley called law enforcement two days after the June 14 news report. (TR125). Ausley recalled all of the tag number on the *Explorer* except for the first letter, and recited it for Detective Nazarchuk. (TR125; 127). Ausley stated that he had written down the tag number, but did not have the piece of paper on which he had written it with him at the time he gave his statement. (TR126). Detective Nazarchuk contacted Ausley a few days later regarding the written tag number, but Ausley said that he could not find it. (TR135-6). Ausley was shown a composite drawing of the suspect, but stated that the drawing did not look like the person that he saw driving the *Explorer*. (TR128).

Ted Culhan was one of two Orange County Assistant State Attorneys assigned to the Huggins case. (TR139). He testified that he would have turned over the February 1 Ausley statement to defense counsel because of the reciprocal discovery rule and because it was his general practice to do so. (TR148-50). He did,

however, emphasize that he did not believe that Ausley's tape recorded statement amounted to *Brady* material. (TR148). Huggins' attorneys were aware of the existence of the handwritten investigative notes, and could have looked at those notes had they asked to do so. (TR162; 166; 189).

Preston Ausley testified that he went to the Orange County State Attorney's Office on February 1 "of last year" because he wanted to give them information about a woman he had seen on International Drive in 1997. (TR210-11).[13] Ausley testified that he had given that information to the Sheriff's Office but nothing had been done with it. (TR212). He saw Angel Huggins on television during the trial and thought that her hairstyle was similar to what he had seen in 1997. (TR212). Ausley testified that, in 1997, he had told a Sheriff's investigator that he had seen a woman driving a Ford *Explorer* with the tag number "they were looking for." (TR212). Ausley testified that he thought that he saw the vehicle the day after Carla Larson disappeared. (TR213).[14] Ausley testified that he wrote down the tag number of an *Explorer* after it cut him off in traffic, and that the evening news broadcast showed a **tag number** that looked familiar to him -- he checked his note and all

[13]Ausley testified in 1999 -- according to his testimony, he went to the State Attorney's Office in 1998, a sequence of events that is wholly inconsistent with any of the other testimony.

[14]The day after the victim in this case disappeared would be June 11, 1997.

but the first letter matched. (TR214-15). According to Ausley, he called the Sheriff's Office the next day, and an investigator arrived later that same morning to take his statement. (TR216).[15] According to Ausley, the investigator did not want the piece of paper on which the tag number was written. (TR218). Ausley never told law enforcement that a male was driving the vehicle, and he was never shown a composite drawing of the suspect. (TR219).

Ausley testified that he saw Angel Huggins on television, and that her hair "reminded" him of the person that he saw in traffic in June of 1997. (TR220). He emphasized that he went to the State Attorney's Office because of the hairstyle and shape of the face of the person that he saw on the evening news, not because the person he saw on the news was Angel Huggins. (TR225).

Ausley testified that he told the trial prosecutor that he had seen the vehicle on June 11, 1997, and that he is assuming that is the date on which he saw the vehicle based upon information contained in an e-mail he received from an Orlando television station[16]. (TR237). That e-mail came from a different station than the one that carried the first broadcast about the victim's disappearance. (TR237). Ausley does not know when the first news story about the victim's disappearance was broadcast. (TR238). Ausley does not have the receipt on which he wrote the tag number

[15]This would be June 12, 1997.

[16]Ausley "figured it was within a couple of days" based on the e-mail. (TR237).

of the vehicle that cut him off in traffic, and law enforcement never asked him for that piece of paper. (TR239-40). Ausley testified that the notes taken by law enforcement are wrong about the location and circumstances of his observations, the gender of the driver (Ausley testified that he never said the driver was male), the length of the driver's hair, and whether the driver had on sunglasses. (TR244-50). Ausley thinks the driver was a woman because of her small stature, and believes that he observed lipstick. (R253-54). Ausley admitted that his recall of events was better in 1997 than in 1999 (TR255), and emphasized that he has never said that Angel Huggins is who he saw in the *Explorer*. (TR260). Ausley testified that he never saw a composite of the suspect (TR263), and that he would not have been able to recite the tag number from memory in 1997 (TR275).

The defense then rested its case. (TR289).

Gordon Halliday is the manager of the Holiday Inn in Melbourne, Florida. (TR290-91). He testified that his records established that Huggins checked into the hotel on June 10, 1997. (TR294). Mr. Halliday also authenticated various telephone records of guest calls made from the Holiday Inn on June 10-11, 1997. (TR297).

Cameron Weir is an investigator with the Orange County Sheriff's Office. (TR305). He was the lead investigator in this case. (TR306). Detective Weir testified that the telephone calls

made by Huggins from the Melbourne Holiday Inn were to Angel Huggins' telephone number. (TR310-11).

Assistant Orange County State Attorney Jeff Ashton, who was one of the prosecutors in this case, testified that he was made aware of Ausley's existence by an e-mail that he received on February 1, 1999. (TR329-31). Mr. Ashton spoke with State Attorney's investigator Pat Guice on the morning of February 2, and eventually talked to Ausley that afternoon. (TR332-34). Ausley told Mr. Ashton that he had seen a white Ford *Explorer* driven by a white female with blonde hair on June 11, 1997. (TR335; 339). However, Ausley later told Mr. Ashton that he might have seen the *Explorer* on June 10, 1997. (TR340). Ausley stated to Mr. Ashton that he never saw the driver's face. (TR345). Mr. Ashton testified that he thought that the most likely explanation for Ausley's statement was that he had seen the victim on June 10, 1997, because, based upon the evidence in the case, Angel Huggins' whereabouts on the morning of June11, were well-established (TR338).

SUMMARY OF THE ARGUMENT

The trial court's grant of relief should be reversed because it is not supported by competent, substantial evidence. When the testimony from the evidentiary hearing on the habeas corpus petition is considered along with the trial testimony, the only possible conclusion is that, assuming the witness Ausley saw anyone driving the victim's vehicle, the person he observed was the victim, herself, not some other, unknown individual. By Ausley's own admission, he is "very bad with dates" and was unsure of the date on which he made his "observation." The evidence from trial demonstrates that the only date on which Ausley could have seen the victim's vehicle being driven by the individual he described was the morning of the victim's murder.

The trial court's grant of relief should also be reversed because Huggins cannot demonstrate that the state possessed favorable evidence, that the defendant could not obtain that evidence through reasonable diligence, that such evidence was suppressed by the state, and that, had such evidence been disclosed, there exists a reasonable probability of a different result.

Finally, the trial court's conclusion that there was a violation of *Brady v. Maryland* is in error because the court did not decide the issue of witness Ausley's credibility. Such a credibility determination is a necessary component part of the

issue before the trial court, and, because the trial court failed to decide that claim, the order granting relief is not based upon competent, substantial evidence.

ARGUMENT

I. THE TRIAL COURT'S GRANT OF RELIEF IS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE, AND IS AN ABUSE OF DISCRETION

The circuit court entered a lengthy order regarding the *Brady* standard and the application of that standard to the facts of this case. However, the deficiency with that order, which standing alone compels reversal, is that the evidence from trial, which is unchallenged, establishes that the order granting relief has no factual support.

As was set out above, the "favorable evidence" that the court found was "suppressed" by the State was the February 1, 1999, statement by Ausley that he had seen a white female of similar "stature" and with a hairstyle similar to that worn by the defendant's ex-wife, Angel Huggins, driving a vehicle that, by inference, was the victim's. (TR809-10). **Ausley never testified that Angel Huggins was the person he saw driving that vehicle, and never made any identification of her.** Moreover, the February 1 statement must be viewed against the backdrop of Ausley's **June 16, 1997** statement to law enforcement in which he stated that he saw the vehicle being driven by a white **male** in his mid-twenties with straight blonde hair above the shoulders.[17]

Ausley's statement containing the "*Brady*" material was

[17]Counsel for Huggins had **this** Ausley statement. (TR334; 814).

precipitated by him purportedly seeing Angel Huggins on a television news report about Huggins' trial.[18] The significance attached to this statement by the trial court was its value as "impeachment" of Angel Huggins' testimony that she never rode in the victim's Ford *Explorer*. (R824). At the hearing on the habeas petition, Ausley testified that "he is very bad with dates" (as the circuit court pointed out), and admitted that he could have seen the Ford *Explorer* on International Drive sometime between June 10 and June 15, 1997.[19] While it is not entirely clear from the order, the circuit court seems to have settled on June 11, 1997, as the date of Ausley's "sighting".[20]

"Time is not relevant to me."
Preston Ausley's Testimony (R233)

Despite the seeming complexity of this case, the issue before this Court is easily and accurately decided by comparing the dates on which Ausley testified that he **could** have observed the white

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[18]The defendant did not attempt to establish that Angel Huggins' hair was styled the same way in June of 1997 as it was in February of 1999. Moreover, the defendant did not even establish which hairstyle Ausley observed because there was no evidence of how Angel Huggins' hair appeared when Ausley saw her on the evening news. From the record, it is equally possible that Ausley saw a photograph of the victim on the news broadcast.

[19]The circuit court stated the possible dates as June 11-15, 1997. (R811). Ausley testified that he could have made his observation as early as June 10, 1997, but could not give a specific date. (R400-01; TR193-4; 214; 232-236).

[20]The **time** of the "sighting" is generally agreed to be approximately 7:30-8:00 AM as lead sheet 302 indicates.

Explorer against the trial evidence concerning the whereabouts of not only the *Explorer* but also Angel Huggins on those various dates. If Angel Huggins cannot have been driving the white *Explorer* on International Drive on a particular date (because either her whereabouts, the whereabouts of the vehicle, or both are accounted for), Ausley's testimony becomes wholly meaningless because it simply cannot be accurate. If that is the case, and, as set out below, that is what the uncontroverted evidence shows, Huggins is not entitled to relief because there is no reasonable probability of a different result at trial. Each of the possible "sighting" dates is discussed below -- that discussion assumes, *arguendo*, that Ausley: 1) saw a white Ford *Explorer,* 2) with a partial license plate number of ?GX-99V, 3) driven by a white **female** with blond hair[21]. As discussed above, the **time** of the sighting was about 8:00 AM.

If Ausley observed the vehicle described above on June 10, 1997, **the driver was the victim**, Carla Larson. It is undisputed that she was alive at that time, and, moreover, she was shown to be in possession of the white Ford *Explorer* around noon on that day. (R446). If Ausley saw the victim on her way to work on the morning of her murder, it proves nothing, and certainly is not exculpatory.

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[21]For purposes of argument, the fact that Ausley originally said he saw a **male** driving the vehicle is not considered. However, that fundamental inconsistency is damaging to whatever version of Ausley's testimony is at issue.

No *Brady* violation can be predicated thereon.

If Ausley observed the described vehicle on June 11, 1997, the driver was not Angel Huggins -- her presence in Melbourne, Florida, at the **time** of the "sighting" was well-established not only at trial (TR673; 652-53), but also at the hearing on the habeas petition (R268-70; 286-88). Angel Huggins was not in Orlando on June 11, 1997, and the only reasonable inference from the facts established at trial is that the "sighting" by Ausley did not take place on June 11, 1997. The circuit court did not take those facts into account when it granted relief. It requires no legal analysis to conclude that if Ausley's statement cannot be accurate, which is the case if one determines that he claims to have seen the vehicle on June 11, there is no basis for relief.[22]

If the date in question is June 12, 1997, Angel Huggins' presence in Melbourne, Florida, is, once again, unchallenged. She was not in Orlando, Florida, at the time of the reported "sighting", and Ausley cannot have seen her driving the white *Explorer* at that time. (SR682; 709). Moreover, the whereabouts of the *Explorer* are also accounted for. On June 12, 1997, the white *Explorer* was parked at Kevin Smith's residence in Cocoa Beach, Florida. (SR985). Once again, the unchallenged evidence from trial establishes that Ausley simply cannot have seen Angel Huggins

[22]In other words, whatever Ausley "saw" (and, at this point that is the assumption), he did not see it on June 11.

driving the *Explorer* on June 12.

Likewise, Ausley cannot have seen Angel Huggins driving the white Ford *Explorer* on June 13, 1997. On that day, the vehicle was parked at Kevin Smith's residence in Cocoa Beach. (SR985). That evidence is unchallenged, and establishes that Ausley simply cannot have seen Angel Huggins driving the *Explorer* on June 13.

The *Explorer* was parked at Kevin Smith's Cocoa Beach residence until the afternoon of June 14, 1997, when the defendant picked the vehicle up. Because the vehicle was in Cocoa Beach on the morning of June 14, Ausley simply cannot have seen it at 8:00 AM on that day. Moreover, the evidence at trial established that the **white** Ford *Explorer* had been painted **black** on either June 13 or 14. (SR958). It requires no leap of logic to conclude that Ausley cannot have observed a white vehicle if the vehicle was no longer that color, which is what the evidence shows.[23]

Based upon the uncontroverted sequence of events, the **only** day on which Ausley could have seen Carla Larson's white Ford *Explorer* being driven by a white female with blonde hair was June 10, 1997. The only white female with blonde hair who was driving that vehicle at 8:00 AM on June 10, 1997, was Carla Larson. By his own admission (and as the trial court pointed out), Ausley is "very bad with

[23]Because the evidence establishes that the Explorer had been painted black prior to June 15, discussion of the possibility of a "sighting" on that day is pointless. Further, there is evidence that the vehicle was at Smith's house in Cocoa Beach on that day. (SR985; 990; 992).

dates". Accepting as true that Ausley saw what he testified he saw (and the trial court found that testimony credible), the **only** way that Ausley's evidentiary hearing testimony can be reconciled with the evidence from Huggins' trial is by concluding that Ausley saw Carla Larson driving to work on the morning of her murder. The trial court unfortunately erred when it overlooked the trial evidence which demonstrated clearly that Ausley could only have seen what he said he saw on June 10. The trial court's grant of relief is in error because Ausley's testimony cannot "impeach" any of Angel Huggins' testimony. Ausley could not have seen Angel Huggins driving the Explorer, and his sighting of the victim in no way impeaches any of the trial testimony. Consequently, there is no basis for relief because there was no *Brady* violation.

The foregoing discussion is, of necessity, based upon a number of assumptions. Specifically, the State is assuming for argument that Ausley testified truthfully when he testified that he saw a white female with blonde hair driving a white Ford *Explorer* bearing a license plate that matched the plate on Carla Larson's vehicle within one digit. The State also accepts as fact Ausley's repeated assertion that he is "very bad with dates".[24] However, as set out above, the only possible way to reconcile all of the evidence is to conclude that Ausley really is as bad with dates as he says he is,

[24]As the trial court pointed out, Ausley had no independent recollection of the date of his observations. (R810).

and that he actually saw the victim -- after all, Ausley **never** identified Angel Huggins as the person that he observed driving the truck. (TR225).[25]

Further, it is assumed for purposes of this brief that the white Ford *Explorer* that Ausley testified that he saw was, in fact, the victim's truck. Huggins, who had the burden of proof, presented no evidence to support that proposition. Obviously, if the vehicle that Ausley saw was **not** the victim's, but rather was the property of some unknown party, Ausley's testimony is irrelevant to this case. Huggins did not even attempt to demonstrate that the vehicle Ausley observed could only have been the vehicle belonging to Carla Larson.

Perhaps most significantly, this view of the evidence is **consistent with Huggins' position at trial**. Specifically, Huggins argued that the vehicle was parked at Kevin Smith's residence from June 10, 1997, until it was burned some two weeks later. (R1512). Huggins should be estopped from taking a position in the habeas proceeding that differs from the position taken before the trial jury. After all, the core elements of Ausley's statement (a "sighting" of the victim's truck) did not change. Huggins **knew**, prior to trial, about Ausley's statement that he had seen the truck being driven by a white male on June 12, 1997. (TR311; 814).

[25]Carla Larson (SR848 - State's Exhibit 24 - Victim's Driver's License) and Angel Huggins both have blonde hair (TR220; 261; *see also,* TR336).

Nevertheless, Huggins did not use that statement, despite its arguable support for his theory of the case. It is, at best, disingenuous for him to wait until he has been convicted and then advance a new theory of the case that was available at trial.[26] He should be estopped from taking such inconsistent positions.

Additionally, nothing in the record establishes that the person seen by Ausley during the January 31, 1999, news broadcast was, in fact, Angel Huggins. No proof of this matter was presented to the trial court. The record is silent as to how Ausley determined that the person he saw on the newscast was Angel Huggins, and, in fact, the photo seen by Ausley has never been identified. In short, Huggins never established that the person that Ausley saw on television who resembled the person he had seen in 1997 was, in fact, Angel Huggins. Without such proof, there is no basis for granting relief. Given the state of the record, there can be no confidence at all that the person seen on television by Ausley was not really Carla Larson. Under the totality of the circumstances, such is highly likely -- of course, no one would be surprised to hear that the person seen driving the *Explorer* on the morning of June 10, 1997, "resembled" its owner (who was

[26]Why trial counsel chose not to use this evidence is not known because the trial court allowed only sharply limited inquiry into matters of trial strategy. (TR477-509; 180-181). Certainly, such inquiry is relevant to the diligence prong of *Brady.*

undisputedly driving the vehicle at that time)[27].

Moreover, and in connection with Ausley's observations during the unidentified newscast, there is no evidence in the record that even alludes to Angel Huggins' appearance in June of 1997. The defendant, who had the burden of proof at the evidentiary hearing, made no effort to show that Angel Huggins' hairstyle (and, for that matter, hair **color**) was the same in 1997 and 1999. The absence of any such evidence further calls into question the basis for the trial court's grant of relief. The state of the record is literally that Ausley testified that he saw an unidentified video or still photograph of a white female with blonde hair during the course of the television coverage of Huggins' 1999 trial. The identification of the person he saw on television is unclear, and, even assuming that the person he saw on television **was** Angel Huggins, the **most** that can be said is that Ms. Huggins' hair in 1999 reminded him of the person he saw in 1997. That does not prove anything, let alone establish a basis for reversal.

2. EVEN IF THE AUSLEY TESTIMONY IS VIEWED IN THE LIGHT MOST FAVORABLE TO THE DEFENDANT, THERE IS NO BASIS FOR RELIEF

For the reasons set out above, Ausley cannot have seen Angel Huggins driving the victim's *Explorer* on June 11, 1997, because Angel Huggins' whereabouts are accounted for on that day. However,

[27]Huggins has also not established that the vehicle that Ausley saw was, in fact, Carla Larson's *Explorer*. Of course, if it was not, whatever Ausley saw is irrelevant in the context of this case.

because the trial court decided the case without addressing that fact, the State has addressed the substantive *Brady* claim, as well. For the reasons set out below, reversal is not warranted.

In order to establish a *Brady* violation, the defendant must demonstrate:

> (1) that the Government possessed evidence favorable to the defendant (including impeachment evidence); (2) that the defendant does not possess the evidence nor could he obtain it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. *Robinson v. State,* 707 So.2d 688, 693 (Fla. 1998) (*quoting Hegwood v. State*, 575 So.2d 170, 172 (Fla. 1991)).

Jones v. State, 709 So.2d 512, 519 (Fla. 1998). When that standard is applied to the Ausley testimony, there is simply no basis for reversal. Initially, the trial court has overstated the importance of Angel Huggins' testimony -- virtually **every** fact to which she testified was **independently** corroborated by one or more **other** witnesses. (SR509-10; 1348; 1070-73; 958-59; 985;987). In any event, as set out below, Ms. Huggins was significantly impeached in several respects and one more bit of collateral impeachment would make no difference[28].

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[28]Conceptually, the difficulty with the trial court's order is found in the precise effect of the "impeachment". Assuming, *arguendo*, that the "*Brady* evidence" showed that Angel Huggins was, in fact, driving the victim's truck, such fact does **not** establish that the defendant was not the killer, and, in fact, is consistent with the **defendant** being the killer and having custody and control of the victim's vehicle. It seems unlikely that defense counsel would want to prove that the defendant gave his wife the victim's

During cross-examination of Angel Huggins, defense counsel impeached (or attempted to impeach) her testimony in the following ways:

> 1. When she admitted lying about her address when she registered at the International Drive Holiday Inn. (SR635, 637, 638);
>
> 2. When she stated that she and the defendant did not go to Los Vegas and get married, by asking questions concerning a photograph of the two of them in wedding attire. (SR511-12, 524);
>
> 3. When she admitted knowing that her sister had had a sexual relationship with the defendant prior to her calling CrimeLine to report Huggins' possible involvement in Carla Larson's murder. (SR684, 705);
>
> 4. When she admitted that she had a felony case pending against her when she called CrimeLine. (SR684, 705);
>
> 5. When she admitted that the felony charge pending against her was the result of an escape from police custody. (SR656-86; 695);
>
> 6. When defense counsel suggested that she was seeking favorable treatment in the pending felony case as a result of her assistance in the prosecution of the defendant. (TR687, 697);
>
> 7. When she admitted accompanying the defendant to purchase drugs from Kevin Smith, even though she testified that Smith was "not a drug dealer". (SR708);
>
> 8. When defense counsel brought out her prior inconsistent statement to law enforcement that she "never [saw] the *Explorer*" after June 10, 1997. (SR714);
>
> 9. When she initially testified that she and the defendant first spent the night of June 11 at her home

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truck, and it seems equally unlikely that defense counsel would risk allowing Angel to explain her statement that she never drove or rode in the vehicle. The utility of the Ausley statement is limited, at best.

(TR682), but later testified that they spent that night at a hotel. (SR709);

10. When later evidence established that she checked out of the Days Inn at 2:01 PM rather than 3:30 PM, as Angel Huggins had testified. (SR1548);

11. When subsequent evidence established that the defendant could not have used his electronic room key to enter his room after 1:00 PM, contrary to her testimony that he used a key to enter the room at 3:30 PM. (SR1353, 514).

One more bit of collateral "impeachment" would not have helped Huggins, nor would it have caused the jury to disbelieve Angel Huggins' testimony. The **most** that Ausley's testimony showed was that he observed a white female in June of 1997, with hair that **reminded** him of Angel Huggins' hair at the time of trial in 1999, driving a vehicle with a tag that **partially** matched the victim's, on a day in June of 1997 **that he cannot recall**. That testimony does not "impeach" the testimony of Angel Huggins because Ausley **never** identified her as the person he saw driving the vehicle, and, in fact, specifically testified that he was **not** testifying that he saw Angel Huggins, and never said that he did. (TR260). Ausley's testimony falls far short of impeaching anything -- because that is so, it does not satisfy the *Brady* criteria, and, therefore, cannot be a basis for relief. The trial court erred in ruling to the contrary.

Moreover, when Angel Huggins' testimony concerning whether she drove or rode in the *Explorer* is read in context, Ausley's

testimony does not amount to impeachment of her testimony. The first segment of such testimony reads as follows:

> Q. When you arrived back in Melbourne, who was at your mother's house when you first arrived? Other than people in your car?
>
> A. Nobody.
>
> Q. Did anyone arrive shortly after your arrival in Melbourne?
>
> A. Yes.
>
> Q. Who was that?
>
> A. John Huggins.
>
> Q. The defendant in this case?
>
> A. Yes.
>
> Q. Is that correct? Now, did he come in a vehicle?
>
> A. Yes.
>
> Q. Can you describe the vehicle?
>
> A. It was a white Ford *Explorer* with a bug shield. That's it.
>
> Q. Anything else you remember about it other than the color and the bug shield?
>
> A. No.
>
> Q. When he arrived, were the children in the house?
>
> A. Yes.
>
> Q. And did you have any conversations with John in the house in the presence of the children?
>
> A. No.
>
> Q. Now, did you have a conversation with John that day?

A. Yes.

Q. Now, at some point, did you ride in the car, or get in the car?

A. No.

Q. That is the white *Explorer*?

A. Right. No, I did not.

Q. Did there come a point in time when the car was moved from your mother's driveway or front of your mother's house to another location?

A. Well, shortly thereafter he arrived, he and his two children got in it and drove away.

(SR673-74).

The second portion of the trial record which is relevant to Angel Huggins' presence in the *Explorer* is as follows:

Q. What types of things did you and Mr. Huggins do during the, say, the week following June 10th?

A. We went to Sea World with the children. We went to hotels. The kids swam and played.

Q. What hotels -- Did you stay at hotels during that period of time with Mr. Huggins?

A. Yes.

Q. What type -- What hotel -- What cities did you stay?

A. Melbourne, Holiday Inn. Melbourne, Budgetel. There were so many, it's so hard to remember.

Q. Okay. All those occasions, all those occasions, who paid for the rooms?

A. John did.

Q. On any of those occasions, did you travel in the white Ford *Explorer*?

A. No.

(SR678).

When that testimony is read in context, it is clear that on neither occasion did Angel Huggins testify that she was **never** in the Explorer. The first part of her testimony, when read in context, is in answer to the question of whether she drove or rode in the *Explorer* on June 10. There is, of course, no claim that Angel Huggins was in possession of the vehicle on the morning of June 10. Angel Huggins' testimony was that she did not get in the truck at that time, and, regardless of the interpretation given Ausley's statement, it does not impeach Angel Huggins because she did not say that she **never** got in the truck.[29] The second series of questions concerning whether Angel Huggins ever drove or rode in the *Explorer* refer to the week of June 17, **when the vehicle had already been painted black**. (SR678). Ausley's testimony certainly would not impeach that portion of Angel Huggins' testimony.

In addition to being a factual impossibility as set out at pages 16-24, above, and in addition to not amounting to impeachment because of its heavily qualified nature, Ausley's testimony (if not

[29]Angel Huggins was never asked that question, and, hence, Ausley's statement was of no impeachment value. Of course, Ausley's statement is wholly inconsistent with the defense theory that the *Explorer* was in Cocoa Beach at Smith's house. In fact, the original Ausley statement could have been used to suggest that, since Huggins and Angel were together the night of June 11, someone else was driving the vehicle in Orlando at 8:00 AM on June 12, as Ausley originally said.(TR682).

reconciled as addressed at pages 20-22, above) is not credible. The trial court did not pass on the credibility of the testimony, and, in light of its comment that such was the province of the jury, expressly intended not to do so. (R814). Such was error in the context of this case because, in the present proceeding, the trial court was the finder of fact, and could not rationally have decided the *Brady* claim without expressly passing on Ausley's credibility. The fact is that credibility was the cornerstone of any claim for relief -- without that issue having been decided, the order rests on an incomplete basis.

In deciding the *Brady* claim without passing on Ausley's credibility, the circuit court created a rule of law that, quite literally, requires a new trial without regard to the absurdity of the testimony at issue. Under that rationale, Huggins would have been entitled to relief if Ausley's second statement had been that he saw someone with hair that resembled Angel Huggins' **riding** in the vehicle in question which was being driven by an extra-terrestrial being. Obviously, that testimony would not be credible, but, under the rule of law applied by the circuit court, the failure to disclose such statement would be a violation of *Brady*. No court would seriously consider resolving such a claim without passing on the credibility of the witness -- the failure to address

Ausley's credibility makes no more sense[30].

As has been discussed at length above, it is factually impossible for Ausley to have seen Angel Huggins driving the victim's truck during the period June 11-15. However, putting aside the multiple factors that make that conclusion inescapable, numerous problems with that testimony remain. The initial problem with Ausley's "testimony" is that the description of the person he claimed to have seen driving the *Explorer* differed substantially from the initial report to law enforcement in June of 1997 to the subsequent report to the State Attorney's investigator in February of 1999. The fact that Ausley initially reported seeing the vehicle being driven by a white **male** with straight blonde hair **above the shoulders** is hopelessly irreconcilable with the later claim that the driver was a white **female** with **shoulder length** hair. The **only** explanation offered by Ausley for this considerable discrepancy is that the investigator who interviewed him initially made a mistake as to the driver's gender and hair length, as well as the date and

[30]In a very real sense, the trial court's refusal to decide the issue of Ausley's credibility results in relief being granted when the circuit court never ruled on the underlying issue. The State suggests that the circuit court cannot insulate its order from review by simply saying that the jury should evaluate Ausley's credibility. There is no reasoned way to evaluate the **materiality** of Ausley's testimony unless his **credibility** is considered. The circuit court did not do that, and, in a very real sense, merely granted relief without deciding the issue on which relief was predicated.

location of the June sighting.[31] Even though Ausley admitted that his recall would have been better in June of 1997 than it was in 1999 (TR255), he had no hesitation in testifying that virtually every factual matter recited in the lead sheet generated in 1997 was wrong. Such a claim strains credulity, but yet was not considered by the circuit court when it granted relief. At the May 1999 hearing, Ausley stated, **for the first time**, that the person he saw driving the white *Explorer* in June of 1997 was wearing sunglasses and lipstick. (TR249; 254). Additionally, Ausley testified that the date of his "observation" was June 11, 1997, not June 12, as reflected in the original statement.(TR236-37).[32]

In addition to these questions concerning the date of Ausley's "sighting", the testimony at the evidentiary hearing was that Ausley saw a news broadcast about Carla Larson's disappearance on one Orlando-area television station, and subsequently attempted to contact that station to determine the date on which news coverage began. (TR237). He was unable to contact that television station, so he contacted **another** Orlando station and based his "determination" of the date on which he saw the vehicle on the date

[31]Ausley explains each and every discrepancy between the June 1997 statement and his 1999 testimony as being that the investigator got each and every detail wrong. (TR 240-275).

[32]Ausley testified that he saw the vehicle the day after the victim disappeared (June 11) and contacted law enforcement and gave a statement the next day (June 12). (TR213-16). The statement given to law enforcement took place on June 16, 1997. (TR121). Those dates cannot be reconciled.

on which the **second** station began broadcast coverage. (TR237-38).[33] This series of facts calls Ausley's credibility into question, and should have been considered by the circuit court. It was not, and that failure to consider all of the evidence is an abuse of discretion.

Ausley's 1999 testimony was totally different from the statement given to law enforcement in close proximity to the alleged sighting of the victim's vehicle. The circuit court incorrectly attempted to decide the *Brady* claim while simultaneously placing the responsibility for any credibility determination on the jury. That misallocation of fact-finding responsibility is an abuse of discretion that compels reversal of the grant of relief. Without passing on the credibility of the witness, the materiality of the testimony at issue cannot be considered -- Ausley's testimony is not credible, and that fact is dispositive. Because of that lack of credibility, there is no support for any relief.

3. THE TRIAL COURT'S GRANT OF RELIEF IS WRONG AS A MATTER OF LAW

Under settled Florida law, a *Brady* violation has four required

[33]Ausley learned of Carla Larson's disappearance from a Channel 9 newscast. (TR237). He does not know when that broadcast took place, and is basing his testimony concerning dates upon an e-mail he claims to have received from Channel 2, another local station. (TR238). That e-mail also included the tag number of the victim's truck. (TR238). Ausley erased that e-mail from his computer. (TR264).

elements: 1) that the State had evidence (including impeachment material) that was favorable to the defendant; 2) that the defendant does not have or could not obtain with reasonable diligence; 3) that was suppressed by the State; and 4) that if the defense had been in possession of the evidence, there is a reasonable probability of a different result. *Jones v. State*, 709 So.2d at 519. That four-part test is in the conjunctive, and, unless all four elements are established, there is no *Brady* violation, and, therefore, no basis for relief. Huggins cannot carry his burden of proof, and the Circuit Court erroneously set aside his conviction and sentence of death.

Even viewing the evidence from the evidentiary hearing in the light most favorable to the result below, Ausley's testimony was that he observed a white female who had hair of a color and style that **reminded** him of Angel Huggins' hair color and style at the time of Huggins 1999 capital trial[34]. That white female was driving a vehicle bearing a tag that **partially** matched the tag number of Ms. Larson's truck, and was seen by Ausley on a day in June of 1997 **that he cannot recall**. Ausley repeatedly emphasized that he never claimed that the driver was Angel Huggins, and, in fact, emphasized

[34]To repeat the genesis of this proceeding, Ausley contacted the State Attorney's Office after seeing television news coverage of Huggins trial during which a photo or video of a person whom Ausley says was Angel Huggins was broadcast. The record does not establish what photo Ausley saw, nor is there any identification of such in the record.

that the hairstyle was the major factor in his observation, **not the facial features**. (R238).[35]

When the *Jones* standard is applied to that evidence, it is not apparent how Ausley's testimony is favorable to Huggins. Assuming for the sake of argument that this testimony was before the jury, the **most** that it does is suggest that Angel Huggins **might** have been in the *Explorer* at a time that she was not asked about during the trial. Even viewed in the best light possible, the Ausley evidence **might** be viewed as impeachment of a minor part of Angel Huggins' testimony.[36] Further, assuming that Ausley's testimony in some way places Angel Huggins behind the wheel of the victim's truck, that does not support the defense theory of the case. The trial testimony established that Angel Huggins and the defendant were in Orlando on June 14-15, 1997. Angel was not asked what vehicle was driven on that trip, but, obviously, Huggins knew the answer to

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[35]Ausley said that Angel Huggins' hair "kind of looked similar with the hair style and shape of" the hair of the person he saw driving Ms. Larson's vehicle. (R197). Ausley said that it was the hair and the size of the person, not the facial features, that were similar to the person he saw on television (who is assumed to be Angel Huggins, though there is no satisfactory proof of that fact). (R238).

[36]Huggins did not attempt to have Ausley identify Angel Huggins from a photograph, even though he had every opportunity to do so. Had Ausley affirmatively identified Angel Huggins as the person he saw in traffic in June of 1997, there would be an issue that is, perhaps, deserving of this Court's attention. However, this case presents a new trial that was granted as a result of nothing more than a similar hairstyle.

that question because he was there. (SR709-10).[37] Ausley's testimony, viewed in the light most favorable to the defense, is not "favorable" within the meaning of *Jones*. Because that is so, the *Brady* inquiry is at an end, and all relief should be denied. However, Huggins also failed to carry his burden of proof on the remaining elements of *Jones.*

The second serious glaring problem with the Ausley testimony is that Huggins cannot meet the second, or due diligence, component of *Jones.* Ausley was known to defense counsel well before trial, and defense counsel **knew** of Ausley's statement to law enforcement that he had seen an *Explorer* being driven by a white **male**. Trial counsel King testified, by deposition, **that he was aware of this statement and found nothing about it to be significant**. (King depo, at 13-14, 17).[38] Due diligence suggests that counsel would have contacted Ausley, and, had they done so, Ausley, by his own testimony, would have told them the same things that he testified to at the hearing. (R247). Specifically, Ausley's testimony was that his story had never changed, but rather had always been the version of events that he related at the evidentiary hearing.

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[37]This argument ignores the fact that the whereabouts of the *Explorer* are accounted for on those two days -- it was not in Orlando.

[38]This statement is peculiar, given that the defense theory was that Huggins had nothing to do with Ms. Larson's murder, and that the statement would have arguably suggested someone other than Huggins was in possession of the truck.

(R247).[39] As was the case in *Blanco*, Ausley's testimony is "new" in the sense that it came after the original statement to law enforcement, but, if that is the scenario that the trial court credits, that court must then address the due diligence component of *Jones*, which is, under this scenario, an insurmountable obstacle. *See, Blanco v. State,* 702 So.2d 1250 (Fla. 1997). Because of Ausley's testimony that his story in 1999 was the same as the version he related in 1997 (but that law enforcement got it wrong), that "evidence" could have been discovered through the exercise of due diligence because Ausley was known to the defense (even though they regarded his information as insignificant).[40]

Of course, under settled law:

> [i]n reviewing a trial court's application of the above law to a rule 3.850 motion following an evidentiary hearing, this Court applies the following standard of review: As long as the trial court's findings are supported by competent substantial evidence, "this Court will not substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court."

Blanco v. State, 702 So.2d 1250, 1252 (Fla. 1997) [citation and footnote omitted]. Competent substantial evidence does not support

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[39]As discussed above, Ausley testified that law enforcement got most of the facts that he related to them wrong.

[40]To the extent that Huggins may claim that his counsel did not have the time to follow up every "lead", the record indicates that present counsel entered a written plea of not guilty on June 6, 1998, 12 days after Huggins was indicted for this offense. (R??0. exhibit F from hearing.

the order in this case because the question of Ausley's credibility, which is determinative of the issue before this Court, was expressly not decided by the circuit court. Because that is so, this Court should not defer to the lower court's grant of relief. If the circuit court credited parts of Ausley's testimony and did not credit other parts, such fact is not addressed in the order granting a new trial.[41] In any event, the absence of a credibility determination prevents there being competent substantial evidence to support the lower court's order. *See, e.g., State v. Robinson*, 1999WL147652 (Fla. 1st DCA 1999) (court must assess credibility of the witnesses in ruling on motion to suppress); *Parker v. State*, 641 So.2d 369, 375 (Fla. 1994) (denial of motion for new trial proper when "new evidence" offered to support not credible); *Blanco, supra; Melendez v. State,* 718 So.2d 746, 748 (Fla. 1998) (*Brady* claim rejected because witness upon whom it was based found incredible); *Wade v. State*, 673 So.2d 906, 907 (Fla. 3d DCA 1996) (error to grant motion to suppress when officer's testimony found credible). The credibility issue is inextricably intertwined with Ausley's testimony, and, because this Court is left to speculate about the due diligence component, there is no competent substantial evidence to support the lower court's order. The

[41]As has been discussed throughout this brief, Ausley's credibility, which the circuit court refused to decide, must be decided in order to decide the *Brady* claim. If Ausley is not credible, there can be no such claim -- the circuit court's job was to make that determination.

conviction and death sentence should be reinstated.

The resolution of the third *Jones* element, the "suppression" component, depends upon the resolution of Ausley's credibility. If Ausley's testimony is believed, the prosecution cannot have suppressed anything because, according to Ausley, his testimony at the evidentiary hearing is the same as what he told law enforcement when he was interviewed in June of 1997. If Ausley's story has not changed, and that is his testimony, it is difficult to conceptualize how anything was suppressed.[42] If, on the other hand, one somehow accepts the "white female driver" version of Ausley's testimony and puts aside the conflict between Ausley's testimony and that of law enforcement, there is no suppression within the meaning of *Brady* and *Jones* because that testimony is neither favorable evidence nor is it impeachment evidence. See pages 20-24, above. There is no basis for granting a new trial.

The final *Jones* element requires that there be a reasonable probability of a different result had the evidence been disclosed to the defense. Huggins cannot make that showing for several

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[42]The trial court made much of the fact that Ausley "came forward" after seeing news coverage of Huggins' trial. In so doing, the court overlooked the fact that Ausley insisted that he has never said anything different from his testimony at the evidentiary hearing. If that is true, Huggins encounters the due diligence element which he cannot overcome. The confusing part of this issue arises as a result of Ausley's claim that law enforcement incorrectly reported what he told them. **That square conflict in the testimony creates a credibility choice which the trial court must make to decide this case.** It did not do so.

reasons. Had the defense had Ausley's 1999 version of events, they would have had testimony that placed the defendant's wife in possession of the victim's truck, **at a time that other witnesses also placed that truck in the defendant's possession**. The defense would hardly want to prove that Huggins and his wife were using the victim's truck as their family vehicle. Further, had the defense sought to present the 1999 version of Ausley's testimony, Ausley would have been impeached by his 1997 statements to law enforcement, wherein he stated that the vehicle he observed was driven by a white **male**. If Ausley had claimed that law enforcement got his statement wrong, the jury would have been faced with a credibility choice. That credibility choice is fundamental to the "reasonable probability" component of *Jones*, and the trial court's failure to decide it is error. Because of Ausley's claim of error by law enforcement, his credibility is a core component of the *Jones* standard -- *Jones* cannot be addressed without deciding the credibility matters. The trial court's order should be reversed.

CONCLUSION

Wherefore, based upon the foregoing, the State submits that the order of the Circuit Court setting aside Huggins' convictions and sentence of death should be reversed, and that the convictions and sentence of death should be reinstated.

Respectfully submitted,

ROBERT A BUTTERWORTH
ATTORNEY GENERAL

KENNETH S. NUNNELLEY
ASSISTANT ATTORNEY GENERAL
Florida Bar #0998818
444 Seabreeze Blvd. 5th FL
Daytona Beach, FL 32118
(904) 238-4990

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to Robert Wesley, 126 E. Jefferson Street, Orlando, Florida 32801, on this _____ day of April, 2000.

Of Counsel