IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-436

LOWER TRIBUNAL NO. 16-2004-CF-00675

JOHN F. MOSLEY

Appellant,

v.

STATE OF FLORIDA,

Appellee,

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REPLY BRIEF OF APPELLANT

John F. Mosley, Appellant
DC#J30192
7819 NW 228th Street
Raiford, FL 32026

I, the Appellant, previously had this 81 page REPLY BRIEF emailed electronically to the clerk of court on May 5, 2015, but I can not confirm at this present date of 05/24/15 [redacted] received the electronic copy due to my maximum lockdown status.

I resubmitt this 81 page REPLY BRIEF paper copy by U.S. mail CERTIFIED #7012 2210 0000 9868 2228.

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PRELIMINARY STATEMENT

Postconviction Extraordinary Circumstances

I, John F. Mosley, the APPELLANT, repeatedly in person on teleconference, and in over 50 LETTERS demanded my postconviction counsel Richard A. Sichta to raise/file all meritorious claims/issues in my postconviction 3.850/3.851, appeals, and habeas corpus State and Federal and he has not. Some of the main letters to Sichta are (2014 dated 07/18/2014, 10/14/2014, 04/30/2014 CERTIFIED #7012 2210 0000 9868 2235, 08/05/2014 CERTIFIED #7010 1870 00019680 2963, 11/20/2014 CERTIFIED #7010 1670 0002 2835 5650), (2015 dated 04/30/2014 CERTIFIED #7012 2210 0000 9868 2242, CERTIFIED #7012 2210 0000 9868 2211).

I did not have enough time to brief all issues. I only seek an acquittal or new trial because I am innocent.

The Appellant, John F. Mosley, Initial Brief to this Honorable Court after his convictions and sentence to death was affirmed on July 16, 2009. Mosley v. State, 46 So. 3d 510 (Fla. 2009). The Appellant filed a pro se' "MOTION FOR REHEARING" on July 30, 2009, due to ineffective direct appeal counsel which was denied on September 23, 2009.

Based on the Appellant's direct appeal counsel's ineffectiveness and abandonment the Appellant filed a pro se' "PETITION FOR WRIT OF CERTIORARI" to the United States Supreme Court on December 22, 2009. In the "**final disposition**" of the United States Supreme Court denied the Appellant's "MOTION FOR REHEARING" for the Petition For Writ Of Certiorari on February 22, 2011, Mosley v. Florida, 131 S. Ct. 1564, 179 L. Ed. 2d 370 (2011).

The Appellant filed his "initial" "POSTCONVICTION 3.850/3.851 MOTION WITH SPECIAL REQUEST FOR LEAVE TO AMEND" with the Florida 4th Judicial Cir. Trial Court on August 6, 2010, through his post-conviction counsel. The Appellant's Postconviction 3.850/3.851 Motion was amended on October 3, 2010, October 4, 2011, December 19, 2011, April 6, 2012, and October 15, 2015. Evidentiary hearing was held on September 4-5, 2013, and on October 14, 2015. The state filed a response on October 22, 2013. The Appellant's post-conviction counsel and the State filed written closing arguments on November 26, 2013. The postconviction trial court denied post-conviction relief on January 14, 2014, **without notifying or serving a copy** of the denial order to the Appellant or his post-conviction counsel; upon surfing the postconviction trial court's website he accidentally discovered the postconviction denial order had been issued without any notification and he immediately filed a "NOTE OF APPEAL" with this

Honorable Court on February 24, 2014. This current postconviction appeal and habeas corpus was filed on October 24, 2014. **NOTE**: The Appellant demanded several times to his poconviction counsel to appeal "every claim" his 3.850/3.851 postconviction appeal and to raise 5, not 1, habeas corpus claims; postconviction stated he will comply with the Appellant's demands several times and in an August 10, 2012, letter to the Appellant. The Appellant's demands to were not complied with. The Appellant is confined to a cell 24-7 and cannot control Counsel's' actions or lack of actions.

The Appellant, John Mosley, filed a pro se' "MOTION TO SUPPLEMENT POSTCONVICTION APPEAL RECORDS" with all pro se' motions ever filed by the Appellant on June 12, 2014; on June 12, 2014, the Appellant filed a pro se' "AMEMDED MOTION TO SUPPLEMENT POSTCONVICTION APPEAL RECORDS". After pressure from the Appellant's pro se' filings the Appellant postconviction counsel filed "APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL" to which this Honorable Court took "judicial notice" to and recognized all of the Appellant's pro se filings as part of the record on August 21, 2014.

The State filed an "extremely long" in small font type postconviction appeal response and habeas corpus response on March 2, 2015.

The Appellant on March 30, 2015, U.S. mail CERTIFIED #7012 2210 0000 9868 2242 a letter to his postconviction counsel demanding he meet with him to be sure everything meritorious be included in this current and final State appeal postconviction reply brief and habeas corpus reply brief; demanded postconviction counsel file a "MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEFS". Postconviction counsel scheduled an April 3, 2015, 2:00p.m. 30 minute telephone conference with the Appellant; F.S.P. #205 prison officials had the Appellant at the telephone conference1:45 p.m. sharp until 2:50 p.m. and posticonviction counsel did not telephone the Appellant which prompted the Appellant to file a pro se "MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEFS" with this Honorable Court on April 9, 2015, to properly file reply briefs to the State's "extremely long" postconviction response brief and habeas corpus response brief. Martinez v. Ryan, 132 S. Ct. 1309 (U.S. 2012) The Appellant has demonstrated under the "MARTINEZ STANDARD" that this court should review and include in this REPLY BRIEF in deciding this initial-review collateral proceeding appeal due to postconviction collateral counsel's error to raise all meritorius "substantial" claims. Both prongs of Martinez are met (1) it is a substantial claim and (2) postconviction collateral counsel's error to not raise it; warrants review.

John F. Mosley will be referred to as "Mosley", "Appellant", "Defendant", or "I". The record on direct appeal will be referenced as "R" for citation purposes proceeded by the volume number, and followed by the page number: (1R1). The record on postconviction 3,850/3.851 appeal will be referenced as "PCR", and any supplemental record on appeal will be designated as "SR".

STANDARD OF REVIEW

ARGUMENTS I, II, V & IV – Brady, Giglio, and Strickland claims present mixed questions lf law and fact. Where the trial court conducted and evidentiary hearing, the reviewing court will defer to the factual findings of the trial court supported competent, substantial evidence, but will review the application of the law of facts de novo. See e.g. Hurst v. State, 18 So. 3d 975, 988 (Fla. 2009), Pittman v. State, 90 So. 3d 794, 811 (Fla. 2011) Socher v. State, 883 So. 2d 766, 771-772 (Fla. 2004)

ARGUMENT III – In reviewing the trial court's decision as to a newly discovered evidence claim following an evidentiary hearing, this Court must determine whether the trial court's findings are supported by competent, substantial evidence, Hurst, 18 So. 3d at 993.

ARGUMENT IV – Where the circuit court denies 3.851 claims without evidentiary hearing, this Court reviews the circuit court's decision de novo, accepting the movant's factual allegations as true to the extent they are not refuted

by the record, and affirming the ruling only if the record conclusively shows that the movant is entitled to no relief. Howell v. State, 109 So 3d 763, 777 (Fla. 2013).

ARGUMENT VII - Where multiple errors are discovered in the jury trial, a review of the cumulative effect of those errors is appropriated because "even though there was competent substantial evidence to support a verdict.... and even though each of the alleged errors, standing alone, could be considered harmless, the cumulative effect of such errors [may be] such as to deny to defendant the fair and impartial trial that is the inalienable right of all litigants in this state and this nation. "McDuffie v. State, 970 So 2d 312, 328 (Fla. 2007).

ARGUMENT VIII - This is a "substantial" meritorious claim that "vitiated" the entire outcome of the Appellant trial with its "harmful" effect of trial defense counsel's ineffectiveness for not objecting to the State's introduction to the jury many items of cumulative inadmissible, irrelevant, and extrinsic evidence, (which was not used in the charged crimes), in inference upon inference through trial testimony and in closing arguments misleading and prejudice the jury to believe non-evidence was evidence as evident by the verdict. Agatheas v. State, 77 So. 3d 1232 (Fla. 2011).

This was CLAIM 15 in the Appellant's 3.850/3.851 POSTCONVICTION MOTION that was summarily denied when the facts of this meritorious claim is

clearly on the face of the record and it "mirror" Agatheas, Moore, and Francois who were granted relief on this same claim. Moore, 1 So 3d 1177; Francois, 132 So 3d 1206. Where the circuit court's decision de novo, accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling only if the record conclusively shows that the movant is entitled to no relief. Howell v. State, 109 So. 3d 763, 777 (Fla. 2013).

I, the Appellant, did not and do not waive this claim in this my initial-review collateral proceeding appeal. I demanded my postconviction counsel raise this 3.850/3.851 CLAIM 15 in this initial-review collateral proceeding appeal and if I did not demand it was/is upon postconviction counsel to raise all meritorious claims for this court to view the cumulative damage of prejudice where one error alone might be harmless but two, three, four, and on errors are **very harmful** as evident by the 3.850/3.851 "18 CLAIMS" and the convictions.

I, the Appellant, through numerous pro se' filings and in this filing have demonstrated due diligence in showing that this "ARGUMENT VIII" should be granted by this Honorable Court in this initial-review collateral proceeding appeal because both prongs of the "MARTINEZ STANDARD" are met (1) it is a substantial claim and (2) postconviction collateral counsel's error to not raise it. Martinez v. Ryan, 132 S. Ct. 1309 [9] (U.S. 2012).

STATEMENT OF THE CASE

On May 6, 2004, John Mosley was arrested for the murders of Lynda Wilkes and Jay-Quan Mosley, Ms. Wilkes' infant. (1 R 1) On July 1, 2004, a Duval County Grand Jury indicted Mosley on two counts of premeditated murder. (1 R 11.) Mr. Mosley proceeded to trial. Jury selection occurred on November 7-8, Mosley v. Florida, 131 S. Ct. 219 (2010).

Mr. Mosley filed his initial 3.850 Motion with Special Request for Leave to Amend with trial court August 6, 2010. The state filed its response on August 23, 2010. Mr. Mosley filed a subsequent 3.850 Motion on October 4, 2011, December 19, 2011, April 6, 2012, and October 15, 2013. Evidentiary hearing was held on September 4, 2013 and October 14, 2013. The state filed a response on October 22, 2013. Mr. Mosley and the State filed written closing arguments on November 26, 2013. The trial court denied postconviction relief on January 14, 2014. This appeal follows:

STATEMENT OF FACTS

Jury Selection: In jury selection, Juror "R" repeatedly stated that she "d[id] not know" whether she could be fair and impartial after viewing gory photographs of the deceased victim – she did not know what she "would take home with [her] and sleep with. I don't know." (10 R 154-155). Reed was never rehabilitated. She sat on Mosley's jury. (12 R 515)

Trial: - The state's main witness, co-defendant, Bernard Griffin, testified against Mosley. He stated that he willingly agreed to testify truthfully against Mosley and that he had not been promised anything by the state. (13 R 675-76). Griffn said that he was not hoping for a benefit in exchange for his testimony. (13 R 676.) On cross-examination, he stated that he only met with the assistant attorneys a couple times. (13 R 743; 756-57) Griffin then clarified he met with the prosecutors only twice within the past thirty days. (13 R 756-57) Although Griffin admitted to telling his aunt during a jail phone call that he would be coming home soon, he claimed that he only said that to make her feel good, and he denied that he ever informed that he would not get prison time. (13 R 729-30). Griffin stated that the prosecutors did not prep him for his trial testimony. (13 R 757). Griffin said he had no idea what sentence he might receive, even though he thought about it every night. (13 R 753).

In the prosecution's guilt phase closing argument the prosecutor opined that Mosley was telling the jury a "fantasy story," that he was a liar and "lived his life with unfaltering belief that he could go on with complete impunity in every aspect of life. Well, that stops today" (19 R 1968). The prosecutor also said that Mosley's words were not those "of an innocent man. No." (19 R 1959) and his actions were not "the actions of an innocent man." (19 R 1978)

In Mosley's penalty phase, the prosecutor informed the jury that they do not seek death in every case (22 R 2412), that the "easy thing to do" is recommend a life sentence, and that a death recommendation, "may not be an easy thing to do but I submit to you it's the right thing to do." (22 R 2433).

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[2] This Court found the former argument improper on direct appeal. See Mosley v. State, 46 So 3d 510, 5220523 (Fla. 2009).

3.851 Evidentiary Hearing:

Bernard Griffin was called by the defense in evidentiary hearing. (10 PCR 1758). He was charged with two counts of accessory to murder after the fact. (10 PCR 1758). He did not sign a plea form until after testifying against Mosley. (10 PCR 1759).

Griffin signed an affidavit on January 7, 2013 stating that he knew he would receive a lenient sentence if he testified favorably for the state against Mosley. (5 PCR 991-92). He received non-jail food the night before Mosley's trial and that he was told by the prosecutor to answer "no" if asked by the defense at trial whether he got a deal in exchange for his testimony. (5 PCR 991-92)

He admitted that although he did not know exactly what his sentence would be after testifying against Mosley, he "had a little idea that I wasn't going to get that much time." (10 PCR 1759). He explained:

A: Like through the process of going through everything I was going through I had – Ms. Libby Senterfitt and some other individuals said I wasn't going to get that much time. They promised me that.

***

Q: Okay. And when you took the stand during Mr. Mosley's trial you knew you weren't going to get the maximum amount of time?

A: Right.

Q: Okay. And prior to trial, did Ms. Senterfitt tell you to say on the stand if you were asked if you had to deal to tell the defense you did not have a deal?

A: Yes.

Q: Okay. And prior to trial, did Ms. Senterfitt tell you to say on the stand if you were asked if had to deal to tell the defense you did not have a deal?

A: Right.

Q: And where did she say that?

A: One of the days I went to her office.

(10 PCR 1759-60)

Q: Were you told that if you talked about your deal at Mosley's trial that it would harm the state's case?

A: Yes.

Q: Did Ms. Senterfitt tell you why it would harm the state's case?

A: No.

(10 PCR 1761).

Q: At trial did you testify you did not have a deal?

A: Yes, sir.

Q: Was that accurate?

A: No, sir. That wasn't.

(10 PCR 1761).

Q: Were you told by the State Attorney that you would receive probation or a little jail time prior to testifying?

A: Yes, sir.

Q: Okay. And when I say prior to testifying, I mean prior to testifying in Mosley's trial?

A: [Nods head affirmatively]

Q: Is that true?

A: Yes, sir.

Q: Do you remember calling you grandmother from jail and talking to her about don't worry about me, I'm not going to do that much time? Do you remember that?

A: Yes, sir.

Q: Did you tell her that because you knew you had talked with the State Attorney and you had a deal in place?

A: Yes, sir.

Q: So, the statement you made to your grandmother about you're going to be okay and you're not going to do prison time that was a true statement?

A: That was a true statement.

(10 CR 1763-64)

Q: Do you remember saying at trial that you were hoping – you were not hoping for any type of benefit from you testimony at trial?

A: Yes, sir.

Q: Was that an accurate statement?

A: [Shakes head negatively]

Q: Is that a no?

(10 PCR 1765-66. The prosecutors also informed Griffin that he was eligible for a lengthy sentence if he did not cooperate in the case. "At first it was 50 years on the table, I can get 50 years for this charge or something." (10 PCR 1769) Then, he was informed that he was facing up to 30 years. (10 PCR 1770)

Griffin also testified that the prosecutor worked with him on numerous occasions prior to testifying at Mosley's trial:

Q: Did State Attorney tell you that you had some inconsistent statements made prior and did you guys go over how to deal with those inconsistent statements at trial?

A: Yes, Sir.

Q: What did she tell you? Do you remember?

A: Just like things did not sound good to her she switched it up or whatever, get everything in order before trial start.

Q: And how many times did you guys work on your testimony before trial?

A: Several times. Every time I came over there to go to her office that was the main reason why I went over there.

(10 PCR 1765) And even though Griffin was in jail for his involvement in this case, the prosecutor bought him dinner from a Chinese take-out restaurant the night before he testified against Mosley. John McCallum brought him the food. Griffin did not pay for it and did not have to eat it in the jail. He ate it in a room by himself" close to the courtroom." (10 PCR 1767, 1804.)

After Mosley's trial, Griffin wrote Judge Weatherby a letter declaring that Ms. Senterfitt helped him get his life back – he was referencing to his plea deal in the instant case. (10 PCR 1778)

Griffin violated the probationary term that he received for his involvement in this case three times. (10 PCR 1776-77). He received 60 days for possession of a weapon on school grounds and 6 months for resisting arrest without violence. Mr. Guy and/or Ms. Sentrifitt (Mosley's prosecutors in the instant case) were the

prosecutors in those cases. In the third case, he received 20 years in prison – neither Guy nor Sentrifitt were the prosecutors in that case. (10 PCR 1777). He believes that Guy and Sentrifitt helped him with the first two violations of probation. (10 PCR 1777) He believes that they should have helped him with his last violation of probation as well. (10 PCR 1778)

Investigators from the State Attorney's Office visited Griffin in prison prior to the evidentiary hearing to find out whether the affidavit he wrote was true. (10 PCR 1770) Griffin verified that every statement with the affidavit, Defense exhibit 2, was true. (10 PCR 1772-73).

Detective Mark Romano testified for the defense. (9 PCR 1555). Det. Romano was the lead detective in Mosley's case. He ascertained that the homicides occurred between 12:57 and 1:21 p.m. on April 22, 2004. This timeframe was determined from reenacting the driving distance and speaking to people. (9 PCR 1556-57, 1567)

Det. Romano spoke to Mosley's co-defendant, Bernard Griffin, several times, once while he was in jail after his arrest in the present case. (9 PCR 1557, 1559-60) Griffin's statements contained some inconsistencies. (9 PCR 1557). The prosecutor, Ms. Senterfitt, got a sworn statement from Griffin after one of Romano's conversations with him. (9 PCR 1558) Romano also spoke with

Griffin's attorney, John Whited. Romano was never informed what Griffin's prison exposure was or what he was ultimately charged with. (9 PCR 1561-62). He was never present when any suggested or promised Griffin what sentences he would receive. (9 PCR 1567).

Romano conceded that he collected no evidence linking Mosley to the Armsdale Road location. (9 PCR 1569, 1572)

Richard Kuritz Mosley's defense counsel was called by the defense. (9 PCR 1573) Kuritz enlisted enlisted investigator Mike Hurst and his assistant to help with the guilt phase investigation of the case. (9 PCR 1577) Quentin Till was Kuritz's co-counsel, whose primary responsibility was the penalty phase. (9 PCR 1582-83) The defense theory was that Mosely's co-defendant, Bernard Griffin was responsible for the murders, possibly with another unknown individual (not Mr. Mosley). (9 PCR 1583-84). Mosley did not prohibit Kuritz from presenting that defense. (9 PCR 1585)

Alibi defense: Kuritz met with Assistant State Attorney Guy in preparation for Mosley's 3.851 hearing. The focus of that conversation was the alibi jury instruction claim. (9 PCR 1576)

Kuritz testified that he would not use the word "alibi" to define his defense theory. However, he conceded that he called at least four witnesses to prove that Mosley could not have committed the crimes because he was somewhere else, "I

was calling as many witnesses as I could to kind of close the window of time that he would have had the option and availability to do this." (9 PCR 1586). He said that he never considered this an "alibi case" because he "never had something where I say here's where he was when you say it happened." (9 PCR 1588)

However, Kuritz recalls that Griffin called Mosley at 12:37 a.m. for a ride, Griffin stated that Mosley picked him up 20 minutes later, and the whole incident started at 12:57, (9 PCR 1588-89) And he recalls that Mosley's wife and daughters testified that Mosely was home around 1:00 p.m. that day. (9 PCR 1589) He conceded that where the state's theory of defense was that Mosley committed the crimes between 12:57 and 1:21 p.m., and testimony that Mosley was at home at 1:00 accounts for "at least some of" the time the murders could have happened. (9 PCR 1589) Kuritz actually drove the route from Armsdale Road two or three times to determine if it was "possible and what all fit into it." He determined that it would be a very small window for the murders to occur, and made that part of his defense at trial. (9 PCR 1588-89)

Kuritz also recalled that the state's theory was that Mosley disposed of both bodies after midnight the same day. (9 PCR 1590) Kuritz called Mosley's wife and daughter, Alexis, to testify that he was home at 11:30 p.m. on the 22nd, that he was in bed sleeping at 5:15 the next morning, and his SUV was in the driveway. (9

PCR 1591). Kuritz argued that Mosley was not present when the bodies were dispose of. (9 PCR 1594)

According to Kuritz's evidentiary hearing testimony. "I'm just saying he wasn't there and that's not necessarily an alibi because I don't necessarily have an alibi." (9 PCR 1594) From Kuritz's perspective, he could not request an alibi jury instruction because he was arguing that Mosley was at "a variety of locations over a window of time," not at a "particular place at a specific time." (9 PCR 1673-74) He felt that he needed something "rock solid" to show the jury for it to constitute an alibi defense and he did not think he had that. (9 PCR 1675) However, he recalled that the state referred to his defense as an "alibi" in its argument to the jury. (9 PCR 1595)

Griffin's recantation: Griffin was important to the state's theory of the case – he was "extremely critical." (9 PCR 1595, 1596). "But-for" Griffin's testimony "it was probably a J.O.A." (9 PCR 1596-97) However, Kuritz never spoke with Griffin. (9 PCR 1578) He wanted to allege that Griffin was obviously there, either by himself or with a friend, because he knew so much about the events. (9 PCR 1957) He tried to show inconsistencies in Griffin's statements through Mosley's testimony. (9 PCR 1597) He tried to show that Griffin was biased or "had some type of relationship with the government and or the State Attorney's office." (9 PCR 1598) Kuritz discovered that Griffin told someone in jail that he was going to

get a deal, so he pulled Griffin's phone records and discovered that Griffin told his grandmother that he had some sort of deal and that he was not going to get much jail time. (9 PCR 1598-99). He found this call before trial and played it for the jury. (9 PCR 1599) From Kuritz' experience in this Circuit the prosecutor will say "I can't tell you what it's going to be but you need to trust me and it's going to work out and that's what came from this case." (9 PCR 1599)

As Kuritz expected, when he questioned Griffin about this at trial, Griffin said there was no deal in place and he was not promised anything. (9 PCR 1599) Based on Kuritz's experience it would be extremely rare for a defendant to take the stand and admit culpability to two capital murder charges without the protection of a plea deal in place. (9 PCR 1601) Griffin got his "get out of jail free card" just like he indicated in the call to his grandmother – he went home and got probation. (9 PCR 1602) Kuritz would have "loved" to have known that Griffin had a deal in place at the time of trial because he would have argued that Griffin would have "done anything in the world" to go from looking at 25 to life to probation. (9 PCR 1602-3)

Similarly, if Kuritz had known that Griffin had been walked from jail to the State Attorney's Office to rehearse his testimony, and that the State ordered him special food the day before Mosley's trial, Kuritz "absolutely" would have used

this information to bolster his theory that the state was "buying" Griffin's testimony. (9 PCR 1603)

State's alleged improper trial tactics: Kuritz was asked whether the following questioning by the prosecutor of Det. Waldrup was improper:

"Q [:] It was Bernard's demeanor and the way that he reacted to certain areas that led you to believe that he was being truthful?" Detective Waldrup.

"A [:] Yes, it was."

(9 PCR 1620) Kuritz responded that it was "close to being objectionable" and "it could be depending on the context," (9 PCR 1623-24)

Kuritz conceded that the following comment was "close to being objectionable" and "it could be depending on the context." (9 PCR 1623-24) Kuritz conceded that the following comment was "close to objectionable" as "improper bolstering":

> "But at the same time back in Jacksonville another small army of good people was working just as hard that day and night uncovering a different kind of mountain, a mountain of evidence. They.....found the truth and that's why we are here.

(9 PCR 1626, 1628)

Kuritz agreed that the following penalty phase closing argument was improper prosecutorial expertise:

> "We have told you that death is not an appropriate – we have told you that death is not appropriated and it's not sought in every first degree murder case but it is sought in this one."

(9 PCR 1636-37)

Kuritz acknowledged that the following question was ""dangerously close" to constituting a personal opinion of the prosecutor:

> "And I submit to you the easy thing to do is to say to yourself what difference does it make? John Mosley is going to die in prison no matter what he does or what we do. A recommendation for death on each of these murders may not be the easy thing to do, but I submit to you it's the right thing to do."

(9 PCR 1637-38)

Quentin Till was called as a defense witness in evidentiary hearing. (9 PCR 1696) Till was Kuritz's co-counsel in Mosley's case. Till's involvement was limited primarily to the penalty phase. (9 PCR 1699-1700)

Till considered Griffin crucial to the state's case. (9 PCR 1704) He stated that it would be "rather unusual" (considering his representation of a thousand defendants over the course of his career) for an individual to testify about his culpability in a first-degree murder case without having entered a plea before the case. (9 PCR 1708-8)

Mr. Till was "very curious" about whether Griffin had a deal in place with the prosecution prior to Mosley's trial. He found it "irritating" that the Griffin was being touted as the "golden boy," and being treated with "kid gloves." Mr. Till knows how the system works, and although there might be no promises per se,

there are little winks. Mr. Till is "sure" Griffin was treated favorably for his participation in Mosley's case. (9 PCR 1706-07).

Mr. Till agreed that the defense put forward "could" be called an alibi defense. (9 PCR 1709) Mr. Till did "not have an answer" for whether any possible harm arose from not requesting an alibi instruction. (9 PCR 1710)

Mr. Till also acknowledged that several comments of the state were objectionable.

Q: And what about this one, Mr. Till: "Mosley lived his life with the unfaltering belief that he could go on with complete impunity in every aspect of life. Well, that stops today."

A: That was in the guilt phase?

Q: Yes, sir.

A: Closing?

Q: Yes, sir.

A: Yeah. That would be objectionable.

(9 PCR 1715.)

Q: Also in closing: "He gave false statements to David Jordan. It was a lie, and he told Terrance Forbes that he had made – that he had been up all night."

And here's another one: "We know that's not true. We know that's not true. That was a lie. He was at Jamila's and look at that letter. He was at Jamilla Jones ['] about 6:00 o'clock. The defendant tried very hard to make an alibi."

A: That would probably be objectionable, too, yeah.

(9 PCR 1715.)

Q: What about statements such as these: "These are not words of an innocent man. He's the victim of his own greed and desire, and those are not the actions of an innocent man."

A: Again – objectionable, okay. That's marginal. Probably – be on the safe side probably be objectionable.

(9 PCR 1717)

Q: "We have told you death is not appropriate and it's not sought in every first degree murder case but it's sought in this case."

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A: Right. This case is – you know, these are the right circumstances for the imposition and recommendation by you of the death penalty. I think that's I think that's highly improper.

(9 PCR 1718-19.)

Q: Mr. Till do you consider this following argument improper: "And I submit to you the easy thing to do is to say to yourself what difference does it make? John Mosley is going to die in prison no matter what we do. A recommendation for death on each of these murders may not be an easy thing to do but I submit to you it's the right thing to do."

A: I think that's improper argument.

Q: Okay.

A: Yeah. Objectionable.

Q: And do you agree now that those comments should have been objected to at trial?

A: They should have.

(9 PCR 1719-20.)

John Mosley, the defendant/appellant, testified for the defense in evidentiary hearing. (10 PCR 1904.) Mosley was formed by his trial attorneys that they were putting on an alibi defense. (10 PCR 1911.) They discussed the alibi defense every time they visited Mosley in jail. (10 PCR 1911-13.) He gave his trial attorney a timeline to use for setting forth his alibi. (9 PCR 1912) Mosley recalls that trial counsel actually used the word "alibi" in presenting his defense to the jury – he used it in opening statement. (10 PCR 1913.)

Mosley's concern with the murder investigation was not that he would be implicated in the murder, because he was not involved, but that his wife would find out he had been cheating. (9 PCR 1913-14.) He acknowledged that his concerns about the infidelity coming to light probably made him look suspicious. (10 PCR 1914.)

He wrote Jamilla Jones a letter encouraging her to be honest because he knew that she had strong feelings for him and was concerned that after finding out that she was not the only woman in Mosley's life, she would hold a vendetta and try to get back at him. (10 PCR 1914.)

Mosley never had a conversation with any of his family members about the state's alleged "murder time." (9 PCR 1916-17.) In explaining his

communications with his wife about what time he got home that evening, he states that woman do not handle stress well, that his wife's memory is not very good, and that his daughters were just kids. He wanted to stress to them the importance of knowing what time he arrived home because it could come to be important. (10 PCR 1917)

Investigator Michael Hurst was called as a defense witness. (10 PCR 1821.) Hurst was appointed to assist trial counsel in the investigation of Mosley's case. (10 PCR 1822.) Though Hurst recalls that Griffin was the most important witness in the case, he never spoke with Bernard Griffin, or assisted trial counsel in attempting to discredit his testimony. (10 PCR 1823, 1824-25.) Before Mosley's trial, Hurst interviewed an inmate name Hampton who indicated that Griffin told him he "was not going to get any prison time," and he had a "deal" for his cooperation with his testimony for the state." (10 PCR 1823.) Hurst listened to phone call between Griffin to his grandmother essentially telling her that he had a deal and that he was coming home.[3] (10 PCR 1825.)

Investigator Earnest Edwards testified at the evidentiary hearing for the state. (10 PCR 1807.) Edwards and a female investigator went to the prison where Griffin was being held to question Griffin about his affidavit. They informed Griffin they were with the State Attorney's Office. Griffin told Edwards that when

he met with "the lawyer" regarding his testimony at Mosley's trial (prior to signing an affidavit).

He stated that he had not written anything down – that "the lawyer" was writing down what he said and that he did not read what "the lawyer" wrote. (10 PCR 1812.) He also stated that he signed the affidavit "but didn't read it." He told Edwards he "don't want nothing to do with this." (10 PCR 1812-13.) Griffin "didn't want to participate" in the meeting with Edwards and "didn't want to be there." (10 PCR 1813) Griffin never denied that the statements contained in the affidavit were true. (10 PCR 1816) On cross-examination, the investigator admitted he drove three hours to see Griffin and three hours back but never asked him whether the statements in the affidavit were true. (10 PCR 1818.)

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[3]The defense also called Detective Gary Stucki. (10 PCR 1834); Officer Jennifer Kayter (9 PCR 1745-47); and Detective Kimberly Long (9 PCR 1748.)

Fourth Judicial Circuit Judge Elizabeth Senterfitt was called by the state in evidentiary hearing. (10 PCR 1844.) She was the lead prosecutor in Mosley's case. (10 PCR 1846.) During the investigation she became aware of Bernard Griffin, who ultimately stated that he was present for the murders of the victims. (10 PCR 1847.) Griffin was instrumental to her case-in-chief. (10 PCR 1863.) His status at the time of Mosley's trial was as a testifying co-defendant – his charges to

accessory-after-the-fact were pending at the time. (10 PCR 1847-48.) She met with Griffin prior to Mosley's trial, as was standard practice. (10 PCR 1848) Griffin's attorney was present for some, but not all, of the meeting she had with Griffin. (10 PCR 1848-49.) John McCallum was usually the investigator responsible for transporting Griffin from the jail to the State Attorney's office. (10 PCR 1849.) She denied telling Griffin what his sentence would ultimately be. (10 PCR 1851) She acknowledged that it is possible she ordered Griffin non-jail food the night before Mosley's trial. (10 PCR 1875.)

After testifying, Griffin's case was resolved for a disposition including two years of community control followed by eight years of probation. (10 PCR 1854.) She acknowledge that it "might not be right" to allow a co-defendant such as Griffin to come to court, testify against the defendant, admit culpability, then max him out on the charges he was facing. (10 PCR 1860). According to Judge Senterfitt, Griffin's attorney would have had "every reason" to believe that if Griffin was cooperative she would let the court know or try to work out a deal based on Griffin's cooperation. (10 PCR 1861) She stated "I would say certainly I had no intent of trying to give him 30 years, no. That would have been wrong I think." (10 PCR 1876) From her experience, a State Attorney's recommendation goes a long way with the judge in determining a case. (10 PCR 1861)

Judge Sentrifitt acknowledged that the meetings she had with Griffin occurred in her office. (10 PCR 1862) John Guy, John McCallum, and Griffin's attorney may have been present. (10 PCR 1863) She would have gone over her questions and tried to prepare him for possible cross-examination questions. (10 PCR 1867-68) She cannot recall <u>any</u> case where a flipped co-defendant had not entered into a plea prior to inculpating himself at a defendant's trial. (10 PCR 1873)

STATEMENT OF THE ISSUES

I. WHETHER THE PROSECUTION COMMITTED A. GIGLIO VIOLATION IN KNOWINGLY ALLOWING ITS MAIN WITNESS, BERNARD GRIFFIN, TO TESTIFY UNTRUTHFULLY AT MOSLEY'S TRIAL?

II. WHETHER THE PROSECUTION COMMITTED A <u>BRADY</u> VIOLATION IN FAILING TO INFORM THE DEFENSE THAT ITS MAIN WITNESS, BERNARD GRIFFIN, RECEIVED FAVORABLE TREATMENT PRIOR TO HIS TESTIMONY IN MOSLEY'S TRIAL AND WAS INFORMED THAT HE WOULD NOT RECEIVE A PRISON SENTENCE IF HE COOPERATED IN TESTIFYING AGAINST MOSLEY?

III. WHETHER NEWLY DISCOVERED EVIDENCE EXISTS THAT BERNARD GRIFFIN KNEW THAT HE WOULD RECEIVE A NONPRISON SENTENCE IN EXCHANGE FOR HIS TESTIMONY IN MOSLEY'S TRIAL AND RECEIVED PREFERENTIAL TREATMENT BY THE PROSECUTOR; AND WHETHER THIS NEWLY DISCOVERED EVIDENCE, IN ADDITION TO ALL OTHER ADMISSIBLE EVIDENCE, WOULD PROBABLY PRODUCE AN ACQUITTAL ON RETRIAL?

IV. WHETHER DEFENSE COUNSEL WAS DEFICIENT FOR FAILING TO STRIKE JUROR "R" AND MOSLEY WAS PREJUDICED WHERE JUROR "R" WAS ACTUALY BIASED?

V. WHETHER TRIAL COUNSEL WAS DEFICIENT IN FAILING TO REQUEST AN ALIBI JURY INSTRUCTION WHERE AN ALIBI DEFENSE WAS PRESENTED AT TRIAL, PREJUDICING MOSLEY?

VI. WHETHER TRIAL COUNSEL WAS DEFICIENT IN FAILING TO OBJECT TO NUMEROUS INSTANCES OF PROSECUTORIAL MISCONDUCT IN MOSLEY'S TRIAL AMOUNTING TO FUNDAMENTAL ERROR PREJUDICING MOSLEY?

VII. WHETHER MOSLEY'S TRIAL WAS FRAUGHT WITH PROCEDURAL AND SUBSTANTIVE ERRORS, WHICH CANNOT BE VIEWED AS HARMLESS WHEN CONSIDERED AS A WHOLE?

VIII. WHETHER TRIAL DEFENSE COUNSEL WAS DEFICIENT FOR FAILING TO FAIL MOTIONS TO SUPPRESS AND FAILING TO OBJECT TO THE STATE'S INTRODUCTION OF MANY ITEMS OF CUMULATIVE INADMISSABLE AND IRRELEVANT EVIDENCE THAT PREJUDICE AND MISLEAD THE JURY RESULTING IN A FUNDAMENTAL ERROR?

SUMMARY OF THE ARGUMENTS

I. The state committed a Giglio violation. As was established in Griffin's January 2013 sworn affidavit and Mosley's evidentiary hearing, Bernard Griffin lied numerous times at trial regarding his motives for testifying against Mosley and coaching that he receive prior to trial. The misstatements were not correct at trial.

The prosecution knew that these statements were false. Indeed, the lead prosecutor acknowledged that many of Griffins' statements in evidentiary hearing (refuting his trial testimony) were true. Griffin's false testimony is not harmless to Mosley's case where Griffin is the most important witness the state's case, the other evidence was merely circumstantial in nature, and the jury could very well have found Griffin's bias compelling in weighing the evidence.

II. The state committed a Brady violation in failing to provide the defense with critical impeachment information concerning the circumstances of his testimony against Mosley, including Griffins knowledge that he would be given a lenient sentence if he testified favorably, and extensive witness coaching. The suppression of this impeachment information was material to Mosley's case because Griffins testimony and credibility was absolutely essential to the State's case against Mosley, and Griffins credibility had already been called into question due to his evolving statements.

III. The January 7, 2013 Affidavit of Griffin stating that he knew he was getting a deal with the state in exchange for his testimony against Mosley, that he was coached, that he met with the prosecutor numerous times to go over his testimony, that he was fed take-out food the night before trial, and other information constitutes newly discovered evidence that when considered with all

other admissible information would probably produce and acquittal on retrial.

IV. Trial counsel was ineffective in striking Juror "R" who was never rehabilitated after revealing her actual bias by repeatedly indicating that she did not know if she could give Mosley a fair and impartial trial.

V. Trial counsel was deficient in failing to request the alibi jury instruction where he presented an alibi defense at trial. This failure prejudiced Mosley, where the jury did not have the single most important tool in considering the evidence in Mosley's case – the relevant instruction on how to evaluate an alibi theory.

VI. Trial counsel was ineffective in failing to object to numerous improper remarks from the state and its witnesses, which singularly and cumulatively amount to fundamental error.

VII. Mosley's trial must be reversed due to the cumulative errors that occurred in his case. Where the state withheld critical impeachment information concerning the state's main witness, allowed this witness to testify dishonestly at trial, and made repeated improper remarks in trial and penalty phase; and where trial counsel failed to remove a biased jury or request the single-most important jury instruction to the defense, Mosley was deprived of a fair and impartial trial as well as his rights to due process under the law resulting in a punishment that is cruel and unusual and arbitrary and capricious.

VIII. This is a "substantial meritorious claim that 'vitiated" the entire outcome of the Appellant trial with its "harmful" effect of trial defense counsel's ineffectiveness for not objecting to the State's introduction to the jury many items of cumulative inadmissible, irrelevant, and extrinsic evidence, (which was not used in the charged crimes), in inference upon inference through trial testimony and in closing arguments mislead and prejudice the jury to believe non-evidence was evidence as evident by the verdict. One error alone might be harmless but two, three, four, five, six, and on errors as is the case is **very harmful**. These cumulative errors of inadmissible evidence along with all other numerous errors denied the Appellant a fair trial in violating his due process rights and U.S. Const. Amend. 4, 5, 6,8,14 rights.

ARGUMENTS

GROUND I

THE PROSECUTION COMMITTED A. GIGLIO VIOLATION IN KNOWINGLY ALLOWING ITS MAIN WITNESS, BERNARD GRIFFIN, TO TESTIFY UNTRUTHFULLY AT MOSLEY'S TRIAL RESULTING IN

VIOLATIONS OF MOSLEY'S FIFTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION

Bernard Griffin, was the states most essential witness." [4]This essential

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[4] Everyone involved in the case agreed that Griffin was critical to the state's case: lead defense counsel (9 PCR 1596-97), defense co-counsel (9 PCR 1704), defense investigator (10 PCR 1823, 1824-25), the prosecutor (10 PCR 1883, 1890). In, fact, Justice Lewis noted that Griffin's testimony was an "absolute critical piece of evidence" and inquired about any deals he had with the state during Mosley's direct appeal oral argument.

Reference INITIAL BRIEF (SC14-436), where GROUND 1 Arguments are well stated. I repeat those arguments in this REPLY BRIEF (SC 14-436). (1B pgs. 30-44).

GROUND II

THE PROSECUTION COMMITTED A BRADY VIOLATION IN FAILING TO INFORM THE DEFENSE THAT ITS MAIN WITNESS, BERNARD GRIFFIN, RECEIVED FAVORABLE TREATMENT PRIOR TO HIS TESTIMONY IN MOSLEY'S TRIAL AND WAS INFORMED THAT HE WOULD NOT RECEIVE A PRISON SENTENCE IF HE COOPERATED IN

TESTIFYING AGAINST MOSLEY RESULTING IN VIOLATIONS OF MOSLEY'S FIFTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Reference INITIAL BRIEF (SC 14-436), where GROUND II Arguments are well stated. I repeat those arguments in this REPLY BRIEF (SC 14-436). (1B pgs.44-54).

GROUND III

NEWLY DISCOVERED EVIDENCE EXISTS THAT BERNARD GRIFFIN KNEW THAT HE WOULD RECEIVE A NON-PRISON SENTENCE IN EXCHANGE FOR HIS TESTIMONY IN MOSLEY'S TRIAL AND RECEIVED PREFERENTIAL TREATMENT BY THE PROSECUTOR; THIS NEWLY DISCOVERED EVIDENCE, WOULD PROBABLY PRODUCE AN ACQUITTAL ON RETRIAL AND THE FAILURE TO GRANT A NEW TRIAL ON THIS CLAIM WILL RESULT IN VIOLATONS OF MOSLEY'S FIFTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Reference INITIAL BRIEF (SC 14-436), where GROUND III Arguments are well stated. I repeat those arguments in this REPLY BRIEF (SC 14-436). (1B pgs.54-58).

GROUND IV

DEFENSE COUNSEL WAS DEFICIENT FOR FAILING TO STRIKE JUROR "R" AND MOSLEY WAS PREJUDICED WHERE JUROR "R" WAS ACTUALLY BIASED RESULTING IN VIOLATIONS OF MOSLEY'S

FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Mosley did not accept his trial jury. Before Mosley's trial began, at the end of jury selection, he asked the trial judge if he could back strike a juror. Mosley's request to back strike a juror was denied. The juror Mosley wanted to personally strike was juror "R". **(12 R 535, line 15-23)** Mantarraz v. State, 133 So 3d 473 (Fla. 2013).

Reference INITIAL BRIEF (SC 14-436), where GROUND IV Arguments are well stated. I repeat those arguments in this REPLY BRIEF (SC 14-436). (1B pgs. 58-66).

GROUND V

TRIAL COUNSEL WAS DEFICIENT IN FAILING TO REQUEST AN ALIBI JURY INSTRUCTION WHERE AN ALIBI DEFENSE WAS PRESENTED AT TRIAL, PREJUDICING MOSLEY AND RESULTING IN VIOLATIONS TO MOSLEY'S FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Pre-trial police reports, trial transcripts, and postconviction evidentiary hearing transcripts "clearly show" there was "no physical evidence" on defendant John F. Mosley from the State's murders location of 11600 Armsdale Road, Jacksonville, FL, which all police investigators, alleged co-defendant Bernard Griffin, and prosecutors stated the only time the alleged murders of Lynda Wilkes, and Jay-

Quan was between 12:57 p.m. to 1:21 p.m. on April 22, 2004. A time frame of which John F. Mosley had an "alibi" corroborated by Jimmy Horton, Carolyn Mosley, and Amber Mosley.

The Appellee "misrepresented cellphone records to mislead this honorable court by stating cell phone records reflect that the murders occurred between 12:33 p.m. to 1:21 p.m. in an attempt to expand the murders time because the Appellee refuse to concede it is "impossible" John F. Mosely to have been at 11600 Armsdale Road with Bernard Griffin between 12:57p.m. to 1:21 p.m. In fact, Mosley's cell phone records in conjunction with Bernard Griffin's home records corroborate John F. Mosley's "alibi" due to the fact John F. Mosley was talking on his cell phone to Bernard Griffin on his home phone from 12:33p.m. to 12:37 p.m.; then Bernard Griffin was on his home phone talking to Kenya Mobley 12:37 p.m. to 12:45 p.m., making it "impossible" for Mosley and Griffin to be together before 12:57 p.m. because it was a 12 min. ride demonstrated by Detective M. Romano Mosley to Griffin in the facts demonstrated. Griffin after being picked up by someone at 12:57 p.m. made a phone call from Kenya Mobley's home to Mosley's cell phone at 1:21 p.m. Griffin testified that he did not see Lynda Wilkes and Jay-Quan the alleged victims until 12:57 p.m. and they were alive. 12:57 p.m. Mosley was at home when the alleged crimes occurred on April 22, 2004.

The time frame between Bernard Griffin leaving his home a 12:57 p.m. to 1:21

p.m. phone call from Kenya Mobley is when the alleged murders occurred while John F. Mosley had an "alibi" that encompass the entire murders time frame of 12:57 p.m. More facts, before, during and after the State's murders time frame Jimmy Horton and Carol Mosley testified there were "**no bodies**" in the back of John F. Mosley SUV and he was with them consecutively.

The foregoing facts undisputedly show and corroborate that John F. Mosley had an "alibi" for 12"57 p.m. to 1:21 p.m. and an "alibi" for the "misrepresentation" time of 12:33 p.m. to 1:21 p.m.; (at 12:33 p.m. Mosley was on his cell phone). At Mosley's trial Griffin clearly stated the alleged murders occurred **after** 12:57 p.m.

Mosley's trial defense counsel Richard R. Kuritz was ineffective for not requesting alibi jury instructions for the jury to properly know how to weigh Mosley's "alibi" for a just outcome.

Whether or not counsel want admit it now, defense counsel in Mosley's trial presented an "alibi defense" then failed to request an alibi jury instruction, prejudicing the outcome of Mosley's trial where the jury was not provided the law relevant to Mosley's defense theory in determining his guilt or innocence. "When a defendant provides an "alibi" it is the duty of the jury to weigh his "alibi" with proper alibi jury instructions," [redacted]" not the duty of counsel or the judge to weigh the

defendant's "alibi", Laythe v. State, 330 So 3d 113 (Fla. 3rd DCA 1976). Williams v. State, 395 So 2d 1236, 1238(5) (Fla. 4th DCA 1981).

There are only "3 credible alibi witnesses" and there has **always** been only 3 alibi witnesses which are Jimmy Horton, Carolyn Mosley, and Amber Mosley that factually corroborate John F. Mosley's whereabouts (as being with them) during the State's murder time of 12:57 p.m. to 1:21 p.m. on April 22, 2004. Any other individuals reference by the State or ineffective counsel are only mentioned to confuse the "alibi" and "mislead" this honorable court. Doctor's, plumbers, and associates have nothing to do with Mosley's whereabouts 12:57 p.m. to 1:22 p.m., those are after the fact testimonies inserted to distort the issue.

I. Applicable Law

A claim of ineffective assistance of counsel is determined under the Strickland standard: The defendant must show that counsel's performance was deficient. Second, the defendant must show that the deficient performance prejudiced the

defense. Strickland v. Washington, 46 U.S. 668 (1984).

When an alibi defense is presented to a jury through defense counsel's opening statements and alibi witnesses testimony there is nothing strategic in defense counsel's failure to request alibi jury instructions as aptly stated by the Ninth Circuit, "We have a hard time seeing what kind of strategy, save an ineffective one, would lead a lawyer to 'deliberately omit' his client's only defense..." U.S. v. Span, 75 F. 3d 1383, 1390 (9th Cir. 2008).

Upon request, a defendant is entitled to a jury instruction on any theory of defense the substantive evidence supports, however weak or improbable his testimony may have been. Trial courts are to decide whether to give a particular jury instructions without weighing the evidence because doing so is the sole prerogative of the jury. Mathis v. State, 973 So. 2d 1153, 1155 (Fla. 1st DCA 2006).

A defense counsel's failure to request a jury instruction "has been deemed" to be an "unreasonable omission which severely prejudice his client's case" where the error complained of "negated the only defense put forth by trial counsel." Id. At 1157 (citing Platt v. State, 697 So. 2d 989,991 (Fla. 4th DCA 1997); see also Cabrera v. State, 766 So. 2d 1131, 1134 (Fla. 2nd DCA 2000).

II. Analysis

A. Introduction

This court has defined an "alibi" as follows:

The defense known in law as an "alibi" is that, at the time of the commission of the crime charged in the indictment the defendant was at a different place, so that he could not have committed it.....

"An alibi" in law simply means that the defendant was not there; or, to state it more definitely, a defendant who sets up an alibi shows such a state of facts surrounding his whereabouts at that particular time as would make it practically improbable or impossible for him to have committed the offense charged." State v. Child, 20 Pac. 275, 276, 40 Kan. 482.

See Blackwell v. State, 79 Fla. 709, 720 (Fla. 1920) (emphasis added) (some internal citations omitted).

All evidence of this case factually demonstrate and corroborate from pre-trial police reports, sworn statements, depositions, trial transcripts, and postconviction evidentiary hearing transcripts there was "no physical evidence" on defendant John F. Mosley from the State's murders location of 11600 Armsdale Road, Jacksonville, FL, which all police investigators, alleged codefendants Bernard Griffin, and prosecutors stated the only time the alleged murders of Lynda Wilkes and Jay-Quan was between 12:57 p.m. t0 1:21 p.m. on April 22, 2004. (13 R 739-742), (13 R767-78), (15 R 1149-1152) A time frame of which John F. Mosley had an "alibi" **corroborated** by Jimmy Horton (18 R 1629-1637), Carolyn Mosley (19 R 1897-1901), and Amber Mosley (19 R 1817), (19 R 1812-1813).

Trial defense counsel **repeatedly** used the word "alibi" in his opening statement to

the jury, indicating that at the time of trial, he believed he was proceeding under an alibi theory (12 PCR 583), (12 PCR 585), (12 PCR 586), (12 PCR 599).

Trial defense counsel presented an "alibi" defense and "alibi" defense information to the jury through police report, Mosley's cell phone records, Griffin's home records, sworn statements, depositions, and direct testimony of Mosley's 12:57 p.m. to 1:21 p.m. "alibi" witnesses to prove it was impossible for John F. Mosley to have committed the charged offenses as follows, (postconviction evidentiary hearing testimony established the state's murders were between 12:57 p.m. to 1:21 p.m. (a time frame which Mosley has an "alibi"):

Police Reports

JSO #~~2004-37225~~ 2004-372225, **Sup. #2**: pg. 12, para. 10, Jimmy Horton; acknowledged Mosley came back to Quality Tire at 1 p.m.; pg. 13, para. 1, acknowledged Carolyn Mosley left work early to pick up sick daughter Amber for walk-in doctor appoint then went home; pg. 23, para 6, acknowledged at 12:33 p.m. John F. Mosley was on his cell phone not committing murders; pg. 37, para. 13, acknowledged the drive from Bernard Griffin's home to the State's murders location was 12 mins, (Griffin's home phone call Kenya Mobley end at 12:45 p.m. plus 12 mins drive is 12:57 p.m. start time).

JSO #~~2004-37225~~ 2004-372225, **Sup. #5**: pg.3, para 4, acknowledged Griffin was on his home phone talking to Kenya Mobley from 12:37 p.m. to 12:45 p.m. and his ride arrived

20 mins later at 12:57 p.m.

John F. Mosley's cell phone records

Mosley's (904-891-4535) cell phone called Griffins (904-764-8216) home phone at 12:33 p.m. to 12:37 p.m. making it "impossible" for Mosley to be with Griffin (State v. Mosley – EVIDENCE LIST, No. 70, 71, 72)

Mosley's (904-891-4535) cell phone received a call from Kenya Mobley's (904-786-5045) home phone, by Griffin, at 1:21 p.m. establishing Griffin left him home with someone between 20 mins after 12:37p.m. is 12:57 p.m. to 1:21 p.m. as Griffin stated, (13 R 740). (State v. Mosley – EVIDENCE LIST, No. 70, 71, 72)

Bernard Griffin's home phone records

Griffin's (904-764-8216) home phone received a call from Mosley's (904-891-4535) cell phone at 12:33 p.m. to 12:37 p.m. making it "impossible" for Mosley to be with Griffin. (State v. Mosley – EVIDENCE LIST, 70, 71, 72) home phone called Kenya Mobley's (904-786-5045) home phone at 12:37 p.m. to 12:45 p.m. immediately after talking to Mosley making it "impossible" for Mosley to be with Griffin, definitely not before 12:57 p.m. (State v. Mosley, EVIDENCE LIST, No. 70, 71, 72)

Trial Testimony

Bernard Griffin: Bernard Griffin testified that the alleged murders of Lynda Wilkes and Jay-Quan occurred on April 22, 2004, at 11600 Armsdale Road, Jacksonville, FL, between **12:57 p.m. to 1:21 p.m.** when he was picked up 20 minutes after his 12:37 p.m. phone call to Kenya Mobley's home phone. (13 R 740), (13 R 767-768).

NOTE: There was "no physical evidence" discovered at 11600 Armsdale Road, and Mosley had an "alibi".

Detective M. Romano, JSO police: M. Romano testified the alleged murders of Lynda Wilkes and Jay –Quan occurred on April 22, 2004, at 11600 Armsdale Road, Jacksonville, FL between **12:57 p.m. to 1:21 p.m.** (15 R 1149-1152).

Jimmy Horton: Mr. Horton runs Quality Tires. He testified that John F. Mosley came to Quality Tires to have the left rear flat tire on his SUV repaired on the morning of April 22, 2004. The tire was repaired and John F. Mosley left before 1:00 p.m. Mr. Horton also testified that he recalled John F. Mosley coming back to Quality Tire for something and that he had previously sworn in deposition that John F. Mosley stopped back by Quality Tires around 1:00 p.m. This testimony **corroborated** John F. Mosley's story that he left home, noticed that he had a flat tire, and went to Quality Tire to have the flat tire repaired. It also **substantiates** John F. Mosley's "alibi" that he went back to Quality Tires to retrieve his valve cap around 1:00 p.m. (18 R 1629-1737). **Most importantly**, Mr. Horton testified

that when John F. Mosley returned to Quality Tires around 1:00 p.m. (during the State's murders time), there were **no bodies and no tarps** in John F. Mosley's SUV (18 R 1636). Additionally, **corroborated** by police report #2004-372225, Sup. #2, pg. 12, para. 10,

NOTE: John F. Mosley lived only approximately 2 minutes from Quality Tires.

Carolyn Mosley: Carolyn Mosley testified that her and John F. Mosley's suburban had tire problems. Carolyn testified that on April 22, 2004, their daughter Amber got sick in school and she left work early to take Amber to the doctor, Dr. Christy Aston. Carolyn testified that her and Amber arrived home from the doctor's office around 12:30 p.m. in the afternoon; and **John F. Mosley was home from 1:00 p.m. to 2:05** p.m. then he left to go to work (19 R 1897-1898) Carolyn, also, testified that John F. Mosley arrived home from work around 11:30 p.m. on April 22, 2004, (19 R 1901) wearing his work attire (19 R 1891). **Most importantly**, Carolyn testified that after John F. Mosley arrived home from work she retrieved a grocery bag with bread and milk from the rear area of the Suburban and there were **no bodies and tarps** in the suburban (19 R 1900-1901). Carolyn's testimony **corroborated** John F. Mosley's "alibi" of his whereabouts during the "entire time frame" of the State's murders time of 12:57 p.m. to 1:21 p.m.

Amber Mosley: Amber Mosley testified that on April 22, 2004, she went home early from school because she was not feeling well; Carolyn, Amber's mother,

picked her up from school, visited Amber's physician, stopped by Food Lion, and arrived home before 1:00 p.m. Amber testified that her father, John F. Mosley arrived home shortly thereafter at 1:00 p.m. (19 R 1819-1820). Amber's testimony corroborated John F. Mosley's "alibi" of his whereabouts during the State's murders time on April 22, 2004.

The foregoing "**3 alibi witnesses**" place John F. Mosley somewhere else **12:57 p.m. to 1:21 p.m**. during the time the alleged murders were committed on April 22, 2004, which make Mosley's trial counsel ineffective for not requesting alibi jury instructions.

Mosley's trial counsel "named" his defense an "**alibi defense**" in opening statements (12 R 584-599), during trial through the fore mention "3 alibi witnesses" (18 R 1629-1637) (19 R 1897-1898)(19 R 1817), and in closing arguments (20 R 2085-2086), but failed to request "alibi jury instructions" denying Mr. Mosley his State and Federal constitutional right to have jury instructions based on his defense.

Evidentiary Hearing Testimony

Richard A. Kuritz: Trial defense counsel, Richard A. Kuritz, at John F. Mosley's evidentiary hearing, "admitted" he presented an "alibi defense" at Mosley's trial (PC, pg. 37, line 11-18, 09/04/13), yet he did not request "alibi jury instructions". (PC, pg. 45, line4-8, 9/04/13)

At John F. Mosley's September 4, 2013, postconviction evidentiary hearing his PC counsel, Richard A. Sichta, asked trial counsel, Richard A. Kuritz, directly did he call alibi witnesses during Mosley's trial:

PC Counsel: Did you argue that there was no evidence found at the crime scene on Armsdale Road, the place where Mr. Griffin said these murders occurred?

R. Kuritz: **Absolutely.**

PC Counsel: And did you call three or four witnesses to say that John Mosley was somewhere else at the time of this crime?

R. Kuriz: **Yes.** **NOTE:** Somewhere else is the definition of an "alibi"

(PC, pg. 37, line 11-18, 09/04/13)

Detective M. Romano, JSO police: Now, Sgt. M. Romano testified at John F. Mosley's evidentiary hearing that the time frame for the alleged murders of Lynda Wilkes and Jay-Quan was **between 12:57 p.m. to 1:21 p.m., April 22, 2004** (PC, g. 7, line 15-21, 09/04/13). **Most importantly,** Sgt. M. Romano testified there was "no physical evidence' linking John F. Mosley to the alleged murders (PC, pg 23, line 10-17, 09/04/13).

John F. Mosley: Defendant John F. Mosley testified at his postconviction evidentiary hearing on October 14, 2013, that his trial counsel Richard A, Kuritz told him and assured him that his trial defense would be an "alibi defense", which

they discussed "alibi defense" at every meeting, and Kuritz presented an "alibi defense" to the jury without requesting "alibi jury instruction" (PC, pg. 11-13, 10/14/13). Most importantly, Mosley's postconviction evidentiary hearing testimony is factually corroborated that Kuritz told Mosley he was presenting an "alibi defense" by Kuritz using the word "alibi" **four times** in his opening statements (12 PCR 583), (12 PCR 585), (12 PCR 586), (12 R 599), in addition to alibi witnesses.

On trial counsel's cue, the state also referred to Mosley's defense as an alibi defense in closing arguments:

State: I was at work. That's his first attempt at an alibi.

(20 R 2085.)

State: He was at Jamila', and look at that letter. He was at Jamila Jones at about 6:00 o'clock. The defendant tried very hard to make an alibi.

(20 R. 2086).

Even co-counsel for the defense admitted in evidentiary hearing that it could have been an alibi defense (9 PCR 1709) and that he could not think of any harm it would have done to request an alibi jury instruction:

Q: [I]t he defense is putting forward witnesses to say defendant – defendant Mosley was somewhere else, what's the harm in not sic] requesting an alibi

defense?

A: I don't have an answer for that. It's something they could have considered, yeah.

(9 PCR 1710.) Despite that everyone (including lead counsel in opening statements of trial) is in agreement that Mosley presented an alibi defense, lead trial counsel refused to admit this point in postconviction.

B. Deficient performance

Where counsel presented an alibi defense, and this was the only defense presented at trial, counsel was deficient in failing to request the alibi instruction that would have given the jury the tools to determine Mosley's guilt or innocence in the case. Mathis, 973 So. 2d at 1157. Had the instruction been requested, the court would have been compelled to so instruct the jury." Hudson v. State, 381 So. 2d 344, 346 (Fla. 3d DCA 1980). (It is not the function of the trial judge to weigh the evidence and select some cases in which to give the alibi instruction. The instruction should be given in every case where there is sufficient evidence to take the issue to the jury.) In attempting to explain away the deficient act of failing to request an alibi jury instruction, trial counsel repeatedly distinguished his theory at trial from an alibi defense, stating that his defense was to put Mosley in various times and places to show that it would have been impossible or impracticable for him to have committed the crimes. On the other hand, posited counsel, an alibi defense," means

that the defendant was in a definite, single place, other than the crime scene when the crimes were committed. (9 PCR 1673-74.) He felt that he needed

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[18]This so even where counsel neglected to file a Notice of Alibi with the State pursuant to Florida Rule of Criminal Procedure 3.200:

> It is well settled that a defendant is entitled to have a jury instructed on the law applicable to his or her theory of the defense. In Ramsaran v. State, 664 So. 2d 1106, 1107 (Fla. 4th DCA 1995), we held that it was reversible error to fail to instruct the jury on the theory of alibi where evidence was presented supporting the defense, despite the defendants noncompliance with Rule 3.200. Failure to follow the notice provision of the rule does not authorize a trial court to refuse to instruct on the alibi defense as a sanction.

Ivory v. State, 718 So. 2d 233,233-34 (Fla. 4th DCA 1998). something "rock solid" to show the jury for it to constitute an alibi defense and he did not think he had that. (9 PCR 1675.)

Counsel cannot insulate himself from this deficient performance upon a claim of strategy." As aptly stated by the Ninth Circuit, "We have a hard time seeing what kind of strategy, save an ineffective one, would lead a lawyer to "deliberately omit" his clients only defense..." US. v. Span, 75 F.3d 1383, 1390 (9th Cir 1996). This is especially so where trial Counsel's "trategy" was based on a misunderstanding of the law. See Lawhorn v. Allen, 519 F.3d 1272, 1295 (11th Cir. 2008) ("Tactical or strategic decisions based on a misunderstanding of the law are unreasonable."); Hardwick v. Crosby, 320 F.3d 1127, 1163 (11th Cir.

2003) ("a tactical or strategic decision is unreasonable if it is based on a failure to understand the law"); Butler v. State, 84 So. 3d 419, 421 (Fla. 5th DCA 2012); State v. Williams, 127 So. 3d 890, 896 (Fla. 1st DCA 2013).

As set forth in Blackwell, above, despite trial Counsel's claims to the contrary, the defense theory fits the exact definition of an alibi: "a state of facts surrounding [Mosley's] whereabouts at that particular time or [timeframe] as would make it practically improbable or impossible for him to have committed the offense charged." Blackwell, 79 Fla. at 720. The Fourth DCA in Rostano v. State, 678 So. 2d 1371 (Fla. 4th DCA 1996) reversed where trial court refused to give an alibi jury instruction because it misunderstood the definition of "alibi." The appellate court found:

> In the instant case, the trial court concluded that Rostano's claim to be in another part of his house away from his garage did not provide an alibi to the charges against him:
>
> I don't find that to be an alibi. *To me an alibi is I couldn't have been in this part of town, I was in another part of town at the same place and time.*
>
> (Emphasis added). In this case, Rostano offered evidence that he was on the third floor of the building. By evidence adduced at trial, Rostano was entitled to have the jury consider whether he was precisely at the scene of the crime."

Id. at 1372. Where as in in Rostano, defense counsel misunderstood the definition of an alibi (as set forth in Blackwell, his declaration of strategy on this point must

fail. Hardwick, 320 F.3d at 1163.

Trial Counsel's claim that he would have " lost credibility with the jury" (e.g. 9 PCR 1595, 1675) had he requested an alibi jury instruction is also specious where he argued an alibi defense throughout trial, actually used the word "alibi" on numerous occasions, and the state attorney repeatedly referred to his defense as an alibi defense. It is unreasonable to think counsel would have lost credibility" with the jury by giving them an alibi jury instruction where his entire defense theory from his first utterances in opening statement was an alibi theory. If an alibi defense was really going to damage his credibility, the damage was certainly already done when he presented **six alibi witnesses.**

C. Prejudice

The murders at issue were committed between 12:57 and 1:21 p.m. on April 22, 2004. (9 PCR 1556-57, 1567.) Defense counsel presented several alibi witnesses at trial including Mosley's wife and daughters to testify that he was home around 1:00 p.m. that day, making it all but impossible for him to have participated in the crimes. (19 R 1810-21, 1822-34, 1881-1922.)

Mosley was prejudiced by his counsel's failure to request the alibi instruction and his Sixth and Fourteenth Amendment right to due process and

effective assistance of counsel were violated where his attorney failed to request the most basic tool to ensure that his jury had the information it needed to render a not guilty verdict: instructions informing the jury that they should find him not guilty if they had reasonable doubt that he may not have been there.

> ALIBI: An issue in this case is whether defendant was present when the crime allegedly was committed. If you have a reasonable doubt that the defendant was present at the scene of the crime, it is your duty to find the defendant not guilty.

Fla. Std. Jury Instr. § 3.6i) (2010).

Obviously, where counsel failed to request the alibi jury instruction, the instruction was not presented to the jury. While the jury likely understood that Mosley put on evidence that he was not at the scene (s) of the crime (s), the jury was not instructed as to how to weigh and consider the alibi information and how this information should be evaluated. In Hudson v. State, where a defendant argued on direct appeal that the trial court erred in refusing to give an alibi jury instruction, the reviewing court found that the error of the trial court was not harmless:

> The state argues that since the jury received an instruction on presumption of innocence, the courts failure to give the alibi instruction was, at most, harmless error. We disagree. **In the absence of an instruction delineating the burden of proof required of the defendant, the jury could well have held the defendant to a standard beyond that required by law**. Where evidence is inconclusive, the trial judge has a duty to provide standards for the jury to follow.

381 So. 2d at 346; see also Williams v. State, 395 So. 2d 1236, 1238 (Fla. 4th DCA 1981) ("Obviously, the evidence of alibi was sufficient to raise a reasonable doubt as to appellants presence at the scene of the sexual battery. Therefore, the trial court committed reversible error in failing to instruct the jury on alibi pursuant to appellant's request.")

Similarly, this Court should find that there is a reasonable probability that the outcome of Mosley's trial would have been different but or Counsel's failure to request the necessary jury instruction.

GROUND VI

TRIAL COUNSEL WAS DEFICIENT IN FAILING TO OBJECT TO NUMEROUS INSTANCES OF PROSECUTORIAL MISCONDUCT IN MOSLEY'S TRIAL AMOUNTING TO FUNDAMENTAL ERROR PREJUDICING MOSLEY AND RESULTING IN VIOLATIONS OF MOSLEY'S FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORDA CONSTITUTION.

There was "no physical evidence", no corpus delicti, linking appellant John F. Mosley to the alleged murders of Lynda Wilkes and Jay- Quan at 11600 Armsdale Road, Jacksonville, FL. The very dubious ever-changing, inconsistent testimony of alleged co-defendant Bernard Griffin claimed Mosley was involved in the alleged murders. Bernard Griffin gave "8 different" official statements of what allegedly occurred with 3 statements in police report JSO #2004-372225, Sup. #2; 1

statement in police report JSO #2004-341517, Sup.#5; 1, 04/27/04 sworn statement; 1 4/29/04 sworn statement; 1 JSO video/audio statement; and inconsistent trial testimony that was unbelievable until not just one but two police officers, Det. C. Waldrup and Det. M. Romano, at Mosley's trial improperly "vouched for and bolstered" Bernard Griffin's trial testimony which let the jury to believe B. Griffin because the police "vouched for Griffin which mislead the jury and rendered Mosley's trial outcome to be unfair and tainted. Tomblin v. State, 20 So 3d 1093 (Fla. 2010).

I. Applicable law

Prosecutorial misconduct has long been recognized" as grounds for reversal. Berger v. United States, 295 U.S. 78 (1934) (it is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed. Consequently, improper suggestions, insinuations, and, especially, assertion of personal knowledge, are apt to carry weight against the accused when they should proper carry none.). In Greer v. Miller, 483 U.S. 756, 765 (1987) the Supreme Court stated:

> This Court has recognized that prosecutorial misconduct may so infect the trial with unfairness as to make the resulting conviction a denial of due process. To constitute a due process violation, the prosecutorial misconduct must be of sufficient significance to result in the denial of
> the defendants right to a fair trial.

Id., citing Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974); United States v. Bagley, 473 U.S. 667, 676 (1985).

Because the following claims of prosecutorial misconduct were not preserved with objections at trial, Strickland is the appropriate standard for ascertaining error. Brooks v. Kemp, 762 F.2d 1383, 1402 (11th Cir. 1985) ("The Strickland v. Washington test, requiring an assessment of errors to determine whether there is a reasonable probability that they changed the outcome of a case, is applicable to our analysis of whether improper closing arguments delivered by the prosecuting attorney rendered the capital sentencing hearing fundamentally unfair.") However, Strickland's prejudice analysis must now ask whether the complained of comments constituted fundamental error. See Hendrix v. State, 908 So. 2d 412,426 (Fla. 2005) (Appellate counsel may not be deemed ineffective for failing to challenge an unpreserved issue on direct appeal unless it resulted in fundamental error")

I. Deficient performance

Counsel was deficient in failing to object to the following improper comments of the prosecution:

A. Guilt Phase

Improper Vouching

The Florida Supreme Court in Gorby v. State, 630 So. 2d 544 (Fla. 1993), held, "It is improper to bolster a witness' testimony by vouching for his or her credibility." See also Parker v. Allen, 565 F.3d 1258, 1274 (11th Cir. 2009) ("A prosecutors comments constitute improper vouching' if they are based on the governments reputation or allude to evidence not formally before the jury."); United States v. Young, 470 U.S. 1, 7, 9 (1985) (counsel have a duty to refrain from commenting on their personal views on a defendant's guilt and the evidence). Trial counsel for Mosley failed to object to Detective Craig Waldrup's bolstering and vouching for Bernard Griffin upon questioning from the prosecutor:

State: **Was it Bernard's demeanor and the way he reacted to certain areas that led you to believe he was being truthful?**

Waldrup: Yes, it was.

(14 R 826.) Trial counsel conceded in evidentiary hearing that this comment was "close to being objectionable" and it could be depending on the context." (9 PCR 1623-24.)

Trial counsel again failed to object to Detective Mark Romano bolstering and vouching for Bernard Griffins testimony.

Defense: Without telling me, was there yet still another version?

Romano: I think he gave me – **the final version is the truth, sir. I** mean he was minimizing his involvement. No doubt about it.

(15 R 1127) (Emphasis added). Trial counsel failed to object again to Det. Romano bolstering and vouching for Bernard Griffins testimony.

Romano: He [Griffin] had said that. **I didn't have any reason to bele that he was lying about that.**

(15 R 1145) (emphasis added). Throughout the guilt phase closing argument, the state vouched for the credibility of the work conducted by the police during investigation:

State: [B]ut at the same time back in Jacksonville another small army of good people was working just as hard day and night uncovering a different kind of mountain, a mountain of evidence...

Overwhelming Caselaw

This Honorable Court, the U.S. Supreme Court, and the U.S. District court of Appeals, 11th Circuit, have long consistently held that witness, (especially a police officer or prosecutor), cannot "vouch for or bolster the testimony of another witness. Tumblin v. State, 29 So. 3d 1093 (2011), "it is especially harmful for a police witness to give his opinion of another witnesses credibility because of the great weight afforded an officers testimony." U.S. v. Hands, F. 3d 1322, 1323 [19] (11th Cir. 1999)

Mosley, the Appellant in this case, "**mirror**" Tumblin's case due to the fact both cases are first degree murder death penalty cases with one alleged co-defendant – eye witnesses that the police vouched for the credibility of the alleged

co-defendants testimony, "which invaded the province of the jury to determine a witnesses credibility." Invading the jury's province causes the jury to be not be impartial which deny the constitutional right to an impartial jury; this is a reversible error. Tumblin was granted a new trial as Mosley should be granted a new trial with an impartial jury.

In Tumblin the police officer only vouched for the credibility of the witness one time with overwhelming evidence against Tumblin and this court overturned his convictions and sentences in holding firmly to Tumblin's constitutional right – whereas- (in Mosley) the police officers vouched for the credibility of the witness three times (14 R 826), (15 R 127), (15 R 145) violating Mosely's constitutional rights in holding Mosley's convictions and sentences should be overturned and remanded for a new trial.

> Tumblin, 29 So. 3d 1094, "law enforcement (officers testimony) that he told detective he believed accomplice would tell him the truth deprived defendant of a fair trial, warranting reversal of first degree murder and robbery with a firearm convictions and remand for a new trial, where the accomplice gave the only eye witness testimony that defendant committed the murder and did so in a premeditated manner; accomplice's testimony and credibility before the jury and court were instrumental in the jury finding the defendant guilty and in the trial court finding in the penalty phase that the murder was cold, calculated, and premeditated."

"Allowing one witness to offer a personal view on the credibility of a fellow witness is an invasion of the province of the jury to determine a witness's creditability." Seibert v. State, 923 So. 2d 460, 472(Fla. 2006) (Quoting Knowles

v. State, 632 So. 2d 62, 5-66 (Fla. 1993). "It is clearly error for one witness to testify as to the credibility of another witness." Acosta v. State, 798 So. 2d 809, 810 (Fla. 4th DCA 2001). Moreover, "it is especially harmful for a (police witness) to give his opinion of a witnesses [sic] credibility because of the great weight afforded an officer's testimony." Seibert, 923 So. 2d at 472 (quoting Page v. State, 733 So. 2d 1079, 1081(Fla. 4th DCA 1999)); See also Acosta, 798 So. 2d at 810. "Police officer's, by virtue of their positions, rightfully bring with their testimony an air of authority and legitimacy. A jury is inclined to give great weight to their opinions....." Bowles v. State, 381 So. 2d 326, 328 (Fla. 5th DCA 1980).

Foregoing overwhelming case laws and the Constitution support, based on police officers vouching for the credibility of the state's only alleged codefendant-eyewitness and trial defense Counsel's failure to object, Mosley's convictions and sentences should be reversed and remanded for a new trial.

Uncovering a different kind of mountain, a mountain of evidence.....

They (police) found the truth that is why we are here.

(19 R 1955) (emphasis added). Trial counsel conceded, in evidentiary hearing, that this comment was "close to objectionable" as improper bolstering." (9 PCR 1626, 1628.)

State: **Gabe Caceras did not quit...Gabe Caceres was diligent in his work. Remember Dr. Tracy? The expert of experts"**

(19 R 1955-56) (emphasis added).

State: They tried and you saw how they tried. They didn't do it. They didn't find him. That's not a reasonable doubt. That's **good work.**

(19 R 1984) (emphasis added).

State: **Well, you heard Gary Stucki has about 18 years on. That's no rookie.**

(20 R 2071) (emphasis added).

State: You heard from Detective Romano and Detective Stucki. **<u>These are not rookie officers.</u>**

(20 R 2073) (emphasis added).

State: The police told you, Detective Romano and Detective Stucki told you the recap on May 5th was leading. They weren't trying to cover anything up...and if they were trying to feed Bernard they really didnt do a good job.

(20 R2074) (emphasis added.)

The preceding statements were made by the state in the attempt to use the government's reputation and experience to bolster the credibility of Griffin and the investigation in the case. This is not a case where an isolated comment was made in closing argument. The record reflects that the prosecutions vouching was pervasive.

Denigration of Defendant and Defense

It is improper for a prosecutor to refer to the accused in derogatory terms, in such manner as to place the character of the accused in issue. Pacifico v. State, 642 So. 2d 1178, 1182 (Fla. 1st DCA 1994); Lewis v. State, 377 So. 2d 640 (Fla. 1979); Donaldson v. State, 369 So. 2d 691 (Fla. 1st DCA 1979); see also Slagle v. Bagley, 457 F.3d 501, 522 (6th Cir. 2006) (for purposes of this appeal, we consider five of the statements denigrating the defense to have been improper.); United States v. Carter, 410 F.3d 1017, 1026 (8th Cir. 2005) (Mr. Carter objects to the prosecutors description of Mr. Carter as a con man" and deviate [sic]," among other things, during closing argument. Such name calling is improper...) Prosecutorial denigration and name calling has long been condemned by Florida's Courts. It is patently improper for the prosecution to refer to a defendant in derogatory, vituperative, or pejorative terms. Rhodes v. State, 547 So. 2d 1201, 1206 (Fla. 1989); Urbin v. State, 714 So. 2d 411 (Fla. 1998) (ruthless killer,

"brutal and vicious character); Brooks v. State, 762 So. 2d 879 (Fla. 2000) (true-deep seeded, violent character, "vicious violent men); Pacifico, 642 So. 2d 1178 (sadistic selfish bully, "criminal, "slick fraternity boy); Biondi v. State, 533 So. 2d 910 (Fla. 2d DCA 1988) (slime); Duque v. State, 498 So. 2d 1334 (Fla. 2d DCA 1986) (scumbag); Izquierdo v. State, 724 So. 2d 124, 125 (Fla. 3d DCA 1998) (reference to a defendant's testimony as a pathetic fantasy" was improper). In Brooks, 762 So. 2d 879, the Florida Supreme Court reversed the death sentence and held that it was improper to denigrate the defense's case as flimsy, "phantom, or excuses." The state in guilt phase closing argument attempted to paint Mr. Mosley as a despicable person whose actions were merely an attempt to avoid facing charges:

State: [T]hat he goes over, he meets with Lynda and he gives this story, his fantasy story, about getting oral sex from her and then according to him he goes right back home to rush back to his toilet.

(20 R. 2083.)

State: Mosley] lived his life with the unfaltering belief that he could go on with complete impunity in every aspect of his life. Well, that stops today.

(19 R 1968.) Co-counsel acknowledged in evidentiary hearing that this comment was improper. (9 PCR 1715.)

State: He gave false statements to David Jordan....It was a lie, and he told Terrance Forbes that he had been up all night.

(20 R 2085-86.) Co-counsel admitted in evidentiary hearing that this comment would probably be objectionable, too, yeah." (9 PCR 1715.)

> State: We know that's not true. We know it's not true. That was a lie. He was at Jamilas, and look at that letter. He was at Jamila Jones at about 6:00 o'clock.
>
> The defendant tried very hard to make an alibi.

(20 R. 2086.)

> State: He's a victim of his own greed and desire.

(19 R 1969.) When asked in evidentiary hearing whether this comment should have been objected to, co-counsel admitted: "That's marginal. Probably – be on the safe side probably be objectionable." (9 PCR 1717.)

> State: Nothing about the grandmother, nothing, **he lied to them**. (19 R. 1969.)

As was the case with the prosecution's impermissible witness vouching comments, the denigration of the defendant and the defense presented at trial were numerous, repetitive, and invasive throughout the guilt phase closing argument.

C. Discussion

The trial court rejected Mosley's prosecutorial misconduct assertions relying on lead counsel's rationale that he failed to object for "strategic" reasons. (7 PCR 1253.) This conclusion is erroneous for at least two reasons: first, there is no indication that trial counsel even considered objecting to any of the above-listed comments at trial, let alone that he failed to object for strategic reasons.

Additionally, this claim of strategy, and the trial courts reliance on it, must fail where, had counsel lodged proper objections, the comments would have amounted to reversible error. See Hodges v. State, 885 So. 2d 338, 367 (Fla. 2003) ("in my view Hodges has demonstrated that trial Counsel's failure to object was deficient and could not be deemed a reasonable strategic decision because the argument was clearly improper and, if objected to, would have constituted reversible error.") (Pariente, C.J., dissenting). In Eure, the Second DCA found:

> If we could determine that in any way the defense Counsel's failure to object was a strategic move, we would not find ineffectiveness; however, in light of the egregious arguments made by the prosecutor, we conclude that counsel's failure to object fell below any standard of reasonable professional assistance. Moreover, there is a reasonable probability that the outcome would have been different because, had an objection and motion for mistrial been made and denied by the trial court, the error would have been preserved.

Eure v. State, 764 So. 2d 798, 801 (Fla. 2d DCA 2000). As in Eure, Counsel's' failure here to enter contemporaneous objections to the numerous egregious

comments of the prosecutor in this case fell below any reasonable standard of professional assistance.

II. Prejudice – the failure to object to numerous instances of improper prosecutorial remarks resulted in fundamental error

Although the comments above may not constitute fundamental error when considered singularly, the cumulative affect of the state's improper comments tips the scale in favor of reversal. Sireci v. State, 587 So. 2d 450, 452 (Fla. 1991).

Aside from the testimony of a scared teenager, who received probation for his role in two grizzly murders in exchange for testifying against Mosley, there was no direct evidence correlating Mosley to the crimes? All the state had were some cell phone records (of a phone that Mosley says he lent to Griffin), the victims DNA in his truck (a truck that Mosley and the victim had sexual relations in), and Mosley's odd behavior (plausibly related to his wife's impending realization of numerous extramarital affairs). The prosecutor in evidentiary hearing all but admitted that the evidence against Mosley was weak, stating that Griffins testimony was crucial to the state's case and that she needed Griffins testimony." (10 PCR 1883, 1890.) Furthermore, the prosecutor knew that Griffin had given conflicting accounts of the events in question and that his credibility was a concern. (10 R 1765, 1864, 1867.) In an effort to tidy up this case and enhance the significance of the marginal evidence, the state bolstered the investigators in the case, vouched for the

credibility of law enforcement officers and Griffin, and belittled Mosley and his testimony. (22 R 2422.) Tomblin v. State, 29 So.3d 1093 (Fla. 2010).

The guilty verdicts and death recommendation in this case could not have been secured absent the repeated prosecutorial improprieties in this case.

GROUND VII

MOSLEY'S TRIAL WAS FRAUGHT WITH PROCEDURAL AND SUBSTANTIVE ERRORS, WHICH CANNOT BE VIEWED AS HARMLESS WHEN CONSIDERED AS A WHOLE. THE COMBINATION OF ERRORS DEPRIVED MOSLEY OF HIS CONSTITUTIONAL RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION

Because of the uniqueness and severity of the death penalty, the United States and Florida Supreme Courts have held that errors, when viewed as a whole, can amount to cumulative error that requires a reversal in convictions even if the errors would not require a reversal if viewed individually. See e.g. Berger, 295 U.S. at 88-89 ["W]e have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential. A new trial must be awarded. ");

GROUND VIII

DEFENSE COUNSEL WAS DEFICIENT FOR FAILING TO FILE MOTIONS TO SUPRESS AND FAILING TO OBJECT TO THE STATE'S INTRODUCITON O FMANYH INTEMS OF CUMULATIVE INADMISSIBLE AND IRRELEVANT EVIDENCE THAT PREJUDICED AND MISLEAD THE JURY RESLUTING IN A VIOLATION OF MOSLEY'S FOURTH, FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

The trial records and postconviction evidentiary hearing records factually and clearly show Appellant John F. Mosley on April 22, 2004, during the state's crimes time 12:57 p.m. to 1:21 p.m. had an alibi, alleged codefendant Bernard Griffin gave many conflicting inconsistent statements, and there was no "physical evidence" linking Mosley to the alleged crimes which the lead the state to present many items of "inadmissible and immaterial evidence" to the jury building "inference upon inference" in misleading the jury to an unfair outcome based on items defense counsel should have suppressed and/or objected to.

During trial and guilty phase closing arguments the state prosecutors presented the following "irrelevant and inadmissible evidence" to the jury to give an inference of evidence which "mislead" the jury: (state reasoning was the items "**resemble**" alleged items used):

(1) State's Trial Exhibit 90 : A diagram of alleged victim Lynda Wilke's home use for home repairs only recovered only recovered from Mosley's home repair tools; (2) STATE'S TRIAL EXHIBIT 107: 4 tarps at Mosley's house

protecting his property from outside property from inclement weather were removed from covering Mosley's front yard bar-b-que grill, backyard bar-b-que grill, backyard refrigerator, and underneath his motorcycle trailer; (3) STATE'S TRIAL EXHIBIT 102: The removable carpet from the key rear cargo area of Mosley's family suburban (was framed, put on wheels, and repeatedly "paraded" in front of the jury) with numerous spots on the removable carpet circled-highlighted giving the pretense of DNA when pretrial tests and trial testimony indisputably showed there was no DNA which confused the issue; (4) STATE'S TRIAL EXHIBIT 30: A "new" gas can marked "bug spray", Mosley did his family pesticide spraying, removed from Mosley's family suburban a week later; (5) STATE'S TRIAL EXHIBIT 119: Two grass fibers, lawn grass, placed in small vials to get the inference of hair fibers; (6) STATE'S TRIAL EXHIBIT: Medical Latex gloves in the family suburban used by Mosley's mother a nurse and Mosley a US navy medical corpsman.

Alleged codefendant Bernard Griffin's credibility was not attacked relating to any of the foregoing STATE'S TRIAL EXHIBITS which made these items completely irrelevant and the items were not linked to the alleged crimes which made this an extrinsic evidence inadmissible.

Despite defense counsel's pretrial/discovery knowledge of the "irrelevant and inadmissible evidence" of the forenamed STATE EXHIBITS, defense counsel failed to suppress and/or object to these items; in affect and effect allowed the state to give inference to the jury to believe the diagram was used to plan the alleged crimes, to believe the tarps were used to wrap the alleged victims, to believe the removable carpet had DNA on it, to believe the "new" gas can was used to douse the alleged victims with gas, to believe medical latex gloves were used to hide prints and to believe the grass fiber were alleged victims hair fibers which these items "cumulative" gave the inference of overwhelming evidence when there was "no evidence"; none of these items were alleged crimes (see STATE'S TRIAL EXHIBIT 90, 107,102,30,119) (19 R states guilty phase closing arguments)

I. Evidentiary hearing was not granted on this sufficiently pleaded claim 15

As a preliminary matter, where the trial court summarily denied this claim without evidentiary hearing (7 PCR 1000-1300), Mosley now request that this court reverse and remand for a hearing due to facts are clearly on the face of the record. Factually based, capital, postconviction claims generally require an evidentiary hearing. Troy v. State, 57 So. 3d 828,834 n. 4 (Fla. 2011) (citing

Amends. to Fla. Rules of Crim. Pro. 3.851, 3.852, & 3.993, 772 So 2d 488, 492 n. 2 (Fla. 2000) See Howell v. State, 109 So. 3d 763, 777 (Fla. 2013)

Moreover, clear precedent also indicates that claims of the cumulative effect on a jury of inference upon inference of irrelevant, inadmissible, and/or extrinsic evidence used by the State during trial to allege evidence without any suppress motions and/or objections from defense counsel require an evidentiary hearing to determine, among other things, trial defense counsel's rationale, or lack thereof, for failing to file motions to suppress and to object to inadmissible evidence. In Moore, the Fifth District held that the "trial court" erred in denying Moore's ineffective assistance of counsel claim where her trial counsel failed to object to the admission of evidence recovered from Moore's house none of which was connected to the charged crime. Moore v. State, 1 So. 3d 1177 (Fla. 5th DCA 2009)

This is a cognitive claim requiring and evidentiary hearing of Mosley's ineffective assistance of counsel and the fundamental error affect, of the cumulative effect, of defense counsel's failure to file suppress motions and/or object to several items forenamed of inadmissible evidence which gave pretense weight to the jury's deliberation and verdict as this Honorable Court held in Agatheas v. State, 77 So. 3d 1232 (Fla. 2011)

II. Applicable Law

A claim of ineffective assistance of counsel is determined under the Strickland standard: The defendant must show that Counsel's performance was deficient. Second, the defendant must show that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 686 (1984). To prove prejudice in the context of counsel's failure to file motions to suppress object to many items of "misleading" irrelevant/immaterial/inadmissible evidence, & defendant must show how the erroneous inadmissible evidence should have been excluded, because there was no link to the alleged crimes, because its admission was a "harmful error" in a pretense demonstrated as evidence of guilt; as this court held in Robertson, 829 So. 2d at 913-14 (quoting Castro 547 So. 2d at 115); Agatheas v. State, 77 So. 3d 1232 (Fla. 2011)

III. Analysis

A. Deficient performance

Defense counsel was deficient in failing to file motions to suppress and/or did not object to the state introduction of "cumulative" inadmissible evidence of a home repair diagram of the alleged victims, rear cargo area removable carpet, "new" gas can used for home pesticide "marked bug spray", and medical latex gloves removed from Mosley's family suburban; 4 tarps covering Mosley's family outdoors grills & refrigerator from inclement weather

removed from Mosley's family home; and 2 grass fibers called hair fibers from who knows where. None of the forenamed items were used in the alleged crimes and had no DNA of the alleged victims on the items, yet, these items were introduced Mosley's jury, the same as Agatheas' jury, in a cumulative effect of many irrelevant items used to build inference upon inference in misleading the jury to believe irrelevant evidence was relevant evidence of guilt.

Defense counsel's failure to file motions to suppress and failure to not object to State's introduction cumulative irrelevant evidence as relevant evidence of guilty claiming the items "look like" evidence in inference through the trial testimony of John Holmquist FDLE (14 R 833-875), Det. Mark Romano & JSO (15 R 1076-1190), alleged codefendant Bernard Griffin (13 R 674-768), and in closing arguments (19 R 1953-2000) mislead Mosley's jury to believe the home improvement diagram was used to plan the alleged crimes, to believe the tarps were used to wrap the alleged victims, to believe the removable carpet had DNA on it, to believe the "new" bug spray gas can was used to douse gasoline, to believe the medical latex gloves were used to conceal prints, all of the forenamed items were used by the "entire Mosley family" with no connection to the alleged crimes, but were presented as evidence of guilt to the jury with no objection from defense counsel which it is

evident by the guilty verdict that the forenamed "cumulative" inadmissible and irrelevant extrinsic evidence contributed to the outcome.

Because evidentiary hearing was not granted on this claim, trial counsel has offered no explanation for his failure to file motions to suppress and to not object to the state introduction of cumulative inadmissible evidence that was undisputedly not used in the charged crimes, yet still presented as evidence of guilt.

B. Prejudice

Actual prejudice is in the guilty verdict its self-obtained with erroneous and cumulative introduction of inadmissible and irrelevant evidence where **nothing in the record linked** the diagram, tarps, removable carpet, new (never used) bug spray gas can, medical latex gloves, and grass fibers (called hair fibers) to being used crimes charged, but the forenamed items were used as evidence of guilt which mislead the jury to an improper verdict. Do to the fact the cumulative forenamed items had no connection were not used in the charged crimes the items would have been inadmissible and should have excluded upon proper objection. Defense counsel's failure to object to the State's introduction of many items of inadmissible evidence that was not used in the charged crimes, prejudice the outcome of Mosley's trial. The evidence is plain on the face of the record is the STATE v. MOSLEY – EVIDENCE LIST, EXHIBITS

90, 107, 102, ---,30, 119; and trial testimony of John Homquist, FDLE, Det. Mark Romano JSO, and alleged codefendant Bernard Griffin gave inference upon inference that the t forenamed items "look like" the ones used in the charged crimes.

Mosley has demonstrated on the face of record that his trial counsel failed to object to the introduction of cumulative inadmissible evidence that gave a pretense of evidence of guilt which lead to Mosley's conviction as did Moore, 1 So. 3d 117 and Agatheas, 77 So. 3d 1232 in cases that "mirror of the same" as Mosley's case where trial counsel failed to object to the State's introduction of cumulative inadmissible evidence not used in the charged crimes in Moore and Agatheas. But, the Florida Appellate courts have "consistently" held that trial counsel is ineffective and fundamental error for not objecting to the State's introduction of cumulative inadmissible evidence not used in the charged crime and when postconviction trial court deny this claim Florida Appellate courts have "consistently" granted review on this issue in all cases and ruled it a harmful error, reversed and remand for a new trial in Moore and Agatheas. Due to the undisputed facts that Mosley's case "mirror in same" on this issue as Moore and Agatheas, Mosley should be granted review on this issue as Moore and Agatheas, was to maintain consistence in fair review by this

honorable court. Moore v. State, 1 Mos. 3d 1177 (Fla. 5th DCA 2009), Agatheas v. State, 77 So. 3d 1232 (Fla. 2011)

The Appellant, John F. Mosley, has demonstrated the prejudice resulting from trial defense trial counsel's deficient performance "on the face of the record" in this case where trial counsel failed to object to the State introduced many items of inadmissible irrelevant and extrinsic evidence in a "cumulative affect" (of a removal carpet, tarps, home repairs diagram, "new" pesticides can, medical latex gloves, grass fibers called hair fibers, etc.), which were not used in the charged crimes but inference upon inference the State claimed through the trial testimony of John Holmquist FDLE (14 R 833-875), Det. Mark Romano & JSO (15 R 1076-1190), alleged codefendant Bernard Griffin (13 R 674-768), and in closing arguments (19 R 1953-2000) that the forenamed "cumulative items" resemble. "**look like**", items allegedly used in the charged crimes which mislead and prejudice the jury to believe those inadmissible cumulative items used by the State as "evidence of pretense" connecting Mosley to the alleged crimes as evidence of guilt which read to the guilty verdict. If trial defense counsel had properly objected to the introduction of the cumulative inadmissible evidence, the outcome would have been different. Trial defense counsel never objected.

The Fourth, Fifth, Sixth, and Fourteenth Amendment of the United State Constitution guarantee due process, right-against illegally seized property, and right to impartial trial.

The entire line of questioning by the State and in closing arguments to introduce the cumulative irrelevant evidence was irrelevant and used to backdoor and bootstrap irrelevant evidence into the trial; its probative value was greatly outweighed by the danger of unfair, prejudice. As long explained by the United States Supreme Court and the U.S. Court of Appeals, 11th Circuit, that prosecutors may not introduce cumulative inadmissible and irrelevant evidence to mislead the jury and prejudice the outcome:

> Erroneous introduction of inadmissible and irrelevant evidence – Fed. R. Evid, 403. Rule 403 is an "extraordinary remedy" "whose major function...is limited to excluding matter of scant or "cumulative" probative force, dragged in by the heels for the sake of its prejudicial effect," U.S. v. Hand, 184 F. 3d 1328 [6][7][8]

U.S. v. Hands, 184 F. 3d 1322 (11th Cir. 1999), Id 1327, "Even of the evidence had been relevant, the ...court would have abused its discretion in admitting it because its prejudicial nature greatly outweighed its probative value, see Fed. R. Evid. 403,"; also see U.S. v. Marshall, 173 F. 3d 1312 (11th Cir. 1999), "An error may substantially influence an outcome and thus warrant reversal even if the evidence, had not error occurred, would have been sufficient to support the conviction." It is

a defendant's constitutional right to have a trial untainted by cumulative inadmissible and irrelevant evidence.

This court in Agatheas and [redacted] has consistently and firmly held on this principal, reaffirming that Agatheas, 77 So. 3d 1232, 1236, [2] quoting, "We have previously held that in order for evidence of a firearm to be inadmissible as relevant in a criminal trial," the State must show a sufficient link between the evidence and the crime." [redacted] (holding that testimony regarding a "little pistol" defendant carried was inadmissible where nothing in the record linked the "little pistol" to the gun used in the crimes charged). As is the case of Mosley, the Appellant, the State introduced cumulative inadmissible evidence of (a removal of carpet, tarps, home repairs diagram, "new" pesticides can, medical latex gloves, grass fibers called hair fibers, etc.) that was not linked to being used in the charged crimes; See Robertson v. State, 829 So. 2d 901, 913(2002), the State cannot rely on the concept of "corroboration" to introduce through the back door clearly inadmissible evidence unrelated to the crime.

The forename cumulative inadmissible evidence in Mosley is a "**carbon copy**" is a sense to Agatheas v. State, 77 So. 3d 1232 (Fla. 2011); Moore v. State, 1 So. 3d 1177 (Fla. 5th DCA 2009); Francois v. State, 132 So. 3d 1206 (Fla. 3rd DCA 2014); where in these cases the State introduced many items of cumulative

inadmissible evidence with no link to the charged crime in inference upon inference which mislead their jury to believe those items were evidence of guilt leading to a limited conviction. The appellate courts were consistent in (reversing and remanding for a new trial) Agatheas, Francois, and Moore, 1 So. 3d 1177, 1178 in stating if evidence is not linked to the charged crime it is "irrelevant", as Mosley's convictions should be reversed and remanded for a new trial.

It cannot be said that the cumulative inadmissible evidence introduced by the State was not harmful based on the verdict itself. Mosley's constitutional right to due process of a fair trial was violated. The only just remedy is a new trial without the irrelevant evidence. Mosley's trial defense counsel was unquestionably ineffective for not objecting to the many items of cumulative inadmissible and irrelevant evidence.

It is Mosley's position that the various errors in his trial individually and cumulatively resulted in a violation of his right to a fair trial under the United States and Florida Constitutions and are sufficient to require reversal of his guilt and penalty phase. This is especially true the state committed a Giglio violation, a Brady violation, and made numerous improper prosecutorial remarks during trial. Had the states improprieties not occurred, had counsel rendered a constitutionally sound performance, and had an actually biased juror not sat on Mosley's panel, it is more likely than not that he would not have been convicted, and at the very least,

he would not have received a death sentence, especially in light of the Life recommendation for Jay-Quan and an 8-4 recommendation for death as to Lynda Wilkes.

The cumulative affect of these errors resulted in violations to Mosley's Sixth Amendment rights to a fair and impartial trial, Sixth Amendment right to counsel, Fifth and Fourteenth Amendment rights to due process and ultimately in an Eighth Amendment violation of his right against arbitrary and capricious and cruel and unusual punishments.

CONCLUSION

WHEREFORE, based on the foregoing, Mr. Mosley respectfully requests this Honorable Court reverse and remand the trial court's denial of his 3.850/3.851 Motion for Postconviction relief for (1) judgement of acquittal or (2) a new trial; on this 24th day of May, 2015.

Respectfully submitted,
John Mosley
John F. Mosley
John F. Mosley DC #J3012
Appellant
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Raiford, FL 32026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered by U.S. mail to Renee M. Rancour, Asst. Attorney General, Office of Attorney General, Capital Appeals, P1-01 The Capital, Tallahassee, FL 32399; and Richard A. Sichta, postconviction collateral counsel, 301 W. Bay Street, Suite 14124, Jacksonville, FL 32202; on this 24th day of May, 2015.

John F. Mosley
John F. Mosley DC #J30192
Appellant

CERTIFICATE OF COMPLIANCE AS TO FONT

I HEREBY that this brief is submitted by the Appellant, using Times New Roman, 14-point font, pursuant to Florida Rules of Appellee procedure, Rule 9.210.

LEGAL MAIL
PROVIDED TO
FLORIDA STATE PRISON
DATE 06/04/15 FOR MAILING.
INMATES INITIALS JM

John F. Mosley
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Appellant