IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-979
LOWER TRIBUNAL NO. 2005-CF-15549

DONALD LENNETH BANKS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

On Appeal from the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida

Honorable Hugh A. Carithers
Judge of the Circuit Court, Division CR-D

REPLY BRIEF OF APPELLANT

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ARGUMENT ONE IN REPLY

THE TRIAL COURT ERRED IN DENYING BANKS' CLAIM THAT COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN ITS PENALTY PHASE INVESTIGATION AND PRESENTATION IN VIOLATION OF HIS FOURTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLA. CONSTITUTION

The government's argument in Answer to Mr. Banks' first claim boils down to three main points: penalty phase counsel did an adequate job; Dr. Dudley was simply a "more beneficial" defense expert; and the additional mitigation witnesses' testimonies presented in postconviction are inconsequential. (AB 11-12, 31.) This conclusory analysis fails to consider some fundamentals of capital mitigation:

I. A bare bones mitigation investigation is not a reasonable investigation

The government avers that because there was ***some*** attempt at a mitigation investigation,[1] counsel is absolved of deficient performance – "this is not a case where counsel failed to make an investigation or locate witnesses altogether; there was no deficient performance." (AB 31.) However, this is not the standard for determining whether counsel's performance was deficient. As pointed out in the Initial Brief, attorneys have been found deficient in many cases where a bare bones investigation was conducted. (IB 51-52); Sears v. Upton, 130 S. Ct. 3259, 3266

[1] Though aside from using Dr. Krop and Dr. Miller and speaking to a couple family members on the phone, undersigned is hard-pressed to say what that attempt at a mitigation investigation was.

(2010), Williams v. Taylor, 529 U.S. 362, 398 (2000); Rompilla v. Beard, 545 U.S. 374, 378 (2005); Porter v. McCollum, 130 S.Ct. 447, 453-54 (2009); Wiggins v. Smith, 539 U.S. 510, 535-36 (2003); Williams v. Allen, 542 F. 3d 1326, 1329, 1342 (11th Cir. 2008); Johnson v. Sec'y DOC, 643 F.3d 907, 936 (11th Cir. 2011); Stankewitz v. Woodford, 365 F.3d 706, 724 (9th Cir. 2004) (explaining that a defendant is prejudiced when counsel introduces "some of the defendant's social history" but does so "in a cursory manner that was not particularly useful or compelling"); Foust v. Houk, 655 F. 3d 524 (6th Cir 2011).

For instance, this case is strikingly similar to a Florida federal case, Cooper v. McNeil, where the Middle District found counsel ineffective, explaining:

> In the state court post conviction hearing, Petitioner's brother and sister, Donnie Cooper and Peggy Jo Cooper-Chipman, his former girlfriend, Lisa Harville, and his elementary school principal, Ralph Palmeroy, testified... Each of them denied, however, having been contacted by anyone about testifying [at trial]. They testified that if they had been asked, they would have testified on Petitioner's behalf.
>
> **Petitioner's attorneys, by their own admission, relied exclusively on Petitioner and his mother to provide the names of possible mitigation witnesses. There is nothing in the record indicating that Petitioner's attorneys investigated his background independent of Petitioner and his mother… Conspicuously absent from their testimony during the state court hearing is any explanation as to why they did not contact Petitioner's siblings, whether they attempted to contact them, or if they were contacted, what the results were**. Effective representation involves "the independent duty to investigate and prepare." *House v. Balkcom*, 725 F.2d 608, 618 (11th Cir. 1984); *Hardwick v. Crosby*, 320 F.3d 1127, 1162 (11th Cir. 2003).

> Although the attorneys limited their penalty phase preparation to their interviews with Petitioner and his mother, they certainly knew from Dr. Merin's evaluation that Petitioner had an extensive history of "horrendous" parental abuse, familial turmoil and mental health issues. That information would have led a reasonable attorney to investigate further. *Williams v. Allen*, 542 F.3d 1326, 1339 (11th Cir. 2008). **Other than the difficulties they experienced in reaching potential witnesses, the attorneys offered no explanation for not broadening their mitigation investigation beyond what they learned from Dr. Merin, Petitioner and his mother**. Their penalty phase investigation and preparation cannot, therefore, be said to have been "entirely strategically reasonable," as the Florida Supreme Court found.

Cooper v. McNeil, 2008 U.S. Dist. LEXIS 113372, *96-101, 2008 WL 5252267 (M.D. Fla. Dec. 17, 2008) (reversed, in part, on other grounds) (emphasis added). Like counsel in Cooper, trial counsel relied solely on a single family member to assist in finding witnesses.[2] (11 PCR 1940-41.) Also like Cooper, despite that counsel was aware of some red flags that would have caused a reasonable attorney to investigate further, such as that Banks had been regularly incarcerated from 14 years of age, counsel failed to delve any deeper into Banks' childhood to find out

[2] Appellee says that Mike Hurst, the guilt phase investigator, assisted penalty phase counsel with his mitigation investigation, but this is incorrect – guilt phase c ounsel (10 PCR 1683-84) and Mr. Hurst, himself, plainly testified that Mr. Hurst did not provide any mitigation services in the case. (12 PCR 2015-16.) Indeed, penalty phase counsel's billing reflects only one meeting with an "investigator" for .8 hours. (9 PCR 1497.) There are no subsequent entries concerning the investigator, or review of any investigator reports. The only individual other than penalty phase counsel who did anything to aid in Banks' sentencing proceedings was Dane Banks, Mr. Banks' handicapped uncle who, by penalty phase counsel's own accounts, was unreliable. (11 PCR 1940-41.)

why.

As explained in an abundance of case law listed above, bare-bones mitigation does not shield an attorney from a deficiency finding, although here, counsel's work barely amounted to bare bones. The billing records are telling in this regard: counsel spent only 72 hours on Bank's penalty phase preparation; of those hours there were only ***three*** billing entries reflecting any communication with Banks' family members, two of which were with Banks' father, who testified telephonically in sentencing. (9 PCR 1495-98.) This lack of investigation is astounding considering that counsel was the only one working on Banks' mitigation investigation.

As was held by the Eleventh Circuit in Williams v. Allen, "We have rejected the idea that there is a 'magic number' of witnesses from whom an attorney is required to seek mitigating evidence. However, we have found deficient performance in cases where an attorney's efforts to speak with available witnesses were insufficient 'to formulate an accurate life profile of [the] defendant." Williams v. Allen, 542 F.3d 1326, 1339 (11th Cir. 2008) (internal citations omitted). Here, contrary to the state and trial court's positions, Banks has demonstrated that the counsel's half-hearted investigation and resultantly dissuasive penalty phase presentation were "insufficient to formulate an accurate life profile" of Mr. Banks, thus deficient performance has been established.

Contrary to the Appellee's assertions, counsel's performance here is not analogous to Hodges. There, this Court specifically noted that counsel utilized an experienced investigator and conducted a comprehensive investigation including reaching out to numerous potential witnesses. Hodges v. State, 885 So. 2d 338, 347-8 (Fla. 2003). Where counsel in Banks' case only contacted four family members (one of which, Uncle Dane, imposed himself upon counsel) and did not utilize an experienced investigator or mitigation specialist to speak to these witnesses or find others, Banks' facts are much closer to Ventura, referenced by this Court as an example of poor investigative performance. Ventura v. State, 794 So. 2d 553, 570 (Fla. 2001).

Banks case is also dissimilar to Schoenwetter, referenced by the state, where, trial counsel utilized an experienced investigator to assist in finding witnesses, counsel made demonstrably "strong efforts" to contact paternal family, and the search was discontinued only when it was determined that the defendant's case would not be benefitted from the additional testimonies. Schoenwetter v. State, 46 So. 3d 535, 558 (Fla. 2010). Two witnesses offered lackluster postconviction testimony offering virtually no mitigation, and revealing that they did not really know Hodges. Id. at 557. Unlike Schoenwetter, counsel here made virtually no effort to find witnesses, as demonstrated by the ease with which mitigation specialist Sara Flynn found witnesses in postconviction; moreover, the

additional witnesses who testified in evidentiary hearing knew intimate details about Banks' home life, childhood, and family secrets.

II. An expert's evaluation is only as good as counsel's background investigation

The government discredits Dr. Dudley as merely a "more beneficial" postconviction expert (AB 30) and summarizes his extensive 81-page evidentiary hearing testimony in merely one sentence (AB 5), ignoring that Dr. Dudley diagnosed Mr. Banks with (1) trauma related anxiety disorder; (2) personality disorder related to attachment, mood, mood regulation, mood stability, impulsivity and an unstable sense of self; (3) substance abuse disorder; (4) cognitive and intellectual difficulties, including frontal lobe issues and a history of learning disabilities; (5) Depression (14 PCR 2504-05); (6) Statutory mental mitigator of extreme emotional disturbance at the time of the crime. (15 PCR 2538-39) (7) Statutory mental mitigator that the capacity to conform his conduct to the requirements of the law was substantially impaired at the time of the crime. (15 PCR 2539-40.) None of these findings were rebutted by the state in evidentiary hearing or elsewhere.

Appellee attempts to excuse trial counsel's failure to discover this mental mitigation by pointing at the **volume** of mental health experts counsel **supposedly**

consulted.[3] As overlooked by the government, counsel could have hired 1000 experts and it would not have been beneficial to Mr. Banks because "as a general rule, it is ***never appropriate*** to expect a mental health expert to deliver a comprehensive mental health assessment ***until [a defendant's] life history investigation is complete***" and here, counsel utterly failed to conduct an adequate life history investigation. Pamela Blume Leonard, Richard G. Dudley, Getting It Right: Life History Investigation As The Foundation For A Reliable Mental Health Assessment, Volume 36, Volume 36 Issue 3 (Hofstra May 11, 2012) (emphasis added); Caro v. Woodford, 280 F.3d 1247 (9th Cir. 2002), (defense counsel failed to investigate and provide appropriate experts with the information necessary to evaluate the petitioner's brain damage); Smith v. Stewart, 189 F.3d 1004, 1012 (9th Cir. 1999); State v. Difrisco, 174 N.J. 195, 273, 804 A.2d 507, 553 (N.J. 2002) ("Performance has been deemed deficient where counsel failed to provide an expert with information that was critical to the expert's analysis."). The Ninth Circuit explained the grave necessity of adequately equipping a mental health expert with necessary background information:

> We have held that an attorney has "a professional responsibility to investigate and bring to the attention of mental health experts who are

[3] Counsel may have conferred with Dr. Harry Krop, Dr. Miller, Dr. Silliman and Dr. Bloomfield, (12 PCR 1944, 2102). However, counsel admits that he had no substantive dealings with Dr. Silliman. Further, Dr. Bloomfield was not involved in this case but was retained by Alan Chipperfield to perform a competence evaluation in the William Johnson case.

> examining his client, facts that the experts do not request . . ., at least at the sentencing phase of a capital case." *Wallace v. Stewart*, 184 F.3d 1112, 1116 (9th Cir. 1999).…In *Wallace*, defense counsel was unconstitutionally deficient in failing to provide the mental health expert with the defendant's psychological profiling results **and in not informing the expert of the defendant's chaotic family history, including a "clinically significant series of head traumas."** 184 F.3d at 1116. **As a result, the experts who testified both for and against the defendant agreed that their diagnoses were incomplete, and that they failed to discover that the defendant likely suffered from organic brain damage.**

Pizzuto v. Arave, 280 F.3d 949, 984-85 (9th Cir. 2002) (emphasis added).

To be sure, as proven at evidentiary hearing (and reflected in counsel's billing), Banks' penalty phase counsel spoke to only three family members over the phone: Banks' sister for 20 to 30 minutes (13 PCR 2264), Banks' father twice (9 PCR 1495-96; 12 PCR 1985); and he "didn't get far" with Banks' mother (11 PCR 1986, 1987); he never traveled to New Jersey where Mr. Banks spent the majority of his life, nor did he send anyone else there to interview witnesses; and relied only upon an unreliable uncle for mitigation leads. (11 PCR 1940-41.) Although counsel claims he gathered some of the documents discovered in postconviction (see e.g. 11 PCR 2072.), it is unclear what, if anything, he did with them.[4] Certainly, counsel did not perform a complete social history investigation

[4] It does not appear that Dr. Krop was provided any of the material submitted into evidence during postconviction, nor were these documents submitted as evidence in penalty phase or Spencer hearing. Krop's notes and reports indicate that he was given school records; police reports (typically Dr. Krop requests police reports from the client's instant crime); jail medical records; jail incident reports; sworn

under any definition and his use of experts was thus premature and more harmful than helpful to Mr. Banks.[5]

III. Banks was unquestionably prejudiced by his counsel's utter failure to perform a social history investigation

The government concedes that the trial court's order below does not sufficiently address Strickland's prejudice inquiry. (AB 11, 27) ("Although the trial court did not explicitly find that Banks had failed to demonstrate prejudice, the trial court appears to have addressed this prong of the Strickland analysis when it found that the testimony provided by Bank's [sic] witnesses at the evidentiary hearing would likely not have affected the death sentence…") Indeed, as squarely found by the United States Supreme Court in Porter, a state court may not "discount entirely" the mitigating effect of undisputed testimony offered in mitigation. Porter v. McCollum, 558 U.S. 30, 41, 130 S.Ct. 447, 454 (2009).

Notwithstanding the trial court's error in this regard, the state contends that Banks cannot prevail because he has not demonstrated prejudice under the correct

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statements of Sudie Johnson; deposition testimony; and testimony of medical examiner. (9 PCR 1435, 1438, 1440, 1478.) Why the mental health expert needed to see most of this information is questionable.

[5] Where, for instance, Dr. Krop diagnosed Banks with ASPD because he did not know anything about him. (14 R 894.) Dr. Dudley does not believe Banks' has ASPD. Many of Banks' qualities, such as his desire to connect with people, attempts to seek gainful employment, and desire to take care of himself are contrary to an ASPD diagnosis. (15 PCR 2541-42.)

standard. [6] Banks respectfully disagrees – the mitigation presented in postconviction changed the landscape of the proceedings. While Banks' jury learned that he had a low IQ, some frontal lobe issues, ASPD, and an absentee father (but did not learn how those issues correlated to the crime), the court in postconviction heard significant mitigation including, but not limited to:

- Extreme emotional disturbance at the time of the crime (15 PCR 2538-39);
- Capacity to conform conduct to the requirements of the law was substantially impaired (15 PCR 2539-40);
- Depression and Anxiety disorder (14 PCR 2504-05);
- Substance abuse disorder (14 PCR 2504);
- Teenage, uninterested mother who was also raising numerous siblings who wanted an abortion and referred to Banks as a "mistake" (13 PCR 2135-36, 2181, 86);
- Parents were forced into marriage due to out-of-wedlock pregnancy with Banks (13 PCR 2207);
- Father was in Vietnam on his second tour when Banks was born (13 PCR 2180);
- Father returned from Vietnam with mental issues and heavily addicted to heroin and cocaine, problems that he never overcome even at the time of postconviction (13 PCR 2184, 2193, 2250, 2257);

[6] Oddly, one reason given by the state that Banks supposedly cannot show prejudice is because the guilt phase evidence was, in the opinion of the state, strong. (AB 36.) Mr. Banks fails to see how guilt phase evidence such as "the laptop located at Johnson's home," and "the cut to Banks leg" are relevant considerations in a penalty phase prejudice analysis.

- Father suffers from extreme paranoia which prevents him from forming relationships with anyone except his commonlaw wife (13 PCR 2248-50);

- Banks was exposed to multi-generational drug use in both parents' homes (13 PCR 2153-55, 2199);

- Banks' mother smoked marijuana daily (14 PCR 2380) and his father and commonlaw stepmother abused cocaine and heroin; Banks was aware of this as a child (13 PCR 2257);

- Banks' commonlaw stepmother was a heroin addict who sought treatment at a methadone clinic (13 PCR 2250);

- Father was violent upon his return from Vietnam – he would go into rages and destroy furniture; he was a "lunatic" and a "junkie" (13 PCR 2184, 2193);

- Banks grew up in impoverished, overcrowded conditions (e.g. 9 PCR 1512; 14 PCR 2378);

- The neighborhoods Banks lived were crime ridden and violent as witnessed by mitigation specialist, Sara Flynn and noted by a probation officer (9 PCR 1512; 14 PCR 2443);

- Banks did not receive the supervision or attention that he required as a child and took to the streets at a very young age; when he was gone, no one cared where he was (9 PCR 1511; 13 PCR 2140, 2145);

- Banks' mother did not see to it that Banks receive the treatment he needed when he began having difficulties in school (13 PCR 2198, 2205);

- Banks began using drugs and alcohol at a young age (e.g. 9 PCR 1506, 1521);

- Banks' mother abandoned him when he began getting into trouble, informing criminal justice personnel that they should simply take him back to the youth detention facility (9 PCR 1515; 14 PCR 2213);

- Mother was self-involved and materialistic, wracking up debt so that the

family was never able to better their circumstances (14 PCR 2379);

- Banks never received adequate treatment and intervention for his mental health issues, cognitive disabilities, and other problems (15 PCR 2535-37);

- Near the time of the crimes, Banks kept a personal diary where he expressed his hopes and dreams including his wish to have a family (13 PCR 2271-72);

- Banks had hideous nightmares causing him to shake uncontrollably in his sleep (13 PCR 2275.)

The court not only heard unrebutted testimony establishing mitigation such as the above, but, as explained by Dr. Dudley, this full evidentiary picture reveals how and why Mr. Banks turned out the way he did, and ultimately, why Banks, might commit the instant crimes where an "average" person would not. (15 PCR 2607-09.) Additionally, and equally importantly, the new mitigation, particularly the statutory and mental mitigation, undercuts the aggravation presented by the state where it reveals that Banks' crimes were not the result of calm, calculated, rational thinking, but rather a manifestation of Banks' troubled upbringing and multifaceted mental health issues.

In conclusion, the government's Answer brief, which largely parrots the trial court's order, does nothing to rebut counsel's deficiency in his penalty phase investigation, expert witness preparation, and presentation. Where Mr. Banks has established the weightiest mitigation available in capital litigation in his postconviction proceedings, explaining to a large degree his alleged actions on the

day in question and undercutting the aggravation, confidence in the outcome is undermined and there is a reasonable probability that the sentencing proceedings would have been different, but-for counsel's unconstitutionally deficient performance.

ARGUMENT TWO IN REPLY

THE TRIAL COURT ERRED IN FAILING TO FIND THAT BANKS' TRIAL ATTORNEY WAS DEFICIENT IN FAILING TO FILE A MOTION TO SUPPRESS THE ILLEGAL POLICE SEARCH OF BANKS' RESIDENCE RESULTING IN VIOLATIONS TO HIS FOURTH, FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLA. CONSTITUTION

I. Counsel ignored evidence demonstrating that Ms. Johnson's "consent" was involuntary where she merely submitted to lawful authority

The government contends that counsel acted correctly in neglecting to file a suppression motion because "in none of her sworn statements, did Johnson indicate that she did not sign the consent-to-search forms freely and voluntarily." (AB 41.) This statement ignores the plain face of the record. In deposition, Ms. Johnson unequivocally stated that law enforcement threatened to tear up her house (1 SPCR 154) and that they "pretty much gave [her] no choice" and "pretty much they had [her] in a corner" (1 SPCR 10-11) prior to the first search.[7] With respect to the second search, Ms. Johnson indicated that the search occurred in the early morning

[7] Notably, in citing sections of Ms. Johnson's deposition testimony, Appellee failed to highlight portions of testimony that indicated that her consent was not voluntary, while highlighting the sections that were beneficial to the state. (AB 45).

hours after lengthy questioning. (1 SPCR 154-156.)

Counsel was aware that Ms. Johnson felt threatened, that there were numerous officers at Johnson's house at the time of her initial "consent," and that she had been questioned for hours before the second "consent." (11 PCR 1742.) Certainly, given the high burden on the government to demonstrate that consent was voluntarily given and not simply a bow to authority,[8] this information should have alerted defense counsel to question Ms. Johnson about the matter further, like undersigned did in postconviction. (13 PCR 2279-80.) However, trial counsel misunderstood the relevant law, in incorrectly believing that the evaluation of whether consent was voluntary is an objective test; rather, it is actually a subjective test, meaning that the court must consider the particular emotional/mental state of Ms. Johnson at the time. (11 PCR 1743); e.g., Culombe v. Connecticut, 367 U.S. 568, 603, 621 (U.S. 1961). Thus, counsel failed to delve into the circumstances further and to discover what Ms. Johnson explained at evidentiary hearing – that she felt threatened, that officers surrounded her home, blocked her driveway, and threatened her with arrest if she did not cooperate. (13 PCR 2279-80.)

Indeed, as ignored by the state, Mr. Chipperfield, the attorney who initially represented Mr. Banks in the case at the trial level indicated that he would have

[8] Warrantless searches conducted under the auspices of "consent" carry a presumption of involuntariness—"the presumption that consent is involuntary often carries the day." Thomas v. State, 127 So. 3d 658, 666 (Fla. 1st DCA 2013).

filed a suppression motion based on Ms. Johnson's sworn testimony regarding the nature of her consent. (14 PCR 2404-06, 2413-14.)

II. Inevitable discovery should not apply where the government was not actively seeking a warrant

The government, like trial counsel, believes that Mr. Banks' claim is trumped by the inevitable discovery rule – the government incorrectly argues that because trial counsel and the lead detective testified at evidentiary hearing that probable cause existed to secure a warrant, the legality of the searches was inconsequential. (e.g. AB 37, 52.) This argument, as noted in the Initial Brief (IB 66), is flawed. The inevitable discovery rule does not cure an illegal search if law enforcement was not in the process of securing a warrant.

The First DCA has "squarely held that the inevitable discovery doctrine did not apply where police 'did not attempt to get a warrant.'" Thomas v. State, 127 So. 3d 658, 666 n.12 (Fla. 1st DCA 2013) (citing King v. State, 79 So. 3d 236, 238 (Fla. 1st DCA 2012)); but see Fitzpatrick v. State, 900 So. 2d 495, 514 (Fla. 2005). The rationale for ensuring that law enforcement were ***actively seeking a warrant*** at the time of an unlawful search for the inevitable discovery rule to apply is simple: "[a]ny other rule would effectively eviscerate the exclusionary rule." United States v. Virden, 488 F.3d 1317, 1322 (11th Cir. 2007) (citations omitted). This is true because "in most illegal search situations the government could have obtained a valid search warrant had they waited or obtained the evidence through some lawful

means had they taken another course of action." Id. at 1322-1323. "Because a valid search warrant nearly always can be obtained after the search has occurred, a contrary ruling would practically destroy the requirements that a warrant for the search of a home be obtained *before* the search takes place." United States v. Satterfield, 743 F.2d 827, 846 (11th Cir. 1984) (emphasis in original).

Here, the lead detective readily admitted that he was not seeking a warrant. (13 PCR 2027-28.) As such, this Court, like the First DCA and the Eleventh Circuit, should not allow the government to end-around an illegal search simply because law enforcement ***could*** have followed the law, but chose not to.

III. Prejudice is apparent

Finally, contrary to the state's assertions (AB 52-53), prejudice has been established here where the evidence illegally obtained from Ms. Johnson and Mr. Banks shared home corroborated Johnson's statements concerning Banks actions the morning after the homicide thus bolstering her damning testimony regarding Banks' supposed confession. The state overlooked the grave emphasis placed on this evidence by the prosecution in closing argument:

> State: Footwear impressions. **Those are these defendant's shoes taken from Sudie Johnson's house about two weeks after he murdered Linda Volum**…[T]he tread design on these shoes, the characteristics of that design is consistent with the impression on the bloody towel and on the piece of paper.
>
> ***

State: The computer. Linda Volum's computer. **A computer that this defendant brought home to Sudie Johnson in that green pillowcase after he killed her**.

The defendant's clothing. **The Encye shirt and the jacket eactly match the clothing worn by the person in the ATM photos**, admittedly the defendant.

(11 R 696, 697-98, 699) (emphasis added). If the clothing, shoes, and computer had not been illegally obtained from Mr. Banks' home, bolstering Ms. Johnson's testimony, there is a reasonable probability that the jury would have been unable to discredit Banks' rational explanation of events and that the evidence linking him to the crime was of innocent origin.

ARGUMENT THREE IN REPLY

THE TRIAL COURT ERRED IN DENYING BANKS' CLAIM THAT COUNSEL WAS INEFFECTIVE IN FAILING TO PRECLUDE DNA EVIDENCE PREJUDICING BANKS AND RESULTING IN VIOLATIONS TO HIS FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OFH THE FLA. CONSTITUTION

Appellee, in Answer, avers that trial counsel's failure to object to the admission of DNA evidence which put Banks, bleeding, at the crime scene[9] was somehow strategic. This is incorrect. First, the government ignores that counsel stated in evidentiary hearing that he wished he had done a better job preserving the

[9] Oddly, in **this** claim the government argues that the admission of DNA evidence was not prejudicial to Banks because he admitted being at the victim's home (AB 53-54, 59.) However, in the preceding claim, they point out that the DNA mixture of Banks' and the victims' blood was damaging (AB 52) – the government cannot have it both ways.

record. (11 PCR 1756-57.) Second, a claim of "strategy" implies that the admission of population statistics by party admitting DNA evidence before jury is optional. (AB 58.) However, the introduction of population statistics is not optional – this is the second of **two requirements** for the admission of DNA evidence. Brim v. State, 695 So. 2d 268, 270 (Fla. 1997) (If the state chooses to introduce DNA evidence at trial: (1) the state must show that two DNA samples match based on principles of molecular biology and chemistry; and (2) the state must submit statistical data to show the relevance of the match.). Third, it is illogical to say that any trial attorney would "strategically" fail to object to the admission of DNA evidence where counsel would have eliminated a portion of the state's evidence against a client – regardless of how damaging or innocuous the DNA evidence is.

Appellee also avers that error cannot be shown because analyst Pollock testified in postconviction that he could have theoretically produced the required population statistics in 30 to 60 minutes. (AB 53.) However, although Pollock may have testified regarding population statistics in other cases, defense counsel at trial filed a motion in limine to exclude the DNA evidence because the state failed to list an expert in population statistics at trial. (4 R 625-28.) The state at trial acknowledged that it did not intend to use Pollock for this purpose, and that they normally call Martin Tracy to give such testimony. (11 PCR 1752.) So there **was**

question at the time of trial regarding Pollock's ability to testify in this regard.

And critically, whether or not Pollock was qualified at the time of Banks' trial to give population statistics, **Pollock did not produce the population statistics in evidentiary hearing.** The state's argument that he **could have** generated the statistics is a post hoc rationalization and violation of Brim, which holds that the statistics are "a distinct step in the DNA testing process." Id. at 273; Wiggins v. Smith, 539 U.S. 510, 526-27 (2003) (Courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions). Certainly, under Brim, where the state **has yet to produce the population statistics in this case**, the state has not finished its DNA testing in this case half a decade after trial.

ARGUMENT FOUR IN REPLY

THE TRIAL COURT ERRED IN DENYING BANKS' CLAIM THAT HIS ATTORNEY WAS INEFFECTIVE IN ELICITING TESTIMONY ON CROSS-EXAMINATION OF SUDIE JOHNSON THAT SHE SAW A VIDEO OF BANKS STABBING SOMEONE IN AN UNRELATED CRIME RESULTING IN VIOLATIONS OF BANKS FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLA. CONSTITUTION

I. Counsel was unquestionably deficient where Sudie Johnson gave the exact answer at trial that she gave in deposition

Appellee claims that trial counsel's grievous misstep in revealing the William Johnson stabbing at trial was somehow strategic because he intended to

show that Sudie Johnson was a scorned woman. (AB 65-66.) However, a mistake by its very definition cannot be strategic. And incredibly, Appellant failed to address the critical fact that Mr. Eler **engaged in the precise line of questioning in deposition and Ms. Johnson gave the same exact answer, putting him on direct notice that she would talk about Mr. Johnson if asked this question**. (1 SPCR 15.) Thus, any claim that defense counsel's line of questioning was "strategic" or that he was shocked or surprised by Johnson's trial testimony is unfounded. (AB 64) Either trial counsel engaged Ms. Johnson's in cross-examination on the prayer that she would not mention Mr. Johnson again; or counsel forgot about Ms. Johnson's deposition testimony. Either way, this concededly invited error (11 PCR 1763) constituted a deficient performance.

II. Defense counsel's mistake was highly prejudicial

Common sense dictates that Sudie Johnson's statement on cross-examination that she "seen the tape of [Mr. Banks] stabbing Mr. William Johnson" was one of the most damaging pieces of "evidence" before the jury because it informed the jury that Mr. Banks probably stabbed Ms. Volum because he was caught on tape stabbing Mr. Johnson. The government's flimsy argument to the contrary defies logic:

> He, himself, testified about his nine felony convictions during his direct examination. The jury was well aware of his criminal past. Furthermore, the trial court conducted a voir dire of the jury and issued a curative instruction, which was expressly approved by this

> Court on direct appeal. Lastly, the jury had the opportunity to view the video themselves during the penalty phase.

(AB 66.) First, Banks' admission that he has numerous felonies of an unspecified nature, is immeasurably less damaging than Johnson's revelation that Banks had, in fact, **stabbed someone** before. The inherent prejudice in revealing the facts of one's prior crimes is long-recognized under Florida jurisprudence and the exact reason why a defendant may not usually be questioned regarding the nature of his prior offenses. See e.g. Fulton v. State, 335 So. 2d 280, 284 (Fla. 1976); Britton v. State, 604 So. 2d 1288, 1291 (Fla. 2d DCA 1992). Certainly, one can be a nine-time felon but not a knife-wielding villain, as portrayed to the jury by Sudie Johnson.

Second, an abuse-of-discretion inquiry, as performed by this Court on direct appeal, is not an ineffective assistance of counsel inquiry, as required here under Strickland. Banks v. State, 46 So. 3d 989, 992 (Fla. 2010) ("a ruling will be upheld unless the ruling is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court."). The issue on direct appeal was whether the trial court reasonably concluded that counsel had invited Ms. Johnson's objectionable response. Banks argued that Ms. Johnson's statement was not responsive to counsel's question, therefore, counsel had not invited the error and the court abused its discretion in denying the defense's motion for mistrial. This Court

denied relief, never considering, as it must here, whether counsel was deficient in inviting the devastating testimony and whether Mr. Banks was prejudiced by this error.[10]

Third, Appellee's argument that Banks was somehow not prejudiced **in guilt phase** because the jury saw the Johnson video **in penalty phase** confounds logic and actually supports Banks' point – the jury would never have learned about the William Johnson stabbing until penalty phase if counsel had not committed his error in cross-examination. This bit of information served as an ace-in-the-hole for state, because even if a juror felt the prosecution had not proved its case beyond a reasonable doubt, the jury undoubtedly believed that Banks probably did it because he had done so before.

In sum, where counsel admitted in evidentiary hearing that he invited Ms. Johnson's statement, his actions were not "strategic" and deficiency is shown. The matter boils down to a prejudice determination and Banks can think of no greater prejudice than a witness revealing to the jury that he committed a similar collateral crime.

[10] Even if this Court should find that the trial court's curative instructions reduced the prejudicial nature of Ms. Johnson's statements, this error must be considered in conjunction with all of counsel's errors, as explained in Mr. Banks cumulative error Claim Eight. (IB 98.)

ARGUMENT FIVE IN REPLY

THE TRIAL COURT ERRED IN REJECTING BANKS' CLAIM THAT COUNSEL WAS INEFFECTIVE IN FAILING TO IMPEACH STATE WITNESSES SUDIE JOHNSON AND DETECTIVE BODINE RESULTING IN VIOLATIONS OF BANKS' RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLA. CONSTITUTION

Appellee makes several arguments to rebut Mr. Banks' assertion that his counsel inadequately cross-examined two key witnesses at trial:

First, Appellee argues that counsel was not ineffective in failing to impeach Sudie Johnson with the fact that she was threatened with arrest and prosecution prior to giving a sworn statement against Banks, because this information "did not exist at the time" of trial. (AB 70.) This assertion ignores counsel's evidentiary hearing testimony:

> Undersigned: And please look at a letter dated 3/26/05.
>
> Eler: Yes, sir. The one with little arrows pointing to it?
>
> Undersigned: Exactly.
>
> Eler: Right.
>
> Undersigned: …A little bit lower than the middle of the page where it says they just kept on after me, naggin and prying like I did something wrong. **They tried to insinuate I was connected, that if I knew people, I was so scared they said they could lock me up**. Do you see that?
>
> Eler: Yeah, I do. Yes, sir.

Undersigned: **Did you know about that before trial?**

Eler: **I did…**

(11 PCR 1808) (emphasis added) (1 SPCR 93.) Counsel was aware that Ms. Johnson was threatened with arrest prior to trial and thus should have used this information to establish bias. Fla. Stat. § 90.608(2); see also Thornes v. State, 485 So. 2d 1357, 1359 (Fla. 1st DCA 1986). The information would have been admissible under several legal vehicles, discussed in the Initial Brief (IB 81), none of which were refuted or even mentioned by the Appellee in the Answer Brief.

Additionally, Appellee attempts to refute Banks' argument that counsel should have impeached Ms. Johnson with a letter demonstrating that she was infuriated with Banks for "tricking" with another woman (11 PCR 1809-10; 1 SPCR 95), stating that counsel intended to present her as a scorned woman with his cross-examination questions, and she "categorically denied it." (AB 71.) Rather than refuting Banks' argument, the fact that Johnson "categorically denied" being upset with Banks at trial would have provided counsel the perfect opportunity to use the letter to impeach her with her prior inconsistent statement or refresh her recollection. (1 SPCR 95.)

Appellee also argues that counsel's cross-examination of Ms. Johnson was sound because he did, in-fact address Ms. Johnson's felony conviction at trial, arguing this issue was overlooked by Appellant and the trial court. (IB 69-70.)

However, when Ms. Johnson was asked whether she was ever convicted of a felony, she failed to provide a straightforward answer:

Johnson: I ***think*** it's a conviction, but I've been arrested, yes.

Defense: And how many times have you been convicted of a felony?

Johnson: ***I'm not sure***. I ***think*** at least once.

(9 R 369) (emphasis added). Despite this ambiguous statement, counsel did not attempt to submit a certified copy of Ms. Johnson's felony into evidence, as allowed under the law. See Sheffield v. State, 634 So. 2d 224, 224 (Fla. 1st DCA 1994) ("since Sheffield did not answer the question concerning prior convictions in a straightforward manner, the prosecution properly sought to impeach him with his three prior felony convictions").

Finally, trial counsel's evidentiary hearing testimony that he may not have used the letters to impeach Ms. Johnson because they contained negative information such as the fact that Banks dealt drugs, is merely an attempt at self-preservation: Banks admitted he was a drug dealer when he testified. Counsel's after-the-fact attempt to salvage his inadequate pre-trial investigation is clearly refuted by the record.

With respect to counsel's failure to adequately cross-examine Detective Bodine, Appellee made no effort to rebut Appellant's argument concerning the admissibility of additional testimony on cross-examination, merely averring that

counsel's cursory questioning regarding other suspects in the Volum homicide was sufficient. (AB 71.)

To conclude, other than pointing out that trial counsel did, in-fact, ask Sudie Johnson about her prior felony conviction, and setting forth a lengthy factual background, the government has offered little or no analysis to rebut any of the argument contained in Claim Five of Banks' Initial Brief. The Answer does not refute any of Appellant's legal analysis concerning the admissibility of the additional cross-examination pointed out by Banks; the Answer does not supply any prejudice analysis, stating only "Banks has failed to demonstrate any reasaonble [sic] possibility of a different outcome at trial had Eler asked different questions on cross-examiation [sic] of the two State witnesses." (AB 72.)

Because Mr. Banks offered a plausible explanation for his actions the night in question, and Sudie Johnson's testimony was the most devastating evidence against him, it was critical for his attorney to expose the multifaceted bias that colored her testimony and to establish that he was but one of several suspects in the case. Where counsel had vital impeachment information available and failed to use it, confidence in the outcome is undermined.

ARGUMENT SIX IN REPLY

THE TRIAL COURT ERRED IN DENYING BANKS' CLAIM THAT TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO INVESTIGATE AND CALL KEYANA SMITH IN BANKS' GUILT PHASE RESULTING IN A VIOLATION OF BANKS' FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLA. CONSTITUTION

Appellee appears to agree with Banks that Keyana Smith's testimony **would not have been harmful** as posited by defense counsel (11 PCR 1885, 1787), and trial court (8 PCR 1189):

> The evidence of Volum and Banks appearing friendly with each other while purchasing beer from Winn-Dixie, if presented during trial, would demonstrate only just that. Banks' testimony established that much and the jury was never presented with any evidence indicating that the two had been seen fighting or were on the outs just before Volum's murder. Thus, the value of Smith's testimony was at best minimal.

(AB 75.) While Appellee agrees that Smith's testimony would have established that Banks and Volum were friendly, it ignores that trial counsel missed a critical opportunity to support Banks' credibility, where Ms. Smith's account of the Winn-Dixie trip mirrors Banks' testimony, and supports the defense theory that he had no reason to kill her. Even if this Court should find that this missed opportunity does not establish prejudice standing alone, it must be considered in counsel's overall performance under a cumulative error analysis. See e.g. Blake v. State, 39 Fla. L. Weekly S729 (Fla. December 4, 2014) (considering whether counsel's errors

collectively prejudiced the outcome of the defendant's guilt phase). However, the fact an independent non-biased witness saw Banks and Volum together, being friendly, purchasing items hours before her death, clearly supporting Banks' account of his involvement in the case, and cannot be discounted to irrelevance.

ARGUMENT SEVEN IN REPLY

THE TRIAL COURT ERRED IN DENYING BANKS' CLAIM THAT COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO IMPROPER PROSECUTORIAL COMMENTS THAT RESULTED IN PREJUDICE TO BANKS' GUILT AND PENALTY PHASE PROCEEDINGS IN VIOLATION OF BANKS' FOURTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLA. CONSTITUTION (RESTATED)

I. Deficiency

A. An uncharged crime of sexual battery of the victim

The Answer asserts that the prosecutor could argue that Banks had raped the victim because Banks opened the door when his attorney stated that the two had consensual sex. (AB 90.) This argument ignores the fact it was the ***prosecution made this insinuation in its opening statement*** to the jury, prior to defense counsel ever having the chance to open the door. (9 R 233.)

The government further argues that the rape was "inextricably intertwined" with the murder, thus the prosecutor had to address it. However, as acknowledged by the prosecutor, there was not a shred of physical evidence that this was a rape rather than consensual sex. In fact, the only evidence that was presented was by

Banks' himself, stating the sex as consensual. (11 R 631). The prosecutor's speculative argument did not provide motive or context for the murder, but rather, served as one attempt in a series to paint Banks' as a nefarious character. This type of comment was improper and commonly results in reversal on appeal. See Ford v. State, 50 So. 3d 799, 800 (Fla. 2d DCA 2011).

B. Improper cross-examination of Mr. Banks

As to the improper cross-examination of Banks, the government ignores the available case law and interestingly asserts that this error was "invited" by the defendant. See Knowles v. State, 632 So. 2d 62, 65 (Fla. 1993). Of course, Banks' exercise of his Constitutional right to testify in his own behalf cannot be held against him. Yet, this the very implication the government makes here. Then, the prosecutor improperly challenged Banks to declare whether or not Sudie Johnson lied under oath, and improperly attempted to impeach Banks with his own incentive in the outcome of the case. How Banks would have "opened the door" to that improper line of questioning is difficult to grasp.

As the Florida Supreme Court has clearly explained, asking a witness if another witness is lying is improper for a litany of reasons, including: an invasion of the province of the jury to determine a witness's credibility; the jury may conclude the witness being questioned is lying though the fact two witnesses disagreeing does not necessarily establish one is lying, and; the witness is not

competent to testify concerning the other's state of mind absent some evidence the witness is privy to the other's thought processes. Id at 65-66.

C. Banks is a "nine-time convicted felon"

The State asserts that because the reference to Mr. Banks' nine felony convictions was testified to during the trial, then it was a proper comment on the facts in evidence and cannot be considered improper. The government ignores the reason this was so objectionable, as it encouraged the jury to convict Banks on his apparent propensity to commit crimes, not because he committed the instant crimes beyond a reasonable doubt.

Even Banks' trial counsel admitted in the evidentiary hearing that the state's repeated references to Banks' criminal history placed could be considered improper. (11 PCR 1796.) A prompt trial objection should have been delivered to stop the cumulating negativity generated by the prosecutor's comments.

II. Prejudice

The State provided very little analysis as to the question of whether these comments prejudiced Banks' trial, given its assumption that the prosecutor had not said anything improper. However, in the section dealing with the prosecutor's repeated references to Banks' having nine felony convictions, the State did reference prejudice but misstated the proper standard for this Strickland. (AB 92.) The State argued that the U.S. Supreme Court had never found that improper

prosecutorial comments had constituted a violation of "due process." However, Banks' claim must be analyzed under the Strickland standard of prejudice and evaluated cumulatively with the other errors to determine whether confidence of the outcome of the case was undermined. See Brooks v. Kemp, 762 F.2d 1383, 1402 (11th Cir. 1985). The proper prejudice analysis is whether these comments "undermined confidence" in the result of the guilty and/or sentencing hearings, or whether there was a "reasonable probability" that the outcome would have been different but for counsel's failure to object." Davis v. State, 928 So. 2d 1089, 1122 (Fla. 2005)("undermines confidence"); Brooks, 762 F.2d at 1402.

Guilt phase cumulative prejudice: The damning nature and theme of all three of the guilt-phase categories of improper prosecutorial comments was that they attacked the character of Mr. Banks rather than offering proof of is commission of this murder—that he was a rapist, a liar, and a nine-time convicted felon. These repeated round-about attacks on Mr. Banks' character were argued at length and repeated throughout the trial. The combined effect was such that one cannot possess confidence in the verdict reached by the jury, given the very real possibility that they were influenced by the horrific character which they were convinced by the prosecution that Banks' possessed.

Penalty phase cumulative prejudice: Likewise, the jury carried this impression of Banks having an atrocious character into its determination of what

sentencing recommendation it would make, reminding them not to take the "easy way" out.

In sum, Mr. Banks is entitled to a new trial and a new sentencing hearing based on his counsel's ineffective assistance in failing to object to the prosecutorial misconduct during the guilt and penalty phases.

ARGUMENT EIGHT IN REPLY

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

The government infers that if there were no errors in Banks' case than the cumulative error analysis is unnecessary. (AB 95.) As the instant reply brief explains, the government's position that no error(s) occurred in Banks' trial is misplaced, refuted by the record on appeal, and contrary to the clearly established law above. As such, these errors must be viewed collectively and cannot be piecemealed. See Elmore v. Ozmint, 661 F. 3d 783, 868-69 (4th Cir. 2011)(Rejecting state postconviction court's adjudication of ineffective assistance of counsel claims because the court engaged in a piecemeal assessment of prejudice- assessing separately the prejudice from each instance in which counsel's performance was deficient).

When examining the errors made in Banks' case as a whole as they pertain to the guilt phase, a dramatically different evidentiary picture emerges. If counsel had successfully filed a motion to suppress items found in Banks' residence, the victim's computer and even Banks' own shoes and clothing would have been inadmissible at trial. Had defense counsel properly objected to admission of the prosecution's DNA evidence, they would also have been prohibited[11] from introducing DNA evidence found in Ms. Volum's residence and any argument of how it "matched" Banks' DNA. Without these critical pieces of evidence, the prosecution would have had to predominately limited to a "scorned" ex-girlfriend's testimony that Banks confessed to her– an ex with a felony conviction and a reason to fabricate her testimony because she was admittedly upset Banks was cheating on her.

Add Ms. Keyana Smith's non-biased testimony that it appeared Banks and Volum were friendly towards each other, were seen buying beer and cigars hours before her death – corroborating Banks' testimony at trial that he and the victim were friends, engaged in consensual sex, and had no reason to harm her. Add other possible suspects than had a clear motive to hurt Volum (according to Volum's

[11] During the evidentiary hearing the prosecution conceded that some of the population statistics still have not been run on the DNA testing in this case, and the trial court and Appellee conceded as much. (AB 58) (8 PCR 1146.) Thus, the evidence still does not comport with Brim and Butler and any argument that the prosecution "could" do population statistics is besides the point – it was not done, and still is not, and therefore it is still inadmissible.

own writings found in her residence), prejudice gets even clearer.

Finally, add defense counsel's massive blunder in eliciting testimony through Sudie Johnson that Banks' stabbed somebody else (thus providing the jury with knowledge Banks committed prior violent crime in a similar fashion to the one he was being accused of at trial), as well as the prosecution's inference that Banks raped Volum and he must be lying if the prosecution's witnesses were not, and it cannot be said that confidence in Banks' guilt phase was not undermined. Cargle v. Mullin, 317 F.3d 1196, 1201 (10th Cir. 2003) (reversing capital conviction and sentence due to cumulative ineffective assistance of counsel and prosecutorial misconduct).

The penalty phase errors and lack of investigation, viewed cumulatively, are equally prejudicial. Ms. Flynn testified she found one-hundred (100) mitigators, and expert testimony was provided that established the powerful statutory mental mitigators of extreme emotional disturbance and capacity to conform the conduct to the requirements of the law. Prejudice is enhanced by the previously undiscovered mitigation that Banks' was literally abandoned by his mother (he had been previously abandoned by his father in favor of a heroin addiction) after his first brush in with the law; grew up in a violent environment; suffered through unstable home life - taking to the streets because there were no supervisory adults willing to devote any time to him. Indeed, his own mother candidly (and

shockingly) admitted she instructed Banks *not* to call her mother, that she did not want him, and; never saw him in prison or wrote him while he was incarcerated – ever, because it was too much for her to bear.

Together with the mitigation that *was* presented during trial (74 IQ, deficits in neuropsychological testing suggesting mild to moderate deficits in frontal lobe, history of substance abuse, borderline intellectual functioning), a clear evidentiary picture of a case emerges, one that is *not* the most aggravated and least mitigated that would support a death sentence. See generally Anderson v. State, 841 So. 2d 390, 407-08 (Fla. 2003).

CONCLUSION

WHEREFORE, based on the foregoing, Mr. Banks respectfully requests this Honorable Court reverse and remand the trial court's denial of his 3.851 Motion for Postconviction relief for a new trial and/or penalty phase.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been delivered via email to the Office of the Attorney General at capapp@myfloridalegal.com and carine.emplit@myfloridalegal.comon this 23rd day of July, 2015.

/s/ Rick Sichta_____
A T T O R N E Y

CERTIFICATE OF COMPLIANCE AND AS TO FONT

I **HEREBY CERTIFY** that this brief is submitted by Appellant, using Times New Roman, 14-point font, pursuant to Florida Rules of Appellate Procedure, Rule 9.210. Further, Appellant, pursuant to Florida Rules of Appellate Procedure Rule 9.210(a)(2), gives Notice and files this Certificate of Compliance as to the font in this immediate brief.

/s/ Rick Sichta_____
A T T O R N E Y