

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC20-155**

**DONTAE MORRIS
Appellant,**

vs.

**STATE OF FLORIDA,
Appellee.**

**ON APPEAL FROM THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FL
Lower Tribunal No. 2010-CF-010203**

INITIAL BRIEF OF THE APPELLANT

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REQUEST FOR ORAL ARGUMENT

Undersigned counsel for the Appellant respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, the resolution of the issues presented will determine whether Dontae Morris will live or die, and a complete understanding of the complex factual, legal and procedural history of this case is critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court's final order denying a successive motion for postconviction relief from a judgment and sentence of death. This Court has plenary jurisdiction over death penalty cases. Fla. Const. art. V, § 3(b)(1); Orange County v. Williams, 702 So.2d 1245 (Fla. 1997).

PRELIMINARY STATEMENT ABOUT THE RECORD

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Fla. Const. art. V, § 3(b)(1; Orange County v. Williams, 702 So.2d 1245 (Fla.
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STATEMENT OF PROCEDURAL HISTORY AND FACTS

Mr. Morris was charged by indictment with two counts of first-degree murder, and one count of escape while being transported. Following a jury trial, the jury found Mr. Morris guilty as charged. After a penalty phase, the advisory panel recommended death by a vote of 12-0 on both counts. Following a *Spencer* hearing, the trial court sentenced Mr. Morris to death. This Court affirmed Mr. Morris's convictions and sentence on direct appeal. *Morris v. State*, 19 So. 3d 33 (Fla. 2017), *reh'g denied* (June 7, 2017), *cert. denied*, 138 S. Ct. 452 (2017).

Morris filed his original Motion for Postconviction Relief pursuant to Florida Rule of Criminal Procedure 3.851 on November 6, 2011. Morris later filed an amended motion on March 27, 2019. In an order dated June 13, 2019, the circuit court issued an order granting an evidentiary hearing on all claims except claim 5(B). Following a bi-furcated evidentiary hearing, the circuit court denied all of Mr. Morris's claims on January 1, 2020. Mr. Morris timely appealed this denial to this Court.

STANDARD OF REVIEW

This is an appeal from a motion filed under Fla. R. Crim. P. 3.851. This Court employs a mixed standard of review, deferring to the factual findings of the circuit court that are supported by competent, substantial evidence, but *de novo* review of legal conclusions. See Sochor v. State, 883 So. 2d 766, 771-72 (Fla.

2004).

SUMMARY OF THE ARGUMENT

Dontae Morris's convictions and death sentence should be vacated because of newly discovered evidence and counsel's ineffective assistance at all stages of the proceeding, which undermines confidence in Mr. Morris's finding of guilt and death sentence.

- i. Newly discovered evidence in the form of James Baird's testimony during the postconviction proceedings is admissible, newly discovered evidence. This evidence showed that Ashley Price lied both to police, and during trial, and creates reasonable doubt as to Mr. Morris's guilt.
- ii. Trial Counsel was ineffective during the guilt phase of Mr. Morris's trial. In addition to this newly discovered evidence, counsel failed to meaningfully investigate, develop a defense, and challenge the State's case. Counsel also caused the jury to be exposed to inflammatory and non-probative evidence during trial and failed to object to the alleged use of racial slurs. Additionally, counsel was deficient for failing to obtain vital mental health evidence which would have put statements made by Mr. Morris into proper context before the jury and allow defense experts to

give proper recommendations regarding their testimony. Those failings undermine confidence in the outcome and independently warrant a new trial.

- iii. Trial Counsel was also ineffective during the penalty phase of Mr. Morris's trial. Counsel failed to investigate – much less present to the jury – facts about Mr. Morris's life that were easily discovered and would have “humanized” Mr. Morris for the jury. Counsel also failed to task either hired experts, or their own mitigation specialist, to conduct a full psychosocial evaluation of Mr. Morris. Nor did counsel put forth any mental health mitigation testimony before the jury, or any evidence of neurocognitive dysfunction. These failings undermine Mr. Morris's death sentence and warrant a new penalty phase proceeding.
- iv. The State withheld vital mental health evidence in violation of Brady v. Maryland. The circuit court denied an evidentiary hearing on this claim. If relief is not granted based on the above mentioned newly discovered evidence, or counsel's ineffectiveness during Mr. Morris's guilt and penalty phase, then at the least this issue should be remanded to the circuit court for a full evidentiary hearing.

This Court should vacate Mr. Morris's convictions for first-degree murder, vacate his death sentence, and remand for a new trial.

I. THERE IS NEWLY DISCOVERED EVIDENCE THAT ASHLEY PRICE LIED WHEN SHE SAID THAT DONTAE MORRIS CONFESSED TO HER THAT HE COMMITTED THE MURDERS, VIOLATING MR. MORRIS'S RIGHTS UNDER THE 5TH, 8TH, AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Newly discovered evidence shows that Ms. Price lied when she testified during trial that Mr. Morris confessed to her because she was being pressured by the State and Tampa Police Department (hereinafter "TPD") to help secure her testimony against Mr. Morris.

To obtain relief on a claim of newly discovered evidence, two conditions must be met. First, the new evidence "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence." See Jones v. State, 709 So.2d 512, 522 (Fla. 1998). Second, the new evidence must sufficiently "weaken[] the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." Jones, 709 So. 2d at 526). This analysis requires a court to "consider all newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." Jones, 709 So. 2d at 521. To determine the

impact of the newly discovered evidence, the court must conduct a cumulative analysis of all the evidence to present a total picture of all the circumstances in the case. Id. at 522. The testimony of Mr. James Baird that Ms. Price lied clearly satisfies the Jones standard and constitutes newly discovered evidence. See Swafford, 235 So.3d at 763.

During postconviction proceedings, Mr. James Baird testified that Ms. Price admitted she was coerced by TPD into coming forward with her statement to help the State convict Mr. Morris. PC/283. While the evidence of this recantation by Ms. Price was not available during trial, it is admissible evidence that must be considered when evaluating whether a new trial would produce an acquittal and/or life sentence for Mr. Morris. See Jones, at 521, 526. Taken together, this new evidence “completely changes the character of” the case and unquestionably leads to “reasonable doubt as to [Morris’s] culpability,” Swafford, 125 So. 3d at 778, because the State largely relied upon the testimony of Ms. Price to identify Mr. Morris as the perpetrator of the murders.

A. James Baird’s Testimony During the Postconviction Proceedings is Admissible, “Newly Discovered Evidence.”

Neither the State nor the circuit court disputed that Mr. Baird’s testimony that Ms. Price admitted to him that she was originally coerced by TPD into coming forward with her fabricated statement to help the State convict Mr. Morris PC/283- is “newly discovered” and would be admissible under the first part of the Jones

test. See Jones, 709 So. 2d at 521; PC/283.

B. This New Evidence of Ms. Price’s Recantation of Her Trial Testimony Gives Rise to Reasonable Doubt About Mr. Morris’s Guilt

Evidence that the State’s star witness fabricated and felt forced to testify against Mr. Morris warrants a new guilt phase because it is likely that the State would have been unable to convict Mr. Morris of the officer’s murders without the testimony of Ms. Price. The Jones standard requires that the newly discovered evidence “probably produce an acquittal on retrial.” Jones, 709 So.2d at 514. The fundamental question under Jones is whether the newly discovered evidence “weakens” the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.” Hildwin (quoting Jones, 709 So. 2dd at 526). The Court must conduct a cumulative analysis of all the evidence” – that is, weigh the new evidence, “in combination with the evidence developed in postconviction proceedings,” and the evidence presented at trial viewed through the lens of these new revelations—“so that there is a ‘total picture’ of the case and ‘all the circumstances of the case.’” Swafford, 125 So. 3d at 776, 778 (quoting Lightbourne v. State, 742 So. 2d 238, 247 (Fla. 1999); see also Jones, 709 So. 2d at 521.

The State’s case against Mr. Morris was mainly circumstance and depended largely upon the testimony of Ms. Price that Mr. Morris confessed the murders to her. In this case, two police officers were fatally shot during a traffic stop by the

front seat passenger of the stopped vehicle. There was no DNA or fingerprint evidence found in the car and Ms. Brantley, the driver, never named the passenger in her car that evening. You could not ascertain the facial features of the shooter in the video and there were available possible defenses regarding why the passenger in Ms. Brantley's car that evening gave Mr. Morris's information to police. Thus, this new evidence regarding the statements made to Mr. Baird by Ms. Price along with Mr. Baird's own personal observations of the overt and subtle threats and pressure by police received by Ms. Price in order to secure her continued cooperation to testify creates reasonable doubt about Mr. Morris's guilt. See Swafford, 125 So. 3d at 778.

Mr. Baird testified to the following information during the evidentiary hearing. First, he explained that he and Ms. Price had been in a relationship for a few months before he broached the topic of her involvement in Mr. Morris's case with her after he noticed she had been getting a lot of phone calls from detectives. PC/282. In response, Ms. Price conveyed frustration to Mr. Baird regarding TPD's repeated and persistent harassment of her to cooperate in Mr. Morris's case. PC/282. Mr. Baird asked Ms. Price directly whether she had information about Mr. Morris's culpability in the officers' murders and she replied that she did not. PC/287. Ms. Price conveyed to Mr. Baird that she did not become involved in the case until law enforcement came to her apartment at Kenneth Court during the man

hunt for Mr. Morris. PC/283. Ms. Price told Mr. Baird that she did not have any information. PC/283. She claimed that TPD made threats regarding the custody of her children and possible criminal charges if she would not provide them information. PC/283. Ms. Price told Mr. Baird that she went down to the TPD station at officer's request and only went along with providing them information out of fear of ramifications if she did not cooperate. She frequently complained to Mr. Baird about the harassment and her inability to provide any real information about Mr. Morris. PC/285. Mr. Baird also testified to specific instances he personally observed to corroborate Ms. Price's statements about the police pressure. One instance Mr. Baird testified to in particular was a message read by Mr. Baird firsthand that TPD was watching him and Ms. Price eating lunch in a park one afternoon when Ms. Price did not immediately respond to detectives. PC/286. Additional evidence suggests TPD kept close sights on Ms. Price. For example, during the evidentiary hearing it was revealed that Ms. Price was pulled over by approximately 10 officers one evening shortly before she was first set to testify against Mr. Morris. PC/64. Even now Ms. Price's credibility is at issue: When Ms. Price was questioned by postconviction counsel, she could not recall why she was pulled over or any details of the stop. PC/64-65. Yet, when the State lead her on cross with an explanation for the stop, she was suddenly able to recall the facts the State fed her concerning what occurred. PC/67-68. These

inconsistencies testified to by Ms. Price should have been more adequately explored at trial before the jury where the State does not have the luxury of leading a witness hostile to the defense.

The postconviction court improperly concluded that Mr. Baird's testimony was not credible. Mr. Baird has no reason or motive to lie and his testimony has been both consistent and credible. Mr. Baird does not know Mr. Morris personally and has no motive or incentive to help Mr. Morris by offering his testimony.

PC/278. He did not come forward with information sooner because of the legal problems he and Ms. Price were independently facing at the time of Mr. Morris's trial. PC/278. Mr. Baird was not offered any promise of assistance or leniency based on his testimony.

The postconviction court also improperly concluded that in light of the evidence produced at trial that the evidence at issue is not of such nature that would probably produce an acquittal on retrial. Ms. Price was a key state witness and her testimony was used to convict Mr. Morris in both the present case and the Rodney Jones case. The Jones conviction was then used as an aggravator in the instant case. Because the state's case relied largely upon the passenger identifying himself as Mr. Morris and the testimony of Ms. Price, this new evidence that the confession was recanted by Ms. Price to Mr. Baird is highly relevant in the context of the remaining available evidence and casts great doubt on Mr. Morris's

conviction. See Swafford; See also Jones. Without the confession of Ms. Price, the State's case is far from convincing beyond a reasonable doubt. It is unlikely that the State would have been able to convict Mr. Morris of the charged offense without her testimony. See Swafford. It will be addressed below that Mr. Morris's ID had been used in the past in the location of the murders, making an alternate suspect a realistic possibility. Ms. Brantley never placed Mr. Morris in the car that evening and text messages between them indicate that they broke up the night of the murders. No fingerprints or DNA evidence of Mr. Morris was found in the car or around the crime scene. Eyewitness, Ynalia Keen, testified she could not see the face of the shooter because it was dark. V25/1474. The dashcam video did not clearly show the shooter's facial feature. The clothing worn by the shooter was different than what an available witness, Mr. Ogelsby, saw Mr. Morris wearing a mere 20 minutes prior to the dashcam video. The testimony from TPD officers about whether Mr. Morris's voice was recognizable during the traffic stop was highly biased and unreliable. The testimony from the prison guard that Mr. Morris's stated he "repent[s] for killing" is similarly problematic because Mr. Morris was in the midst of a psychotic break when the statement was allegedly made. Thus, without the testimony of Ms. Price, there is a distinct lack of available evidence directly tying Mr. Morris to the crime. See Swafford; see also Jones.

Therefore Mr. Baird's testimony constitutes newly discovered evidence, is

admissible, and creates strong, reasonable doubt as to Mr. Morris's culpability. See Jones, See Swafford. This Court should vacate Mr. Morris's convictions and sentence and remand for a new trial because Ms. Price fabricated Mr. Morris's confession during trial because of the pressure placed on her by TPD for her cooperation.

II. DONTAE MORRIS WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT PHASE OF HIS CAPITAL TRIAL, IN VIOLATION OF THE 5TH, 6TH, 8TH, AND 14TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION. TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE, DEVELOP A DEFENSE AND CHALLENGE THE STATE'S CASE, AND AS A RESULT, THE DEATH SENTENCE IS UNRELIABLE.

A successful claim of ineffective assistance of counsel must show that counsel's performance was deficient and that the deficient performance prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687-89 (1984). Deficient performance must establish that counsel's representation "fell below an objective standard of reasonableness." Id. at 688. Prejudice requires a showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

Mr. Morris's trial counsel was deficient for failing to meaningfully investigate, develop a defense, and challenge the State's case during the guilt phase of his trial. Counsel also deficiently allowed the jury to be unnecessarily exposed to

inflammatory evidence, failed to object to the alleged use of racial slurs by Mr. Morris, and failed to obtain a working version of the November 10, 2011, jail visitation video, which contained probative mental health evidence that could have been used during several stages of the proceeding. These deficiencies prejudiced Mr. Morris and a new guilt phase is required. See Strickland, 466 U.S. at 694.

A. Counsel's Failure To Meaningfully Investigate, Develop A Defense, And Challenge The State's Case Was Deficient Performance That Prejudiced Mr. Morris.

Trial counsel's failure to adequately investigate and challenge the State's case prejudiced Mr. Morris because it allowed the State's case to remain virtually unchallenged before the jury. Counsel has a duty to investigate and "a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Strickland, 466 U.S. at 688, 690. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness." Id. at 691. Strickland makes clear that a claim for ineffective assistance of counsel may turn on the failure to conduct a reasonable investigation. "One of the primary duties defense counsel owes to his client is the duty to prepare himself adequately prior to trial." Fitzpatrick, 118 So. 3d at 753. As this Court has recognized, "[pretrial preparation, principally because it provides a basis upon which most of the defense case must

rest, is, perhaps the most critical stage of a lawyer's preparation." Id. Additionally, "a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." Wiggins, 539 U.S. at 527. A "cursory investigation" does not "automatically justif[y] a tactical decision." Id.

Counsel failed to put forth any evidence during its case in chief. However, there were several key facts that the jury should have known before deliberating on Mr. Morris's guilt. See Wiggins, 539 U.S. at 527. These facts include: (i) that another individual had previously used Mr. Morris's identity to fraudulently cash checks; (ii) the true extent of the motives, bias, and financial and legal circumstances of the State's star witness, Ashley Price; (iii) a witness to challenge the identification of Mr. Morris based on the clothing worn by the shooter in the video; (iv) and to give context to text message evidence admitted by the State that actually went to show that it was unlikely it was Mr. Morris who was in Ms. Brantley's passenger seat that evening. Had this evidence been properly put forth by trial counsel the outcome of the proceeding would have been different.

Trial Counsel's deficient performance is underscored by postconviction counsel's uncovering of the following evidence and theories that were not previously discovered, nor presented, by trial counsel. This evidence obtained by postconviction counsel was uncovered by investigating leads found in trial

counsel's files. Id. Counsel's deficiency is clear because it was unreasonable to fail to conduct additional investigation of Ms. Price's custody issues, legal issues, and financial situations because the evidence already available to trial counsel would have led a reasonable attorney to investigate further. Id.

1. Counsel failed to investigate and obtain checks cashed in Mr. Morris's name while he was incarcerated.

Evidence that someone cashed four checks with Mr. Morris's Florida ID card while he was incarcerated should have been presented by defense counsel to challenge the State's case that it could have only been Mr. Morris in Ms. Brantley's passenger seat that evening. Counsel's failure to fully investigate and follow up on this potential defense after first mentioning it during opening statements and failing to present it before the jury as an alternate theory as to why the passenger would know and provide Mr. Morris's identifying information was deficient and prejudicial. ROA Vol. 31 P. 2340-42.

While the duty to investigate does not "force defense lawyers to scour the globe on the off chance that something will turn up," Rompilla v. Beard, 545 U.S. 374, 383 (2005), postconviction evidence demonstrates that counsel's preparation and performance were constitutionally inadequate," because the check cashing information was clearly readily accessible and available to postconviction counsel. See State v. Fitzpatrick, No. SC11-1509 (Fla. June 27, 2013). Additionally, mention of this defense was first made by Ms. Meeks during opening statement

and was never again mentioned by the defense. V24/R1287. Deficient performance of counsel arises when counsel argues a defense in opening and presents no evidence to support the defense during trial. Avery v. State, 737 So.2d 1166, 1167 (Fla. 2d DCA 1999); see also Harris v. Reed, 894 F.2d 871, 879 (7th Cir.1990) (explaining that counsel “primed the jury” to hear evidence, failed to present it, and “the jury likely concluded that counsel could not live up [to] the claims made in the opening”).

Ample evidence to support this defense was obtained and admitted by postconviction counsel during Mr. Morris’s evidentiary hearing. See Fitzpatrick. This evidence could have been available to trial counsel to present during its case-in-chief upon competent investigation. Their failure to do so was deficient. Id.; See Wiggins, 539 U.S. at 527. Trial counsel was already aware and had documentation of the three checks for Duval County. Exhibits 1-3; Exhibit 6. An investigator was tasked with looking into these check cashing instances. PC/332, and trial counsel obtained documentation of these worthless checks from Duval County. PC/332; Exhibit 6. Mr. Boldt knew whomever passed those checks had in their possession Mr. Morris’s FL ID card because it was included on the check, and that the ID card contained Mr. Morris’s middle initial, date of birthday, and photograph. PC/336; Exhibit 5. Trial counsel admitted during the evidentiary hearing that it could have

been easily proven that Mr. Morris was incarcerated during the month of April 2008 by calling the DOC custodian of records to testify to that fact. PC/17-21; 335.

The circuit court improperly found that counsel's decision not to investigate the check cashing defense was strategic and thereby reasonable under the norms of professional conduct because trial counsel failed to obtain all of the necessary information before concluding not to present this evidence before the jury. The most relevant check, the one cashed in Hillsborough County, was not found or mentioned anywhere in the defense files or notes, establishing that the alleged investigation into this matter was inadequate. PC/332-334. See *Rompilla*. This check was arguably the most relevant because it occurred in the same location as the officers' murders. See *Magil v. Dugger*, 824. Because counsel failed to obtain all of the necessary evidence prior to determining that this defense should not be pursued, a strategic decision could not have been made because counsel was not equipped with all of the facts in order for them to have fully considered the issue. See *Brewer v. Aiken*, 935 F.3d 850 (7th Cir. 1991).

Additionally, the court found the decision reasonable in light of the defendant's resistance to investigating the imposter's identity, the fact that the checks had been cashed two years prior to the murder, the State's evidence, and counsel's desire to maintain credibility with the jury. However, Mr. Morris's concern regarding this defense was in attempting to ascertain who the individual

was who cashed these checks in his name while he was incarcerated. During the evidentiary hearing, trial counsel conceded that it was unnecessary to prove who cashed the checks in order to present the defense. PC/344. Additionally, as documented in the October 19, 2011 attorney note, Mr. Morris seemed receptive to exploring the defense. PC/140. Mr. Boldt agreed that after this October 19, 2011 attorney note entry, this theory of defense was dropped and not mentioned again until an attorney note dated August 1, 2013. PC/140. This was around the time period that the relationship between Mr. Hileman and Mr. Morris became strained and this entry should be properly interpreted as counsel's attempt to begin shifting blame to Mr. Morris in anticipation of another lost trial. PC/341, 432.

Nor was the time frame the checks were cashed a reasonable consideration as the circuit court claimed. It is not the timing that would have been helpful for the jury to consider. See Magil. Rather, it was the fact that someone else has previously used Mr. Morris's identification. The State argued that the passenger identified himself as Dontae Morris, and so therefore this is proof beyond a reasonable doubt that the passenger was in fact Dontae Morris.

Mr. Morris was prejudiced because it deprived the jury of hearing evidence that someone, only two years prior to the murder of the officers, looked enough like Dontae Morris to pass four worthless checks at a grocery store in broad daylight. This evidence directly supports the theory of the defense that the State

had insufficient evidence identifying Mr. Morris as the perpetrator and would have changed the outcome of the proceeding had it been presented. PC/331. The failure to challenge the State's identification prejudiced Mr. Morris because the jury never heard any alternative argument regarding why the passenger in the vehicle was so well-versed with Mr. Morris's information. The State placed undue emphasis on the shooter giving Mr. Morris's name and information to police when an individual who resembled Mr. Morris and possessed his Florida ID Card only a few years earlier was able to cash checks in broad daylight. If the passenger had a warrant that he was concerned about, it would have been reasonable for him to not show identification and give a false name instead of his own. This is especially true if this person had previously used Mr. Morris's identification to fraudulently cash checks and had the information on hand. Mr. Morris's jury was not able to fully consider whether it was Mr. Morris in the passenger seat that evening because they were not provided all of the available facts. Thus, this deficiency prejudiced Mr. Morris, and relief is proper. See Strickland, 466 U.S. at 685.

2. Counsel failed to meaningfully investigate and uncover evidence to challenge Ms. Price's testimony.

Trial counsel's inadequate investigation into the State's star witness Ashley Price left out key information that could have been used to severely discredit her as a witness before the jury. Evidence was discovered and admitted by postconviction counsel during Mr. Morris's evidentiary hearing that showed the full picture of the

financial, legal, and personal situation of Ms. Price when she came forward with Mr. Morris's alleged confession. This evidence was readily available upon diligent investigation and did not "force defense lawyers to scour the globe on the off chance that something will turn up." See Rompilla, 545 U.S. at 383.

The jury failed to hear this evidence because counsel either failed to obtain the evidence entirely or failed to properly question Ms. Price in a way for the jury to understand the whole context of the situation she was facing. Mr. Morris was prejudiced by this failure because the evidence of her pending child neglect charges, knowledge of the \$98,000 reward in light of her financial situation, and legal situation, would have allowed the jury to hypothesize alternative reasons regarding why Ms. Price came forward with Mr. Morris's alleged confession.

The circuit court erroneously concluded that trial counsel's cross examination was reasonable and competent in light of all of the information uncovered and presented by postconviction counsel during the evidentiary hearing.

Because counsel failed to obtain all of the necessary evidence prior to determining that this defense should not be pursued, a strategic decision could not have been made because counsel was not equipped with all of the facts in order for them to have fully considered the issue. See Brewer v. Aiken, 935 F.3d 850 (7th Cir. 1991). The breadth of information presented by postconviction counsel during the evidentiary hearing standing alone shows the deficiency of trial counsel

especially because no tactical motive can be ascribed to an attorney whose omissions are based on ignorance due to the failure to properly investigate or prepare. See Brewer, 935 F.2d at 850; see also Wiggins, 539 U.S. at 526-27.

There were several key pieces of information that could have been used by counsel to show what issues Ms. Price had hanging over her head that could have been used by TPD and the State to induce her cooperation. For example, because of counsel's deficient investigation, the jury was unaware that at the time Ms. Price was caught up in TPD's massive manhunt for Mr. Morris, she had pending child neglect charges. Nor was counsel aware that Ms. Price's children were not living with her at the time because of this open dependency proceeding. PC/164. During trial, the only question asked of Ms. Price during cross examination regarding her children was if she had received any threats by TPD or the State to call the Department of Children and Families ("DCF") to have her children removed. This question failed to elicit the information that Ms. Price did in fact have an open, pending, dependency proceeding against her and that her children were removed from her home at the time she gave her statement about Mr. Morris to TPD, and that she was in the process of trying to get the Court to return them to her. PC/34. Counsel was deficient for failing to obtain any of the details of Ms. Price's dependency and during the evidentiary hearing admitted it would have been a more effective cross examination to make the jury aware Ms. Price was facing an active,

open, DCF proceeding. PC/163-164, 166. Counsel also failed to offer any strategy for their failure to do so. PC/166.

Jurors were also unaware of Ms. Price's full financial situation and her knowledge of the \$98,000 reward being offered to anyone who could help with the capture and conviction of Mr. Morris. During the evidentiary hearing, Ms. Price testified that she watched the broadcasts on the news the day after the murders occurred and was therefore aware of the \$98,000 reward being offered at the time she came forward with her statement. PC/39-40. Ms. Price was also under significant financial strain at the time she learned of this reward and came forward with information about Mr. Morris. However, Ms. Price was only questioned regarding any direct monetary benefit she received from the State. This questioning was insufficient because simply asking about receipt of a direct monetary benefit does not offer the full context of her financial situation.

Postconviction counsel was able to uncover through a Hillsborough County Clerk of Court that when she came forward in June of 2010, Ms. Price was unemployed and only received \$338 twice a month from unemployment. PC/29, 31; Exhibit 8. Her children were not living with her during this June 2010 period because of the open dependency proceeding discussed above, so she was not receiving any WIC assistance of the \$674 a month that she would receive for SSI as it was being transferred to her mother who had custody of the children. PC/ 28, 29, 34. This

means that Ms. Price was only receiving approximately \$676 a month from documented sources, yet owed \$715 a month, plus electricity and any corresponding late fees to her apartment each month before calculating in food and other expenses. In September of 2010, Ms. Price was served an eviction notice for failing to pay her rent. PC/31. Trial counsel testified that they were unaware of the actual financial situation of Ms. Price at the time she came forward because no investigation was conducted. PC/ 166, 168. Trial counsel conceded that had the eviction notice, lease information, and financial situation of Ms. Price been investigated and uncovered, it would have been used during her cross examination. PC/170-171.

Finally, jurors failed to hear any specific information regarding Ms. Price's pending violation of probation (hereinafter "VOP) charges for two counts of aggravated battery and burglary of an occupied dwelling because of counsel's deficient investigation and cross examination. Counsel should have investigated the new law violation and lenient sentence Ms. Price ultimately received shortly after coming forward to TPD with Mr. Morris's statement. Trial counsel's failure to investigate left them unaware of the maximum penalty Ms. Price faced when the State offered her probation and how much time she was facing for her violation of probation. PC/175. This evidence would show the favorable treatment one receives as a star witness for the State in a high-profile murder case. The lenient sentence

on the burglary and aggravated battery charges sent a message to Ms. Price that she would be protected from law violations as long as she remained a State witness. Transcripts from her violation of probation hearings were available and obtained by postconviction counsel that mentioned Ms. Price's involvement as a potential State witness. These transcripts also indicated that Ms. Price's attorney requested continuances because of "mitigation" that was being developed on behalf of Ms. Price. Exhibits 12, 13, 14, 15, 16 and 17. However, all that was asked of Ms. Price before the jury was whether she had ever been convicted of a felony, had a pending VOP, and if her felony charges originated after she came forward to police in June of 2010.

During the evidentiary hearing, postconviction counsel obtained and presented the full details of Ms. Price's legal situation. Her 2010 scoresheet establish that she was facing a minimum recommended sentence of 76.65 months and a maximum of 15 years Florida State Prison ("FSP") for two counts of aggravated battery and burglary of an occupied dwelling. Exhibit 9; PC359-360. Instead of the recommended sentence, pursuant to a plea deal with the State, Ms. Price received just five years of probation on December 6, 2010. Exhibit 9. Postconviction counsel also discovered and presented that on February 11, 2013, Ms. Price received a violation of probation for failing to make payments towards her financial obligations and for a new felony law violation, operating an

unregistered vehicle with a suspended license. (“DWLS”). Exhibit 10. Trial counsel confirmed that all that was discovered and included in the attorney files for Ms. Price is the judgment and sentence document and a CCIS print out which showed all of the litigation regarding Ms. Price. PC/359-360. Trial counsel could not locate in their files any criminal punishment scoresheets, the December 6, 2010 please form, any violation report for the February 2013 violation, or any criminal report affidavits. PC/359-360.

Counsel’s failure to investigate and obtain this information made it so the jury never heard that the State offered Ms. Price five years-probation for a crime with a maximum penalty of up to 30 years and with a lowest permissible sentence of 76.65 in PSP. PC/43, 46. Nor does the questioning reveal the open and continuing violation of probation that was not being resolved because of “mitigation” that happened to correspond with Ms. Price’s testimony in Mr. Morris’s trial. Because none of the transcripts were obtain, trial counsel was unaware of the continuances in sentencing Ms. Price on her violation of probation charges, and that they were being requested to develop “mitigation” on behalf of Ms. Price. Therefore, her violation of probation charges and what mitigation was being developed was never able to be fully developed during cross examination before the jury.

The Court erred by finding that Mr. Morris was not prejudiced by Counsel’s

failure to question Ms. Price about the specific details regarding her convictions, pending cases, and financial troubles. Taken together, Ms. Price was facing the loss of her children, her ability to provide and care for herself and her children, her home, and her freedom. The motive and veracity of Ms. Price was central to the State's case. Trial counsel's focus on whether Ms. Price admitted to receiving any overt offer or deal from the State missed the circumstantial evidence of police and State pressure in more subtle, underhanded ways. This evidence could have been used to call into question Ms. Price's denial that she had a motive to cooperate. For example, instead of overt threats, Ms. Price had to still cooperate with the State as an entity to get her children back. Her children being out of the home also caused financial issues as the disability check and government assistance she received for her children was going to her mother at the time. Thus, Ms. Price had quite a bit of incentive to do whatever possible to try and get her children returned to her. The jury was also unaware that Ms. Price knew about the \$95,000 reward when she came forward and the financial difficulties she was facing at that time. It should have been discovered that shortly after coming forward to police, she lost her home and her expenses were more than her income. Relocation assistance does not convey to the jury that Ms. Price was unable to provide for herself through documented sources during this time period and that level of financial insecurity can lead to desperate acts. Her freedom was also at stake. Evidence could have

been presented to show that the State was holding her testimony over her head as both a carrot and a stick: if her testimony was successful, she would receive a lenient sentence. There is also a flip side, and the State was obviously exerting a subtle influence over her testimony. This was constitutionally deficient and prejudicial error because Ms. Price was undoubtedly the most important of the State's witnesses and in the context of the available evidence, was arguably left unscathed by defense counsel. Had the jury been properly informed through questioning conducted by a well-prepared counsel, it is likely that the jury would not have found Ms. Price to be credible and would not have found Mr. Morris guilty of the charged offense.

3. Counsel failed to call Marcus Ogelsby to testify to contradict the identification of Mr. Morris as the shooter in the dash cam video.

Mr. Oglesby should have been called as a witness by trial counsel because his description of Mr. Morris's clothing the night of the shooting contradicts what the shooter was wearing in the dashcam video. Had this testimony been elicited, it would have called into question the identification of Mr. Morris in the dashcam video because the face of the shooter was not discernable, and the clothing worn by the individual contradicts the testimony of Mr. Ogelsby. Mr. Olgelsby was available and willing to testify that the clothing description he gave to police the night of the shooting was a contrary description of what Mr. Morris was allegedly wearing in the dashcam video less than twenty minutes later. PC/130. Trial counsel

was aware of this conflicting description, which was contained in a police report they received as discovery and was thus deficient for failing to put forth this testimony. PC/365-6.

The following evidence could have been elicited by competent counsel during trial. Mr. Ogelsby testified during the evidentiary hearing that he saw Mr. Morris 20. Minutes before the shootings occurred wearing a white T-Shirt, necklace, and driving a light-colored car. PC/125, 128-129. He originally gave this description to a TPD Detective prior to trial. He explained during the evidentiary hearing that he was with Mr. Morris that evening for about 20 minutes and was clearly able to see what he was wearing because his driveway is well lit. PC/125, 127. He recalled seeing the necklace in particular because of the way it shimmered and that he was not wearing a black vest. PC/125. Trial counsel during the evidentiary hearing agreed that Mr. Oglesby's statement to law enforcement would have corroborated Temika Jones' testimony. A light-colored car would also put him in a different car than the red one that was the subject of the traffic stop shortly before the murders occurred. PC/129. Mr. Oglesby recalled that he was only contacted once by someone from Mr. Morris's defense team in 2010 and they reviewed with him the same questions that were asked at the evidentiary hearing. PC/129. No follow up contact was made, and he was not called to testify.

The postconviction court erroneously concluded that counsel was not deficient

for failing to put forth this evidence to challenge the State's case before the jury that it was Mr. Morris in the dashcam video. Mr. Morris was prejudiced because it is clear from the dashcam video, taken less than 20 minutes after Mr. Morris was at Mr. Ogelsby's house, that the shooter is not visibly wearing a necklace but is wearing a black vest. This description would have cast doubt on the State's identification of Mr. Morris as the individual in that video because there are no identifying features of the shooter other than the clothing and the information provided by the individual in the passenger seat. This also would have directly contradicted the testimony of Temika Jones and challenged the State's identification of Mr. Morris. Instead, defense counsel put on no alternative theory for jurors to consider. Had this identification been properly challenged, the outcome of the proceeding would have been different. See Strickland, 466 U.S. at 685.

4. Counsel failed to offer context to evidence admitted by the State during trial.

Counsel was ineffective for failing to direct the jury's attention to the portion of the text messages between Cortney Brantley, the driver, and Mr. Morris that indicated Mr. Morris broke up with Ms. Brantley that evening and did not want to see her. These messages contradict the State's theory of the case and call into question who was actually with Ms. Brantley that evening. Coupled with Mr. Olgesby's testimony during the evidentiary hearing that Mr. Morris visited Mr.

Oglesby that evening less than a half-hour before the shootings, the assumption that it was Mr. Morris who was the perpetrator becomes even more uncertain before the jury.

During trial, the State introduced records of cellphones purporting to be the cellphones used by Cortney Brantley and Mr. Morris between June 28, 2010 through July 2, 2010. PC/185, Exhibit 20. Trial counsel failed to argue that the cell phone number attributed to Mr. Morris indicates he broke up with Ms. Brantley about 11 hours before the shootings occurred. PC/184-186;191. Additionally, during the time of the traffic stop, there was a third, unidentified number that was in communication with the phone number attributed to Mr. Morris. This third party could have been the passenger in the car and the perpetrator of the shootings. If he was in communication with the phone number attributed to Dontae Morris it would explain how Mr. Morris allegedly seemed to be aware of the shooting. It would explain why Mr. Morris allegedly sent a text to Courtney Brantley advising her to not park her car in the usual place. Trial counsel testified at the evidentiary hearing that Mr. Morris was very protective of Ms. Brantley. PC217-218, 237-239. Therefore, he did not need to be the shooter to care about Ms. Brantley being apprehended for being involved with a shooting. The existence of a third party being aware of the shooting puts subsequent text messages and phone calls between all three parties in a different light. It removes any conclusions the State

drew from the text messages when they argued that the texts establish that Mr. Morris must have been the passenger and shooter in this case. None of this was presented to the jury.

Trial counsel testified that she failed to call jurors attention to these text message exchanges or additional number. This was prejudicially deficient because Ms. Brantley never identified the passenger in her front seat that evening and the cell phone evidence directly challenges the State's assurance that it was Mr. Morris who was her passenger hours after text messages indicate that they ended their relationship. Counsel's failure to present this information left the State's theory unchallenged. Had counsel presented this information, it is likely that the outcome would have been different. See Strickland, 466 U.S. at 685.

B. Counsel was deficient for causing the jury to be exposed to inflammatory and non-probative evidence during trial

Counsel deficiently caused the jury to be exposed to extremely damaging dash came video with inflammatory and non-probative images during the guilt phase of Mr. Morris's trial. The admission of unsettling photographs will be upheld by an appellate court only if corroborative of other evidence. Czubak v. State, 570 So.2d 925, 928 (Fla. 1990). An admission of photographs of deceased victims must be probative of an issue that is in dispute." Almeida v. State, 748 So.2d 925, 928 (Fla. 1990). None of the desperate efforts of fellow officers trying to save the life of their comrades went to the issue of the shooting itself, or more particularly, the

identity of the shooter. The images were not published until after trial counsel opened the door during cross examination by demanding the video's completeness. V23/R1568-70. Thus, counsel was ineffective under Strickland for failing to limit the inflammatory images shown to the jury because there was no probative issue that justified the playing of the emotional, heart wrenching rescue efforts before the jury. V23/R1566-70. See Czubak, 570 So.2d at 928; see also Almeida, 748 So.2d at 928.

The postconviction court erred by concluding that trial counsel was not deficient because he made a strategic decision when he objected and asked for the damaging portion of the video to be played to the jury. However, counsel claimed that he demanded the video be played in its entirety to show that the integrity of the crime scene had been compromised and that the officers were not focused on preservation of evidence. PC377-378, 379. However, Mr. Boldt also testified during the evidentiary hearing that he was aware the remainder of the dash cam video contained approximately 2 minutes and 20 seconds of rescue efforts on the two slain officers. Mr. Boldt then had to admit that upon further questioning, no gun was recovered or associated with Mr. Morris and therefore it made no difference whatsoever that a bullet casing may or may not have been found due to the integrity of the crime scene, as he originally claimed. PC437. Trial counsel's evidentiary hearing testimony invokes the post hoc rationalization forbidden by

Wiggins v. Smith, 539 U.S. 510, 526-27 (2003). Additionally, because no gun was found, no argument was made by counsel regarding the integrity of the crime scene which makes this explanation disingenuous at best. See Id. Mr. Morris suffered prejudice because of counsel's deficiency when the jury was subjected to this highly emotional and distressing life-saving efforts on the slain police officers because it was not probative of any issue before the jury and was played completely unnecessarily and only because of the deficient action of counsel. Czubak, 570 So.2d 925, 928; see also Almeida v. State, 748 So.2d 925, 928 (Fla. 1990). Therefore, relief is warranted on this claim.

C. Counsel was deficient for failing to object to the alleged use of racial slurs by Mr. Morris

Counsel's failure to object to the alleged use of the term "cracker" as a descriptor of the slain officer's was deficient and prejudiced Mr. Morris. The term was used three times during trial: (1) during the State's opening argument; (2) during the testimony of Ms. Price; (3) during the State's closing argument. The officers were identified by being named in the indictment along with the date they were murdered; meaning that they could be identified in ways other than race. Counsel never objected to its use even though race was not an issue in this case.

Trial counsel was deficient and failed to strategize to the word's admissibility, draft a motion in limine to restrict its use, or conduct legal research as to whether it could properly be introduced. PC/194-95, 379-381, 383. See Luce v. US, 469 U.S.

38, 105 S.Ct. 460, 83 L.Ed.2d 443 (1984); See Capehart v. State, 583 So.2d 1009 (Fla. 1991),

The postconviction court improperly concluded that because race was not a focus of the trial, that the term “cracker” was used as a physical descriptor of the officers as white and not as a prejudicial racial slur that inflamed the passions of the jury. This was especially deficient on the part of counsel where vigilance against racial prejudice is especially necessary in death penalty proceedings, State v. Davis, 872 So.2d 250 (Fla. 2004); see also, Wallace v. State, 768 So.2d 1247, 1251-52 (Fla. 1st DCA 2000). Similar to the situation in Wallace, by using the term “crackers,” what the assistant State attorney did in this case was attempt to get the majority of Mr. Morris’s white jurors to have an emotional and negative reaction to the fact that a black defendant had allegedly murdered two white police officers and allegedly referred to them as “crackers.” E.g., Robinson v. State, 520 So. 2d 1 (Fla. 1988). Trial counsel admitted during the evidentiary hearing that the word “cracker” can be prejudicial and derogatory depending on its context. Counsel also admitted that there were other ways to establish the identity of the officers. Counsel also surmised the State wanting to inject race into the trial to inflame the passions of the jury. PC/249. Counsel also acknowledged that she would likely now object to the use of the term crackers. PC/202-4.

Thus, a new trial is warranted because it cannot be proven that the jury’s

conviction and recommendation of death was not motivated in part by racial considerations. Id. at 8. Further, counsel can offer no strategy as it pertains to the statement because no legal research was conducted. See Hardwick v. Crosby, 320 F.3d 112. Because of this deficiency, Mr. Morris suffered prejudice and relief is proper.

D. Counsel was deficient for failing to obtain a working version of the November 10, 2011, jail visit video, which contained incredibly probative mental health evidence.

Counsel failed to obtain a working version of the November 10, 2011 jail visit video and provide it to Dr. McClain who now, after viewing the video, has changed her original diagnosis because of the probative and relevant information contained in the video regarding Mr. Morris's mental health. No strategic decision could support counsel's investigative failure to follow up with mental health mitigation evidence where the competency process alerts counsel to extensive and multiple mental health concerns. See State v. Bright, 200 So. 3d 710 (Fla. 2016). Further, defense counsel is "duty bound" to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation during the sentencing phase.

Counsel's failure to obtain this video resulted in Mr. Morris being originally misdiagnosed by defense experts as suffering from manic depression with temporary psychosis. After viewing Mr. Morris on the video, Dr. McClain testified

during the evidentiary hearing that her diagnosis would be now be schizophrenia. This video would have also help counsel put Mr. Morris's statement "I repent for killing," in better context for the jury.

1. The missing 11/10/11 video left statements by Mr. Morris unchallenged before the jury and impacted defense expert recommendations and proposed testimony regarding the presentation of penalty phase mitigation evidence.

Because of counsel's deficiency in obtaining this vital mental health evidence, defense experts were unable to review the only direct evidence of Mr. Morris's psychosis, provide an accurate recommendation to defense counsel in regard to the presentation of testimony during the penalty phase, and simply accurately evaluate Mr. Morris's mental health. Counsel was also deficient for failing to properly challenge the statement, "I repent for killing," with other statements from the Hillsborough County Direct Observation log as permitted by the court's order. Mr. Morris was prejudiced because the above-mentioned statement was introduced to the jury as an admission as opposed to what it really was – the ramblings of someone under a psychotic break. Therefore, no mental health testimony was presented during his penalty phase because defense experts were never provided with all of the relevant information.

This Court in Bevil v. State, 221 So.3d 1168, 1180 (Fla. 2017), explained that:

[W]hile a more favorable expert opinion in postconviction generally does

not establish deficient performance, because trial counsel is entitled to rely on the evaluations of qualified mental health experts, see Jennings v. State, 123 So.2d 1101, 1116 (Fla. 2013), it is critical to note that the mental health experts who testified at the evidentiary hearing were provided with additional background information not previously discovered or provided to the expert witness- that is, the very records and information trial counsel failed to discover.

Counsel was therefore deficient for failing to provide Dr. McClain this 11/10/11 jail visit video because she failed to even consider the diagnosis of schizophrenia until after she reviewed the evidence in the video. See Id. Dr. McClain testified during the evidentiary hearing that the only evidence provided to her by defense counsel after being retained by trial counsel to evaluate Mr. Morris's competency and provide possible mitigation testimony was: a letter transcribed by Mr. Hileman detailing a conversation between himself and Ms. Watson about Mr. Morris's auditory hallucinations; The Hillsborough County Sheriff's Direct Observation Logs; and notes from mitigation specialist Carol Springer. PC/1134, 1135, 1137, Exhibit 28. She also interviewed Mr. Morris a total of four times. PC/1135. All materials received by Dr. McClain contained second-hand observations of the auditory hallucinations and delusions Mr. Morris was experiencing. PC/1139-1140. There was no direct evidence of Mr. Morris's psychosis provided. Even during in person interviews, when questioned, Mr. Morris would vaguely reference the voices as foolishness, which he refused to define. PC/1140. Based off of this second-hand information and her interviews

with Mr. Morris, Dr. McClain diagnosed Mr. Morris with major depression with psychotic features. PC/1139. She later informed trial counsel that she could not seem to find sufficient mitigation and feared a diagnosis of Antisocial Personality Disorder (“ASPD”) diagnosis would be damaging if her testimony was presented. Because of this advice, no mental health evidence was presented before the jury in Mr. Morris’s trial.

Postconviction counsel retained Dr. McClain and provided the 11/10/11 jail visit video for her review. PC/1141, Exhibit 22. Dr. McClain had not previously received or reviewed that video. PC/1141. It was not provided prior to her original diagnosis and mitigation recommendation to defense counsel. Based on the video, Dr. McClain now views a diagnosis of schizophrenia as more accurate than her original diagnosis of major depression with psychotic features. PC/1142.

Trial counsel should have been aware that this jail visit between Mr. Morris and his mother existed and contained probative and relevant mental health evidence to provide to Dr. McClain. PC/637, 781-782. They knew he was placed under direct observation on November 10,2011, following issues that arose during a jail visitation between Mr. Morris and his mother that same day. PC/635, 637, 639-640, 776-778 Exhibit 28. Counsel had a duty to obtain this information. However, to the contrary, trial counsel referenced the nonworking condition of the discovery file which contained the jail visit video both in attorney’s notes and on

the record, yet never followed up to ensure that they ever actually received or were able to view it. They never filed a motion to compel this evidence. Even pre-trial, the Defense was aware that there was one video missing from the competency review; the date of which was the same day Mr. Morris's direct observation and competency concerns began, November 10, 2011. PC/772-773, Exhibit 41. It was even brought to their attention during the deposition of Dr. McClain upon questioning by the State regarding whether she had ever watched this video. PC/771. There was ample time between her pre-trial deposition and potential testimony during the penalty phase to ensure she had reviewed this seemingly vital video and that her recommendations were based off all the available evidence. During the evidentiary hearing, counsel conceded that it was the responsibility of defense counsel to acquire and provide this video to their experts. This video was never obtained by trial counsel. Exhibit 26, PC/604-641, 642, 648-649, 669.

Mr. Morris was clearly prejudiced by counsel's failure to obtain a working copy of the November 10, 2011, jail video visitation and provide it to Dr. McClain or admit it at trial. Dr. McClain made clear during the evidentiary hearing that had she previously been provided this video she would have been better able to counsel the defense teams against possible mitigation avenues and would not have been fearful of a more damaging diagnosis such as antisocial personality disorder. PC/1203. This would have unquestionably changed the nature of her trial

testimony. Because of this evidence, Dr. McClain testified that she considers this 11/10/11 jail visit video the single piece of evidence that had the most impact. PC/1166, 1169. She explained that if she had been given this video prior to trial, she would have further explored with counsel testimony regarding a psychotic disorder as mitigation. PC/1170. She would also not have suggested that her testimony would be damaging because a diagnosis of schizophrenia rules out an ASPD diagnosis. PC/1203-1204. Additionally, this video evidence could have been used by trial counsel to better counter the State's argument that the statements made by Mr. Morris during direct observation and jail visitations around this time were religious, not psychotic. Dr. McClain noted that his statements go beyond a religious discussion of salvation because of the comments about someone taking or putting something on him PC/1161, 1163. Instead of religious ideation, Dr. McClain considered this evidence of an auditory hallucination because of the insistence on something happening to him and because of his soul being on the dark side. PC/1155.

Further, the court's finding that Dr. McClain already had all of the information necessary to render her opinion with the video was error. Dr. McClain testified that the evidence contained in the video was "markedly different" because the notations made in the direct observation logs are not as clear-cut evidence of psychosis as what she observed during the discussion between Mr. Morris and Ms.

Watson PC/1142, 1166-1168. Dr. McClain also testified that she could not form this schizophrenia diagnosis prior to viewing this video because she had not been able to previously ascertain Mr. Morris's differentiation of the voices as well as their delusional, paranoid nature. PC/1165-1166, 1168. Dr. McClain explained that there is a difference between reading something from someone else's observations and actually observing something in real time where it is verifiable. PC/1202.

This is not the circumstance where a new expert offers a more favorable opinion during postconviction proceedings like in Jennings, but rather, this is akin to the situation in Bevil where the same expert changed their opinion because of additional information not previously provided. Had Dr. McClain been properly provided this video by trial counsel, Mr. Morris's diagnosis of schizophrenia would have been mitigation evidence that should have been heard by the jury during the penalty phase, the judge during the pretrial motions in limine, and the jury in connection with Mr. Morris statement, "I repent for killing," addressed below.

2. The 11/10/11 video and its impact on challenging the statement, "I repent for killing"

Counsel was deficient for failing to use the video and other statements made by Mr. Morris in the Hillsborough County Sherriff's Direct Observation Logs to

challenge Mr. Morris's statement "I repent for killing," which was testified to by Deputy Clemente during the State's case-in-chief. While the court's order prohibited the use of lay or expert testimony regarding Mr. Morris's mental health at the time he made the statement, the ruling did not preclude evidence of other statements made by Mr. Morris or observations of his conduct or actions during the time period deputies were observing him. PC/650. Instead, trial counsel merely cross-examined Deputy Clemente on his ability to recall and observe Mr. Morris during this time frame instead of eliciting or calling additional deputies to testify to the other irrational and psychotic statements and observations made by Mr. Morris that were included on that log.

The postconviction court also erred by concluding that presenting the video to challenge the statement alleged by Deputy Clemente, or introduce the other statements made by Mr. Morris while under direct observation, would not have changed the outcome. During the evidentiary hearing, counsel agree that several concerning statements made by Mr. Morris included in the direct observation logs would have been helpful to present to the jury. PC/652, 653, 654, 658, 659, 660. These include statements such as giving his whole family AIDs and concern about voodoo being placed on his soul. PC/653-654, 658. Counsel also agreed that questioning about these other statements made during direct observation were explicitly permitted by the Court's order and would not have changed the court's

ruling regarding William's rule evidence, so there was no real danger of putting forth this evidence. PC/650-651, 663. Additionally, defense counsel was prepared to present this evidence during trial because the other officers on the direct observation log were already under subpoena. PC/715, 768.

This Court in Morris v. State, 219 So. 3d 33 (2017), acknowledged that the trial court's ruling precluding lay and expert testimony of Mr. Morris's mental health at the time he made the statement was error and that this evidence could have been used as impeachment. See, § 90.8061, Fla. Stat. While this Court considered this error to be harmless at the time, in conjunction with the other postconviction claims in this appeal, the harm in counsel's failure to obtain this video magnifies and its procurement would have likely changed the outcome. Had counsel acted as competent counsel should have, by truly testing the State's case, this video becomes much more significant. Rather than interpret "I repent for killing" as an admission of guilt, trial counsel would be able to argue it was nothing more than a delusional ideation. The jury's failure to understand the mental state of Mr. Morris when this statement was made caused him irreparable harm. Thus, counsel was deficient, and Mr. Morris was prejudiced.

E. The cumulative effects of counsels' errors amount to overwhelming deficiency and warrant relief.

Taken together, failing to present items A. through D. deprived Mr. Morris of a new trial. The defense did not call any witnesses or present a defense. If all of the

above-mentioned evidence would have been present, the jury would have found the State's case insufficient to convict Mr. Morris. See Strickland, 466 U.S. at 685. This is especially apparent in light of the information argued and admitted during the evidentiary hearing which addressed several key components of the State's case that remained originally unchallenged by defense counsel. Because no tactical motive can be ascribed to any of the actions on the part of the Defense that were based on ignorance due to their failure to investigate, it is clear that Mr. Morris's counsel fell below the standard of care of reasonable, competent counsel. Because of this deficiency, the State's case remained largely unchallenged even though ample evidence existed to counter almost all of the State's major points and identification of Mr. Morris. Thus, coupled with the remaining claims, Mr. Morris was prejudiced and deserves a new trial.

III. TRIAL COUNSEL WAS INEFFECTIVE DURING THE PENALTY AND SENTENCING PHASE OF MR. MORRIS'S TRIAL FOR FAILING TO INVESTIGATE AND PRESENT ADEQUATE MITIGATION, THUS DENYING MR. MORRIS HIS RIGHTS UNDER THE 5TH, 6TH, 8TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Mr. Morris's trial counsel also failed to provide effective assistance of counsel, as required by the Sixth Amendment, during the penalty phase of trial. Counsel never presented the full context of Mr. Morris's traumatic life circumstances nor any mental health testimony. Nor did an expert witness testify in his penalty phase

before the jury regarding Mr. Morris’s significant mental health issues. Counsel should have also presented evidence of Mr. Morris’s neurocognitive dysfunction. To assess prejudice for failure to present adequate mitigation evidence, this Court must consider, ‘the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the postconviction proceeding’—and ‘reweigh it against the evidence in aggravation.’ Porter v. McCollum, 558 U.S. 30, 41 (2009).

A. Trial Counsel failed to investigate and present adequate mitigation evidence during Mr. Morris’s penalty phase.

While a plethora of mitigation evidence was available for Mr. Morris, it was not investigated or presented during the penalty phase. Rather, the only witnesses called during the penalty phase were Mr. Morris’s mother and three other family members, related by blood, who had not had any significant contact with Mr. Morris over many years. ROA. Vol. 33. These witness’s testimony revolved largely around their encounters with Mr. Morris on the sports field, PC/680-681, without any questions being asked about Mr. Morris’s family life, his mental health, stability, or about the death of Mr. Morris’s father. PC/681-682.

In a capital case, trial counsel has an “obligation to conduct a thorough investigation of the defendant’s background,” Williams v. Taylor, 529 U.S. 362, 396 (2000), to “find witnesses to help humanize the defendant,” Hardwick v. Crosby, 320 F. 3d 1127, 1163 (11th Cir. 2003); see State v. Lewis, 838 So. 2d

1102, 1113 (Fla. 2002) (“[T]he obligation to investigate and prepare for the penalty portion of a capital case cannot be overstated—this is an integral part of a capital case.”) Under the Sixth Amendment, a reviewing court must determine whether the “investigation supporting counsel’s decision not to introduce mitigating evidence of [the defendant’s] background was itself reasonable.” Wiggins, 539 U.S. at 523. Counsel must make an adequate investigation of a defendant’s background and family history. See Rompilla v. Beard, 545 U.S. 374, 377 (2005); see also Porter, 558 U.S. at 39; Wiggins, 539 U.S. at 527; Rose, 675 So. 2d at 571; see also Ragsdale v. State, 798 So. 2d 713, 716 (Fla. 2001) (vacating death sentence for “fail[ure] to investigate . . . an abundance of potential mitigating evidence,”); See also Rose, 675 So. 2d at 571-72. Trial counsel cannot make a reasonable, strategic decision about his trial presentation without information gathered through sufficient investigation. See Wiggins, 539 U.S. at 534; see also, e.g., Rose, 675 So. 2d at 572-73. This Court found the attorney deficient in Hildwin v. Dugger, where trial counsel failed to unearth a large amount of mitigation evidence that could have been presented at sentencing.

Mr. Morris’s trial counsel provided deficient performance during the penalty phase in three ways. First, counsel failed to complete a thorough psychosocial evaluation because the only investigation completed was merely cursory. See Wiggins, 539 U.S. at 527; see also Williams, 529 U.S. at 396 (2000). This failure

was constitutionally deficient because it resulted from “inattention, not reasoned strategic judgment.” Williams, 529 U.S. at 526. Second, trial counsel failed to fully investigate Mr. Morris’s mental health and failed to use even the minimal evidence they had to present an effective mitigation case. See Porter v. McCollumn, 558 U.S. 30, 40 (2009); see also Rose v. State, 675 So.2d 567 (Fla. 1996). When this court “reweigh[s] the evidence in aggravation against the totality of available mitigating evidence,” presented during the evidentiary hearing the prejudice to Mr. Morris because of his trial counsel’s deficiencies is clear.” Williams.

Ample mitigation evidence existed to present before the jury had counsel acted competently and conducted a full psychosocial evaluation, invested and presented mental health evidence, and ordered the necessary tests to show Mr. Morris’s neurocognitive dysfunction.

1. A full psychosocial evaluation should have been requested by counsel

Trial counsel failed to develop the necessary relationship and trust with family members in order to fully investigate Mr. Morris’ past and have a clear picture of his upbringing. Defense counsel should have made competent efforts to develop relationships with family members, build trust, and foster open and honest communication in order to acquire sufficient mitigation. Hardwick. Instead, only superficial attempts were made, which were met by Mr. Morris’ family and friends

with distrust and a reluctance to participate. Regardless, attorneys have a duty to investigate and present adequate mitigation evidence, even when it is suggested by the client, or family members, that no evidence is available. See, Williams v. State, 987 So.2d 1, 13 (Fla. 2008); See also, Rompilla v. Beard, 545 U.S. 374 (2005). Moreover, counsel must not “ignore pertinent avenues for investigation of which he should have been aware.” See Porter, 558 U.S. at 40.

This deficiency on behalf of counsel to form and foster relationships amongst Mr. Morris’s circle in order to present a sufficient mitigation presentation becomes even more apparent in light of the relationships formed and the information made available to postconviction counsel by Dr. Cunningham. “Strategic choices made after less than a complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” Larzelere v. State, 979 So. 2d 195 (Fla. 2008). Dr. Cunningham was retained by postconviction counsel to conduct a psychosocial evaluation of Mr. Morris and identify any adverse developmental factors that could have been considered as mitigation at capital sentencing. PC/812. He testified that no psychosocial evaluation was conducted for Mr. Morris until postconviction proceedings and that it was imperative for trial counsel to have conducted such an evaluation prior to this point to have a thorough understanding of the significant events that occurred in Mr. Morris’s early formative years in order to properly assess his moral

culpability. PC/814-815, 1007. Dr. Cunningham explained that this was especially true in Mr. Morris's case because of his suspicious and guarded nature. PC/833-834. Dr. Cunningham also explained that he only obtained this new and expanded information through "crucial" third party interviews with family witnesses, many of whom had not been previously contacted by trial counsel. PC/831-832, 835.

The postconviction court erred finding that trial counsel for Mr. Morris was not deficient and conducted a reasonable investigation into Mr. Morris's background and possible mitigation. While there was instability regarding whether Mr. Morris would permit the presentation of a penalty phase, trial counsel acknowledged during the evidentiary hearing that Mr. Morris agreed to the presentation of mitigation during penalty phase and his full willingness to cooperate during a Koon hearing. PC/627, 678. Therefore, regardless of any resistance on behalf of Mr. Morris regarding his penalty phase, the duty to present sufficient mitigation still existed. Additionally, trial counsel agreed it is the responsibility of counsel to foster relationships and build trust with individuals in the defendant's family in order to properly investigate mitigation. PC/674.

Dr. Cunningham testified that he found Mr. Morris's family members to be forthcoming and open and he cites to the "voluminous nature of his 94 page affidavit" as reflective of the degree of detail provided. PC/ 1000-1001. These family members were provided to Dr. Cunningham by postconviction counsel who

had already developed relationship with the witnesses in an attempt to foster the best level of communication possible. PC/1005, 885. All interviews were arranged by postconviction counsel, who had already made several contacts to attempt to foster a working relationship, as trial counsel should have done. PC/885. Trial counsel on the other hand relied heavily upon Ms. Meeks, who joined the defense team late in the case, and their mitigation specialist to develop relationships with Mr. Morris's family. PC/760. During the evidentiary hearing, counsel could not recall or reference anything more than an initial contact of the paternal family by the mitigation specialist and no attorney attempted to contact Mr. Morris's paternal grandparent, Janie or Eugene Morris. PC/675-676, 760-761.

Additionally, the reluctance by Mr. Morris regarding his family members involvement seemed to focus on them having to testify in a case as notorious as his own. PC/563. Counsel was deficient for failing to explain to Mr. Morris that it would not be necessary for his family to offer live testimony in order for the jury to hear a comprehensive psychosocial background like the one completed by Dr. Cunningham. PC/676. Instead, Ms. Spring seemed able and prepared to testify as she was deposed by Mr. Harmon and listed as a witness. PC/765-766. Trial counsel admitted that these steps were taken "in the case that Dontae makes a Koon waiver, she can testify to what exists and make a proffer to the court regarding the mitigation she investigated." PC/765-766. During the evidentiary hearing, trial

counsel attempted to allege that he had recently reviewed a note by lead counsel Byron Hileman that stated Mr. Morris refused to allow Ms. Springer to testify during cross examination. Counsel was unable to locate this note even after the court took a short recess to allow him time to search. PC/761-762. Upon return from recess, counsel testified that he “may be misremembering that.” PC/765.

Because of these deficiencies, Mr. Morris was prejudiced. Based on these extended interviews, Dr. Cunningham was able to identify and explain with great specificity the adverse developmental factors suffered by Mr. Morris. Most significantly, Janie and Eugene Morris’s interview with Dr. Cunningham yielded significant dysfunction that had been previously unexplored. Trial counsel testified that information from the paternal side of Mr. Morris’s family was absent in the defense team’s mitigation considerations. PC/584. This dysfunction consisted of evidence of Mr. Morris’s sexual abuse he suffered as a child as well as several individuals in Mr. Morris’s paternal family that had either substance abuse or mood disorders. This is important evidence because it can increase the likelihood of a mood disorder in a criminal defendant. PC/882, 887-88. The presence of a mood disorder in a family system increases the likelihood of a mood disorder in a criminal defendant and is information that was previously undiscovered because of counsel deficient mitigation investigation. PC/882, 887-88. It is also necessary to identify the presence of hereditary factors that would predispose or increase the

heredity risk for mood disorder in order to make a full diagnostic differential and mitigate against malingering. PC/889.

Dr. Cunningham also noted that the sparse information that was presented during Mr. Morris's penalty phase was done without any discussion of the implications of the information that was being presented and no explanation of the nexus these adverse factors had to his adult development or his moral culpability of these offenses. PC/841-842. The postconviction court even acknowledged that trial counsel did not introduce expert testimony specifically explaining the nexus between the Defendant's history/background and his psychological and emotional development and therefore his moral culpability. Additionally, trial counsel's "strategy" to save the sparse mental health testimony uncovered at the time for the Spencer hearing in the hopes of a judicial override is significantly prejudicial in light of Hurst v. Florida. Even before Hurst, hoping for a judicial override of a death recommendation in a highly publicized and politically significant case is not a competent strategy. Thus, their finding that Mr. Morris was not prejudiced is error and a new penalty phase is warranted.

2. Mental Health Evidence should have been presented during the penalty phase before the jury

Trial counsel's failure to present any mental health evidence was deficient and prejudiced Mr. Morris. A thorough and sufficient investigation into Mr. Morris's background, and of *all* the available evidence such as the November 10,

2011 video, would have revealed significant mental health mitigation. Specifically, that Mr. Morris suffered from schizophrenia. Trial counsel should have obtained and presented the same evidence before the jury that was presented by postconviction counsel through the testimony of Dr. Cunningham, Dr. Ingulli, and Dr. McClain

The postconviction court's finding that counsel's decision not to put forth any mental health or expert testimony was reasonable because of their concerns regarding a diagnosis of antisocial personality disorder or sociopathy was error. Counsel's strategy for failing to put on this evidence is not sufficient because counsel's concerns regarding damaging diagnoses, and the defense expert recommendations they relied upon, were based off of inadequate information. Had counsel obtained and provided the 11/10/11 jail visit video to Dr. McClain, she would have properly diagnosed Mr. Morris with schizophrenia which would have quelled council's fear about the State's ASPD diagnosis. Dr. McClain testified that in order to make a diagnosis of antisocial personality disorder and/or conduct disorder, the DSM 5 requires that there be a ruling out of evidence of another mental health disorder, like schizophrenia or bipolar. Thus, had counsel acted competently, obtained the video, and provided it to the defense experts; Dr. McClain could have advised counsel during their mitigation conversations that the State would be unable to make the diagnosis because she would have then

considered schizophrenia as a “rule out” disorder. PC/1171, 1189.

Additionally, even if Mr. Morris meets the diagnostic criteria for antisocial and narcissistic personality disorder, that does not mean that the jury should not have heard that Mr. Morris suffers from schizophrenic ideations and borderline intellectual functioning. The State uses the diagnosis of antisocial personality disorder, psychopathy, or sociopathy, in order to convey to the jury through a clinical personification of a malignantly evil heart. PC/824. ASPD does not rebut mitigation or diminish the damaging and impairing factors that undergo an analysis of moral culpability. PC/825. These are not willfully chosen disorders. It is a label that we place on a particular type of damage, which has its origins in things such as hereditary factors within familial system, abuse, neglect, corruptive community influence, and attachment issues experienced in early childhood. PC/825-826. There are over 600,000 symptom combinations that can result in this diagnosis. PC/826. Dr. Cunningham testified that research indicates neither ASPD nor the more extreme diagnosis of psychopathy, predict serious violence in American prisons. PC/827. Thus, the diagnosis of antisocial personality disorder does not need to be something that the defense runs from, as Mr. Morris’s trial team testified to do, but rather something that can be explained by an expert in light of the available science as something the jury can properly understand. PC/828-829.

Mr. Morris suffered prejudice because jurors heard no mental health

testimony even in light of all of the available evidence. Had counsel performed competently, Dr. McClain could have properly advised trial counsel that a more “damaging” diagnosis was unlikely given her findings. Dr. McClain was also able to correlate Dr. Ingulli’s test scores, which will be addressed in more detail below, to a schizophrenia diagnosis because the present of auditory hallucinations could cause difficult in processing speed and verbal skills.

3. Evidence of Neurocognitive dysfunction was available and should have been presented during Mr. Morris’s penalty phase before the jury.

Counsel was deficient for failing to follow up on Dr. Ingulli’s recommendation and obtain an appropriate PET and MRI scan of his brain to show he suffered from brain abnormalities. Had counsel acted competently and followed up on Dr. Ingulli’s recommendation for additional diagnostic testing, the jury could have been presented with a brain scan that corresponds with Dr. Ingulli’s findings.

Dr. Ingulli was originally retained by trial counsel to conduct a full neuropsychological battery of tests on Mr. Morris. PC/551-552. Amongst those tests were the Weschsler Adult Intelligence Scale-4th Edition (WAIS-IV) IQ test and the Wechsler Memory scale (WMS) PC/528. Dr. Lamar Ingulli testified that she advised counsel that a neurology consult would be helpful in light of the large split between Mr. Morris’s verbal score (76) and nonverbal score (94). Dr. Ingulli explained that Mr. Morris’s results showed an 18-point differential between his

verbal and nonverbal IQ scores, which is over the 10-point difference considered statistically significant amongst leading authority. PC/526, 529, 543. This was the type of evidence that would have made competent counsel aware of the need for further investigation. See Wiggins v. Smith, 539 U.S. 510, 527 (2003).

Trial counsel failed to retain an expert who could have ordered and reviewed the appropriate scans requested by Dr. Ingulli, which was deficient. See Id. Dr. Ingulli's recommendation was based off the significant difference between Mr. Morris's left and right-side functioning and low processing speed, which showed Mr. Morris suffers from neurodevelopmental defects that caused a statistically significant split between the left and right hemisphere of his brain and below average processing speed. PC/529. This should have made counsel aware of the need to follow up on the doctor's recommendation. See Id. Dr. Ingulli even relayed these findings to trial counsel in an email dated October 27, 2013, in which she informed trial counsel that Mr. Morris suffered from these neurodevelopmental and neurocognitive defects. PC/530, 557. See Wiggins. In this email, Dr. Ingulli affirmatively recommended that trial counsel obtain a neurology follow-up based on these findings. PC/530, 557. Counsel failed to so do. Dr. Ingulli received no further contact from trial counsel following this email and was not contacted again about Mr. Morris until March of 2018 by postconviction counsel. PC/ 531, 548. This was deficient because Dr. Ingulli did not testify to any of these neurocognitive

defects during any part of Mr. Morris's penalty phase but would have been available and willing to do so. PC/533.

The postconviction court's finding that defense counsel was not deficient because they reasonable relied on experts who advised them that there was no traumatic brain injury was in error. While trial counsel testified that Dr. Ingulli did not express concern over Mr. Morris's test scores, that simply was not the case. PC/682, 684. While it seems that trial counsel only retained Dr. Ingulli to look for any indication of traumatic brain injury, this is not the only possible avenue to present in terms of mitigation evidence. PC/548. Instead, trial counsel's laser focus on only findings of traumatic brain injury precluded an objective consideration of the findings by Dr. Ingulli that did in fact show brain dysfunction. PC/684. Because this was the type of evidence that would have made competent counsel aware of the need for further investigation, counsel was deficient. See Wiggins, 539 U.S. at 527.

Further, trial counsel did not recall Dr. Ingulli's recommendation for a neurology consult but had to acknowledge that the was included on the October 27, 2013, email referenced by Dr. Ingulli after his memory was refreshed. PC/684. Dr. Ingulli testified that she conveyed Mr. Morris's neurocognitive deficiencies to trial counsel but believed that she was only retained to look for indication of traumatic brain injury. PC/546. While trial counsel claim that an attorney note from October

29, 2013 memorialized statements allegedly made by Dr. Ingulli during a “tactical” conference on mitigation, Dr. Ingulli does not recall ever being part of a phone conference of that nature. PC/547-548. Nor did she agree with some of the statements attributed to her in the note. Specifically, Dr. Ingulli testified that she would not have made an Axis II diagnosis of cognitive disorder NOS. PC/550. Nor would she have told the defense team that she found indication of narcissistic personality disorder because she does not ever diagnose personality disorders. PC/551. Nor would she have told the defense team that she made a diagnosis of borderline intellectual functioning with a full IQ score of 79 because as a clinical psychologist, Dr. Ingulli explained that she knows that you cannot use the full scale when you have an 18-point difference and other significant differences, like Mr. Morris. PC/550. Thus, trial counsel’s reliance on a note attributing statements to Dr. Ingulli that she would not have made is extremely concerning and raise credibility concerns regarding the October 29, 2013 attorney note.

However, the following information was available and shows how trial counsel’s insistent focus on traumatic brain injury ignored other evidence of dysfunction. Dr. Ingulli testified that she found significant was Mr. Morris’s processing speed score of 76, which is very weaken when considering that a full-scale score below 70 is considered intellectually disabled. PC/527. Mr. Morris’s vernal comprehension index score was similarly low with a score of 76. PC/527.

Dr. Ingulli explained that processing speed can also slow significantly in stressful situations. Processing speed is an individual's ability to rationalize or problem solve quickly. Mr. Morris's already low processing speed would have been even more compromised in a high stress situation. PC/528-529. Jurors should have heard that this low processing score would have severely limited the number of possibilities Mr. Morris could consider in that situation. While Mr. Morris received a full IQ score of 79, because of these deficiencies in his cognitive functioning, Dr. Ingulli testified that she would not use Mr. Morris's overall IQ as a unified measure and would not have relied on it in any conversations with defense counsel. PC/526, 546. Instead, after being informed by Dr. Ingulli that Mr. Morris suffered from statistically significant, mitigating neurodevelopmental neurocognitive defects, trial counsel called this information "not mitigation." Thus, counsels' laser focus on only one available avenue of mitigation caused them to deficiently refrain from putting forth Dr. Ingulli's results.

Nor is it correct that counsel's failure to follow up on Dr. Ingulli's recommendation or put forth this evidence of neurocognitive defects before the jury did not prejudice him. Especially when Dr. Ingulli's testimony would have been especially strong had trial counsel followed up on her recommendation for a neurological consult and corroborating PET/MRI scan. Postconviction counsel followed Dr. Ingulli's unexplored recommendation and obtained a prescription for

both Positron Emission Tomography and Magnetic Resonance Imaging (PET/MRI) scans of Mr. Morris's brain. Dr. Wu was retained to interpret those scans and found Mr. Morris has brain abnormalities. PC/1029. Specifically, Mr. Morris's MRI showed decreased intracranial volume and decreased absolute forebrain parenchyma. PC/1026-1027. This was consistent with Dr. Ingulli's finding that there is a disparity between Mr. Morris's verbal and nonverbal processing and low processing speed scores. PC/532-533,1027, 1031. Additionally, Mr. Morris's brain is about 17% smaller than the average human's brain. PC/1028. Dr. Wu explained that individual's with damaged brains like Mr. Morris have greater difficulty not acting out violently later in life. PC/1029. This testimony should have been heard by Mr. Morris's jury because it is likely that he would not have been sentenced to death.

In light of these facts, and all of the new evidence that Mr. Morris has presented for the first time on post-conviction review, there is at the very least a "reasonable probability" that "but for counsel's unprofessional errors," Mr. Morris would not have been sentenced to death. Strickland, 466 U.S. at 694-95; Walker, 88 So. 3d at 142 ("Considering the lack of background evidence produced at trial, [and] the wealth of such evidence produced at the postconviction hearing . . . , our confidence in the outcome of the penalty phase trial is undermined.") Therefore, a new penalty phase is warranted.

IV. MR. MORRIS'S TRIAL WAS FRAUGHT WITH PROCEDURAL AND SUBSTANTIVE ERRORS WHICH CANNOT BE HARMLESS WHEN VIEWED AS A WHOLE, SINCE THE COMBINATION OF ERRORS DEPRIVED HIM OF A FAIR TRIAL UNDER THE 5TH, 6TH, 8TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

The circuit court erred denying that Mr. Morris was deprived of his Constitutional rights because counsel was not deficient. Mr. Morris contends that he did not receive the fundamentally fair trial to which he was entitled under the Eighth and Fourteenth Amendments. See State v. Gunsby, 670 So. 2d 920, 924 (1996); see also State v. Dougan, 202 So. 3d 363, 389 (Fla. 2016).

Counsel failed to adequately challenge the State's case during the guilt phase and instead, Mr. Morris's jurors were unaware of the credibility issues of the State star witness, conflicting evidence of Mr. Morris's appearance and whereabouts the evening of the shooting, along with a lack of context of some of the severe mental health issues Mr. Morris was facing. Because there was no DNA connecting Mr. Morris to the crime or any physical evidence identifying Mr. Morris, the State's case was largely circumstantial. The crux of the State's case against Mr. Morris consisted of the testimony of Ms. Price and the self-identification of the passenger in Ms. Brantley's car that evening. Counsel deficiently failed to attack those two central components of the State's as well as other failures that deprived the jury of the full factual circumstances of the evening and of Mr. Morris's mental health. If

the jury had known, Mr. Morris would not have been found guilty of the charged offenses. Nor was Mr. Morris's background and mental health issues sufficiently presented to the jury. Rather, the jury during the penalty phase only heard a fraction of what was uncovered by postconviction doctors and testified to during the Spencer hearing. Had this information been heard, Mr. Morris would have not received a death sentence. While there are means for addressing each individual error, the fact remains that addressing these errors on an individual basis may not adequately safeguard against an improperly imposed conviction and death sentence. The cumulative effect of all of counsel's deficiencies deprived Mr. Morris of a fair trial and a new trial is warranted.

V. THE STATE WITHHELD VITAL MENTAL HEALTH EVIDENCE IN VIOLATION OF BRADY V. MARYLAND AND AN EVIDENTIARY HEARING IS WARRANTED

For the reasons stated above, Mr. Morris respectfully submits that the newly discovered evidence along with counsel's constitutional ineffectiveness during both the guilt and penalty more than justify a new trial. To the extent this Court does not believe the current record sufficient, this Court should reverse the circuit court's order denying an evidentiary on the Brady claim alleged by Mr. Morris's and remand for a full evidentiary hearing. The circuit court erred by denying Mr. Morris an evidentiary hearing on claim 5(b) of his postconviction motion that the State suppressed the November 10, 2011 in violation of Brady v. Maryland,

because first, Mr. Morris's claim is not procedurally barred in this postconviction proceeding and second, an evidentiary hearing is required because this claim is not refuted by the record and Mr. Morris has asserted and sufficiently plead a cognizable Brady claim that warrants relief.

- A. While the Brady violation alleged in Claim 5(b) occurred pre-trial, facts supporting this violation did not become known to the Defense until post-conviction.

The circuit court improperly found that because a Richardson hearing was not held, that a cognizable postconviction Brady claim does not exist at this stage because it should have been instead raised during trial or on direct appeal. However, it was not until the preparation of postconviction proceedings by CCRC, after the trial and direct appeal was completed, when the facts comprising the basis of Mr. Morris's Brady claim were discovered. This is not a case "where a defendant fails to timely object to a discovery violation or to request a Richardson hearing, the defendant does not preserve the point for appellate review." Major v. State, 979 So. 2d 243 (Fla. 3d DCA 2007). On the contrary, the basis of Mr. Morris's Brady claim consists almost entirely of evidence that was not discovered until during the postconviction proceedings and could not have been known to counsel during trial.

It is undisputed at this point and evidenced by a certificate of diligent search that the State no longer has a working version of the November 10, 2011 video.

The fact that the State no longer had a working version of the video was not discovered until a records request was filed by CCRC during postconviction proceedings looking for the 11/10/11 jail visit video because it was missing from the record on appeal.

It was also not until postconviction proceedings that a note written by ASA Scott Harmon, dated 11/10/11, led CCRC Investigator Maza to discover the missing 11/10/11 jail visit video. The video was located by Investigator Maza, which had been saved in TPD's file as the November 24, 2011 "mothers visit" jail visit video. When the notes dated November 10th from ASA Harmon were compared with the conversation between Mr. Morris and his mother from a recorded jail visitation dated November 24th, it was discovered by CCRC counsel that the video was mislabeled. This evidence was only found after CCRC being appointed and receiving information from the State.

Because all of this evidence could not have come to light until after the commencement of trial and during this post-conviction process, it could not have been raised to its full effect prior to this point. Thus, it was not until this stage of the proceeding that Mr. Morris's Brady claim became cognizable, making the lower court's reliance on Major erroneous and warrants remanding this claim back to the circuit court for an evidentiary hearing.

- B. Because Mr. Morris alleged a facially sufficient Brady claim which raised disputed factual issues not conclusively refuted by the

record, he is entitled to an evidentiary hearing on this claim.

Mr. Morris alleged that the State committed a Brady violation by failing to disclose a working version of the 11/10/11 jail visit video to his defense team. Brady v. Maryland, 373 U.S. 83 (1963), requires that the State disclose material information within its possession that is favorable to the defense. To establish a Brady violation, the defense must show that (1) that favorable evidence, either exculpatory or impeaching, (2) was willfully or inadvertently suppressed by the State, and (3) because the evidence was material the defendant was prejudiced. Id.

Here, the State failed to disclose a working version jail visit video record on 11/10/11 between Mr. Morris and his mother Selecia Watson; first during pre-trial proceedings and again during postconviction. This jail visitation was recorded the day Mr. Morris was placed under direct observation and contains both impeaching and mitigating mental health evidence that remained otherwise unknown and undiscovered to the defense team during trial. This highly probative mental health evidence contained in this suppressed video would have changed the outcome of the proceeding.

- (1) This jail visit video contained both impeaching and mitigating mental health evidence and satisfies the first prong of the Brady analysis.

This 11/10/11 jail visit video satisfies Brady's requirement regarding the nature of the evidence because it is the only direct physical evidence of the psychosis Mr.

Morris was experiencing prior to trial. See Brady. This evidence would have allowed defense expert, Dr. McClain, to consider alternate diagnoses for, such as schizophrenia, when she had been otherwise unable to reach this diagnosis without viewing this video. This evidence could have also been used to impeach Mr. Morris's statement "I repent for killing."

- (2) A material question of fact exists as to whether this video evidence was willfully or inadvertently suppressed by the State.

Whether the State suppressed evidence is a question of fact that can be resolved by an evidentiary hearing. See Way v. State, 630 So.2d 177, 178 (Fla. 1993). Allen v. State, 854 So. 2d 1255, 1259 (Fla. 2003). Here, a material question of fact exists as to whether the State suppressed this 11/10/11 jail visit video, especially because the video no longer exists in the State's files as evidenced by a certificate of diligent search filed during postconviction proceedings.

The court in its order improperly considered the following evidence to show that this video had been "disclosed" for purposes of Brady: (1) the notice provided in an amended notice of discovery filed on 4/16/12; (2) Mr. Hileman's statement during the motion in limine (hereinafter "MIL") transcript which acknowledged that the defense received that notice of discovery listing the video and; (3) that Mr. Hileman was on the record as late as Jan 24, 2013 requesting this video.

However, these facts relied on by the postconviction court do not actually amount to disclosure under Brady because there is no evidence in the record that a working version of this video was ever provided to anyone outside of the State Attorney's office. While a corrupted file may have been noticed by the State, even during the MIL transcript that the court uses to support its proposition that the video was "disclosed," Hileman noted that the videos were inaccessible because of some kind of computer programming error. Further, it was not only the defense team that was encountering problems with this video. Dr. Taylor, the doctor appointed to determine Mr. Morris's competency to stand trial, noted in his report that this video in particular was unintelligible because of issues with the audio portion of the video. Again, this shows that the video, while being noticed and "provided" by the State, was not actually working, and thus, should not be considered disclosed for purposes of Brady.

Further, it was not until postconviction proceedings that CCRC received in records from the Repository a memo written by ASA Scott Harmon containing notes from this jail visit video. This means that the only entity or individual who has been able to view a working version of this video was ASA Scott Harmon. In fact, it was this note by Mr. Harmon that provided for the ultimate discovery of the 11/10/11 tape by CCRC Investigator Maza.

As background, when CCRC could not locate the 11/10/11 video, a records request was filed including five jail visit videos that could not be located in the record on appeal. Ultimately, four of the five videos were located in the file. The only remaining missing video was the one from 11/10/11. In response to CCRC's record request, the State filed a notice of diligent search information advising the court and defense counsel that the 11/10/11 jail visit video could not be located in their files.

Using the note dated 11/10/11 by Scott Harmon, Investigator Maza was able to find the missing jail visit video mis-saved in TPD's files as a visit labeled November 24, 2011 with the special notation "mother's visit," which was not included in any other jail visit title. Most peculiar, is that the November 24, 2011 video was saved on November 17, 2011. The conversation between Mr. Morris and his mother in the November 24th video follows along verbatim with Mr. Harmon's note dated 11/10/11. It is only through these notes that CCRC was able to realize the missing video was mislabeled under another date. This video dated November 24th was not corrupted and could *finally* be viewed, once it was understood that the information had been hidden under the wrong date. Because a material question of fact exists as to whether this video was suppressed, an evidentiary hearing on this claim is warranted. Allen, 854 So. 2d at 1259.

(3) The mental health evidence contained in this 11/10/11 video is material and Mr. Morris was prejudiced by its omission.

To satisfy the materiality prong of Brady, a defendant must prove that there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome. Guzman v. State, 868 So.2d 498 (Fla. 2003).

This video was material because it changed Dr. McClain’s original opinion and diagnosis that Mr. Morris was suffering from a temporary psychosis, manic depressive state, to a more serious diagnosis of schizophrenia. Dr. McClain’s consideration of a schizophrenia diagnosis would have significantly impacted the proceedings because it would have changed both the advice she gave to counsel regarding her mitigation testimony as well as the testimony she provided before the court during Mr. Morris’s Spencer hearing. It is also likely that had Dr. McClain been able to diagnosis Mr. Morris with schizophrenia by observing the first hand evidence of his psychosis as explained in this video, that mental health testimony would have been put on by the defense during the penalty phase because a schizophrenia diagnosis quells concerns over more damaging diagnosis, such as ASPD.

This change in Dr. McClain’s testimony and the impeachment of Mr. Morris’s statement “I repent for killing” with the direct evidence of psychosis contained in this video by placing the statement in proper context for the jury

would have changed the outcome of the proceeding. See Guzman, 868 So. 2d. Allowing the jury to view the video evidence of Mr. Morris's psychosis, would have created reasonable doubt as to the credibility of any statement Mr. Morris made while experiencing schizophrenic and paranoid delusional thoughts. Rebutting this damaging statement, along with challenges to the State's guilt phase evidence presented in further detail below should entitle Mr. Morris to a new jury trial. Because Mr. Morris has alleged a cognizable Brady claim and his allegations are not conclusively refuted by the record, at the least, Mr. Morris is entitled to an evidentiary hearing on this claim.

Therefore, a genuine dispute of fact exists as to whether the State properly "disclosed" this information *in working form* to the defense as required by Brady. To the extent this Court does not believe the current record is sufficient to provide relief, this Court should reverse the circuit court's order denying Mr. Morris an evidentiary hearing on his Brady claim.

CONCLUSION

Based on the foregoing claims, viewed individually and cumulatively, Mr. Morris's death sentence is unconstitutional. He prays this Court vacate his death sentence and remand for a new trial. In the alternative, because a genuine dispute of fact exists and that the current record is insufficient to provide relief, this Court should reverse the circuit court's order denying Mr. Morris an evidentiary hearing

on his Brady claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of June, I electronically filed the foregoing Motion with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: The Honorable Michelle Sisco, Circuit Judge, 401 N. Jefferson Street, Room #102, Tampa, FL 33602, heckshsl@fljud13.org, Marilyn Beccue, Assistant Attorney General, Office of the Attorney General, Marilyn.Beccue@myfloridalegal.com, capapp@myfloridalegal.com, Scott Harmon, Assistant State Attorney, harmon_s@sao13th.com, Stapleton_a@sao13th.com, 419 North Pierce Street, Tampa, FL 33602, mailprocessingstaff@sao13.com, Circuit Court Reporting, 800 E. Twiggs Street, Room 606R, Tampa, FL 33602, reporters@fljud13.org and by U.S. mail to Donte Morris DOC # 214353, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Initial Brief was generated in Times New Roman 14-point font pursuant to Fla. R. App. P. 9.210.

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