

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

HENRY MARTIN STEIGER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case Number: SC20-1404

DCA Case Number: 1D19-3217

L.T. Case Number:
172018CF004365XXXAX

PETITIONER'S BRIEF ON THE MERITS

On Discretionary Review from the District Court of Appeal, First District

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STATEMENT OF THE CASE AND FACTS

Procedural Posture

The Office of the State Attorney in and for the First Judicial Circuit (“the State”) charged Henry Steiger (“Mr. Steiger”) with one count of second-degree murder concerning the death of Cassandra Robinson (“Ms. Robinson”). (R. 12, 13). Paul Hamlin (“Mr. Hamlin”) represented Mr. Steiger prior to and during the trial, which commenced on June 17, 2019 and concluded June 21, 2019. (R. 35, 326, 428). After deliberating, the jury convicted Mr. Steiger as charged. (R. 326). On August 13, 2019, Judge Jeffrey Burns sentenced Mr. Steiger to life in prison. (R. 391). Mr. Steiger filed a notice of appeal on August 30, 2019. (R. 429). The First District Court of Appeal affirmed Mr. Steiger’s conviction on August 25, 2020.

On September 23, 2020, Mr. Steiger filed a notice to invoke the Supreme Court’s discretionary jurisdiction followed by his jurisdictional brief on October 2, 2020. The Supreme Court issued an order accepting jurisdiction on December 23, 2020.

Statement of the Facts

Mr. Steiger is a middle age man born on July 20, 1965 who ran a coffee business in the Pensacola area. (R. 12; Tr. 175-2:176:9). He met Ms. Robinson, born March 13, 1993, at a strip club. (R. 53; Tr. 460:12-14.).

She became pregnant with Mr. Steiger's child and gave birth to their daughter Evelyn on February 1, 2017. (R. 53).

On February 1, 2018, Mr. Steiger and Ms. Robinson held a first birthday party for Evelyn. (Tr. 504:24-505:3). That was the last date that anyone heard from Ms. Robinson again. (Tr. 137:14-17; 146:16-19). No one reported her missing until June 8, 2018. (Tr. 142:16-20).

On July 11, 2018, police found Ms. Robinson's decomposed body inside a 55-gallon barrel located within a trailer on William Shelby Johnson's ("Mr. Johnson") property. (Tr. 278:15-20; 289:6-13). Mr. Johnson knew Mr. Steiger for years through their participation in a honeybee club. (Tr. 268:12-19). He also sold Mr. Steiger the two 55-gallon barrels found inside the trailer. (Tr. 272:1-273:25). Mr. Steiger owned the trailer containing the barrel encasing Ms. Robinson. (R. 203-04; Tr. 274:75-2). Law enforcement arrested Mr. Steiger for Ms. Robinson's murder on August 1, 2018. (R. 14).

The case against Mr. Steiger depends completely upon the testimony of cooperating defendant Julian Measure ("Mr. Measure.") After all, no State witness testified that he or she saw Mr. Steiger murder Ms. Robinson. (Tr. 135:3-742:19). There is no direct evidence that Mr. Steiger murdered Ms. Robinson. (Tr. 135:3-742:19). Dr. Andrea Minyard ("Dr. Minyard"), the

medical examiner who performed an autopsy on Ms. Robinson, couldn't even determine the way in which Ms. Robinson died. (Tr. 739:8-14).

Although Ms. Robinson's body was found over five months later in a barrel, Mr. Measure is the only witness who supports the theory that Mr. Steiger killed Ms. Robinson rather than having simply moved and encased an already dead body. (Tr. 135:3-742:19).

At trial, the prosecution introduced without objection inadmissible evidence which undoubtedly deprived Mr. Steiger of a fair trial. First, on over ten occasions, the prosecution played a recorded statement which included references to a federal investigation of Mr. Steiger, Mr. Steiger being on federal probation and Mr. Steiger having out of state issues which would prevent him from being able to get a driver's license. (Tr. 600:1-602:8; 611: 12-22; 621:3-7; 662:4-25). During the prosecution's case in chief, the jury heard the following prejudicial evidence:

THE DEFENDANT: Hey, I'm (sic) appreciate you putting me in that tone and that context because I can tell you (unintelligible). I can tell you that the situation that I'm in with the Feds could potentially be never-ending. They haven't charged me yet, but they could. It never ends, and you can't defend yourself against that.

DETECTIVE ALVERSON: Why not?

THE DEFENDANT: Because allegations – because in the federal system defense is a higher standard

of defense is required and a lesser standard of accusation is required to succeed in a conviction.

DETECTIVE ALVERSON: Well, that doesn't seem fair.

THE DEFENDANT: Well, who are we to judge the federal system?

DETECTIVE ALVERSON: I agree, yeah, well, we don't question them. Yeah.

DETECTIVE WILLHITE: I try not to deal with the feds on anything.

DETECTIVE ALVERSON: Yeah.

DETECTIVE WILLHITE: They scare me.

THE DEFENDANT: You know, and they know about my coffee company and they know I have a cash fund and they know I've been drawing from a cash fund. It should not have been any surprise to them at all that I have cash to draw from. They don't know it's at my house. They (unintelligible) amount, but they know I draw from cash every month. And it's even written down on my monthly report, cash draw, from cash.

DETECTIVE ALVERSON: Well, I don't know, maybe they've made some errors. Maybe the -- I don't know. Maybe your probation officer is the one to blame for not following up. I don't know. I don't know anything about --

THE DEFENDANT: I know that's not from you guys. I know that. That stuff's not from you guys. But they take what you say and they use it against me. Like, packing my bags. Well, there's no charges because I didn't leave, I didn't move I didn't leave

the area. I didn't move houses without permission. I'm just preparing for the inevitable --

DETECTIVE ALVERSON: Well --

THE DEFENDANT: -- knowing that I can't pay rent.

DETECTIVE ALVERSON: Well, logical to me.

THE DEFENDANT: Yes. Well, pretty much everything I do is logical. I'm a very deliberate person. However, they are not in the business of viewing me in the best possible light. Their business is to view me in the worst possible light and then ask me to defend myself. And I have been unsuccessful in the past, and I don't imagine any success rate improving under the circumstances of the system that is -- that I'm operating within.

DETECTIVE ALVERSON: Well, hopefully that's not the case, you know. That was not my intentions, you know, to get you hemmed up in whatever that is....

(Tr. 600:1-602:8).

DETECTIVE ALVERSON: Yeah. Okay. So you know my role here and Chad's role is trying to find Cassandra. We're not in the money part of it. I'm sorry that -- if we did something to cause you to have this money issue. I mean, and if I can explain anything to the federal people about your situation -- the only thing I told them is what I saw in --

THE DEFENDANT: That part was accurate. I found this much money, da, da, da, and they were like, well, we didn't know it was there, so that upset them....

(Tr. 611: 12-22).

DETECTIVE ALVERSON: Something happened and I need to know from you what happened. I don't want my mind to be spinning and everybody else's mind to be spinning. I just need to know what happened, and I need to know it from you.

THE DEFENDANT: Well, it is a story that I don't think anyone would believe, and that's my problem.

DETECTIVE ALVERSON: Well, I would like to hear it because it's on me, because I mean, there's a -- I've heard lots of things in my career that I would think this is not -- it couldn't happen that way, and when I looked into it, more I looked into people's lives and things that happen, yeah, you know, things could happen that way, it could have happened that way.

THE DEFENDANT: Well, I mean, it did happen that way, and it's just not a matter of something that I have any kind of confidence that anybody would really understand, especially what I've been through recently and the way I've been accused of things I haven't done and how poorly I faired as a result of submitting myself to the system.

(Tr. 662:4-25).

THE DEFENDANT: I know what happened at the Pace DMV. I'm not sure what day it was, but I remember what happened at the Pace DMV. We went to check to see if I had any outstanding issues in other states that would stop me from being able to get a Florida license.

(Tr. 621:3-7). At no point after the first improper reference did the prosecution or the defense act to prevent the playing of the remaining

statements. (Tr. 600:1-602:8). Rather than object to the admission of this evidence or ask for a mistrial, Mr. Hamlin waited until every improper statement was admitted, then covered up for the prosecution, failed to correctly preserve any error for appeal, failed to request a mistrial, and convinced Mr. Steiger not to request even a curative instruction in the following exchange:

MR. HAMLIN: When everything's done, we'll bring up the other issue, Your Honor.

MR. MYERS: Yeah. We just need to get on the record, obviously, there were multiple edits in that disk, and there was one that was missed. And I think Defense counsel, after discussing it with him, has decided, based on the Court's reading of the jury instruction, that any other curative instruction would maybe point out something he doesn't want pointed out. And we need --

THE COURT: The curative -- this was pretty generic right here.

MR. MYERS: Right. And I think it was an appropriate instruction.

MR. HAMLIN: There was a section in there -we thought we had everything, but he talked about the Feds and the VOP and the money. And, of course, we don't want to highlight that. I thought about a curative instruction to tell them that doesn't apply. I think that would just highlight -- I've spoken with him about it, so it's a strategy decision of mine that I'm not going to ask for that. And I think the instruction you read about law enforcement comments, kind of, covers it.

THE COURT: Maybe we should -- should we call him up here to make sure he's okay?

MR. MYERS: Yes, sir.

THE COURT: Do you mind calling him up here?

(Bench conference concluded)

MR. HAMLIN: Come on.

(At the bench:

THE COURT: So y'all made the decision not to do a curative instruction about the federal investigation stuff, right?

THE DEFENDANT: We don't need to highlight it.

THE COURT: Okay. All right. And you've discussed that with Mr. Hamlin?

THE DEFENDANT: Uh-huh.

THE COURT: Okay. All right.

MR. MYERS: I'm sorry. Is that a yes, just so it picks up?

THE DEFENDANT: Yes.

THE COURT: Let me swear you in real quick too.

(Defendant sworn)

THE DEFENDANT: Yeah.

THE COURT: Okay. I just have to do that for purposes of today. Okay. So you're making a fully informed decision not to elect to make that curative?

THE DEFENDANT: As much as a person that is uneducated in the art of law is capable.

THE COURT: Is that a yes or no?

THE DEFENDANT: I answered you as accurately as I could.

THE COURT: So yes –

THE DEFENDANT: I'm not qualified to say yes.

THE COURT: So you're okay with your attorney's opinion?

THE DEFENDANT: Uh-huh.

THE COURT: Okay. Is uh-huh a yes?

THE DEFENDANT: Yes.

THE COURT: Okay. Thank you.

MR. MYERS: And I think the copy we send back will be – we'll edit that part that was produced.

THE COURT: Okay. On the video?

MR. MYERS: Right. So the one that goes back will not have that.

THE COURT: We'll watch it too before we send it back to them, outside their presence too.

MR. MYERS: Right.

(Tr. 667:14-670:9).

Second, the prosecution admits inflammatory photographs over timely and valid objections made by Mr. Hamlin. (Tr. 686:24-699:2). These three photographs show a five-month decomposed corpse prompting Ms. Jensen to state that they “are going to be somewhat prejudicial and disturbing, especially to people that have never seen dead bodies before.” (Tr. 696:4-7). To rationalize their admission, Dr. Minyard proffered “[t]his will assist in my testimony because this is how the body was received as I first saw it without laying any hands on her after she came out of her clandestine burial drum, the 50-gallon drum.” (Tr. 690:20-23; 716:19-20). She added “It is important to convey to the jury that the death was a hidden body, basically.” (Tr. 691:1-2).

She confirms the lack of probative value in the next exchange:

THE WITNESS: Yes, sir, this is a picture that, while it is not pretty, it was -- I took very -I took extreme care to dry the skin as well as I could and make it as palatable as possible for a jury to see. I think it's important because it shows the discoloration of the skin during her decomposition process and why certain injuries to the skin would, therefore, be hidden by that discoloration.

THE COURT: So it would be to show that the injuries would be hidden.

THE WITNESS: Yes, sir.

THE COURT: Okay. Are any of the wounds visible in that picture?

THE WITNESS: No, sir.

(Tr. 691:6-19).

With respect to the last photo, Dr. Minyard said the following to the trial court: “[t]his is a picture that shows that she was wearing a nursing bra. And I -- I think It’s important to show that she was actively in the nursing process, and I think it’s important for the jury to understand that.” (Tr. 691:23-692:2). When asked by the trial court, “[w]ill that assist with showing the manner of death, location of wounds?” Mr. Myers answered “[n]o.” (Tr. 692:3-5). Nevertheless, the trial court admitted these three photographs. (Tr. 698:23-699:2).

Third, the prosecution admitted an incriminating recording made by former Pensacola Police Department (“PPD”) Detective Gilbert Galloway (“Detective Galloway”) through current PPD Sergeant Martez Lawrence (“Sgt. Lawrence”) even though Sgt. Lawrence couldn’t authenticate the recording. (Tr. 142:1-172:3). Detective Galloway, who speaks on the recording, didn’t testify at the trial and was not subject to cross-examination. Mr. Hamlin stated that he had no objection to the introduction of this recording. (Tr. 144:9). This recording is prejudicial because it establishes: that Mr. Steiger, while alone, is the last person to see Ms.

Robinson before her disappearance; Mr. Steiger's whereabouts surrounding the disappearance; Mr. Steiger's explanation as to why Ms. Robinson disappeared; the last statements Ms. Robinson made to Mr. Steiger; and that the statements made during this conversation completely contradict the physical evidence discovered at a later date. (Tr. 146:1-172:3).

Fourth, Mr. Hamlin allowed the prosecution to call Mr. Steiger's attorney Erica Reed ("Ms. Reed") to testify against him and never objected to the admission of any attorney-client privileged testimony. (Tr. 187:2-194:16). Ms. Reed immediately testifies that she was Mr. Steiger's attorney so there is no confusion about her status. (Tr. 187:16-188:4). Yet, Mr. Hamlin fails to object when the prosecution asks Ms. Reed about privileged communications on two occasions:

Q. Did Henry Steiger tell you that they had a good relationship?

A. He and Cassandra?

Q. Yes.

A. No. I got the -- it was -- it was -- I think it was more of a turbulent relationship, emotionally turbulent relationship.

(Tr. 189:24-190:5).

Q. All right. Your next contact, when would that have been?

A. The next contact was probably around late May, early June. That was a telephone call with Mr. Steiger.

Q. Is this the first time you heard of Cassandra being missing?

A. Yes.

Q. What did Mr. Steiger say?

A. He was -- he was panicked and he -- he was concerned that -- he was concerned because he was worried about, basically, worried about Evelyn. He said that either a family or friend had reported Cassandra missing. He was concerned he wasn't --

Q. Was he worried about paternity?

A. Yes. He was concerned because he wasn't on the birth certificate, and he, basically, was concerned because local authorities were, kind of, I guess, snooping around and he was worried.

Q. All right. Did you tell him calm down, maybe she'll come back?

A. I did.

Q. What did he say?

A. He said, no, no, like that wasn't going to happen. That was basically the gist of it.

Q. No, it's not going to happen?

A. It was something along those lines, like --

Q. Did you probe any further?

A. No, I didn't.

(Tr.191:18-192:20).

Mr. Hamlin failed to provide Mr. Steiger with constitutionally sufficient counsel during a whole host of other circumstances. Mr. Hamlin failed to object when crime laboratory analyst Jennifer Wilkerson ("Ms. Wilkerson") testified to the DNA population statistics without proper foundation. (Tr. 309:6-327:9). Mr. Hamlin failed to object when latent fingerprint examiner Marsha Fitch-McConnell ("Ms. Fitch-McConnell") admitted evidence of fingerprint comparisons without proper foundation. (Tr. 302:4-306:17). Mr. Hamlin failed to object when the prosecution admitted cell phone location mapping without proper foundation. (Tr. 438:16-445:13). Mr. Hamlin barely cross examined twenty-two of the twenty-four prosecution witnesses; yet, he's quick to tell the judge and State that if Mr. Steiger goes on a narrative during direct examination, that "[i]t will probably be helpful" for the State. (Tr. 751:6-7). Mr. Hamlin failed to object when the State burden shifted during the rebuttal closing argument. (Tr. 896:15-21).

The jury convicted Mr. Steiger as charged of second-degree murder on the same day the parties gave closing arguments. (R. 326; Tr. 849:12-

898:11; 925:6-926:10). On August 13, 2019, Judge Jeffrey Burns sentenced Mr. Steiger to life in prison. (R. 391). Mr. Steiger filed a notice of appeal on August 30, 2019. (R. 429).

SUMMARY OF THE ARGUMENT

Mr. Steiger raises five issues in this appeal. First, Mr. Hamlin rendered ineffective assistance of counsel by failing to object to the admission of several irrelevant and prejudicial references to criminal behavior and then choosing not to preserve the error.

Second, the trial court erred by admitting inflammatory photos of a five-month decomposed corpse which did nothing to prove any material issues at trial.

Third, Mr. Hamlin rendered ineffective assistance of counsel by failing to object to the introduction of an incriminating recording which the prosecution could not authenticate and admit. This also violated the defendant's right to cross-examine Detective Galloway, whose statements are admitted through the recording.

Fourth, Mr. Hamlin rendered ineffective assistance of counsel by failing to object to the admission of attorney-client privileged statements.

Fifth, the aforementioned errors, individually and in cumulation with DNA population statistics admitted without foundation, fingerprint

comparison admitted without foundation, cell phone mapping admitted without foundation, scant examinations of the State's witnesses and burden shifting in closing argument, deprived Mr. Steiger of his constitutional right to a fair trial, especially in light of the relatively low quantum of proof of guilt.

ARGUMENT

COURTS ADDRESS 3.850 CLAIMS APPARENT ON THE FACE OF THE RECORD TO RESPECT JUDICIAL ECONOMY

Although typically raised after appeal, Defendants may challenge their conviction for ineffective assistance of counsel when the ineffectiveness is apparent on the face of the record and it would be a waste of judicial resources to require the trial court to address the issue. *Jackson v. State*, 970 So. 2d 346, 347 (Fla. 2d DCA 2007). After all, “[i]t is the duty of this Court to ensure the fair and efficient administration of the criminal justice system.” *Maddox v. State*, 760 So. 2d 89, 110 (Fla. 2000). The court should “...avoid the legal churning which would be required if we made the parties and the lower court do the long way what we ourselves should do the short.” *Eure v. State*, 764 So. 2d 798, 801 (Fla. 2d DCA 2000).

To establish an ineffective assistance of counsel claim, two elements must be met:

First, the claimant must identify particular acts or omissions of the lawyer that are shown to be outside the broad range of reasonably competent performance under prevailing professional standards. Second, the clear, substantial deficiency shown must further be demonstrated to have so affected the fairness and reliability of the proceeding that confidence in the outcome is undermined.

Kruse v. State, 222 So. 3d 13, 16 (Fla. 4th DCA 2017). Furthermore, “[a] reasonable probability is a probability sufficient to undermine confidence in the outcome. . . . a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.” *Gordon v. State*, 469 So. 2d 795, 798 (Fla. 4th DCA 1985). Because ineffective assistance claims involve both questions of fact and law, “this Court employs a mixed standard of review, deferring to the trial court’s factual findings that are supported by competent, substantial evidence, but reviewing the trial court’s legal conclusions de novo.” *Taylor v. State*, 62 So. 3d 1101, 1109 (Fla. 2011).

**THE REPEATED ADMISSION OF IRRELEVANT AND PREJUDICIAL
PAST CRIMINAL BEHAVIOR WARRANTS THE
REVERSAL OF THIS CONVICTION**

The introduction of irrelevant prior crime evidence requires the reversal of Mr. Steiger’s conviction as courts recognize the gravity of the accompanying prejudice. In a murder trial where a husband was accused of strangling his wife, the prosecution admitted evidence that the defendant

was on probation for a domestic violence offense believing it relevant to prove the defendant's state of mind. *Matthews v. State*, 772 So. 2d 600, 602 (Fla. 5th DCA 2000). The prosecution simply admitted evidence of one sentence in a psychiatrist's report which referenced probation for the past charge. *Id.* The Fifth District recognized the "enormously prejudicial effect" of this evidence and reversed the conviction as it could not deem the error harmless. *Id.* at 603.

Although the defendant objected to the evidence in *Matthews*, a court reversed a conviction over the ineffective assistance of counsel where a defense attorney failed to object to the improper impeachment of a defendant testifying about his prior felony convictions. *Rodriguez v. State*, 761 So. 2d 381, 383 (Fla. 2d DCA 2000). In *Rodriguez*, the prosecution erred by asking a defendant who admitted being a three-time felon to name the felonies. *Id.* This question violated the law because the defendant admitted to being a felon, thereby ending further lawful inquiry; however, the prosecution continued asking the defendant to name the felonies for which he was convicted. *Id.* Despite this relatively brief line of questioning which concluded without defense objection, the Second District reversed the conviction for robbery firearm and grand theft because

defense counsel's ineffectiveness was apparent on the face of the record.
Id. at 382.

Here, Mr. Hamlin's errors dwarf the omissions committed in *Rodriguez* both substantively and procedurally. First, the prosecution introduced other crime evidence during its case in chief without any probative ground to do so. (Tr. 600:1-602:8; 611:12-22; 621:3-7; 662:4-25). As in *Rodriguez*, the prosecution committed misconduct before defense counsel erred by failing to act. Unlike *Rodriguez*, there isn't an argument to be made that this error occurred during the spontaneous impeachment of a witness as Mr. Myers deliberately chose to admit a recording in his custody which contained prejudicial and irrelevant evidence. Mr. Hamlin is tasked with knowing the contents of this evidence, especially a recording, which delivers the same performance in the dress rehearsal as the live show. *Ferrell v. State*, 29 So. 3d 959, 970 (Fla. 2010) ("Clearly, counsel has an obligation to review discovery provided by the State..."). If he didn't commit ineffective assistance by failing to review the recording, he knew the State was on the verge of introducing highly prejudicial and undeniably inadmissible evidence.

What makes this matter appreciably worse for Mr. Steiger is the sheer volume of statements referencing prior criminal actions. The

prosecution plays a protracted conversation whereby the admitted recording mentions Mr. Steiger's past crimes, being on probation or being under federal investigation arguably thirteen times as well as a reference to Mr. Steiger's potential inability to get a driver's license due to out of state misconduct.

THE DEFENDANT: Hey, I'm (sic) appreciate you putting me in that tone and that context because I can tell you (unintelligible). I can tell you that the situation that I'm in with the Feds could potentially be never-ending. They haven't charged me yet, but they could. It never ends, and you can't defend yourself against that.

DETECTIVE ALVERSON: Why not?

THE DEFENDANT: Because allegations – because in the federal system defense is a higher standard of defense is required and a lesser standard of accusation is required to succeed in a conviction.

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THE DEFENDANT: Well, who are we to judge the federal system?

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DETECTIVE ALVERSON: Well, I don't know, maybe they've made some errors. Maybe the -- I don't know. Maybe your probation officer is the one to blame for not following up. I don't know. I don't know anything. about --

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DETECTIVE ALVERSON: Well, hopefully that's not the case, you know. That was not my intentions, you know, to get you hemmed up in whatever that is....

(Tr. 600:1-602:8).

DETECTIVE ALVERSON: Yeah. Okay. So you know my role here and Chad's role is trying to find Cassandra. We're not in the money part of it. I'm sorry that -- if we did something to cause you to have this money issue. I mean, and if I can explain anything to the federal people about your situation -- the only thing I told them is what I saw in --

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(Tr. 611: 12-22).

DETECTIVE ALVERSON: Something happened and I need to know from you what happened. I don't want my mind to be spinning and everybody else's mind to be spinning. I just need to know what happened, and I need to know it from you.

THE DEFENDANT: Well, it is a story that I don't think anyone would believe, and that's my problem.

DETECTIVE ALVERSON: Well, I would like to hear it because it's on me, because I mean, there's a -- I've heard lots of things in my career that I would think this is not -- it couldn't happen that way, and when I looked into it, more I looked into people's lives and things that happen, yeah, you know, things could happen that way, it could have happened that way.

THE DEFENDANT: Well, I mean, it did happen that way, and it's just not a matter of something that I have any kind of confidence that anybody would really understand, especially what I've been through recently and the way I've been accused of things I haven't done and how poorly I faired as a result of submitting myself to the system.

(Tr. 662:4-25).

THE DEFENDANT: I know what happened at the Pace DMV. I'm not sure what day it was, but I remember what happened at the Pace DMV. We went to check to see if I had any outstanding issues in other states that would stop me from being able to get a Florida license.

(Tr. 621:3-7). At no point after the first improper reference did the prosecution or defense take action to prevent the playing of the remaining statements. (Tr. 600:1-602:8). The defense lawyer should have known the remaining inappropriate statements were about to be heard, but he chose to simply let the jury hear it all. Mr. Hamlin didn't object to the admission of any of these statements. (Tr. 600:1-602:8; 611:12-22; 621:3-7; 662:4-25).

The idiom about "not making a federal case out of something" exists because everyone besides Mr. Hamlin apparently recognizes the gravity of a federal case.

How Mr. Hamlin chooses to handle the matter further supports Mr. Steiger's ineffective assistance claim. Unlike *Rodriguez*, Mr. Hamlin

ultimately recognizes the gravity of what's just happened and chose to protect himself over protecting his client and preserving error. There's a discussion in which the parties acknowledge that the jury heard evidence it wasn't supposed to hear.

MR. MYERS: Yeah. We just need to get on the record, obviously, there were multiple edits in that disk, and there was one that was missed. And I think Defense counsel, after discussing it with him, has decided, based on the Court's reading of the jury instruction, that any other curative instruction would maybe point out something he doesn't want pointed out. And we need --

THE COURT: The curative -- this was pretty generic right here.

MR. MYERS: Right. And I think it was an appropriate instruction.

MR. HAMLIN: There was a section in there -we thought we had everything, but he talked about the Feds and the VOP and the money. And, of course, we don't want to highlight that. I thought about a curative instruction to tell them that doesn't apply. I think that would just highlight -- I've spoken with him about it, so it's a strategy decision of mine that I'm not going to ask for that. And I think the instruction you read about law enforcement comments, kind of, covers it.

(Tr. 667:16-668:12). Because the parties know they undoubtedly erred, they even agree to redact the evidence before providing it to the jury for its deliberation.

MR. MYERS: And I think the copy we send back will be – we’ll edit that part that was produced.

THE COURT: Okay. On the video?

MR. MYERS: Right. So the one that goes back will not have that.

THE COURT: We’ll watch it too before we send it back to them, outside their presence too.

MR. MYERS: Right.

(Tr. 670:2-9). Yet, for some reason, Mr. Hamlin opted not to contemporaneously object when he heard evidence he knew was inadmissible. The requirement to object contemporaneously to improperly admitted statements isn’t new or novel. *See Clark v. State*, 363 So. 2d 331, 335 (Fla. 1978). Mr. Hamlin had multiple opportunities to object and failed to object every single time. He never even asked for a mistrial. (Tr. 600:1-602:8; 611:12-22; 621:3-7; 662:4-25). Instead, he waits for a break to convince an uncertain and deferential Mr. Steiger that he should “strategically” opt against seeking a curative instruction, glossing over his prior decisions not to object or request a mistrial.

THE COURT: So y’all made the decision not to do a curative instruction about the federal investigation stuff, right?

THE DEFENDANT: We don’t need to highlight it.

THE COURT: Okay. All right. And you've discussed that with Mr. Hamlin?

THE DEFENDANT: Uh-huh.

THE COURT: Okay. All right.

MR. MYERS: I'm sorry. Is that a yes, just so it picks up?

THE DEFENDANT: Yes.

THE COURT: Let me swear you in real quick too.

(Defendant sworn)

THE DEFENDANT: Yeah.

THE COURT: Okay. I just have to do that for purposes of today. Okay. So you're making a fully informed decision not to elect to make that curative?

THE DEFENDANT: As much as a person that is uneducated in the art of law is capable.

THE COURT: Is that a yes or no?

THE DEFENDANT: I answered you as accurately as I could.

THE COURT: So yes –

THE DEFENDANT: I'm not qualified to say yes.

THE COURT: So you're okay with your attorney's opinion?

THE DEFENDANT: Uh-huh.

THE COURT: Okay. Is uh-huh a yes?

THE DEFENDANT: Yes.

THE COURT: Okay. Thank you.

(Tr. 667:14-670:6) (emphasis added).

Despite falsely referring to this as a strategy decision, it's clear from the record that this wasn't true. The parties admit that they agreed to edit the recording and missed some of the proposed redactions. (Tr. 667:16-668:12). The only reason to redact the recording would be to prevent the jury from hearing prejudicial and inadmissible evidence. Rebranding the error as a "strategy decision" prejudiced Mr. Steiger tremendously as Mr. Hamlin procedurally damaged Mr. Steiger's ability to directly or indirectly challenge the obvious error.

Lastly, this error only becomes an issue if Mr. Hamlin, in a murder trial, chose not to review the edited recording or did so and inexplicably failed to notice the glaring and repeated references to irrelevant and prejudicial criminal conduct. This again amplifies the nature of the error when compared to *Rodriguez*. The lawyer in *Rodriguez* failed to act quickly during an unpredictable cross-examination. Ostensibly, Mr. Hamlin failed to act before the trial even began as he did not notice the problem with the prosecution's evidence, failed to act again repeatedly during the trial by not preserving an objection which would almost certainly guarantee a mistrial

and then decided to call the failure to request a curative instruction a strategy decision. The failure to request a mistrial is not discussed on the record. *Rodriguez* received a new trial and Mr. Steiger should as well.

**THE PROSECUTION IMPROPERLY ADMITTED PREJUDICIAL
PHOTOGRAPHS DESIGNED TO INFLAME THE JURY**

The trial court committed reversible error when, over frequent objection, it admitted multiple photographs of Ms. Robinson's decomposed body at the medical examiner's office. Although the standard of review is abuse of discretion, this error warrants reversal under these circumstances. *Farias v. State*, 31 So. 3d 909, 913 (Fla. 4th DCA 2010).

In *Farias*, a jury convicted the defendant of lewd and lascivious conduct molestation after he touched the exterior of a seven-year old's vagina. *Id.* at 911. Even though the examining doctor testified there were no external or internal injuries to the child's vagina, the prosecution admitted pictures of the child's vagina into evidence over objection. *Id.* The Fourth District reversed the conviction based upon the erroneous admission of the picture. *Id.* at 913. The picture had little to no relevance as it showed no sign of injury; however it certainly evoked sympathy for the victim. *Id.* "[T]he trial court may decline to admit photographs if it determines that the gruesomeness of the portrayal is so inflammatory as to

create an undue prejudice in the minds of the jurors and distract from a fair and unimpassioned consideration of the evidence.” *Id.*

Here, the prosecution admitted the challenged photos solely to arouse the same improper sympathies. Ms. Jensen begins her argument admitting that the autopsy photos “are going to be somewhat prejudicial and disturbing, especially to people that have never seen dead bodies before.” (Tr. 696:4-7). Unfortunately, the following justifications were as horrendous as viewing the pictures.

With respect to State’s 154, which shows a five and a half month decomposed body yet to be cleaned up after having just been removed from a barrel, Dr. Minyard proffered “[t]his will assist in my testimony because this is how the body was received as I first saw it without laying any hands on her after she came out of her clandestine burial drum, the 50-gallon drum.” (Tr. 690:20-23; 716:19-20). She added “It is important to convey to the jury that the death was a hidden body, basically.” (Tr. 691:1-2).

However, there was no dispute that the body was hidden in the barrel. Dr. Minyard testified as much without objection. It was clear this wasn’t a material issue. This photograph adds nothing to the unopposed testimony.

With respect to State's 156, another picture of Ms. Robinson's decomposed corpse, Dr. Minyard admits it doesn't demonstrate the mechanism of death. The following exchange occurs while the trial court examines the witness outside the presence of the jury:

THE WITNESS: Yes, sir, this is a picture that, while it is not pretty, it was -- I took very -I took extreme care to dry the skin as well as I could and make it as palatable as possible for a jury to see. I think it's important because it shows the discoloration of the skin during her decomposition process and why certain injuries to the skin would, therefore, be hidden by that discoloration.

THE COURT: So it would be to show that the injuries would be hidden.

THE WITNESS: Yes, sir.

THE COURT: Okay. Are any of the wounds visible in that picture?

THE WITNESS: No, sir.

(Tr. 691:6-19). After admitting the picture isn't pretty, Dr. Minyard literally states that there are no visible wounds in the picture. (Tr. 691:6-19). She then testifies that the mechanism of death is unclear because the skin discoloration precludes her from seeing any bruising. (Tr. 695:3-14).

Again, this photo does nothing to explain the way Ms. Robinson died or anything else relevant. At best, it supports the medical examiner's explanation as to why she couldn't determine the mechanism of death.

However, justification for why she couldn't come to a conclusion isn't proof of the defendant's guilt. Additionally, there was no dispute by the defendant that the body's discoloration inhibited the medical examiner's ability to reach a conclusion as to mechanism of death. She could have testified to this fact without aid from a picture which she admits isn't pretty.

With respect to State's 158, a picture of the upper torso of the decomposing corpse, Dr. Minyard said the following to the trial court: "[t]his is a picture that shows that she was wearing a nursing bra. And I -- I think It's important to show that she was actively in the nursing process, and I think it's important for the jury to understand that." (Tr. 691:23-692:2).

When asked by the trial court, "[w]ill that assist with showing the manner of death, location of wounds?" Mr. Myers answered "[n]o." (Tr. 692:3-5).

Once more, this photo does nothing to explain the mechanism of death or anything else relevant. At best, it shows that Ms. Robinson was breastfeeding, which is a cumulative fact that wasn't in dispute. Her breastfeeding comes up with exasperating frequency. Dr. Minyard could have simply testified as much.

Mr. Hamlin correctly states during his relevance and 403 objection that these three pictures are "not necessary for the expert to use to explain to the jury, they don't establish any identity, they don't reveal any cause of

death, they don't really to do anything to assist the jury in understanding that the expert can't tell them verbally." (Tr. 689:10-19). Whatever it is the prosecution sought to prove via the admission of these three photos wasn't in dispute and didn't need to be visualized.

The trial court justified admission having reviewed *Campbell v. State*, 271 So. 3d 914 (Fla. 2018). In *Campbell*, the objected to photograph showed the "nature and extent of the victim's injuries." *Id.* at 934. The photographed injuries were relevant to proving manner of death. *Id.* at 918, 934. That fact renders *Campbell* completely inapposite to Mr. Steiger's matter as Dr. Minyard made it abundantly clear that the pictures wouldn't demonstrate the manner of death because of the severe decomposition and skin discoloration. (Tr. 690:17-694:4). As these pictures do nothing to further the State's case, Mr. Steiger's conviction should be reversed under *Farias* due to the admission of inflammatory evidence.

MR. HAMLIN DID NOT CHALLENGE THE ADMISSION OF DETECTIVE GALLOWAY'S RECORDING OF MR. STEIGER

Mr. Hamlin failed to objected to the admission of a conversation between Mr. Steiger and law enforcement despite the prosecution's obvious inability to authenticate the evidence or produce the detective who directs the conversation. Before an audio recording may be admitted into evidence, it's proponent must properly authenticate it. *Santana v. State*,

191 So. 3d 946, 949 (Fla. 4th DCA 2016). “[T]he authentication should be made by the technician who operated the recording device or a person with knowledge of the conversation that was recorded.” *Id.*

In *Santana*, a confidential informant recorded conversations he had with a defendant regarding a drug trafficking offense. *Id.* at 948. At trial, the prosecution introduced the audio recordings without calling the confidential informant as a witness. *Id.* Despite the prosecution’s ability to identify the speakers on the recordings, there was no “evidence that the recording was a fair and accurate representation of the conversation that occurred.” *Id.* “[T]he law enforcement officials who testified were not participants in or listening to the conversations as they occurred, and the State did not ask Appellant whether the recordings were accurate despite the fact that Appellant testified on his own behalf.” *Id.* The trial court abused its discretion by admitting the recordings and the conviction was reversed. *Id.* at 948-49.

Similarly, the prosecution introduced a recording made by Detective Galloway through Sgt. Lawrence. (Tr. 143:11-144:13). Apparently, Detective Galloway works for a federal agency and the prosecution didn’t call him as a witness. (Tr. 144:18-19). This recording, admitted as State’s Exhibit 2 and published for the jury, includes only two speakers: Mr. Steiger

and Detective Galloway. (Tr. 146:1-172:3). There's no evidence whatsoever that Sgt. Lawrence participated in that call. (Tr. 146:1-172:3). He was in no position to comment on whether the recording fairly and accurately represented the conversation between Mr. Steiger and Detective Galloway. Accordingly, the evidence should not have been admitted.

Furthermore, the prosecution's admission of Mr. Steiger's recorded statement violated Mr. Steiger's rights under the Confrontation Clause. "The United States Supreme Court has held that a hearsay statement offered against the defendant violates this constitutional right if (1) the statement is testimonial, (2) the declarant is unavailable, and (3) the defendant lacked a prior opportunity for cross-examination." *Corona v. State*, 64 So. 3d 1232, 1239 (Fla. 2011); *State v. Hernandez*, 875 So. 2d 1271, 1273 (Fla. 3d DCA 2004). To be clear, the out of court conversation, as to Detective Galloway, is hearsay. Fla. Stat. § 90.801. State's Exhibit 2 fits the rest of the definition.

With respect to the first prong, "[t]he Court later clarified that where the circumstances objectively indicate that there is no ongoing emergency and that the primary purpose of the police interrogation is to establish or prove past events potentially relevant to later criminal prosecution, statements in response to the interrogation are testimonial. *Corona*, 64 So.

3d at 1240. State's Exhibit 2 is undoubtedly testimonial as Mr. Steiger speaks to law enforcement about a non-emergency past events pertaining to his child's first birthday, his relationship with Ms. Robinson and the circumstances behind Ms. Robinson's disappearance. Next, both Mr. Steiger and Detective Galloway are unavailable as a witness as Mr. Steiger is legally unavailable and prosecution never called Detective Galloway as a witness at trial. Also, the prosecution publishes State's Exhibit 2 after the admitting witness is off the stand so there's no procedural avenue to examine a witness about the exhibit. (Tr. 145:16-172:3). Lastly, Mr. Steiger lacked the prior opportunity for cross examination. *Id.* at 40-41.

Again, Mr. Hamlin failed to preserve these objections. This recording is prejudicial because it establishes: that Mr. Steiger, while alone, is the last person to see Ms. Robinson before her disappearance; Mr. Steiger's whereabouts surrounding the disappearance; Mr. Steiger's explanation as to why Mr. Robinson disappeared; the last statements Ms. Robinson made to Mr. Steiger; and that the statements made during this conversation about Ms. Robinson leaving Pensacola completely contradict the physical evidence discovered at a later date. (Tr. 146:1-172:3). Therefore, the prejudice to Mr. Steiger's defense is apparent.

**MR. HAMLIN ALLOWED THE PROSECUTION TO ADMIT ATTORNEY
CLIENT PRIVILEGED COMMENTS WITHOUT OBJECTION**

Without objection, Mr. Hamlin allowed the prosecution to call Mr. Steiger's lawyer Ms. Reed to testify about privileged communications between them. Granted, Mr. Hamlin could not preclude the calling of Ms. Reed as a witness; he could still object to the admission of specific incriminating statements. "A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client." Fla. Stat. § 90.502(2). This means that Mr. Hamlin could have and should have objected to aspects of testimony from Ms. Reed, who had moments earlier testified that she was Mr. Steiger's lawyer and only had a business relationship with him. *Id.*

At trial, Ms. Reed testified to Mr. Steiger's admission of guilt and motive to commit the offense. First, Ms. Reed stated the following on direct examination:

Q. Did Henry Steiger tell you that they had a good relationship?

A. He and Cassandra?

Q. Yes.

A. No. I got the -- it was -- it was -- I think it was more of a turbulent relationship, emotionally turbulent relationship.

(Tr. 189:24-190:5). The question literally asks what Mr. Steiger discussed with his lawyer and Mr. Hamlin allows the witness to answer. The answer provides Mr. Steiger a motive to harm the deceased.

The next inquiry is significantly damning based upon the number of questions asked about conversations between Mr. Steiger and his lawyer as well as the responses. Again, the prosecution's questions should have tipped off Mr. Hamlin that the questions sought attorney-client privileged replies.

Q. All right. Your next contact, when would that have been?

A. The next contact was probably around late May, early June. That was a telephone call with Mr. Steiger.

Q. Is this the first time you heard of Cassandra being missing?

A. Yes.

Q. What did Mr. Steiger say?

A. He was -- he was panicked and he -- he was concerned that -- he was concerned because he was worried about, basically, worried about Evelyn. He said that either a family or friend had reported Cassandra missing. He was concerned he wasn't --

Q. Was he worried about paternity?

A. Yes. He was concerned because he wasn't on the birth certificate, and he, basically, was concerned because local authorities were, kind of, I guess, snooping around and he was worried.

Q. All right. Did you tell him calm down, maybe she'll come back?

A. I did.

Q. What did he say?

A. He said, no, no, like that wasn't going to happen. That was basically the gist of it.

Q. No, it's not going to happen?

A. It was something along those lines, like --

Q. Did you probe any further?

A. No, I didn't.

(Tr. 191:18-192:20). During this exchange, Mr. Steiger tells his lawyer that the missing Ms. Robinson, who police have been searching for unsuccessfully, isn't coming back home. Mr. Steiger's certainty that Ms. Robinson isn't coming back screams to all that he knows she's already dead. Mr. Hamlin could have and should have objected to this exchange; yet he allowed the prosecution to admit an obviously objectionable confession.

THE CUMULATIVE EFFECT OF THE ERRORS MERITS REVERSAL

Besides the aforementioned errors, Mr. Hamlin failed to act on several other occasions, which, when considered with the individually addressed errors, merit reversal. These failures to act regarding the DNA evidence, fingerprint evidence, cell phone mapping, limited cross-examinations and rebuttal closing argument invariably infringe upon Mr. Steiger's constitutional right to counsel.

DNA Testimony

At trial, the prosecution elicited testimony from Florida Department of Law Enforcement expert witness Ms. Wilkerson regarding DNA evidence collected during the investigation. (Tr. 308:8-327:10). She compared known standards to a swab from the car headrest, passenger trunk, back front passenger seat, barrel and lid or its rim and bolt, baseboard, driver headrest, handle area, container handle and swab of interior of the container. (Tr. 313:5-323:20). Ms. Wilkerson then testified to the statistical comparisons performed between known standards and items pertinent to the murder investigation. (Tr. 313:21-327:10). These statistical figures give the DNA evidence meaning.

Before a witness can testify to the statistical analyses, the testimony's proponent must establish the expert's familiarity with the pertinent

population databases and mathematical methodology used to arrive at the statistics. *Cruz v. State*, 262 So. 3d 244, 249-50 (Fla. 2d DCA 2018).

“Because a juror’s understanding about how unusual a DNA profile is could be wrong, testimony about DNA analysis must go beyond a simple statement of the occurrence of a match and must provide the trier of fact with expert guidance about its probative value.” *Id.* at 248-49. However, the prosecution introduced no evidence laying the foundation for Ms. Wilkerson’s population statistics testimony. *Id.* at 249-50. Unsurprisingly, Mr. Hamlin never objected to the insufficient foundation.

Fingerprint Examiner

Latent print examiner Ms. Fitch-McConnell provided a questionable foundation for her testimony linking Mr. Johnson with prints found on the barrel in which Ms. Robinson’s body was located. (Tr. 302:4-306:16).

Expert testimony may only be admitted if there is sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness applied the principles and methods reliably. Fla. Stat. § 90.702.

Yet, Ms. Fitch-McConnell never testified to why seven of nine lifts were of no value and how she linked two prints to Mr. Johnson. (Tr. 302:4-306:16).

Mr. Hamlin never objected. (Tr. 302:4-306:16). He never even questioned the print examiner. (Tr. 302:4-306:16).

Cell Phone Mapping

Mr. Hamlin didn't object to a law enforcement witness admitting evidence mapping the location of cell phone communications or the prior admission of the cell records. (Tr. 438:14-445:13) Rather, he asked three questions that undoubtedly questioned the veracity of the mapped information and witness's ability to testify to the underlying information. (Tr. 444:15-445:5). Mr. Hamlin learned that the witness isn't an engineer, the witness doesn't understand the concept of cell tower skipping and that the listed towers aren't necessarily the ones which facilitated the calls. (Tr. 444:15-445:5). But he failed to challenge the admission of this evidence.

Scant Witness Examinations

Mr. Hamlin barely cross-examined the witnesses called by the prosecution. Of the twenty-four State witnesses, Mr. Hamlin didn't ask a single question of eight of those witnesses. (Tr. 141:13-145:25; 231:5-241:8; 243:24-254:10; 286:18-301:24; 302:4-306:17; 411:4-418:23; 428:4-431:7; 450:13-672:10). All eight of those witnesses were law enforcement. (Tr. 141:13-145:25; 231:5-241:8; 243:24-254:10; 286:18-301:24; 302:4-306:17; 411:4-418:23; 428:4-431:7; 450:13-672:10). Two of those witnesses introduced Mr. Steiger's damning recorded statements and one was the lead detective who interrogated the cooperating witness three

times. (Tr. 141:14-145:25; 450:13-672:10). He asked one transcript page or less worth of questions of another eight witnesses. (Tr. 135:4-140:23; 174:10-186:18; 187:2-194:16; 213:6-226:3; 226:5-230:17; 258:8-266:22; 438:16-445:13; 672:11-686:12). He asked one to two transcript pages worth of questions of six witnesses and, although he saluted toxicologist Dr. Bruce Goldberger for being a Gator fan, he didn't even ask one question about Mr. Steiger's explanation for the mechanism of death. (Tr. 194:17-200:8; 200:9-213:5; 267:6-281:9; 308:8-327:9; 418:24-427:25; 702:17-713:21).

Only his examinations of the medical examiner Dr. Minyard and the cooperator Mr. Measure lasted more than two transcript pages of testimony. His eight-and one-half page examination of the Medical Examiner seemed more like a deposition. (Tr. 714:1-742:11). Again, he didn't ask about Mr. Steiger's explanation for the manner of death. (Tr. 714:1-742:11). He didn't even ask whether the hyoid bone was damaged, which typically occurs during strangulation deaths. (Tr. 714:1-742:11).

Before examining the cooperator Mr. Measure, Mr. Hamlin opted not to impeach Mr. Measure with information pertaining to all of his pending charges. (Tr. 383:20-388:13). The prosecution erroneously mentions that Mr. Measure is facing up to fifteen years in prison for charges that are

pending against him when he's really facing twenty-five years in prison. (Tr. 383:20-388:13). Mr. Hamlin catches this error; however, he mistakenly believes this will open the door to the State bringing up a second case pending against Mr. Steiger. (Tr. 383:20-388:13). Therefore, he opts against using this information to impeach the most significant State witness because he doesn't "want to do it in a way that undermines the State, like the State was hiding the 25 years..." (Tr. 384:1-3). It's clear from his trial tactics that Mr. Hamlin routinely chose not to undermine the State.

During his most "rigorous" cross-examination, Mr. Hamlin inexplicably asked the cooperator an open-ended question about whether Mr. Steiger had previously discussed "getting rid" of Ms. Robinson and Mr. Mesure clearly says "yes." (Tr. 403:2-6). He never impeached the witness with prior inconsistent statements despite Mr. Mesure giving prior contradictory statements to the police on multiple occasions. (Tr. 338:20-411:2). Even the way he asked questions insinuated that Mr. Mesure had previously lied to the police while being forthright now before the jury. (Tr. 394:395-9).

Before Mr. Steiger testifies, Mr. Hamlin says on the record says that if Mr. Steiger gives a narrative answer, it will probably help the prosecution. (Tr. 751:3-7). It seems clear from this comment and the uninspired cross-

examinations that Mr. Hamlin prejudged Mr. Steiger guilty and provided constitutionally deficient representation.

Burden Shifting During Rebuttal Closing Argument

During the rebuttal closing argument, the prosecution shifted the burden to the defense by blaming Mr. Steiger for the uncertainty over the mechanism of death. “It is well settled that due process requires the state to prove every element of a crime beyond a reasonable doubt. For that reason, it is error for a prosecutor to make statements that shift the burden of proof and invite the jury to convict the defendant for some reason other than that the State has proved its case beyond a reasonable doubt. *Lenz v. State*, 245 So. 3d 795, 798 (Fla. 4th DCA 2018) (citations omitted).

The biggest mystery in this case is how Ms. Robinson died. No prosecution witness saw her die and the delay from death to discovery produced significant decay. To address the uncertainty, Mr. Myers stated:

Defense counsel wants you to question the medical examiner and what she said because she couldn't find the evidence because the body's condition. Don't reward Henry Steiger for putting her in that condition, for hiding and destroying the evidence of murder. He's the reason she's in that condition. He's the reason she cannot give you an opinion as to how it happened.

(Tr. 896:15-21).

By asking the jury not to reward Mr. Steiger, he confuses the burden of proof. Whatever blame might be attributable to Mr. Steiger for the decomposition isn't the rubric for determining guilt. See *id.* The standard is always proof beyond a reasonable doubt. *Id.* Although the decomposition issue undoubtedly makes the case harder for the prosecution as the mechanism of death remains unknown, the State misuses that fact to manipulate the burden of proof. Of course, Mr. Hamlin didn't object.

Cumulative Error Law Applied

When addressing cumulative error, the standards of review remain important considerations.

Harmless error analysis places the burden upon the State, as beneficiary of the errors, to prove there is no reasonable possibility that the error contributed to McDuffie's conviction. It is well-established that the harmless error test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test but the focus is on the effect of the error on the trier-of-fact.

Where multiple errors are discovered in the jury trial, a review of the cumulative effect of those errors is appropriate because even though there was competent substantial evidence to support a verdict . . . and even though each of the alleged errors, standing alone, could be considered harmless, the cumulative effect of such errors [may be] such as to deny to defendant the fair and

impartial trial that is the inalienable right of all litigants in this state and this nation.

McDuffie v. State, 970 So. 2d 312, 328 (Fla. 2007) (internal citations omitted). Courts also consider the strength of the prosecution's case, especially when direct evidence of the offense is not unassailable. *Id.*

The Florida Supreme Court found cumulative error under lesser circumstances than in Mr. Steiger's case. In *Agatheas*, the prosecution admits evidence at a murder trial that the defendant, during his arrest five years after the crime's commission, possessed a firearm unconnected to the murder. *Agatheas v. State*, 77 So. 3d 1232, 1234 (Fla. 2011). Defense counsel didn't object to the irrelevant firearm's admission or evidence that the defendant also possessed a bandana, latex gloves, a flashlight, batteries, a lighter and screwdriver. *Id.* None of these items, ostensibly proof of the commissions of burglaries, had anything to do with the charged crime. *Id.* at 1241. The Court addressed the severe prejudice regarding the admission of the firearm before concluding the cumulative effect of the remaining inflammatory evidence mandated reversal. *Id.*

In *McDuffie*, the court reversed a murder conviction ruling that the cumulative errors could not be considered harmless beyond a reasonable doubt. *Id.* at 329. There was no physical evidence linking the defendant to the crime. *Id.* at 330. The murder weapon was never recovered. *Id.*

Forensics matched the defendant's palm print to the tape binding the victim. *Id.* Although the court upheld the sufficiency of the evidence, it only did so following protracted analysis. *Id.* at 330-332.

Nevertheless, the court reversed the conviction over the cumulative effect of three errors. *Id.* at 320. First, the trial court excluded a witness from testifying that he gave the defendant money, thereby reducing his financial motive to commit the murders. *Id.* Second, the trial court limited cross examination regarding two men near the crime scene at the time of the offense, one of whom looked similar to the defendant. *Id.* at 329. Third, the court admitted an inflammatory and irrelevant, two sentence voicemail capable of committing violent acts against another. *Id.*

Mr. Hamlin's errors in this case far outweigh the gravity of those committed by the lawyers in *Agatheas* and *McDuffie*. Although there's enough evidence to survive a sufficiency challenge on appeal, Mr. Steiger's case is circumstantial with no proof of guilt outside of the testimony of a cooperating witness. Here, there are numerous references to irrelevant criminal behavior, photos of a decaying corpse designed to inflame the jury, an incriminating recording lacking authentication, attorney-client privileged conversation, DNA population statistics admitted without foundation, fingerprint comparison admitted without foundation, cell phone mapping

admitted without foundation, scant examinations of the State's witnesses and burden shifting in closing argument. *See supra*. Thus, the cumulative effects of Mr. Hamlin's action and inaction necessitates reversal.

CONCLUSION

For all claims, the appropriate remedy is the reversal of Mr. Steiger's conviction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to the Clerk of Court and Office of the Attorney General via the electronic filing portal this 19th day of January, 2021.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), Appellant's Initial Brief complies with the font requirements of this rule.

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