

IN THE SUPREME COURT OF FLORIDA

**CASE NO. SC2023-1123
L.T. NO. 042011CF000498CFAXMX**

WAYNE DOTY

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH CIRCUIT,
IN AND FOR BRADFORD COUNTY, STATE OF FLORIDA**

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This is an appeal of the circuit court's denial of Mr. Doty's motion for post-conviction relief¹ brought pursuant to Florida Rule of Criminal Procedure 3.851.

Citations shall be as follows: The record on appeal from Mr. Doty's first direct appeal in case number 05-2009-CF-31876-A (SC13-1257) proceedings shall be referred to as "DR Vol. number: page number". Page references to the record on appeal for the second sentencing proceeding in case number 05-2009-CF-31876-A (SC 18-973) are designated with "R and page number". The post-conviction record on appeal shall be referred to as "PC" followed by the appropriate volume and page numbers. All other references will be self-explanatory or otherwise explained herein.

REQUEST FOR ORAL ARGUMENT

Wayne Doty has been sentenced to death. The resolution of issues involved in this action will determine whether he lives or dies. This Court has not hesitated to allow oral arguments in other capital cases in a similar posture. A full opportunity to air the issues through oral argument would be

¹ The latest post-conviction motion for this appeal was filed on October 14, 2022.

appropriate in this case, given the seriousness of the claims at issue and the stakes involved. Wayne Doty, through counsel, respectfully requests this Court grant oral argument.

STATEMENT OF CASE

Procedural History

The Circuit Court of the Eighth Judicial Circuit, Bradford County, entered the judgment of conviction and sentence under consideration.

Mr. Doty was indicted by the Bradford County Grand Jury on August 24, 2011. The indictment was for first-degree murder of a fellow inmate. After both the Public Defender and Regional Counsel withdrew from representing Mr. Doty, private counsel was appointed. Mr. Doty then filed his own motions to discharge counsel and represent himself. A hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1975) was held on October 4, 2011. After inquiry, the trial court granted Mr. Doty's request to represent himself.

On August 7, 2012, Mr. Doty requested to change his plea of not guilty to guilty as charged. Another *Faretta* hearing was held, and the presiding judge granted Mr. Doty's request to change his plea and accepted the plea of guilty as charged. The case was then set for the penalty phase of the trial. The penalty phase was held on January 7, 2013. The jury recommended

death by a vote of 10 to 2. A *Spencer*² hearing was held on March 13, 2013. Mr. Doty was ultimately sentenced to death on June 5, 2013.

Mr. Doty filed his notice of appeal on June 6, 2013. This Court denied his direct appeal on July 9, 2015.³ Because Mr. Doty attempted to waive all post-conviction proceedings, the State requested a hearing pursuant to *Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993). While a hearing and competency evaluation were pending, the United States Supreme Court issued its decision in *Hurst v. Florida*.⁴ Post-conviction counsel filed a Motion to Defer Dismissal of Postconviction Proceedings and Discharge of Collateral Counsel. (R631-33, 635, 39). Defense counsel then filed a Motion to Vacate Sentence and Special Request for Leave to Amend. (R738-68). On August 7, 2017 the trial court entered an Order Granting Motion for Postconviction Relief and Vacating Sentence of Death. (R1003-11). The trial court found the *Hurst* error in Mr. Doty's case was not harmless because, although two of the aggravators were such that "no reasonable juror would not have found their existence," the court could not determine that the jury had unanimously found the aggravators outweighed the mitigators. (R1007).

² See *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

³ *Doty v. State*, 170 So. 3d 731 (Fla. 2015).

⁴ *Hurst v. Florida*, 577 U.S. 92 (2016).

A jury was selected on February 19, 2018 (R1717, 1901, 1902). Mr. Doty confirmed at the beginning of *voir dire* that he wanted to continue to represent himself. (R1717). The jury unanimously found all three aggravating factors that the State presented beyond a reasonable doubt, and that Doty established four non-statutory mitigating circumstances by the greater weight of the evidence. *Doty v. State*, 313 So. 3d 573, 576 (Fla. 2020). The jury unanimously agreed that the aggravators outweighed the mitigators and unanimously recommended death. *Id.* The trial court entered a sentencing order, finding that the State proved all three aggravators beyond a reasonable doubt.⁵ *Id.* After considering and weighing the aggravators and mitigators, the trial court sentenced Mr. Doty to death. *Id.* On direct appeal, this Court affirmed Mr. Doty's conviction and sentence of death. *Doty v. State*, 313 So. 3d 573 (Fla. 2020). The United State Supreme Court denied certiorari on November 1, 2021, *Doty v. Florida*, 142 S. Ct. 449 (2021). On October 14, 2022, Mr. Doty filed a Motion for Postconviction Relief pursuant to Fl. R. Crim. Proc. 3.851. Mr. Doty raised eight (8) claims. On March 21,

⁵ The three aggravators the court found were: 1) Doty was currently serving a sentence of imprisonment for a prior felony conviction; 2) Doty was previously convicted of a capital felony; and 3) Doty murdered Rodriguez in a cold, calculated, and premeditated manner without pretense of moral or legal justification. *Doty v. State*, 313 So. 3d 573, 575 (Fla. 2020).

2023, a *Huff*⁶ hearing was held. On July 11, 2023, the trial court summarily denied all eight (8) claims Mr. Doty raised. (PC 1307). Mr. Doty now files this timely appeal.

STATEMENT OF FACTS

On May 17, 2011, Wayne Doty and William Wells murdered a fellow inmate, Xavier Rodriguez. Doty and Wells were tried separately. In 2012, Mr. Doty pleaded guilty to first-degree murder. *Doty v. State*, 170 So. 3d 731, 733 (Fla. 2015). A detailed recitation of the facts of the murder are set out in *Doty v. State*, 313 So. 3d 573 (Fla. 2020).

Facts Developed in Post-Conviction

During post-conviction investigation and through the *Huff* hearing, post-conviction counsel developed the following issues and filed the appropriate motions. Defense filed its Motion to Interview Venire Member (PC 1263) and the trial court denied said Motion (PC 1304).

During post-conviction investigation and through the Huff hearing, post-conviction counsel filed a Motion for a PET Scan and MRI of Mr. Doty, based on expert opinions that scans of Mr. Doty were necessary. (PC 424). The trial court denied said motion (PC 1297).

⁶ *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

The defense also filed a timely initial postconviction 3.851 motion on October 14, 2022 (PC 438-483.) The trial court summarily denied the 3.851 motion, without an evidentiary hearing on July 11, 2023 (PC 1307-1331).

If post-conviction counsel had been allowed the opportunity to have an evidentiary hearing on the claims listed in the initial 3.851 motion, defense would have presented facts and evidence to support each claim listed in their motion and listed below through arguments I through VII. Further, the information that would have developed at an evidentiary hearing, had it been presented to Mr. Doty's sentencing jury, could have led to a different result. The trial court must determine whether there is a "reasonable probability" that the result of the proceeding would have been different. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). The failure of the trial court to hold an evidentiary hearing was a violation of Mr. Doty's Fifth, Sixth, and Eighth Amendment rights under the United States Constitution and the corresponding provisions of the Florida Constitution.

STANDARD OF REVIEW

The standard of review is *de novo*. *Stephens v. State*, 748 So. 2d 1028, 1032 (Fla. 2000). The lower court's legal rulings are reviewed *de novo* and deference is given to factual findings supported by competent and substantial evidence. *Sochor v. State*, 883 So. 2d 766, 772 (Fla. 2004).

Under *Strickland*⁷, ineffective assistance of counsel claims are a mixed question of law and fact; with the lower court's legal rulings reviewed de novo and deference given to factual findings supported by competent and substantial evidence. *Id.* In this matter, since the motion for postconviction was summarily denied, Mr. Doty's factual assertions should be accepted as true.

SUMMARY OF THE ARGUMENT

Mr. Doty was denied his due process rights, violating the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution. These constitutional violations occurred because the trial court erred in summarily denying the defendant's 3.851 motion without an evidentiary hearing. If an evidentiary hearing had been conducted, the defense would have shown the following deficiencies in the trial and conviction of Mr. Doty.

First, the trial court erred in summarily denying the defendant's claim based on *Brady*⁸, *Giglio*⁹ and *Napue*¹⁰ in which the State used false and misleading evidence at trial. If an evidentiary hearing had been held, the

⁷ *Strickland v. Washington*, 466 U.S. 668 (1984)

⁸ *Brady v. Maryland*, 373 U.S. 83 (1963)

⁹ *Giglio v. United States*, 405 U.S. 150 (1972)

¹⁰ *Napue v. Illinois*, 360 U.S. 264 (1959)

defense would have called witnesses and presented evidence to indicate that one of the key state witnesses, Senior Inspector Kevin Snow, testified falsely in the 2018 resentencing of Mr. Doty. These falsehoods would have been presented to the court through witness testimony and pertinent records between the first sentencing of Mr. Doty, as well as the trial for Mr. Doty's co-defendant, William Wells.

Second, if an evidentiary hearing had been held, the defense would have presented facts and evidence through defense experts that the original medical examiner, Doctor Hamilton, testified falsely and speculatively throughout Mr. Doty's second penalty phase trial in 2018. Not only would the defense have presented transcripts and other evidence pertaining to Doctor Hamilton's testimony, but defense would have also presented experts to indicate that Doctor Hamilton provided opinions that were beyond the bounds of science and did not testify in an accepted manner by the medical community.

Next, the trial court erred when it summarily denied the defense's proportionality and relative culpability claims where the appellant's death sentence is disproportionate as compared to his co-defendant, William

Wells.¹¹ If an evidentiary hearing had been held, the defense would have presented witnesses and testimony that would have shown the trial court that co-defendant William Wells was the mastermind and principal actor in the murder, and that Mr. Doty would have been considered the "nontrigger" man during the acts committed by William Wells.

Fourth, the trial court erred when an evidentiary hearing was not granted pursuant to *Indiana v. Edwards*, 554 U.S. 164 (2008) when the trial court allowed the defendant to represent himself when the defendant lacked the appropriate judgment that would meet the high reliability demand by the Constitution. If an evidentiary hearing had been held, the defense would have presented witnesses and exhibits to show the trial court the extensive mental health and traumatic brain injuries that Mr. Doty had at the time of the trial. The information that would be presented in a post-conviction evidentiary hearing was not known to the trial court or his sentencing jury at

¹¹ Appellant concedes that the current state of the law, per the holding in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020) is that the conformity clause of Article I, Section 17 of the Florida Constitution forbids the Florida Supreme Court from analyzing sentences for comparative proportionality in the absence of a statute establishing that review. However, as Justice Labarga so aptly articulated in his dissent in *Lawrence*, this Court has now receded from nearly fifty years of precedent and that this holding "undermines the reliability of this Court's decisions on direct appeal and more broadly, Florida's death penalty jurisprudence, *Lawrence* at 554 (J. Labarga dissenting).

the time of the trial but could have been presented if there had been adequate legal counsel to represent Mr. Doty.

Fifth, the trial court erred by summarily denying the defendant's request to hold an evidentiary hearing and to allow defense counsel to interview a member of the venire. If the defense would have been allowed to interview the venire person, the defense would have then presented further evidence that communications between the trial court and the potential jurors occurred outside the presence of Mr. Doty, denying Mr. Doty his rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

Sixth, the trial court erred when it summarily denied a hearing on the ineffective assistance of counsel (both trial and penalty phase court appointed counsel). If an evidentiary hearing had been held, the defense would have presented witnesses and evidence to indicate that trial counsel(s) on all levels were ineffective, leading to Mr. Doty representing himself. Further, standby counsel appointed at the penalty phase was ineffective for not properly investigating and presenting numerous amounts of mitigation. The mitigation that has been uncovered by post-conviction counsel never was presented to the jury or the trial judge, and still hasn't been presented due to the summarily denied post-conviction claims.

Lastly, because the trial court summarily denied all post-conviction claims filed through the defense's 3.851 motion, the trial court has deprived Mr. Doty of his rights to a fundamentally fair trial guaranteed under the Fifth, Sixth, Eighth and Fourteenth Amendments. For these reasons, the appellant is asking this Court to reverse the trial court's ruling and order the trial court to hold an evidentiary hearing on all claims listed within the defense's 3.851 motion (PC 538-593) and for all other just and proper relief.

ARGUMENTS

ARGUMENT I: THE TRIAL COURT ERRED IN SUMMARILY DENYING THE DEFENDANT'S CLAIM BASED ON *BRADY, GIGLIO, AND NAPUE* IN WHICH THE STATE USED FALSE AND MISLEADING EVIDENCE AT TRIAL WHICH VIOLATED THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Mr. Doty was deprived of his Fifth, Sixth, Eighth and Fourteenth Amendment rights as a result of the summarily denied post-conviction claim pertaining to the State's use of false and misleading evidence at trial. On a *Giglio*¹² claim this Court applies a mixed standard of review, "defer[ring] to the factual findings made by the trial court to the extent they are supported by competent, substantial evidence, but review[ing] de novo the application

¹² *Giglio v. United States*, 405 U.S. 150 (1972).

of those facts to the law." *Sochor v. State*, 883 So. 2d 766, 785 (Fla. 2004), (quoting *Lightbourne v. State*, 841 So. 2d 431, 437-38 (Fla. 2003).)

The State violated Mr. Doty's Due Process rights under *Brady* and *Giglio* by presenting false and/or incorrect evidence to the jury during trial. The Supreme Court has held that both the withholding of exculpatory evidence from a criminal defendant by a prosecutor, and the knowing use of false testimony, violates the Due Process Clause of the Fourteenth Amendment. See *Brady v. Maryland*, 373 U.S. 83, 86 (1963) and *Giglio v. United States*, 405 U.S. 150, 153-55 (1972).

The knowing use of false testimony violates due process. *Giglio v. United States*, 405 U.S. 150, 153 (1972). This rule applies regardless of whether the false testimony is solicited, or merely allowed to stand uncorrected after it appears. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). To establish a *Giglio* violation, it must be shown that: (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material. *Guzman v. State*, 941 So. 2d 1045, 1050 (Fla. 2006) (quoting *Guzman v. State*, 868, So. 2d 498, 505 (Fla. 2003).) The State bears the burden of proof on the materiality prong. *Id.* The test of materiality under *Giglio* requires the state to prove that the presentation of the false testimony was "harmless beyond a reasonable doubt," and "that there is no

reasonable possibility that the error contributed to the conviction." *Id.* (citations omitted).

Under *Giglio*, where the prosecutor knowingly uses perjured testimony, or fails to correct what the prosecutor later learns is false testimony, the false evidence is material "if there is any reasonable likelihood that the false testimony could have affected the judgment of [the finder of fact]." *Id.* See also, *United States v. Bagley*, 473 U.S. 667, 679-80 (1985).

The following *Giglio* violations changed the facts of the case to such a degree that the most culpable defendant was improperly changed from Mr. Wells to Mr. Doty, violating Mr. Doty's fundamental due process rights under the constitutions of Florida and the United States, amounting to fundamental error; and therefore, may be raised for the first time in post-conviction relief. *Haliburton v. State*, 7 So. 3d 601, 606 (Fla. 4 DCA 2009) (citing *Hipp v. State*, 650 So. 2d 91, 92 (Fla. 4th DCA 1995).)

"Fundamental error has been described as 'error that reaches down into the validity of the trial itself to the extent that a verdict of guilty or jury recommendation of death could not have been obtained without the assistance of the alleged error.'" *Card v. State*, 803 So. 2d 613, 622 (Fla. 2001).

In the instant case, the trial court erred when it did not grant Mr. Doty's request for an evidentiary hearing on claim one, both sub-parts. If a post-conviction evidentiary hearing had been held the defense would have presented the inconsistent statements of Senior Inspector Kevin Snow and Doctor William Hamilton.

During Mr. Snow's testimony at the second penalty phase, Mr. Snow discussed an incorrect sequence of events of the murder, implicating Mr. Doty as the primary aggressor and more culpable than Mr. Doty's co-defendant, Mr. William Wells.

The evidence, as constructed from Mr. Doty's first trial, showed that Mr. Wells tied Inmate Rodriguez's hands and Wayne Doty put Mr. Rodriguez in a chokehold rendering Mr. Rodriguez unconscious but not dead. Then Wells tied a bedsheet around Mr. Rodriguez's neck, strangling Mr. Rodriguez to death. After Wells strangled Mr. Rodriguez to death, Mr. Doty inflicted stab wounds (all of which were survivable (DRX160-61)) to Mr. Rodriguez's already dead or dying body. These are the facts established by Inspector Kevin Snow's investigation; the facts determined by Doctor William Hamilton's autopsy; the testimony of Inspector Snow and Doctor Hamilton in 2013; and the evidence obtained through the testimony of Inspector Snow and Doctor Hamilton in 2017 at William Wells' trial. However, in 2018, during

Mr. Doty's resentencing, Inspector Snow changed his testimony and falsely testified contrary to his prior testimony. Not only did Inspector Snow testify untruthfully, but his false and contrary testimony was left uncorrected by prosecutors¹³, violating *Napue*¹⁴ and denying Mr. Doty's substantive due process rights under the Fourteenth Amendment.

If the trial court had granted the post-conviction motion for an evidentiary hearing as to claim one, defense expert witness Doctor Daniel Spitz¹⁵ would have testified that Inmate Rodriguez was dead or in a "terminal state/brain dead due to ligature strangulation prior to sustaining the stab wounds to his lower chest and abdomen." (PC 1278-1283.) Defense expert Doctor Spitz would have clarified the cause of death and would have supported Doctor Hamilton's 2013 trial testimony, but contradicted Doctor Hamilton's 2018 trial testimony. Further, if an evidentiary hearing had been granted, the defense could have called Mr. Snow to testify about his inconsistencies with his testimony in 2018 compared to his report and

¹³ The same assistant state attorneys and State Attorney Office handled both trials against Mr. Doty and Mr. Wells, as well as Mr. Doty's resentencing, although the two defendants were tried separately. The State was well aware of the contrary and false testimony during Mr. Doty's resentencing hearing.

¹⁴ *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

¹⁵ Doctor Daniel Spitz is the chief medical examiner and chief forensic pathologist in Macomb County, Michigan.

testimony in 2013 when Mr. Snow testified in the first trial for Mr. Doty. Further, the inconsistencies between Mr. Snow's testimony from Mr. Wells' 2017 trial would have been made clear as compared to Mr. Snow's testimony in Mr. Doty's resentencing trial in 2018. In 2018, the prosecution should have known that Mr. Snow's testimony was incorrect and false, but the prosecution did nothing to correct the false statements. This false testimony led to the presumption that Mr. Doty was the primary assailant.

If an evidentiary hearing had been granted by the trial court, testimony and evidence would show the actual sequence of events, as presented in prior proceedings. The actual events show that William Wells was the most culpable, primary actor and actual killer of Mr. Rodriguez. Further, evidence presented at a post-conviction evidentiary hearing would have shown that a person would likely fully recover from a chokehold applied for 45 seconds¹⁶, thus showing that Mr. Doty was not the actor that caused Mr. Rodriguez's death.

Not only did the prosecution fail to correct Inspector Snow's erroneous and/or perjured testimony, but the State also compounded this falsehood in its sentencing memorandum. (R1305-6). The trial court then relied upon the

¹⁶ Defense medical examiner expert Doctor Daniel Spitz was expected to testify that a person would likely fully recover from a chokehold applied for 45 seconds.

false testimony and inaccurate sentencing memorandum to support its finding of the "cold, calculated, and premeditated" aggravator. (R1386-7).

The false testimony offered by Inspector Snow, quoted and repeated in the State's sentencing memorandum, and relied upon by the trial court to sentence Mr. Doty to death, amounts to fundamental error because it switches the most culpable primary actor and "triggerman" from William Wells to Wayne Doty, See *Walton v. State*, 847 So. 2d 439 (Fla. 2003). In *Johnson v. State*, 128 So. 3d 155 (Fla. 2nd DCA 2013), the Second District Court of Appeals found that that it was a substantive due process violation for not allowing the defense to raise a *Giglio* claim during post-conviction proceedings. The *Johnson* court found that *Giglio claims* may be cognizable in a postconviction motion when the issue has not been raised on direct appeal, citing *Robinson v. State*, 65 So. 3d 75, 76 (Fla. 2d DCA 2011) (cited by *Callaway v. Secretary of Corrections*, WL 2598064 * 10 (U.S.D.C. M.D. 3/22/2023). Further, the Florida Supreme Court has held that "' a conviction obtained by the knowing use of perjured testimony is fundamentally unfair. . . [for it] involve[s] a corruption of the truth-seeking function of the trial process.'" *Johnson v. State*, 44 So. 3d 51, 53 (Fla. 2010).

Turning to the second part of claim one, the false testimony of Doctor William Hamilton also contributed to a fundamental error of Mr. Doty's due

process rights. In 2013, Doctor Hamilton testified that the stab wounds suffered by the victim were likely survivable. (DRXI: 60-61). In 2017, at Well's trial, Doctor Hamilton testified consistently with his testimony in 2013. (PC 805). However, in 2018, at Mr. Doty's second penalty phase, Doctor Hamilton, similarly to Investigator Snow, fundamentally changed his testimony and stated the following: "25 stab wounds with a dirty shank is more than likely to be fatal from an ultimate infection." (R2101). This violates *Napue* and denies Mr. Doty's substantive due process rights under the Fourteenth Amendment.

To summarize, Doctor Hamilton's testimony changed from, "there's a good probability that he could have survived these wounds alone," (DRXI: 60-61) and "These wounds were certainly treatable and - if property treated and - with (indiscernible) antibiotics, he had a good chance of survival . . ." (DRXI: 60-61) to the final 2018 version, "He has two separate forms of harm, so I list them both, either of which could be sufficient to cause death. The stab wounds would have taken longer [to cause death] because it doesn't look like he hit anything that would cause immediately exsanguination, but stab wounds with a dirty shank is more likely to be fatal from an ultimate infection." (emphasis added) (R2101).

This contradictory testimony clearly violates the rules established in *Napue* and *Giglio*. First, it is clear Doctor Hamilton gave false testimony based on his sworn contradictory statements given under oath. Secondly, the prosecutor knew the testimony was false because he was present during every on-topic statement provided by Doctor Hamilton. Lastly, Doctor Hamilton's statement was material. Since the stab wounds caused by Mr. Doty did not cause the death of Inmate Rodriguez, as confirmed in the majority of Doctor Hamilton's sworn testimony, Mr. Doty's culpability is significantly less than the primary actor and sole killer, Mr. William Wells. This change dramatically decreases Mr. Doty's culpability relative to Mr. Wells and would therefore demand a reduced sentence for Mr. Doty since Mr. Wells was sentenced to life in prison, making Doctor Hamilton's false testimony rise to the level of a fundamental error creating a violation of Mr. Doty's fundamental rights under the Fourteenth Amendment of the United States Constitution. Further, such a skewed picture of the crime directly impacted the jury's decision, especially since Mr. Doty was representing himself. Lastly, Mr. Doty would have relied on the testimony by Doctor Hamilton from the first trial to prepare for the resentencing trial. A pro se defendant would not have anticipated or been prepared for a substantial

change in the cause of death, thus would have "ambushed" the defense with a different theory and cause of death.

In this case, it is extremely likely the improper identification of Mr. Doty being the primary assailant opposed to Mr. Wells would have affected the judgment of jury members, which would have changed the outcome of the trial. This is evidenced by the lack of unanimous votes for Mr. Doty to be sentenced to death in 2013 when the proper facts were presented. Following the line of cases cited in *Johnson*, Mr. Doty's death sentence obtained by the knowing use of perjured testimony is fundamentally unfair and amounted to a denial of Mr. Doty's substantive due process. Further, the false information presented impacted Mr. Doty's sentencing directly, by painting him as the main perpetrator when the actual evidence indicated otherwise. Therefore, Mr. Doty is entitled to an evidentiary hearing on this claim and the trial court should be ordered to hold such a hearing.

Lastly, the trial court erred when it ruled that the claims were procedurally barred because "issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." PC 1316 (citing *Smith v. State*, 445 So. 2d 323, 325 (Fla. 1983)). However, the trial court has erred because the standard should be viewed as to whether a fundamental error has occurred. "Fundamental error is that

which 'reaches down into the validity of the trial itself to the extent that a verdict . . . could not have been obtained without [that] error.'" *Floyd v. State*, 850 So. 2d 383, 403 (Fla. 2002). The errors relating to the false testimony by both Mr. Snow and Doctor Hamilton rise to fundamental error which violates Mr. Doty's due process rights under the United States Constitution Amendments, VI, VIII and XIV, thus requiring an evidentiary hearing on these issues.

ARGUMENT II: THE TRIAL COURT ERRED IN SUMMARILY DENYING THE DEFENDANT'S CLAIM AS TO DOCTOR WILLIAM HAMILTON TESTIFYING BEYOND THE SCOPE OF SCIENCE, WHICH VIOLATED THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

"Due process requires a state to prove each element of the offense beyond a reasonable doubt." *Bishop v. Kelso*, 914 F. 2d 1468 (11th Cir. 1990) (citing *Jackson v. Virginia*, 443 U.S. 307, 316 (1979).) "The element at issue here is causation---whether the [injury inflicted by the defendant] was the actual, and proximate, cause of [the victim's] death. *Id.*

In this case, Doctor Hamilton's testimony alone fails to establish the stab wounds were the actual cause of Rodriguez's death. The trial court erred in not granting an evidentiary hearing on this issue so that the defense could have questioned Doctor Hamilton on his inconsistencies between his testimony in 2013 and 2017 compared to Doty's re-sentencing in 2018. In

the words of Doctor Hamilton, "[T]here's a good probability that he could have survived these wounds alone," solidifying Doctor Hamilton's opinion the stab wounds probably did not cause Rodriguez's death. (DRXI: 60-61). Further, if the trial court had granted a post-conviction evidentiary hearing, defense expert medical examiner Doctor Daniel Spitz would have shown that Inmate Rodriguez did not die from the stab wounds. Doctor Spitz would have also testified that Inmate Rodriguez was either dead or in a terminal state (i.e., no chance of survival) at the time Rodriguez suffered the stab wounds (PC 1278).

Doctor Hamilton's identification of "multiple stab wounds" as a cause of death is based on pure speculation and conjecture. (R69) "As numerous courts have held, '[c]ourts are cautioned not to admit speculation, conjecture, or inference that cannot be supported by sound scientific principles,' especially from an 'expert' witness." *Linic v. State*, 80 So. 3d 382, 390 (Fla. 4th DCA 2012) (quoting *Rider v. Sandoz Pharms. Corp*, 295 F. 3d 1194, 1202 (11th Cir. 2002); see also *M.A. Hajjanpour, M.D., P.A. v. Khorsrow Maleki*, P.A. 932 So. 2d 459, 464 (Fla. 4th DCA 2006) ("When the expert's opinion is based on speculation and conjecture, not supported by the facts, or not arrived at by recognized methodology, the testimony will be stricken).

There are no facts in evidence supporting Doctor Hamilton's conjecture/speculation that Rodriguez died from the stab wounds or may have/would have died from infection stemming from the stab wounds. Further, defense expert medical examiner Doctor Spitz would have testified at the evidentiary hearing that Doctor Hamilton testified beyond the scope of science and outside Doctor Hamilton's expertise with regard to the speculative infection death.

Doctor Hamilton's comments justifying the stab wounds as a cause of death rise to the level of fundamental error. For Doctor Hamilton to claim Rodriguez would have eventually died from an infection from the wounds was speculative and irrelevant to Rodriguez's actual cause of death. This testimony likely confused the jury, and possibly the court, leading them to believe the stab wounds inflicted by Doty killed Rodriguez. Being that the stab wounds did not kill Rodriguez, the sole remaining cause of death is the ligature strangulation applied by Wells making Wells the more culpable defendant.

Lastly, the trial court erred when it ruled that the claims were procedurally barred because "issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." (PC 1316) Citing *Smith v. State*, 445 So. 2d 323, 325 (Fla. 1983).

However, the trial court has erred because the standard should be viewed as to whether a fundamental error has occurred. "Fundamental error is that which 'reaches down into the validity of the trial itself to the extent that a verdict . . . could not have been obtained without [that] error.'" *Floyd v. State*, 850 So. 2d 383, 403 (Fla. 2002). The errors relating to the false testimony by both Mr. Snow and Doctor Hamilton rise to fundamental error which violates Mr. Doty's due process rights under the United States Constitution Amendments, Six, Eight and Fourteen, thus requiring an evidentiary hearing on these issues.

In this case, the cause of death, one of the essential elements that the state must prove beyond a reasonable doubt, is uncertain as it pertains to Mr. Doty's actions during the murder. This factual dispute requires an evidentiary hearing.

ARGUMENT III: THE TRIAL COURT ERRED WHEN IT SUMMARILY DENIED THE DEFENSE'S PROPORTIONALITY AND RELATIVE CULPABILITY CLAIMS WHERE THE APPELLANT'S DEATH SENTENCE IS DISPROPORTIONATE AS COMPARED TO HIS CO-DEFENDANT WILLIAM WELLS.

The trial court in this case heavily relies on *Lawrence v. State*, 308 So. 2d 544 (Fla. 2020) to summarily deny the defendant's request to have his sentence reviewed for proportionality and relative culpability claims. It has been a long-standing history for this Court to do a relative culpability review

when there are co-defendants. It is true that this Court has typically intertwined both proportionality review and relative culpability claims, however based on the non-mandatory language from *Cruz*¹⁷, the law does not prohibit a trial court or this Court from reviewing sentences between co-defendants. As stated in *Cruz*, this Court ruled that relative culpability review is not a mandate, however jurisprudence from the last fifty years dictates that this Court should conduct a relative culpability review when sentences are so disparate between co-defendants. *Cruz* *3.

"The Supreme Court has held that comparative proportionality review of death sentences is not required by the Eighth Amendment," *Pulley v. Harris*, 465 U.S. 37, 50-51 (1984) ("There is . . . no basis [in Supreme Court case law] for holding that comparative proportionality review by an appellate court is required in every case in which the death penalty is imposed and the defendant requests it"). *Lawrence* at 549. However, previously this court found that "proportionality review in death cases rests at least in part on the recognition that death is a uniquely irrevocable penalty, requiring a more intensive level of judicial scrutiny or process than would lesser penalties." *Lawrence* at 555. (Labarga, J. dissenting) (quoting *Tillman v. State*, 591 So.

¹⁷ *Cruz v. State*, 2023 WL 4359497, July 6, 2023.

2d 167, 169 (Fla. 1991) (receded by *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020)).

"The concept of proportionality is central to the Eighth Amendment." *Graham v. Florida*, 560 U.S. 48, 59 (2010). This Court has consistently held that "the sentence of an accomplice may indeed affect the imposition of a death sentence upon a defendant." *Walton v. State*, 847 So. 2d 438, 449 (Fla. 2003). Proportionality review and relative culpability review has been one of the checks and balances to ensure that the death penalty is not "arbitrarily imposed". *Pulley v. Harris*, 465 U.S. 37, 50 (1984); *see also Furman v. Georgia*, 408 U.S. 238 (1972) (holding, "at a minimum, the death penalty cannot "be imposed under sentencing procedures creating a substantial risk that it [will] be inflicted in an arbitrary and capricious manner.")

As Justice Labarga so amply stated in *Lawrence*, "Without proportionality review, each death sentence stands on its own. Failing to consider a death sentence in the context of other death penalty cases impairs the reliability of this Court's decision affirming that sentence." *Lawrence* at 557. If some sort of proportionality review, including relative culpability review, isn't carried out, then this Court cannot abide by the mandate in *Spaziano*. "If a State has determined that death should be an

available penalty for certain crimes, then it must administer that penalty in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not." *Spaziano v. Florida*, 468 U.S. 447, 460 (1984).

In the instant case, if an evidentiary hearing had been held on defense's 3.851 post-conviction motion, the facts would have supported that co-defendant William Wells was the mastermind and murderer of Inmate Rodriguez. Evidence would have shown that Mr. Wells developed the plan to kill Rodriguez and that Mr. Wells had committed a strikingly similar attempted murder at Everglades Correctional Institute in 2008¹⁸. Further, it was Wells who made the actual decision to kill Rodriguez on the day of the murder. (PC 647). Further, per the testimony of Doctor Hamilton, the forensic pathologist that conducted the autopsy on Inmate Rodriguez, the ligature strangulation was the cause of death which is solely attributable to co-defendant Wells. (PC 805). Defense expert medical examiner Doctor Spitz would have further testified that the chokehold administered by Doty would not have caused death and that Inmate Rodriguez would have survived those wounds. (PC 1278). The exclusion of the stab wounds and

¹⁸ Records on Wells' attempted murder homicide 2008, PC 822

the chokehold from the cause of death leaves only one person responsible for the actual death of Inmate Rodriguez, and that is William Wells.

All the facts in this case vividly show William Wells, the "Mayport Monster," was the primary planner and primary perpetrator in the killing of his sixth murder victim, Xavier Rodriguez. For Mr. Doty to be sentenced and re-sentenced to death, when Wells received a life sentence, the evidence must show Mr. Doty is more culpable than Wells. Also, *Cruz* has receded from *McCloud v. State*, 208 So. 3d 668 (Fla. 2016) (abrogated by *Cruz v. State*, 2023 WL 4359497 (July 6, 2023)). However, this Court still has the ability to do a relative culpability review of the sentences. There is nothing that prohibits this review, even though the Court has found it is not mandated. At a minimum, the trial court should have allowed an evidentiary hearing on the relative culpability argument so that the record would be clear and Mr. Doty's Due Process rights under the Eighth Amendment, through the Fourteenth Amendment of the United States Constitution are not violated.

In this case, relative culpability review is applicable because both Wells and Doty were each charged with first-degree murder, both facing the potential for a death sentence. See *Shere v. Moore*, 830 So 2d 56, 62 (Fla. 2002). Even though *McCloud* has now been abrogated by *Lawrence*, the fairness and prevention of cruel and unusual punishment through the Eighth

Amendment is still applicable and imperative. "We have long recognized 'that the less culpable, non-triggerman defendant cannot receive a death sentence when the more culpable, triggerman defendant receives' a lesser sentence.," *McCloud v. State*, 208 So. 3d 668, 688 (Fla. 2016) (abrogated by *Lawrence v. State*, 308 So. 3d 544 (2020)).

Both Wells and Doty were convicted of first-degree murder and were eligible for the death penalty. Furthermore, the state sought the death penalty for both defendants. However, Wells received a life sentence after a jury's recommendation. The truth clearly identifies Wells as the "triggerman." Mr. Doty requests this court rectify this error and resentence Mr. Doty to a term of natural life without possibility of parole, or at a minimum, a new resentencing.

ARGUMENT IV: THE TRIAL COURT ERRED WHEN AN EVIDENTIARY HEARING WAS NOT GRANTED PURSUANT TO *INDIANA v. EDWARDS*, 554 U.S. 164 (2008) WHEN THE TRIAL COURT ALLOWED THE DEFENDANT TO REPRESENT HIMSELF WHEN THE DEFENDANT LACKED THE APPROPRIATE JUDGMENT THAT WOULD MEET THE HIGH RELIABILITY DEMANDED BY THE CONSTITUTION.

While self-representation is a recognized right under the United States Constitution, that right is not absolute. "Even at the trial level, therefore, the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S.

152, 162 (2000). The United States Supreme Court has recognized that the United States Constitution permits states to insist upon representation by counsel for those who are competent enough to stand trial but are so mentally ill that they cannot represent themselves. *Indiana v. Edwards*, 554 U.S. 164 (2008).

In *Edwards*, the Court identified several considerations as to why counsel may be forced on a defendant without running afoul of *Faretta v. California*, 422 U.S. 806 (1975). The Court stated that "[i]n certain instances an individual may well be able to satisfy Dusky's mental competence standard, for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without help of counsel." *Edwards*, 554 U.S. at 175-76. Further the United States Supreme Court noted that "disorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illness can impair the defendant's ability to play the significantly expanded role for self-representation even if he can play the lesser role of represented defendant." *Id.* at 176 (internal citations omitted).

During the postconviction investigation, defense expert Valerie McClain, a licensed psychologist, conducted psychological evaluations of

Mr. Doty and reviewed medical records that had been available at trial. If an evidentiary hearing had been granted, Doctor McClain would have testified to the results of her evaluation and psychologist testing (PC 1283). Specifically, Doctor McClain noted that due to a split between his verbal comprehension and perceptual reasoning, there is an indication that Mr. Doty has issues and damage of his front left temporal lobe which causes issues with neuro-relay. Further, Mr. Doty had a low verbal comprehension score, which was indicative of borderline verbal skills. According to Doctor McClain, as a result of these deficiencies Mr. Doty has limited meaningful understanding of outcomes of his actions and choices. Mr. Doty demonstrated trouble absorbing information and conveying it properly. Doctor McClain also indicated that Mr. Doty had short-term memory issues. If a lot of information is given at once, Mr. Doty has trouble fully absorbing the information and retaining it. Doctor McClain would have testified that these impairments are permanent and affect Mr. Doty in his daily life.

The defense also requested the trial court grant their motion for a PET/MRI Scan so that Doctor McClain could finish her assessment and issue a final report. (PC 424). The trial court denied the request for PET/MRI scan

(PC 1297)¹⁹. The trial court erred when it denied defense's motion for a PET/MRI scan, thus violating Mr. Doty's due process rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution. By denying the PET/MRI scan, the trial court hindered post-conviction counsel's ability to fully develop and conclude its mitigation investigation, thus denying Mr. Doty to a fundamentally fair postconviction process.

Mr. Doty, like the defendant in *Indiana v. Edwards*, has "deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illness that can impair the defendant's ability to play the significantly expanded role for self-representation even if he can play the lesser role of represented defendant." *Indiana v. Edwards*, 554 U.S. 164, 176 (2008). Although Mr. Doty did perform admirably during his trial, he was at a severe and unrecognized disadvantage, as the trial mental health experts were unaware of the extent of Mr. Doty's issues, past traumas, head injuries and brain damage. The examination done by trial experts was incomplete due to a lack of information and it impaired their ability to assess Mr. Doty's cognitive functions fully.

¹⁹ The PET Scan and MRI are necessary to meet the minimal requirements of particularized fact finding essential to a fair sentencing determination of Mr. Doty's capital case.

When experts lack information, the resultant opinions, unfortunately, become skewed and can mislead both the trial court and counsel. Further, if standby trial counsel (penalty phase) had done a proper investigation, these deficits could have been presented to the jury/sentencer and it would have been clear that Mr. Doty was not fully capable of representing himself in a capital murder trial. Lastly, if a postconviction evidentiary hearing had been held by the trial court, these facts would have come to light through defense witnesses' explanation of full scans and neuropsychological testing. The trial court then could have properly weighed the new evidence of the significant impairments for Mr. Doty.

The Sixth Amendment provides the defendant the right to be left to his own devices if he so chooses. *Faretta v. California*, 422 U.S. 806, 820 (1975) ("The language and spirit of the Sixth Amendment contemplates that counsel "shall not" be an organ of the State interposed between an unwilling defendant and his right to defense himself personally.") *State v. Reddish*, 181 N.J. 553, 587 (2004).

However, the application of *Faretta*, coupled with the concerns regarding the reach of the right of self-representation, call for a cautious interpretation of *Faretta*. The United States Supreme Court has recognized that the penalty phase of a capital trial necessitates a "heightened reliability"

that is "demanded by the Eighth Amendment," *Sumner v. Shuman*, 483 U.S. 66, 72 (1987); cf. *People v. Chadd*, 28 Cal. 3d 739 (1981) (stating that capital defendant's appeal "is not entirely 'his appeal'" because of state's "indisputable interest" in safeguarding against arbitrariness), *cert. denied*, 452 U.S. 931 (1981). Thus, ascertaining the scope of a capital defendant's right to appear pro se during sentencing requires that we reconcile the defendant's constitutionally protected autonomy interest with the State's constitutionally mandated need for reliability. There may be times, during both the guilt phase and penalty phase, when the defendant will be required to cede control of his defense to protect the integrity of the State's interest in fair trials and permit courts to ensure that their judgments meet the high level of reliability demanded by the Constitution.

The quality of Mr. Doty's defense did not meet the Constitutional requirements required to protect a defendant in a death penalty case. In fact, the uniqueness of the death penalty and its ultimate punishment has been recognized by the legislature of this state as requiring, not just any counsel, but one that meets the minimum statutory criteria to be considered "death qualified", i.e. sufficiently versed in the law and having the adequate training and experience to represent a defendant in death penalty cases.²⁰ For

²⁰ See Fl. R. Crim. Proc. 3.112

example, a licensed attorney who has been practicing for five (5) years, but has not conducted a first degree murder case would not have been allowed to represent Mr. Doty. Even though the licensed attorney has been educated in the practice of law, passed the bar exam, and continued to practice for five (5) years would still not have risen to the qualified level to represent a defendant in a capital murder case. Common sense dictates that if this hypothetical attorney isn't qualified, how could Mr. Doty be qualified to represent himself? The Eighth Amendment has evolved to the point where mental health concerns are part of the consideration of a defendant's rights. Unlike when *Faretta* was decided, science has now evolved to the point where the ramifications of mental illness or cognitive deficits are better understood than they were in 1975. Cases subsequent to *Faretta* have cautioned courts to be cautious regarding the right to self-representation but preserving the Defendant's rights to do so.

As mentioned above, Mr. Doty has been found to have limitations which could have affected his performance in representing himself. Doctor Valerie McClain attempted to conduct a post-conviction full psycho-neurological review. However, Doctor McClain was not able to submit a complete report due to the denial of the defense's motion for a PET/MRI scan. (PC 1297.) If the PET/MRI scan had been completed, and if an

evidentiary hearing had taken place, Doctor McClain would have reported her findings to the severe limitations that Mr. Doty had concerning his lack of verbal comprehension, perceptual reasoning and short-term memory issues. If this evidence had been presented to the trial court, the trial court would have clearly seen that Mr. Doty was not competent to represent himself as his own attorney in a death penalty case. Much of the information that Doctor McClain would have testified to at an evidentiary hearing was unknown at the time of the trial and not taken into consideration in the trial court's ruling to allow Mr. Doty to represent himself. Because of this, the trial court has erred in not allowing a post-conviction evidentiary hearing.

Pursuant to *Indiana v. Edwards*, the trial court should not have allowed Mr. Doty to proceed with self-representation. Mr. Doty is entitled to a new trial, with the benefit of competent counsel. Mr. Doty's trial did not meet the high level of reliability required by the United States Constitution²¹. There are no higher stakes than a capital death penalty trial where someone's life literally hangs in the balance. Curtailing the right to self-representation to

²¹ "[T]he penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

achieve a fundamentally fair capital trial is more than appropriate. At the very least, Mr. Doty is entitled to an evidentiary hearing on these issues. The result of Mr. Doty's self-representation in his case is an arbitrary and capricious result, which violates Mr. Doty's Eighth Amendment rights against cruel and unusual punishment.

Lastly, the trial court erred when it ruled that the claims were procedurally barred because "issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." PC 1316, citing *Smith v. State*, 445 So. 2d 323, 325 (Fla. 1983). However, the trial court has erred because the standard should be viewed as to whether a fundamental error has occurred. "Fundamental error is that which 'reaches down into the validity of the trial itself to the extent that a verdict . . . could not have been obtained without [that] error.'" *Floyd v. State*, 850 So. 2d 383, 403 (Fla. 2002). The errors relating to the false testimony by both Mr. Snow and Doctor Hamilton rise to fundamental error which violates Mr. Doty's due process rights under the United States Constitution Amendments, Six, Eight, and Fourteen, thus requiring an evidentiary hearing on these issues.

ARGUMENT V: THE TRIAL COURT ERRED BY SUMMARILY DENYING THE DEFENDANT'S REQUEST TO HOLD AN EVIDENTIARY HEARING PERTAINING TO THE COURT QUESTIONING POTENTIAL JURORS OUTSIDE OF MR. DOTY'S PRESENCE WHEN MR. DOTY WAS ACTING

HAS HIS OWN REPRESENTATIVE, THUS VIOLATING MR. DOTY'S DUE PROCESS RIGHTS AND FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Criminal defendants have an explicit unqualified right to be present at all stages of a trial, including voir dire. *Muhammad v. State*, 782 So. 3d 343, 351 (Fla. 2001). The right to be present is derived from the Sixth Amendment Confrontation Clause and the Due Process Clause of the Fifth and Fourteenth Amendments. See *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987); see also *Hojan v. State*, 212 So. 3d 982, 991 (Fla. 2017) (a criminal defendant has a right to be present at every critical stage of his or her trial).

During Mr. Doty's voir dire, Mr. Doty requested that a specific question be asked of the jurors, regarding the fact he requested electrocution versus legal injection. Based on the record, the question was put to the potential jurors, but this was conducted off the record and out of the presence of Mr. Doty. At this point in the trial process Mr. Doty was representing himself. (R1724). The trial transcript record also denotes a discussion that the trial court judge had with prospective juror Grow and Mr. Doty was not present for. (R1737-38). Post-conviction defense attorneys filed a motion with the trial court to allow potential juror Grow to be interviewed pertaining to the comments and conversation had when Mr. Doty was not present for the

court's inquiry. (PC 1263). Although the trial judge summarized the discussions, this does not adequately remedy the fact that Mr. Doty had an absolute right to be present and witness the discussion with Juror Grow. The trial court wrongly denied the defense's motion to Interview Venire Member. (PC 1304). Further, the trial court erred in its summary denial of an evidentiary hearing for the post-conviction claim pertaining to the questioning by the court out of the presence of Mr. Doty.

A criminal defendant has the right to be "present at all stages of the trial," *Faretta v. California*, 422 U.S. 806, 820 n. 15 (1975), including jury selection, *Lewis v. United States*, 146 U.S. 370, 373-76 (1892). This is especially true when a defendant is representing himself at trial. The denial of Mr. Doty's presence for portions of the trial court's venire, the denial of post-conviction counsel's ability to speak to potential juror Grow, and the trial court's summary denial of the post-conviction claim pertaining to jury selection violates Mr. Doty's Sixth, Eighth and Fourteenth Amendments of the United States Constitution. Mr. Doty is entitled to a new trial or, at a minimum, an evidentiary hearing on the postconviction claims.

Lastly, the trial court erred when it ruled that the claims were procedurally barred because "issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral

attack." (PC 1316), citing *Smith v. State*, 445 So. 2d 323, 325 (Fla. 1983). However, the trial court has erred because the standard should be viewed as to whether a fundamental error has occurred. "Fundamental error is that which 'reaches down into the validity of the trial itself to the extent that a verdict . . . could not have been obtained without [that] error.'" *Floyd v. State*, 850 So. 2d 383, 403 (Fla. 2002). The errors relating to the false testimony by both Mr. Snow and Doctor Hamilton rise to fundamental error which violates Mr. Doty's due process rights under the United States Constitution Amendments, VI, VIII and XIV, thus requiring an evidentiary hearing on these issues.

ARGUMENT VI: THE TRIAL COURT ERRED WHEN IT SUMMARILY DENIED A HEARING ON AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WHICH LED TO MR. DOTY'S DUE PROCESS RIGHTS BEING VIOLATED UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Mr. Doty had the right to effective assistance of counsel at every stage of the proceedings against him, including the first stages of representation when counsel is tasked with developing a rapport with their client to gain trust. The trial court did not know of the extensive mitigation available to Mr. Doty. Because of the lack of a relationship with the first appointed counsel, followed by the ineffectiveness of standby counsel during the penalty phase, Mr. Doty's rights were violated under the Fifth, Sixth, Eighth, and Fourteenth

Amendments to the United States Constitution and corresponding provisions of the Florida Constitution. The suppression of mitigating evidence violates fairness, equity, due process, proportionality, and the Eighth Amendment, leading to an arbitrary and inconsistent application of an irreversible and most severe penalty of death. See *Furman v. Georgia*, 408 U.S. 238 (1972). Even where a defendant chooses to refuse the presentation of mitigation at the penalty phase, the Court must still be appraised of the available mitigation. *Muhammad v. State*, 782 So 2d 343 (Fla. 2001).

Counsel has a duty to investigate to make the adversarial testing process work in the case. *Strickland v. Washington*, 466 U.S. 668, 688, 690 (1984). A claim of ineffective assistance of counsel, to be considered meritorious, must include two general components. First, the claim 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 proceeding that confidence in the outcome is undermined. *Maxwell v. Wainwright*, 490 So. 2d 927, 932 (Fla. 1986). In *Wiggins v. Smith*, 539 U.S. 510, 524-25 (2003), the United States Supreme Court held counsel "fell short of --- professional standards" for not expanding their investigation beyond the presentence

investigation report and one set of record obtained, particularly "in light of what counsel actually discovered in the records. *Porter v. McCollum*, 558 U.S. 30, 39 (2009).

The United States Supreme Court does not require a defendant to show "that counsel's deficient conduct more likely than not altered the outcome" of his penalty proceeding, but rather that he established "a probability sufficient to undermine confidence in [that] outcome. *Porter v. McCollum*, 558 U.S. 30, 44 (2009).

Prevailing norms require attorneys in a capital case to meet with their client early and often to begin building a relationship of trust and confidence. Mr. Doty's trial counsel failed to do this, leading Mr. Doty to choose self-representation. The ABA Guidelines require counsel to "establish a relationship of trust with the client and should maintain close contact with the client." *Guideline 10.5*. In this case, Mr. Doty had three different attorneys prior to representing himself. During the penalty phase of the re-sentencing, pursuant to *Hurst v. State*, 202 So 3d 40 (Fla. 2016), Mr. Doty continued to represent himself and was appointed standby counsel. The jury unanimously recommended death. The trial court sentenced Doty to death (R1717).

Had initial trial counsel developed the necessary rapport and trust with Mr. Doty and conducted a complete investigation into his guilty and penalty

phase issues, it is possible he would not have opted to represent himself and would have proceeded to trial with counsel. As a result, it is likely that Mr. Doty would have been acquitted, convicted of a lesser charge, and/or sentenced to life.

If an evidentiary hearing had been held, the trial court would have received information concerning Mr. Doty's mitigation and how the information would have likely changed the outcome of Mr. Doty's trial. Evidence would have been presented to show that standby counsel was deficient by failing to conduct a reasonably competent mitigation investigation. Standby counsel failed to complete a comprehensive social history, biological history, or psychological history of Mr. Doty. He failed to obtain records of Mr. Doty's parents and siblings and their background, including but not limited to medical records; financial records; military records; and so forth. "Accurate sentencing information is an indispensable prerequisite to a reasoned determination of whether a defendant shall live or die [made] by a jury of people who may have never made a sentencing decision." *Gregg v. Georgia*, 428 U.S. 153, 190 (1976) (plurality opinion). Thus, it is imperative to obtain a complete and accurate portrait of a capital defendant's life.

Had standby counsel conducted a reasonable investigation and/or the trial court fully complied with the dictates of *Muhammad*, the court would have heard extensive mitigation, which Mr. Doty would have presented at the post-conviction evidentiary hearing.

If an evidentiary hearing had been granted for Mr. Doty's 3.851 claims, the trial court would have heard testimony from Doctor Valerie McClain. Doctor McClain reviewed Mr. Doty's medical records, including jail and prison records. Doctor McClain also personally conducted a neuropsychological evaluation.²² Further, post-conviction defense filed a written motion requesting approval for a PET/MRI examination of Mr. Doty so that Doctor McClain could complete her evaluation. (PC 424). The trial court denied the motion. (PC 1297).

Even without the complete neuropsychological examination by Doctor McClain, Doctor McClain surmised several mental health issues, as well as likely frontal lobe damage to his brain. Doctor McClain opined that Mr. Doty struggled with verbal comprehension and perceptual reasoning. (PC 1283). Doctor McClain also found that Mr. Doty had short-term memory issues with seemed to exacerbate the other mental health issues that were found to

²² Doctor McClain's complete neuropsychological assessment of Mr. Doty could not be completed because the trial court denied defense's motion for a PET/MRI scan.

exist. Because defense trial standby counsel was wholly ineffective on gathering any mitigation evidence, and because the trial court has summarily denied this claim, Mr. Doty's due process rights under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution have been violated.

Further evidence of psychological trauma would have been presented at an evidentiary hearing, specifically pertaining to the effect of closed management incarceration. Mr. Doty had been held in closed management for over two years.²³ Mr. Doty was diagnosed with major depressive disorder as early as 2000 while he was incarcerated in Everglades Correctional Institution. Florida Department of Corrections ("FLDOC") records reveal Mr. Doty's history of unstable mood swings and anxiety. At different points during his incarceration, Mr. Doty was prescribed Prozac and Sinequan for depression and anxiety. Because of these diagnoses, Mr. Doty was being treated by the Florida Department of Corrections up until the time of the murder for which he was convicted. However, none of this mitigation was

²³ According to the Florida Department of Corrections, close management (CM) is indefinite housing for people who have shown that they cannot live in the general population without "abusing the rights and privileges of others." Southern Poverty Law Center, *Solitary Confinement, Inhumane, Ineffective and Wasteful* (2019) available at https://www.splcenter.org/sites/default/files/com_solitary_confinement_0.pdf (last visited November 30, 2023).

gathered or presented by standby counsel during the penalty phase of the resentencing.

Although evidence regarding closed management was presented at trial, it was not tied to the mental health mitigation, nor was its effect on Mr. Doty's mental condition explored. Further, Mr. Doty's long history of mental health issues in FLDOC was not explored in any depth and they bear directly on his state of mind prior to the murder. Had the above mitigation been presented in trial, there exists a reasonable probability the trial court would have determined the aggravators did not outweigh the mitigators and would have sentenced Mr. Doty to life in prison. Because the trial court did not hear the ample amount of mitigation evidence that existed, the trial court erred when it summarily denied the 3.851 petition without hearing.

Lastly, the trial court erred when it ruled that the claims were procedurally barred because "issues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack." (PC 1316), citing *Smith v. State*, 445 So. 2d 323, 325 (Fla. 1983). However, the trial court has erred because the standard should be viewed as to whether a fundamental error has occurred. "Fundamental error is that which 'reaches down into the validity of the trial itself to the extent that a verdict . . . could not have been obtained without [that] error.'" *Floyd v. State*,

850 So. 2d 383, 403 (Fla. 2002). The errors relating to the false testimony by both Mr. Snow and Doctor Hamilton rise to fundamental error which violates Mr. Doty's due process rights under the United States Constitution Amendments, VI, VIII and XIV, thus requiring an evidentiary hearing on these issues.

ARGUMENT VII: BECAUSE THE TRIAL COURT SUMMARILY DENIED THE POST-CONVICTION CLAIMS OF MR. DOTY, THE TRIAL COURT HAS DEPRIVED WAYNE DOTY OF A FUNDAMENTALLY FAIR POST-CONVICTION EVIDENTIARY HEARING UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

This Court has encouraged trial courts "to liberally allow" evidentiary hearings on Rule 3.851 motions. Amendments to Fla. Rules of Criminal Procedure, 3.851, 3.852, * 3.993 & Fla. Rule of Judicial Admin 2.050 and *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2009) ("This Court is guided by the principle that courts are encouraged to liberally view the allegations to allow evidentiary hearings on timely raised claims that commonly require a hearing.") "A circuit court should hold an evidentiary hearing on a Rule 3.851 motion 'whenever the movant makes a facially sufficient claim that requires a factual determination.'" *Rogers v. State*, 327 So. 3d 874, 787 (Fla. 2021). See also *Hojan v. State*, 212 So. 3d 982, 988 (Fla. 2017) (there is a presumption that claims of relief sought in a Rule 3.851 motion are presumptively entitled to a postconviction evidentiary hearing). "[T]o the

extent that there is any question as to whether a Rule 3.851 movant has made a facially sufficient claim requiring a factual determination, the Court will presume that an evidentiary hearing is required." *Walker v. State*, 88 So. 3d 128, 135 (Fla. 2012). Lastly, "To uphold the trial court's summary denial of claims raised on an initial postconviction motion, the record must conclusively demonstrate that the defendant is not entitled to relief." *Everett v. State*, 54 So. 3d 464, 485 (Fla. 2010).

In the instant case, Mr. Doty made a facially sufficient claim or claims that required further factual development. An evidentiary hearing must be held whenever the movant makes a facially sufficient claim that requires a factual determination. *Owen v. State*, 986 So. 2d 534 (Fla. 2008). Factual allegations as to the merits of a constitutional claim as well as to issues of diligence must be accepted as true, and an evidentiary hearing is warranted if the claims involved "disputed issues of fact." *Maharaj v. State*, 684 So. 2d 726, 728 (Fla. 1996).

The analysis of these claims is meant to be a fact-based inquiry and no fact-based inquiry can be made without an evidentiary hearing to flesh out the facts. For the trial court to fully evaluate the claim(s), testimony from trial counsel is necessary as to why they did not consult with forensic experts. Generally, when applying *Strickland*, "an evidentiary hearing is required to

conclude that action or inaction was a strategic decision." *Patrick v. State*, 246 So. 3d 253, 264 (Fla. 2018). The trial court erred in summarily denying Mr. Doty's claims. The err by the trial court not to grant an evidentiary hearing is not harmless and in fact has violated Mr. Doty's due process rights through the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing, the lower court improperly denied Mr. Doty relief on his 3.851 motion. This Court should order that his sentence be vacated and remand the case for a new trial, or for such relief as the Court deems proper.

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Florida Supreme Court, and electronically delivered to Christina Z. Pacheco, Assistant Attorney General at christina.pacheco@myfloridalegal.com, heather.davidson@myfloridalegal.com, paula.montlary@myfloridalegal.com, stephanie.tesoro@myfloridalegal.com on this 10th day of January, 2024.

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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the forgoing Initial Brief of Appellant, was generated in Arial 14-point font, pursuant to Fla. R. App. P. 9.100 and 9.210.

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