IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-893

PATRICK C. HANNON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This proceeding involves the appeal of the circuit court's denial of Mr. Hannon's motion for post-conviction relief. The motion was brought pursuant to Fla. R. Crim. P. 3.850. The following symbols will be used to designate references to the record in this appeal:

"R" -- record on appeal to this Court;

"PC-R" -- record on instant 3.850 appeal to this Court

"Supp. PC-R." -- supplemental record on instant 3.850 appeal to this Court.

REQUEST FOR ORAL ARGUMENT

Mr. Hannon has been sentenced to death. This Court has not hesitated to allow oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument would be more than appropriate in this case, given the seriousness of the claims involved and the stakes at issue. Mr. Hannon, through counsel, accordingly urges that the Court permit oral argument.

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PROCEDURAL HISTORY

Mr. Hannon was charged by indictment on February 13, 1991, with two counts of first degree murder in the Thirteenth Judicial Circuit, Hillsborough County (R. 1672-1674). A superseding indictment was filed on March 27, 1991 charging Mr. Hannon and co-defendant, Ronald Richardson, with the same premeditated murders (R. 1683-1685). By executive order the governor assigned the State Attorney for the Sixth Judicial Circuit to prosecute the case in place of the State Attorney for the Thirteenth Judicial Circuit because of a conflict of interest (R. 1678-1680). The change of State Attorney was granted because one of the State's witnesses, who was also the sister of co-defendant James Acker, was employed by the Hillsborough County State Attorney's Office (R. 1046, 1678-80, 1686-87, 1831-1832).

Mr. Hannon's trial began on July 15, 1991. On July 23, 1991, the jury found Mr. Hannon guilty of two counts of first-degree premeditated murder (R. 1577, 1781-82). The entire penalty phase was held on July 24, 2991 and lasted less than thirty (30) minutes. The jury recommended death sentences for both murder counts (R. 1587-1634, 1783-84, 1792). On August 5, 1991, the circuit court sentenced Mr. Hannon to death for both ocunts of murder (R. 1642, 1806-16).

On direct appeal, this Court affirmed the conviction and sentences. *Hannon v. State*, 638 So. 2d 39 (Fla. 1994). Mr. Hannon timely petitioned the United States Supreme Court for writ of certiorari. The petition was denied on February 21, 1995. *Hannon v. Florida*, 115 S. Ct. 1118 (1995).

On March 17, 1997,[1] Mr. Hannon filed his initial Fla. R. Crim. P. 3.850 motion. On April 22, 1997, Mr. Hannon filed an amended Rule 3.850 motion. Mr. Hannon filed his first amended Rule 3.850 motion on April 10, 2000.

On July 3, 2000, the State filed its response. After the circuit court held a *Huff*[2] hearing on July 10, 2000, the court entered an order granting an evidentiary hearing on claims IV (in part), V (in part), IX, X (in part) and XXI, and summarily denied the remainder of Mr. Hannon's claims. The court held an evidentiary hearing on February 18, 2002 and June 21, 2002. After the hearing, Mr. Hannon and the State filed memoranda (PC-R. 1882-1931, 1933-1989, Supp. PC-R. 355-367). In an order entered on February 3, 2003, the court denied those claims for which an evidentiary hearing had been granted. Mr.

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[1]This Court granted Mr. Hannon an extension of time in which to file his initial motion for post conviction relief, ordering that it be filed by April 22, 1997. *Hannon v. State*, No. 78,678 (Fla. April 22, 1996).

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

Hannon timely filed a notice of appeal.

STATEMENT OF THE FACTS

Trial

Brandon Snider and Robbie Carter lived in the Cambridge Woods Apartments (R. 373-74, 377, 398, 1838-39). On January 10, 1991, several neighbors of Snider and Carter heard and saw what they termed as unusual events. Neighbors heard crashing, breaking glass and loud voices around 10:00 p.m. (R. 270-71, 289-290, 316-17). At least one neighbor saw into the apartment and noticed an individual covered with blood (R. 272-73). A downstairs window was broken and covered with blood and an upstairs window was broken and had blood on it (R. 272, 277-78). There also appeared to be blood on the outside of the open apartment door (R. 277, 323-25). Neighbors described three unclean or unkempt men who were leaving the victims' apartment (R. 296-96, 302-3, 307, 349, 344, 348). The police arrived shortly after the three individuals were seen leaving.

Mr. Hannon was arrested on February 6, 1991 (R. 980-81, 989). According to the detective arresting Mr. Hannon, he did not know whay he was being arrested and stated that he was not guilty (R. 993). The State presented several witnesses at trial to testify about statements allegedly made by Mr. Hannon while he was in jail pending trial (R. 866-69; 876-78;

880-87; 889-90; 892-905).

Ron Richardson, Mr. Hannon's co-defendant, was arrested on March 19, 1991 (R. 999, 1014). He was expected to be a defense witness at Mr. Hannon's trial, but initially invoked his Fifth Amendment privilege not to incriminate himself (R. 985-989). Richardson ultimately testified as a witness for the prosecution, after he entered a negotiated plea to one count of accessory after the fact and a sentence of five years in prison in return for his testimony against Mr. Hannon (R. 1139-1218). During his direct examination, Richardson implicated both Mr. Hannon and Jim Acker, a third co-defendant. On cross-examination, Richardson acknowledged that he lied to Mr. Hannon's attorney during his statement prior to trial (R. 1193-94). Richardson had told defense counsel that he and Mr. Hannon had nothing to do with the murders (R. 1194). He further told Mr. Hannon's attorney that he and Mr. Hannon played quarters, a drinking game, on the night in question until 10:00 p.m., when Mr. Hannon went to sleep (R. 1194-95).

The State also called Judith Bunker, a forensic consultant in blood stain pattern analysis and crime scene reconstruction. Trial counsel did not cross examine this witness on her supposed expertise, her methodology, and the

bases for her opinion.

At the penalty phase, the State presented no additional evidence. The defense presented Toni Acker, a friend and sister of co-defendant Acker, to testify that she didn't believe Mr. Hannon was capable of murder (R. 1598). Trial counsel also presented Mr. Hannon's mother and father (R. 1599-1600). The trial court found three aggravating circumstances with regard to victim Brandon Snider: 1) previous conviction of another capital felony, 2) the capital felony was committed while the defendant was engaged in the commission of the crime of burglary, and 3) the capital felony was heinous, atrocious and cruel (R. 1806). With regard to victim Robbie Carter the court found the same three aggravators and additionally found that the capital murder was committed to avoid arrest (R. 1807-8).

The trial court found only two mitigating circumstances: 1) Mr. Hannon had never been a violent person, had never tried to harm anyone and had never hurt anyone, and 2) the plea agreement between co-defendant Richardson and the State in which his murder charges were reduced to one count of accessory after the fact (R. 1807, 1809). The court rejected defense counsel's argument of residual or lingering doubt as a mitigating circumstance (Id.).

Post-Conviction

The lower court held an evidentiary hearing on February 18, 2002 and July 21, 2002. Mr. Hannon called numerous witnesses including Mr. Hannon's trial attorney and several mental health witnesses in support of his claims of ineffective assistance of counsel at the guilt/innocence and penalty phases of his trial.

At the time he represented Mr. Hannon, trial counsel Joe Episcopo had been a prosecutor for six years in Pinellas and Hillsborough counties. Mr. Hannon's case was his **first** as a defense attorney and his **first** capital case that went to penalty phase (PC-R. 2696). Mr. Episcopo was unfamiliar with the law and the obligations of defending a capital defendant. Mr. Episcopo said he was retained by the Hannon family in 1991 to represent Patrick Hannon. He said he went to jail to speak with him and spoke to his parents in New York. He said everyone he spoke with was adamant that his client was not guilty (PC-R. 2698).

Mr. Episcopo said he had the assistance of Norman Zamboni, a young man who was waiting to go into active duty with Army JAG corp. His role was limited to going to the crime scene and interviewing witnesses. He was not involved in making trial decisions (PC-R. 2699). Mr. Episcopo testified

that he did not hire an investigator in this case (PC-R. 2700), but identified a bill for $250.00 to Brown Investigations for 6.3 hours of work. He then recalled the investigator was hired for the limited purpose of interviewing jailhouse snitches (See, Defense Exhibits 1,2). No other investigator was involved because Mr. Episcopo said he and Mr. Zamboni did the investigation themselves. He said he did not authorize any investigation into Ronald Richardson and did not recall if he obtained a criminal history on him (PC-R. 2702).

Mr. Episcopo said he did not investigate Ron Richardson's relationship with Mr. Hannon; his influence on Mr. Hannon or any accusations that he made against his girlfriend, Michelle Helm (PC-R. 2704). He also did not investigate his brother, Mike Richardson (PC-R. 2708). Mr. Episcopo testified that Mr. Richardson was "part of our alibi." When Mr. Richardson made a deal with the state midway through the trial, Mr. Episcopo did not change his defense accordingly. His theory was to continue rather than give Mr. Richardson time to refresh his memory. Mr. Episcopo's strategy was not to depose Mr. Richardson, which would have given him time to finalize his story (PC-R. 2708-9).

Even after Richardson became a state witness, Mr. Episcopo remained on the path that he took, despite evidence

to the contrary. He said he did not want to impeach Ron Richardson because he did not want to ruin his alibi defense. He did not question him extensively about the murders because it was "inconsistent with our defense." "And my goodness, you know, we're not going to change our defense as we start our case. I mean might as well send the guy right to the chair on that one." (PC-R. 2710). When asked if he was aware of Mr. Richardson's drug history, he did not recall, but he said he knew about Mr. Richardson's prior conviction for armed robbery, but "I don't recall anything serious about it." (PC-R. 2713). Mr. Episcopo knew that Mr. Richardson had initially passed a lie detector test, but then turned state's evidence, which meant that his polygraph was wrong. When asked if he made any effort to use the polygraph information at Mr. Hannon's penalty phase, he said he did not (PC-R. 2715).

Judith Bunker was the State's expert who testified to blood spatter at the crime scene. Mr. Episcopo said he did not question her credentials, although he did object to the pictures she identified because "I didn't want to give the jury the impression that we were impeaching a witness that was not relevant to our defense" (PC-R. 2716). According to Mr. Episcopo, questioning State witness Bunker "had nothing to do

with our alibi." (Id.). When asked if he deposed her before trial, he said he did not remember, but then added, it "didn't matter" (PC-R. 2717).

Mr. Episcopo testified that he knew who Ms. Bunker was before trial because she had been a prosecution witness in Pinellas County and he knew prosecutors who were "very, very high on her and used her a lot." (Id.). When asked if Ms. Bunker confirmed the testimony of Ron Richardson and the aggravating factors advanced by the State, Mr. Episcopo responded:

> ...You've got to understand our defense was alibi. You know, when you're doing that, you've got to stick to that defense. You can't change that. You've got to hold to it. You've got to fight the case and keep fighting it as you fight it. And that's the way we did it.

(PC-R. 2720). Because Mr. Episcopo thought Ms. Bunker's testimony was "irrelevant" (PC-R. 2722), he did not depose her, question her credentials, or attack her testimony in anyway. He was unaware that Ms. Bunker was a fraud, had not even graduated from high school (PC-R. 2724); and had been a secretary throughout most of her career at the Orlando Medical Examiner's office (PC-R. 2725). He did not obtain her personnel file and never learned that she had no higher education (Id.). He failed to learn that she did not lecture

at the places she purported to lecture at and had not been employed at the places listed on her resume (PC-R. 2726-27).

Mr. Episcopo failed to investigate anything about Ms. Bunker because he said, while it would have made him look sharp, it did nothing to advance his defense (PC-R. 2729). Later on in his testimony, Mr. Episcopo said he knew that Ms. Bunker was used in aggravation to argue that the crimes were heinous, atrocious and cruel. He said that is why he objected so strenuously to the photographs that were introduced during her testimony (PC-R. 2807).

Mr. Episcopo also said he failed to question the credentials or background of FBI Agent Michael Malone (PC-R. 2732). Although he was a state witness, Mr. Episcopo felt he was really a defense witness. He thought Malone was a good expert because he was from the FBI, which is "very impressive to the jury. That he had done lots of cases. That he had this expertise" (Id.). Mr. Episcopo said he did not look into the credentials of Mr. Malone. He said he was not familiar with a 1986 case from the Second District Court of Appeals that found Mr. Malone to be less than credible (PC-R. 2733). Mr. Episcopo testified that he had not requested or received the full and complete FBI file on Mr. Hannon's case and was unsure if he received bench notes from Mr. Malone (PC-R.

2735). "I probably had some of it. I don't know if I had it all"[3] (PC-R. 2736).

As for penalty phase preparation, Mr. Episcopo said he planned to establish that Mr. Hannon did not have the type of character to be involved in these crimes (PC-R. 2747). He said he had discussions with Mr. Zamboni, Mr. Hannon, his parents and his sister about what he planned to present. However, his discussions with Mr. Hannon were at the jail. His discussions with Mr. and Mrs. Hannon were at the trial during breaks. And, his discussion with Maureen Hannon was outside the courtroom when she was called as a defense witness at the guilt phase (PC-R. 2748).

He said his view of the penalty phase "depends on the case" (PC-R. 2749), but in Mr. Hannon's case, its purpose "was to try to save his life so that we could find the killers." He explained:

> And we had decided that this was the position we were going to take. And then in the event that he was convicted, if we were to change that, if we were now to get up there and say I was there. I'm sorry. I didn't do it or any of that kind of stuff, which I felt in those cases I prosecuted, I often felt those

[3]After Mr. Episcopo testified that he did not have the complete FBI file, counsel sought to orally amend the Rule 3.850 motion with a Brady v. Maryland claim, arguing that it was Brady material not given to the defense. This Court denied the motion (PC-R. 2738-42).

> defense attorneys didn't handle that phase right. You know, they find somebody's convicted. Now they completely change their defense and get up there and take another tactic. We decided that wasn't what it was going to be because Mr. Hannon was adamant. I can't tell you how much he was adamant that he wasn't there. He didn't do this. He would never do this.

(PC-R. 2748-49).

When he was asked if he investigated Mr. Hannon's background, he said he knew all about his background. He knew he had a minor criminal background, which the State did not use to impeach him. (PC-R. 2749-50). He knew that Mr. Hannon had prior convictions of cocaine, burglary and grand theft. He knew about Mr. Hannon carrying a concealed weapon (PC-R. 2750). When asked if he investigated any of Mr. Hannon's drug use, his response was "No. Of course not. It had nothing to do with our defense" (Id.). When asked if he investigated Mr. Hannon's background in New York, he responded by saying that he spoke to his parents, and "they were firm that their boy could never do something like this" (PC-R. 2751). Mr. Episcopo testified that he did not obtain any of Mr. Hannon's school, military or medical records (Id.).

In order to keep a consistent defense of innocence, Mr. Episcopo said he called Toni Acker to the stand. She had testified for the State at the guilt phase. At penalty phase, she testified that Mr. Hannon was not the type of person to

commit this type of crime (PC-R. 2747, 2752). He also called Mr. Hannon's parents to the stand. Mr. Episcopo explained:

> And I believe we called Tony Acker back and again reiterated their belief that he couldn't do this. Not only didn't do it, he couldn't do it. So the thought was maybe they'll have a doubt now. Because here's a guy who – should he be begging for his life? Well, he's not. He's still saying he didn't do it. I thought it was a good idea.

(PC-R. 2752-53).

Mr. Episcopo could not explain why the jury would reject this information in the guilt phase and then suddenly believe it in the penalty phase. Mr. Episcopo said he argued lingering doubt, which he described as the "catch all." (PC-R. 2756). He said he did not consult with any attorneys experienced in death penalty litigation about what he was doing because he "didn't have a lot of confidence" in them (Id.).

He did not attend any defense-oriented seminars on how to conduct a death penalty case. He said he had a lot of practical experience as a prosecutor (PC-R. 2757). It never occurred to Mr. Episcopo that defending a capital client was any different from prosecuting one. Mr. Episcopo said he never heard of Life Over Death, the seminar for death penalty lawyers. He was unfamiliar and never consulted the American

Bar Association guidelines on how to conduct a death penalty case (PC-R. 2770). He was not familiar with *Ake v. Oklahoma* (PC-R. 2806). Mr. Episcopo specifically stated:

> "I don't care what the ....American Bar Association says. I don't care what anybody says. This is a decision I made. I'm the guy that makes those decisions. Not the life and death course."

(PC-R. 2784).

Mr. Episcopo said he did not investigate Mr. Hannon's mental state or possible brain damage because he had no indication of that (PC-R. 2757). He said he spent lots of time talking with Mr. Hannon and his family and "I can determine whether somebody's whacked" (Id.). On cross examination, Mr. Episcopo said he had no reason to believe that Mr. Hannon was incompetent to stand trial or was insane (PC-R. 2775-76).[4] Mr. Episcopo said he questioned Mr. Hannon's parents in the hallway during trial about problems he may have had, and found no basis to do it. "And, why would I do that anyway? We're going to get up there and say he's crazy and therefore, he shouldn't be killed? He wasn't crazy."(PC-R. 2758-59). Mr. Episcopo said he did not believe

[4]It was obvious that Mr. Episcopo failed to understand the difference between competency to stand trial, insanity and having brain damage that impacts on one's ability to make rational decisions.

that Mr. Hannon had “a mental problem....I think I know it when I see it.” (PC-R. 2759).

Likewise, Mr. Episcopo did not investigate Mr. Hannon‘s drug history, which he described as “standard run of the mill” (PC-R. 2760). Because he was unfamiliar with *Ake v. Oklahoma*, he did not have Mr. Hannon evaluated for any mental health issues before trial. He had no one evaluate Mr. Hannon for mitigation issues at all (Id.).

Mr. Episcopo’s preparation of Mr. and Mrs. Hannon for their testimony at the penalty phase was to say, “get up there and – and remember this is our defense and basically you’ve just got to look at the jury and tell them what you feel from your heart. That was it” (Id.). He said the preparation did not require more than that “because they had told me he didn’t do it. That was our mitigation” (Id.).

Mr. Episcopo said he did not question Mr. Hannon’s parents in the hallway during trial about his background because “I had no indication that it was bad” (PC-R. 2761). He didn’t ask about his drug problems because he “didn’t see it as relevant” (Id.). He had no indication that Mr. Hannon had been neglected.

When asked if Mr. Hannon had cocaine problems before trial, he adamantly said, “He didn’t have a cocaine problem”

(PC-R. 2765). He said he wasn't told by Mr. Hannon that he had had a drinking problem (PC-R. 2766). Mr. Episcopo testified that he did not know that his client began using drugs and alcohol at age 11; that he had a history of using LSD, crystal methamphetamine, hallucinogenic mushrooms, crack cocaine, and that he was paranoid when on drugs (PC-R. 2767). He said he was never told about those drugs and "it didn't come up because it wasn't an issue....We weren't exploring those things" (Id.).

Mr. Episcopo confirmed that he "expected this case to go back to trial. I expected that someone could come forward or there'd be a confession in jail just like you read about all the time. It happens all the time. I said this is going to happen in this case and we've preserved his ability to go to trial again" (PC-R. 2786-87). Even after he decided to put on a mitigation case, he still failed to investigate any of Mr. Hannon's background. "So what are we going to do a background investigation for? What's the point?" he asked (PC-R. 2805).

Dr. Faye Sultan, a clinical psychologist, testified that she spent 14 hours interviewing and evaluating Mr. Hannon. She gave him an IQ test that showed him to be scattered (PC-R. 3007-8). She said she hoped to gain understanding of how Mr.

Hannon, a person of normal intelligence, could behave in such a "repetitively impulsive, poorly-reasoned, self-destructive way over many years without obvious psychopathology." (PC-R. 3009). While she found no major thought disorders, depression, or obvious mental illness, she testified that his behavior did not make sense in light of his normal intelligence. Because of the way he processed information, she suggested that Mr. Hannon be evaluated by a neuropsychologist (PC-R. 3008-9).

In her lengthy interviews with Mr. Hannon, she learned of Mr. Hannon's illogical behaviors. She said he had a long history of fleeing his environment. She learned he went AWOL in the military on three separate occasions and spent six to eight years being pursued by authorities when stopping that behavior would have been a simple matter (PC-R. 3010).

She learned about Mr. Hannon's extensive drug abuse that began at age 11 and escalated over time (PC-R. 3011). She learned that he began to smoke marijuana and drink alcohol at age 11 and that this behavior progressed and worsened over time. She learned that Mr. Hannon took cocaine, crystal methamphetamine, LSD, hallucinogenic mushrooms, crack, Quaaludes, prescription drugs to stimulate himself and barbiturate for sedation purposes, in addition to alcohol and

marijuana (Id.). Dr. Sultan testified that while Mr. Hannon was able to reduce his alcohol and drug consumption during the week, during the weekend, he spent an inordinate amount of time staying “very, very stoned the entire weekend.” (PC-R. 3046).

In addition to spending 14 hours interviewing Mr. Hannon, Dr. Sultan reviewed his military records, which talked about his difficulties with substance abuse and refer to his rheumatic fever; the facts of the crime and the testimony of family members from trial. She also spoke with Mr. Hannon’s parents and his two sisters, Ellen Coker and Maureen Hannon (PC-R. 3016). Dr. Sultan learned that Mr. Hannon was the youngest of four children and that his parents were distracted by illnesses and other issues. When he was 6 or 7 years old, Mr. Hannon was left for long periods of time with older sisters because his oldest sister, Stephanie, was hospitalized for scoliosis and his parents were consumed with her illness (PC-R. 3012). During that time, there was no adult supervision in the home (Id.).

At home, Mrs. Hannon drank alcohol and her behavior at times was “quite violent and unpredictable.” (PC-R. 3012). His mother was more lenient with him than with the girls, and he watched her being abusive to the girls (PC-R. 3013). On

one occasion, he recalled his mother hurling high- heeled shoes down the staircase at the girls' head. He remembered her throwing a bottle of salad dressing or cleaning solution at him. Mr. Hannon was not frightened, but he knew his sisters were and he felt protective towards them (Id.).

Dr. Sultan learned that Mrs. Hannon would come home from work, drink a great deal and then behave in a way that the children found "difficult, unpredictable." (PC-R. 3017-18). On one occasion, she grabbed one of her daughters by the head and smacked her head into the wall, and throwing shoes at her children was not an unusual event (PC-R. 3018). The kids lived with a great deal of uncertainty. When Patrick Hannon was himself small, the sisters recall him being pretty frightened of what was going on and coming to them for comfort or support, sometimes going to hide (Id). They remember that as he grew larger mom became a less frightening figure physically because he was a lot bigger than she -- she's not very large -- and by the time he was thirteen he was the size of a rather large man (ID.). The lack of consistency, the lack of supervision, the lack of discipline that went on in the house greatly influenced Patrick Hannon's development. (Id.).

When Mr. Hannon was 11, his sister Maureen, the one he

was closest to and dependent upon, began using drugs. Because Mr. Hannon was so dependent upon her for her approval and her company, he began using drugs with her. She introduced him to some of the drugs that he used as a young boy (PC-R. 3012). Mr. Hannon told Dr. Sultan that his parents were "chronically angry with Maureen" since she started skipping school as a teenager and started using drugs. He recalled that it caused a great deal of stress in the home (PC-R. 3013).

Dr. Sultan learned that Mr. Hannon began to skip school around the 9th grade but when he did attend school, he had difficulty concentrating. After his family moved to Florida, he had no desire to go to school. He said he stopped learning in school in the 9th grade and then dropped out in the 10th grade. (PC-R. 3014). According to Mr. Hannon, his parents were very busy. His father worked long hours and multiple jobs and his decision to quit school was largely ignored (Id.).

Dr. Sultan learned that Mr. Hannon's parents had no idea of the types of drugs he was doing when he was a teenage boy (PC-R. 3018). They did not know when he attended school, who his friends were and how he spent his time (Id.). From his children's perspective, Charles Hannon had a limited role in his children's lives. He worked all the time and appeared

only one day a week, on Sunday, and that the children loved spending time with him. Patrick Hannon was eager to spend time with his father, sought his companionship and suffered because his father was not around too much. His father was also the last resort disciplinarian in the family (PC-R. 3019). "...Dad was called upon to use his leather belt as a last resort, which isn't terribly unusual in families, but it put him, because he was so rarely there, in the position of only being seen as the bad guy." (Id.).

According to Dr. Sultan, Mr. Hannon's parents were so involved in Maureen Hannon's substance abuse problems that they failed to take time to notice Mr. Hannon's deteriorating condition. His parents were unaware of any of his difficulties with drugs or alcohol while he lived at home (PC-R. 3050). According to Dr. Sultan, his parents "didn't have any idea what was happening with him." (Id.).

Dr. Sultan learned of the relationship between Patrick and Maureen and although Maureen is three years older than he is, she knew from a early age that he was not an independent thinker; that he relied on her and her friends, and relied on her judgment. Maureen felt responsible for Mr. Hannon's heavy drug use, for introducing him to destructive people who were a bad influence and who sat around and got high (PC-R. 3021).

The relationship between Mr. Hannon and his sister Maureen got stronger as they got older. When Mr. Hannon went AWOL from the military, he always returned to Maureen (Id.). She became his home base. The weeks and months leading up to the crime, Maureen did not know all the drugs that Mr. Hannon was using, but she knew that he was using a great deal of cocaine, drinking large quantities of alcohol and smoking a lot of marijuana. "She described his usage as becoming quite out of control" and a deteriorating condition (PC-R. 3022). "She talked about having to call the police at some point because her brother's response to cocaine use was to become quite unreasonable, very paranoid in his thinking, irritable, difficult to deal with" (Id.).

At the time of the crimes in January, 1991, Mr. Hannon was experiencing personal and professional failures, according to Dr. Sultan. He had worked at several jobs and had been unsuccessful in the military. He relied on his sister, Maureen and other people to structure his day for him. Dr. Sultan described him as having had "very poor skills in living" (PC-R. 3023). Mr. Hannon had used vast amounts of substances over a long period of time and his ability to reason, to use good judgment, to logically and sequentially plan something was compromised (Id.). What also was

compromised was his ability under stress to think clearly and rationally. He was irritable. He was unable to focus on anything for long periods of time. He wandered from one drug experience to the next, went long periods without sleep, worked long hours and then took drugs to stay awake and put himself to sleep and then to wake up again. He wasn't thinking too much about what he was doing (PC-R. 3023-24).

And because Mr. Hannon had been neglected as a child, without discipline, structure and support in his early life, "he made some choices that had terrible consequences for him long-term. His early beginning of substance abuse then led him down a path through the years of not thinking clearly, of not making plans, of not formulating an adult existence. He continued to live like an adolescent right up until the point that he was arrested for this offense." (PC-R. 3024). Dr. Sultan testified that his parents loved him, but their lack of parenting skills "had some serious consequences" (Id.). There was inadequate attention provided to the children in the family and as a consequence, "there have been some terrible life histories for those children" (PC-R. 3035-36).

Dr. Sultan found the non-statutory mitigating factors of parental neglect, lack of structure, lack of discipline, lack of guidance in his early environment, very serious childhood

history of illness that interfered with his school life (PC-R. 3025). He was extremely dependent on others to help him in basic living skills, including his sister, Maureen. He was dependent on Ron Richardson for employment and supplying him drugs. (Id.). She also found that Mr. Hannon was an "extreme follower" (Id.), had severe and chronic substance abuse over a long period of time; was extraordinarily impulsive; lacked concentration; was unable to formulate goal-directed behaviors; was unable to live as an adult and had personality changes from consuming large amounts of cocaine. These personality changes – irritability, impulsivity, difficulty concentrating, and paranoid thinking impacted on Mr. Hannon's daily life. (PC-R. 3025-26).

As a final result, Dr. Sultan said that Mr. Hannon's upbringing and lack of parental involvement contributed to him making bad decisions in his life. As for his parents, "I don't think they had a clue what young Patrick Hannon's life was like, what he was doing, what he was learning, who was around him, and he wasn't able to provide that guidance himself." (PC-R. 3051-52).

Dr. Barry Crown, a clinical and forensic neuropsychologist, testified that he evaluated Mr. Hannon in 1999 and conducted a neuropsychological exam (PC-R. 2962).

In addition to conducting his own psychological tests, he also reviewed the cognitive and intellectual testing conducted by Dr. Sultan (PC-R. 2964). While he found that Mr. Hannon had average intelligence, he found what he described as "scatter" (Id.).

On the test that is most sensitive to brain damage, Mr. Hannon scored extremely low (PC-R. 2965). That meant that Mr. Hannon is having difficulty with cognitive processing. "He's having difficulty with the processing of information and with the rapid processing of information. He's pretty good when it comes to stored information, but when he has to take that information out of the storage and rapidly apply it in a new situation in a sense he falls apart." (PC-R. 2965-66).

Dr. Crown said he learned from Mr. Hannon and his records that he had been involved in various accidents and had received head trauma from those accidents. He also learned of extensive substance abuse that went back to Mr. Hannon's developmental period in his life before he was physically developed and before his brain was fully developed (PC-R. 2966). Dr. Crown explained that the brain doesn't fully develop until after the adolescent growth spurt. That means that for most people, the brain isn't fully developed until the age of 13 or 14 (Id.). And in Mr. Hannon's case, there

was a significant history of consuming substances to the point of blacking and passing out before the age of 13. (Id.).

Dr. Crown obtained information that Mr. Hannon was using cocaine and drinking alcohol over a considerable period of time (PC-R. 2969). That combination can aggravate fibers of the brain and impact the control areas of the brain (PC-R. 2971). Dr. Crown also learned that Mr. Hannon suffered from rheumatic fever when he was 7 years old (Id.). The fever was so severe that it impacted on his health and schooling (PC-R. 2971-72). He missed an entire year of school, and that illness can impact the functioning integrity of the brain (PC-R. 2972). In addition to the rheumatic fever at 7, Mr. Hannon began his drug history at age 11, before his adolescent growth spurt (Id.). He also consumed alcohol and drug on a continuing basis. Dr. Crown learned that Mr. Hannon lost consciousness on several occasions, including being kicked by a bull, and falling from a scaffolding. He was involved in several car accidents in which he was dazed and confused but did not lose consciousness (Id.).

Based on all of these factors, Dr. Crown opined that while Mr. Hannon's general overall cognitive processing was within the average range, it was clear that he has:

> processing deficits, meaning that when he has to deal with stored information he's

> pretty good at that, the stuff is in storage; but rapidly retrieving that information and applying it in a new situation is extremely difficult for him, and that's where he falls apart. He falls apart in terms of visual processing, but most particularly he falls apart in auditory processing.

(PC-R. 2974). Dr. Crown explained that when Mr. Hannon was faced with distractions, his attention became more difficult and he was unable to attend to what was happening. Dr. Crown found that these types of auditory processing and auditory selective attention problems are related to those areas that are impaired both by drugs and by rheumatic fever. (PC-R. 2976). Dr. Crown said Mr. Hannon had difficulties arriving at logical conclusions (PC-R. 2977). He had difficulties under stress, pressure, drugs, lack of sleep, in fully comprehending information and attending to tasks (Id.). He also had difficulty picking out what to focus on (Id.). Dr. Crown testified that he would have been able to testify to his results in 1991 had he been called to do so. (PC-R. 2977-78).

Dr. Jonathan Lipman, a neuropharmacologist, also testified on behalf of Mr. Hannon. He testified that he took a detailed drug history from Mr. Hannon, that was corroborated by his sister, Maureen (PC-R. 3061). Dr. Lipman testified that he learned that Mr. Hannon had an extensive drug history that began at 11 with beer and marijuana at age 12 (PC-R.

3061-62). He described that as significant because the effects of drugs on a teenager impact their socialization, maturity and neuropsychological development (PC-R 3062). According to Dr. Lipman, it can have “some very enduring effects” (PC-R. 3062-63). For example, drinking alcohol at the age of 11 can predispose a person to alcohol abuse later on in life. The same is true of marijuana (PC-R. 3062).

In addition to alcohol and marijuana, Dr. Lipman learned that when Mr. Hannon was 13-14, he moved to Tampa (PC-R. 3064). He did well in school, but his drug use escalated. Towards the end of 9th grade, he began drinking beer, smoking pot to excess and drinking a fortified wine called Mad Dog 20/20 (Id.). It was during this time that Mr. Hannon passed out at school drunk and was brought home by a teacher who did not notice he was drunk (Id.). At the same time, Mr. Hannon was smoking angel dust, a tranquilizer for large animals that produces dissociative anesthesia, numbness and a feeling of intoxication. It also produces a feeling of grandiosity and strength (PC-R. 3065). During the same time period, Mr. Hannon was taking hallucinogenic mushrooms and smoking up to two marijuana joints a day (PC-R. 3066-67).

At the age of 15, when he moved to Brandon, it was Mr. Hannon’s practice to cruise around town, smoke marijuana and

drink a six-pack of beer (PC-R. 3069). He was suspended from school for smoking marijuana, but he did not care (PC-R. 3071-72). Dr. Lipman said that sentiment of lack of concern is often found in marijuana-smoking teens (PC-R. 3072). Instead of applying himself, Mr. Hannon spent his time smoking, drinking, taking LSD and Quaaludes (Id). Dr. Lipman testified that Mr. Hannon drank a lot of vodka several nights a week when he was 16-17. While his consumption of alcohol increased, so did his use of acid. At 16-17, he used LSD 10-15 times that year, two doses at a time (PC-R. 3076-76B).

While in the military, Mr. Hannon was introduced to crystal methamphetamine, which he said he used every day for 6-7 months (PC-R. 3078). This drugs creates long-lasting highs and produces feelings of energy and elation. It also increases anxiety and suspiciousness. Mr. Hannon used this drug for binges lasting 6 or 7 days without sleep and "that's really not good for the brain" because it causes brain damage (PC-R. 3079). Mr. Hannon would crash after 6-7 days of being high, sleep and then start the cycle over again. He snorted the drug up his nose, which produced a number of hallucinations (PC-R. 3080).

At the same time as he used this drug, Mr. Hannon also used depressants. The combination of the two drugs is called

"speed balling" (PC-R. 3081). The agitation and anxiety caused by the stimulant was allayed by the tranquilizing drugs. In this combination of drugs, the depressant drug allows you take more drugs. It was at this time that Mr. Hannon also tried opium tar – raw opium (PC-R. 3082).

While AWOL from the military and working at Guantanamo Bay, Mr. Hannon moved onto cocaine, an eighth of an ounce a day, which is a significant amount. Dr. Lipman described Mr. Hannon as "high functioning." When he returned to Tampa, he began freebasing cocaine, which is much more potent and highly addictive. (PC-R. 3086). Mr. Hannon continued to use cocaine up until the time of the offense (PC-R. 3089).

Dr. Sidney Merin, a clinical psychologist, was the only witness called by the State. Dr. Merin testified that he interviewed and tested Mr. Hannon. Dr. Merin found that Mr. Hannon "was heavily into drugs, heavily into the use of alcohol. The probabilities are he had destroyed some neurons in his brain," but not the point that it interfered with his abilities (PC-R. 3209). "We would all agree that there was drug abuse, yes" (PC-R. 3230). Dr. Merin said had he been called as a defense witness in 1991, he would have been able to take a social and drug history of Mr. Hannon and present it to the jury (PC-R. 3220).

Ellen Coker, a older sister of Mr. Hannon, testified that she and her siblings were raised in Broadalbyn, New York, a small town in upstate New York. Her father managed a grocery store and her mother worked for the phone company and did other odd jobs over the years (PC-R. 2818). Ms. Coker described the family life as "very difficult" because of catastrophic illnesses and injuries. Her oldest sister, Stephanie, suffered from a severe case of scoliosis when she was in the sixth or seventh grade. The illness lasted about two years and she was in the hospital for much of that time. "My parents were never ever home when she was in the hospital." (PC-R. 2820). She reported that her parents spent much of their time in the hospital in Schenectady, New York, a 45-minute drive from their home. She said her parents were there nearly every night. While the parents were gone, the grandmother lived next door, but she never came out of her house. For the most part, Ms. Coker was responsible for watching her siblings (PC-R. 2821).

Ms. Coker described her mother as drinking a lot and every day. Both parents drank when they came home from work. She described it as "routine." (PC-R. 2822). She described her mother's drinking as "very excessive to the point where my mother at one time admitted to me herself that she thought she

had a drinking problem" (PC-R. 2851). She used the word "unpredictable" to describe her mother (Id.). Ms. Coker said the children received severe beatings on many occasions when her parents drank (PC-R. 2822). When she was asked what prompted the beatings, she said: "Whatever happened to be -- whatever they felt like that day. I mean either we did something that -- my parents were very, very strict disciplinarians first of all." (Id.). She said they were beaten for the "slightest infraction of their rules....especially my mother. My dad was like a last resort if she couldn't handle the situation. She regularly did it. That was her way of dealing with it. I mean no questions asked. Just boom. You got it." (PC-R. 2822-23). She described that her mother would "just grab you by the back of your hair and slam your head in the wall." (PC-R. 2835). Her mother did this to her "many times" (Id.). She said if she or her sisters were a few minutes late or if their mother was upset, her mother would stand at the top of the stairs and swing spiked high-heeled shoes at the girls. She said her father would beat the children with a belt, but not that often. She described both parents as disciplinarians (Id.).

Ms. Coker had no memory of her parents being affectionate or telling her they loved her. "To this day I don't think I

have ever heard those words from either of my parents." (PC-R. 2823). Ms. Coker testified that Mr. Hannon was closest to his sister, Maureen, and he was very protective of her. While growing up, Mr. Hannon was also close to a cousin named Andy, who was much older than Mr. Hannon. Andy was a Vietnam vet and he and Mr. Hannon spent a lot of time together and became very close. Andy committed suicide, which hurt Mr. Hannon a great deal. (PC-R. 2823-26).

Ms. Coker said immediately after she turned 18 she left home and joined the Army because she did not like her home life or the small town the family lived in. Mr. Hannon was 12 at the time. She only returned for short visits (PC-R. 2826). She testified that after she got out of the Army in 1986, her sister, Stephanie left her two children with Mr. and Mrs. Hannon. The parents had difficulty dealing with two small children and Ms. Coker moved back home to help care for her sister's children. She said that that arrangement did not last too long. Ms. Coker said she moved to Florida, and her parents were in Florida, too (PC-R. 2828).

During this time, Ms. Coker recalled Mr. Hannon drinking alcohol to the point that he got drunk. He was still a teenager and was supposed to be going to school but she knew that he was not. "I was there when my mother finally found

out. Half a school year had passed before she figured out he wasn't going to school." (PC-R. 2830). Ms. Coker said that her mother was very upset but she "turned the other cheek" (Id.). She figured that he was old enough to do what he wanted and "she washed her hands of it." (Id.). She said that her brother had been fooling their mother for a long time. "...in my opinion they chose to look the other way and ignore it or maybe they did not know." (PC-R. 2841).

Ms. Coker said she knew the type of lifestyle that her brother was living in 1990. He was drinking and using drugs "excessively" (PC-R. 2832-33). He often switched jobs, moved from place to place and lived an unstable life (PC-R. 2833). In the months leading up to the crimes, Mr. Hannon was "drinking. He was doing coke, smoking dope. At that point it was anything that I'm aware ...it was basically he was in a stage where it was, hey, anything goes, you know. I didn't approve of that." (PC-R. 2850).

In 1990 and 1991, during Mr. Hannon's trial, Ms. Coker was living in Tampa. She did not know that she was listed as a penalty phase witness by attorney Joe Episcopo. The witness list placed her in Gloversville, New York at the time, although she was living in Tampa. "I had little to no contact with Mr. Episcopo during this whole proceeding," even though

she was living in town and attended some of the court proceedings (PC-R. 2831). She said she met with Mr. Episcopo on one occasion for about 10 minutes. "He told me I had nothing to contribute and he didn't need me for anything." (Id.). Had she been asked, Ms. Coker testified that she would have testified on behalf of her brother in 1991. "I had actually tried to contact Mr. Episcopo on more than one occasion and he absolutely refused to listen to what I had to say or contribute. He did not want to talk to me at all. I never had a phone call returned." (PC-R. 2834).

Maureen Hannon, Patrick's closest sibling, testified that their early home life was normal. The kids went to school, the parents worked and the kids had chores, but she said that her parents were not very involved in their lives. If the school called with a problem, it was dealt with, but generally, "everything just kind of went along." (PC-R. 2910). She described her parents as "clueless" (PC-R. 2946). Maureen recalled when her sister, Stephanie, was sick in the hospital. She and her brother and Ellen were home a lot without her parents (PC-R. 2911). She has no recollection of going to the hospital to visit her sister (Id.). She said her mother drank the minute she got home from work until she went to bed (PC-R. 2913). She had little interaction with the

kids unless one of them got in trouble (Id.). Maureen testified that the girls were treated differently from Patrick because he was the baby of the family and because he was a boy. In her parent's eyes, "Pat never did anything wrong...Anything he did do that he got caught doing was somebody else's fault." (Id.). Maureen said she was the one who was usually blamed for the problems.

When Maureen was in the seventh grade, she began getting in trouble in school. Her mother told her she did not hang out with the right kids and that her grades were not what they were supposed to be (PC-R. 2916). Maureen said it "got out of control," by the time she was in the 8th grade and "things were beyond repair" (PC-R. 2917). Her parents first kicked her out of the house when she was 15. She went to a nearby town where she stayed with friends, drank and did drugs (PC-R. 2917-18). She said that sometimes her brother would join her, but that her parents did not know about it. On several occasions, Maureen said she ran away to Florida, often hitchhiking. She was caught and sent back on a bus and considered an out-of-state runaway. She didn't return home when she went back, but went to live with friends (PC-R. 2919-20). Before she turned 16, she was kicked out for good. She said she didn't even know that her parents had moved to

Florida (PC-R. 2940).

When Patrick was in the 8th grade in Tampa, he and Maureen were drinking alcohol, including beer and Mad Dog 20/20 (PC-R. 2921). At that time, they also smoked pot, ate mushrooms and took acid. They took these drugs on the backstairs of the apartment complex in which they were living. Her parents never caught them taking drugs (PC-R. 2921-23). She stated: "We didn't do like my kids go skating, go to the movies and go the malls. We didn't do that. We hung out in the apartment complex. That's what we did" (PC-R. 2923). Maureen testified that she and Patrick came home drunk many times, and her parents sometimes knew what was going on. Maureen was eventually thrown out of the house again (PC-R. 2924).

It was during this time that Patrick stopped going to school. Mr. Hannon caught Patrick and learned that he had never registered in school that year (PC-R. 2924). Because it was close to his 16th birthday, his parents thought there was nothing they could do. Maureen testified that her brother began work and moved around from job to job. She said his drug use escalated over the years (PC-R. 2926). Patrick was close to Ronald Richardson, who was 20 years his senior. He helped Patrick find work at the slaughterhouse and their relationship was like that of brothers (PC-R. 2928). In 1990

and the time leading up to the murders, Patrick was drinking alcohol on a regular basis. He also was doing cocaine on a daily basis and LSD. Maureen noticed that while on cocaine, Patrick became irritated and edgy (PC-R. 2929-30).

Maureen testified that she was called as a defense witness at Mr. Hannon's guilt phase, but not asked to testify at penalty phase (PC-R. 2931). She said she spoke with Mr. Episcopo several times about her brother's case. He never asked her about her brother's drug or alcohol use leading up to the murders; he never asked her about growing up in upstate New York or the relationship with her parents (PC-R. 2932).

Mr. Hannon's parents did not know too much about their son as he grew up. Charles Hannon, Mr. Hannon's father, testified that he was a store manager in a grocery store and at one time, worked three jobs at once. He only saw his children one day a week on Sundays (PC-R. 2988-89). By the time he got home each night, the children were asleep. Charles Hannon said he didn't see how the children responded to Stephanie's illness, but that they were kept from it, for the most part (PC-R. 2890). He described the difficulties he and his wife had with their daughter, Maureen. They initially learned of her problems when someone called to say that she had passed out. She was taken to the hospital and "I guess it

was from alcohol" (PC-R. 2891). Maureen continued her behavior and began running away from home. She was 13 at the time and Patrick was about 9 (Id.).

Charles Hannon said he did not know that his son was doing drugs and alcohol or that his son was smoking marijuana at age 12 (PC-R. 2892). He did not know that his son was eating hallucinogenic mushrooms; that he drank a six pack each night; that he was taking LSD or crystal methamphetamine (PC-R. 2894-95). He was not aware that his son had to repeat any grades in school, although Mr. Hannon did repeat a grade when he was seven years old (PC-R. 2895).

Charles Hannon said Patrick went to school regularly until the family moved to Florida. Charles Hannon said he learned of his son cutting school when he saw him walking the streets. Patrick told him that he didn't feel like going that day and Charles Hannon believed him and thought that he returned to school, but he later learned that he did not (PC-R. 2892-93). Charles Hannon was never told that his son did not go to school. He never asked him about homework, and didn't recall seeing report cards (PC-R. 2893). Charles Hannon said he worked from 11 a.m. until midnight and he only saw his son on Saturdays (PC-R. 2894).

Charles Hannon was called as a witness to testify at the

penalty phase on behalf of his son, but he was not prepared for his testimony. He was never asked about Patrick's background or life growing up. "He didn't ask about anything. He just told us what he – what we should do. You're going to go up and say what you want to say and that was it." (PC-R. 2896). He did not know what mitigating evidence was. Even after Judge Graybill inquired of Mr. Episcopo about the penalty phase and knew that his parents were present, Charles Hannon testified that he still had no discussion with Mr. Episcopo about what his testimony should be (PC-R. 2897). He said there was no discussion with Mr. Episcopo that the defense was innocence and it had to be consistent throughout the case (Id.). Charles Hannon testified that his son did not want him to testify on his behalf, but he told his son that it did not matter and that his parents were going to do it anyway (PC-R. 2903-4). Once it was decided that his parents should testify, there was no discussion with Mr. Episcopo about what to testify about (PC-R. 2904).

Barbara Hannon, Patrick Hannon's mother, testified that her son developed rheumatic fever when he was 7 or 8 years old and he was out of school for several months. When he was 10 years old, his sister Maureen began cutting school and running away from home. She was placed in Catholic school, but that

did not work out well. She returned to public school but did not solve the problem. Maureen was taken to a child psychologist, but that, too, did not work out as Maureen started running away again (PC-R. 2858-59). Patrick took care of Maureen, even though she was 3 years older than he was. Patrick had his own friends, but eventually, he became friends with Maureen's friends (PC-R. 2859-60).

In 1978, the family, including Patrick and Maureen moved to Florida. Patrick was 14. Mrs. Hannon did not know that Patrick was doing drugs at the time. Her husband still worked long hours and she said no one kept an eye on Patrick. "He was, you know, right there with Maureen. That was about it." (PC-R. 2861). Mrs. Hannon knew that Maureen was doing drugs at the time because she was smoking marijuana in the house and bringing boys into the house (PC-R. 2861-62).

While the family lived in Brandon, she said they learned that Patrick was not going to school. Mr. Hannon caught him some place where he should not have been. Mr. Hannon took his son back to school, and found out he had been suspended, "which we didn't know. Well, we knew he was suspended for smoking, but we hadn't realized it was for marijuana" (PC-R. 2862). Mrs. Hannon did not know that her son was drunk at school. She did not know that he was eating hallucinogenic

mushrooms or doing other drugs (PC-R. 2863). She never got a call from a guidance counselor or principal asking about her son's whereabouts (Id.). She did not notice that he wasn't bringing homework or report cards home. When he was 17, she knew that he drank alcohol and that he grew marijuana in the backyard (PC-R. 2881).

In 1991, Mrs. Hannon testified on her son's behalf. She said she was not told by Mr. Episcopo what the purpose of the penalty phase was. He did not tell her that innocence was what was needed to be presented in the penalty phase. She was never asked about her son's drug use, home life, school life, relationship with Maureen, or how Stephanie's illness may have impacted him or the family (PC-R. 2864-65). When it was decided that she would testify on her son's behalf, she had no explanation from Mr. Episcopo as to what to testify about. "He told us to go up on the stand and say what we wanted." (PC-R. 2884). "We really had no contact with him. Once we knew we were going the next day, that's it. He said you're going to go up on the stand tomorrow and we said fine." (Id.).

Mrs. Hannon acknowledged that she used to drink a lot of wine and that her husband drank beer, but that he was not home that much (PC-R. 2866). When she was asked on cross examination if she thought she was an alcoholic, she said no,

but then added,"Of course, I could have been," (PC-R. 2868). On cross examination, she also acknowledged to throwing her shoes and orange juice at her kids, mostly out of anger (PC-R. 2872-73).

Mr. Hannon also presented Robert Norgard, a criminal defense attorney, who was qualified as an expert in criminal defense with a specialization in capital defense litigation. Mr. Norgard testified about the community standards for representing a capital in 1990-1991, at the time of Mr. Hannon's capital trial (PC-R. 3117-24).

SUMMARY OF THE ARGUMENTS

1. Counsel at Mr. Hannon's trial rendered ineffective assistance of counsel. Counsel failed to investigate and present a defense of voluntary intoxication. Numerous other failings of counsel prejudiced Mr. Hannon, such as counsel's failure to investigate an expert witness' background, failure to adequately cross-examine state witnesses and failure to adequately question jurors regarding their views on capital punishment. Because the lower court summarily denied these allegations, an evidentiary hearing is warranted.

The evidence presented at the evidentiary hearing establishes that trial counsel was ineffective for failing to depose the State's key witness, Ron Richardson or to even

request a continuance to further investigate his motives for testifying against Mr. Hannon and his motives with respect to the crime. Counsel had a duty to question witness Michele Helm who would have provided incriminating information pertaining to Richardson. Furthermore, the evidence establishes that counsel was ineffective in his preparation for the testimony of State expert, Judith Bunker. As such, without a reasonable strategy, relevant testimony from these key witnesses went unchallenged. Relief is warranted.

2. Counsel rendered prejudicially deficient performance at the penalty phase of Mr. Hannon's trial. Counsel's decision was not strategic, but based on ignorance of the law. An abundance of mitigation was available. The mitigation was never presented because trial counsel did not conduct any investigation into Mr. Hannon's background, family history or drug history. With no reasonable tactic or strategy, counsel failed to hire a mental health expert to evaluate Mr. Hannon for mitigation contrary to *Ake v. Oklahoma*. The evidence presented below established that trial counsel's performance was deficient and that Mr. Hannon was prejudiced by the deficiencies. Relief is warranted.

3. The lower court erred in summarily denying numerous meritorious claims including the State's withholding of

material exculpatory information, the State's presentation of unreliable scientific evidence through Judith Bunker, Mr. Hannon's trial counsel rendered ineffective assistance due to a conflict of interest, the State's use of jailhouse informants violated Mr. Hannon's right to counsel, the State used misleading and improper argument, trial counsel failed to object to clear constitutional error, including significant instances of *Caldwell* error, newly discovered evidence of false testimony by State's key witness, Ron Richardson, and expert, Michael Malone. An evidentiary hearing is warranted.

4. Mr. Hannon's capital sentence is improper because the aggravating circumstance of avoiding arrest was vague and improperly applied.

5. Mr. Hannon's death sentence is improper where the jury instruction regarding the heinous atrocious and cruel aggravating factor was vague and the aggravator was improperly applied.

6. Mr. Hannon is innocent of the death penalty, as insufficient aggravating circumstances exist under Florida law to make Mr. Patton death-eligible.

7. The death penalty is unconstitutional on its face and as applied to Mr. Hannon.

8. Due to the sheer number and types of errors involved

in his trial and sentencing, Mr. Hannon did not receive a fundamentally fair trial.

ARGUMENT I-MR. HANNON WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL PRE-TRIAL AND AT THE GUILT/INNOCENCE PHASE OF HIS TRIAL

The basis for the lower court's decision in summarily denying numerous claims as well as denying claims for which there was an evidentiary hearing focuses on the defense theory of innocence presented at trial. Focusing on trial counsel's theory that Mr. Hannon was not present on the night of the crime and did not commit this crime, the trial court deemed Mr. Episcopo's decisions to not prepare, investigate or impeach several witnesses as strategic. However, simply deeming a decision strategic is not the end of the legal analysis. Rather, an attorney's performance must be **reasonable** under the prevailing professional norms, considering all of the circumstances, and viewed from the attorney's perspective at the time of trial. See *Downs v. State*, 453 So.2d 1102, 1106-07 (Fla.1984). Although, there is a strong presumption of reasonableness that must be overcome, and strategic or tactical decisions by counsel made after a thorough investigation are "virtually unchallengeable"... "patently unreasonable" decisions, while they may be characterized as tactical, are not immune. Downs, 453 So.2d at 1108, 1134. The trial court has overlooked this important standard and overlooked the fact that Mr. Episcopo's

decisions were made after virtually no investigation. In light of trial counsel's complete failure to conduct a thorough investigation of Mr. Hannon's guilt phase issues, the decisions the lower court found to be strategic cannot be reasonable.

A. SUMMARY DENIAL

The lower court summarily denied Mr. Hannon's numerous allegations of serious deficiencies which singularly and cumulatively undermined confidence in the outcome of the guilt phase of Mr. Hannon's capital trial. *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Gunsby*, 670 So. 2d 920 (Fla. 1996). Because these claims were more than sufficiently pled, and because the files and records do not conclusively demonstrate that Mr. Hannon is not entitled to relief, reversal for an evidentiary hearing is warranted.

1. Involuntary Intoxication

Without a reasonable tactic or strategy, trial counsel failed to investigate and utilize plentiful and available evidence of Mr. Hannon's voluntary intoxication at the time of the offense. Likewise, counsel failed to request the assistance of a mental health expert to assist in the preparation of a voluntary intoxication defense. Under Florida law at the time of Mr. Hannon's trial, "[v]oluntary

intoxication [was] a defense to the specific intent crimes of first-degree murder and robbery." *Gardner v. State*, 480 So. 2d 91, 92-93 (Fla. 1985) (citations omitted). Furthermore, a defendant has the right to a jury instruction on the law applicable to his theory of defense where any trial evidence supports that theory. *Bryant v. State*, 412 So. 2d 347 (Fla. 1982); *Palmes v. State*, 397 So. 2d 648 (Fla.), *cert. denied*, 454 U.S. 882 (1981).

Mr. Hannon's Rule 3.850 motion alleged that during the guilt/innocence phase of trial, defense counsel presented no evidence regarding Mr. Hannon's intoxication. Counsel failed to call any defense witnesses who could have testified to Mr. Hannon's intoxication at the time of the offense and to his extensive history of drug and alcohol abuse. The trial court concluded that counsel was not ineffective in failing to investigate, develop and present a voluntary intoxication defense because Mr. Hannon consistently maintained his innocence (PC-R. 1745).

Although, the trial court denied this claim without an evidentiary hearing with regards to guilt phase ineffectiveness, an abundance of evidence of Mr. Hannon's intoxication was presented at the evidentiary hearing in support of Mr. Hannon's claim of penalty phase ineffective

assistance of counsel. As the trial court acknowledged, witnesses Eckert, Allersma, Mike Richardson and Ronald Richardson testified at trial that Mr. Hannon arrived at Ronald Richardson's house with beer and that he left and purchased more beer when they ran out . All of these witnesses indicated that Mr. Hannon had been drinking heavily on the night of the crime.

Additionally, Mr. Hannon presented evidence detailing Mr. Hannon’s intoxication and drug use in the months, weeks and days leading up to the crime, as well as on the day of the crime. All of the defense mental health experts testified about Mr. Hannon’s extensive alcohol and drug use that began at the age of 11. Dr. Faye Sultan testified that she spoke to Mr. Hannon’s sisters, Maureen and Ellen, who corroborated the information about alcohol and drug use relayed by Mr. Hannon (T. 6/21/02 at 67-69). Furthermore, Dr. Sultan reviewed Mr. Hannon’s military records that corroborated his drug abuse (Id.). Dr. Lipman testified that Mr. Hannon was using cocaine up until the time of the offense (T. 6/21/02 at 142). Even the State’s own expert, Dr. Sidney Merin, agreed that Mr. Hannon was heavily into drugs and alcohol (T. 6/21/02 at 283). Dr. Lipman testified that the drug history he took from Mr. Hannon was corroborated by Maureen Hannon (T. 6/21/02 at 113).

Maureen Hannon testified that Mr. Hannon was drinking alcohol on a regular basis. She said he was using cocaine and LSD on a daily basis during the time leading up to the murders (T. 2/18/02 at 250). Ellen (Hannon) Coker testified that Mr. Hannon was drinking, doing cocaine and smoking dope during that same time period (T. 2/18/02 at 169).

Relying on the fact that the defense at trial was innocence, the trial court ignored record evidence showing that two witnesses to Mr. Hannon's alibi defense changed their stories during trial and counsel failed to waiver his strategy. Prior to trial, counsel failed to consider any other options. This was unreasonable in light of the turn of events at trial. Trial counsel should have investigated an intoxication defense and been prepared to present such a defense before his determination to focus on one theory in exclusion of all others. An evidentiary hearing is warranted and/or in light of the evidence that was received at the hearing, this claim should be remanded for reconsideration of the issue.

2. Failure to Investigate State Expert's Background

During trial the State presented testimony from purported blood splatter expert Judith Bunker. In his Rule 3.850 motion

Mr. Hannon alleged that trial counsel did not address this testimony though its purpose was to provide the jury with the expert opinion that it needed to aid in its determination of how this crime was committed. Bunker's testimony also provided much of the basis for the jury to determine the existence of all of the aggravating factors alleged in this case. Trial counsel failed to cross-examine this witness on her supposed expertise, her methodology, and the bases for her opinion.

The State elicited testimony from Ms. Bunker on voir dire pertaining to her education, experience, consulting, publishing, and teaching/instructional positions. During her voir dire under oath, Ms. Bunker provided materially inaccurate information regarding her qualifications and competency to testify as a blood stain pattern expert. Accordingly, Mr. Hannon's trial judge and jury never heard the truth regarding her credentials and thus, they were deprived of material evidence critical to evaluating the reliability and trustworthiness of Ms. Bunker's testimony. Ms. Bunker's training, experience and her position during her prior employment at the Orange County Medical Examiner's Office were misrepresented. These facts were critical in this case because Ms. Bunker lacks any other qualifications. Ms.

Bunker represented her training and experience in the area of blood stain analysis as follows:

> From 1970 to 1982, I was employed by the Office of the Discrict Nine Medical Examiner--this is in Central Florida--with the jurisdiction of three counties: Oranbe, Osecola and Seminole.
>
> As assistant to the medical examiner, one of my primary responsibilities was to assist the medical examiner in the medical/legal investigation of death. Besides my on-the-job training with 1,500 to 2,000 cases a year, I also compiled many hours, over five hundred of in-continuing education, involving the various fields and the various topics covering medical/legal investigation of death.

Ms. Bunker stated that her employment at the Medical Examiner's Office gave her "on the job training, which involved 1,500 to 2,000 cases a year by 1980" (R. 1077).

In fact, Ms. Bunker was classified as a secretary at the Medical Examiner's Office from November 30, 1970 through June 2, 1974. During this time period there is no evidence in her employment records that she had any opportunity or occasion to perform any crime scene investigations whatsoever, not to mention develop any expertise in performing blood stain pattern analysis outside of her becoming aware of the field through a State Attorney sponsored general homicide investigation seminar. Ms. Bunker was only classified as a

"Medical Examiner's Assistant" from July 14, 1974 through September 27, 1981. Only from December 6, 1981 until April 30, 1982 did Ms. Bunker actually occupy the position of "Technical Specialist." And during those five brief months, that position only entailed a twenty-four hour work week. Yet, Ms. Bunker misrepresented to Mr. Hannon's trial judge, jury, and defense counsel that she was "assisting the medical examiner in the medical and legal investigation of death" from 1970 to 1982. (R. 1470). In order to further enhance her credentials, Ms. Bunker misrepresented her caseload while at the Medical Examiner's Office. During trial, Ms. Bunker claimed to have examined 1,500 to 2,000 cases a year while at the Medical Examiner's Office between 1970-1982 (R. 1077). These statements were patently false and misled Mr. Hannon's trial judge, jury, and defense counsel. Mr. Hannon's counsel failed to discover this information.

Further, Ms. Bunker misrepresented her educational background on her employment application in order to obtain her employment at the Medical Examiner's Office. Mr. Hannon alleged that Ms. Bunker never graduated from high school. However, on her employment application she represented that she received her high school diploma from "Decatur High - Howe High" in Indianapolis, Indiana in 1953. Ms. Bunker's

employment application contained an oath of honesty in which she represented that all representations made therein were true and correct and constitutes full disclosure. Despite this oath of honesty signed by Ms. Bunker, she falsely stated that she did graduate from high school. In fact, Ms. Bunker did not graduate from high school and has never obtained her equivalency diploma. From the beginning of her secretarial career, Ms. Bunker has built her reputation as a bloodstain expert on false statements.

Mr. Hannon alleged in his 3.850 that Ms. Bunker also provided a false and misleading curriculum vitae. Accordingly, the state, judge and jury[3] were deceived into believing that Ms. Bunker was more than just a secretary who attended one or two blood stain pattern workshops. In particular, Ms. Bunker made false statements throughout her curriculum vitae. These included, inter alia, the following:

> Assistant Instructor, 1977 Bloodstain Institute, conducted by Herbert L. MacDonnel, leading authority on flight characteristics and stain patterns of human blood, sponsored by Elmira College, Elmira, New York.
>
> Attendee, 1974 Bloodstain Institute, a one week course conducted by Herbert L.

[3]It is unclear whether Mr. Hannon's attorneys were provided with Ms. Bunker's curriculum vita.

> MacDonnel, sponsored by University of Birmingham, Birmingham, Alabama.

Ms. Bunker was neither Mr. McDonnel's assistant at the 1977 workshop nor has she ever been his assistant in any capacity. Mr. MacDonnel did have two assistants in 1977 but Ms. Bunker was not one of them. Further, as to the 1974 course, it spanned three days, not one week, and did not render Ms. Bunker an "expert." Additionally, Ms. Bunker's vita at the time of Mr. Hannon's trial claimed that she was a consultant to each and every prosecutors office throughout the State of Florida. However, several State Attorney Offices across the State of Florida have never consulted Judith Bunker for any reason. Similarly, Ms. Bunker falsely claimed that she has performed her services for medical examiners statewide. But most medical examiners in the state report that they have never utilized Ms. Bunker's services.

In summarily denying Mr. Hannon’s claim, the lower court relied on this Court’s decision in *Correll v. State*, 698 So. 2d 522 (1997). The court’s reliance on *Correll* is misplaced. In *Correll*, the defendant’s claim was that the misrepresented credentials of Ms. Bunker were newly discovered evidence. This Court found that the evidence did not qualify as newly discovered because it was discoverable at the time of

Correll's trial and would not have made a difference in the outcome of the trial. *See Jones v. State*, 591 So. 2d 911 (Fla. 1991). Here, Mr. Hannon's claim is ineffective assistance of counsel for failing to investigate Ms. Bunker's background. Furthermore, the trial court finds, similar to Correll, that Ms. Judith Bunker's exaggeration of her credentials is not prejudicial when Ms. Bunker's testimony was based on her extensive experience in the field of blood spatter analysis" (PC-R. 1748). Mr. Hannon alleged in detail in his 3.850 that her experience was exaggerated as well. Because the claim is ineffective assistance of counsel it is distinguishable from *Correll* and Mr. Hannon's claim should be evaluated based on *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel for Mr. Hannon rendered prejudicially ineffective assistance by failing to investigate this witness, discover this information and present it to the court. If counsel had been effective Judith Bunker would have never been allowed to testify. Even if she had been permitted to take the stand, she could have been discredited and impeached and the impact of her testimony would have been weakened. An evidentiary hearing is warranted.

3. Failure to Adequately Prepare for Trial

In his 3.850 motion, Mr. Hannon alleged that trial counsel failed to conduct an adequate investigation of his case prior to trial. Mr. Hannon detailed numerous incidents during trial where defense counsel was stating that he was learning of or reviewing evidence for the first time. These allegations included counsel's failure to obtain Mr. Hannon's rap sheet, failure to review photographs before trial, failure to cross-examine and impeach state witnesses and failure to adequately question jurors regarding their views on capital punishment. The sheer number and types of errors involved in his trial, when considered as a whole, resulted in the unreliable conviction and sentence that he received. Mr. Hannon is entitled to an evidentiary hearing.

B. EVIDENTIARY HEARING

In denying Mr. Hannon's motion after the evidentiary hearing, the Court relied solely on the testimony of trial counsel, Joe Episcopo. In denying relief on Mr. Hannon's claim of ineffective assistance of counsel during the guilt/innocence phase, the Court focuses on Mr. Episcopo's unwillingness to veer from an alibi defense and finds his decision to maintain Mr. Hannon's innocence defense throughout the guilt and penalty phases of trial to be strategic. Mr. Episcopo's testimony is at odds with the record in this case,

and as such, the court's findings are not supported by the record.

1. Failure to Depose Ron Richardson and/or Request a Continuance to Further Investigate Ron Richardson

Mr. Episcopo testified that Mr. Richardson was "part of our alibi." When Mr. Richardson made a deal with the state midway through the trial, Mr. Episcopo did not change his defense accordingly. His theory was to continue rather than give Mr. Richardson time to refresh his memory. Mr. Episcopo's strategy was not to depose Mr. Richardson, which would have given him time to finalize his story (PC-R. 2707). Even after becoming a state witness, Mr. Episcopo remained on the path that he took, despite evidence to the contrary. He said he did not want to impeach Ron Richardson because he did not want to ruin his alibi defense. He did not question him extensively about the murders because it was "inconsistent with our defense...And my goodness, you know, we're not going to change our defense as we start our case. I mean might as well send the guy right to the chair on that one." (PC-R. 2710). Mr. Episcopo did not realize that his alibi defense was gone the minute Mr. Richardson decided to testify for the State.

Mr. Episcopo said he did not investigate Ron Richardson's relationship with Mr. Hannon; his influence on Mr. Hannon or

any accusations made against him by his girlfriend, Michelle Helm (PC-R. 2704-5)). He also did not investigate his brother, Mike Richardson (PC-R. 2708). Mr. Episcopo knew that Mr. Richardson had initially passed a lie detector test during which he denied involvement in the crimes, but then turned state's evidence, which meant that his polygraph was wrong. When asked if he made any effort to use the polygraph information at Mr. Hannon's penalty phase, he said he did not (PC-R. 2715). Had Mr. Episcopo deposed Ron Richardson, he would have known that his alibi defense was serious damaged.

The court found that Mr. Episcopo's decision to forgo investigating, deposing, and impeaching Ron Richardson was a strategic decision because Episcopo "was not interested in making Ron look bad in front of the jury because he did not want to ruin Defendant's alibi defense, and questioning Ron about his involvement in the murders and his motive to lie would be inconsistent with the Defendant's alibi defense." (PC-R. 2003). This logic overlooks Mr. Episcopo's testimony that Ron Richardson was going to be a witness for the defense and was part of Mr. Hannon's alibi (PC-R. 2706). It also ignores Mr. Episcopo's testimony that Ron's brother Mike Richardson changed his story regarding Mr. Hannon's alibi as well when he took the stand (PC-R. 2706-7). It also

overlooks that any impeachment of Ron Richardson tending to incriminate Richardson would be entirely consistent with the fact that Mr. Hannon was not present and therefore consistent with his innocence.

Therefore, the record shows that the alibi defense was in jeopardy mid-trial and counsel failed to waiver his strategy. He failed to consider any other options. Even had he decided to alter his theory, he was ill prepared to do so because he had chosen to pursue an innocence defense without adequate investigation into any other possibilities. This includes failing to investigate Ron Richardson as the dominant participant. This was unreasonable in light of the turn of events at trial. Trial counsel should have been prepared to confront and attack Mr. Richardson long before his statement to the state and police mid-trial.

2. Failure to Adequately Prepare for the State's Expert, Judith Bunker

Mr. Episcopo failed to question Judith Bunker's credentials and failed to learn that she was not testifying truthfully or qualified to render an opinion. Judith Bunker was the State's expert who testified to blood spatter at the crime scene.

Mr. Episcopo said he did not question her credentials, although he did object to the pictures she identified because

"I didn't want to give the jury the impression that we were impeaching a witness that was not relevant to our defense." Yet, Mr. Episcopo did cross examine the medical examiner as to how long victim Snider would survive after his throat was cut and also questioned the FBI firearms examiner regarding the firearm and the bullets used. If Mr. Episcopo's reasoning for not questioning Judith Bunker were strategically based on Mr. Hannon's absence from the crime scene, then arguably he would not have questioned these experts because they were irrelevant to Mr. Hannon's defense as well. Mr. Episcopo's testimony is inconsistent with the record in this case.

According to Mr. Episcopo, questioning State witness Bunker "had nothing to do with our alibi." (PC-R. 2716). When asked if he deposed her before trial, he said he did not remember, but then added, it "didn't matter." Mr. Episcopo testified that he knew who Ms. Bunker was before trial because she had been a prosecution witness in Pinellas County and he knew prosecutors who were "very, very high on her and used her a lot." (PC-R> 2717). When asked if Ms. Bunker confirmed the testimony of Ron Richardson and the aggravating factors advanced by the State, Mr. Episcopo responded:

> ...You've got to understand our defense was alibi. You know, when you're doing that,

> you've got to stick to that defense., You can't change that. You've got to hold to it. You've got to fight the case and keep fighting it as you fight it. And that's the way we did it.

(PC-R. 2720).

But, Mr. Episcopo did not fight the state's case. Because Mr. Episcopo thought Ms. Bunker's testimony was "irrelevant," he did not depose her, question her credentials, or attack her testimony in anyway. He was unaware that Ms. Bunker was a fraud, had not even graduated from high school; and had been a secretary throughout most of her career at the Orlando Medical Examiner's office. He did not obtain her personnel file and never learned that she had no higher education. He failed to learn that she did not lecture at the places she purported to lecture at and had not been employed at the places listed on her resume (PC-R. 2724-27). Mr. Episcopo failed to investigate anything about Ms. Bunker because he said, while it would have made him look sharp, it did nothing to advance his defense (PC-R. 2729). Instead, Mr. Episcopo relied on information from prosecutors that she was a "good" witness. Had Mr. Episcopo adequately prepared for cross examining Ms. Bunker, the jury would have evaluated the exaggeration of her credentials and determined how much weight to place on her opinions.

Later on in his testimony, Mr. Episcopo said he knew that Ms. Bunker was used in aggravation to argue that the crimes were heinous, atrocious and cruel. He said that is why he objected so strenuously to the photographs that were introduced during her testimony (PC-R. 2807). Logically, then it was the photographs alone that established heinous, atrocious or cruel, not Ms. Bunker's testimony. This is clearly wrong.

The lower court did not address the significance of Ms. Bunker's testimony on the penalty phase of trial and thus, overlooks the relevance of Ms. Bunker's testimony as it pertains to the aggravating circumstances. Mr. Norgard testified that in terms of preparation for the guilt phase, a defense attorney needs "to be prepared to deal with aggravations (sic) during the guilt phase of the trial and not just your typical guilt phase issues that come up in a routine case" (PC-R. 3128). While Mr. Norgard stated whether or not a witness should be impeached depends upon the content of their testimony, he stated that when a witness is testifying to an aggravating factor during the guilt phase

> You would certainly – I mean, as I talked about before, the State's probably going to rely on that in the penalty phase so you would need to impeach that witness now because they're not going to re-call them to testify to the same things, you know.

(PC-R. 3130). Because Mr. Episcopo narrowly focused his efforts on an alibi defense, he failed to see the significance of Ms. Bunker's damaging testimony. The jury was left to with no other option but to accept her opinions.

3. Failure to Question Witness Michele Helm

During the deposition of Michele Helm on July 9, 1991, the former girlfriend of Ron Richardson testified that he was a very jealous person who often accused her of sleeping with other men, especially Robbie Carter and Jim Acker. She also testified that she was violent and had threatened to kill her. Mr. Hannon's trial attorney never questioned her further about this information. Trial counsel never questioned the fact that Ron Richardson may have had a motive for the killings. Trial counsel never used this information during Ron Richardson's testimony to impeach him or show that he had a motive for the killings. Rather, the majority of the cross examination deals with the deal that Ron Richardson made with the State.

Again the court relied on Mr. Episcopo's blanket statements that this witness had nothing to do with his alibi defense in support of the court's conclusion that counsel's failure to question Michele Helm regarding Ron Richardson's

possible motives for killing the victims was strategic. Mr. Episcopo reiterated that questioning Helm "had nothing to do with the alibi" (PC-R. 2796).

4. Conclusion

The theory of defense at Mr. Hannon's trial was an alibi defense that Mr. Hannon was innocent. Despite the discovery of a bloody palm print identified as Mr. Hannon's, that theory remained constant during Mr. Hannon's guilt phase, even after Ronald Richardson changed his story and turned State's evidence against Mr. Hannon. But, according to Joe Episcopo, Mr. Hannon's trial attorney, innocence was the theory and that's the way it was and that was the way it was going to be. Because Mr. Hannon was the first capital defendant he represented, Mr. Episcopo was thinking as a prosecutor throughout his defense of Mr. Hannon.

Because of Mr. Episcopo's intransigence on his theory of defense he failed to investigate and prepare to adequately cross examine and impeach key state witnesses. Defense expert, Robert Norgard made it clear, that while not all State witnesses needed to be deposed or impeached in their testimony, if a state witness was testifying to an aggravating factor, "....the State's probably going to rely on that in a penalty phase so you would need to impeach that witness

....and if a witness is testifying to something that damaging to your case you would want to impeach that witness...If there's circumstantial evidence that points to your client being at a scene when you're claiming he wasn't there, you would want to attack that evidence as well." (T. 6/21/02 at 183). It is unreasonable to choose a defense to the exclusion of all others where there has been no investigation or consideration of other issues and/or avenues. Trial counsel's unwaivering strategy was unreasonable in light of all the circumstances. As a result, inculpatory evidence went completely unchallenged. Mr. Hannon is entitled to relief.

ARGUMENT II-INEFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE AND FOR FAILURE TO OBTAIN ADEQUATE MENTAL HEALTH EVALUATION

Analysis of an ineffective assistance of counsel claim proceeds under *Strickland v. Washington*, 466 U.S. 668 (1984), which requires a showing of deficient attorney performance and prejudice. Counsel's highest duty is the duty to investigate, prepare and present the available mitigation. *Wiggins v. Smith*, 123 S. Ct. 2527 (2003); *see also Williams v. Taylor*, 120 S. Ct. 1495 (2000). The conclusions in *Wiggins* are based on the principle that "strategic choices made after less than complete investigation are reasonable" only to the extent that "reasonable professional judgments support the limitations on

investigation." The *Wiggins* Court clarified that "in assessing the reasonableness of an attorney's investigation, a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Wiggins* at 2538.

Throughout the *Wiggins'* Court's analysis of what constitutes effective assistance of counsel, they turned to the American Bar Association (ABA) Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. *See id*. at 2536-7. Under the ABA guidelines, trial counsel in a capital case "should comprise efforts to discover *all reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor. ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1(c), p 93 (1989) (emphasis added)." *Id*. at 2537.

Under the ABA Guidelines, there are specific requirements which should be met from the initial appointment on a case through its conclusion.[4] Guideline 11.4.1(c)

[4]The ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases was updated in February 2003. However, references in this case are to the edition that was in effect from 1989 to February 2003.

states, “the investigation for preparation of the sentencing phase should be conducted regardless of any initial assertion by the client that mitigation is not to be offered. This investigation should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.” In order to comply with this standard, counsel is obliged to begin investigating **both** phases of a capital case from the beginning. *See id*. at 11.8.3(A). This includes requesting all necessary experts as soon as possible. *See* Commentary on Guideline 11.4.1(C). Here, trial counsel’s failure to pursue any investigation, and the subsequent failure to present mitigation evidence was unreasonable in light of all the circumstances.

Strickland's prejudice standard requires showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." 466 U.S. at 694. A petitioner is not required to show that counsel's deficient performance "[m]ore likely than not altered the outcome in the case." *Strickland*, 466 U.S. at 693. The Supreme Court specifically rejected that standard in favor of

a showing of a reasonable probability: "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Strickland*, 466 U.S. at 693.

The correct standard is whether unpresented, available evidence "might well have influenced the jury's appraisal of [the defendant's] moral culpability" or "may alter the jury's selection of penalty." *Williams v. Taylor*, 120 S. Ct. at 1515-16. Further, under *Strickland*, prejudice is established when the omitted evidence likely would have affected the "factual findings". *Strickland*, 466 U.S. at 695-96.

A. DEFICIENT PERFORMANCE

The evidence presented below establishes that counsel did not conduct a reasonable investigation pursuant to *Wiggins* and *Williams*. Counsel's decision was not strategic but rather based on a complete misunderstanding of the law. The penalty phase record itself demonstrates counsel's failure to investigate and prepare for the penalty phase. The direct examination of the defense penalty phase witnesses is significant evidence of what counsel had prepared to present. Those direct examinations, in which counsel mainly asked vague

questions about how witnesses felt about Mr. Hannon and whether he could have committed this crime, show that counsel had prepared very little. Counsel brought out none of the abundant mitigation which was readily available.

Mr. Episcopo said he planned to establish that Mr. Hannon did not have the type of character to be involved in these crimes (PC-R. 2747). Although Mr. Episcopo said his view of the penalty phase "depends on the case," in Mr. Hannon's case, the purpose of the penalty phase "was to try to save his life so that we could find the killers" (PC-R. 2749). Mr. Episcopo explained:

> And we had decided that this was the position we were going to take. And then in the event that he was convicted, if we were to change that, if we were now to get up there and say I was there. I'm sorry. I didn't do it or any of that kind of stuff, which I felt in those cases I prosecuted, I often felt those defense attorneys didn't handle that phase right. You know, they find somebody's convicted. Now they completely change their defense and get up there and take another tactic. We decided that wasn't what it was going to be because Mr. Hannon was adamant. I can't tell you how much he was adamant that he wasn't there. He didn't do this. He would never do this.

(PC-R. 2748-49). Mr. Episcopo made it very clear that his theory for the penalty phase was residual doubt, an invalid mitigating circumstance. *See*, *King v. State*, 514 So. 2d 354,

358 (Fla. 1987)("The lingering doubt theory has been used several times. This Court, however, has consistently held that residual, or lingering, doubt is not an appropriate nonstatutory mitigating circumstance"(citations omitted). *See also*, *Franklin v. Lynaugh*, 108 S. Ct. 2320, 2327 (1988)("At the outset, we note that this Court has never held that a capital defendant has a constitutional right to an instruction telling the jury to revisit the question of his identity as the murderer as a basis for mitigation." Lingering doubts over a defendant's guilt "are not ever any aspect of petitioner's "character," "record," or a "circumstance of the offense." This Court's prior decisions....fail to recognize a constitutional right to have such doubts considered as a mitigating factor.").

In support of his invalid residual or lingering doubt theory, which he described as a "catch all" (PC-R. 2756) Mr. Episcopo said he called Toni Acker to the stand. She had testified for the State at the guilt phase. At penalty phase, she testified that Mr. Hannon was not the type of person to commit this type of crime (PC-R. 2747). Mr. Episcopo stated his belief that

> ...we called Tony Acker back and again reiterated their belief that he couldn't do this. Not only didn't do it, he couldn't do

> it. So the thought was maybe they'll have a doubt now. Because here's a guy who – should he be begging for his life? Well, he's not. He's still saying he didn't do it. I thought it was a good idea.

(PC-R. 2752-53). Mr. Episcopo also relied on the guilt phase testimony of Rusty Horn, Mr. Hannon's employer, and Roy Kilgore, a roommate of Mr. Hannon's to reiterate to the jury during penalty phase that Mr. Hannon could not have committed this crime (PC-R. 2748, 2752). Of course, Mr. Episcopo could not explain why the jury would reject this information in the guilt phase and then suddenly believe it in the penalty phase (PC-R. 2753).

Mr. Episcopo's legal errors and omissions were obvious when Robert Norgard testified as to what reasonable death penalty attorney performance was in 1991. In 1990, if an attorney was advancing an innocence defense, that would not limit an investigation into penalty phase issues (PC-R. 3134-35). Mr. Norgard said investigation into mitigation, even in an innocence case, should begin "well before the trial" (PC-R. 3135). Mr. Norgard agreed that in 1990 lingering doubt was not a valid argument, nor was it something that legally could be argued as a mitigating factor or a non-statutory mitigating factor (PC-R. 3136). Mr. Episcopo did not know the law on this issue.

When Mr. Episcopo was asked if he investigated Mr. Hannon's background, he said he knew all about his background (PC-R. 2749). He knew he had a minor criminal background, which the State did not use to impeach him. (PC-R. 2749-50). He knew that Mr. Hannon had prior convictions of cocaine, burglary and grand theft (PC-R. 2750). He knew about Mr. Hannon carrying a concealed weapon (Id).

Although Mr. Episcopo conceded knowledge of Mr. Hannon's previous conviction for possession of cocaine, when asked if Mr. Hannon had cocaine problems before trial, he adamantly stated, "[h]e didn't have a cocaine problem" (PC-R. 2765). Mr. Episcopo described Mr. Hannon's drug and criminal history as "standard run of the mill" (PC-R. 2760). When asked if he investigated any of Mr. Hannon's drug use, he responded: "No. Of course not. It had nothing to do with our defense." (PC-R. 2750). He said he wasn't told by Mr. Hannon that he had a drinking problem (PC-R. 2766). Mr. Episcopo testified that he did not know that his client began using drugs and alcohol at age 11; that he had a history of using LSD, crystal methamphetamine, hallucinogenic mushrooms, crack cocaine, and that he was paranoid when on drugs (PC-R. 2767). He said he was never told about those drugs and "it didn't come up because it wasn't an issue....We weren't exploring those

things” (Id.).

When asked if he investigated Mr. Hannon’s background in New York, he responded by saying that he spoke to his parents, and “they were firm that their boy could never do something like this” (PC-R. 2751). Mr. Episcopo said he had discussions with Mr. Zamboni, Mr. Hannon, his parents and his sister about what he planned to present. However, his discussions with Mr. Hannon were at the jail, his discussions with Mr. and Mrs. Hannon were at the trial during breaks and, his discussion with Maureen Hannon was outside the courtroom when she was called as a defense witness at the guilt phase (PC-R. 2748). Mr. Episcopo’s preparation of Mr. and Mrs. Hannon for their testimony at the penalty phase was to say, “get up there and – and remember this is our defense and basically you’ve just got to look at the jury and tell them what you feel from your heart. That was it” (PC-R. 2760). He said the preparation did not require more than that “because they had told me he didn’t do it. That was our mitigation” (Id.).

Mr. Episcopo said he did not question Mr. Hannon’s parents in the hallway during trial about his background because “[he] had no indication that it was bad” (PC-R. 2761). He didn’t ask about his drug problems because he

"didn't see it as relevant" (Id.). He had no indication that Mr. Hannon had been neglected. Of course, if had he known of Mr. Hannon's neglect, he would not have had time to develop that evidence because he only spoke to the witnesses in the hallway during trial.

Mr. Episcopo testified that he did not obtain any of Mr. Hannon's school, military or medical records (PC-R. 2751). Mr. Norgard explained the importance of obtaining records. According to Mr. Norgard a fundamental aspect of investigating a penalty phase is to get all the available records on your client, including records of extended family members who may have mental health issues, genetic issues, and physical issues (PC-R. 3131). A lawyer or an investigator can obtain the records or hire a mitigation specialist, who were available in 1990-1991 (PC-R. 3131-32). After the records were obtained, a competent attorney would look for any aspect of the client's background or history (PC-R. 3132). Under the law in 1990, any aspect of the client's life was mitigation (Id.). The records are helpful to assist family members recount family dynamics and family history. The records also could be provided to mental health experts to review and analyze the case (PC-R. 3132-33).

Although this was the first capital case he tried as a

defense attorney, and therefore the only penalty phase he had ever prepared at that point in time[5], Mr. Episcopo stated he did not consult with any attorneys experienced in death penalty litigation about what he was doing because he "didn't have a lot of confidence" in them (PC-R. 2756). He did not attend any defense-oriented seminars on how to conduct a death penalty case (PC-R. 2756-57). He said he had a lot of practical experience as a prosecutor (PC-R. 2757). It never occurred to Mr. Episcopo that defending a capital client was any different from prosecuting one. Additionally, he was unfamiliar and never consulted the American Bar Association guidelines on how to conduct a death penalty case (PC-R. 2770). He was not familiar with *Ake v. Oklahoma*, 470 U.S. 68 (1985)(PC-R. 2806). In fact, Mr. Episcopo argued:

> "I don't care what the ....American Bar Association says. I don't care what anybody says. This is a decision I made. I'm the guy that makes those decisions.

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[5]The degree of deference given to trial counsel is based on counsel's experience at the time of trial; thus, the more experience defense counsel has, the greater deference counsel's decisions are given. *See*, *Chandler v. United States*, 218 F. 3d 1305 (11th Cir. 2000). Although Mr. Episcopo had experience as an attorney and a prosecutor, he testified that Mr. Hannon's case was the **first** capital case he tried as a defense attorney. Based on Mr. Episcopo's lack of defense experience at the time of trial, and the testimony of Mr. Norgard about the minimum requirements of a defense attorney trying a capital case, Mr. Episcopo's purported decisions should be given little deference.

> Not the life and death course."

(PC-R. 2784).

Mr. Episcopo said he did not investigate Mr. Hannon's mental state or possible brain damage because he had no indication of that (PC-R. 2757). He said he spent lots of time talking with Mr. Hannon and his family and "**I can determine whether somebody's whacked**" (Id.)(emphasis added). On cross examination, Mr. Episcopo said he had no reason to believe that Mr. Hannon was incompetent to stand trial or was insane (PC-R. 2775).[6] Mr. Episcopo said he questioned Mr. Hannon's parents in the hallway during trial about brain damage or mental health issues he may have had, and found no basis to that (PC-R. 2758). Mr. Episcopo further opined:

> "And, why would I do that anyway? We're going to get up there and say he's crazy and therefore, he shouldn't be killed? He wasn't crazy."

(PC-R. 2758-59).

Evidently, Mr. Episcopo believed unless Mr. Hannon was crazy, there was nothing mitigating in any other mental health issue. Mr. Episcopo said he did not believe that Mr. Hannon had "a mental problem....I think I know it when I see it."

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[6]It was obvious that Mr. Episcopo failed to understand the difference between competency to stand trial, insanity and having brain damage that impacts on one's ability to make rational decisions.

(PC-R. 2759). He did not understand any other form of mental health mitigation. Because he was unfamiliar with *Ake v. Oklahoma*, he did not have Mr. Hannon evaluated for any mental health issues before trial. He had no one evaluate Mr. Hannon for mitigation issues at all (PC-R. 2760).

According to Mr. Norgard, it was standard practice in 1990 for an effective capital defense attorney to hire a mental health expert (PC-R. 3133). *Ake v. Oklahoma* had already been decided and "....there can be mental health issues that aren't necessarily readily apparent to a layperson. Not all mental health problems are readily apparent. Brain damage is something which you would need neuropsychological testing, other testing to try to ascertain that." (PC-R. 3142-43). While mental health experts are useful in capital cases not just to explore competency or insanity, they are useful to look at other defenses, too, such as intoxication and personality disorders that could be mitigating (PC-R. 3142). Mental health experts can also be helpful in the areas of family dynamics, and different aspects of childhood development (PC-R. 3143).

Mr. Episcopo had done no investigation into any mitigation. Even when a bloody palm print was found at the murder scene and the alibi supported by Ron Richardson fell

apart, Mr. Episcopo did not change because it was too late. Even after he decided to put on a mitigation case, he still failed to investigate any of Mr. Hannon's background: "So what are we going to do a background investigation for? What's the point?" he asked (PC-R. 2805). Mr. Episcopo confirmed this when he said, "I expected this case to go back to trial. I expected that someone would come forward or there'd be a confession in jail just like you read about all the time. It happens all the time. I said this is going to happen in this case and we've preserved his ability to go to trial again" (PC-R. 2786-87).

Similar to its reasoning in denying Mr. Hannon's claim of ineffective assistance of counsel at the guilt/innocence phase of trial, the court in denying Mr. Hannon's penalty phase claim focuses on Mr. Episcopo's innocence strategy and finds his decision to maintain Mr. Hannon's innocence defense throughout the guilt and penalty phases of trial to be strategic. The trial court ignores the fact that residual doubt is not recognized as valid mitigation in Florida and therefore is not a valid strategy. Ignorance of the law is not reasonable performance. *See, Nero v. Blackburn*, 597 F. 2d 991 (5th Cir. 1979)(no tactical motive can be ascribed to an attorney whose omissions are based on lack of knowledge).

The Court completely ignores the testimony of several witnesses. Most importantly, the Court failed to address the testimony of criminal defense expert, Robert Norgard. The jury found Mr. Hannon guilty. Mr. Norgard testified regarding the importance of presenting an integrated defense between the guilt and penalty phases (PC-R. 3138-39). He explained:

> Part of the concept of the integrated defense which is talked about in the ABA standards is how do you deal with situations where your claim in the guilt phase is innocence but, you know, here you are in the penalty phase; and how you make that transition, how you maintain that credibility as the attorney in the case, that's a very important part of dealing with the case where you are claiming innocence, yet you're in a penalty phase.

(PC-R. 3139). This means that even where there is a pure innocence claim, a defense attorney must prepare for a penalty phase (PC-R. 3138). Mr. Norgard explained the significance of the jury rejecting an innocence defense in the guilt phase:

> A The point is, is that whether you're arguing pure innocence or you know some type of lesser, the jury rejected your position and so you have to, you know, approach them on a level of maintaining your credibility. So whether it was an innocence defense or a self-defense argument they didn't buy, you're having to maintain your credibility with them and the way to do that would be in opening statements if you request opening statements - -
>
> Q At penalty phase you're speaking

about?

A - - certainly in closing argument at the penalty phase, you know, essentially conveying the message to the jury that you respect their verdict, but you know, you presented a different position in the guilt phase but now we're dealing with separate issues and, you know, to some extent rebuild your credibility with the jury so that they listen to what you have to say about the mitigation and what you have to say by way of attacking the aggravators.

(PC-R. 3154-55). Based on the community standards discussed by Mr. Norgard regarding presentation of mitigation even where the guilt phase defense was innocence, Mr. Episcopo's strategy to present no substantial mitigation was unreasonable. This Court failed to see the significance of Mr. Norgard's expert testimony.

In finding that Mr. Episcopo was not ineffective for failing to present an abundance of non-statutory mitigation during the penalty phase, the court also did not address the testimony of Mr. Hannon's family members at the evidentiary hearing. While Mr. Episcopo stated that he had inquired if the Defendant was "born with any problems" (PC-R. 2758, 2014), and that the family members never brought any mental health problems to his attention, the testimony of Mr. Hannon's family refutes this. Ellen (Hannon) Coker testified that Mr. Episcopo never asked her about Patrick's life leading up to

the murders, his drug use, his alcohol use, or his home life (PC-R. 2833). Ms. Coker even indicated that she had attempted to contact Mr. Episcopo on several occasions and he refused to listen to her contributions. Although Ms. Coker was listed as a witness by Mr. Episcopo, he never spoke to her and in fact, had an out of state address listed for Ms. Coker even though she resided in Tampa and had for some time. Patrick's mother, Barbara Hannon, testified that she had very few meetings with Mr. Episcopo (PC-R. 2864). She also stated that Mr. Episcopo did not prepare them for their testimony at the penalty phase, nor did he explain the purpose of a penalty phase (Id.). Mrs. Hannon confirmed that Mr. Episcopo never asked her any questions pertaining to Patrick's family history schooling or his relationship with Maureen (PC-R. 2865). Charles Hannon, Patrick's father, testified that there was no discussion as to what they were to testify to during the penalty phase, nor was there any discussion about the innocence defense being persistent throughout the case (PC-R. 2897). Likewise, Maureen Hannon's testimony at the evidentiary hearing was consistent with the other family members that Mr. Episcopo never consulted with the family regarding the penalty phase (PC-R. 2932).

The court found that Mr. Episcopo did not present any

mental health mitigation because he was given no indication of brain damage by Mr. Hannon. It is not the defendant's responsibility, nor his family's, to inform trial counsel of potential family background and mental health mitigation with out some guidance from counsel as to what is to be provided. This further ignores the fact that Mr. Episcopo is a layperson with no mental health training, as well as again ignores the testimony of Robert Norgard. Mr. Norgard made it clear "[t]here's absolutely no reason not to present mitigation in a capital case and even [when a client prevents presentation of mitigation] you would proffer it to the Court and want to make as thorough a record as you could" (PC-R. 3153).

In light of this record, the lower court erred in concluding that trial counsel's performance was not deficient.

B. PREJUDICE

The lay and expert testimony at the evidentiary hearing established numerous mitigating factors. The evidence established the domination of Mr. Hannon by co-defendant Ron Richardson, a history of chronic and severe drug and alcohol abuse, intoxication at the time of the crime, parental neglect, a dysfunctional family, an alcoholic mother and absentee father, neurological impairments resulting in poor impulse control and flawed decision making. Mr. Hannon was

an extreme follower and dependent on others to assist him with basic living skills.

While the lower court did not reach the prejudice prong of *Strickland* based on it's error in finding counsel's performance not deficient, in light of these mitigating factors, prejudice is established. Analysis of prejudice must assume that the jury and judge would have found mitigating factors supported by the evidence. Under *Strickland*, "The assessment of prejudice should proceed on the assumption that the decision maker is reasonably, conscientiously, and impartially applying the standards that govern the decision." 466 U.S. at 695. Further, under Florida law, a sentencer is required to find a mitigating factor if it is proved. *Farr v. State*, 621 So. 2d 1368, 1369 (Fla. 1993).[7]

Here, under the applicable standard of proof, Mr. Hannon established numerous, recognized mitigating factors which were not established or found at trial. The State presented no rebuttal to the evidence regarding Mr. Hannon's history and

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[7]Under Florida law, a mitigating factor should be found if it "has been reasonably established by the greater weight of the evidence: 'A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you re reasonably convinced that a mitigating circumstance exists, you may consider it as established.'" *Campbell v. State*, 571 So. 2d 415, 419-20 (Fla. 1990), quoting Fla. Std. Jury Inst. (Crim.) at 81.

impairments. The omission of the mitigating factors undermines confidence in the outcome of the penalty phase.

Throughout the trial court's order, the court inaccurately reflected the testimony of Drs. Barry Crown and Faye Sultan. The trial court credits Dr. Crown with testifying that "although Defendant has some brain damage, it did not affect his behavior on the date of the crime." (PC-R. 2025-26). This is completely inaccurate. Dr. Crown testified that he was asked to evaluate for brain damage through neuropsychological testing and was not asked to evaluate the affect said brain damage would have had on Mr. Hannon on the day of the crime. Therefore, he was only testifying to the results of the testing, not whether it had an affect on that particular day (PC-R. 2998). Both Dr. Sultan and Dr. Crown testified however that his impairments impacted his daily functioning in general.

The court also states that Dr. Faye Sultan did not find Mr. Hannon incompetent to stand trial or insane at the time of the incident (PC-R. 2026. The Court misunderstands that incompetency and insanity are very different issues than penalty phase mental health mitigation. Dr. Sultan did in fact find several non-statutory mitigators including parental neglect, lack of structure, lack of discipline, lack of

guidance in his early environment, and a very serious childhood history of illness that interfered with his school life. Additionally she found he was dependent on others and termed him an “extreme follower.” Dr. Sultan found that Mr. Hannon had severe and chronic substance abuse over a long period of time, was impulsive, lacked concentration, was unable to form goal-directed behaviors and had personality changes from consuming large quantities of cocaine including irritability, impulsivity, and paranoid thinking.

Even the State’s own witness, Sidney Merin, offered more mitigation information than Mr. Episcopo. Dr. Merin agreed that Mr. Hannon “was heavily into drugs, heavily into the use of alcohol (PC-R. 3209). He acknowledged that long-term drug abuse and alcohol can cause brain damage, as can binge drinking . He also acknowledged that his results were “pretty much” consistent with the other experts who evaluated Mr. Hannon as far as Mr. Hannon’s drug abuse (PC-R. 3229). Dr. Merin said had he been called as a defense witness in 1991, he would have been able to take a social and drug history of Mr. Hannon and present it to the jury (PC-R. 3219). Obviously, Mr. Hannon was deeply into drugs and alcohol, which affected his ability to control his impulses. Even though he may not have been “whacked,” in the words of Mr. Episcopo, he did have

severe and long-standing abuse problems that a jury would have found mitigating.

The lower court further misunderstood Mr. Hannon's claims of substantial domination by Ron Richardson. Mr. Hannon's claim is not of physical domination, but rather mental domination. Mr. Hannon was looking to be accepted and looking for approval from his friends and sister. There was ample evidence presented at the evidentiary hearing to support this mental domination. Both, Dr. Sultan and Maureen Hannon testified regarding the fact that Mr. Hannon was a "follower." Dr. Sultan explained that Mr. Hannon followed a pattern of seeking approval:

> I learned that around the time that he was around age eleven, ten or eleven, his next older sister who is the one upon who he's most dependant and has been forever, Maureen, began to use drugs heavily; that he was so dependant upon her, her approval, her company, that he began to use drugs with her and that she in fact is the one who introduced him to some of the substances that he began to use when he was an early adolescent boy.

(PC-R. 3012). Even in his relationships, Mr. Hannon relied on Maureen:

> It appears that throughout all of his life, that I recall us talking about Mr. Hannon's friends have been Maureen's friends, that he had some neighborhood friends that tended to be older children, and then from the time he was a teenager he hung around

> with whoever his sister Maureen hung around, and that continued into his adult life.

(PC-R. 3014). Maureen Hannon testified that "Richardson had helped Defendant find work at the slaughterhouse, Defendant looked up to Richardson as older than he, and she described their relationship as like brothers." This is exactly the same pattern of reliance and desire for acceptance that was seen in his relationship with his sister. Patrick's relationship with Richardson continued in the same pattern as his relationship with Maureen, that of a follower seeking approval.

C. CONCLUSION

The evidence presented below established that trial counsel's performance was deficient and that Mr. Hannon was prejudiced. Had counsel adequately investigated, he would have discovered evidence establishing numerous, unrebuttable mitigating factors. These mitigating factors "might well have influenced the jury's appraisal of [Mr. Hannon's] moral culpability" or "may [have] alter[ed] the jury's selection of penalty." *Williams v. Taylor*, 120 S. Ct. at 1515-16. The evidence likely would have affected the "factual findings"

regarding mitigating factors.[8] *Strickland*, 466 U.S. at 695-96. This Court should grant Mr. Hannon relief.

ARGUMENT III-THE LOWER COURT ERRED BY SUMMARILY DENYING MERITORIOUS CLAIMS

This Court has stated many times that under rule 3.850, a movant is entitled to an evidentiary hearing unless the motion, files, and records conclusively show that the movant is not entitled to relief. Fla. R. Crim. P. 3.850(d); e.g. *Provenzano v. Dugger*, 561 So.2d 541, 543 (Fla. 1990); *Harich v. State*, 484 So.2d 1239, 1240 (Fla. 1986), *O'Callaghan v. State*, 461 So.2d 1354, 1355 (Fla. 1985). Appellant's Rule 3.850 motion was sufficiently pled and the allegations presented remain unrefuted by the record.

A. The State Withheld Evidence Which Was Material and Exculpatory in Nature And/or Presented Misleading Evidence.

Ronald Richardson was the State's key witness. Three people were charged with the murders in this case -- Ronald Richardson, James Acker, and Pat Hannon. Mr. Hannon was the first to be arrested and his case was the first to be tried.

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[8]The only mitigation found by the trial court at sentencing was based on the testimony of Mr. Hannon's parents that "the defendant has never been a violent person, has never tried to harm anyone and never hurt anybody in his whole life" and the plea agreement of co-defendant Ron Richardson (R. 1807, 1809).

Co-defendant Acker was brought to trial only after Mr. Hannon was convicted and sentenced. Up until trial, Ronald Richardson insisted that he would invoke his Fifth Amendment rights and would not testify against Mr. Hannon. (R. 985-986). Shortly before the State rested its case, it announced that Ronald Richardson had given a statement to the defense and will testify against Mr. Hannon (R. 1139). The State argued that Mr. Richardson agreed to testify against Mr. Hannon because he didn't want to be involved in a lying alibi. (R. 1149-1156). Mr. Richardson complied and in exchange, he pled guilty to being an accessory after the fact to murder (R. 1156). While the state argued at Mr. Hannon's trial that Richardson was going to spend time in prison for his role in this case, he only received a suspended sentence and never spent a day in jail for this offense. The record does not conclusively refute these facts and the trial court overlooked the actual sentence received by Richardson. The prosecution's failure to disclose that Richardson's testimony was presented in exchange for lenient treatment is a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Additionally, the prosecution's presentation of false testimony at trial establishes a violation of *Giglio v. United States*, 405 U.S. 150 (1972).

Additionally, in *Scott v. Dugger*, 604 So.2d 465 (Fla.

1992), this Court held that a co-defendant's lesser sentence constituted newly discovered evidence for which postconviction relief could be afforded. "Even when a co-defendant has been sentenced subsequent to the sentencing of the defendant seeking review on direct appeal, it is proper for this court to consider the propriety of disparate sentences in order to determine whether a death sentence is appropriate given the conduct of all participants in committing the crime." (citations omitted) *Id*. The facts in *Scott* mirror the facts in Mr. Hannon's case. Acker was sentenced after Mr. Hannon, and, thus his sentence constitutes newly-discovered evidence cognizable in a Rule 3.850 motion. Additionally, had trial counsel had the facts that came out at Mr. Acker's trial, it is more than likely he would have been able to prove that Mr. Hannon's role in the crime was that of the least culpable co-defendant. Whether the state failed to disclose these facts and/or presented misleading evidence or whether the facts demonstrate newly-discovered evidence,

The State also presented unreliable testimony and evidence through Judith Bunker, whom the court qualified as a blood-spatter expert. Ms. Bunker's "qualifications" as an expert in the field of blood spatter were misrepresented. See Argument I(A)(2). To the extent the state failed to disclose

this information and/or presented misleading testimony, *Brady* and *Giglio* violations occurred. Mr. Hannon is entitled to an evidentiary hearing and relief.

B. State's Presentation of Unreliable and Non-scientific Evidence

At trial, the State relied on the testimony of purported blood splatter expert Judith Bunker. After the State elicited testimony regarding Ms. Bunker's qualifications and Mr. Hannon's counsel's failure to properly voir dire, Ms. Bunker was qualified as a bloodstain pattern expert. Ms. Bunker's opinions were not based on reliable scientific principles. *Ramirez v. State*, 542 So. 2d 352 (Fla. 1989). No *Frye* hearing was held. *Frye v. United States*, 293 Fed. 1013 (D.C. Cir. 1923). Trial counsel for Mr. Hannon failed to object.[9] *Correll v. State*, 523 So. 2d 562 (Fla. 1988), *cert. denied*, 488 U.S. 871, 109 S. Ct. 183. The State elicited misrepresentations from Ms. Bunker during her voir dire and failed to correct these false statements. But for these

[9]To the extent the lower court granted an evidentiary hearing on trial counsel's failure to adequately challenge Ms. Bunker's testimony through cross examination, counsel's failure to depose Ms. Bunker, counsel's failure to retain experts to rebut her testimony and failure to object to her testimony, these issues have been addressed in Argument I (A)(2), supra.

misrepresentations Ms. Bunker would have never been qualified as a bloodstain pattern expert at Mr. Hannon's trial.

During Mr. Hannon's guilt phase, Ms. Bunker provided testimony explaining how the accused, Mr. Hannon, could have committed these crimes. Her narrative reconstruction of events was based upon her interpretation of bloodstain patterns found at the scene, including the following opinions: the point of origin of the blood; the type and direction of impact, that produced the bloodstain; the positions of the persons or objects during bloodshed; movement of the victims or persons following bloodshed. Using a slide show, Ms. Bunker provided an explanation of how the crime was committed (R. 1101-23). This testimony was well beyond her expertise.

Ms. Bunker should have never been qualified as an expert at Mr. Hannon's trial. She lacked the scientific training, knowledge, and skills to perform bloodstain pattern analysis. The admission of her materially inaccurate testimony undermined the reliability of Mr. Hannon's convictions and sentence particularly given that her testimony provided the basis for the heinous, atrocious and cruel aggravating factor. There is a reasonable possibility that had Mr. Hannon's jury known that Ms. Bunker's testimony was false and/or misleading, that she was not an expert in any field, and that her

conclusions were without any scientific basis, that the jury could have reached a different result. *Bagley*; *Giglio*; *Brady*. Mr. Hannon is entitled to an evidentiary hearing.

C. Conflict of Interest

Rendering effective assistance pursuant to the Sixth Amendment requires that defense counsel avoid an "actual conflict of interest" that adversely affects his representation. *Cuyler v. Sullivan*, 466 U.S. 333, 351 (1980). Where an attorney represents an interest contrary to his client's interests, prejudice is presumed. *Id*. In this case, trial counsel had an undisclosed conflict which prevented him from rendering effective assistance.

During his representation of Mr. Hannon, Mr. Hannon's trial attorney tried to obtain the business of co-defendant Ron Richardson (R. 1201, 1217). At the outset of trial, trial counsel was under the impression that Richardson was going to testify as a defense witness. However, Mr. Richardson entered a plea agreement with the State and testified against Mr. Hannon.

In *Barclay v. Wainwright*, 444 So.2d 956, 958 (Fla. 1984), the Court stated that "A conflict occurs 'whenever one defendant stands to gain significantly by counsel adducing probative evidence or advancing plausible arguments that are

damaging to the cause of a co-defendant whom counsel is also representing." While many of the cases dealing with conflict of interests address the problem of one attorney representing two parties with adverse interests, such as co-defendants in a criminal trial, the analysis of this issue is clearly applicable in the instant case. "Conflict of interest cases usually arise at the trial level, but, . . . [they] can arise at any level of the judicial process. In general an attorney has an ethical obligation to avoid conflicts of interest and should advise the trial court if one arises." *Id*. In Mr. Hannon's case, his attorney did not succeed in representing co-defendant Richardson, but, throughout his representation of Mr. Hannon, trial counsel was actively trying to procure Richardson's business. The effect on Mr. Hannon is the same whether trial counsel actually represented Mr. Richardson or not. By aiming to represent both defendants, trial counsel "[sacrificed] the interests of one client for the enhancement of the interests of another." *Davis v. State*, 461 So.2d 291 (Fla. 1st DCA 1985)

Since trial counsel was endeavoring to obtain co-defendant Richardson's business in connection with his representation of Mr. Hannon, trial counsel was blinded to pursuing avenues of investigation which may have pointed to

the co-defendant Richardson's role in these killings. Further, this conflict clouded trial counsel's ability to effectively cross examine Mr. Richardson. Mr. Hannon was denied these rights not only because defense counsel was ineffective at trial, but also because Mr. Hannon had no one to file a motion for the appointment of conflict-free counsel on his behalf. Mr. Hannon is entitled to an evidentiary hearing.

D. State's Use of Jailhouse Informants

The state presented the testimony of several "jailhouse informants" in its case against Mr. Hannon. Jerry Robinson, Rodney Green, Larry Crocker, Michael Keever, Jonathan J. Ring and Keith Fernandez. The state's use of these informants in this case was improper. Non-record evidence supports Mr. Hannon's claim that many of these witnesses, particularly Keith Fernandez, had no information to provide when the state first contacted them. However, Keith Fernandez told Officer -- that he could get more information out of Mr. Hannon. He was sent back to do just that and later gave testimony that Mr. Hannon said: (1) "they would never find [the weapons]" (R.771); (2) that if the police found Robin Eckert it would blow his alibi and he would be sent to the electric chair (R.777); that one of his [Mr. Hannon's] friends was going to

"roll on him" (R.775). Further Fernandez said he was not given anything in exchange for his testimony (R.774), non-record information reveals that this was not true.

Non-record evidence establishes that Mr. Fernandez was a police agent throughout the relevant time period. In other words, Mr. Fernandez was acting as a jailhouse informant. Mr. Fernandez told the detectives he could get a statement from Mr. Hannon. Furthermore, Mr. Fernandez' assistance in Mr. Hannon's case was considered when he was sentenced for his crime. Additionally, inmate Jonathon Ring testified for the State against Mr. Hannon. In exchange for his testimony, the State investigator Scott Hopkins wrote a letter on September 6, 1991 to the Superintendent of the prison where he was housed asking that his gain time that he lost while waiting to testify be reinstated. Counsel for Mr. Hannon was unaware of this request.

When Mr. Hannon was questioned by jailhouse informants, in the absence of counsel, his right to counsel was impermissibly violated. *Maine v. Moulton*, 474 U.S. 159, 176 (1985); *United_States v. Henry*, 447 U.S. 264 (1980); *Massiah v. United States*, 377 U.S. 201 (1964). To the extent trial counsel failed to discover this information, Mr. Hannon was denied the effective assistance of counsel. To the extent the

state failed to disclose this information, violations of *Brady* and *Giglio* occurred. Mr. Hannon is entitled to an evidentiary hearing.

E. State's Use of Misleading and Improper Argument

This Court has held that when improper conduct by a prosecutor "permeates" a case relief is proper. *Garcia v. State*, 622 So.2d 1325 (Fla. 1993); *Nowitzke v. State*, 572 So. 2d 1346 (Fla. 1990). The state's presentation of false and misleading testimony denied Mr. Hannon of a fair and reliable adversarial testing. *See Napue v. State*, 360 U.S. 264 (1959).

The prosecution's case against Mr. Hannon was permeated with improper innuendo and argument based on facts not in evidence and that were patently false. During closing argument the State referred to Mr. Hannon's case as "the slaughterhouse" case (R. 1457). Continuing its reliance on this characterization the State argued that Mr. Hannon worked in a slaughterhouse, had access to knives, had used knives and had killed animals in the past (R. 1479). These arguments were not supported by any factual basis.

Additionally, in regards to co-defendant Richardson, the State argued that they only did a deal "with the sinner to get to the devil" (R.1613). The State also told the jury that

Richardson would be spending time in prison for his role in the crimes (Id.). However, Richardson received a suspended sentence and spent no time in prison. Counsel's failure to object was unreasonable, and an evidentiary hearing is warranted.

F. Failure to Object to Constitutional Error

1. Burden Shifting

The State must prove that aggravating circumstances outweigh the mitigation. *State v. Dixon*, 283 So. 2d 1 (Fla. 1973), *cert. denied*, 416 U.S. 943 (1974)(emphasis added). This standard was not applied at Mr. Hannon's sentencing, and counsel failed to object to the court and prosecutor improperly shifting to Mr. Hannon the burden of proving whether he should live or die (R. 1619). *Mullaney v. Wilbur*, 421 U.S. 684 (1975). Relief is warranted.

2. *Caldwell* Error

Mr. Hannon's jury was repeatedly instructed by the court and the prosecutor that its role was "advisory" and just a "recommendation". This infected every aspect of Mr. Hannon's sentencing. The court instructed the jury that the "final decision as to what punishment shall be imposed is the responsibility of the judge" and that the jury furnishes only "advisory sentence" (R. 1785)(emphasis added). As a result,

the jury's sense of responsibility was diminished in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). Counsel's failure to object without a tactic or strategy rendered Mr. Hannon's sentencing unreliable. An evidentiary hearing is warranted.

G. Automatic Aggravating Factor

Mr. Hannon's jury was instructed that they could find as an aggravating circumstance the fact that Mr. Hannon was engaged in the commission of the crime of burglary (Fla. Stat. §921.141(5)(d)) based upon the state's alternative theory of felony murder (R. 1461). The trial court found as one of the three aggravating circumstances in support of the death sentence that the capital felony was committed while Mr. Hannon was engaged in the commission of the capital felony.

Aggravating factors must channel and narrow sentencers' discretion. A state cannot use aggravating "factors which as a practical matter fail to guide the sentencer's discretion." *Stringer v. Black,* 112 S. Ct. 1130 (1992). The use of this automatic aggravating circumstance did not "genuinely narrow the class of persons eligible for the death penalty," *Zant v. Stephens*, 462 U.S. 862, 876 (1983). *Stringer* establishes the validity of Mr. Hannon's claim that the felony murder aggravating factor is an unconstitutional automatic

aggravating factor which does not provide the requisite narrowing. Counsel's failure to object rendered Mr. Hannon's sentencing unreliable. An evidentiary hearing is warranted.

H. Newly Discovered Evidence

Newly discovered evidence exists to show that Ron Richardson, the State’s key witness at trial gave materially false information. Mr. Richardson was initially charged with two counts of first degree murder, but during Mr. Hannon’s trial entered into a plea agreement with the State in which his charges were reduced to one of accessory after the fact. In exchange for the plea Mr. Richardson testified against Mr. Hannon. The newly discovered evidence shows that Richardson’s testimony was false.

Mr. Hannon alleged in his 3.850 motion that Kelly Reynolds, a niece of Ron and Mike Richardson, testified at an evidentiary hearing for co-defendant Jim Acker. Reynolds testified that after Ron Richardson was released from jail he returned to Indiana and lived in the same house as Reynolds. During that time, Ron Richardson discussed this case on more than one occasion. Mr. Richardson admitted that Jim Acker was not present when the murders occurred. Reynolds also overheard Ron Richardson on the phone with his brother Mike. He told Mike to forget about the money Ron owed him because

Ron saved Mike from going to prison. This newly discovered evidence indicates that Ron Richardson's testimony regarding the night of the murders is false.

Because Richardson's admission that he did not testify truthfully was not made until after Mr. Acker was convicted and sentenced, neither Mr. Hannon, trial counsel, collateral counsel or the trial court could have known of the admission and could not have learned of it through due diligence. Because Mr. Hannon had one year from the date of discovery of the new evidence to file his claim with the circuit court, this claim was timely filed. *Mills v. State*, 684 So. 2d 801 (Fla. 1996). Ron Richardson's testimony was essential to the State's prosecution of Mr. Hannon. Without it, Mr. Hannon would not have been convicted. Thus, the newly discovered evidence here "would probably produce an acquittal on retrial." *Jones v. State*, 591 So. 2d 911 (Fla. 1991).

In his 3.850 motion, Mr. Hannon further alleged that the U.S. Department of Justice, Office of Inspector General completed an investigation into the practices and procedures of the FBI Crime Laboratory and subsequently issued a report titled: "The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases." One of the sections investigated participated

in the testing of evidence relied on by the State in Mr. Hannon's case. One of the agent's investigated, Special FBI Agent Michael Malone, provided critical testimony against Mr. Hannon[10].

Malone was "in charge" of Mr. Hannon's case at the FBI Lab and conducted hair and fiber analysis of evidence taken from the victims (R. 542). He testified that the hair and fiber samples at the scene did not match Mr. Hannon (R. 543). He also testified that he evaluated a fabric impression which was made about three feet from the bottom of the outside door of the victims' residence and it was consistent with a blue jean fabric (R. 548). He testified that it did not match the pants obtained from Mr. Hannon when he was arrested (Id.).

Mr. Malone's testimony was significant for its implication that Mr. Hannon was in the victims' apartment the night of the murders, but failed to leave any hairs as evidence. Because the State argued that Mr. Hannon burned his clothes after the murders to destroy evidence, Malone was able to imply that the pants Mr. Hannon was wearing the night

[10]In the FBI report, Malone was criticized for conducting incomplete tests and exaggerating testimony to fit the government's case. The report recommended that Malone be subject to disciplinary action and that his testimony in future cases should be monitored to assure that Malone's testimony is accurate and reflects only matters within his knowledge and competence.

of the murders left the impression on the door. Malone testified that the fiber impression on the outside of the door was consistent with a blue jean type material and that Mr. Hannon was wearing blue jeans on the night of the murders. Malone's testimony was emphasized during the State's closing argument in which it was argued that all the witnesses identified the three who left the victims' apartment as wearing blue jeans (R. 1471). The State further argued that Richardson identified Mr. Hannon as wearing blue jeans (Id.). Had trial counsel been provided with the evidence that is now available he would have been able to discover that Malone's testimony was objectionable on several grounds[11] and should have been excluded because it was beyond the witness' expertise and not relevant to any material issue in the case.[12]

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[11]*See Hayes v. State*, 660 So. 2d 257 (Fla. 1995); *Ramirez v. State*, 651 So. 2d 1164 (Fla. 1995); *Frye v. United States*, 293 Fed. 1013 (D.C. Cir. 1923).

[12]Although the trial court originally summarily denied this claim as a whole, See Order, Denying In Part, and Granting An Evidentiary, (PC-R. 1810-13), the court addressed this portion of Mr. Hannon's newly discovered evidence claim following the evidentiary hearing. The lower court found that the Justice Department's report regarding Michael Malone and the FBI Crime Lab would not have made a difference in the outcome because Mr. Episcopo would not have changed his strategy of maintaining that Mr. Hannon was not at the crime scene and did not commit these murders (PC-R. 2042). Further, the lower court relied on Mr. Episcopo's testimony that he believed Malone's testimony helped the alibi defense (Id.). This reasoning overlooks the fact that Malone's

Argument IV-Avoid arrest Aggravator is Vague and Improperly Applied

In sentencing Mr. Hannon to death, the trial court found the aggravating factor of avoiding arrest. This factor is constitutional only when the sentencer is informed of, and applies the Florida Supreme Court's limiting construction of this aggravating circumstance. Failure to so instruct renders this factor vague and over broad, *see Godfrey v. Georgia*, 446 U.S. 420 (1980); *Maynard v. Cartwright*, 486 U.S. 356 (1988), and, as such, fails to genuinely narrow the class of persons eligible for the death sentence. *See Zant v. Stephens*, 462 U.S. 862, 876 (1983). In Mr. Hannon's trial, no limiting instruction was given.

Under the facts of this case, it cannot be said that the dominant or sole motive for the homicide was elimination of a witness, or that the trial court based its application of this circumstance on such facts. The state itself provided evidence that there may have been other reasons that victim Carter was murdered. The application of the avoid arrest

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testimony about the blue jean impression made on the door of the victim's residence was emphasized during the State's closing argument. Because the State argued that Mr. Hannon was wearing blue jeans on the night of the murders and burned his clothes to cover up his participation, Malone's testimony implied that Mr. Hannon was involved, but left no evidence behind.

factor thus violated the Eighth Amendment and rendered the death sentence unreliable and arbitrary. *Stringer v. Black*, 112 S. Ct. 1130 (1992). The factor was applied overbroadly, directly contrary to the statute and the settled standards articulated by the Florida Supreme Court. *Godfrey*; *Cartwright*. The result is an improper capital sentence.

Argument V- Misapplication of Heinous, Atrocious and Cruel Aggravator

The jury cannot be instructed on HAC, and it is error for the judge to find HAC, when the evidence does not show beyond a reasonable doubt that the defendant, and not an accomplice, had the requisite mental state. *Archer v. State*, 613 So. 2d 446 (Fla. 1993); *see also Williams v. State*, 622 So. 2d 456 (Fla. 1993); *Omelus v. State*, 584 So. 2d 563 (Fla. 1991). Such is the case here. Moreover, the jury instruction received by the sentencing jury was unconstitutionally vague. *Espinosa v. Florida*, 112 S. Ct. 2926 (1992); *Stringer v. Black*, 112 S. Ct. 1130 (1992). Mr. Hannon's death sentence is improper.

Argument VI-Innocence of the Death Penalty

Where a person convicted of first degree murder and sentenced to death can show either innocence of first degree murder or innocence of the death penalty, he is entitled to

relief for constitutional errors which resulted in the conviction or sentence of death. *Sawyer v. Whitley*, 112 S. Ct. 2514 (1992). Innocence of the death penalty can be shown by establishing ineligibility for a death sentence, that is, insufficient aggravating circumstances so as to render the individual ineligible for death under Florida law. Mr. Hannon is innocent of the death penalty because the State failed to establish any aggravating circumstance making him death eligible. Mr. Hannon's jury was given unconstitutionally vague instructions on the aggravating circumstances relied upon by the judge to support Mr. Hannon's death sentence and there was insufficient evidence to support all three aggravators. Further, Mr. Hannon's death sentence is disproportionate based on the lack of aggravating circumstances, the unpresented mitigation, and the disparate treatment of Mr. Hannon's co-defendants. Mr. Hannon is ineligible for the death penalty under Florida law.

Argument VII-Florida's Capital Sentencing Statute is Unconstitutional

Florida's death penalty scheme is unconstitutional on its face and as applied to Mr. Hannon. *See Ring v. Arizona,* 122 S. Ct. 2428 (2002). Mr. Hannon hereby preserves any

arguments as to the constitutionality of the death penalty, given this Court's precedent.

Argument VIII-Cumulative Error

Due to the sheer number and types of errors involved in his trial and sentencing, Mr. Hannon did not receive the fundamentally fair trial to which he was entitled. The lower court failed to conduct an adequate cumulative analysis of the errors stating only that “Based upon the Court’s rulings on claims I through XX, no relief is warranted” (PC-R. 2043). Mr. Hannon is entitled to relief.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing Patrick Hannon respectfully requests that this court immediately vacate his convictions and sentences, including his sentence of death and order a new trial. In the alternative, Mr. Hannon additionally requests that this court remand for an evidentiary hearing on issues previously denied by the lower court. Finally, Mr. Hannon requests that a new sentencing be ordered.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States Mail, first class postage

prepaid, to Candance Sabella, Assistant Attorney General, 2002 N. Lois Avenue, Ste. 700, Tampa, FL 33607 on August 20, 2004.

_____
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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this petition is typed using Courier 12 font.

_____
SUZANNE MYERS KEFFER