IN THE SUPREME COURT OF FLORIDA

TIMOTHY A. ROBINSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC09-1860

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

This brief refers to Appellant as such, Defendant, or by proper name, "Robinson." Appellee will be referenced as such or as the State.

This brief uses the following referencing symbols:

"R"	Direct-appeal record of this case; Roman numeral designates a volume number, followed by any page number(s), for example, "R/IV 779-80" refers to pp. 779-80 of volume IV of the direct-appeal record;
"PC"	Postconviction record; Roman numeral designates a volume number, followed by any page number(s);
"PC-EH"	Transcript of postconviction evidentiary hearing on April 21 & 22, 2009, with volume number and any page number(s);
"PC-EXH"	Exhibits in postconviction evidentiary hearing, with volume number and any page number(s);
"PC-SE" or "PC-DE"	State Exhibit or Defense Exhibit, respectively, followed by any exhibit number(s);
"IB"	Robinson's Initial Brief of Appellant, which this Answer Brief opposes, followed by applicable page number(s);
"IAC"	Ineffective assistance of counsel.

Unless indicated otherwise, bold-typeface and bold-underlined emphases are supplied; cases cited in the text of this brief and not within quotations are underlined; other emphases are contained within the original quotations.

INTRODUCTION

Robinson accuses his trial counsels of Strickland prejudicial deficiency during the penalty phase of the trial proceedings. Robinson bore the burden of demonstrating in the postconviction evidentiary hearing that there was a reasonable probability of a life sentence, but he failed.

At postconviction, Robinson's weighty obstacle, which also faced his trial counsel, was his leadership role in the home invasion robbery, in which he barged into the home brandishing a gun, ordered the occupants to "shut up," ordered them to sit down, stand up, "get down," ordered them to strip naked, interrogated them, stabbed, raped, and ordered "open up" -- resulting in four murders, and one attempted murder.

The Robinson-led mayhem resulted in the extremely weighty aggravation of HAC, CCP, and with four dead victims, prior violent felony in the extreme. These are facts that were overwhelming at trial and remain overwhelming now. Robinson's postconviction evidence does not overcome them.

Trial defense counsel, given the obstacles Robinson created, performed more than reasonably, and nothing could have been done to save Robinson from the death penalty. Trial counsel's ability to obtain a six-to-six jury recommendation of life is a tribute to counsel's competence. At the postconviction evidentiary hearing, Robinson failed to prove either of Strickland's prongs.

STATEMENT OF THE CASE AND FACTS

As authorized by Fla.R.App.P. 9.210(c), the State submits its rendition of the case and facts.

Case Timeline.

To provide a basic framework and an index for portions of the record, Respondent submits a timeline of major events and pleadings in the case.

YEAR	NATURE OF MAJOR EVENT OR PLEADING
1988	Bodies of four victims discovered on the floor of a house in Escambia County Florida, and rape victim Amanda Merrell discovered alive with her throat slit (R/IV 779-80; R/VII 1300-1305; VIII 1396-1401);
1989	Initial 17-count indictment (R/XII 2101-2105);
1989	Michael Pitts appeared for Robinson at the arraignment on the indictment (See R/VII 2125-28) onward (See, e.g., R/I 2);
1989	Defense counsel Barry Beroset moved to appear as co-counsel (R/XII 2216-17);
1989	17-count corrected indictment charging Robinson and others with four murders, one attempted murder, six kidnappings, two armed sexual batteries, conspiracy to traffic in cocaine, armed burglary of a dwelling with assault, and two armed robberies (R/XII 2106-2110); this is the indictment on which Robinson was tried (See R/XII 2106; R/XI 1958);
1989	Timothy Robinson, Michael Coleman, and Darrell Frazier, tried together (R/III 398, 428 et seq); subsequently, Ronald Williams, was tried separately, See Williams v. State, 622 So.2d 456, 460 (Fla. 1993)[1]; **here, Robinson's appellate claims include an**

[1] This Court, in Williams v. State, 987 So.2d 1 (Fla. 2008), reversed Williams' death sentence. Williams v. State, 622 So.2d 456, 463-64 (Fla. 1993), had previously struck HAC, reasoning:

	allegation pertaining to shackling of Robinson (ISSUE II);
1989	Jury returned verdicts finding Robinson guilty as charged (R/XI 1970-72; R/XIII 2431-39) as to all 17 counts of the Indictment (R/XII 2106-2110);
1989	Penalty phase of the jury trial, at which Dr. James D. Larson (R/XI 1995-2004) and Robinson's mother, Mary Robinson (R/XI 2012-22) testified; by a six-to-six vote, the jury recommended life for Robinson (R/XI 2096-97; R/XIII 2449);
1989	Spencer-type[2] proceedings (R/XIV 2478-2508) at which Robinson's counsel, Mr. Beroset, referenced a set of character letters he was submitting to the Court for Robinson (R/XIV 2498-2501, 2510-29) and argued for Robinson's life (R/XIV 2499-2506);
1989	Robinson's counsel submitted a written Memorandum in Support of the Jury's Advisory Sentence (R/XIV 2530-34);
1989	Trial court's death sentences, overriding the jury's life recommendation (R/XIV 2562-66, 2582-87) and finding five aggravating circumstances (including prior violent felony, HAC, and CCP), rejecting statutory mitigation, finding that Robinson was "clearly the ringleader and the person who directed the other participants" (R/XIV 2586), and

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> While the record reflects that the manner in which the victims were killed was heinous, atrocious, and cruel, the State in this instance failed to prove beyond a reasonable doubt that Williams knew or ordered the particular manner in which the victims were killed. We have expressly held that this aggravating factor cannot be applied vicariously, absent a showing by the State that the defendant directed or knew how the victim would be killed. *Omelus v. State*, 584 So.2d 563 (Fla. 1991). Consequently, the trial court erred in applying*464 this aggravating factor vicariously. We find that the remaining aggravating factors are fully supported by the evidence.

[2] See Spencer v. State, 615 So.2d 688 (Fla. 1993)("trial judge should hold a hearing to: a) give the defendant, his counsel, and the State, an opportunity to be heard ***").

	considering aspects of non-statutory mitigation (R/XIV 2586); **here, Robinson's appellate claims include an allegation of ineffective assistance of trial counsel at the penalty phase (ISSUE I)**;
1992	Robinson v. State, 610 So.2d 1288 (Fla. 1992), on direct appeal, rejected several guilt-phase and penalty-phase issues, including claims regarding **shackling**, the jury override, and the trial court's findings concerning "potential mitigating evidence presented in this case"; although this Court struck the avoid or prevent arrest aggravator, it upheld Robinson's death sentence as proportionate;[3]
1994	United States Supreme Court denied certiorari at Robinson v. Florida, 510 U.S. 1170, 114 S.Ct. 1205, 127 L.Ed.2d 553 (1994);
1995	Postconviction motion (PC/I 16-188) citing to Fla.R.Crim.P. 3.850 (PC/I 16) and indicating that Fla.R.Crim.P. 3.851's one-year filing requirement applies except for this Court granting an extension (PC/I 20);
1999	Robinson's "Second Amended Motion to Vacate …" (PC/II 256-373);
2000	Robinson's 244-page amended postconviction motion (PC/III 398-PC/IV 641), and the State's response (PC/IV 671-735);
2000	Defendant's over-244-page third amended postconviction motion (PC/V 830-PC/VI 1085); on the State's motion (PC/VI 1086-91), the trial court ordered Robinson to clarify the claims that have been changed or added in the latest version of Robinson's postconviction motion (PC/VI 1092-93); and Robinson responded by indicating that the latest postconviction motion added Claims XIX, XX, and XXI [pages 243a through 243f]" (PC/VI 1105-1108); and the State responded to the added claims (PC/VI 1109-

[3] Coleman's case is pending in this Court on a habeas petition (SC09-92) and on review of the trial court's denial of postconviction relief (SC04-1520).

	35);
2004	Huff[4] hearing (PC/VIII 1354-94);
2008	At Robinson's postconviction instigation (See, e.g., PC/VII 1246, PC/VIII 1396-98 et seq.[5]; PC/X 1824-26), DNA testing (PC/X 1842-48, 1849-55) ultimately showing the odds of DNA in swabs from victims Merrell and Baker coming from anyone other than Robinson was 1 in 2.0 quadrillion among U.S. Africa-Americans (PC/X 1845, 1852);[6] the trial court's postconviction order accredited and relied upon the 2008 DNA test results (See PC/XIV 2505-2506);
2008	"[B]ased upon the DNA report," Robinson, through counsel, requested leave to amend the postconviction motion (PC/X 1859), which the trial court granted (PC/X 1859, 1866);
2008	Robinson filed a "Supplement to Third Amended Motion to Vacate …" (PC/X 1867-97, which the State moved to strike and alleged that the "Supplement" exceed the trial court's and the Rules' authorization (PC/X 1899-1908); the trial court denied the State's motion to strike (PC/X 1909), and the State responded to the "Supplement" (PC/X 1918-47);
2009	Huff hearing on the "Supplemental" postconviction motion (PC/XI 1982-2037) and attendant order (PC/XI 2087-88);
2009	Judicial notice of co-defendants' records (PC/XI 2151; see also, e.g., PC/XI 2095-96);
2009	Evidentiary hearing on aspects of Robinson's postconviction motion (PC-EH/I, II); parties' post-evidentiary hearing memoranda (PC/XIII 2376-2443,

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

[5] Proceedings and litigation concerning the postconviction DNA testing consume most of a number of volumes of the record on appeal.

[6] The State moved for judicial notice of the 2008 DNA results. (PC/XI 1956-60; see also PC/XI 2019-21, 2034-35, 2039-40) Robinson's counsel filed a reply indicating "no legal basis to object" to the trial court relying upon the 2008 DNA testing. (PC/XI 2085)

	2448-81, 2482-93);
2009	Trial court denied postconviction relief (PC/XIV 2494-2535) and included extensive supportive attachments (PC/XIV 2536-PC/XVII 3271), resulting in this appeal (SC09-1860; PC/XVII 3272-73).

The Four Murders; Sexual Battery; Multiple Kidnappings and Armed Robberies; and, Additional Felonies.

This case arose from four murders, an attempted murder, two sexual batteries and several other felonies committed in September 1988. (See, e.g., R/IV 778-80; R/VII 1286 et seq.)

In 1989, an indictment charged Timothy Robinson with the following: First Degree Murder (4 counts), Attempted First Degree Murder (1 count), Armed Kidnapping (6 counts), Armed Sexual Battery (2 counts), Conspiracy to Traffic in Cocaine (1 count), Armed Robbery (2 counts), and Armed Burglary of a Dwelling (1 count). (R/XII 2106-2110)

In 1989, Timothy Robinson, Michael Coleman, and Darrell Frazier were tried together (See, e.g., R/IV 594), and Ronald Williams was tried separately, See Williams v. State, 622 So.2d 456, 460 (Fla. 1993).

Evidence at Robinson's trial showed that on September 20, 1988, when Officer Rodrigues arrived at the murder scene, he found Amanda Merrell[7] alive but "laying out in the front yard, blood all over her, she had a

[7] At trial, there was no evidence that Ms. Merrell was involved in the use or theft of drugs. In fact, Darlene Crenshaw testified at trial that Ms. Merrell does not use drugs nor even drink. (R/VII 1232)

shirt and underwear on." (Compare R/IV 779 with R/VII 1305) Officer Rodrigues went inside the house where he found four dead bodies the living room. (R/IV 780) The dead bodies were all nude and consisted of three males and one female. (R/V 786-87) "They were all bound hand and foot and gagged." (R/V 786) "There were numerous knife or slash wounds on each of the [four dead] victims, and there were gunshot wounds to the back of the head of each of the four [dead] victims." (R/V 786-87; see also medical examiner's testimony at R/VIII 1395 et seq.)

Amanda Merrell was Life Flighted from the murder scene (R/IV 781) and survived to testify at length at the trial, including Robinson's specific role in the murders, rapes, and other felonies (R/VII 1285-R/VIII 1379). Darlene Crenshaw also provided details of those events at the murder scene. (R/VII 1178-1234)

Because of the importance in determining the issues of this appeal, the State elaborates on the trial evidence showing Robinson's leadership role in the September 19-20, 1988, events of the quadruple murders, two rapes, attempted murder, and other felonies, in which Robinson, Michael Coleman, and others entered the victims' residence at gunpoint, snatched cords out of the walls, made the victims undress, raped two women, slit throats, and systematically executed victims. Ronald Williams was not one of the intruders.

Robinson was known as "Red" or "Big Red." (See R/IV 644-45, 704-705, 738; R/VII 1295-1296; R/VIII 1360; R/IX 1571) He was armed with a gun when he entered the residence. (See R/VII 1186, 1294)

"Red told everybody to sit down and shut up ... then he made everybody strip" (R/VII 1294-95) Ms. Merrell's testimony continued:

> Q. What happened then?
>
> A. After he told everybody to sit down. Then he said no, stand up, let me make sure you don't have no shit. He went to searching the pillows to make sure there wasn't any guns there. Then they beat the guy Gas [Michael McCormick, R/IV 685, 707) down.
>
> Q. What do you mean beat him down?
>
> A. They beat him down. Red beat him down.
>
> Q. What do you mean beat him down?
>
> A. Was hitting on him.
>
> Q. With what?
>
> A. Seemed like the end of his gun.
>
> ***
>
> Q. What happened then?
>
> A. After he went in the room and started jerking – yanking equipment and jerking extension cords out the back of it.
>
> Q. Who started doing that?
>
> A. Red.
>
> ***
>
> Q. What happened then, Amanda?
>
> A. Then after he did that, he ... started beating on Derek and said let me get my knife, and he went in the kitchen and got a knife. Then he came back and started stabbing on Derek.

(R/VII 1295-97) On re-direct examination, Ms. Merrell repeated that she saw "Red" stab Derek with a knife. (R/VIII 1370-71)

One of Robinson's accomplices then came in the room with Mildred Baker, and "they made her sit down and strip as well." (R/VII 1298; see also, e.g., R/VIII 1399) Robinson told Coleman, "if anyone say[s] anything else

to shoot them and start with" Amanda Merrell. (R/VII 1299; see also R/VIII 1370-71)

Ms. Merrell was on the floor in the living room with her hands tied up behind her back, when Coleman put his hands between her legs and told Robinson that he "was going to get some of this." (R/VII 1300) Coleman then raped Ms. Merrell. (R/VII 1300) Robinson then raped Mildred Baker. Robinson and Coleman then "decided they would change up" and Robinson raped Ms. Merrell and Coleman appeared to rape Mildred. (R/VII 1301)

Robinson said, "y'all been using up my stuff, huh." When Ms. Merrell responded that she does not use drugs, Robinson called her a "liar" and Ms. Merrell said she had simply been with the others at the dog track. At this point, Robinson "kicked Derek and he said so you spent all the money at the dog track, huh." Coleman then stood Ms. Merrell up and took her to another room, untied her legs, kept her hands tied, and raped her (a third time). (R/VII 1301-1302)

Robinson called for Coleman, and Ms. Merrell heard someone come in the door. "He" said, "I'm going to do this," and Merrell saw Coleman in the doorway with a knife. (R/VII 1302-1303) Robinson told someone to "open up," and Coleman entered the bedroom and got onto Merrell's back, pulled her hair back, and cut her neck from left to right. (R/VII 1303) Some shots were fired, and Coleman re-entered the bedroom and cut Merrell's neck again, felt her neck and cut her neck again, making three times that Coleman slashed Merrell's neck. (R/VII 1304)

Mildred begged Robinson for her life, and Robinson questioned her whether McCormick had anything to do with it. Robinson then ordered Mildred, "Get down, bitch," and another shot rang out. Someone then walked in the room, kicked Merrell's leg, and shot Merrell. (R/VII 1304, 1319) Merrell did not know who shot her. (R/VIII 1377-78)

Merrell heard Robinson ask whether anyone knows how to drive a stick-shift. The killers left, and Merrill cut the ropes off of her hands, and called 911. (R/VII 1304-1305)

There was no doubt in Ms. Merrell's mind when she confirmed her photo identification of Robinson and his accomplices. (See R/VIII 1372-73; see R/IX 1620-22).

Robinson's DNA (R/V 851, 854, 859, 878, 973) was found in the rape kit swabs taken from Amanda Merrell (Exhibit 38C/43C) and Mildred Baker's body (Exhibit 38A/8-C-6/43A). The odds that the DNA came from anyone other than Robinson were **1 in 9 million** (Compare R/V 849, 978-79; R/VI 1029 with R/VII 1044-46, 1050) and **1 in 1.3 billion** (Compare R/V 834-35, 977; R/VI 1029 with R/VI 1043-44, 1050).[8]

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[8] As outlined in the TimeLine, 2008 postconviction DNA testing (PC/X 1842-48, 1849-55) ultimately showed the odds of DNA in swabs from victims Merrell and Baker coming from anyone other than Robinson were 1 in 2.0 quadrillion among U.S. Africa-Americans (PC/X 1845, 1852); subsequently, the State moved for judicial notice of the 2008 DNA results (PC/XI 1956-60; see also PC/XI 2019-21, 2034-35, 2039-40), and Robinson's counsel replied that he has "no legal basis to object" to the trial court relying upon the 2008 DNA testing (PC/XI 2085). The trial court's postconviction order

Additional trial evidence identified Robinson. (See, e.g., R/IV 617-18, 644, 738; R/VI 1155; R/VII 1193-94, 1295-96; compare R/IV 623, 682-83 with R/VII, 1246-47, 1257).

This Court's direct-appeal opinions summarized the guilt-phase facts:

> Michael Coleman, Timothy Robinson, and brothers Bruce and Darrell Frazier were members of the 'Miami Boys' drug organization, which operated throughout Florida. Pensacola members of the group moved a safe containing drugs and money to the home of Michael McCormick from which his neighbors Derek Hill and Morris Douglas stole it. Hill and Douglas gave the safe's contents to Darlene Crenshaw for safekeeping.
>
> Late in the evening of September 19, 1988 Robinson, Coleman, and Bruce Frazier, accompanied by McCormick, pushed their way into Hill and Douglas' apartment. They forced Hill and Douglas, along with their visitors Crenshaw and Amanda Merrell, as well as McCormick, to remove their jewelry and clothes and tied them up with electrical cords. Darrell Frazier then brought Mildred Baker, McCormick's girlfriend, to the apartment. Robinson demanded the drugs and money from the safe and, when no one answered, started stabbing Hill. Crenshaw said she could take them to the drugs and money and left with the Fraziers. Coleman and Robinson each then sexually assaulted both Merrell and Baker.
>
> After giving them the drugs and money, Crenshaw escaped from the Fraziers, who returned to the apartment. Coleman and Robinson then slashed and shot their five prisoners, after which they and the Fraziers left. Despite having had her throat slashed three times and having been shot in the head, Merrell freed herself and summoned the authorities. The four other victims were dead at the scene.
>
> Merrell and Crenshaw identified their abductors and assailants through photographs, and Coleman, Robinson, and Darrell Frazier were arrested eventually. ***Among other evidence presented at the joint trial, the medical examiner testified that three of the victims died from a combination of stab wounds and gunshots to the head and that the fourth died from a gunshot to the head. Both Crenshaw and Merrell identified Coleman, Robinson, and Frazier at trial, and Merrell

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accredited and relied upon the 2008 DNA test results. (See PC/XIV 2505-2506)

> identified a ring Coleman gave to a girlfriend as having been taken from her at the apartment. Several witnesses testified to drug dealing in Pensacola and to the people involved in that enterprise. Coleman and Robinson told their alibis to the jury with Coleman claiming to have been in Miami at the time of these crimes and Robinson claiming he had been in New Jersey then. The jury found Coleman and Robinson guilty of all counts as charged ... .

Coleman v. State, 610 So.2d 1283, 1284-85 (Fla. 1992)(adopted in Robinson v. State, 610 So.2d 1288, 1289 (Fla. 1992) ("facts of this case are set out more fully in *Coleman*"). See also Williams v. State, 622 So.2d 456 (Fla. 1993).

The jury returned verdicts finding Robinson guilty as charged (R/XI 1970-72; R/XIII 2431-39) as to all 17 counts of the Indictment (R/XII 2106-2110).

The Jury Penalty Phase.

ISSUE I alleges IAC in the penalty phase. To the contrary, the State argues infra that Robinson's postconviction mitigating evidence pales, and is even harmful, especially in light of the aggravating trial facts, and, his trial counsel did significantly more than the requisite reasonable job in the penalty phase of the case, as substantiated by the jury's life recommendation. Therefore, the State describes trial counsel's on-the-record efforts in the penalty phase.

At the jury penalty phase, Robinson's trial co-counsel, Barry Beroset, called as mitigation witnesses psychologist Dr. James D. Larson (R/XI 1995-2004) and Robinson's mother, Mary Robinson (R/XI 2012-22).

Dr. Larson testified that he interviewed Robinson twice for an hour each time. (R/XI 1997) Dr. Larson gathered from Robinson personal history,

facts concerning his upbringing, and any problems Robinson may have encountered. (R/XI 1997) Dr. Larson explained his findings:

> [H]e was born in a ghetto environment in Miami, Florida, and he was raised by his mother and his father was not present. *** He reported a lot of bitterness about his father. *** a pretty chaotic early childhood environment ... ."

(R/XI 1997-98, 2000)

Dr. Larson testified that Robinson's "mother did as good a job as she could in raising seven kids in a ghetto environment and he expressed fondness for her." (R/XI 1998)

Robinson scored 79 on the verbal portion of Dr. Larson's IQ test, which placed Robinson in about the lowest eighth percentile. (R/XI 1999; see also R/XI 2001) Robinson either completed his GED or high school. (See R/XI 2002)

Dr. Larson testified that Robinson "denied that he had any problems with alcohol or drug abuse." (R/XI 1998) Robinson told Dr. Larson that "drugs and alcohol were not his thing." (R/XI 2003)

Dr. Larson's recollection was Robinson did not tell him that he was abused by his father, but he did not "have a lot of recall for that." (R/XI 2000; See also R/XI 2003)

Mary Robinson, Robinson's mother, also testified for him in the jury penalty phase. She has birthed seven children, and at the time of the trial, she was the "mother of six." (R/XI 2012)

Mary took off from work and sat through the entire trial. She questioned her son, Defendant Robinson, and does not believe that he

committed these crimes. Since she was "always a loving mother" to him, "he always did talk" to her. (R/XI 2020)

"[A]ll his life," Mary's son, Defendant Robinson, was "a very sweet child" to her, but the death of another one of her sons, Derek, by being shot down, affected the entire family, including Defendant Robinson. (R/XI 2018-19) After the funeral, Defendant Robinson "was packing, getting ready to leave Miami." She thought he went to be with her brother. (R/XI 2019)

She explained that early-on, the father did show his love for Defendant Robinson, but as the children grew up, the father's attitude changed, especially when she became pregnant with the "twins." (R/XI 2017)

Robinson's father ultimately had no relationship with Robinson. The father was "never there for them. *** He never was home, never was there." Instead, Mary "gave the kids all the love." She was "always there for them." (R/XI 2013) After 20 years of marriage to the father, Mary divorced him and continued to raise the children. (R/XI 2013-14)

Mary described the abusiveness of Robinson's father:

> The father used to treat me real bad *** the conflicts would start coming between the husband and the children because he was no help to them.
>
> He was a street man. *** [A]fter I left him he came to my household and wanted to jump on me and Tim told him that he wasn't going to let him hurt me anymore, that he had hurt me enough. He had broke my jaw and did everything to me ***

(R/XI 2014-15) She said that Defendant Robinson, and all of her kids, witnessed the father's violence over the years. (R/XI 2015)

She elaborated on "Tim's" (Defendant Robinson's) intervention to "protect" his mother against the father. (R/XI 2015) "... Timothy was the

oldest boy in the house and he was always very protective of all his family." (R/XI 2017)

Mary related another incident in which the father told her son, Defendant Robinson, that he actually was not the father. "Tim" did not inform her of this, but rather "Tim's uncle" did. (R/XI 2015) The father said that he "stayed around" only because he cared for Mary, which she denied. (R/XI 2015-16)

Defendant Robinson worked at the Miami Lake Club for two years. He brought his tips home. He also worked on the Team Clean in Miami, and like his siblings, bought his own clothes for school. (R/XI 2020)

Ms. Robinson described Defendant Robinson's church attendance and educational achievement:

> ... Timothy went to church too. He was going to a Holiness church ... when he ... got his GED and finished school [-] he went on ... to college, a Bible college down there in Miami. He attended that.

(R/XI 2016) Defendant Robinson said "he was going to be a minister and they was taking him around to different church ministers." (R/XI 2016)

Mary suspected that her son, the Defendant, was using drugs "[b]ecause he started changing" but he denied it and she took his word for it. (R/XI 2017-18)

In Robinson's early childhood, she, her husband, and Robinson lived at 591 Northwest 65th Street, which is –

> a bad neighborhood. It's Liberty City and all of the crimes and most take place in that neighborhood.

(R/XI 2013)

After the divorce from the father, Mary and her children moved to North Miami, which was "a little bit better." (R/XI 2014)

When she broke up with her husband, she worked two jobs and did the best she could to raise her children. (R/XI 2020)

In closing, she pled for her son's life:

> I just ask that you all don't have him sentenced to the electric chair. That's all I ask. That's all I am asking of you all. I know what they say he's did was a bad crime, but I'm asking you all to forgive him if he did it. Maybe the Lord will forgive him for it. It's the Lord up above. And that's the way I feel about it.
>
> Everything any human being do, that is the Lord up above, he has to answer to him.

(R/XI 2021)

In the penalty phase, the State recalled **Amanda Merrell**. She testified that "Red told him [Darrell Frazier] to make sure we was tied up tight." (R/XI 2005) Red was also tying people up. (Id.) Her testimony continued:

> Red started beating on Derek with the knife – well, he started beating on him with his fist then he said let me get me a knife. *** He started stabbing him.

(R/XI 2005) After Coleman took Ms. Merrell to another room, he left "[b]ecause Red called him." Coleman returned to the room where Ms. Merrell was located. (R/XI 2006-2007) When one of the accomplices said, man, we got what we want[,] come on let's go[,] … Red said no, I'm going to do this." (R/XI 2009) When asked what was the last thing she heard Mildred say, Merrell replied:

> She said Red, I'll tell you what I know, I'll tell you what I know. And he said get down, bitch. [Then Merrell] heard a gunshot.

(R/XI 2009)

In his penalty-phase closing argument to the jury, Robinson's counsel, Mr. Beroset, argued that Robinson was not the triggerman, but "we're never going to know specifically what happened." He argued that the jury should recommend life because of Robinson's 22-year-old age, his only prior incarceration was for non-violent offense, and his intelligence was borderline at a 79 IQ according to Dr. Larson. (R/XI 2084-85) He argued that Robinson was "raised in a ghetto," that he "saw violence early in the home," and that "he had a confrontation with his dad over the violent behavior with his mother." (R/XI 2085) He highlighted that his father denied being his father and that he was under the stress of losing his brother. (R/XI 2086) And, he argued that a life sentence in this case would suffice and that the death penalty should not apply. (R/XI 2087) He concluded with a plea for compassion, mercy, and sympathy for Robinson and his family. (R/XI 2987)

On June 2, 1989, by a six-to-six vote, the jury recommended life for Robinson. (R/XI 2096-97; R/XIII 2449)

Spencer[9]-type Hearing.

Almost two months after the jury's June 2, 1989, six-to-six life recommendation, on July 25, 1989, the trial court, sitting without jury, resumed the sentencing phase. (R/XIV 2478-2508) The Court noted that

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[9] Spencer v. State, 615 So.2d 688 (Fla. 1993).

because Robinson had a prior felony record, no presentence investigation was ordered. (R/XIV 2480-81)

Mr. Beroset referenced a set of character letters he was submitting to the Court for Robinson. (R/XIV 2498-99) The letters are included in the record (at R/XIV 2511-29).

Mr. Beroset spoke of a letter from Robinson's mother discussing Robinson's upbringing, "a good child," and at one time his interest in becoming a pastor. He asked the Court to "consider carefully her letter, because it comes from the heart." (R/XIV 2499; letter at R/XIV 2512-17)

Mr. Beroset highlighted a letter from Robinson's sister "Atrell (phonetic)" wrote the Court in her own hand requesting that Robinson's life be spared. She pleaded that they already lost their other brother to violent crime. (R/XIV 2499-2500; letter at R/XIV 2518-19)

Mr. Beroset discussed Robinson's teacher, Joyce S. Dixon, who knew Robinson for years and wrote the trial court that Robinson was always respectful to adults. (R/XIV 2500; letter at R/XIV 2521; see also "always respectful" by Barbara Walker at R/XIV 2520; "very respectful individual" by Denise Walker at R/XIV 2523)

One of the letters was from Robinson's four-year-old cousin, who, for example, stated, "We love him and he loves us so much." (R/XIV 2526) A friend wrote that Robinson has a "kind and warm personality" and is "extremely polite." (R/XIV 2528) Similarly, an acquaintance wrote that Robinson was "very polite and kind." (R/XIV 2529)

Robinson's trial counsel submitted letters "from the heart" from New Jersey on Robinson's behalf. Counsel summarized for the Court that a number of them re-asserted Robinson's alibi, and one of the cousin's stated that she and Robinson had become close and he seemed "very nice" and introduced him to friends in New Jersey. (R/XIV 2500)

Counsel highlighted the jury's life recommendation as speaking for the "conscience of the community." (R/XIV 2502-2503) Counsel continued with his argument for a life sentence by stressing the jury's consideration of Robinson's young age of 22, lack of violent convictions, and close family ties in spite of his father's abandonment, low I.Q. (R/XIV 2503-2504). Counsel argued a lack of proof of Robinson as a triggerman, two victims' commission of a burglary, and most of the victims' drug use. (R/XIV 2504-2505) Counsel's conclusion reiterated the emphasis on the jury's recommendation, Robinson's age, and lack of a violent background. (R/XIV 2505-2506)

Sentencing Memorandum.

On August 3, 1989, Robinson's trial counsel submitted a written Memorandum in Support of the Jury's Advisory Sentence. The memorandum argued Robinson's 22-year-old age, Robinson's lack of prior violent convictions, (R/XIV 2530), drug use by four of the victims, a burglary committed by two of the victims, and evidence inconsistent with Robinson being a triggerman (R/XIV 2531-32). The memorandum argued positive aspects of Robinson's upbringing and family background. (R/XIV 2530-31)

Sentence and Attendant Trial Court Findings.

On September 26, 1989, trial court announced its override of the jury's life recommendation. (R/XIV 2562 et seq.) The written Order provided the reasons for imposing the death sentence. (R/XIV 2582 et seq.) The Order detailed the facts (R/XIV 2582-84) and then found five aggravating circumstances: prior violent felony (three other murder victims in this case); HAC; CCP; committed during a robbery, sexual battery, burglary, and kidnaping; and avoid arrest. (R/XIV 2584-85)

In support of HAC, the Order summarized:

> [T]he four victims were stripped naked, bound face down, slashed with knives and sharp objects over the length of their torsoes, repeatedly stabbed and finally executed.

(R/XIV 2585)

Concerning CCP, the Order characterized the murders as "execution-style." (R/XIV 2585)

The order rejected statutory mitigation, and in conjunction with rejecting the age mitigator, the Court found that Robinson was "clearly the ringleader and the person who directed the other participants." (R/XIV 2586)

Concerning nonstatutory mitigation, the Court found that the "defendant has maintained close family ties throughout his young life and has been supportive of his mother." Concerning other aspects of Robinson's background, this Court concluded that "even if such factors are found to exist under the evidence," they do not "outweigh the aggravating factors." (R/XIV 2586)

Direct Appeal Affirmance of Death Penalty.

In Robinson v. State, 610 So.2d 1288, 1291-92 (Fla. 1992)(several internal case citations omitted), this Court upheld all of the five aggravators except avoid arrest; upheld the jury override and this Court's findings concerning "potential mitigating evidence presented in this case"; and upheld that Robinson's death sentence as proportionate:

> In support of the death sentences the trial court found that five aggravators had been established: previous conviction of a prior violent felony; committed during a robbery, sexual battery, burglary, and kidnapping; committed to avoid or prevent a lawful arrest; heinous, atrocious, or cruel; and cold, calculated, and premeditated. We agree with Robinson that the evidence does not support finding committed to avoid or prevent arrest in aggravation. *** The other aggravators are fully supported by the record.
>
> Robinson also argues that the trial court erred in overriding the jury's recommendation of life imprisonment. As we did with Coleman, however, we disagree with this contention. Robinson relies on cases ***, where this Court reversed jury overrides. In the cases relied on, however, the defendants established overwhelming mitigating evidence that provided reasonable bases for their juries' recommendations. Here, on the other hand, the trial court found in mitigation only that Robinson had maintained close family ties and had been supportive of his mother. As to the other potential mitigating evidence, the court stated:
>
> > The remaining contentions are not borne out by the evidence, and even if they were, would have no mitigating value: defendant's education while incomplete was not altogether lacking and would not excuse or mitigate the vicious crimes committed; his low IQ did not impair his judgment or actions; he was not an abused child and this fact cannot serve to mitigate his conduct. Finally, the victim's background cannot be used to mitigate the sentence to be imposed and warranted under these facts.
>
> We agree that the potential mitigating evidence presented in this case does not provide a reasonable basis for the jury's recommendation. ***. As with Coleman, any sentence other than death for Robinson would be disproportionate. ***. Striking one of the aggravators does not alter this conclusion because there is no reasonable likelihood that the trial court would conclude that the mitigating evidence outweighed the four valid aggravators. Any error, therefore, was harmless. *Holton v. State*, 573 So.2d 284 (Fla. 1990),

cert. denied, 500 U.S. 960, 111 S.Ct. 2275, 114 L.Ed.2d 726 (1991); *Bassett v. State*, 449 So.2d 803 (Fla.1984).

Robinson's death sentence is not disproportionate because Frazier received a sentence of life imprisonment. In contrast to Robinson and Coleman, the jury convicted Frazier of only one count of first-degree murder and recommended that he not be sentenced to death by a vote of eleven to one. This disparate treatment is warranted by the facts, facts that show that Frazier was less culpable than Robinson or Coleman. *Scott v. Dugger*, ***, is factually distinguishable and provides no basis for relief.

Therefore, we affirm Robinson's convictions and sentences of death.

Postconviction Proceedings.

As outlined in the Timeline supra, Robinson filed several variations of his motions for postconviction relief and the State responded.

On September 13, 2004, the trial court entered an Order granting an evidentiary hearing on claims IIIA (alleged ineffective assistance of counsel, IAC, concerning the penalty phase) and IIA (alleged IAC concerning other suspects). The Court reserved ruling on claims IIB, XIV, and XVIII concerning DNA.

Proceedings concerning DNA ensued, and resulted in a Bode Technology Forensic Case Report that indicated probabilities of the DNA evidence from two of the female victims coming from someone other than Defendant Robinson at "**1 in 2.0 quadrillion** from the US African American population."

On April, 21-22, 2009, the trial court conducted an evidentiary hearing on claims III-A and II of Robinson's postconviction motions.

At the evidentiary hearing, Robinson called following witnesses:

Ivory Baker (PC-EH 6-39), Robinson's sister's ex-boyfriend and son of Gloria Baker;

Gloria Baker (PC-EH 40-67), Ivory's mother who said she knew most of the Robinson family (EH 41);

Richard DeLancey (PC-EH 67-120), Robinson's uncle who stayed at Robinson's mother's house for about three-and-a-half to four-and-a-half years starting when Defendant Robinson was about four or five years old (PC-EH 69);

Edward Robinson, Jr. (PC-EH 122-62), Defendant Robinson's older brother (PC-EH 123) who said he grew up with Defendant Robinson in violent Liberty City (PC-EH 123-25), left home at about age 13 or 14 (PC-EH 143-44, 153-55), and engaged in various felonies with Defendant Robinson, such as using drugs (PC-EH 125-26, 148) and breaking into houses (PC-EH 130-31);

Marjorie Hammock, an all-but-dissertation social-work assistant professor (PC-EH 167-230) testified about "biopsychosocial" assessment and "risk factors" (PC-EH 169 et seq);

Dr. Marvin Dunn (EH 236-315), a community psychologist grew up in, and testified about, Opa-lacka 1950 to 1957 (PC-EH 244-45) and the transformation of Liberty City form a nice place to live in the 1940s (PC-EH 247) to a place of violence related to the drug trade (PC-EH 254); Dr. Dunn had not performed a psychological evaluation on Defendant Robinson (PC-EH 301-302);

Dr. James Larson (PC-EH 316-48), who had testified for Defendant Robinson at trial (See summary supra), testified at the postconviction evidentiary hearing about his pre-trial evaluation of Defendant Robinson, including its instigation by Mr. Pitts, who was Mr. Beroset's co-counsel (PC-EH 320); his assumption that Mr. Pitts asked him to address mitigation because it was discussed in his report (PC-EH 328; see PC-EXH 51); his lack of memory regarding details of preparing for his trial testimony (PC-EH 321); his administration of IQ testing but not other psychological testing at any time in this case (PC-EH 339; see also PC-EXH 47-48); Robinson's completion of high school or a GED (PC-EH 340); Robinson's characterization of his father as a "piece of shit" (PC-EH 344); and Robinson's malingering, uncooperative, "resentful, somewhat hostile attitude" in which Robinson "wasn't forthcoming about details and information" (PC-EH 340-42);

and, Defendant Robinson filed the perpetuated testimony of --

Edward Robinson, Sr., Defendant Robinson's purported father, who actually was not certain whether he is Defendant Robinson's father (PC/XI 2113); he said that Mary, Defendant Robinson's mother, "called the shots" (PC/XI 2113-14) and was the "boss" in the family (PC/XI 2118); Defendant Robinson treated him like he was "non-existent" (PC/XI 2118); he [the father] would "slap" Mary "around" when she made him jealous (PC/XI 2121-22) and denied beating the kids (PC/XI 2143; see also PC/XI 2127-29); he discussed a time when Defendant Robinson "shot [his] car all up" (PC/XI 2131), including shooting out

the windows and tires (PC/XI 2132) and putting "holes in the body of the car" (PC/XI 2144); Defendant Robinson's "aggression," not "afraid of anything" (PC/XI 2126), "very aggressive … do whatever he can get away with" (PC/XI 2145); Defendant Robinson "seemed to enjoy" physical confrontation (PC/XI 2143); the other kids in the house did not get nearly in as much trouble as Defendant Robinson (PC/XI 2142).

The State called as a witness Robinson's trial co-counsel --

Barry Beroset (PC-EH 350-94), co-counsel for Defendant Robinson, testified about his extensive experience and assisting Mr. Pitts with representing Robinson; Mr. Pitts is now deceased (PC-EH 353); Robinson's postconviction counsel objected to Mr. Beroset testifying about communications he had with Robinson during his representation if they concerned the guilt phase, even if they overlapped into the penalty phase (PC-EH 357-59), and Mr. Beroset said that his sentencing memorandum, Robinson's mother's testimony, and Dr. Larson's testimony reflected his penalty-phase strategy (PC-EH 361); Beroset said that Robinson continued to assert his innocence into the penalty phase (EH 359-60).

Postconviction counsel withdrew the guilt-phase claim (PC-EH 363) on which the trial court had granted an evidentiary hearing.

Trial Court Order on IAC/Penalty Phase and Shackling Claims.

After the parties submitted post-evidentiary hearing memoranda (PC/XIII 2376-2443, 2448-81, 2482-93), the trial court, on September 4, 2009, rendered a 42-page order denying postconviction relief (PC/XIV 2494-2535). The Circuit Judge's order included voluminous documentation. (See PC/XIV 2536-PC/XVII 3271) The trial court rejected the IAC/Penalty Phase and Shackling postconviction claims corresponding to ISSUES I and II, respectively, of this appeal.

Concerning **IAC/Penalty Phase** [**ISSUE I**, here], the trial court found as follows (original underlining and bold typeface maintained):

Claim III

***

In this claim, Defendant asserts that his trial counsel failed to call witnesses as to his 'positive qualities,' and further failed to present a 'wealth of mitigating evidence that the defense could have presented, which would have given the jury a basis for recommending life.' Defendant asserts that 'Mr. Robinson was sentenced to death by a judge who never knew that he grew up under appalling conditions and had suffered a lifetime of abuse and rejection.' Defendant also asserts that Defendant suffered two head injuries which impacted his 'ability to clearly reason and make sound judgments." Defendant points to abuse by his father of his mother, himself and his siblings, poverty, criminal influences within the neighborhood in which he grew up, two head injuries, and the murder of an older brother as mitigating circumstances. Defendant also suggests that defense counsel should have established 'for the jury and the Court that Mr. Robinson's mental capacity was substantially impaired on the night of the murder.'

'Under Florida law, a trial judge is prohibited from rejecting a jury's recommendation of life imprisonment if there is competent evidence of mitigation supporting a life recommendation at the time of sentencing.' Williams v. State, 987 So.2d 1, 12 (Fla. 2008), citing Stevens v. State, 552 So. 2d 1082, 1085 (Fla. 1989); Tedder v. State, 322 So. 2d 908, 910 (Fla. 1975).

An evidentiary hearing was convened on this issue in April 2009. Counsel for Defendant and for the State have aptly summarized the evidentiary hearing testimony and the testimony offered at trial in the closing memoranda, and the Court will not reiterate the details of that testimony here. However, having considered the testimony, the evidence, and the record, the Court finds that Defendant has failed to demonstrate an entitlement to relief.

At the original penalty phase proceedings, the defense presented the testimony of Dr. James Larson.[FN36] Dr. Larson testified that Defendant was raised in a 'ghetto environment,' that Defendant related a 'lot of bitterness about his father,' and that he got 'the overall impression of a pretty chaotic early childhood environment.' Dr. Larson testified that Defendant did not report child abuse or any drug or alcohol abuse. Defendant's mother, Mary Robinson, also testified at the penalty phase,[FN37] and stated that Defendant spent his early childhood in Liberty City, 'a bad neighborhood' with 'all of the crimes and most take place there in that neighborhood.' Mrs. Robinson also testified that 'the father was never there for them. I was always there for them. He never was home, never was there.' Mrs. Robinson also told the jury that 'the father used to treat me real

bad.' Mrs. Robinson continued in her explanation that she 'tried to stay with him until [she] couldn't take it anymore,' then she left him. After she left, she related that 'he came to my household and wanted to jump on me and Tim told him that we wasn't going to let him hurt me anymore, that he had hurt me enough. He had broke my jaw and did everything to me he was not going to let him hurt me anymore, that he was going to protect me now, that he wasn't going to let him fight me no more, that he wasn't a child that had to stand and let him do things to me.' When asked if Defendant had observed the violence over the years, Mrs. Robinson replied that all of her children had been witness to it. Mrs. Robinson also related that the elder Mr. Robinson told Defendant that he was not his father, and testified that her oldest son had been shot and killed in Orlando. Counsel for Defendant argued in his sentencing memorandum that substantial mitigation was present, including the following: 1)'Timothy Robinson was raised in an impoverished, crime-ridden neighborhood;' 2) 'Timothy Robinson had many good qualities and at one time wanted to become a minister;' 3) 'Timothy Robinson's father deserted the family and left Mrs. Robinson to raise and care for all the children;' 4) 'Timothy Robinson saw violence directed toward his mother by his father;' and 5) 'Timothy Robinson was very close to his mother, brothers, and sisters and there is a strong mutual love and respect between them.'[FN38]

The Court has considered at length the evidence offered at the postconviction evidentiary hearing, as well as the record of the trial proceedings, and finds that, while postconviction counsel may have presented evidence of Defendant's troubled background in greater detail, the evidence offered at evidentiary hearing was largely repetitious of that which was presented to a lesser degree in the original penalty phase proceedings.[FN39] See generally Lynch v. State[,] 2 So.3d 47, 71 (Fla. 2008), citing Darling v. State, 966 So. 2d 366, 377 (Fla. 2007)('With one major exception (Lynch's mild cognitive impairment) and several minor exceptions, the mitigation evidence and testimony that he presented during the postconviction proceedings "may generally be described as only a more detailed presentation of the mitigation that was actually presented during the penalty phase"'). Although the suggestion of organic brain damage resulting from two childhood accidents was not previously addressed during penalty phase, Dr. Dunn, who reviewed Defendant's medical records, testified that he saw nothing to support a conclusion that Defendant suffered from any residual effects of a head injury.[FN40] The jury and the Court had before them the facts that Defendant was a perpetual witness to violence, that he grew up impoverished and in a crime-ridden neighborhood, and that his childhood was 'a pretty chaotic early environment.'[FN41] Based on the facts as presented to this Court, the Court finds that even had this additional evidence been presented, in light of the facts and circumstances surrounding

this case, the record would still reveal the facts suggesting a sentence of death to be so clear that 'no reasonable person could differ.' Tedder v. State, 322 So. 2d 908, 910 (Fla. 1975). Defendant has failed to demonstrate an entitlement to relief on this basis.

[FN35] Defendant amended the instant claim in his 'Supplement to Third Amended Motion to Vacate Judgment of Conviction and Sentence,' filed August 25, 2008.

[FN36] See Attachment 7, trial transcript excerpts, pages 1995-2004.

[FN37] See Attachment 7, trial transcript excerpts, pages 2012-2022.

[FN38] See Attachment 9, sentencing memorandum.

[FN39] In considering the perpetuated testimony of Edward Robinson, Sr., the Court agrees with the argument of the State that Mr. Robinson's testimony might have indeed been harmful to Defendant if presented at penalty phase. Mr. Robinson described, among other things, Defendant's propensity for violence, saying he was 'very aggressive,' and that none of his other children had gotten into trouble the way Timothy Robinson had, 'not even close.' Mr. Robinson further described Defendant as cruel and mean, and observed that he seemed to enjoy fighting. See Attachment 10, Edward Robinson Sr., deposition excerpts, pages 16, 34-35.

[FN40] See evidentiary hearing transcript, pages 220-221.

[FN41] Further, at evidentiary hearing, Ivory Baker, a longtime acquaintance of the family, suggested that the Robinson family seemed 'well-adjusted' when the father was 'taken out of the equation,' and that Mary Robinson was a 'very good mother.'

(PC/XIV 2509-13)

Concerning **Shackling** [**ISSUE II**, here], the trial court found as follows:

Claims XII and XVII

***

In his twelfth claim, Defendant asserts that '[t]he trial court's use of, and failure to prohibit, this "inherently prejudicial practice" without any showing of necessity or any hearing entitles Mr. Robinson to a new trial before an unbiased jury.' He also notes that defense counsel vigorously objected to the procedure employed by the trial court,[FN52] but argues '[t]o the extent Mr. Robinson's attorney failed to properly preserve this claim for appeal Mr. Robinson received ineffective assistance of counsel.' In his seventeenth

> claim, Defendant elaborates on his earlier claim, stating that the Court worked a 'bizarrely gross injustice[]' when Defendant was shackled during the entire trial, arguing that the Florida Supreme Court erred in its ruling regarding this issue and that the Florida Supreme Court 'failed to address, to admit, and to correct the constitutional errors and violations that Mr. Robinson suffered during said prejudicial trial.' He further argues that the trial court erred in failing to consider less restrictive means before shackling Defendant, and in failing to make the reasons for shackling part of the court record.
>
> This claim has already been litigated on direct appeal,[FN53] and therefore is procedurally barred. Furthermore, '[a]llegations of ineffective assistance cannot be used to circumvent the rule that post-conviction proceedings cannot serve as a second appeal'[]. Cherry v. State, 659 So.2d 1069, 1072 (Fla. 1995). Even were this not the case, Defendant has failed to demonstrate that counsel performed deficiently, and in fact, concedes that trial counsel objected to the shackling of Defendant on numerous occasions. In addition, Defendant has failed to show that a different result would have been had at trial were it not for the brief potential glimpse of Defendant's shackles during closing argument. Defendant is not entitled to relief on the basis of these claims.
>
> > [FN52] See Attachment 7, trial transcript excerpts, pages 31-33. The record reflects that the defense table was covered at the bottom in order to prevent the jury from seeing Defendant's feet and shackles.
> >
> > [FN53] 'Robinson also claims that the trial court's ordering the defendants to remain shackled during trial violated his due process rights. He objected to the shackling, but the court stated it was necessary due to unspecified information received by the court. Robinson, however, never asked the court to explain further, and we see no reversible error here. The court excused the jury and had Robinson's shackles removed before he took the witness stand. A piece of cardboard placed under the defense table to hide the defendants' legs fell over during trial, but Robinson has not shown that the jurors noticed, or were affected by, the shackles. We therefore find no merit to this issue.' Robinson v. State, 610 So.2d 1288, 1290 (Fla. 1992).

(PC/XIV 2521-22)

The State respectfully submits that the trial court's findings and rulings merit affirmance.

SUMMARY OF ARGUMENT

Neither of the two appellate issues merit any relief.

ISSUE I contends that Robinson has met his Strickland burdens of demonstrating that his trial counsels were prejudicially ineffective at the penalty stage. To the contrary, Robinson's postconviction evidence, not any trial counsel deficiency, would have prejudiced Robinson and reinforced the State's trial evidence that showed Robinson's leadership role in the home invasion charged in this case in which he and his accomplices killed four people, tried to kill another victim, raped women, slit throats, stabbed victims, and executed victims by shooting them in the head.

The State's trial evidence, for example, showed that Robinson, with his accomplices, entered the residence armed. Robinson stabbed a victim and threatened, "Somebody better start talking and start talking fast." Robinson told an accomplice, "if anyone say[s] anything else …[,] shoot them and start with" Amanda Merrell. Robinson told someone to "open up," and shortly thereafter some shots were fired. Robinson interrogated Mildred Baker, Mildred begged for her life, and Robinson ordered Mildred: "Get down, bitch," and a shot rang out.

In sum, the State's trial evidence depicted Robinson as the aggressive leader of his accomplices in the multiple murders and rapes of this case.

Robinson's postconviction evidence would have substantiated Robinson as aggressive and malevolent. Robinson's postconviction evidence included Robinson as aggressive, as being thrown out of school for fighting, and as not afraid of anything. Robinson shot car tires and car windows and put holes in the body of the car too. At home, Robinson was the biggest

troublemaker. Robinson burglarized with his brother. Robinson did whatever he thinks he can get away with.

Dr. Larson was called by defense counsel as a witness in the trial, and at trial he was able to paint Robinson in a sympathetic light, for example, growing up in the ghetto in a "pretty chaotic" environment and rejecting drugs and alcohol use. However, at postconviction, Robinson introduced evidence from Dr. Larson that Robinson was uncooperative and belligerent and essentially did not try at school and essentially malingered on Dr. Larson's intelligence testing.

Dr. Larson's trial testimony was compatible with Robinson's loving mother's trial testimony that humanized Robinson and depicted him as contributing to the family's finances with a legitimate job, reading the Bible, going to church, and aspiring to be a minister. Robinson's postconviction evidence, in contrast, reinforced the image of the person who led in the multiple heinous murders and rapes.

Mr. Beroset, one of Robinson's two trial defense counsels, showed his extensive experience in filtering Robinson's image for the jury and for the sentencing judge, resulting in a six-to-six recommendation of life, in contrast to what could have been much worse result if the postconviction evidence had been introduced at trial. However, the aggravation, with CCP, prior violent felonies through quadruple murders, and HAC that Robinson personally led, was much too weighty, resulting in the trial judge overriding the jury verdict and this Court affirming on direct appeal. Robinson's postconviction evidence would have enhanced that weight.

So, after having the benefit of over a decade of hindsight and multiple amendments to his postconviction motion, Robinson has still failed to demonstrate his Strickland burdens. The trial court, having afforded Robinson a full and fair evidentiary hearing on his IAC penalty phase claim, merits affirmance in its denial of postconviction relief.

ISSUE II attempts to improperly re-package as IAC the shackling claim that this Court rejected in Robinson's direct appeal and, as such, is procedurally barred. Indeed, the IAC claim was not specifically pled in the trial court. For these and other reasons, ISSUE II should be rejected.

ARGUMENT

ISSUE I: HAS ROBINSON DEMONSTRATED THAT THE TRIAL COURT ERRED IN RULING THAT ROBINSON FAILED TO MEET HIS BURDENS TO PROVE INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PENALTY PHASE OF THE TRIAL? (IB 63-84, RESTATED)

ISSUE I ("Argument I") contends that the trial court erred in its ruling, after an evidentiary hearing, that Robinson failed to meet his burdens to prove ineffective assistance of counsel in the penalty phase of the trial. ISSUE I argues that counsels' failure to "employ a mitigation expert," failure to "request additional funding beyond what was paid to Dr. Larson," failure to provide "his experts with background information," and failure to obtain "any institutional records" constituted deficient performance. He also alleges deficiency through counsels' "limited contact" with family members. (IB 71-72)

ISSUE I is meritless. It does not support relief. Robinson's trial attorneys, Mr. Pitts (deceased by the time of the postconviction evidentiary hearing, PC-EH/II 353) and Mr. Beroset, a very experienced

trial attorney, marshaled the evidence that a competent attorney reasonably would believe to be useful for Robinson, as substantiated by the mitigation that they adduced at trial through Dr. Larson, through Robinson's mother, through extensive letters pleading for Robinson's life, and through the vigorous advocacy that resulted in the jury's six-to-six recommendation of life.

Moreover, Robinson's burden to prove prejudice through a reasonable probability of a life sentence is not met by the raw numbers of witnesses or pages of records. **After decades in which to prepare his postconviction evidence, Robinson presented NO MENTAL HEALTH EXPERT WHO HAD PSYCHOLOGICALLY TESTED ROBINSON AFTER THE TRIAL**, and the experts he did present at the evidentiary hearing testified about vague and unconvincing concepts like "biopsychosocial assessment" of "risk factors" (PC-EH 169, 205-207) and the poor environment in which Robinson grew up (Compare PC-EH 242-43, 302-303 with, e.g., PC/XIV 298-301), which the evidence introduced in the penalty phase covered.

Indeed, in spite of calling three experts to the witness stand at the postconviction evidentiary hearing, **NO COMPETENT EVIDENCE WAS INTRODUCED SUPPORTING ANY STATUTORY MITIGATION**.

As the trial court found, "the evidence offered at evidentiary hearing was largely repetitious" of what trial counsel marshaled in the penalty phase (PC/XIV 2511-12), and to the degree it was not duplicative of penalty phase evidence, it was frequently harmful to Robinson. Under the applicable

burdens that Robinson was required to meet and did not, ISSUE I should be rejected.

A. Robinson's Strickland Burdens & the Standard of Appellate Review.

In order to prevail, Robinson must meet the rigorous tests of Strickland v. Washington, 466 U.S. 668 (1984). "[B]ecause the Strickland standard requires establishment of both prongs, when a defendant fails to make a showing as to one prong, it is not necessary to delve into whether he has made a showing as to the other prong." Waterhouse v. State, 792 So.2d 1176, 1182 (Fla. 2001).

For the **deficiency prong**, the standard for counsel's performance is "reasonableness under prevailing professional norms." Strickland, 466 U.S. at 688. "Judicial scrutiny of counsel's performance must be highly deferential." Stein v. State, 995 So.2d 329, 335 (Fla. 2008)(quoting Strickland, 466 U.S. at 689.) "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690.

"When courts are examining the performance of an experienced trial counsel, the presumption that his conduct was reasonable is even stronger." Chandler v. United States, 218 F.3d 1305, 1316 (11th Cir. 2000). See, e.g., Jones v. State, 732 So.2d 313, 319-20 n.5 (Fla. 1999)("We give the conclusion of Davis in this respect substantial deference in light of his experience in representing capital defendants at the time he represented appellant")(citing Provenzano v. Singletary, 148 F.3d 1327, 1332 (11th Cir. 1998)("Our strong reluctance to second guess strategic decisions is even

greater where those decisions were made by experienced criminal defense counsel").

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight." Strickland, 466 U.S. at 689.

"The object of an ineffectiveness claim is not to grade counsel's performance." 466 U.S. at 697. "[O]missions are inevitable." Chandler v. United States, 218 F.3d 1305, 1313 (11th Cir. 2000) (en banc). "[T]he issue is not what is possible or 'what is prudent or appropriate, but only what is constitutionally compelled.'" Id. at 1313 (quoting Burger v. Kemp, 483 U.S. 776 (1987)).

The standard is not whether counsel would have had "nothing to lose" in pursuing a matter. See Knowles v. Mirzayance, __U.S.__, 129 S.Ct. 1411, 1419 (2009)(reversed Court of Appeals, which used "… improper standard of review … [of] blam[ing] counsel for abandoning the NGI claim because there was nothing to lose by pursuing it").

Robinson must establish that his counsel's performance was "so patently unreasonable that no competent attorney would have chosen it," Haliburton v. Singletary, 691 So.2d 466, 471 (Fla. 1997). Chandler v. U.S., 218 F.3d 1305, 1315 (11th Cir. 2000), explained that this test implements the presumption of no deficiency: "because counsel's conduct is presumed reasonable, for a petitioner to show that the conduct was unreasonable, a petitioner must establish that no competent counsel would have taken the action that his counsel did take."

Applying Strickland's principles to the penalty phase, defense counsel is not required to present every available mitigation witness to be considered effective. See Bell v. Cone, 535 U.S. 685, 696-98 (2002)(not ineffective where defense counsel presented no mitigating evidence in the penalty phase). Accordingly, Grayson v. Thompson, 257 F.3d 1194, 1225 (11th Cir. 2001), explained that a failure to find more of the same type of mitigation is not unconstitutionally deficient:

> 'A failure to investigate can be deficient performance in a capital case when counsel totally fails to inquire into the defendant's past or present behavior or life history.' *Housel v. Head*, 238 F.3d 1289, 1294 (11th Cir. 2001). However, counsel is not required to investigate and present all mitigating evidence in order to be reasonable. *See Tarver v. Hopper*, 169 F.3d 710, 715 (11th Cir. 1999).

For the **prejudice prong**, Dillbeck v. State, 964 So.2d 95, 99 (Fla. 2007)(quoting Strickland, 466 U.S. at 694), summarized: "To establish prejudice, '[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" The reviewing court analyzes IAC-penalty-phase claims to determine whether the allegedly "'missing' testimony is significant enough to 'undermine [[its]] confidence in the outcome' of' the defendant's sentencing," *Strickland*, 466 U.S. at 694, not to ask whether it would have had 'some conceivable effect on the outcome of the proceeding,' Id. at 693." Cade v. Haley, 222 F.3d 1298, 1305 (11th Cir. 2000). "'In assessing prejudice,'" the appellate court "'reweigh[s] the evidence in aggravation against the totality of

available mitigating evidence.'" Hannon v. State, 941 So.2d 1109, 1134 (Fla. 2006)(quoting Wiggins v. Smith, 539 U.S. 510 (2003)).

The determinations of Strickland's prongs are not measured by the volume of the postconviction evidence but rather how it measures up to the specific Strickland criteria; thus, Hannon v. State, 941 So.2d 1109, 1136 (Fla. 2006), explained that, there, "the mitigation provided by witnesses during the postconviction evidentiary hearing was not compelling."

On appeal, the trial court's factual findings are presumed correct and merit affirmance if supported by competent, substantial evidence. See, e.g., Ford v. State, 955 So.2d 550, 553 (Fla. 2007)("Because both prongs of the *Strickland* test present mixed questions of law and fact, this Court employs a mixed standard of review, deferring to the circuit court's factual findings that are supported by competent, substantial evidence, but reviewing the circuit court's legal conclusions de novo")(citing Sochor v. State, 883 So.2d 766, 771-72 (Fla. 2004)).

B. The Trial Judge's Order and Competent Substantial Evidence Supporting It.

The trial judge's postconviction order (PC/XIV 2509-13) is block-quoted in the last sub-section of the "STATEMENT OF THE CASE AND FACTS" supra.

The trial court concluded concerning this issue:

> [W]hile postconviction counsel may have presented evidence of Defendant's troubled background in greater detail, the evidence offered at evidentiary hearing was largely repetitious of that which was presented to a lesser degree in the original penalty phase proceedings.

(PC/XIV 2512)

After properly providing standards under Strickland (PC/XIV 2498-99), the trial court (at PC/XIV 2510-11) detailed evidence, substantiated with trial record citations and attachments, that trial defense counsel marshaled for Robinson's penalty phase, including:[10]

- Defendant was raised in a "ghetto environment" (R/XI 1998);
- Defendant spent his early childhood in Liberty City, "a bad neighborhood" with "all of the crimes and most take place there in that neighborhood" (R/XI 2013);
- Bitterness in Defendant's relationship with his father (R/XI 1998) and "pretty chaotic early childhood environment" (R/XI 2000);
- Defendant's father was never there for them and never home; the mother was "always there for" the kids (R/XI 2013);
- At one point, the father broke the mother's "jaw" (R/XI 2015);
- Defendant's father treated Robinson's mother "real bad … until [she] couldn't take it anymore," when she left him (R/XI 2013-15);
- Even after his mother left the father, the father came to the household and wanted to "jump on" her, but the Defendant "told him that we wasn't going to let him hurt" his mother any more (R/XI 2015);
- Defendant and all the children had observed the violence over the years (R/XI 2015);
- The father told Defendant that he was not his father (R/XI 2015-16); and,
- Defendant's brother had been shot and killed in Orlando [which was traumatic in the family] (R/XI 2018).

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[10] See also detailed and documented summary of penalty phase proceedings in subsections "The Jury Penalty Phase" and "Spencer-type Hearing" in the STATEMENT OF THE CASE AND FACTS supra. In the ensuing "bullets," the State narrows the citations that the trial court provided.

Accordingly, the trial court pointed out that some of this background was elicited at trial from Dr. Larson and some of it was elicited at trial from Defendant's mother. (PC/XIV 2510-11)

Referring to and attaching (PC/XVI 3080-84) the pertinent part of the direct-appeal record (R/XIV 2530-31), the trial court enumerated (PC/XIV 2511) key points in trial counsel's sentencing memorandum to the Court:

> 1) Timothy Robinson was raised in an impoverished, crime-ridden neighborhood;
>
> 2) Timothy Robinson had many good qualities and at one time wanted to become a minister;
>
> 3) Timothy Robinson's father deserted the family and left Mrs. Robinson to raise and care for all the children;
>
> 4) Timothy Robinson saw violence directed toward his mother by his father; and
>
> 5) Timothy Robinson was very close to his mother, brothers, and sisters and there is a strong mutual love and respect between them.

Concerning any suggestion of brain damage from two childhood accidents, the trial court (PC/XIV 2512) properly cited to the postconviction testimony (at PC-EH 220-21) of "Dr. Dunn, who reviewed Defendant's medical records, testified that he saw nothing to support a conclusion that Defendant suffered from any residual effects of a head injury." Dr. Dunn testified:

> Q You studied Mr. Robinson's medical history; is that correct?
>
> A What little I found, yes. It is pretty skimpy.

Q You found no evidence of any organic brain damage[11]?

A No, I didn't.

Q You found no neurological problems presented?

A No.[12]

(PC-EH 220) Indeed, as quoted, even after over a decade for Robinson's postconviction team to prepare, Dr. Dunn said that the records he was provided were "pretty skimpy."

The trial court correctly pointed to the postconviction testimony (perpetuated) of Robinson's father ("Mr. Robinson") that could have harmed Defendant in the penalty phase:

> Mr. Robinson described, among other things, Defendant's propensity for violence, saying he was 'very aggressive,' and that none of his other children had gotten into trouble the way Timothy Robinson had, 'not even close.' Mr. Robinson further described Defendant as cruel and mean, and observed that he seemed to enjoy fighting. See Attachment 10, Edward Robinson Sr., deposition excerpts, pages 16, 34-35.

(PC/XIV 2512 n.39) In fact, the father's postconviction testimony included testimony concerning --

- An incident in which Defendant Robinson "shot [the father's] car all up" (PC/XI 2131), including shooting out the windows and

---

[11] Social work assistant professor Hammock also found no evidence of brain damage or neurological problems. (PC-EH 220-21)

[12] The responsive, detailed, and articulate nature of Robinson's trial testimony concerning his alibi defense also negates any suggestion that he suffered from any serious cognitive deficiency (See R/IX 1554-90; see also Robinson's leadership role in the murderous events, bulleted infra). Robinson continued to demonstrate his mental acuity throughout the postconviction proceedings (See, e.g., PC/VI 1140-59, 1170-76).

tires (PC/XI 2132) and putting "holes in the body of the car" (PC/XI 2144);

- Defendant's "aggression" and not being "afraid of anything" (PC/XI 2126);
- Defendant being "very aggressive … do[ing] whatever he can get away with" (PC/XI 2145);
- Defendant "seemed to enjoy" physical confrontation (PC/XI 2143);
- Defendant treating the father like he was "non-existent" (PC/XI 2118); and,
- The other kids in the house not getting nearly in as much trouble as the Defendant (PC/XI 2142).

The foregoing evidence would have not only affirmatively harmed Defendant Robinson, but also, it would have conflicted with the reasonable theme trial counsel employed of humanizing Defendant Robinson, in the mother's trial-testimony words, as a "sweet child" (R/XI 2018) who went to church regularly, wanted to be a minister, obtained his high school or equivalent degree, and assisted with family finances:

> ... Timothy went to church too. He was going to a Holiness church ... when he ... got his GED and finished school [-] he went on ... to college, a Bible college down there in Miami. He attended that. *** [H]e said that he was going to be a minister and they was taking him around to different church ministers.
>
> ***
>
> He worked at Miami Lake Club, country club in Miami. He worked there for two years. And all his tips he got he brought them home to me and he worked on the Team Clean in Miami and all my children have bought their clothes for school.

(R/XI 2016, 2020)

Further, the father's testimony would have also conflicted with the mother's trial testimony by characterizing the mother as the "boss" in the family (PC/XI 2118).

Moreover, as the trial court pointed out (PC/XIV 2512 n.41), Robinson's postconviction evidence was weakened with internal inconsistencies. The trial court noted that "at evidentiary hearing, Ivory Baker, a longtime acquaintance of the family, suggested that the Robinson family seemed 'well-adjusted' when the father was 'taken out of the equation,' …." (PC-EH 37) Further, Baker indicated that Robinson's mother and her children could obtain sanctuary at his family's house. (PC-EH 22; see also PC-EH 46-47)

Additional weaknesses in Robinson's postconviction evidence include the following:

- Defendant's school attendance was "[t]errible" (PC-EH 266);
- Rather than going to school, Defendant was more interested in making money "in the streets" (PC-EH 267);
- Defendant had behavioral problems but there was no diagnosis of a mental disorder under the Diagnostic and Statistical Manual (PC-EH 302);
- Dr. Larson's report indicating that Robinson reported being "thrown out" of junior high school for fighting (PC-EXH 47);
- Dr. Larson's report indicating Robinson's "rather belligerent attitude … at times" (PC-EXH 49);
- Dr. Larson's postconviction testimony indicating that Robinson "wasn't fully cooperative with the evaluation … somewhat resentful, somewhat hostile … not quickly forthcoming with information … couldn't get him to talk at all about the alleged incident … wasn't forthcoming about details and information … clearly … he didn't try to perform his best on the intelligence testing" (PC-EH 340-42);
- Dr. Dunn's postconviction testimony undermining Robinson's mother's trial testimony by indicating that, although she was a loving mother, he was unsure whether the mother was "significantly important as an emotional support system" (PC-EH 299-300);
- The postconviction testimony of Defendant Robinson's older brother (PC-EH 123) that he used drugs with the Defendant (PC-EH 125-26, 148), broke into houses with him (EH 130-31), and armed

> himself with a .22 rifle with Defendant Robinson when anyone "messed with" them (PC-EH 145).

Moreover, as indicated above, no expert that Robinson produced at the evidentiary hearing conducted an psychological testing on Robinson other than Dr. Larson who did testing with the WAIS-R and the WRAT-R instigated by defense counsel prior to trial (See R/XI 1999; PC-EH 320-21, 328-29, 339; PC-EXH 44, 47-48) and on which Dr. Larson thought that Robinson "didn't try to perform his best" (PC-EH 341; see also report indicating that the 79 IQ was "likely a slight underestimate," PC-EXH 47).

Thus, for example, Dr. Dunn's postconviction testimony indicated that he did not do a psychological evaluation and made no formal diagnosis. (PC-EH 243) Ms. Marjorie Hammock, who opined about risk factors, was a social work assistant professor, who had not completed her Ph.D. (PC-EH 166-67); instead of testing Robinson, she reviewed records and interviewed several people (PC-EH 175-77).

The trial court concluded:

> Based on the facts as presented to this Court, the Court finds that even had this additional evidence been presented, in light of the facts and circumstances surrounding this case, the record would still reveal the facts suggesting a sentence of death to be so clear that 'no reasonable person could differ.' *** Defendant has failed to demonstrate an entitlement to relief on this basis.

(PC/XIV 2512-13)

Therefore, the trial court considered not only the postconviction evidence that was weak, and sometimes affirmatively harmful to Robinson, but also the trial evidence showing Robinson's leadership role in the heinous mayhem, quadruple murders, rapes, and attempted murder, and other felonies in 1988, which the State has detailed in the subsection entitled

"The Four Murders; Sexual Battery; Multiple Kidnappings and Armed Robberies; and, Additional Felonies, in the "STATEMENT OF THE CASE AND FACTS" section supra. To summarize some of the key points: **ROBINSON**, also known as "Red" –

- With others, entered the residence brandishing a gun (R/VII 1294; see R/VII 1186);
- Ordered "everybody to sit down and shut up" (R/VII 1294-95);
- "[M]ade everybody strip" (R/VII 1295);
- Ordered victims to "stand up" to "make sure" victims did not have any "shit" (R/VII 1295);
- Searched "the pillows to make sure there wasn't any guns there" (R/VII 1295);
- "Beat" one of the male victims "down" by "hitting him" (R/VII 1295);
- Went "in the room and started jerking – yanking equipment and jerking extension cords out the back of it" (R/VII 1295);
- Threatened, "Somebody better start talking and start talking fast" (R/VII 1295);
- "[S]tarted beating on Derek and said let me get my knife, and he went in the kitchen and got a knife. Then he came back and started stabbing on Derek" (R/VII 1296-97; see also R/VIII 1370-71);
- Told Coleman, "if anyone say[s] anything else to shoot them and start with" Amanda Merrell (R/VII 1299);
- Raped Mildred Baker, then with Coleman "decided they would change up" and Robinson raped Ms. Merrell and Coleman appeared to rape Mildred (R/VII 1301);
- Said, "y'all been using up my stuff, huh" and called Merrell a "liar" (R/VII 1302);
- "[K]icked Derek and he said so you spent all the money at the dog track, huh" (R/VII 1302);
- Called for Coleman and Coleman responded (R/VII 1302-1303);
- Told someone to "open up," and shortly thereafter some shots were fired (R/VII 1303-1304);

- Interrogated Mildred Baker and when Mildred begged for her life, ordered Mildred: "Get down, bitch," and a shot rang out (R/VII 1304);
- Asked whether anyone knows how to drive a stick-shift, after which the killers left (R/VII 1304-1305).

Accordingly, the trial court found that Robinson was "clearly the ringleader and the person who directed the other participants" (R/XIV 2586), and found applicable to Robinson the aggravators of previous conviction of a prior violent felony; committed during a robbery, sexual battery, burglary, and kidnapping; heinous, atrocious, or cruel; and cold, calculated, and premeditated. (R/XIV 2584-85) (The trial court also found avoid or prevent a lawful arrest, which this Court struck on direct appeal.)

When compared to the extreme aggravation in this case, the mitigation was insignificant at the trial and remains inconsequential now.

C. Case Law and Additional Argument Supporting the Trial Court's Ruling.

The trial court's ruling concerned both Strickland prongs. Robinson's burden was to prove both prongs. He proved neither.

The trial court's citation to Lynch v. State, 2 So.3d 47, 71 (Fla. 2008), pinpointed Lynch's analysis of Strickland deficiency, but Lynch also concerned Strickland prejudice, and the trial court's ruling (PC/XIV 2512-13) that the postconviction evidence does not have changed the lawfulness of the death sentences constitutes a clear finding on the prejudice prong. Therefore, the State discusses prejudice first, then deficiency.

1. Robinson's Failure to Prove Prejudice.

As the trial court found, Robinson failed to meet his burden to prove Strickland prejudice.

Robinson's life recommendation was by a scant tie jury vote of six-to-six (R/XI 2096-97; R/XIII 2449). Therefore, at the outset, the State submits that, given the likely harmful impact of Robinson's postconviction evidence (**such as the evidence that Defendant is aggressive; excels at being the biggest troublemaker in the household; shoots up a car's tires, windows, and body; fights; burglarizes; behaves belligerently to a psychologist; malingered with his schooling and on Dr. Larson's testing; and does whatever he thinks he can get away with**), the result of producing that postconviction evidence at trial would have been a jury recommendation of death. As in Reed v. State, 875 So.2d 415, 437 (Fla. 2004), the additional evidence would have placed the defendant "in a very negative light." In such cases, "[a]n ineffective assistance claim does not arise from the failure to present mitigation evidence where that evidence presents a double-edged sword." Id. (citing Carroll v. State, 815 So.2d 601, 614-15 & n. 15 (Fla. 2002); Asay v. State, 769 So.2d 974, 988 (Fla. 2000)). As in Pooler v. State, 980 So.2d 460, 468 (Fla. 2008)("failing to investigate and present his school, military, and employment records in mitigation"), introduction at trial of the postconviction evidence "would have undermined" the mitigation that trial counsel did introduce at trial and would not have "overcome the aggravation found by the trial court," thereby negating Strickland's prejudice prong.

Indeed, given the extreme aggravation in this case and Robinson's leadership is orchestrating the murderous events, as bulleted above and narrated more fully in the Facts section supra, the six-to-six jury vote is a tribute to trial counsel's effectiveness and, concerning the prejudice prong, does not necessarily benefit Robinson in these postconviction proceedings. Suggs v. McNeil, 2010 WL 2519268, *15 (11th Cir. 2010)(internal citations omitted), recently illustrated the point concerning prejudice in the context of upholding this Court's finding of failure-to-prove Strickland prejudice where there was a seven-to-five jury vote for death:

> Closely divided capital juries do not move in only one direction when presented with new evidence. We disagree with Suggs that the relevant question is whether 'evidence of … organic brain damage would have in and of itself caused one more juror to vote for life.' The question is whether evidence of Suggs's efficiency deficit along with any new unfavorable evidence would have caused at least one new juror to vote for life and no new jurors to vote for death. Each juror who participated in Suggs's penalty phase necessarily was willing to recommend a sentence of death. *** Even if one of the original seven votes for death would have viewed Suggs's new evidence of mitigation favorably, **it is reasonable to conclude that some jurors who voted for life would have reconsidered had they known what we now know about Suggs**. Even in the light of the closely divided sentencing jury, the decision about prejudice of the Florida Supreme Court, whether or not it 'was correct, … was clearly not unreasonable.'

Here, given the postconviction damaging facts, it is "reasonable to conclude that some jurors who voted for life would have reconsidered had they known what we now know." Moreover, the damaging nature of the postconviction testimony certainly supports the trial court finding that the postconviction evidence was insufficient to change the support for the jury override.

Mills v. State, 603 So.2d 482 (Fla. 1992), was a jury override like here. There, the trial court found "six aggravating circumstances: 1) under sentence of imprisonment; 2) previous conviction of violent felony; 3) great risk of death to many persons; 4) felony murder; 5) pecuniary gain; and 6) heinous, atrocious, or cruel [HAC]. The court had found that no mitigating circumstances had been established." Mills v. State, 476 So.2d 172, 177 (Fla. 1985). On direct appeal, this Court upheld the aggravators of under sentence of imprisonment, previous conviction of violent felony based on an aggravated assault, and felony murder, but it struck pecuniary gain and HAC. 476 So.2d at 177-78. Thus, here the aggravation is substantially stronger than in Mills: HAC, CCP, and prior violent felony (including multiple murders and an attempted murder).

In Mills and here, in the penalty phase, defense counsel relied on family testimony to plead for life. Here, trial counsel also called Dr. Larson to testify to the judge and jury and harnessed several letters for the Spencer hearing. In Mills, like here, the defendant produced a volume of evidence "at the ... evidentiary hearing," 603 So.2d at 484.

In Mills, 603 So.2d at 484, at the postconviction hearing, the expert testimony was substantially stronger than here:

> Two psychologists testified that Mills has some brain damage and that he met the criteria for the two statutory mental mitigators, i.e., extreme mental or emotional disturbance and substantially impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. One also stated that Mills' IQ is normal, that he has complete contact with reality and knew what he was doing when this crime occurred, and that the brain damage makes him impulsive. The other testified that Mills has impulse control problems and shows a lack of judgment.

Here, there is no such postconviction evidence of brain damage, and actually Robinson did not introduce any psychological or neurological testing results whatsoever at the postconviction hearing. Here, unlike Mills, there was no competent postconviction evidence of any statutory mitigator.

Like here, Mills' lay postconviction evidence overlapped the evidence presented in the penalty phase: "Mills' sister … testified at trial and one of his brothers also testified. They recounted growing up in poverty with parents who did not function as parents and how Mills had suffered two head injuries as a child." 603 So.2d at 484. Here, the postconviction lay testimony substantially overlapped the trial evidence and actually, in some very significant respects, is quite harmful to Robinson, as bulleted and discussed above.

Like here, in Mills, there was no Strickland prejudice, that is, no "reasonable probability that the currently tendered evidence would have produced a reversal of the judge's override of the jury's recommendation," 603 So.2d at 486. In Mills, the implication for "abrogate[ing] the judge's override of the jury recommendation" was "speculative," Id., whereas here, the totality of Robinson's postconviction evidence would have provided additional weight supporting the override and likely even changed the override to a death recommendation. Further, here the aggravation of four murders, HAC, and CCP is weightier than in Mills.

Routly v. State, 590 So.2d 397, 398-99 n.1 and accompanying text (Fla. 1991), like here, was a jury override and, like here, included the weighty

aggravators of HAC and CCP. Moreover, Routly did not involve the prior violent felony aggravator, where here, that aggravator was proved three-times-over with a quadruple murder that Robinson orchestrated at the scene. There, the trial court found "no mitigating circumstances," whereas here, trial counsel marshaled some mitigation. In Routly, like here, the defendant claimed counsel "ineffective in the penalty phase for failing to investigate and present mitigating evidence regarding his difficult childhood," 590 So.2d at 401. The postconviction evidence in Routly bore some similarities to here, but was stronger than here, with less characteristics that damaged the defendant's cause. There, defendant at postconviction, showed --

> that Routly's mother resented and vehemently disliked him, never showed him affection, and disciplined him more severely than she did her other children. She held him responsible for the accidental death of her infant son, even though Dan was only two years old at the time of the accident. Routly's mother ordered him out of the house when he turned seventeen. Routly's father drank excessively and only showed affection to his children when he was drunk. He beat the children. Routly's older brother physically abused him. The death of his father in 1978 profoundly affected Routly.

590 So.2d at 401. There, as here, evidence showed that the defendant was hostile in school. There, as here, much of the postconviction evidence was introduced at trial, there only through a mental health expert, whereas here also through Robinson's mother and, for the Spencer hearing, also through several letters. There, unlike here, "Routly reported [to the expert] that his father was a strict disciplinarian who beat him until he bled." 590 So.2d at 401, 402. There, as here, the defendant "also claims that trial counsel failed to provide the mental health experts with

background information," but the expert's trial testimony or report showed that the defendant "provided the doctor with background information," Id., although here Robinson chose to hold some back. There, in contrast to here, the only negative aspects of the postconviction evidence were that a parent showed favoritism to Routly and Routly was a problem in school, Id., whereas here, as discussed above, the negative aspects of the postconviction evidence were abundant and weighty. There and here, the defendant "has not demonstrated a reasonable probability that he would have received a life sentence if trial counsel had presented this evidence." 590 So.2d at 401.

In Hannon v. State, 941 So.2d 1109, 1116 (Fla. 2006), while not a jury override, "[t]he trial court found no statutory mitigating factors" and weak mitigation. In Hannon, 941 So.2d at 1137-38, postconviction evidence included exert testimony as well as lay testimony. Like here, the aggravators included HAC, which "is one of the most serious aggravators set out in the statutory sentencing scheme, *see Everett v. State*, 893 So.2d 1278, 1288 (Fla. 2004)…." Like Robinson, "Hannon has failed to demonstrate that if the mental health and lay witness testimony presented during the postconviction evidentiary testimony had been offered at trial 'the result of the proceeding would have been different,' *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052 …."

Jones v. State, 998 So.2d 573, 585-86 (Fla. 2008), while distinct from this case in some respects, included aggravators of prior violent felony and HAC, and statutory mental mitigation, and nonstatutory mitigation of "a

traumatic and difficult childhood [] and … the love and support of his family." Here, the aggravation was stronger and the mitigation, weaker. Jones held:

> Thus, in light of the significant aggravation, Jones has not demonstrated how the enhanced mitigation would create a probability sufficient to undermine our confidence in the outcome. *See Singleton v. State*, 783 So.2d 970 (Fla.2001) (upholding a death sentence where the trial court found the prior violent felony and HAC aggravating factors and substantial mitigation, including extreme mental or emotional disturbance, impaired capacity to appreciate criminality of conduct or to conform conduct to requirements of law, age of sixty-nine at time of offense, under the influence of alcohol and possibly medication at time of offense, mild dementia, and attempted suicide); *Spencer v. State*, 691 So.2d 1062, 1066 (Fla.1996) (affirming a death sentence where the trial court found the prior violent felony and HAC aggravating factors and the mitigation included extreme mental or emotional disturbance; impaired capacity to appreciate criminality of conduct or to conform conduct to requirements of law; drug and alcohol abuse; paranoid personality disorder; sexual abuse; honorable military record; good employment record; and ability to function in structured environment); *see also Offord v. State*, 959 So.2d 187, 191 (Fla.2007) ('HAC is a weighty aggravator that has been described by this Court as one of the most serious in the statutory sentencing scheme.'); *Sireci v. Moore*, 825 So.2d 882, 887-88 (Fla.2002) (noting that prior violent felony conviction and HAC aggravators are 'two of the most weighty in Florida's sentencing calculus.').

In Jones, "in light of the significant aggravation, Jones has not demonstrated how the enhanced mitigation would create a probability sufficient to undermine our confidence in the outcome." Robinson also failed to meet his burden.

See also Jones v. State, 998 So.2d 573, 586-87 (Fla. 2008)("At the evidentiary hearing, Jones presented several witnesses, including family members and his youth football coach, to support his claim that counsel was ineffective in failing to present sufficient background mitigation … cumulative to that presented at the penalty phase … **counsel is not**

ineffective for failing to present cumulative evidence")(citing Darling v. State, 966 So.2d 366, 377-78 (Fla. 2007); Whitfield v. State, 923 So.2d 375, 386 (Fla.2005)); Henry v. State, 862 So.2d 679, 686 (Fla. 2003)(no prejudice or deficiency; **humanizing** trial strategy; "retrial counsel's decision not to present mental health experts did not prejudice Henry. Despite the presentation of this expert testimony during the penalty phase of the original trial, the trial court **did not find one mitigating factor**, but it did find **two valid statutory aggravators**, the same two found upon retrial"); Haliburton v. Singletary, 691 So.2d 466, 471 (Fla. 1997)("In light of the substantial, **compelling aggravation** found by the trial court, there is no reasonable probability that had the mental health expert testified, the outcome would have been different. Haliburton has shown neither deficiency nor prejudice, and the trial court properly denied this claim"); Cade v. Haley, 222 F.3d 1298, 1307-1308 (11th Cir. 2000)("Cade has not overcome either the inconsistencies in the expert opinions at issue nor the **double-edged** quality of the lay testimony offered"; "profile shown is not mitigating to a degree sufficiently greater than the profile the jury actually had at sentencing")(citing, e.g., Mills v. Singletary, 63 F.3d 999, 1024-26 (11th Cir. 1995); Marek v. Singletary, 62 F.3d 1295, 1298-1301 (11th Cir. 1995); Francis v. Dugger, 908 F.2d 696, 703-04 (11th Cir.1990) (all holding the omission of testimony regarding **difficult childhood experiences** nonprejudicial); Tompkins v. Moore, 193 F.3d 1327, 1335-38 (11th Cir. 1999)(finding, after testimony of family members to the defendant's good character, that omission of additional evidence indicating

childhood abuse was not prejudicial); Jackson v. Herring, 42 F.3d 1350, 1362-69 (11th Cir. 1995)(prejudice found where omitted testimony from the family was **unambiguously positive**)).

2. Robinson's Failure to Prove Deficiency.

Robinson also failed to prove Strickland's deficiency prong. Trial counsels' performance was reasonable, given what Robinson gave them to work with. Indeed, as stated above, the six-to-six jury vote in this case is a tribute to trial counsel's effectiveness given the extremely weighty aggravation.

Here, Mr. Beroset's decision making is entitled to special deference due to his extensive experience. See Chandler; Jones; Provenzano. He had practiced law since 1972, extensively practiced criminal law, had been board certified in trial practice since 1987, and had experience in capital cases, including "six first degree murder cases prior to Mr. Robinson's," two of which were death qualified," one of which resulted in a life recommendation. (PC-EH 351-52, 364-65)

Robinson's mother hired Mr. Berosat for this case, and he worked on the case with Mr. Pitts, who was deceased by the time of the evidentiary hearing. Mr. Beroset refused to appear in the case until he was assured that Mr. Pitts would also remain as counsel. (PC-EH 352-53)

For the postconviction hearing, Mr. Beroset had not reviewed the trial transcript. (PC-EH 365) He did not keep a log of his work on this case because he received a flat fee. (PC-EH 368-69) His trial notes were not in his file when he tried to review the file for the evidentiary hearing. (PC-

EH 391-92) He deferred to the trial record concerning aspects of the case. (E.g., PC-EH 355, 375)

Mr. Beroset did not recall several aspects of his penalty-phase trial preparation. (PC-EH 381-82, 384-85) Thus, a number of Robinson's arguments on the deficiency prong need clarifying concerning a Beroset's answers at the evidentiary hearing. Concerning "a need for additional investigation" and additional follow-up (IB 73), Beroset testified that he did not recall what his "thoughts were at the time" (PC-EH 382) and he did not "recall following up" (PC-EH 380-81). Concerning the Initial Brief's statement that counsel at no point moved for a continuance for the penalty phase (IB 73-74), Beroset explained that it was his understanding that "I wasn't going to ask for a continuance just because I came in to the case" (PC-EH 370). The trial record does reflect that Beroset requested additional time between the guilt and jury penalty phase. (See R/XI 1982-85)

Although Beroset said that "we didn't send an investigator down to Miami," as the Initial brief indicates (IB 74), Beroset did not recall whether he had personal contact (PC-EH 379) with those from whom counsel somehow obtained mitigation letters for the judge's sentencing consideration (See R/XIV 2498-2506, 2510-29).

Mr. Beroset indicated that he would not have put Dr. Larson on the witness stand without talking to him first. (PC-EH 373-74)

Robinson assumes (See IB 74) that Beroset did no other investigation because he simply "assumed that Mary Robinson would have known her son better than anyone because she was his mother." To clarify, Beroset's full

answers to the questions from Robinson's postconviction attorney were as follows:

> Q. Now, you were hired I think as you testified to by Mr. Robinson's mother. You had contact, direct contact, with her; is that correct?
>
> A. I'm sure it was her, yes.
>
> Q. All right. And she was called and presented as a witness during the penalty phase proceeding?
>
> A. Yes, she was.
>
> Q. Why was that?
>
> A. Well, because she raised Tim, Mr. Robinson. She was his mother, you know, we would hope we would garner sympathy by her testifying, show that, you know, that what good qualities there were and bad qualities there were that we were able to bring out through her.
>
> Q. Was it part of your consideration that probably she was a person that best knew Mr. Robinson both at the present time as well as when he was a youngster growing up?
>
> A. You know, I assume that his mother knew him best. Other than that, I don't know that I investigated that but yeah, his mother would be obviously the one.

(PC-EH 393-94)

Robinson argues (IB 74) that if a defense investigator had been sent to Miami, "they would have been able to speak with" the lay witnesses that Robinson called during the postconviction evidentiary hearing. However, this ignores the investigative work, including contacts, in marshaling the letters for the Spencer hearing. It also ignores the fact that Robinson's postconviction investigation yielded only evidence that was either substantially duplicitous of the evidence that counsel actually introduced

in the penalty phase trial and at the Spencer hearing or substantially harmful to Robinson, as discussed in the Prejudice section supra.

Robinson contests (IB 75) the trial court's finding that his postconviction evidence was largely repetitious of the penalty phase evidence and lists (IB 76) several postconviction matters. However, those items help prove the trial court's conclusion: As discussed supra, evidence was introduced prior to sentencing of Robinson growing up in a high-crime neighborhood, and, Robinson's postconviction evidence even demonstrated, harming Robinson's case, that Robinson assisted in creating that crime, as, for example, he shot-up a car and committed burglaries with his brother. Robinson also overlooks his postconviction evidence in which his father testified that neither he nor his wife ever beat the children (PC/XI 2143, 2127-29; see also PC-EH 64, 72-73).

Although "Mr. Pitts was involved with [D]r. Larson" before Beroset appeared in the case, Beroset did examinations during the penalty phase. (PC-EH 353-54) Robinson's postconviction counsel objected to Mr. Beroset testifying about communications he had with Robinson during his representation if they concerned the guilt phase,[13] even if they affected the penalty phase. (PC-EH 357-59) Beroset said that his sentencing memorandum, Robinson's mother's testimony, and Dr. Larson's testimony

[13] During the evidentiary hearing, postconviction counsel withdrew the guilt phase claim on which an evidentiary hearing had been granted. (PC-EH 362-63)

reflected his penalty-phase strategy. (PC-EH 361) Beroset said that Robinson continued to assert his innocence into the penalty phase. (PC-EH 359-60).

Robinson claims (IB 78) that Beroset had "nothing to lose" by presenting additional evidence at the Spencer hearing. However, this overlooks that the United States' Supreme Court has expressly rejected "nothing to lose" as part of Strickland's test. See Knowles v. Mirzayance, __U.S.__, 129 S.Ct. 1at 1419. Moreover, as outlined above, Beroset did marshal addition evidence for the Spencer hearing and Bersoset did have "something to lose" if he had introduced Robinson's postconviction evidence that would have harmed his case.

Therefore, Robinson has failed to demonstrate Strickland's deficiency prong, as trial counsel –

- obtained a mental health evaluation of Robinson (See PC-EXH 44-51);
- conducted very competent penalty-phase examinations of Dr. Larson (See R/XI 1995-2004) and Robinson's mother (See R/XI 2012-22);
- argued effectively (See R/XI 2082-87) in front of the penalty-phase jury;
- succeeded in obtaining a life recommendation from the jury (R/XI 2096-97);
- had from June 2, 1989 (R/XI 1988, 2099) to July 25, 1989 (R/XIV 2478) to prepare for the Spencer-type hearing;
- submitted additional mitigation evidence, in the form of letters, for the trial judge to consider (See R/XIV 2498-2506, 2510-29; discussion in Facts section, "Spencer-type Hearing" supra);
- competently argued in court for the trial judge to spare Robinson's life (See R/XIV 2498-2506; discussion in Facts section, "Spencer-type Hearing" supra); and
- submitted a competent sentencing memorandum (See R/XIV 2530-34).

Indeed, when trial counsels prepared for the foregoing events, they were armed with Dr. Larson's report, which indicated that –

- Robinson's full scale IQ of 79 is an underestimate (PC-EXH 47), which is abundantly corroborated in the record in this case showing --

  - Robinson's leadership role in the murderous events in 1988 (bulleted in the "Trial Judge's Order and Competent Substantial Evidence Supporting It" section supra),

  - Robinson's articulate trial testimony (See R/IX 1554-90), and

  - the occasions in which he freely and articulately expressed himself during the postconviction proceedings (See, e.g., PC/VI 1140-59, 1170-76);

- Robinson claimed to have obtained his GED (PC-EXH 47), to which his mother also testified in the sentencing phase (R/XI 2016; see also R/XI 2002)

- Robinson was "very clear[ly]" "street wise and reasonably intelligent" (PC-EXH 47)

- Robinson's "thought processes appear[ed] to be logical, relevant, and goal directed" (PC-EXH 45);

- No evidence of "formal thought disorder" (PC-EXH 45);

- No evidence of "delusions" or "hallucinations" (PC-EXH 45);

- Robinson relied on his Bible readings (PC-EXH 45), and his mother testified at trial about Robinson's interest in the Bible and becoming a minister (R/XI 2016);

- Robinson denied alcohol or drug abuse (PC-EXH 47);

- Infirmary records reflect no psychological problem (PC-EXH 45);

- Robinson said he was "thrown out" of junior high for fighting (PC-EXH 47).

Moreover, Robinson did not report child abuse to Dr. Larson (See R/XI 2000, see also 2003; PC-EH 343), so there was no reason for counsel to pursue that matter further.

Under all the foregoing facts, defense counsel was not required to investigate any further, and defense counsel was not deficient under Strickland. The case law supports this conclusion.

Here, the humanizing theme defense counsel presented in the penalty phase was a reasonable course of action. See Arbelaez v. State, 898 So.2d 25, 39 (Fla. 2005)("We have generally denied relief where the attorney's chosen strategy was to 'humanize' the defendant rather than to portray him as psychologically troubled")(citing Henry v. State, 862 So.2d 679, 685-86 (Fla. 2003); Rutherford v. State, 727 So.2d 216, 223 (Fla. 1998); Haliburton, 691 So.2d at 471; Bryan v. Dugger, 641 So.2d 61, 64 (Fla.1994)).

Here, the "defendant ha[d] given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful," so "counsel's failure to pursue those investigations may not later be challenged as unreasonable." Reed v. State, 640 So.2d 1094, 1096-97 (Fla. 1994). See also Bryan v. State, 748 So.2d 1003, 1007(Fla. 1999) ("claim that his mental health experts and trial counsel lacked facts upon which to explore his alleged drug use, drinking problem, and sleep deprivation at the time of the crime is undermined by his own failure to provide such facts himself"). Here, defense counsels did a reasonable and constitutionally effective job of harvesting mitigating evidence, given what Robinson created. Cf. Schriro v. Landrigan, 550 U.S. 465, 475 (2007)("If Landrigan issued such an instruction [to "his counsel not to

offer any mitigating evidence"], counsel's failure to investigate further could not have been prejudicial under Strickland").

Mills, 603 So.2d 482, involved less preparation for the penalty phase than here. There, defense counsel "had no reason to suspect that any mental health mitigating evidence could be developed," Id. at 485. A "defendant's mental condition is not necessarily at issue in every criminal proceeding." Id. (quoting Ake v. Oklahoma, 470 U.S. 68, 82 (1985)). See also Duckett v. State, 918 So. 2d 224, 237 (Fla. 2005)(rejected claim "that trial counsel was ineffective for failing to obtain and present psychological testing at the penalty phase"; "trial counsel had no reason to suspect that any mental mitigating evidence could be developed").

Here, given Dr. Larson's pre-trial evaluation, given Robinson's palpable intelligence, given the anticipated humanizing theme that Robinson was a "sweet" son, Strickland did not require Robinson's counsels to pursue mental health any further.

In Mills, two psychologists testified at postconviction to substantially more mitigating evidence than Ms. Hammock's and Dr. Dunn's evidence that was weak and, in part, even harmful to Robinson.

In Mills and here, defense counsel's "effectiveness in securing a jury recommendation of life imprisonment cannot be overlooked," 603 So.2d at 485. See also Buford v. State, 492 So.2d 355, 359 (Fla. 1986) (appellant's contention that his trial counsel rendered ineffective assistance of counsel during the penalty phase is refuted by the fact that the jury recommended life; "Further, we refuse to find counsel ineffective by

relying on the jury recommendation and failing to present further mitigating evidence to the judge")(citing Lewis v. State, 398 So.2d 432 (Fla. 1981)).

Accordingly, Mills v. Singletary, 161 F.3d 1273, 1284-86 (11th Cir. 1998), reviewed the same death sentence that this Court upheld in Mills, 603 So.2d 482 (Fla. 1992). The Eleventh Circuit rejected the federal claims of "ineffective assistance because: (1) both [counsel] failed to investigate mitigating evidence and to prepare for their respective proceedings; and (2) both failed to have a mental health evaluation of Mills performed, and failed to argue mental health issues as mitigating evidence." Mills held that the defendant failed to establish the deficiency prong even though the public defender's office waited until the Saturday prior to the Monday penalty phase to hire penalty-phase counsel and even though penalty phase counsel testified that "with the benefit of hindsight mental health evidence should have been looked at." 161 F.3d at 1285, 1286.

Here, part of the penalty defense was arguing lingering doubt. concerning whether Robinson was the triggerman (See R/XI 2084-85). Tarver v. Hopper, 169 F.3d 710 (11th Cir. 1999), like here, was a jury override case. Tarver indicated that a reasonable focus of defense counsel can be on the guilt phase and extended through residual doubt in the penalty phase. See 169 F.3d at 715. In Tarver, the Eleventh Circuit was "unpersuaded by the admission (during state collateral proceedings) of Tarver's lawyer that he had not prepared adequately for sentencing," Id. at 716, so any

counsel's hindsighted testimony suggesting desirable additional investigation is unpersuasive.

In Hannon v. State, 941 So.2d 1109, 1131 (Fla. 2006), as here, trial defense counsel sought to use a humanizing theme, and it was reasonable for trial counsel not to pursue investigative avenues suggesting that the defendant used "illegal drugs, was unstable, failed at school, or was abused." In Hannon, 941 So.2d at 1127, defense counsel consulted with family members as part of his preparation, especially defendant's "most intimate family members, and here trial defense counsel necessarily talked with Robinson's mother before she took the stand, who "gave the kids all the love" (R/XI 2013), and contacted the people who submitted mitigation letters for Robinson. Here, unlike Hannon, See 941 So.2d at 1131, defense counsel did put a mental health expert on the witness stand. In Hannon and here, defense counsel's representation of the defendant was reasonable and not Strickland deficient.

In sum, trial counsels for Robinson chose a course of action that was reasonable under Strickland, and, if there were "other reasonable courses of defense," they do not determine Strickland deficiency, see Chandler v. U.S., 218 F.3d 1305, 1315-16 n.16 (11th Cir. 2000).

D. Robinson's Case Law, Not Applicable.

For all of the foregoing reasons, Robinson has failed to demonstrate that he is entitled to relief. Accordingly, the cases on which he relies are inapplicable.

Robinson's Initial Brief appears to primarily relied upon the following cases: Williams v. State, 987 So.2d 1 (Fla. 2008)(IB 79, 81-84); Rompilla v. Beard, 545 U.S. 374 (2005)(IB 71); and, Wiggins v. Smith, 539 U.S. 510 (2003) (IB 70-71).

Co-defendant Ronald Williams' case, **Williams**, 987 So.2d 1, is inapplicable. As indicated in the Timeline supra, co-defendant Williams was tried separately from, and after, Robinson. Like this case, Williams, 987 So.2d at 5-6, was an override, but there, the vote for life was 11 to 1, versus the 6 to 6 here.

Unlike Robinson here, Williams was not at the murder scene. Therefore, on direct appeal, this Court struck HAC, reasoning that "the State in this instance failed to prove beyond a reasonable doubt that Williams knew or ordered the particular manner in which the victims were killed." Williams v. State, 622 So.2d 456, 463 (Fla. 1993).

In Williams, defense counsel "utterly failed to present to the sentencing court mitigation evidence that defense counsel literally had in his hand." Williams, 987 So.2d at 12. In Williams, the in-hand evidence included the following:

> Williams asserts on appeal that his counsel was ineffective in failing to present the mitigating evidence of Dr. James D. Larson, despite the fact that, long before sentencing, defense counsel had this mental health expert's evaluation and detailed report. Among other findings, Dr. Larson concluded that Williams had an IQ of 75 and was in the borderline range for mental retardation. Dr. Larson further calculated that due to his mental deficits, Williams had a personality disorder and functioned emotionally and mentally at the age level of a thirteen or fourteen-year-old. The report reflects that the defendant had an impoverished and abusive childhood, an erratic school record, was frequently beaten, sometimes with an extension cord, and his parents were alcoholics who frequently drank

> to the point of intoxication. Williams himself also had a lengthy drug abuse history. These circumstances eventually caused Williams to leave school at age sixteen and to enter the drug culture that thrived in his 'ghetto' neighborhood in Miami. Further, due to the mental deficits Dr. Larson found, he concluded that Williams would not even be recommended for employability.

987 So.2d at 10-11. Here, in contrast to Williams, defense counsel had Dr. Larson's report in his hand and used that information by calling Dr. Larson as a witness in the penalty phase (R/XI 1995-2004). In contrast to the failure of introduce IQ evidence, here Dr. Larson testified at trial as to Robinson's IQ of 79 (R/XI 1999) and that Robinson's mental age was in the "bottom 10 percentile" of a "reduced adult" (R/XI 2001). At trial, Dr. Larson generously testified that his IQ score was an underestimate because of Robinson's "erratic attendance at school" (R/XI 2001), but at the postconviction hearing Larson testified to several facts that would have reflected very negatively upon Robinson if they had been introduced at trial:

> Q. … whether it was that specific circumstance that led you to say that he was an unreliable source of information with regard to his prior history?
>
> A. There were -- there were several things that led to that conclusion. Is that what you're asking me about, that conclusion?
>
> Q. Right.
>
> A. One, was **he wasn't fully cooperative** with the evaluation. He was **somewhat resentful, somewhat hostile**. **He was not quickly forthcoming with information**.
>
> ***
>
> A. … One, he just wasn't very -- some people are quite forthcoming and provide a lot of information, **with him it was more like pulling teeth**, and then he was also **somewhat hostile and negative in the evaluation**. I **couldn't get him to talk at all about the alleged**

> **incident**. He framed it all as a miscarriage of justice, and so forth and so on.
>
> But there was an attitude about him that was clear, **he wasn't forthcoming about details and information**. And, also, in the psychological testing, my impression **clearly was, he didn't try to perform his best on the intelligence testing**.
>
> One reason that I came to that conclusion is, he scored higher on academic achievement testing than he did on intelligence testing, and you just don't normally achieve higher than your capacity to do so.
>
> So, I actually would estimate his level of intellect to be in the average range or low-average range, even though the score I obtained was in the upper part of the borderline range.

(PC-EH 340-42)

Therefore, defense counsel here, unlike counsel in Williams, did extremely well for Robinson, with counsel here cherry-picking the best possible angle on Dr. Larson's opinions and observations to place in front of the jury.

In Williams, counsel apparently decided "to withhold Dr. Larson's evidence … based upon counsel's overconfidence that a life sentence would be imposed," 987 So.2d at 12, whereas here counsel optimized Dr. Larson's evidence.

"Williams' defense lawyer was aware that the presiding trial judge had already failed to follow life recommendations by other juries in the cases of Williams' codefendants," 987 So.2d at 12, which "heightened" "defense counsel's responsibility," whereas here, where Robinson was tried before Williams, there was no such "heightened responsibility."

Moreover in Williams, unlike here, defense counsel had reason to believe that the defendant had mental problems but he failed to follow-up

on them. Even erroneously hindsighting over a decade after the trial here, Robinson has failed to produce any psychological-test-based evaluation and diagnosis that counsel should have been aware of and used at trial – in-hand or even otherwise.

In Williams, the defendant provided to Larson details that were not used at trial, whereas here Robinson was uncooperative with Larson, and in spite of Robinson's belligerence to Dr. Larson, defense counsel managed to elicit some additional favorable evidence at trial for Robinson, including the absence of the father in formative years (R/XI 1998), growing up in a ghetto (R/XI 1997-98) and "pretty chaotic" (R/XI 2000) environment, a relatively salutary explanation for the IQ score of 79 underestimating Robinson's actual IQ (See R/XI 1999, 2000-2001), Robinson's ability to complete high school or his GED (R/XI 2001-2002), and Robinson's rejection of drugs and alcohol use (R/XI 1998, 2003).

Concerning prejudice, in Williams, the trial court used the improper standard for prejudice, 987 So.2d at 11, whereas here the judge used the correct standard (See PC/XIV 2512-13).

Also concerning prejudice, as noted supra, Williams was not at the murder scene and this Court on direct appeal struck HAC.

In Williams, 987 So.2d at 14, the evidence omitted from the penalty phase included the entire mental health report, whereas here Dr. Larson testified at trial, including regarding Robinson's ghetto/chaotic childhood and Robinson apparently withheld information about any abuse, Robinson denied to Larson drug and alcohol abuse, and Larson testified concerning

Robinson's intelligence testing, which was below-average but higher than Williams'.

In sum, concerning prejudice, in Williams, 987 So.2d at 14, "important mitigation evidence that was available but was not presented by defense counsel would have provided an objective and reasonable basis for the jury's recommendation and a sentence of life." In contrast, here not only did defense counsel use available evidence at trial, the evidence was put in a light generously favorable to Robinson, in spite of Robinson's uncooperative and belligerent efforts.

Williams' characterization of defense counsel "utterly fail[ing] to present to the sentencing court mitigation evidence that defense counsel literally had in his hand," Williams, 987 So.2d at 12, resembled the theme in **Rompilla**, 545 U.S. at 389-390, where –

> Counsel fell short … because they failed to make reasonable efforts to review a crucial prior conviction file, despite knowing that the prosecution intended to use details of it. The unreasonableness of attempting no more than they did was heightened by the easy **availability of the file at the trial courthouse**, and the great risk that testimony about a similar violent crime would hamstring counsel's chosen defense of residual doubt.

Here, in contrast, Robinson's counsels used Dr. Larson's evidence and used it well. Here no "great risk" resulted. Here, in contrast, counsel knew going into the penalty phase that Robinson was uncooperative and deceptive with the psychologist and nothing put them on reasonable notice that they should pursue additional investigative.

Rutherford v. Crosby, 385 F.3d 1300, 1315 (11th Cir. 2004), explained the relative magnitude of the omitted "excruciating life history"

mitigation in **Wiggins**, unlike here, as extreme, which included "defendant's long history of severe physical and sexual abuse at the hands of his alcoholic mother and various foster parents. Wiggins' abuse included going for days without food, his hospitalization for physical injury, and repeated rapes and gang-rapes." Further, unlike here, there, the omitted abuse was documented in "state social services, medical, and school records," 539 U.S. at 516. Here, Robinson has failed to produce any such readily available records showing such an "excruciating life history."

Here, in contrast with Wiggins, counsels' "reasonable professional judgments support[ed] the limitations on investigation." 539 U.S. at 533 (quoting Strickland, 466 U.S. at 690-91). In any event, as discussed at some length supra at multiple junctures, Robinson's postconviction evidence would not have changed the sentencing outcome to his benefit.

In conclusion, none of Robinson's cases assists him. In contrast to those cases, Robinson failed to demonstrate both Strickland deficiency and Strickland prejudice. His burden was to overcome the strong presumption attached to counsel's performance and prove both deficiency and prejudice. He proved neither.

ISSUE II: DID THE TRIAL COURT REVERSIBLY ERR IN SUMMARILY DENYING ROBINSON'S SHACKLING CLAIM? (IB 85-94, RESTATED)

ISSUE II ("Argument II") complains that Robinson's constitutional rights were violated when the trial court maintained some sort of shackles on his legs. The issue is substantially (at IB 87-93) is devoted to an IAC claim contending that his trial attorney should have requested a hearing into the trial court's reasoning for the shackling. By couching his

shackling claim in IAC terms, it appears that Robinson now hopes to by-pass the procedural bar of this Court rejecting his shackling claim on direct appeal.

On direct appeal, this Court held:

> Robinson also claims that the trial court's ordering the defendants to remain shackled during trial violated his due process rights. He objected to the shackling, but the court stated it was necessary due to unspecified information received by the court. Robinson, however, never asked the court to explain further, and we see no reversible error here. The court excused the jury and had Robinson's shackles removed before he took the witness stand. A piece of cardboard placed under the defense table to hide the defendants' legs fell over during trial, but Robinson has not shown that the jurors noticed, or were affected by, the shackles. We therefore find no merit to this issue.

Robinson v. State, 610 So.2d 1288, 1290 (Fla. 1992).

The State has six responses to this issue: **First**, Robinson's claim in the trial court was a free-standing shackling claim, and although he mentioned IAC in passing in his postconviction motion, he never alleged any specificity concerning IAC on this subject.

Second, because IAC shackling was not actually raised in the trial court as a viable claim, ISSUE II is not the same claim that was raised in the trial court, procedurally barring ISSUE II now.

Third, even if IAC had been alleged with sufficient specificity in Robinson's postconviction motion and remained otherwise viable, it would still be procedurally barred by the direct appeal, as the trial court ruled. ISSUE II is an attempt to re-litigate the direct appeal's shackling claim.

Fourth, if the merits of an IAC claim are reached, Robinson improperly relies on case law that has developed after the 1989 trial; in evaluating

Strickland's deficiency prong, trial counsel is not responsible for changes in the law.

Fifth, there has not been a requisite showing of Strickland or any other prejudice where, during a lengthy trial, at-most the jury may have only obtained a glimpse of any shackles, and the evidence of Robinson's guilt was overwhelming at trial and is now, with additional DNA results, even more overwhelming that Robinson is guilty of these heinous crimes.

And, **Sixth**, at the time of this trial, the trial court's handling of the shackling was reasonable, especially given the heinousness of the quadruple murders, and therefore any shackling claim, however it might be packaged, is meritless.

A. Robinson's postconviction motion was facially insufficient to raise an IAC claim, and, in any event, any such claim was waived at the Huff hearing.

As purported support for arguing that this claim was raised in Robinson's postconviction motion, ISSUE II cites to the postconviction record at PC/V 929-34, 973-93, and PC/VI 994-1002. However, in contrast to ISSUE II's focus on IAC, Robinson's postconviction motion failed to allege any specificity whatsoever regarding shackling. Instead, the postconviction motion contested the shackling itself and contested this Court's holding on direct appeal rejecting the shackling claim. As such, the postconviction motion was facially insufficient to raise an IAC claim. The State elaborates.

Robinson's Third Amended Motion to Vacate raised shackling at two junctures: "Claim XII" and "Claim XVII." Neither of the issue statements at the heading of each claim even mentions trial counsel. (See PC/V 929, 973)

Claim XII begins by claiming that Robinson was shackled and "inherently" prejudiced." (PC/V 929) The claim continues by arguing that the trial court did not provide a sufficient reason for the shackling. (Id.) The claim describes some events, and indicates that "Counsel for Mr. Robinson strongly objected." (Id. at 930)

The postconviction motion then alleges that the trial court "**never gave the defense a chance to contest**" the reason for the shackling, and in the same paragraph conclusorily states: "To the extent defense counsel failed to inquire into the secret intelligence conveyed to the trial judge, counsel were ineffective." Then, that same numbered paragraph resumes its attack on the shackling itself without mentioning anything about IAC. (Id. at 931)

For pages, the postconviction motion continues by attacking shackling and not mentioning anything about IAC. (Id. at 931, 932, 933, and the top of 934) At this juncture, the motion makes another conclusory statement: "8. To the extent Mr. Robinson's attorney failed to properly preserve this claim for appeal Mr. Robinson received ineffective assistance of counsel. Murphy v. Puckett, 893 F.2d 94 (5th Cir. 1990)." (Id. at 934) However, Murphy, 893 F.2d 94, did not concern shackling at all but rather IAC concerning double jeopardy. The postconviction motion, without any other

explanation regarding IAC, then concluded with two more numbered paragraphs attacking shackling itself. (PC/V 934)

CLAIM XVII, entitled "Shackling Issue," continued along the same lines as Claim XII of the postconviction motion. Its first paragraph argues that his trial counsel interposed "numerous objections," but the trial court "still ruled it necessary to have Mr. Robinson shackled …." (Id. at 973) It again alleges that Robinson's **counsel was not "afforded an opportunity to challenge" the shackling**. (Id. 973) The postconviction motion for pages then discusses shackling and the events of the trial without suggesting that trial counsel was deficient. (See Id. at 974-79)

At another juncture, the postconviction motion again essentially states that trial counsel could not have been ineffective because he did all that he could do: "**any and all objections**, inquiries, and request for further explanation made by Mr. Robinson or defense counsel **would have been equally** fruitless, unsuccessful, and meaningless." (Id. at 979-80)

On several occasions, the postconviction motion complains about this Court's ruling that denied Robinson's shackling claim on direct appeal. (See Id. at 977, 982, 985, 986) The postconviction motion complains that this Court mentioned that defense counsel "never asked the court to explain further," but then the motion argues that the "true issue" is not ineffectiveness of counsel but rather whether "the required constitutional safeguards have been met." (Id. at 986)

At this juncture, the postconviction motion resumes its discussion of shackling itself with no discussion of IAC. (See ID. 986-93; PC/VI 994-

1002) Instead, the motion argued that the shackling was "per se reversible error." (Id. 1001)

In sum, the postconviction motion's shackling claims argue for over 35 pages and only mentions IAC twice but buried within other arguments, at a facially deficient conclusory level with no specificity whatsoever, and in the context of other assertions that facially contradict IAC. As such, any claim of IAC based on shackling was insufficiently alleged, and ISSUE II should be rejected on that basis. See Jones v. State, 998 So.2d 573, 587-88 (Fla. 2008)("This Court has consistently held that to be entitled to an evidentiary hearing on a motion claiming ineffective assistance of counsel, the defendant must allege **specific facts establishing both deficient performance of counsel and prejudice to the defendant**")(citing Rhodes v. State, 986 So.2d 501, 513-14 (Fla. 2008)(noting that a claim of ineffective assistance of counsel will be summarily denied absent specific factual allegations of both a deficiency in performance and prejudice); Doorbal v. State, 983 So.2d 464, 483 (Fla. 2008) (reminding "attorneys who represent capital defendants of the importance of compliance with minimal pleading requirements to allege a claim of ineffective assistance of trial counsel" and repeating that insufficiently pled claims "may not receive an evidentiary hearing or be considered by the trial court on the merits"); Spera v. State, 971 So.2d 754, 758 (Fla. 2007)(holding that a motion claiming ineffective assistance of counsel must include facts establishing both deficient performance of counsel and prejudice to the defendant and

instructing that the failure to sufficiently allege both prongs results in summary denial of the claim)).

In Sireci v. State, 773 So.2d 34, 39 n.9 (Fla. 2000), the defendant claimed that "(21) Sireci appeared before the jury in shackles in violation of his constitutional right." Sireci explained, 773 So.2d at 39 n.10, that the shackling claim was a matter for direct appeal. There, the claim "should have been raised on direct appeal," and in this case, the claim was actually raised on direct appeal. As here, in Sireci, 773 So.2d at 40-41 n.11, the defendant sought to "circumvent the procedural bar as to the substantive claims by interjecting conclusory allegations of ineffective assistance of counsel for failure to raise an appropriate objection or otherwise preserve the issue for appellate review." As here, the IAC claim was facially insufficient.

Moreover, at the Huff hearing, counsel for Robinson discussed the shackling claim in terms of providing an opportunity to present evidence on whether the shackling impaired Robinson or his counsel. The assistant attorney general responded that this is not an IAC claim, and, even if it were, it would be procedurally barred. (PC/VIII 1379-80) Robinson's counsel did not respond to the assertion that this is not an IAC claim. (See Id.) Thus, the facially deficient IAC allegation in the postconviction motion was clarified as not even attempting to raise IAC. As such, any IAC claim was waived in the trial court.

B. ISSUE II not preserved below.

Because, as discussed in the previous section, ISSUE II was not properly presented below, it is not the same claim that was actually raised in the trial court. See, e.g., Bryant v. State, 901 So.2d 810, 822 (Fla. 2005)("In order to preserve an issue for appeal, the issue 'must be presented to the lower court and the specific legal argument or grounds to be argued on appeal must be part of that presentation").

C. ISSUE II is procedurally barred by the direct appeal.

Even if IAC had been alleged with sufficient specificity in Robinson's postconviction motion and even if it had not been waived at the Huff hearing, it remains procedurally barred by Robinson v. State, 610 So.2d 1288, 1290 (Fla. 1992), which resolved shackling on the merits. Robinson mentions counsel not asking for a hearing, but then discusses the facts surrounding the cardboard and rejects the claim on the merits: "We therefore find no merit to this issue." Accordingly, the trial court ruled:

> **Claims XII and XVII**
>
> ***
>
> In his twelfth claim, Defendant asserts that '[t]he trial court's use of, and failure to prohibit, this "inherently prejudicial practice" without any showing of necessity or any hearing entitles Mr. Robinson to a new trial before an unbiased jury.' He also notes that defense counsel vigorously objected to the procedure employed by the trial court,[FN52] but argues '[t]o the extent Mr. Robinson's attorney failed to properly preserve this claim for appeal Mr. Robinson received ineffective assistance of counsel.' In his seventeenth claim, Defendant elaborates on his earlier claim, stating that the Court worked a 'bizarrely gross injustice[]' when Defendant was shackled during the entire trial, arguing that the Florida Supreme Court erred in its ruling regarding this issue and that the Florida Supreme Court 'failed to address, to admit, and to correct the constitutional errors and violations that Mr. Robinson suffered during said prejudicial trial.' He further argues that the trial

> court erred in failing to consider less restrictive means before shackling Defendant, and in failing to make the reasons for shackling part of the court record.
>
> This claim has already been litigated on direct appeal,[FN53] and therefore is procedurally barred. Furthermore, '[a]llegations of ineffective assistance cannot be used to circumvent the rule that post-conviction proceedings cannot serve as a second appeal'[]. Cherry v. State, 659 So.2d 1069, 1072 (Fla. 1995). Even were this not the case, Defendant has failed to demonstrate that counsel performed deficiently, and in fact, concedes that trial counsel objected to the shackling of Defendant on numerous occasions. In addition, Defendant has failed to show that a different result would have been had at trial were it not for the brief potential glimpse of Defendant's shackles during closing argument. Defendant is not entitled to relief on the basis of these claims.
>
> [FN52] See Attachment 7, trial transcript excerpts, pages 31-33. The record reflects that the defense table was covered at the bottom in order to prevent the jury from seeing Defendant's feet and shackles.
>
> [FN53] 'Robinson also claims that the trial court's ordering the defendants to remain shackled during trial violated his due process rights. He objected to the shackling, but the court stated it was necessary due to unspecified information received by the court. Robinson, however, never asked the court to explain further, and we see no reversible error here. The court excused the jury and had Robinson's shackles removed before he took the witness stand. A piece of cardboard placed under the defense table to hide the defendants' legs fell over during trial, but Robinson has not shown that the jurors noticed, or were affected by, the shackles. We therefore find no merit to this issue.' Robinson v. State, 610 So.2d 1288, 1290 (Fla. 1992).

(PC/XIV 2521-22) For the reasons the trial court provided, the trial court should be affirmed. See also, e..g., Torres-Arboleda v. Dugger, 636 So.2d 1321, 1323 (Fla. 1994)("Proceedings under rule 3.850 are not to be used as a second appeal; nor is it appropriate to use a different argument to relitigate the same issue").

As a related point, Robinson v. State, 610 So.2d at 1290, established the law of the case. See Valle v. Moore, 837 So.2d 905, 908 (Fla. 2002)("A

claim that has been resolved in a previous review of the case is barred as 'the law of the case'")(citing Mills v. State, 603 So.2d 482, 486 (Fla. 1992)), which also bars this issue.

D. If an IAC claim is entertained, trial counsel is not deficient by not knowing future law.

Most of the cases cited in ISSUE II were decided after the May-June 1989 trial of this case. They do not assist Robinson in demonstrating an IAC claim because defense counsel is not deficient for not knowing future law. See Owen v. Crosby, 854 So.2d 182, 191 (Fla. 2003)(counsel not responsible for case law decided three years later).

This principle is consistent with avoiding the distorting effects of hindsight in IAC analysis. See Strickland, 466 U.S. at 689; Lockhart v. Fretwell, 506 U.S. 364, 113 S.Ct. 838, 841 (1993)(*Strickland*'s prohibition against evaluating trial defense counsel's performance against hindsight is a protection for counsel).

Accordingly, Marquard v. Secretary for Dept. of Corrections, 429 F.3d 1278, 1311 (11th Cir. 2005), held that Deck v. Missouri, 544 U.S. 622 (2005), does not apply retroactively.

E. There is no cognizable prejudice from any glimpse jurors might have gotten of the shackles, and, therefore, there is no basis for relief.

It has not been demonstrated that any juror saw the shackles, eliminating prejudice required to sustain this claim. But even if jurors obtained a glimpse of shackles, Robinson would not be entitled a defendant to relief from the trial proceedings. Thus, Singleton v. State, 783 So.2d 970, 976 (Fla. 2001) explained:

> [J]urors' brief glances of him as he was being transported in prison garb and shackles, standing alone, were not so prejudicial as to require a mistrial. *See Anderson v. State*, 574 So.2d 87, 93-94 (Fla. 1991); *Heiney v. State*, 447 So.2d 210, 214 (Fla. 1984).

Heiney v. State, 447 So.2d 210, 214 (Fla. 1984), rejected a claim that the trial court erred in denying his motion for a mistrial "based on his allegation that some of the jurors may have momentarily seen him in chains on two occasions while he was being transported to and from the courtroom," reasoning "the inadvertent sight of a defendant in handcuffs or prison clothes by the jurors is not so prejudicial that it requires a mistrial."

In Cooper v. State, 739 So.2d 82, 85 n. 8 (Fla. 1999), "the fact that jurors may have inadvertently seen [the defendant] in shackles when he was being transported to or from the courtroom does not require reversal."

Stewart v. State, 549 So.2d 171, 174 (1989), rejected a shackling claim where the shackles were apparently more exposed than Robinson's: "Stewart had remained stationary during the trial, thus giving the jury no opportunity to see him walk in shackles, and that the shackles were barely visible under the table."

Here, the judge indicated that a barrier blocked the jurors view of Robinson's leg shackles. (See R/II 213), and, here, the barrier was down only momentarily. (R/X 1876) There was no prejudice.

Moreover, any glimpse any juror **may have** obtained of any shackles pales in the context of this lengthy trial in which jury selection began on May 22, 1989 (R/II 240) and the jury returned its guilty verdict on June 1, 1989 (R/XI 1970-72; R/XIII 2431-39), and the evidence of Robinson's guilt was overwhelming at trial.

Further, the lack of prejudice here is substantiated by the jury's recommendation of life in the face of overwhelming evidence of Robinson's role in quadruple murders and multiple rapes and other felonies and his multiple identifications through compelling DNA and other evidence.

Even if Deck were to be erroneously applied here, Robinson "still has the burden in his IAC-shackling claim to establish a reasonable probability that, but for his trial counsel's failure …, the result … would have been different," Marquard v. Secretary for Dept. of Corrections, 429 F.3d 1278, 1313 (11th Cir. 2005).

F. The trial court did not abuse its discretion in handling the shackling.

Given the magnitude of the charges and the presence of multiple defendants in the courtroom, the trial court's reasoning and measures were reasonable. In this context, the trial court's indication that it had "certain information" that justified the shackling was sufficient, and any juror's momentary glimpse would be insufficient to justify any additional proceedings on the matter. Further, the trial court did, in fact, afford defense counsel an opportunity to be heard. (See, e.g., R/II 214-39; R/X 1876-81)

For each of the foregoing reasons, no relief should be granted on ISSUE II.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm the trial court's denial of postconviction relief.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by U.S. MAIL on July 16, 2010: Maria Perinetti, Esq.; Assistant CCRC; Capital Collateral Regional Counsel; 3801 Corporex Park Drive, Suite 210; Tampa, FL 33619-1136.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
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