

**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC09-1860**

TIMOTHY ROBINSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL
CIRCUIT FOR ESCAMBIA COUNTY, STATE OF FLORIDA**

INITIAL BRIEF OF APPELLANT

Mark S. Gruber
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
813-740-3544
Counsel for Appellant

PRELIMINARY STATEMENT

This is an appeal of the circuit court's denial of Timothy Robinson's motion for postconviction relief brought pursuant to Florida Rule of Criminal Procedure 3.851.

The following format will be used when citing to the record. References to the record of the direct appeal of the trial, judgment, and sentence in this case shall be referred to as "R." followed by the appropriate volume and page numbers. References to the 2009 evidentiary hearing shall be referred to as "Evid." followed by the appropriate volume and page numbers. References to the postconviction record on appeal shall be referred to as "PC-R." followed by the appropriate volume and page numbers. References to exhibits to the post-conviction record on appeal shall be referred to as "PC-Ex." followed by the appropriate volume and page numbers. All other references will be self-explanatory or otherwise explained herein.

REQUEST FOR ORAL ARGUMENT

Timothy Robinson has been sentenced to death. Given the gravity of the case and the complexity of the issues raised herein, Mr. Robinson, through counsel, respectfully requests this Court grant oral argument.

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STATEMENT OF THE CASE

The episode from which this case arose occurred on November 19-20, 1988. On February 28, 1989, a grand jury returned an indictment for the Defendant on four counts of first degree murder, one count of attempted first degree murder, six counts of kidnapping with a firearm, two counts of sexual battery with a firearm, one count of conspiracy to traffic in more than 400 grams of cocaine, and two counts of robbery with a firearm. R. Vol. XII, 2101-2105.

Mr. Robinson was tried along with two of his co defendants, Michael Coleman and Darrell Frazier. The guilt phase trial began on May 22, 1989. The evidence presented at trial was summarized in *Coleman v. State*, 610 So. 2d 1283, 1284-1285 (Fla. 1992). On June 1, 1989, Mr. Robinson was found guilty as charged. R. Vol. XI, 1970-72. The penalty phase was conducted on June 2, 1989, ending with a six-to-six jury recommendation of a life sentence. R. Vol. XI, 2096-2097. The *Spencer*¹-type hearing took place on July 25, 1989. R. Vol. XIV, 2480-2508. The trial court overrode the jury's recommendation of life imprisonment and imposed a death sentence on September 26, 1989. R. Vol. XIV, 2562-2566. The written sentencing order and judgment and sentence are located at R. Vol.

¹ *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

XIV, 2582 -2587 and 2568-2581.

The judgment and sentence were affirmed at *Robinson v. State*, 610 So. 2d 1288 (Fla. 1992). The United States Supreme Court denied certiorari on February 28, 1994. *Robinson v. Florida*, 510 U.S. 1170 (1994).

Mr. Robinson filed an Amended Motion to Vacate Judgment and Sentence on January 13, 2000 and a Third Amended Motion to Vacate Judgment and Sentence on April 19, 2000. PC-R. Vol. Vol. V, 830-993; PC-R. Vol. VI, 994-1085; PC-R. Vol. X, 1867-1898. The State filed responses on February 25, 2000 and May 26, 2000. PC-R. Vol. IV-V, 671-818; PC-R. Vol. VI, 1109-1135. A case management conference was held on July 9, 2004. PC-R. Vol. VIII, 1354-1395. On September 13, 2004, the trial court issued an order granting an evidentiary hearing on Claims IIA and IIIA. PC-R. Vol. VIII, 1418-1419. Mr. Robinson filed a Supplement to Third Amended Motion to Vacate Judgment and Sentence on August 25, 2008. PC-R. Vol. X, 1867-1898. The State filed its response on October 20, 2008. PC-R. Vol. X, 1918-1947. A case management conference regarding the August 25, 2008 motion was held on January 29, 2009. PC-R. Vol. XI, 1982-2038. On March 12, 2009, the trial court further ordered an evidentiary hearing on the amendment to Claim IIIA as presented in Defendant's Supplement to Third Amended Motion to Vacate Judgment and Sentence. PC-R. Vol. XI,

2087-2088.

An evidentiary hearing was held on April 21-23, 2009. Mr. Robinson formally abandoned Claim IIA at the evidentiary hearing. Evid. Vol. II, 362-363. Written closing arguments were filed by both parties. PC-R. Vol. XIII, 2376-2443, 2448-2493. On September 4, 2009, the trial court entered an order denying relief. PC-R. Vol. XIV-XVII, 2494-3271. A notice of appeal was timely filed on September 17, 2009. PC-R. Vol. XVII, 3272-3273.

STATEMENT OF THE FACTS

Mr. Robinson presented seven witnesses at the evidentiary hearing held on April 21-23, 2009. The State presented one witness. Additionally, a deposition of Edward Robinson, Sr. was conducted on October 29, 2008, pursuant to the trial court's Order on Motion to Perpetuate Testimony dated October 6, 2008. PC-R. Vol. XI, 2107-2147; PC-R. Vol. X, 1916-1917. The facts elicited at the evidentiary hearing and through the deposition of Edward Robinson can be summarized as follows.

Edward Robinson, Sr.

Edward Robinson, Sr. is Timothy Robinson's father, although Edward suspects that Timothy is not his biological son. PC-R. Vol. XI, 2113. Edward and Mary, Timothy's mother, were together for approximately twenty years. *Id.* at

2114. According to Edward, they had six children. *Id.* at 2111.² Timothy's brother, Derrick, was Edward's favorite child. *Id.* at 2145. Having so many children was a financial burden for Edward. *Id.* at 2125. They lived in the projects in Liberty City for a long time, and it was "hectic." *Id.* at 2119. Edward smoked marijuana and there were drugs in the home when Timothy was growing up. *Id.* at 2120.

Edward was jealous of the attention that Timothy's mother received from other men, and he "didn't want her out of [his] sight." PC-R. Vol. XI, 2113-2114, 2121. He became angry when he could not control Mary and the children. *Id.* at 2121-2122. Edward and Mary argued in front of Timothy and his siblings all the time. *Id.* at 2117. Edward "would slap her around" or "attack her" in front of the children. *Id.* at 2121-2122. He recounted one incident in which he and Mary got into a big fight and he slapped her around in front of the children after a man nailed a warning on the door that someone in the house had a venereal disease. *Id.* at 2122. Edward recounted another incident that occurred after he and Mary separated. Edward was living with another woman in Opa Locka and Mary came to their home. *Id.* at 2116-2117. Mary shot Edward in the hip at point blank range.

² In reality, Edward and Mary Robinson had seven children. Edward neglected to list Edward G. Robinson, Jr.

Id.

The children often tried to intervene when their parents fought and, according to Edward, they always took their mother's side. PC-R. Vol. XI, 2117-2118. Timothy was especially protective of his siblings and his mother, and he tried to protect her when she fought with Edward. *Id.* at 2124-2125. Edward described how he felt when Timothy intervened to protect his mother:

I never saw him, he didn't exist when things like that were going on. I know he was there protesting whatever happened, but I couldn't see him. All I could see was my problem and for some reason I just ignored whatever he said. He was just the baby in the way, I guess, I don't know.

PC-R. Vol. XI, 2125.

Edward was the victim of horrible physical and verbal abuse at the hands of his alcoholic mother. PC-R. Vol. XI, 2134-2135. Although Edward denied hitting his own children, he described how he verbally abused, embarrassed, and insulted his children because of the profound and lasting effect that verbal abuse had on him as a child:

Well, something would happen and I tried to bring it to a level wherein they would feel it. I remember when I was a kid there where it started that I would remember being verbally abused. I can hardly ever remember being physically abused, but verbally I remember things that happen to me that I can't forget. It won't leave my head. It really hurt me verbal abuse for some reason and I figured this is the only way to get through to people. If you insult them and got on their nerves they will never forget it and it works. People listen to verbal

abuse but you can do something physically and they'll forget about it, but a verbal shellacking or whatever, beating you never forget, it sticks with you.

Id. at 2128.

Edward described Timothy as a quiet child who was also “bold,” “aggressive,” and “fearless.” PC-R. Vol. XI, 2129. Edward did not understand Timothy. *Id.* at 2145. He recounted an incident when Timothy was ten or eleven years old and his eleven year old cousin came to visit. *Id.* at 2129-2130. Edward made each of his children fight their cousin, and according to Edward, “Timothy was the only one of them that seemed to enjoy it.” *Id.* at 2130.

According to Edward, Timothy “had to prove something to somebody all the time. He was always proving how courageous he was . . .” PC-R. Vol. XI, 2133. When Timothy was twenty years old, Edward went to Mary’s house to pick up his two younger children. *Id.* at 2131-2132. He and Mary got into an argument and Edward got into his car. *Id.* Timothy went outside and shot at the car multiple times before “putting the gun to his head and smiling like it was funny.” *Id.*

Timothy’s trial attorneys did not contact Edward prior to trial. PC-R. Vol. XI, 2137. He was living in Miami Gardens in 1989 and he would have been available to testify at trial. *Id.*

Ivory Baker

Ivory Baker dated Timothy's older sister, Teeshawn, for four or five years in the mid 1980s. Evid. Vol. I, 7. Timothy was approximately 15 to 18 years old when Ivory dated Teeshawn, and Ivory was two years older than Timothy. *Id.* at 7.

When he and Teeshawn were dating, Ivory spent approximately four or five days a week in the Robinson home, and he was a witness to many of the events that were happening in the Robinson home during that time period. Evid. Vol. I, 10. When he first met Edward Robinson, Sr., he thought Edward was just a man Mary was dating, and not her children's father. *Id.* at 8. Edward did not communicate with Mary or the children. *Id.* at 8. Edward acted as though his wife and children were beneath him, and he always used profanity and insults. *Id.* at 9. He even cursed at his twins, who were four or five years old, and he spoke to them like they were adults. *Id.* at 9. Ivory never heard Edward say anything positive to Timothy, nor did he ever see Edward show Timothy any affection. *Id.* at 10. During the course of the four or five years that Ivory dated Teeshawn, Edward said about fifty words to Ivory, if that. *Id.* at 10.

Edward was a very violent man, and Ivory feared for Teeshawn's safety when she was living in Edward's house. Evid. Vol. I, 12, 19-20. Edward had guns in the home. *Id.* at 18. Everyone in the Robinson home tried to ignore Edward, but

Edward provoked them to “come into his world” and “give him a reason for his actions.” *Id.* At 12. Any little thing, such as a child dropping a toy or running through the house, would set Edward off, causing him to use profanity and be loud. *Id.* at 12. Edward was also verbally abusive toward Mary, and he spoke to her like she was “somebody off the streets.” *Id.* at 15. One time Ivory was inside the Robinson house and Edward was on the side of the house shooting a gun. *Id.* at 16. On another occasion, Edward went into the backyard in his underwear and shot a gun. *Id.* at 19. Ivory recalled another incident when Timothy’s brother was approximately five or six years old and Edward beat him as though he was a grown man. *Id.* at 17. On several occasions, Edward threatened to kill his entire family, and the family took these threats seriously. *Id.* at 19.

While Ivory witnessed a lot of violent behavior on the part of Edward Robinson, he believed that things were even worse when he was not present, because of what he could hear when he was on the phone with Teeshawn. *Evid.* Vol. I, 38. Likewise, on several occasions when the police were called to the home, Edward would change and act as though he was provoked. *Id.* at 18.

Mary and the children routinely left and stayed with friends and relatives when things became violent in the Robinson home. *Evid.* Vol. I, 17. They often left the home early in the morning and stayed away until midnight in an effort to

avoid Edward. *Id.* at 18. When Timothy visited Ivory's house, which was peaceful and loving, he did not want to leave. *Id.* at 22. On one occasion, Mary and the children stayed with Ivory and his mother for several weeks after Edward threatened his family with a gun. *Id.* at 21.

Edward also exposed his children to drugs. Evid. Vol. I, 10. He smoked marijuana in front of the children, and Ivory saw him smoking marijuana every time he went to the Robinson home. *Id.* at 10-11. When Edward smoked marijuana, he acted "like no one else in the world existed." *Id.* at 11. Edward also drank alcohol practically every time he smoked marijuana. *Id.* at 11. When Edward drank alcohol, he became more aggressive. *Id.* at 12. Although Ivory did not see Edward use any other illegal drugs, he suspected that Edward was using drugs when he locked himself in his room and emerged looking zoned out and paranoid. *Id.* at 14.

Ivory further described Edward's bizarre behavior. Sometimes Edward came out of his room in his underwear in front of the children. Evid. Vol. I, 9. Ivory also saw Edward walk around the house or in the yard naked two or three times, not doing anything to cover up when he saw his children. *Id.* at 14-15. If anyone said anything to him, Edward would respond by saying "This is my motherfucking house," or threatening to kill whoever dared to challenge him. *Id.*

at 9. Edward's family tried not to respond to his actions, because when they did it "triggered him to go to the next level." *Id.* at 19.

The death of Timothy's older brother, Derek, was a "big blow" to the family. Evid. Vol. I, 23. Timothy and Derek were very protective of their mother and siblings. *Id.* at 17, 22. Derek took on the role of father in the family, and he helped purchase a home for his mother to get her away from Edward. *Id.* at 23, 28-29. Although Edward did not communicate with Derek, Derek stood up to his father and everyone looked up to him. *Id.* at 23-24.

Timothy's trial attorneys did not contact Ivory prior to trial. Evid. Vol. I, 32. He was living in Tallahassee in 1989 and he would have been available to testify at trial. *Id.*

Gloria Baker

Gloria Baker is a foster mother and a retired school bus driver. Evid. Vol. I, 41. She became acquainted with the Robinson family when her son, Ivory Baker, dated Timothy's older sister Teeshawn for approximately four years. *Id.* at 41-43.

Gloria described Edward Robinson as a "very mean, hateful person." Evid. Vol. I, 45. He had no relationship with his children. *Id.* at 45. She never heard the Robinson children say anything positive about their father, only negative things. *Id.* at 45. The children were afraid of Edward. *Id.* at 46. He set an example of

violence. *Id.* at 46. It was apparent that Ivory was very afraid for Teeshawn's safety in the Robinson home. *Id.* at 49.

When Ivory and Teeshawn first started dating, Ivory spent a lot of time at the Robinson home. Evid. Vol. I, 42. After a while, Ivory and Teeshawn began spending more time at the Baker home. *Id.* at 42. Timothy and Teeshawn were very close, and Timothy would also come to Gloria's house sometimes. *Id.* at 43.

Gloria recalled instances where Teeshawn and Timothy tried to stay at her home to avoid their father. When Teeshawn was at Gloria's house and Gloria told her it was time to go home, she would find excuses not to go home. Evid. Vol. I, 46-47. When Timothy came over, Gloria would tell Ivory to make everyone leave and Timothy would sneak back in during the night. *Id.* at 47.

Gloria came to know Mary Robinson through Ivory's dating relationship with Teeshawn. Mary was a good, loving mother. Evid. Vol. I, 64. During the time Teeshawn and Ivory were dating, Mary worked as a custodian at Carol City Elementary School. *Id.* at 43. Sometimes she saw Mary and the children walking in the rain or in the dark in the morning and Gloria picked them up in her school bus. *Id.* at 44. Gloria described Mary Robinson as a battered woman. *Id.* at 48. With Mary and Edward, "[t]here was a lot of anger and a lot of arguing, a lot of threatening." *Id.* at 48.

Mary and the children would often leave the home and stay with friends and family. Evid. Vol. I, 53. Gloria recalled one time when Mary and the children stayed with her in her home for approximately one month. *Id.* at 51. Ivory was on the phone with Teeshawn one evening and Gloria heard Ivory say he was tired of Edward's abuse and arguing. *Id.* at 49, 51. Ivory told Teeshawn to get out of the way in case Edward shoots and that he would be right there. *Id.* at 50. Ivory drove to the Robinson home and Gloria followed him in a separate car. *Id.* at 50. Gloria described what happened next:

When I got halfway down the street, Mary and the kids was standing in the street and I stopped and asked her what's going on, and she said that man down there with a gun. He's talking about killing all of us and that and that. I said, where is my child? She said, I don't know. I said, oh. So I said, Mary, ya'll get in the car, get in the car and let's go. She was standing there hesitating. I said, Mary, come on. I said, if you don't go put the kids in the car. So they got in the car. And as I started past the house I saw him in the yard with a gun. So instead of me going forward, I backed up and I had taken them home with me and I kept them.

Id. at 51.

Timothy did not come with her at that time because he was hiding in a shed behind the house. *Id.* at 51. He came to her house later when he found out his mother and sisters were there. *Id.* at 52.

While Mary was staying with her, Gloria attempted to help her get away from Edward. She took her to Opa Locka City Hall to a program that helped

battered women find housing. Evid. Vol. I, 52. When she was not working, Gloria tried to help Mary find low income housing. *Id.* at 52. Despite Gloria's help, however, Mary went back to Edward. *Id.* at 53.

Mary eventually left Edward for good when her son, Derek, bought her a house. Evid. Vol. I, 54. Derek was very protective of his mother. *Id.* at 54. He earned the money to purchase the house from selling drugs. *Id.* at 54. Even after she had her own house, however, Mary would sometimes go back to Edward and leave Teeshawn in charge of her younger brothers and sisters. *Id.* at 54.

Timothy's trial attorneys did not contact Gloria prior to trial. Evid. Vol. I, 55. She was living in Miami in 1989 and she would have been available to testify at trial. *Id.* at 40, 55.

Richard Delancey

Richard Delancey is Timothy Robinson's paternal uncle and Edward Robinson, Sr.'s younger brother. Evid. Vol. I, 68. Although they have different fathers, Richard and Edward grew up together. *Id.* at 72, 83. Richard and Edward's mother married Richard's father, but she never married Edward's father, and this bothered Edward. *Id.* at 86-87. Eventually, Edward grew to hate their mother. *Id.* at 87.

When Richard was seventeen years old, his mother was incarcerated and he

went to stay with Edward and Mary. Evid. Vol. I, 68-69. Timothy was four or five years old at the time. *Id.* at 69. Richard lived with Edward and Mary for three and a half to four and a half years in the projects in Liberty City. *Id.* at 69-70. He believes that the family was on some kind of government assistance at the time, such as food stamps. *Id.* at 72.

Edward had an extensive history of drug use. The drugs made him “paranoid” and “emotionally damaged.” Evid. Vol. I, 81. Before Timothy was born, Edward’s drug of choice was heroin. *Id.* at 81. Aside from using heroin, he also sold it. *Id.* at 83. After Timothy was born, Edward used cocaine, alcohol, and marijuana. *Id.* at 85. He would be high in the presence of his children, and he smoked marijuana and drank in front of them. *Id.* at 85. The cocaine made him act “irrational,” “moody”, and argumentative. *Id.* at 84. Edward was especially bad when he combined cocaine and alcohol. *Id.* at 85. The only time Edward was not on drugs was when he went to work. *Id.* at 84.

Edward glorified drugs and criminal activity in front of his children. Evid. Vol. I, 79. He lived the “gangster lifestyle,” pimping prostitutes and selling drugs. *Id.* at 97-98. He did not teach his children to value education. *Id.* at 80. Edward believed that if a person did not have an education to make money, he should get money the best way he can, even if it meant selling drugs or robbing people. *Id.* at

79. Edward glorified the main character in the movie *Super Fly*, who was a drug dealer. *Id.* at 80. He said that the character “did what he had to do because he wasn’t given the opportunity to abide by the rules of society to achieve, so he went and he sold drugs.” *Id.* at 80. According to Richard, Edward started arguments with Mary to give him an excuse to get out of the house and do what he wanted to do, such as see other women or get drugs. *Id.* at 78.

Richard described his brother Edward as “a number of deranged personalities.” Evid. Vol. I, 72. He was “explosive” and “cruel.” *Id.* at 72. He acted enraged more often than he acted normal. *Id.* at 119. When things didn’t go Edward’s way, he took it out on the people around him. *Id.* at 72. “If you did anything to him you paid one way or another.” *Id.* at 72. Edward did not tolerate people who disagreed with him. *Id.* at 73. He often resorted to verbal abuse and insults, and he used very harsh language, regardless of whom he was speaking to. *Id.* at 73. “He would just say what he had to say to make you feel that you were inferior or bad.” *Id.* at 73. Edward and Richard would often argue in front of the children. *Id.* at 74-75.

Edward was also verbally abusive toward his children. Evid. Vol. I, 73. The children feared Edward. *Id.* at 90. When they did or said things Edward did not approve of, he would give them a “verbal shellacking.” *Id.*; at 76-77. When

Timothy repeated things his older brother said, Edward would say, “That must have come out of your ass because your mouth knows better.” *Id.* at 76. He told Timothy that he was stupid and he told the children that they were “not smart enough to get a Ph.D.” *Id.* at 80. Edward called Mary a “stupid bitch” and a “whore,” and that made the children angry. *Id.* at 77. Often when Edward was verbally abusive, he was under the influence of drugs. *Id.* at 77.

Edward traumatized his children by using extreme punishments. Evid. Vol. I, 89. He never explained to the children why they should not do certain things, or discussed the consequences of certain actions. *Id.* at 90. Richard recalled one incident when Timothy was eight or nine years old and he and his friends were playing outside in a box and drinking liquor that they got out of the house. *Id.* at 74. Richard went to speak to Timothy about what he was doing, but Edward overheard their conversation:

He comes over and blew it all out of proportion. You know, he grabbed him by the arm – damn it, do you know what you’re doing? You’re stealing from me, and you know better. Are you thinking, damn it? Are you crazy? I said, hey, man, what are you going to do, kill him? I said, he’s just a kid, man, you know. You stay out of this; you are not his father. I said, no, but, you know, I know what you’re doing is wrong . . .

It went on too long. Because I commented to him – that’s when I said to him, well, what are you going to do, kill him?

This attitude he had it was too extreme because I believe in, you know, let the punishment fit the crime. And he had him by the arm and he's squeezing him and he's shaking him. Tim is looking at me as if to say, Uncle Richard help me out.

Id. at 74-75.

A pivotal moment in Timothy's life was when his father took him to a man he did not know and told him that that man was his father. Evid. Vol. I, 91. Timothy was eleven or twelve years old at the time. *Id.* at 91. This affected Timothy in a lot of ways, and after that point, he acted as though he felt left out of the family. *Id.* at 92.

Edward was physically abusive toward Mary, often when he was under the influence of drugs. Evid. Vol. I, 81. Richard described some of the incidents when Edward physically abused Mary:

He broke her jaw. He knocked her down the stairs once. He jacked her up. When I say jacked her up, I mean like grabbed her and shook her up, pulled her hair out, and he thought nothing of it.

Id. at 81.

The incident when Edward broke Mary's jaw occurred when Timothy was a small child. *Id.* at 111. Mary was hospitalized and had her jaw wired. *Id.* at 111. There were times when Timothy and his siblings intervened when Edward was beating Mary. *Id.* at 96. When Richard tried to intervene, Edward accused him of having an affair with Mary. *Id.* at 82.

In addition to the physical abuse he inflicted upon Mary, Edward has a history of violent behavior. One time, Edward's sister, Jeanette, broke into his house and stole some money that Edward made from selling heroin. Evid. Vol. I, 83. When Edward found out, he beat her with a stick, and Richard had to stop him. *Id.* at 83. Richard recounted another incident when he, Mary, and the children watched as Edward chopped up the furniture in the home with a buoy knife. *Id.* at 93-96. Edward was under the influence and was acting irrationally. *Id.* at 94. He threw Mary down and choked her. *Id.* at 94. Edward chopped up the stereo, a picture Richard painted of Mary, and some of Richard's other artwork. *Id.* at 95-96. He poked holes in the furniture. *Id.* at 96. Richard called the police, and when the police arrived, Edward challenged them to shoot him. *Id.* at 94.

Timothy's trial attorneys did not contact Richard prior to trial. Evid. Vol. I, 99. He was living in Miami in 1989 and he would have been available to testify at trial. *Id.* at 100.

Edward G. Robinson, Jr.

Edward G. Robinson, Jr. is Timothy Robinson's brother. Evid. Vol. I, 123. Edward is three years older than Timothy. *Id.* at 123. Edward and Timothy grew up in the same home in the Scott Projects in Liberty City, and the two observed a lot of the same things in the community. *Id.* at 123.

The Robinson family was poor, and they received assistance from the government. Evid. Vol. I, 126. They received food stamps and a monthly check. *Id.* at 126. They ate government issued peanut butter, cheese, and cornflakes. *Id.* at 126. When they opened the box of cornflakes in the morning, roaches would run out, but they had to eat the cereal anyway. *Id.* at 126. According to Edward, “my mother was taken care of by the government. The government was her husband.” *Id.* at 126.

When Timothy was a child, he was riding his Big Wheel tricycle in the projects and he was hit by a drunk driver. Evid. Vol. I, 135. The car dragged him and split his head open. *Id.* at 135. There was blood everywhere and people were screaming. *Id.* at 135-136.

When Edward and Timothy lived in Liberty City, it was “hell.” Evid. Vol. I, 123. They observed violence every day, including fighting, shootings, and stabbings. *Id.* at 124. Edward recalled an incident when he and Timothy witnessed two sisters who lived behind them shoot a man several times and beat him with a bat in the street. *Id.* at 125. Drugs such as alcohol, marijuana, cocaine, and pills were readily available. *Id.* at 125. They observed prostitution every day. *Id.* at 126.

The community in Liberty City did not trust the police department at all.

Evid. Vol. I, 128. Any encounters between the community and the police department were negative, such as the police arresting someone or chasing someone. *Id.* at 128. His maternal uncle was a police officer, but he would never visit his family in the projects. *Id.* at 128.

Mary Robinson taught her children that they had to fight. Evid. Vol. I, 126-127. She told them that she did not want them growing up punks. *Id.* at 127. They had to know how to fight in the projects, to protect themselves and their siblings. *Id.* at 127. Edward and Timothy's uncles made the children fight one another to see who was the toughest. *Id.* at 127. Edward and Timothy were protective of their siblings and they fought more than any of the others. *Id.* at 127.

Edward and Timothy were not given the tools they needed to succeed in school. Their mother wanted them to go to school, but she could not help them with their school work because she was not educated. Evid. Vol. I, 134. Their father did not encourage them to go to school at all. *Id.* at 134. There were few opportunities for Edward and Timothy growing up, and they focused on surviving and staying alive. *Id.* at 134-135.

Edward and Timothy both attended an alternative school called Jan Mann Opportunity School. *Id.* at 129. It was "just like the hood." *Id.* at 129. Many of same problems that they encountered in the projects existed at school, such as

fight, drugs, guns, and other weapons. *Id.* at 129.

Edward and Timothy also both attended Okeechobee Boys Home. *Evid.* Vol. I, 131. Edward was there in 1976 to 1977 and Timothy was right behind him. *Id.* at 131. The children who were sent there had committed a variety of offenses, including burglaries, robberies, car thefts, and even murders. *Id.* at 132. Children at the Okeechobee Boys' Home picked up bad habits and learned how to be criminals from the other children who were there. *Id.* at 132. There was physical abuse and sexual abuse, both from the guards and the other children. *Id.* at 132. Rapes occurred frequently. *Id.* at 133. When the children fought or sexually abused each other, the guards turned their heads. *Id.* at 133.

Edward regrets that he exposed Timothy to things that he should not have exposed him to at a young age. *Evid.* Vol. I, 130. He described himself as a corrupting influence. *Id.* at 131. He and his brother Derek sold drugs, which is how they were eventually able to afford a house for their mother. *Id.* at 146. Edward and Timothy did drugs together, including alcohol, marijuana, cocaine, and Quaaludes. *Id.* at 125. They stole and robbed to support their drug habits. *Id.* at 148. Timothy's first encounter with the law happened at the age of ten, when Edward put Timothy and Teeshawn through a window to break into a house and steal some weapons to protect themselves. *Id.* at 130. Edward owned a rifle, and

whenever somebody messed with him or Timothy, they would get the rifle and go in the bushes like they were going to shoot them. *Id.* at 145.

The environment in the Robinson home was worse than the streets. Evid. Vol. I, 136. The Robinson children were traumatized by verbal and physical abuse. *Id.* at 136. Edward never felt safe, and he lived his life in fear and anger. *Id.* at 136. Their father did not show his children love or spend time with them. *Id.* at 147. He abused alcohol, marijuana, and heroin, and their mother gave him money to support his drug habit. *Id.* at 145. Edward and Timothy smoked marijuana with their father from the time they were twelve or thirteen years old. *Id.* at 136. The first time Edward had sex when he was twelve or thirteen years old, his father took him to a prostitute. *Id.* at 137. Their father would lock himself in his room and play his music, and if the children made noise he came out and called them names such as “dead ass” and “asshole.” *Id.* at 137. Sometimes when they went to department stores or grocery stores, their mother had Edward and Timothy help her shoplift. *Id.* at 147.

Edward Robinson, Sr. was a violent man. Evid. Vol. I, 137. He looked for things to tick him off, and he provoked people to fight with him, especially when he was drinking or smoking marijuana. *Id.* at 141. He had guns in the home. *Id.* at 145. There were several occasions when he threatened to kill his family. *Id.* at

144. He fought with his wife at least three times a week. *Id.* at 141. He hit her in the head with vases. *Id.* at 140. He knocked her out cold. *Id.* at 140. He broke her jaw and he broke her nose. *Id.* at 137. She wore shades all the time to hide her black eyes. *Id.* at 161. He chopped up all the furniture in the house with a knife he made. *Id.* at 140. All of the children witnessed their father beat their mother. *Id.* at 139. The police came to the home several times, but it never helped the situation. *Id.* at 141. Sometimes Mary and the children ran from the home and stayed with neighbors for two or three days, but eventually they would come home thinking Edward Sr. had calmed down and that everything would be all right. *Id.* at 140. Instead, it would start all over again. *Id.* at 140.

Edward Robinson, Sr. beat his children until they were black and blue with two-by-fours, sticks, extension cords, and his fists. Evid. Vol. I, 137-138. He would “bust your mouth, nose, knock you in the eye.” *Id.* at 138. One day he slapped Timothy so hard that he knocked two teeth out of his mouth. *Id.* at 138. He beat all of the children, but he beat them more when they tried to stop him from jumping on their mother. *Id.* at 138. Timothy started intervening in fights between his mother and father when he was approximately eight years old. *Id.* at 138. Edward and Timothy stood up for their mother the most, but they were no match for their father. *Id.* at 138.

His father's constant abuse caused Edward to run away from home twice.

Id. at 142. He described the day when he was thirteen or fourteen years old and he left his father's home for good:

I got a gun, and one day I was leaving home and I heard him – I was about two blocks down the street and I heard him yelling at my mother – B, I told you this. I knew he was beating my mother, and I ran back home. And when I ran back home, that was the last straw with me and him.

When I went in the door, he was coming at my mother and I pulled the gun out and clicked the handle back and told my mother to get out of the way. And I told him, if you ever hit my mother again I'm going to kill you. She was hollering and screaming, put the gun down. He ran into the room. I took my mother out of the house and tried to get her next door to Ms. Katie's house. She was screaming for Ms. Katie and Mr. Jim to call the police. Call the police. Call the police.

He came to the door with a rifle and pointed a rifle between the crack of the door. He pointed it out. I'm trying to keep my mom behind the door, I would have killed him that day. He wouldn't come out of the door. He just stood in the crack telling me to put the gun down. I said, no, you come out here. Come get the gun. I ran and hid the gun, and Ms. Katie and them called the police. I hid the gun. The police came, and I lied and said I didn't have no gun. He had a gun. The police didn't take anybody to jail.

And at that point he told my mama he didn't want me around there anymore. I couldn't stay there anymore.

Id. at 142-144.

Timothy's trial attorneys did not contact Edward prior to trial. Evid. Vol. I, 149. He was living in Miami and he would have been available to testify at trial.

Id. at 149.

Marjorie Hammock, MSW

Marjorie Hammock, MSW is a licensed social worker with several decades of experience. Evid. Vol. I, 167; Evid. Vol. II, 214; PC-Ex. Vol. I, 1-2A. She was hired by CCRC-Middle to perform a biopsychosocial assessment of Timothy Robinson. Evid. Vol. I, 175. She interviewed numerous witnesses, reviewed records and scholarly literature, and met with Timothy. *Id.* at 177, 181. She also consulted with Dr. Marvin Dunn and observed the testimony of Ivory Baker, Gloria Baker, Richard Delancey, and Edward G. Robinson, Jr. Evid. Vol. I, 178, 180. She was accepted as an expert in clinical social work and conducting biopsychosocial assessments. *Id.* at 175.

Ms. Hammock explained the importance of considering various sources to put together a complete picture. She never relies solely on her interview with the individual she is assessing, but instead speaks to additional witnesses in order to learn their opinions and observations of the person whom she is assessing. Evid. Vol. I, 171. Some witnesses are more forthcoming than others, and different witnesses might have different views of the same situation. *Id.* at 178-179. For example, victims of abuse, such as Mary Robinson, have a tendency to minimize bad experiences, and those experiences are outweighed by the need to keep the

family together. *Id.* at 179-180. In this way, Mary Robinson had a different perspective than other people regarding “what was violent and what was abusive and what could be tolerated.” *Id.* at 179. It is also common for people to have difficulty remembering dates. *Id.* at 180. Additionally, if an event is particularly traumatic, “there is a tendency to avoid remembering the specifics.” *Id.* at 180.

Ms. Hammock identified patterns in Timothy Robinson’s life. He was subjected to physical abuse and neglect. Evid. Vol. I, 182. There was a lack of resources, and the Robinson children’s needs were not always met. *Id.* at 182. Timothy experienced loss, including “the specific loss of any kind of continuity or structure in his life because things changed very rapidly on an ongoing basis,” the death of his older brother Derek at a critical point in his life, and the loss of his brother Edward when he left the home. *Id.* at 183. There was also a pattern of corruption, which encompassed physical abuse, violence, and substance abuse. *Id.* at 182-83.

These patterns were evident in the major developmental time frames of Timothy Robinson’s life. The first stage Ms. Hammock considered was the prenatal stage. Timothy’s parents were living together in Liberty City, but they were not married. Evid. Vol. I, 184. At first, their relationship was positive. *Id.* at 184. However, Edward started to be abusive, jealous, and negative around the time

of Timothy's birth. *Id.* at 184. According to Edward, he resented having to be responsible for another child. *Id.* at 184. Additionally, Mary reported that shortly before giving birth to Timothy, she saw someone killed near her and that person fell on her. *Id.* at 184.

The next major developmental period in Timothy's life was early childhood. Evid. Vol. I, 185. The family had limited resources, and they were eligible for welfare and food stamps. *Id.* at 186. Timothy's father, Edward, was hostile and abusive toward the family. *Id.* at 186-187. Edward abused drugs and alcohol, and the abuse escalated when he was high. *Id.* at 186-187. Edward was jealous of Mary, and he was afraid that other men wanted her. *Id.* at 187. Sometimes when Edward was abusive, Mary and the children left the house and stayed with neighbors or friends. *Id.* at 187.

Timothy had a negative relationship with his father. Edward told Timothy when he was very young that he was not his son, and as a result Timothy experienced a loss of belonging. Evid. Vol. I, 192-193. Timothy and his brothers became involved with trying to protect their mother from their father when they were seven or eight years old. *Id.* at 187. Edward resented the fact that his children stuck up for their mother and did not hold him in high regard. *Id.* at 188. Edward admitted to using physical punishment with his children. *Id.* at 188.

Several family members reported to Ms. Hammock that they witnessed Edward being extremely physically abusive toward his children. *Id.* at 188.

In addition to the violence in the home, Timothy encountered violence in the community during his early childhood. *Id.* at 188. The community where Timothy grew up was a hostile place, and he had to fend for himself because he did not have many adults to protect him. *Id.* at 188. He looked for ways to get money, both legally and illegally. *Id.* at 189. As Edward Robinson, Jr. testified, Timothy had to fight to survive. *Id.* at 189.

Exposure to violence during early childhood can have a profound impact on a child's development. It can make a child anxious about protecting himself and his turf. Evid. Vol. I, 189. Children who experience violence are likely to abuse drugs and be depressed or suicidal. *Id.* at 189. They may be on guard, untrusting, or feel that people are out to get them. *Id.* at 189. They may have difficulty concentrating on the good things around them. *Id.* at 189. Exposure to violence may also interfere with a child's ability to be a good student because he cannot focus on his school work. *Id.* at 189.

Ms. Hammock discussed how exposure to violence affected Timothy:

Well, as I mentioned, the ability to maintain a good, steady relationship other than with his brother, and they were cohorts. But outside of that, very little trust of others. Anticipation that he could be

harmed just like he regularly was harmed by his dad, and a serious sense of powerlessness, which leads to – again, can lead to depression and feeling negative feelings about self. So he didn't have much faith in the goodness of the world as it were.

Id. at 190.

Additionally, Timothy's drug use and some of his behavior suggested that he did not care about himself. *Id.* at 190.

There was additional evidence of corruption during Timothy's early childhood. Evid. Vol. I, 190. He was introduced to marijuana around the age of eight or nine by his father and brother. *Id.* at 190. His father and brother also introduced Timothy to a variety of criminal acts, such as burglary and robbery. *Id.* at 191. Timothy's father took Timothy with him to help him rob a house, and on more than one occasion he was pushed through a window by his father and brother to access a house. *Id.* at 191.

Many of the problems of Timothy's early childhood continued into his adolescence. There was never enough money in the Robinson home. Evid. Vol. I, 192. Edward was fired from his job for using drugs. *Id.* at 200. The Robinson children worked to support themselves and to help their mother. *Id.* at 192. Their father taught them to get money the best way they could, even if that meant hustling. *Id.* at 200. Timothy started selling drugs at age twelve or thirteen. *Id.* at 192. At one point, Timothy worked at a country club, but the tips he earned went

to his mother. *Id.* at 192. Timothy and his siblings were getting arrested. *Id.* at 193. Additionally, Timothy experienced a loss when his brother, Edward was removed from the home. *Id.* at 200-201.

In addition to the violence he continued to experience in the community, the environment in the Robinson home remained violent. Evid. Vol. I, 193, 199. Edward was abusive toward his wife and children. *Id.* at 193. Timothy's role in the family was to protect his mother and siblings, and he became more forceful in trying to protect both his mother and himself from his father. *Id.* at 194-195. Although Timothy accepted his role as protector, it took its toll, and he did not have the support necessary for positive growth and development during his childhood. *Id.* at 196.

Additionally, Timothy did not receive the support he needed to succeed in school. Evid. Vol. I, 196. His mother did not have the time to make sure he went to school and did his homework. *Id.* at 196. His father was not interested. *Id.* at 196. He insulted Timothy and told him that he was going to be stupid, which had a negative, discouraging impact on Timothy. *Id.* at 196-97. As a result, Timothy did not perform well in school. *Id.* at 197. His grades dropped after first grade. *Id.* at 197. At times, he was excessively absent from school. *Id.* at 197.

Eventually, Timothy was sent to an alternative school. Evid. Vol. I, 197.

Alternative schools are special schools for children with behavioral or educational issues. *Id.* at 198. There were weapons and violence in the alternative school Timothy attended. *Id.* at 198. According to the school’s principal, Mr. Shateen, the focus of the school was containment. *Id.* at 198. The school had difficulty maintaining “a decent educational program because they were always putting out fires with warring groups of students.” *Id.* at 198.

As a young adolescent, Timothy was sent to the Okeechobee Boys’ Home. Evid. Vol. I, 201.³ It was a “horrendous” and “exploitative” environment. *Id.* at 201. The ACLU filed a class action lawsuit against the Okeechobee Boys’ Home, which highlighted some of the horrific practices of the institution over a period of time, including the time Timothy spent there. Evid. Vol. II at 224; PC-R. Vol. XII, 2243-2344. The conditions were unsanitary. *Id.* at 224. The young people at the school endured physical abuse, beatings, and rapes. Evid. Vol. I, 201. They experienced “profound isolation,” such as being “locked in holes.” *Id.* at 201. There was also a practice of hog tying. *Id.* at 201. After he was released from the

³ Records from the Department of Corrections indicate that Timothy was committed to the Okeechobee Boys Home for six months in 1979. PC-R. Vol. IV, 562, 566, 727. Timothy was twelve years old at the time. *Id.* at 727.

Okeechobee Boys Home, Timothy was sent to adult prison. *Id.* at 202.⁴ Adult prison proved to be another “training ground for violence and learning criminality.” *Id.* at 202.

Ms. Hammock discussed the importance of an adolescent having a safe haven. Evid. Vol. I, 199. During adolescence, children experience rapid physical and emotional growth and change. *Id.* at 199. “[I]f there isn’t stability and consistency in their lives, it’s hard for them to continue healthy development and get a sense of themselves and their relationship to the rest of the community.” *Id.* at 199. In Timothy’s case, he had few temporary safe havens, such as his uncle, Richard Delancey. *Id.* at 199.

Timothy’s young adulthood proved to be a very traumatic and unproductive time. Evid. Vol. I, 205. After he was released from prison, he attempted to turn his life around. *Id.* at 203. A minister in a detention center influenced Timothy to become involved in the church and the ministry, and Timothy became active in the church for a time. *Id.* at 203. Unfortunately, when Timothy was not able to make enough money to support himself and help his mother and his siblings, he went back to selling drugs. *Id.* at 203. He also used drugs, including marijuana and

⁴ Records from the Department of Corrections indicate that Timothy was sentenced as a youthful offender on October 9, 1981 to two years in prison, followed by two years of community control. PC-Ex. Vol. IV, 540-541. He was fifteen years old.

cocaine. *Id.* at 204. His life on the streets was violent. *Id.* at 203. He continued to have violent encounters with his father, which sometimes involves guns. *Id.* at 203-04. He lived an “empty existence,” in which “[h]e wasn’t connected to anyone in any kind of serious way.” *Id.* at 204.

The Robinson family experienced a devastating loss during Timothy’s young adulthood when his brother, Derek, was shot and killed. Evid. Vol. I, 205.

It was a very, very major impact on all family members, and there were changes in the behavior of family members. It was more – there was some depression. Folks just sort of went down and out. It really sort of crushed the family. He was, despite his activity, a major force in the family and it hurt everybody. It sort of gave a sense of there is really nothing for me to do but whatever I can to survive. *Id.* at 205.

Ms. Hammock discussed the literature on risk factors and protective factors. Evid. Vol. I, 205. By looking at risk factors and protective factors, social workers can predict possible outcomes and intervene in people’s lives to protect them from negative outcomes and consequences. *Id.* at 206. Ms Hammock listed several risk factors in Timothy’s life, including a lack of strong, positive parenting; poverty and a lack of resources; violence and instability; a non-nurturing environment in and around the home; and alcohol and drug abuse. *Id.* at 207. In contrast, the only protective factor she was able to identify was the presence of one or two people, including his brother, who “cared about him and wanted to take care of him.” *Id.*

at 207. She concluded that Timothy had extreme limitations and multiple challenges growing up. The “very negative [and corrupting] influences . . . , abuse and violence . . . made it very difficult for him to proceed in a healthy and productive kind of way.” *Id.* at 208.

Marvin Dunn, Ph.D.

Marvin Dunn, Ph.D. is a psychologist and a retired psychology professor from Florida International University, who specializes in community psychology. *Evid.* Vol. II, 236-237. He also possesses extensive knowledge about the history of African American people in Miami-Dade County, and in 1997 he published the first comprehensive work on the subject, entitled *Black Miami in the Twentieth Century*. *Id.* at 237. He was accepted as an expert in community psychology and the history of African American people in Miami-Dade County. *Id.* at 242.

Dr. Dunn was hired by CCRC-Middle to assess the impact of external factors on Timothy Robinson’s life. *Evid.* Vol. II, 242-243. He interviewed numerous witnesses, reviewed records, and met with Timothy six to eight times. *Id.* at 243-244. Additionally, he relied on his own research concerning the African American community in Miami-Dade County, as well as his personal experiences as an African American male growing up in Opa Locka. *Id.* at 244-245. He also consulted with Marjorie Hammock, MSW and observed the testimony of Ms.

Hammock, Ivory Baker, Gloria Baker, Richard Delancey, and Edward G. Robinson, Jr. *Id.* at 246.

As chair of the psychology department at Florida International University, Dr. Dunn was tasked with grading the evaluations of other experts. *Evid. Vol. II*, 245-246. He reviewed the testimony of James Larson, Ph.D. from the penalty phase of Timothy's 1989 trial. *Id.* at 245. He described Dr. Larson's evaluation of Timothy as "superficial," "inadequate," and "missing very important elements that, in a case like this, should have been considered." *Id.* at 246. It was a substandard assessment, which should have included more information about Timothy's family background. *Id.* at 303. Dr. Dunn would have given Dr. Larson's testimony a grade of D-plus. *Id.* at 246.

Timothy Robinson was born in 1966. *Evid. Vol. II*, 246. When he was young, his family lived in the James E. Scott Housing Project in Liberty City, approximately four miles northeast of Miami. *Id.* at 247. Although Liberty City had once been an attractive place to live, by the time Timothy was born it was in full decline. *Id.* at 247.

The community was suffering serious problems with overcrowdedness, crime, drugs, youth violence. The schools were performing terribly. The drop-out rate was astronomical. There were serious problems with the police in the community at the time. And of all the locations in Liberty City, the James E. Scott Housing Project

was the worst.
Id. at 247.

When Timothy was approximately seven years old, his family moved six miles north to Opa Locka. Evid. Vol. II, 248. Opa Locka was experiencing some of the same problems at that time as Liberty City, including drugs, violence, and failing schools. *Id.* at 249. Even after the Robinson family moved away from Liberty City, “[i]t was as if he never left.” *Id.* at 249. From the time he was eight years old, Timothy took the bus by himself from Opa Locka to the James E. Scott Housing Project to be with his friends in Liberty City. *Id.* at 249-250. A surrogate grandmother named Grandma B, who lived next to the Robinson family in the projects, allowed Timothy to stay with her when he went back to Liberty City. *Id.* at 250.

According to the critical period hypothesis, a theory in psychology that was started by a biologist named Conrad Lorenz, there are “certain periods in human development . . . when certain things are learned optimally.” Evid. Vol. II, 250-251. In terms of social development, “[t]here are certain periods during which children develop certain ideas and values and ways of behaving with others. . . . [A]fter a certain period, it’s very difficult to get them to relate in a different way.” *Id.* at 251. The critical theory hypothesis is particularly relevant in Timothy’s case

because his family moved out of Liberty City after the critical period during which his social and intellectual development were important. *Id.* at 252.

Dr. Dunn discussed some of the specific problems facing Liberty City and Opa Locka when Timothy was growing up. There was a severe problem with drugs. Evid. Vol. II, 253. A person could buy any kind of drug he wanted, including crack, cocaine, marijuana, and heroin. *Id.* at 253. Timothy's father smoked marijuana in his presence. *Id.* at 253. Timothy and his brother, Edward, used drugs together. *Id.* at 253. Several of Timothy's family members have been arrested for drugs. *Id.* at 254. Exposure to drugs at a young age gave Timothy an impression that it was normal for people to use drugs. *Id.* at 254. It also taught him that selling drugs was a way to make money. *Id.* at 254.

Violence was endemic in the community. Evid. Vol. II, 254. There were several powerful gangs in Liberty City and Opa Locka. *Id.* at 255. Two prominent gangs in Opa Locka were the 22nd Avenue Players and the Bunche Park Bandits. *Id.* at 255. After Section Eight housing was built close to the Robinson home in Opa Locka, the gang activity increased. *Id.* at 256; *Id.* at 276. There was "drug activity, staking out territories, terrorizing people, and gang wars." *Id.* at 276. Drive-by shootings were common, and public transportation was dangerous. *Id.* at 276. The buses would not stop between 135th Street and 163rd Street in Opa Locka

“because of fear of the buses being shot into by gangs or people being attacked or robbed at the buses.” *Id.* at 256. Young people took over the movie theaters, and they were closed because they were too dangerous. *Id.* at 277. Timothy was five years old when he witnessed his first murder. *Id.* at 258.

Many young people from the James E. Scott Housing Project went to prison for violent crimes. *Evid.* Vol. II, 257. For example, Ray Anthony Mitchell, a fifteen year old boy with whom Timothy was friends, murdered four people with a screwdriver and was sentenced to 900 years in prison. *Id.* at 256-258. An eleven or twelve year old girl named Maddie, whose family moved into the apartment where the Robinsons lived in the James E. Scott Housing Project after they moved out, was involved in a murder, and she was sentenced to 99 years in prison. *Id.* at 276. Aside from Timothy, several other members of his family were arrested for violent crimes, and most of his brothers have been to prison. *Id.* at 255. For Timothy, violence was a normal part of life, and a way for people to get what they want. *Id.* at 259.

As was common in Liberty City and Opa Locka, particularly the African American community, there was violence in the Robinson home. *Evid.* Vol. II, 277-278. There were guns in the Robinson home when he was growing up. *Id.* at 254. Mr. Robinson physically abused his children, and as they became older the

abuse became more intense. *Id.* at 281. The children often witnessed their father's violence against their mother, which was traumatizing for them:

Dr. Dunn: Boys who see their mothers beaten by someone else, by a man in particular – even the father – react to this very strongly. They never forget it. Even one incident of seeing your mother hit, you never forget that. And when you see this as a pattern and when you're a young boy and you can't do anything about it, it leads to a tremendous amount of repressed anger and trauma that is lifelong.

Counsel: Did you see this is Timothy Robinson?

Dr. Dunn: Oh, yes, yes.

Counsel: And did you see that, witnessing the abuse, had an effect on his sisters, as well?

Dr. Dunn: Yes. The Robinson sisters were also troubled girls, and their lifestyles reflect that, unwed motherhood, difficulty in relating to Ed, Sr., self-concept problems. One of the daughters recently attempted suicide. So, they also had the effect of living in the household. But I think the intensity of the impact of viewing the domestic violence was more apparent to the boys.

Id. at 279.

Timothy tried to protect his mother from his father, and this often led to violent confrontations between Timothy and his father. *Id.* at 285.

As is common in domestic violence situations, much of Edward's abuse of his wife was verbal and emotional in nature. Evid. Vol. II, 278. He often accused her of cheating on him, and he was convinced that any man who looked at Mary wanted her. *Id.* at 280. This was further evidenced by Edward accusing Dr. Dunn

of wanting to have sex with Mary when Dr. Dunn interviewed Edward in preparation for his testimony. *Id.* at 280-281. When Edward confronted Mary about having sex with a twelve or thirteen year old girl who lived next door, he turned things around, as he often did, and accused her of having sex with his brother. *Id.* at 280. The children heard Edward call Mary names such as “bitch” and “whore,” and they became used to him referring to her in this way. *Id.* at 279. This caused the children to feel hurt and angry, as they identified with their mother’s pain. *Id.* at 279. Timothy was anxious to get himself and his mother out of his father’s house and away from Edward’s abuse. *Id.* at 277. He and his siblings were willing to do whatever it took to get their mother her own place to live. *Id.* at 277.

The Robinson children also experienced verbal and emotional abuse. Evid. Vol. II, 281. Timothy’s relationship with his father was “sick.” *Id.* at 300. Dr. Dunn interpreted Mary Robinson’s statement at trial that Timothy had no relationship with his father as meaning that he had no positive relationship with his father. *Id.* at 300. As a young child, Timothy was particularly traumatized when Edward took him to a stranger and told him that the stranger was his real father. *Id.* at 281. In addition to raising questions about who he was and the circumstances of his birth, this event intensified Timothy’s anger toward his father.

Id. at 282.

Dr. Dunn testified about the values that Edward taught his children:

I think he taught them that verbal abuse and the use of vulgarities and profanity was the basic way you talked to people. I think he taught them that beating your wife is the way that you control your wife. I think he taught them that using drugs, weapons were common and not a problem. I think he taught them that illegal activity was acceptable to survive. And I think he taught them that power is exerted through force – through physical force to get what you want or at least a threat of it.

Evid. Vol. II, 271.

Although some of these values were common in the community, in Edward's case they were extreme. *Id.* at 272. Edward mistrusted people, was suspicious about the world being against him, and had a lack of positive feelings toward people, including his own family. *Id.* at 282. Based on his observations, Dr. Dunn opined that Edward was probably an undiagnosed paranoid schizophrenic. *Id.* at 282.

Timothy's father was also a victim of domestic violence. Evid. Vol. II, 283. His mother, Electra, exhibited unusual behavior, and she was probably mentally ill. *Id.* at 283; *Id.* at 291. She was a violent woman, who served time in prison for shooting a man. *Id.* at 283. As is common with victims of domestic violence, Edward adopted some of the abusive tactics that his mother used to discipline him in dealing with his own family. *Id.* at 283.

In contrast to Edward, his brother, Richard Delancey is a successful man and

a good father. *Id.* at 308. His arrest record is negligible. *Id.* at 308. He is talented, and he has a love of art. *Id.* at 308. His own daughter finished college and had her own career. *Id.* at 308. What may have made the difference in these two brothers is the fact that they have different fathers. *Id.* at 308. Edward did not know his father. *Id.* at 312. Their mother preferred Richard, and she treated him better than she treated Edward. *Id.* at 312. While Richard had a positive relationship with his mother, Edward's relationship with his mother was continuously combative. *Id.* at 312.

Dr. Dunn concluded that Timothy's mother was a battered woman. Evid. Vol. II, 284. Although she loved her children dearly, the abuse she endured left her passive and ineffective. *Id.* at 284. She "did not have the strength, emotionally or in any other way, to protect her children from the ongoing trauma that they lived all their young lives." *Id.* at 284. Mary did not leave Edward until Timothy was thirteen or fourteen years old. *Id.* at 284. Edward evicted the family from the house, and he threatened to burn the house down if they did not leave. *Id.* at 284. Even though the court told Mary that she could continue to live in the house because she had minor children, she chose to leave the house to avoid a confrontation with Edward. *Id.* at 284. She did not receive child support. *Id.* at 284.

When Timothy was growing up, the relationship between the African American community in Miami-Dade County and the police department was extremely tense. Evid. Vol. II, 263. In December 1979, about a dozen white Miami-Dade County police officers beat a young black man to death after he was stopped for speeding on his motorcycle. *Id.* at 259-260. Five of the officers were tried in Tampa, and they were acquitted on May 17, 1980. *Id.* at 259. Within an hour of the verdict, there were riots in Liberty City. *Id.* at 260. This incident created the “impression in the minds of many black people that the police were not to be trusted, that they were dangerous, that they disrespected black people, that they’d use any pretense to arrest you, [a]nd that their language was abusive.” *Id.* at 260. The police used abusive and verbally aggressive language, particularly with black people. *Id.* at 262-263. There was racial tension between white and Hispanic police officers and the African American community. *Id.* at 263. White people stopped coming to Liberty City, and many white and Hispanic people moved their businesses out of Liberty City. *Id.* at 263. This made the black people in the community feel isolated and unwanted. *Id.* at 264. People routinely shot at police officers. *Id.* at 263. When a person called the police in the James E. Scott Housing Project, they did not respond unless they were called twice, and when they did respond there were three units. *Id.* at 260.

Timothy's family exposed him to criminal activity and taught him to view the police in a negative light. Edward set an example for his children that they should not trust the police, and that they should resist the police. Evid. Vol. II, 272. Edward used drugs in the presence of his children and "taught them that abnormal behavior was okay if it got you what you wanted." *Id.* at 272. Timothy's brother, Edward, Jr., took Timothy with him to commit burglaries. *Id.* at 273. Timothy's mother enabled his criminal activity by not questioning where he got his money, and by taking advantage of the money he brought into the house. *Id.* at 273. She also took her children with her to shoplift. *Id.* at 273.

The public school system was also failing. The drop-out rate was very high. Evid. Vol. II, 264. The literacy rate was very low. *Id.* at 264. There was overcrowding in the schools, resulting in double shifts. *Id.* at 264. The school "system was just overwhelmed with poor families, with ill-prepared children, disengaged parents, lack of resources for the children to function in school, nutritional problems, psychiatric problems, [and] drug problems." *Id.* at 264. It did not have the ability to reach out to African American children from disadvantaged backgrounds, such as Timothy. *Id.* at 264.

Dr. Dunn has extensive first-hand experience with the school system in Miami-Dade County. Prior to joining the faculty at Florida International

University in 1972, Dr. Dunn worked for two years as a school psychologist in the Miami-Dade County Public School System. Evid. Vol. II, 238. In 1981, he established the Academy for Community Education, “a model for alternative education that the school system might use, given the poor performance of alternative schools” in the county. *Id.* at 238. He was the principal of the school for approximately fifteen years. *Id.* at 239. He further described alternative schools as “schools that are specifically designated to deal with students who have trouble adjusting to or performing in regular school.” *Id.* at 238. Many of the students in alternative schools have problems with attendance or behavior. *Id.* at 238.

The Academy for Community Education was an extraordinary exception among alternative schools in Miami-Dade County. Dr. Dunn described alternative schools as “dumping grounds.” Evid. Vol. II, 265. The students at the schools are not educated, but are “contained as best they can.” *Id.* at 265. It was common for alternative schools to advance children who were failing, which taught the children that they would be advanced whether they work or not. *Id.* at 268. Most of the students at alternative schools drop out when they reach the age of sixteen, and the graduation rate is very low. *Id.* at 265. “Some of the worst teachers in the system are sent to alternative schools.” *Id.* at 265. There was violence in the schools,

which involved both the students and the teachers. *Id.* at 265. Dr. Dunn discussed the irony of calling alternative schools opportunity schools:

Counsel: You called them opportunity schools. Is that an accurate description of these schools, opportunity schools?

Dr. Dunn: The opportunity to learn crime, an opportunity to drop out, an opportunity to have your life go down the tube. It's a term used to sort of whitewash the reality of what was going on in those schools. So, no, it was not an opportunity for advancement at all.

Id. at 268.

Timothy attended an alternative school called Jan Mann, which was one of the worst. *Id.* at 365.

Aside from the challenges that attending Jan Mann posed for Timothy's education, education was not valued in the Robinson home the same way that money was valued. *Evid.* Vol. II, 266. In some ways, Timothy's family even interfered when the school system tried to reach him and his siblings. *Id.* at 266. On one occasion, Timothy went to school with eight hundred dollars in his pocket. *Id.* at 266. The school called his mother, and instead of insisting on knowing how their son got so much money, his parents were upset at the school for taking his money. *Id.* at 266.

The problems with the school system, as well as a lack of support from his family, contributed to Timothy's poor performance in school. He received D's and

F's. Evid. Vol. II, 268. His school attendance was terrible, and at one point he was absent from school more days than he was present. *Id.* at 266. The disorganization in the Robinson family contributed to Timothy not wanting to go to school. *Id.* at 267. Furthermore, there was no effective way in which his parents could ensure that he went to school because in many of the alternative schools the parents were not notified when their children were absent. *Id.* at 267. Timothy dropped out of school when he was approximately fifteen years old. *Id.* at 266-267. He did not want to continue with school because he was not successful in school. *Id.* at 267. Additionally, Dr. Dunn opined that "the things that he was interested in, money, could not be gotten by going to school. He had to be in the streets to do that." *Id.* at 267. Dr. Dunn explained the effect that attending Jan Mann had on Timothy:

I think it led to a disdain of school and of education. I think it led to a view that school was worthless. That school was a place where people tried to exert control over you, and you were required to resist this. It was a place where he had no positive reinforcement, no structure, and an opportunity to learn bad habits from his fellow schoolmates.

Id. at 269.

Another problem facing Opa Locka and Liberty City when Timothy was growing up involved housing, particularly for poor people. Evid. Vol. II, 273. Overcrowding caused the quality of public housing to deteriorate. *Id.* at 273.

There were rats attacking children, roaches, leaks, and toilets that did not work. *Id.* at 273. The James E. Scott Housing Project was populated by poor people, most of whom were single mothers with no stable male presence in the household. *Id.* at 274. The public housing projects in both Liberty City and Opa Locka had inadequate support from the county to make them habitable for families. *Id.* at 274.

As a result of the poor conditions in Liberty City and Opa Locka, many of the people who could afford to left. Evid. Vol. II, 274. Dr. Dunn described a “brain drain,” in which “[p]eople who had the ability to perform successfully in school left with their children and took them to other schools.” *Id.* at 275. Racial desegregation caused many black families to move out of Liberty City and Opa Locka and into what had previously been all-white communities. *Id.* at 275. Some of the people, such as teachers and community leaders, who could have helped in the community moved away, and the character of the community changed rapidly. *Id.* at 275. This resulted in more people living in the poor areas of Liberty City and Opa Locka who could not exist “without a tremendous amount of public support.” *Id.* at 275.

As the population increased, the public support that the citizens of Liberty City and Opa Locka desperately needed was in short supply. Evid. Vol. II, 275; *Id.*

at 285. Budgets were reduced. *Id.* at 285. Social workers were overwhelmed, and there was a lack of mental health services. *Id.* at 285-286. The schools lacked resources, and they were unable to follow up on the problems they were facing. *Id.* at 286. More and more children were being placed in foster care at a time when the state's resources were limited. *Id.* at 285. This lack of social services only exacerbated the problems in the community. *Id.* at 285. The Robinson family in particular was affected by the lack of social services. *Id.* at 286. There was no intervention with Timothy even though he was a "disturbed young man," nor did the government assist the Robinson family with its domestic violence problems. *Id.* at 286.

There were also problems with the juvenile justice system in Miami-Dade County. Evid. Vol. II, 286. Young people came before the court for serious crimes, and they were released on community control, which was "a joke." *Id.* at 286. These children returned to the supervision of their parents, who were ineffective in the first place by virtue of their children ending up in court. *Id.* at 287.

Other children were sent to institutions such as the Okeechobee Boys' Home, where Timothy spent some time. Evid. Vol. II, 287. Dr. Dunn described the abysmal conditions at the Okeechobee Boys' Home:

[T]his was a place that was so bad that eventually it was shutdown . . . [I]t was a place where there was lack of supervision of the boys, where rape, physical abuse happened, even on the part of the staff against the boys. It was a place where a young person could really learn to be a better criminal. It was a training school for criminals, basically.

Id. at 287.

Following the time he spent at the Okeechobee Boys' Home, Timothy was sent to adult prison. Evid. Vol. II, 287. Timothy was angry that he was sentenced to prison as a juvenile, and he was certain that this was not the best thing for him. *Id.* at 287. He felt that the judge in his case made a poor decision by placing him in an environment where he could learn from hardened adult criminals, which is what happened to him. *Id.* at 288.

Dr. Dunn testified that while many people who grew up in Liberty City and Opa Locka ended up in prison, some people became successful. Evid. Vol. II, 269. There were groups that offered scholarships to encourage children to complete school. *Id.* at 269. Additionally, Dr. Dunn discussed how sports and other extracurricular activities divert children from the street. *Id.* at 270.

For Timothy, what little intervention he received was "too little, too late." Evid. Vol. II, 297-298. Timothy was not involved in sports or extracurricular activities. *Id.* at 269. At one point after Timothy spent some time in prison, he expressed a desire to become a minister, and he read the Bible. *Id.* at 270.

However, this desire to become a minister was a “flight of fancy” for Timothy:

By that period in his life, it would have taken a lot more intensive intervention. It would have taken a close relationship with a male figure – a positive relationship with a male figure over a sustained period of time to really change him from the pattern he was already involved in.

Id. at 271.

After a brief period of studying to become a minister, Timothy returned to the lifestyle he was leading before he went to prison. *Id.* at 271.

Another factor that differentiated Timothy from those people from Liberty City and Opa Locka who became successful was parenting. Evid. Vol. II, 289. Dr. Dunn testified that in his experience as a principal, “the most predictable factor of a child moving to criminality is ineffective parenting.” *Id.* at 289. Children are more likely to engage in criminal activities when they have “[a] parent who does not know or care where the children are, who does not support the schools, who teaches children that police are bad, [and] who encourages children to commit crime to advance the family’s resources.” *Id.* at 289. Timothy’s father was “the most damaging impact on Timothy.” *Id.* at 290. In Dr. Dunn’s opinion, Timothy would have been better off if he had no contact with his father. *Id.* at 290. Ivory Baker is one example of an individual who was raised by a single mother who was engaged and had control over her children. *Id.* at 289. As a result, Mr. Baker grew

up to become successful despite growing up in Miami-Dade County with limited resources. *Id.* at 289.

Another factor that made Timothy particularly vulnerable was the verbal and physical abuse and neglect that he suffered all of his life. Evid. Vol. II, 290. Of the thousand or so families he counseled as an alternative school principal, all of whom were troubled in some way, the Robinson family was one of the worst situations he ever encountered:

[It was] [o]ver the top. I had really, really not come into contact with anything quite like that.

Yes, I saw abused children. I saw ineffective parenting. But the Robinson case was unusual, in that the length of time to which the family was subjected to this terror, the inability of the mother to escape it, the apparent history of mental disturbance in the family beyond just Ed, Sr., all of these led me to believe that the Robinson family was one of the worst I ever saw.

Id. at 291.

James D. Larson, Ph.D.

James D. Larson, Ph.D. is a psychologist. Evid. Vol. II, 316. He performed psychological evaluations of Mr. Robinson and all of his co-defendants. *Id.* at 320. He testified during the penalty phase of Mr. Robinson's 1989 trial. *Id.* at 316. He has not seen Mr. Robinson since 1989. *Id.* at 316.

Historically, psychiatrists were appointed in competency proceedings. Evid.

Vol. II, 317. Generally, psychiatrists performed mental status examinations and offered diagnoses. *Id.* at 318. Around 1981, the trend shifted toward appointing psychologists. *Id.* at 317. From the period of approximately 1981 to 1985, Dr. Larson and another psychologist, Dr. Gilgun, were appointed in 90 to 95 percent of competency cases in the four county area. *Id.* at 318.

Dr. Larson was appointed by the trial court at the request of Mr. Pitts to assist defense counsel “in the preparation of [Mr. Robinson’s] defense.” R. Vol. XII, 2132; *See also*, Evid. Vol. II, 322. Mr. Pitts claimed in the motion to have Dr. Larson appointed that Mr. Robinson had prior psychological examinations and that he was concerned about Mr. Robinson’s competency, sanity, and possible mental retardation. R. Vol. XII, 2130-2132; *See also*, Evid. Vol. II, 322. Dr. Larson’s written evaluation dated May 22, 1989 was addressed to Mr. Pitts. PC-Ex. Vol. I, 44-51; *See also*, Evid. Vol. II, 320. Mr. Beraset handled the direct examination of Dr. Larson at trial. *Id.* at 320-321. Dr. Larson does not have any independent recollection of whether he met with Mr. Beraset or Mr. Pitts about this case. *Id.* at 321. He does have documentation that he spoke with Mr. Pitts on the telephone. *Id.* at 321. Based on his billing records, Dr. Larson estimates that he spoke with Mr. Pitts for a total of less than one hour. *Id.* at 330. Mr. Robinson’s trial attorneys did not contact him about performing any additional work in this

case following his testimony at Mr. Robinson's penalty phase. *Id.* at 345.

Dr. Larson took a "passive approach" to his evaluation of Mr. Robinson. Evid. Vol. II, 323-324. Although through the years he has gained extensive experience and now takes more of an interactive role in the capital cases he works on, in 1989 Dr. Larson had performed few evaluations in capital cases. *Id.* at 324. At the time he evaluated Mr. Robinson, Dr. Larson "didn't understand very much about what was mitigating and what wasn't, except what was a statutory mitigator." *Id.* at 324. In fact, he stated that, at that time, he did not understand that nonstatutory mitigation was admissible in capital cases. *Id.* at 347. He addressed certain issues that the attorneys requested he address, but he did not suggest to the attorneys what they should do about mitigation in their cases. *Id.* at 324. He performed only the work that was specified in the court order, and he did not go beyond the dictates of the order without further guidance from the attorneys. *Id.* at 325-326. Furthermore, there was a concern that if he went beyond what he was ordered to do, he would not be compensated for that work. *Id.* at 325.

The evaluation that Dr. Larson conducted of Mr. Robinson was limited. Aside from the WAIS-R and the WRAT-R, he did not administer any psychological testing. Evid. Vol. II, 339. He reviewed the warrant, arrest report, and indictment from the case. *Id.* at 330. He also reviewed Mr. Robinson's

medical records from the Escambia County Jail. *Id.* at 332. Mr. Robinson's trial attorneys did not provide him with any institutional records concerning Mr. Robinson, such as school records or records from previous incarcerations. *Id.* at 331.

Dr. Larson interviewed Mr. Robinson, but he considered Mr. Robinson to be an unreliable source. *Id.* at 333. It is not uncommon for criminal defendants to be suspicious and guarded, especially on a first meeting with an expert. *Id.* at 342. Mr. Robinson "was not quickly forthcoming with information." *Id.* at 340. He was somewhat hostile and resentful. *Id.* at 340. Mr. Robinson would not speak about the alleged incident, and he framed his situation as a "miscarriage of justice." *Id.* at 341. When Dr. Larson asked Mr. Robinson about his father, Mr. Robinson told him that his father was "a piece of shit." *Id.* at 344. There is no indication that Dr. Larson spoke with third party witnesses, either to corroborate the information provided by Mr. Robinson or to learn additional information.

Dr. Larson's report of May 22, 1989 includes sections on IQ testing, competency to stand trial, insanity at the time of the offense, and statutory mitigating factors. PC-Ex. Vol. I, 44-51. Dr. Larson does not recall why he considered statutory mitigating circumstances when he was not specifically ordered to do so by the court, but based on his general practice he assumes that Mr.

Pitts asked him to address statutory mitigation. Evid. Vol. II, 328. He copied the language regarding the statutory mitigating circumstances from court orders in other cases. *Id.* at 328. Beyond his hypothesis that Mr. Pitts asked him to look at statutory mitigation in this case, he does not believe he received any additional guidance from the attorneys with regard to his work on this case. *Id.* at 336.

Barry Beroset

Timothy Robinson was represented at trial by Barry Beroset and Michael Pitts. Evid. Vol. II, 352. Mr. Beroset has been licensed to practice law in the State of Florida since 1972. *Id.* at 350. Prior to the Robinson trial, he handled six first degree murder cases, two of which were death qualified. *Id.* at 351. At the time he represented Mr. Robinson, he had not completed any specific training to qualify him for death penalty work. *Id.* at 352.

Mr. Beroset first appeared in Mr. Robinson's case on May 2, 1989. Evid. Vol. II, 365. The trial commenced approximately three weeks later, on May 22, 1989. *Id.* at 365. Mr. Pitts had been appointed to represent Mr. Robinson, and he completed most of the discovery, including depositions, and pre-trial work on the case. *Id.* at 352. At the time of Mr. Robinson's trial, Mr. Pitts had limited experience, and he had not tried any major cases. *Id.* at 365. Shortly before the trial, Mr. Robinson's mother went to see Mr. Beroset about hiring him to represent

her son. *Id.* at 352. He told her that he could not take the case unless Mr. Pitts stayed on as co-counsel. *Id.* at 352. Mr. Beronet subsequently informed the trial court that he would try the case only if Mr. Pitts remained as co-counsel. *Id.* at 352-353. He moved for a continuance at various points during the case, but everyone understood that he was not going to ask for a continuance just because he was new on the case. *Id.* at 370. He did not make a motion to continue the case because of the need for additional time to investigate and present mitigating evidence. *Id.* at 370.

Mr. Pitts was responsible for what little mitigation investigation was done on this case. Evid. Vol. II, 353. The defense did not obtain a mitigation expert, or any other person specifically assigned to the job of investigating and developing mitigation. *Id.* at 385. Mr. Beronet does not recall the defense requesting additional funding for mitigation beyond what was paid to Dr. Larson. *Id.* at 379-380. Mr. Beronet does not recall the defense team obtaining any institutional records regarding Mr. Robinson or examining the court files of his prior record. *Id.* at 381-382. The defense did not obtain any information about the Okeechobee Boys' Home, or the class action lawsuit that was filed with regard to that institution. *Id.* at 382.

Mr. Pitts retained Dr. Larson before Mr. Beronet became involved in Mr.

Robinson's case. Evid. Vol. II, 353. In reviewing Dr. Larson's report, Mr. Beraset felt that it did not contain the type and volume of information that he would normally provide to an expert. *Id.* at 357. He was concerned that the defense did not provide a lot of information to Dr. Larson. *Id.* at 386. He observed that the report mostly discussed competency and was limited with regard to mitigation. *Id.* at 381. At the time of Mr. Robinson's trial, Mr. Beraset understood that nonstatutory mitigation was both admissible and relevant. *Id.* at 380. However, he did not follow up on the indication in Dr. Larson's May 22, 1989 report that there may be nonstatutory mitigation because the report was received at about the time of trial. *Id.* at 380-381. He testified that, given the indications in Dr. Larson's report that Mr. Robinson was guarded and that he was not a reliable reporter, additional investigation or collaboration was needed, either by way of third party or institutional records. *Id.* at 381. Mr. Pitts attempted to bring another expert to testify during the penalty phase, but he could not get him there. *Id.* at 357. Mr. Beraset did not have any contact with that expert. *Id.* at 371.

Although Mr. Pitts remained on the case after Mr. Beraset was retained, Mr. Beraset essentially tried the case from start to finish. Evid. Vol. II, 370-371. Mr. Beraset remained in contact with Mr. Robinson throughout the course of the trial, and Mr. Robinson was cooperative with his attorneys. *Id.* at 355. With so little

time to prepare, Mr. Beroset concentrated his efforts on trying the guilt phase. *Id.* at 353; *Id.* at 389. His trial strategy was to raise a reasonable doubt and get Mr. Robinson acquitted. *Id.* at 360; *Id.* at 389. There were several guilt phase issues with regard to firearms, DNA, and an alibi defense. *Id.* at 360-361. Subsequent to being retained on Mr. Robinson's case, Mr. Beroset performed work related to lining up the alibi witnesses, and he used his own credit card to make travel arrangements for the witnesses. *Id.* at 389.

They went directly into the penalty phase after Mr. Robinson was found guilty. Evid. Vol. II, 372-373. In addition to trying the guilt phase, Mr. Beroset also tried the penalty phase, including the examinations of Mary Robinson and Dr. Larson. *Id.* at 354. Regarding strategic considerations involving the presentation of mitigation, Mr. Beroset stated that “[w]hen a person is found guilty I think you should present whatever you can the best you can. I mean, you have nothing to lose at that point.” *Id.* at 393. Mr. Beroset had some contact with Dr. Larson prior to Dr. Larson's testimony, but the meeting may have been very brief. *Id.* at 373-374. Regarding his decision to present Mary Robinson as a witness during penalty phase, Mr. Beroset testified:

Mr. Beroset: [We called Mary Robinson] 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.

Judge Geeker: 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?

Mr. Beroset: 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.

Id. at 393-394.

His strategy in the penalty phase was contained in his memorandum to the court.

Id. at 361; R. Vol. XIV, 2530-2534.

Following the jury's life recommendation, Mr. Beroset continued to take the lead in Mr. Robinson's case, and he handled the sentencing hearing before the trial court. Evid. Vol. II, 387-388. His strategy was to convince the judge to enter a sentence in accordance with that recommendation. *Id.* at 375. On or about June 9, 1989, Chief Assistant Public Defender Terry D. Terrell sent a letter to Mr. Beroset concerning life recommendation overrides. PC-Ex. Vol. VII, 1256; Evid. Vol. II, 375-376. Mr. Terrell cautioned Mr. Beroset:

I thought you should be aware that Judge Geeker has the attached Memorandum in Support of Jury Recommendation of Life before him for his consideration in the Vernon Ray Cooper case. I have spelled out the long line of recent authority supporting upholding life recommendations.

It is significant to note that in the absence of substantial factual

mitigation the Florida Supreme Court has been affirming life overrides.

I think you should share this information with the counsel for the co-defendants in your case. It will be extremely important to detail specific factual mitigation arising from evidence relating to guilt or from the information supplied before the jury in mitigation. It may also be necessary for you to supply additional factual mitigation for the trial court that goes beyond that presented to the jury. The Court is allowed to consider information outside the presence of the jury.

As you may see from a reading of these cases, providing an evidentiary basis for the jury's recommendation is crucial.

PC-Ex. Vol. VII, 1256.

Despite the warning from Mr. Terrell, between June 2, 1989 and the *Spencer*-type hearing in late July, 1989, the defense did not investigate or develop any further factual mitigation in this case, other than obtaining character letters that were introduced into the court file. Evid. Vol. II, 376-378. They did not send an investigator to speak with potential mitigation witnesses in Miami. *Id.* at 379. Mr. Beronet does not recall anyone from the defense team making contact with Dr. Larson after June 2, 1989. *Id.* at 373.

JURISDICTION

This Court has jurisdiction. Art. V, § 3(b)(1) Fla. Const.

STANDARD OF REVIEW

The standard of review is *de novo*. *Stephens v. State*, 748 So. 2d 1028, 1032

(Fla. 2000). Under *Strickland v. Washington*, 466 U.S. 668, 688 (1984), ineffective assistance of counsel claims are a mixed question of law and fact; with the lower court's legal rulings reviewed *de novo* and deference given to factual findings supported by competent and substantial evidence. *Sochor v. State*, 883 So. 2d 766, 772 (Fla. 2004).

SUMMARY OF ARGUMENT

1. Mr. Robinson was deprived of the effective assistance of counsel during the penalty phase of his capital trial. Mr. Beroset, who was not retained until three weeks prior to trial, concentrated his efforts on trying the guilt phase. Trial counsel failed to conduct an adequate penalty phase investigation, and as a result they did not uncover and present readily available mitigation. The wealth of mitigation presented during the evidentiary hearing would have provided a reasonable basis for the jury's life recommendation, and would have prevented a jury override. A remand to the lower court with directions that Mr. Robinson's sentences be reduced to life is warranted.

2. The shackling of Mr. Robinson during both his guilt and penalty phase was a violation of his due process rights under the Federal and Florida Constitutions. The trial judge based his decision to shackle Mr. Robinson throughout the trial on information in his possession that was not accessible to counsel. Although trial

counsel objected to the shackling, they provided ineffective assistance when they failed to inquire about the specific information in the judge's possession. The jury became aware of the shackles on Mr. Robinson's legs when a cardboard barrier that was in front of his feet fell during closing arguments, and several of the jurors looked toward Mr. Robinson. Mr. Robinson is entitled to a new trial.

ARGUMENT I

THE TRIAL COURT ERRED WHEN IT DENIED MR. ROBINSON'S CLAIM THAT HIS SENTENCE OF DEATH VIOLATES THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE COUNSEL'S PERFORMANCE DURING THE PENALTY PHASE WAS INEFFECTIVE.

Penalty phase ineffective assistance was alleged in Claim III (a) of the motion for postconviction relief. PC-R. Vol. V, 876-887; PC-R. Vol. X, 1867-1881. The circuit court conducted an evidentiary hearing on this claim. The circuit court found that even if the additional evidence presented at the evidentiary hearing had been presented at trial, "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)." PC-R. Vol. XIV, 2512-2513. Mr. Robinson seeks review of that finding.

A. Penalty Phase Trial Proceedings

1. Testimony

At the penalty phase of Mr. Robinson's trial, the defense presented two witnesses: Mr. Robinson's mother, Mary Robinson, and James D. Larson, Ph.D. The State did not present any witnesses during the penalty phase.

a. James D. Larson, Ph.D.

James D. Larson, Ph.D. interviewed Timothy Robinson at the Escambia County Jail for approximately two hours on March 7 and March 14, 1989. R. Vol. XI, 1996-9197. He testified at trial that Timothy was born in a ghetto environment in Miami, and that he was raised by his mother, who did the best job she could raising seven children. *Id.* at 1997-1998. According to Dr. Larson, Timothy's father was not present when he was growing up. *Id.* at 1998. Dr. Larson testified that while Timothy reported a lot of bitterness about his father, he related very little about him. *Id.* at 1998. Timothy did not report any type of child abuse. *Id.* at 2000. He denied drug or alcohol abuse. *Id.* at 1998. Timothy earned a verbal IQ of 79, which placed him in the lower eighth percentile. *Id.* at 1999. However, based on Timothy's erratic attendance in school, Dr. Larson opined that his IQ scores might be slight underestimates, and that Timothy's IQ may actually fall in the low average range. *Id.* at 2001. Dr. Larson was unclear about whether

Timothy obtained a GED or graduated from high school. *Id.* at 2002.

Mr. Robinson's trial attorneys did not submit Dr. Larson's written report dated May 22, 1989 to the Court. PC-Ex. Vol. I, 44-51. In contrast to his penalty phase testimony, Dr. Larson stated in his written report that "[i]t was miserable for him during early childhood, and he likely experienced considerable abuse and neglect." *Id.* at 46. He further stated that Timothy complained of "frequently not having enough to eat and having no opportunity." *Id.*

b. Mary Robinson

Mary Robinson provided the trial court with a general description of Timothy Robinson and his family. She testified that she had seven children, including Timothy. R. Vol. XI, 2012. When Timothy was a child, they lived in Liberty City, which was a "bad neighborhood." *Id.* at 2013. They later moved to North Miami, which was a slightly better area. *Id.* at 2014. She was married to Timothy's father for twenty years before she divorced him. *Id.* at 2013. She described Timothy's father as a "street man" who used to treat her "real bad." *Id.* at 2014-2015. She stayed with him until she could not take it anymore and she had saved enough money to leave him. *Id.* at 2015. All of her children observed their father's violent acts toward her, including one time when he broke her jaw. *Id.* at 2015. The family suffered a traumatic loss when Timothy's brother, Derek, was

shot and killed in Orlando. *Id.* at 2018.

Mrs. Robinson described Timothy as a “sweet child.” R. Vol. XI, 2018. At one time, she suspected that Timothy might have been using drugs because he started changing, but he denied it to her. *Id.* at 2018-2019. He was very protective of his family. *Id.* at 2017. She described one time after she left Timothy’s father when Mr. Robinson wanted to jump on her and Timothy intervened. *Id.* at 2015. Timothy did not have a relationship with his father because his father was never there for him. *Id.* at 2013. At one point, Timothy’s father lied to him and told him that he was not his biological father. *Id.* at 2015. Mrs. Robinson gave her children “all the love” and was “there for them” where their father was not. *Id.* at 2013.

Mrs. Robinson further testified about Timothy’s educational and employment history. According to Mrs. Robinson, Timothy obtained a GED. R. Vol. XI, 2016. He attended church, and he went to a Bible college in Miami because he planned to be a minister. *Id.* at 2016. He worked at a country club in Miami for two years, and he gave his mother his tips. *Id.* at 2020. He also worked on the Team Clean in Miami. *Id.* at 2020.

2. Jury Recommendation

The penalty phase trial concluded on June 2, 1989. The jury recommended that the trial court impose a sentence of life imprisonment. R. Vol. XI, 2096-2097.

3. *Spencer*⁵-type Hearing

A *Spencer*⁶-type hearing was held on July 25, 1989. R. Vol. XIV, 2480-2510. The trial court allowed counsel to introduce any matters that were not considered by the jury during the penalty phase trial. *Id.* at 2481. The State did not present any evidence. *Id.* at 2481. The defense did not present any additional evidence or witnesses at the July 25, 1989 hearing, with the exception of twelve letters of character reference. *Id.* at 2510-2529.

4. Memorandum in Support of the Jury's Advisory Sentence

On August 3, 1989, Mr. Beronet filed a Memorandum in Support of the Jury's Advisory Sentence. R. Vol. XIV, 2530-2534. On the second page of the memorandum, Mr. Beronet highlighted several points that Dr. Larson allegedly testified to. *Id.* at 2531. For example, according to the memorandum, Dr. Larson testified that the Robinson family "did not have enough to eat and had limited opportunities." *Id.* at 2531. Dr. Larson did not actually testify to that fact. Instead, it was contained in his written report of May 22, 1989, which was not presented to the trial court. Mr. Beronet further claimed that Dr. Larson testified that Mr. Robinson has a full-scale IQ of 79. *Id.* at 2531. In fact, although Dr.

⁵ *Spencer*, 615 So. 2d 688.

⁶ *Id.*

Larson stated in his written report that Mr. Robinson had a full-scale IQ of 79 and he testified that Mr. Robinson has a verbal IQ of 79, he did not testify regarding Mr. Robinson's full-scale IQ. Dir. Vol. XI, 1999.

5. Sentencing Order

The trial court found that the State had established five aggravating circumstances under Fla. Stat. Sec. 921.142 (6): 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. R. Vol. XIV, 2584-2585. The Florida Supreme Court held that the evidence did not support a finding that the murders were committed to prevent a lawful arrest. *Robinson*, 610 So. 2d at 1291.

The trial court further found that the only mitigation that had been established was that Mr. Robinson "has maintained close family ties throughout his young life and has been supportive of his mother." R. Vol. XIV, 2586. Regarding the other potential mitigating evidence, the trial 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. *Bolender v. State*, supra, at 837. Even if any such factors are found to exist under the evidence, this Court must consider whether they are of sufficient weight to outweigh the aggravating factors. *Lamb v. State*, supra, at 1054.

Id.

As a result, the trial court found that:

[T]he aggravating circumstances far outweigh the mitigating circumstances presented and the death penalty is the appropriate sentence under Counts 1, 2, 3, and 4. The jury's recommendation of life sentences could have been based only on minor, non-statutory mitigating or sympathy. "It would not be reasonable for a jury to recommend a sentence of life based only upon the evidence presented regarding these non-statutory mitigating factors standing alone." *Harmon v. State*, 527 So. 2d 182, 189 (Fla. 1988).

In this case the sentence of death is so clear and convincing that virtually no reasonable person could differ, and a jury override in light of the standard pronounced in *Tedder v. State*, 322 So. 2d 908 (Fla. 1975), would be warranted.

Id. at 2586-87.

6. Direct Appeal

On direct appeal, the Florida Supreme Court held that the trial court did not err in overriding the jury's life recommendation in Mr. Robinson's case because "the potential mitigating evidence presented in this case does not provide a reasonable basis for the jury's recommendation." *Robinson*, 610 So. 2d at 1292.⁷

⁷ In a dissenting opinion, Justice Barkett held:

I do not believe that the jury recommendation of life imprisonment should be disregarded. Based on the

This decision followed *Tedder v. State*, in which the Florida Supreme Court held:

A jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.

Tedder, 322 So. 2d at 910.

B. Deficient Performance

The first prong of an ineffective assistance claim is deficient performance:

First, a petitioner must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.

Strickland, 466 U.S. at 688.

In addition, to establish deficient performance, a petitioner must demonstrate that counsel's representation "fell below an objective standard of reasonableness." *Id.* at 688.

In *Wiggins v. Smith*, 539 U.S. 510 (2003), the Supreme Court held "*Strickland* does not establish that a cursory investigation automatically justifies a tactical decision with respect to sentencing strategy. Rather, a reviewing court must consider the reasonableness of the investigation said to support that strategy."

circumstances of the killings, as well as the evidence of nonstatutory mitigation, I cannot say that no reasonable person would have recommended a life sentence here.

Robinson, 610 So. 2d at 1292 (Barkett, J. dissenting).

Id. at 527.

[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness.

Id. at 521-522 (quoting *Strickland*, 466 U.S. at 690-691).

Subsequently, in *Rompilla v. Beard*, the United States Supreme Court held that “even when a capital defendant’s family members and the defendant himself have suggested that no mitigation evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the sentencing phase of trial.” *Rompilla v. Beard*, 545 U.S. 374, 377 (2005).

In Mr. Robinson’s case, in light of the extensive case law concerning the duty of defense counsel to investigate and present mitigating evidence in capital cases, trial counsel clearly rendered deficient performance during the penalty phase. *See, e.g., Wiggins*, 539 U.S. 510; *Rompilla*, 545 U.S. 374. Mr. Beronet did not become involved in Mr. Robinson’s case until approximately three weeks before trial. *Evid.* Vol. II, 365. With so little time to prepare, Mr. Beronet concentrated his efforts on preparing for the guilt phase trial. *Id.* at 355. Mr. Pitts,

who did not have any experience trying capital cases, was responsible for what little mitigation investigation was done on the case. *Id.* at 365; *Id.* at 353. The defense did not employ a mitigation expert, nor did they request any additional funding beyond what was paid to Dr. Larson. *Id.* at 385; *Id.* at 379-380. They did not obtain any institutional records regarding Mr. Robinson, and they did not obtain any information regarding the Okeechobee Boys' Home, which Mr. Robinson attended as a juvenile. *Id.* at 381-382.

Further, the Florida Supreme Court has held that trial counsel renders deficient performance when his investigation involves limited contact with a few family members and he fails to provide his experts with background information. *Sochor v. Florida*, 883 So. 2d 766, 772 (Fla. 2004). *See also, State v. Lewis*, 838 So. 2d 1102, 1113 (Fla. 2002) (“[T]he obligation to investigate and prepare for the penalty phase portion of a capital case cannot be overstated- this is an integral part of a capital case.”); *Ragsdale v. State*, 798 So. 2d 713, 718-719 (Fla. 2001) (holding that inexperienced counsel rendered deficient performance when his entire investigation consisted of a few calls made to family members); *Rose v. State*, 675 So. 2d 567, 571 (Fla. 1996) (“An attorney has a duty to conduct a reasonable investigation, including an investigation of the defendant’s background, for possible mitigation evidence.” (quoting *Porter v. Singletary*, 14 F. 3d 554, 557

(11th Cir. 1994)); *State v. Lara*, 581 So. 2d 1288, 1289 (Fla. 1991) (finding prejudice where counsel failed to present evidence of defendant's abusive childhood, notwithstanding the State's argument on appeal that it was defendant and his family who prevented defense counsel from developing and presenting mitigating evidence).

Mr. Robinson's trial counsel failed to provide their expert, Dr. Larson, with background information or follow up on indications from Dr. Larson concerning a need for additional investigation. In conducting his evaluation in this case, Dr. Larson relied almost entirely on his interview with Mr. Robinson. Mr. Beraset expressed concern that the defense did not provide a lot of information to Dr. Larson, and that Dr. Larson's report was limited with regard to mitigation. *Id.* at 386; *Id.* at 381. Likewise, unlike Ms. Hammock and Dr. Dunn in postconviction, Dr. Larson did not interview any third party witnesses about Mr. Robinson. Trial counsel did not follow up on the indication in Dr. Larson's report that there may be nonstatutory mitigation because the report was received at about the time of trial. *Id.* at 380-381. Mr. Beraset agreed that, given Dr. Larson's opinion that Mr. Robinson was not a reliable reporter, there was a need for additional investigation. *Id.* at 381. However, defense counsel did not at any point move to continue the case because of the need for additional time to investigate and present mitigation

evidence. *Id.* at 370.

Additionally, defense counsel had very limited contact with Mr. Robinson's family members, and failed to seek family and friends who could have provided important mitigation. Mr. Robinson's mother, Mary Robinson, was the only lay witness who testified at Mr. Robinson's penalty phase trial. Defense counsel did not send an investigator to Miami to speak with potential mitigation witnesses. Evid. Vol. II, 379. Had they attempted to, they would have been able to speak with Edward Robinson, Sr., Ivory Baker, Gloria Baker, Richard Delancey, and Edward G. Robinson, Jr. These witnesses were available, and they could have provided the same mitigation that they testified to in postconviction. Instead of conducting a proper mitigation investigation, Mr. Beronet assumed that Mary Robinson would have known her son better than anyone because she was his mother. *Id.* at 393-394. In reality, as Ms. Hammock explained, Mrs. Robinson would have had a tendency to minimize bad experiences because she was a victim of abuse. Evid. Vol. I, 179-180. Furthermore, people tend to have difficulty remembering the specifics of traumatizing events. *Id.* at 180. As a result, the trial court was left with a very general description of Mr. Robinson and his family and the impression that his father was not present during his childhood, when in fact, although he was emotionally unavailable, he was a dominant and traumatizing presence in the

Robinson home.

The lower court's finding that the evidence presented by Mr. Robinson at the evidentiary hearing was largely repetitious of what was presented at trial is incorrect. PC-R. Vol. XIV, 2512. In stark contrast to the wealth of mitigation that was presented during the evidentiary hearing, the mitigation presented during Mr. Robinson's trial was extremely limited. In its sentencing order, the trial court found that the only mitigation that the defense established at trial was that Mr. Robinson "has maintained close family ties throughout his young life and has been supportive of his mother." R. Vol. XIV, 2586. The trial court stated that Mr. Robinson's remaining contentions, which were outlined in trial counsel's Memorandum in Support of Jury's Advisory Sentence, R. Vol. XIX, 2530-2534, were "not borne out by the evidence." R. Vol. XIV, 2586. The trial court further found that Mr. Robinson "was not an abused child." *Id.* In the Answer Brief of Appellee, which was filed by the State in Mr. Robinson's direct appeal to the Florida Supreme Court on March 6, 1991, the State argued that Mr. Robinson "had no 'significant' non-statutory mitigating evidence except that he was a 'sweet child' in the words of his mother." Answer Brief of Appellee at 34. Therefore, even if trial counsel attempted to establish some of the same mitigating factors that were successfully established at the evidentiary hearing, such as the facts that Mr.

Robinson grew up in a “ghetto environment,” or the abuse of Mr. Robinson’s mother by his father, they failed in their attempt to do so.

Had trial counsel conducted a reasonable investigation into Mr. Robinson’s background, they would have uncovered the vast amount of mitigation evidence that was brought out at Mr. Robinson’s evidentiary hearing, and which is discussed in detail above. They would have discovered evidence of the problems facing Liberty City and Opa Locka that Dr. Dunn testified about at the evidentiary hearing, which had an impact on Mr. Robinson’s development. Trial counsel would have found evidence of the harmful patterns and risk factors in Timothy’s life, which Marjorie Hammock testified about at the evidentiary hearing, including patterns of loss; corruption from multiple sources; a lack of strong, positive parenting; poverty and a lack of resources; violence and instability; a non-nurturing environment in and around the home; and alcohol and drug abuse. They would have uncovered evidence that Mr. Robinson experienced severe physical, emotional, and verbal abuse as a child, which the trial court found in its sentencing order did not exist. R. Vol. XIV, 2586. It is well-settled that evidence of family background and personal history, such as the evidence presented at Mr. Robinson’s evidentiary hearing, may be considered as mitigation. *See, e.g., Stevens v. State*, 552 So. 2d 1082, 1086 (Fla. 1989). Likewise, this Court has found that a history of

substance abuse⁸, an impoverished background⁹, being raised in dysfunctional family circumstances¹⁰, lack of parenting¹¹, child abuse (both physical and mental)¹², and low intelligence¹³ all constitute valid mitigation.

While trial counsel in any capital case has a duty to investigate and present mitigating evidence, this duty was heightened in a case such as this, where the jury actually returned a life recommendation. Trial counsel was warned following the jury's life recommendation in a letter from Chief Assistant Public Defender Terry D. Terrell that "in the absence of substantial factual mitigation the Florida Supreme Court has been affirming life overrides." PC-Ex. Vol. VII, 1256. Like Mr. Robinson, the jury in the Vernon Cooper case, which Mr. Terrell discussed in his letter to Mr. Beronet, recommended a sentence of life imprisonment by a vote of six-to-six, and the trial court overrode the jury's recommendation. *Cooper v. State*, 581 So. 2d 49 (Fla. 1991). However, unlike Mr. Robinson's trial counsel, Mr.

⁸ See, e.g., *Clark v. State*, 609 So. 2d 513, 516 (Fla. 1992); *Mahn v. State*, 714 So. 2d 391, 400-401 (Fla. 1998).

⁹ See, e.g., *Maxwell v. State*, 603 So. 2d 490, 492 (Fla. 1992); *Foster v. State*, 614 So. 2d 455, 461 (Fla. 1993).

¹⁰ See, e.g., *Snipes v. State*, 733 So. 2d 1000, 1008 (Fla. 1999); *Mahn*, 714 So. 2d at 402.

¹¹ See, e.g., *Snipes*, 733 So. 2d at 1008; *Mahn*, 714 So. 2d at 402.

¹² See, e.g., *Mahn*, 714 So. 2d at 402; *Strausser v. State*, 682 So. 2d 539, 542 (Fla. 1996).

¹³ See, e.g., *Williams v. State*, 987 So. 2d 1, 11 (Fla. 2008); *Henyard v. State*, 689 So. 2d 239, 244 (Fla. 1997).

Cooper's counsel established a reasonable basis for the jury's recommendation, and Mr. Cooper's death sentence was overturned on appeal. *Id.*

Mr. Beroset did not identify, nor can counsel imagine, a strategic reason for defense counsel not to present all available mitigating evidence at the *Spencer*-type hearing in order to establish a reasonable basis for the jury's life recommendation. In fact, Mr. Beroset stated at the evidentiary hearing that once a person is found guilty, there is nothing to lose by presenting whatever mitigation one can present. Evid. Vol. II, 393. Despite this warning however, and despite having nothing to lose by presenting additional evidence at the *Spencer*-type hearing, defense counsel did not present additional mitigating evidence to the trial court, with the exception of some character reference letters.

Mr. Robinson has shown that defense counsel's performance during penalty phase was deficient under *Strickland*. Defense counsel's failure to investigate and present mitigation during penalty phase, in spite of the indication in Dr. Larson's report that there may be additional nonstatutory mitigation such as childhood abuse and neglect, fell far below "an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. Furthermore, trial counsel failed to introduce Dr. Larson's report, which, although lacking, would have provided a reasonable basis for the jury's life recommendation.

C. Prejudice

In addition to proving that there was deficient performance, *Strickland* requires a showing of prejudice to sustain a claim of ineffective assistance of counsel. *Strickland*, 466 U.S. at 687. The defendant must show that counsel's errors were "so serious as to deprive the defendant of a fair trial, whose result is unreliable." *Id.* at 687.

"The proper standard for prejudice [in jury override cases] is whether the omitted evidence would have provided a reasonable basis for a life recommendation and sentence." *Williams*, 987 So. 2d at 11. A trial judge is not permitted to override a jury recommendation of life unless "the facts suggesting a sentence of death are so clear and convincing that virtually no reasonable person could differ." *Tedder*, 322 So. 2d at 910. It is of no significance whether the additional evidence would have made a difference to the trial judge, or whether the trial judge would have found the mitigation believable or persuasive, because if there was a reasonable basis for the jury's life recommendation the trial judge is prohibited from overriding that recommendation. *Williams*, 987 So. 2d at 11; *See also*, *Hall v. State*, 541 So. 2d 1125, 1128 (Fla. 1989); *Stevens*, 552 So. 2d at 1085; *Tedder*, 322 So. 2d at 910.

"[T]he jury's life recommendation changes the analytical dynamic and

magnifies the ultimate effect of mitigation on the defendant's sentence.” *Keen v. State*, 775 So. 2d 263, 285 (Fla. 2000). In contrast to the weighing process that a judge conducts after a jury returns a recommendation of death, when a jury recommends life the trial court's singular focus is whether there is a reasonable basis for that recommendation, regardless of the heinous nature of the crime or the weight of the aggravating circumstances. *Id.* at 283. Because the jury recommended a life sentence in this case, the trial court must consider only whether the mitigation presented during postconviction would have provided a reasonable basis for the jury's life recommendation. In its sentencing order, the trial court stated that “the aggravating circumstances far outweigh the mitigating circumstances presented and the death penalty is the appropriate sentence under Counts 1, 2, 3, and 4.” Dir. Vol. XIV at 2586-2587. Similarly, the postconviction court alluded to a weighing of aggravating circumstances against the mitigation presented at the evidentiary hearing when it stated that “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.’” PC-R. Vol. XIV, 2512-2513. However, any weighing of aggravating circumstances against mitigating circumstances is inappropriate in this case.

This case is analogous to the case of Mr. Robinson's co-defendant, Ronald

Lee Williams. *Williams*, 987 So. 2d 1. Mr. Williams was tried separately for his involvement in this case, and he was found guilty of four first degree murders. *Id.* at 5. Prior to trial, Mr. Williams' counsel was presented with a report from Dr. Larson that contained extensive evidence of an abusive childhood, substance abuse, and mental impairment. *Id.* at 5. During Mr. Williams' penalty phase, however, defense counsel "presented only minimal mitigation evidence that Williams helped his loved ones as much as he could," and counsel did not present Dr. Larson's report or the evidence contained therein to the jury or the judge. *Id.* at 5. Following the penalty phase trial, the jury recommended life and, as the trial court had done with his co defendants, it overrode the jury's recommendation. *Id.* at 5. In doing so, the trial court stated that "The jury's recommendation of [a] life sentence could have been based only on minor, non-statutory mitigating circumstances or sympathy and was wholly without reason." *Id.* at 5. The Florida Supreme Court affirmed Mr. Williams' sentence of death on appeal "because of the existence of only miniscule evidence of mitigation." *Id.* at 5.

Mr. Williams subsequently filed a motion for postconviction relief, which was denied by the circuit court. *Williams*, 987 So. 2d at 5. On appeal, the Florida Supreme Court agreed with Mr. Williams that trial counsel was not ineffective for failing to present additional mitigating evidence to the jury because they returned a

life recommendation. *Id.* at 11. This Court held, however, that Mr. Williams' counsel was ineffective for failing to present this evidence at the *Spencer* hearing after the jury returned a life recommendation, even though he was aware that the trial judge had already failed to follow life recommendations in the cases of Mr. Williams' co defendants. *Id.* at 11-12.

At Mr. Robinson's evidentiary hearing, CCRC presented a vast amount of nonstatutory mitigation that was neither presented to the jury at trial nor to the trial court at the *Spencer*-type hearing on July 25, 1989. Much of the mitigation that Mr. Robinson presented at his evidentiary hearing was similar in nature to the mitigation that was contained in Dr. Larson's report on Mr. Williams, such as an impoverished and abusive childhood, an erratic school record, physical abuse, a lengthy drug abuse history, a parent with substance abuse problems, and an IQ score in the 70s. *Williams*, 987 So. 2d at 10-11. As was the case in *Williams*, the substantial amount of mitigation evidence that was presented during Mr. Robinson's evidentiary hearing, and that would have been available at the time of trial, would have provided a reasonable basis for the jury's life recommendation.

Furthermore, this Court has held that disparate treatment of another principal in a crime provides a reasonable basis for a life recommendation. *See, e.g., Pomeranz v. State*, 703 So. 2d 465, 472 (Fla. 1997) (holding that the co

defendant's life sentence provided a reasonable basis for the jury's life recommendation where the defendant shot a store clerk during a robbery while the co defendant waited outside in a car); *Brookings v. State*, 495 So. 2d 135, 142-143 (Fla. 1986) (holding that there was a reasonable basis for the jury's life recommendation where one co defendant who hired defendant to murder victim avoided a death sentence by pleading no contest to second degree murder and a second co defendant who participated in the murder received total immunity in exchange for truthful testimony against the defendant). In the case at hand, Bruce Frazier, Darrell Frazier, and Ronald Williams were principals in the murders of Michael McCormick, Derek Hill, Morris Douglas, and Mildred Baker. Darrell Frazier was tried with Mr. Robinson. The jury recommended a life sentence, and the trial court overrode the jury's recommendation. *Williams*, 987 So. 2d at 5. Bruce and Darrell Frazier subsequently testified against Mr. Williams. *Id.* at 5. The trial court vacated and set aside Darrell Frazier's previous sentence of death and he was resentenced to life imprisonment without the possibility of parole for 25 years. *State of Florida v. Darrell Frazier*, July 17, 1991 Hearing Before the Honorable Nickolas P. Geeker. Bruce Frazier entered a plea and he was sentenced to a total of fifty years prison, followed by ten years of probation. *State of Florida v. Bruce Frazier*, July 17, 1991 Hearing Before the Honorable Nickolas P. Geeker.

In 2008, this Court remanded Ronald William's case to the lower court with directions that his sentence be reduced to life. *Williams*, 987 So. 2d at 15-16. Of the five co-defendants in this case, Timothy Robinson and Michael Coleman are the only two who are still sentenced to death.

Mr. Robinson has shown that there is a reasonable probability that, but for trial counsel's deficient performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 694. The evidence presented at Mr. Robinson's evidentiary hearing would have provided a reasonable basis for the jury's life recommendation. The life sentences received by Mr. Robinson's co-defendants also would have provided a reasonable basis for the jury's life recommendation. Had this mitigation been presented to the court in 1989, either before the jury or at the *Spencer*-type hearing, the trial judge could not have overrode the jury's life recommendation and Mr. Robinson would have received a sentence of life as opposed to a sentence of death. *See Torres-Aroboleda*, 636 So. 2d 1321, 1326 (Fla. 1994) (holding that the mitigating evidence presented during postconviction would have provided "a reasonable basis in the record to support the jury override and the jury override would have been improper"). A remand to the lower court with directions that Mr. Robinson's sentences be reduced to life, as was the result in the *Williams* case, is warranted.

ARGUMENT II

THE TRIAL COURT ERRED WHEN IT SUMMARILY DENIED MR. ROBINSON'S CLAIM THAT HIS DUE PROCESS RIGHTS WERE VIOLATED WHEN HE WAS SHACKLED THROUGHOUT HIS TRIAL AND TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO INQUIRE INTO THE NECESSITY FOR SHACKLING.

The shackling issue was raised in Claim XII and Claim XVII of the motion for postconviction relief. PC-R. Vol. V, 929-934, 973-993; PC-R. Vol. VI, 994-1002. Mr. Robinson requested an evidentiary hearing on Claim XII. PC-R. Vol. VIII, 1379; PC-R. Vol. V, 934. The trial court denied an evidentiary hearing on this claim in an order dated September 13, 2004. PC-R. Vol. VIII, 1418-1419. In its order denying Mr. Robinson's Rule 3.851 motion, the trial court found that this claim has already been litigated on direct appeal, and it is procedurally barred. PC-R. Vol. XIV, 2522. The court further found that, even if the claim was not procedurally barred Mr. Robinson has failed to demonstrate that counsel performed deficiently or that there would have been a different result at trial were it not for the jury viewing Mr. Robinson's shackles during closing arguments. *Id.* Mr. Robinson seeks review of these findings.

A. Routine shackling of defendants is prohibited.

A defendant's due process rights are violated when he is shackled in the presence of the jury during his trial. *Holbrook v. Flynn*, 475 U.S. 560, 568-569

(1986). Routine shackling is prohibited; there must be an “essential state interest” to justify the practice, such as an interest in courtroom security that is specific to the defendant on trial. *Id.* This right was extended by the United States Supreme Court in 2005 to include the sentencing phase of a capital case. *Deck v. Missouri*, 544 U.S. 622, 632 (2005).

Prior to the Supreme Court’s holding in *Deck*, the Eleventh Circuit recognized that shackling a defendant during the penalty phase of his trial without a prior finding of necessity violates a defendant’s Due Process rights. *Elledge v. Dugger*, 823 F.2d 1439 (11th Cir.) (*per curiam*), *receded from on other grounds*, 833 F.2d 250 (11th Cir. 1987) (*per curiam*), *cert. denied*, 485 U.S. 1014 (1988). In *Elledge*, the Eleventh Circuit held that the shackling of the petitioner at a sentencing hearing violated the Due Process Clause because there was an inadequate determination of dangerousness and need for restraint. *Id.*; *See also*, *Duckett v. Godinez*, 67 F.3d 734, 740 (9th Cir. 1995); *Roden v. Rowland*, 172 F.3d 633 (9th Cir. 1999) (habeas petition granted where petitioner was shackled throughout the trial, in view of jurors, even though no compelling security need for shackles was established).

The reasons for prohibiting routine shackling are threefold. First, every criminal defendant is presumed innocent until proven guilty. *Deck*, 544 U.S. at

630. “Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process.” *Id.* Moreover, “[i]t suggests to the jury that the justice system itself sees a need to separate a defendant from the community at large.” *Id.* (internal citations omitted).

Second, every defendant has a Sixth Amendment right to counsel. Having a defendant physically restrained interferes with that right. *Deck*, 544 U.S. at 631. Shackling will “interfere with the accused’s ability to communicate with his lawyer” and his “ability to participate in his own defense, say, by freely choosing whether to take the witness stand on his own behalf.” *Id.* (internal citations and quotations omitted).

Third, the judicial process is supposed to be a dignified one.

The courtroom’s formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual’s liberty through criminal punishment . . . [T]he use of shackles at trial affronts the dignity and decorum of judicial proceedings that the judge is seeking to uphold. *Deck*, 544 U.S. at 631 (internal quotations and citations omitted).

B. Deficient Performance

At the beginning of the proceedings, the trial court ordered that Mr. Robinson and his co-defendants remain shackled throughout the trial. R. Vol. I, 31-33. Upon objection by trial counsel, the trial court allowed the handcuffs to be

removed, but insisted that the leg restraints remain. *Id.* The trial court attempted to alleviate the problem by placing a cardboard barrier in front of the defendants' feet. *Id.*; R. Vol. II, 213. When Mr. Robinson's counsel informed the court that there was no evidence that Mr. Robinson planned an escape attempt, the trial court responded by asking, "Are we supposed to wait until they make that attempt before we take measures to use some type of security?" R. Vol. I, 32. The following day, the court commented further regarding the shackling:

I just want the record to reflect that the court has taken every precaution to safeguard against such extraneous matters being injected into the jury's view, but on balance, the rights of the defendants to sit in the courtroom here unfettered must give way to the court's paramount right to ensure proper court security. *And the court has in its possession certain information which would not be accessible to counsel and the court can only certify for purposes of the record that these measures, extreme measures are necessary and warranted under the circumstances.*

R. Vol. II, 214 (emphasis added). This information was not introduced into the record, and defense counsel was not privy to this information; thus, the information was the fruit of an improper ex parte communication between Judge Geeker and some third party.¹⁴ When Mr. Robinson's counsel objected to the shackling

¹⁴ Canon B(7) of the Code of Judicial Conduct provides in pertinent part that "[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding."

throughout the trial, his objections were overruled. R. Vol. I, 31-33; R. Vol. II, 213-214, R. Vol. IX, 1552-1553. Trial counsel did not ask the judge to disclose the information that was in his possession, and the trial court never gave the defense a chance to contest that information.

The first prong of an ineffective assistance of counsel claim is deficient performance. *Strickland*, 466 U.S. at 687. Although defense counsel objected to the shackling of Mr. Robinson, they rendered deficient performance when they failed to inquire about the secret intelligence conveyed to the trial judge. This Court has previously held that “a hearing on necessity must precede the decision to shackle if a defendant timely objects and requests an inquiry into the necessity of the restraints.” *Bryant v. State*, 785 So. 2d 422, 429 (Fla. 2001); *Bello v. State*, 547 So. 2d 914 (Fla. 1989) (remanding for a new sentencing proceeding where trial counsel objected to the shackling of the defendant during the penalty phase and requested an inquiry into the necessity for the shackling and the trial court refused to make such an inquiry). In Mr. Robinson’s direct appeal, this Court noted that trial counsel never asked the trial court to explain further why shackling was necessary. *Robinson*, 610 So. 2d at 1290. If Mr. Robinson’s trial counsel requested an inquiry into the necessity of restraints, the trial court would have been obliged to hold an evidentiary hearing. *Bryant*, 785 So. 2d at 429. A hearing

would have been required even if the judge entered his reasons for shackling the defendants on the record, which he did not do in this case. *Id.*

Because Mr. Robinson's trial counsel did not request such an inquiry, we do not know upon what information the judge based his decision to restrain Mr. Robinson and his co-defendants. Any determination by a judge that shackling is warranted must be case-specific, and "must reflect particular concerns related to that defendant such as security needs or escape risks." *Deck*, 544 U.S. at 633. In the case at hand, Mr. Robinson, Mr. Coleman, and Mr. Frazier were all shackled throughout the course of the trial. Although Judge Geeker stated that, based on certain information in his possession, the shackling was necessary and warranted, he did not state that the information was specific to Mr. Robinson, as opposed to his co-defendants. Furthermore, we do not know whether the information was relevant or related to a particular concern, such as security needs or escape risks. There is no indication anywhere in the record that Mr. Robinson ever presented an escape risk or a security risk to the courtroom personnel or any spectators. Because defense counsel did not inquire further, Mr. Robinson was not afforded an opportunity to challenge the information.

C. Prejudice

The prejudice prong of *Strickland* is also satisfied. *Strickland*, 466 U.S. at

687. There is sufficient evidence to show that the jury was aware of Mr. Robinson's shackles. The record indicates that when the cardboard barrier that was in front of the defendants' feet came all the way down during closing arguments, the trial court was put on notice that several jurors looked toward Mr. Robinson. R. Vol. X, 1875. Judge Geeker also acknowledged that when the cardboard barrier fell down, "[t]here was a little commotion there enough to draw their attention." R. Vol. X, 1875. In *Deck*, the Supreme Court rejected the State's claim that the defendant did not show prejudice because there was no evidence as to how much the jury was aware of the shackling or any record that the defendant's ability to participate in the proceedings was diminished. *Deck*, 544 U.S. 634. Likewise, Mr. Robinson is not required to show that there would have been a different result at trial were it not for the jury viewing his shackles during closing arguments, how much the jury was aware of the shackling, or any record that his ability to participate in the proceedings was diminished in order to obtain relief. The practice of shackling is "inherently prejudicial." *Holbrook*, 475 U.S. at 568. Because of this presumption, Mr. Robinson "need not demonstrate actual prejudice to make out a due process violation;" instead the State must prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained." *Deck*, 544 U.S. at 635 (citing *Chapman v. California*, 386 U.S.

18, 24 (1967) (internal citations omitted). It is not, as the trial court suggested, Mr. Robinson's burden 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." PC-R. Vol. XIV, 2522.

D. Procedural Bar

The circuit court erred in its finding that "[t]his claim has already been litigated on direct appeal, and therefore is procedurally barred." PC-R. Vol. XIV, 2522. In *State v. Finney*, the Florida Supreme Court held that in order to preserve a shackling issue for direct appeal, the defendant must make an inquiry regarding the necessity for shackling. *State v. Finney*, 660 So. 2d 674 (Fla. 1995); *See also*, *State v. Taylor*, 848 So. 2d 448 (Fla. 2003). Mr. Robinson's trial counsel failed to make such an inquiry. Although a claim regarding the shackling of Mr. Robinson was raised and denied on direct appeal, counsel was ineffective to the extent that they failed to properly preserve the shackling issue for appeal. This Court has held that a claim that trial counsel was ineffective for failing to object to the shackling of the defendant is properly raised in a collateral proceeding. *Floyd v. State*, 18 So. 2d 432, 457 (Fla. 2009). Therefore, the claim that Mr. Robinson's trial counsel was ineffective for failing to inquire about the secret intelligence conveyed to the trial judge was properly raised in a postconviction motion for relief.

E. Conclusion

Fla. R.Crim. P. 3.851 (f) (5) (B) provides that a defendant is entitled to an evidentiary hearing on postconviction claims for relief unless the motion, files, and records in the case conclusively show that the movant is entitled to no relief. To uphold the trial court's summary denial, the claims must be either facially invalid or conclusively refuted by the record. *Hodges v. State*, 885 So. 2d 338 (Fla. 2004). Neither Mr. Robinson's claim that the jury saw Mr. Robinson in shackles nor his claim that defense counsel provided deficient performance by failing to inquire about the secret information in the possession of the trial judge are conclusively refuted by the record. *See Torres v. State*, 9 So. 2d 746 (Fla. 4th D.C.A. 2009) (holding that an evidentiary hearing was required or the trial court was required to attach portions of the record justifying its summary denial of defendant's postconviction claim based on ineffective assistance of counsel for failing to object to the shackling of defendant). The circuit court erred in issuing a summary denial of this claim without an evidentiary hearing.

The routine shackling of Mr. Robinson during both his guilt and penalty phase was a violation of his due process rights under the Federal and Florida Constitutions. Trial counsel rendered prejudicial ineffective assistance under *Strickland* when they failed to failed to inquire about the necessity for shackling.

Mr. Robinson is entitled to a new trial free from the burdens of shackles, unless the trial court can specify an essential state interest specific to the danger or security risk of Mr. Robinson himself. Absent such a finding, the dignity of the judicial process cannot be accomplished, and Mr. Robinson was hampered in his ability to enjoy the presumption of innocence and participate in his defense. In the alternative, Mr. Robinson requests that this Court reverse and remand this case to the trial court for an evidentiary hearing.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing, the circuit court improperly denied Mr. Robinson relief on his 3.851 motion. Relief is warranted in the form of a new trial, a new sentencing proceeding, a remand to the trial court with directions that Mr. Robinson's sentences be reduced to life, or any other relief that this Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Initial Brief of Appellant has been furnished by United States Mail, first class postage prepaid, to all counsel of record and the Defendant on April ____, 2010.

MARK S. GRUBER
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
Assistant CCRC
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
(813) 740-3544

Copies furnished to:

Stephen R. White
Assistant Attorney General
Department of Legal Affairs
400 South Monroe Street, #PL-01
Tallahassee, FL 32399-6536

John Dickinson
Assistant State Attorney
Office of the State Attorney
190 Governmental Center
P.O. Box 12726
Pensacola, FL 32501

Timothy Robinson
DOC #393789
Florida State Prison
7819 NW 228th Street
Raiford, FL 32026

CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Initial Brief of Appellant, was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210 (a) (2).

MARK S.GRUBER
Florida Bar No. 0330541
Maria Perinetti
Florida Bar No. 0013837
Assistant CCRC
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE REGION
3801 Corporex Park Drive, Suite 210
Tampa, Florida 33619
(813) 740-3544

Counsel for Appellant