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STATEMENT OF THE CASE

On August 26, 1999, the Pinellas County Grand Jury indicted the appellant, Kenneth Louis Dessaure, Jr., for the first-degree premeditated murder of Cindy Riedweg on February 9, 1999. [ROA V1 1-2] Dessaure was tried by jury before Circuit Judge Brandt C. Downey, III, on August 28 through September 5, 2001. [ROA V25 1; V37 1716] Defense counsel moved to preclude the death penalty on the ground that the State did not allege aggravating circumstances in the indictment. The court denied the motion. [ROA V25 29-35; SR 1-13] The jury found Dessaure guilty of first-degree murder as charged. [ROA V23 4201; V37 1817] The court adjudicated him guilty. [ROA V24 4366; V37 1819] At a hearing on September 6, 2001, defense counsel filed Dessaure's signed, written waiver of his right to present mitigating evidence to the jury. [ROA V24 4310-11; V37 1827] The court inquired to determine that the waiver was knowing, voluntary, and against advice of counsel. [ROA V37 1829-32] The penalty phase trial was conducted without a jury on September 11, 2001. [ROA V38 1840-1926] Dessaure filed a signed, written waiver of argument in favor of a life sentence during the penalty phase. [ROA V24 4313; ROA V38 1847-48] Defense counsel filed a motion for new trial on September 17, 2001. [ROA V24 4408-09] Both parties presented evidence at a Spencer hearing conducted on October 15, 2001. [ROA V24 4424-73] Both parties filed sentencing memoranda. [ROA V24 4333-34, 4337-49] A presentence investigation report was prepared.

On October 26, 2001, the court sentenced Dessaure to death. [ROA V24 4358-65, 4367-94] The court found four aggravating circumstances had been proven beyond a reasonable doubt: 1. The capital felony was committed by a person previously convicted

of a felony, conspiracy to commit armed robbery, and placed on community control (some weight). [ROA V24 4358-59] 2. The defendant was previously convicted of a felony involving the use or threat of violence, resisting arrest with violence (little weight). [ROA V24 4359] 3. The capital felony was committed during the course of a burglary (great weight). [ROA V24 4359-60] 4. The capital felony was especially heinous, atrocious, and cruel (very great weight). [ROA V24 4360-61] The court found that five mitigating circumstances had been established: 1. The defendant was 21 years old (some weight). [ROA V24 4362] 2. The defendant has the capacity and desire to be a loving parent (little weight). [ROA V24 4362] 3. The defendant's family life was dysfunctional while he was growing up, his parents abandoned him to be raised by his grandmother, and his older brother died in a traffic accident (some weight). [ROA V24 4362-63] 4. The defendant has the capacity to form personal relationships (little weight). [ROA V24 4363] 5. The defendant was well behaved in court (little weight). [ROA V24 4363] This Court affirmed the judgment and sentence. *Dessaure v. State*, 891 So.2d 455 (Fla. 2004). The mandate was issued on December 22, 2004. On February 28, 2006, a "Motion to Vacate Judgment and Death Sentence" was filed by Capital Collateral Regional Counsel. The rule 3.851 evidentiary hearing was conducted on March 10-11, 2008. On February 5, 2009, the lower Court denied all relief. (PC-ROA VOI. I 1- 87). After a timely notice, this appeal followed.

STATEMENT OF THE FACTS

The State's Case

Kenneth Dessaure lived with Amy Cockrell and Tim Connole in apartment 1307 of the Village at Countryside at 1307 Amanda Lane in Oldsmar in Pinellas County. [ROA V27 414, 452; ROA V28 489-91, 514-16] Cindy Riedweg moved into apartment 1308 next door to them on the weekend of Super Bowl Sunday in 1999. [ROA V28 492, 518; V29 695, 705- 06] Both Dessaure and Connole commented on how pretty Riedweg was. [ROA V28 493, 519] Sometimes she sunbathed on a chair in front of her apartment. [ROA V28 494, 525] Neither Cockrell nor Connole was aware of Dessaure having any social relationship with Riedweg or of him having been inside her apartment. [ROA V28 493-94, 520] Riedweg was a CNA at the Harborside Nursing Home. [ROA V29 759-60] She had a relationship with a boyfriend named Stuart Cole, who was married to another woman. [ROA V29 702-04, 710] Riedweg's friend Doreen Cosenzino, Donald Cambensy, and workers sent by Cole helped her move in. [ROA V29 700, 704-07; V30 893-94] Riedweg did not smoke and refused to allow Cole or Cosenzino's husband to smoke in her apartment. [ROA V29 708-09] On February 9, 1999, Cockrell left her apartment at 8:00 a.m. Dessaure, Connole, and Connole's friend Ivan Hup were there when she left. [ROA V28 495-96, 522-24] Connole and Hup went out for lunch around noon, leaving Dessaure alone in the apartment. [ROA V28 524-25] Before they left, Connole heard some guy ranting and raving on a cell phone outside his apartment. [ROA V28 550] Connole did not hear what the man said. He did not see the man when they departed. [ROA V28 551] Steven Way lived in the apartment at 1309 Amanda Lane. Although he did not know Riedweg, he was aware that a girl had moved into the

apartment next door a couple of weeks before. [ROA V27 437-38] On the afternoon of February 9, 1999, Way went to the store for about 20 to 30 minutes. [ROA V27 438] When he returned, he noticed a lawn chair and telephone on the sidewalk. Nobody was around and everyone's doors were closed. He went into his apartment, leaving the door open. [ROA V27 439-41] He did not hear any unusual noises. [ROA V27 441]

John Hayes lived in the apartment at 1408 Amanda Lane on February 9, 1999. As he left his apartment to go to work around 3:30 p.m., he encountered a young, tall, thin African-American man in the parking lot. He had seen the man in the complex before. [ROA V27 447-49] The man was wearing shorts, but no shirt. [ROA V27 450, 461] Hayes first saw the man walking on the sidewalk in front of the last apartment in building 13. When they reached the middle of the parking lot, the man motioned him over. [ROA V27 451] In court, Hayes identified a photo, State Exhibit 7 [ROA V27 449], and Dessaure as the man he saw. [ROA V27 452] Dessaure told him he thought there was someone dead or dying in the apartment. Hayes asked how he knew. Dessaure said he went there for ice and looked in. He acted nervous. His left hand was balled up. Hayes told him to call 911. [ROA V27 452-53, 46] Dessaure went to the back side of the apartments. [ROA V27 454] Donna Biem, a 911 supervisor, received a call from 1308 Amanda Lane at 3:35 p.m. on February 9, 1999. [ROA V27 464-66] Biem transferred the call to Antoinette Maglione, a 911 operator for the Sheriff's Office, at 3:37 p.m. [ROA V27 468, 475-78] The Advanced Life Support unit arrived at the scene at 3:39 p.m. [ROA V27 467] A tape recording of the 911 call was played for the jury. [ROA V27 472-74, 480-83] Dessaure reported that his next door neighbor was dead in apartment 1308 of the Village at Countryside at 1308 Amanda Lane in Oldsmar. [ROA V27 472-74] He said

he walked over to see if Cindy had some ice. She was sunbathing. Her phone was outside. He opened the door. She was lying in the middle of her hallway naked. Dessaure said he asked a "home boy" to help, but he would not come over. Dessaure used her phone to call the police. [ROA V27 473]

The operator asked him to stay on the line while she transferred the call to the Sheriff's Office. [ROA V27 474] When the Sheriff's Office operator took over the call, Dessaure repeated that his next door neighbor was dead at 1308 Amanda Lane. The operator asked how, and he replied that he did not know. Dessaure then said, "Ow. Fuck." The operator asked what was going on. [ROA V27 480] He replied that he just cut his finger while washing his dishes. In response to further questions, Dessaure said that he had not touched his neighbor, his name was Kenny, and he lived next door. He explained that he was cleaning his house and saw her outside sunbathing. He went next door to see if she had some ice. Her stuff was outside, so he figured she was in the bathroom. He knocked on the door, but did not receive an answer. The door was unlocked, so he went in. She was lying in the middle of the hallway. [ROA V27 481] He did not know if she was breathing. [ROA V27 481-82] He did not walk up to her. He just walked out of the house. He went to the boy who was standing outside. Dessaure just cut his finger. He had not seen anyone unusual. His neighbor's name was Cindy. [ROA V27 482] He guessed that she was between 28 and 35 years old. [ROA V27 482- 83] Paramedic Greg Newland was dispatched to 1308 Amanda Lane at 3:35 p.m. on February 9, 1999. [ROA V27 376-79] He, Captain Robert Carman, and EMT Jill Manines arrived at 3:39 p.m. [ROA V27 379] Newland identified a photo of the apartment complex, State Exhibit 11, and a close-up photo of building 13, State Exhibit 9. [ROA V27 381-82] The man shown in State

Exhibit 7 (Dessaure) met them and led them to the apartment. The back of his shirt appeared to be wet. [ROA V27 383-84,408-09]

Dessaure said he went over to borrow some ice and found his neighbor on the floor. He wasn't sure what was wrong with her. [ROA V27 385] Newland saw a lounge chair outside the apartment and a telephone lying beside the chair. [ROA V27 385-86] Newland entered the living room of the apartment and found a woman lying on the floor in a pool of blood. Carman escorted Dessaure out of the apartment, while Newland and Manines went to check on the woman. [ROA V27 387, 390] The woman was lying on her front with her arms tucked under her body. There were stab wounds to her upper back and shoulder. Newland found no pulse or breathing. The body was still warm. [ROA V27 391] He placed EKG leads on her back and obtained a reading showing a pulseless electrical activity rate of 30, which indicated that the heart was still conducting electricity but was not pumping. [ROA V27 392-94] That electrical activity was not sufficient to sustain life; she was already dead. [ROA V27 407] Newland called a Doctor on a portable radio. While he was talking to her, the electrical activity fell to flat line. The Doctor told Newland to roll the body over. He then found that her throat had been slashed. [ROA V27 395] He pronounced her dead at 3:41 p.m., two minutes after they arrived. [ROA V27 402, 407-08] Newland and Manines remained at the front door of the apartment to prevent anyone from entering. Carman cordoned off the area.

In a deposition, Hayes said that the ambulance arrived as he was driving out of the parking lot. [ROA V27 458] During cross examination, he also said he was leaving when the paramedics arrived. [ROA V27 460] fire scene tape. [ROA V27 403] Dessaure approached them several times, asking them if the woman was all right and what was

wrong with her. He seemed anxious. Newland saw Dessaure go up to several apartments and talk to other people from the complex who gathered at the scene. [ROA V27 404] Sheri Rodrigues had borrowed John Hayes' car. [ROA V 448-49] She drove up in the car about the same time that the Paramedics arrived. Hayes went to his car and sat down to put on his work boots. [ROA V27 455, 457-58] Dessaure came up and asked him for a cigarette. Hayes told him he did not smoke. [ROA V27 455] Afterwards, Hayes saw Dessaure smoking a cigarette in the parking lot. [ROA V27 455-56] Hayes went to work. He returned around 10:00 p.m. and spoke to law enforcement officers. [ROA V27 456] Hayes denied telling Deputy Hamilton that he saw Dessaure enter and leave Riedweg's apartment. [ROA V27 461-62]

Steven Way came out of his apartment and found the Paramedics there as they started to rope off the area. Way went back into his apartment. A strange black man came to the door and asked if he had seen anything. The man stuttered like he was nervous. [ROA V27 441-42, 444] Way had never seen the man before and never saw him again. [ROA V27 444, 446] He was skinny and taller than Way, who was 5 feet 7 inches tall. [ROA V27 444] Way went out into the parking lot a few times that night. [V27 442, 446] Later on, Detectives showed Way some photographs to see if he could identify the man, but he did not recognize any of them. [ROA V27 442-43, 445]

Tim Connole returned to his apartment between 4:00 and 4:30 p.m. [ROA V28 526-27] Fire trucks and paramedics were there, but his apartment had not been sealed off. Connole went inside. [ROA V28 527,545-47] Dessaure was acting nervous. [ROA V28 528] Dessaure said he had been trying to call Connole. Connole asked him what was going on and what was wrong with him. Dessaure said he didn't know, and there was a

body. Connole tried asking the neighbors what was going on, but they did not know.

[ROA V28 529] Dessaure then said he went over for some ice. He knocked, but there was no answer. He felt that something was wrong. He opened the door and saw a dead body lying in the hallway between the kitchen and the bathroom. [ROA V28 529-30, 550]

Once he saw the body, he ran out, picked up the phone, and dialed 911. [ROA V28 531]

Dessaure said he saw a guy in the parking lot. He said he did not want to be blamed for it.

[ROA V28 532] After about two or three hours, Connole noticed blood on Dessaure's shirt and asked him about it. Dessaure said he cut his hand doing the dishes and showed him the cut. [ROA V28 532-33]

Amy Cockrell returned to her apartment between 4:30

and 4:45 p.m. Connole and Hup were already there. The police were also there. [ROA

V28 499] Hup told her Dessaure went to Riedweg's apartment for ice. [ROA V28 499-

500] The next day, Cockrell looked in her own freezer and found a cup of ice but no ice

tray. [ROA V28 500-01, 510-11] In a prior statement, she told the prosecutor she found a

tray of ice that was frozen solid. [ROA V28 501-05, 512] Police technicians entered her

apartment to seize evidence on the night of February 9, 1999. One of the items seized was

an ice tray. [ROA V28 505] Later on, Cockrell's mother hired a private Detective to try to

help Dessaure. Dessaure called Connole and asked whether he had found the man

Dessaure had seen outside Riedweg's apartment. Dessaure was adamant that the man

could corroborate that he had only been in the apartment for two seconds. [ROA V27

5387-38] Connole testified that he could not get from the front door to the kitchen, then

back to the front door in two seconds. [ROA V28 539] Dessaure said he did not touch the

body. [ROA V28 539]

Karen Greule, a Forensic Science Specialist for the Pinellas County Sheriff's Office, arrived at Riedweg's apartment at 4:53 p.m. on February 9, 1999. [ROA V29 711-13, 742] She took photographs, including the exterior of Riedweg's apartment, the lawn chair, the exterior of Dessaure's apartment, Dessaure -- State Exhibit 7, the half-inch cut on Dessaure's hand, the interior of Riedweg's apartment, blood stains on the living room carpet, a vase on top of a television in the living room, and the waste basket in the kitchen. [ROA V29 714-24, 726-27, 736, 741, 743, 756-57] She took samples of the blood stains on the carpet and a chair in the living room. [ROA V29 725- 30] Upon entering the apartment, she did not see the body in the hallway until she was near the chair. [ROA V 755-56] She lifted 37 latent prints from the bedroom, laundry room, and living room, a mirror by the door, and the vase on the television. [ROA V29 732-35, 745] She took a photo, State Exhibit 63, which showed either an imperfection in the print or cigarette ashes in the kitchen sink. [ROA V29 738-40, 746, 752-54] She observed Dessaure smoking in the parking lot that evening. [ROA V29 739]

Catherine Holloway, another Forensic Science Specialist, collected the telephone found near the lawn chair [ROA V29 762-63, 768-69], a bathing suit top found on the floor of Riedweg's bedroom [ROA V29 770], a plastic mug and straw found on the counter of the kitchen sink [ROA V29 771-73], a white hair barrette with blood [ROA V29 777], a maroon hand towel found on the vanity in the bathroom [ROA V29 778-80], some knives [ROA V29 782-83], 19 samples of blood from the bathroom floor, walls, door, and toilet [ROA V29 785-86], the bottom of the bathing suit [ROA V29 787], the comforter from the bed [ROA V29 787-88, 790], and 23 cigarette butts from the parking lot and the area around the exterior of Riedweg's apartment. [ROA V29 798-99] She

observed two knives and cigarette ashes in a measuring cup in the kitchen sink, as shown in State Exhibit 63. [ROA V29 774-75] Another photo showed a black comforter on the bed and the bathing suit on the floor. [ROA V29 775-76] She failed to observe a stain on the comforter until she reviewed a video later on. [ROA V29 790-95] She observed an area of dampness on the kitchen floor in front of the sink. [ROA V29 789] Before jury selection, the court granted the Prosecutor's motion to exclude evidence of two marijuana cigarettes found in Riedweg's apartment. [ROA V25 23-24]

After the State presented evidence of cigarette ashes found in Riedweg's sink, defense counsel asked the court to reconsider its ruling and to allow him to present evidence that there was a strong smell of incense in the apartment, two marijuana cigarettes were found in the apartment, one of them was partially smoked, Stuart Cole smoked marijuana, and Cole was in the apartment earlier in the day before he played golf. This evidence would provide an alternative explanation for the presence of ashes in the kitchen sink. [ROA V30 804-09] The court ruled that it would not allow the evidence. [ROA V30 807] Detective Thomas Klein and his partner Detective Tim Pupke arrived at Riedweg's apartment at 5:14 p.m. They expanded the crime scene to include Dessau's apartment. [ROA V34 1345-50] Klein entered Riedweg's apartment and saw blood stains on the carpet in the living room. Once he reached the chair, he could see Riedweg's body lying in the hallway. Klein found a scuff mark on the kitchen floor and a pool of water near the refrigerator and sink. [ROA V34 1350-55] Craig Giovo, a Crime Scene Technician, arrived at Riedweg's apartment at 5:41 p.m. on February 9, 1999. [ROA V28 554-56, 587] Giovo videotaped the exterior of the apartments. [ROA V28 556] There was

a lounge chair on the sidewalk in front of her apartment. [ROA V 28 575- 76] There was a cordless phone on the ground. [ROA V28 576]

Robert Detwiler, a Forensic Science Specialist, arrived at Riedweg's apartment at 6:42 p.m. on February 9, 1999. [ROA V30 810-11] He noticed two men, one black and one white, standing in the parking lot. [ROA V30 812] He made a videotape of the interior of the apartment which was played for the jury. The tape showed a stain on the carpet, a white hair scrunchy, maroon towels, the arm of a chair, a wet spot on the kitchen floor, discarded paper towels, a pair of panties hanging on a door, a stain on the comforter on the bed, venetian blinds covering the bedroom window, a paper towel box, and the living room. [ROA V30 812-21] Detwiler observed water on the floor of the kitchen near the sink and cabinets. [ROA V30 823-24] Upon leaving Riedweg's apartment, Klein saw Dessaure standing with Connole near the parking lot. [ROA V34 1356] Dessaure was smoking a cigarette. [ROA V34 1357] Dessaure complied with the Officers' request to give them his blood stained shirt and his sandals. [ROA V34 1357-58, 1389, 1392-93] Connole loaned Dessaure a pair of tennis shoes. [ROA V28 540-41, 543, 1393] Dessaure took Klein and Giovo inside his apartment to show them the knife with which he cut his hand while he was washing dishes. [ROA V28 558; V34 1359, 1394-95] Giovo saw blood stains on the threshold and at the bottom of the door and later took samples. [ROA V28 559, 574] Dessaure showed them a knife on a dry sponge next to the kitchen sink. [ROA V28 561-62, 598; V34 1359] Giovo collected the knife and the sponge. [ROA V28 576-78] The water in the sink appeared greasy, and there were dirty dishes in the sink. [ROA V28 563-64, 590] There was smeared blood on the knife. Giovo saw a blood stain on the door of the freezer. [ROA V28 565] Giovo testified that he

opened the freezer door at 7:15 p.m. and saw blood stains on the bottom of the freezer and on the ice tray. [ROA V28 565, 567, 587] There was frost on the ice tray, and the ice cubes were frozen solid. He collected the ice tray. [ROA V28 566, 598] There was also an empty plastic cup in the freezer. [ROA V28 600] Giovo found and took samples of blood stains on the kitchen floor, the kitchen sink, the backsplash, and the faucet. [ROA V28 575] There was a bottle of bleach underneath the kitchen sink. [ROA V28 568-69] Giovo received Dessaure's sandals and shirt from Klein. [ROA V 28 570]

Detective Klein testified that he asked Dessaure for permission to look in the freezer, then opened it at 7:15 and found the ice tray containing the ice cubes. [ROA V34 1360, 1397] There was blood under the ice tray. [ROA V34 1397] Dessaure told him the ice cubes were not quite frozen earlier in the afternoon when he wanted ice, and that was the reason he went to Riedweg's apartment. [ROA V34 1360] Klein asked Dessaure to accompany him to the Sheriff's Office to make a statement. [ROA V34 1360-61] Klein noticed that Dessaure is right handed. [ROA V34 1360] Klein initially interviewed Dessaure as the complainant. During the course of the interview, the Officers became suspicious of Dessaure and took a break. When they resumed the interview, they advised Dessaure of his Miranda rights. [ROA V34 1361- 63, 1398] Prior to trial, the court denied defense counsel's motion in limine to exclude a portion of the tape recorded interview concerning an argument over the telephone on the day of the homicide between Dessaure and his girlfriend, Mary Parent, about Dessaure having a relationship with another woman, Renee Listopad. [ROA V21 3821-22;] Defense counsel renewed his objection to this evidence at trial [ROA V34 1366] before the recorded interview was played for the

jury. [ROA V34 1369, 1-54] The recording began at 8:20 p.m. on February 9, 1999.

[ROA V34 1]

Dessaure was twenty-one years old. He was born in Yonkers, New York. [ROA V34 2] He moved to Largo, Florida, to live with his grandmother, Louise Randall, his grandfather, and his two brothers when he was one year old. [ROA V34 2-3] Dessaure attended several schools in Pinellas County, then moved to Tennessee when he was in the ninth grade. He attended the ninth grade for only two months and did not graduate from high school. [ROA V34 3-4] He moved back to Pinellas County in 1995 and lived with his grandmother in Baskins for awhile. [ROA V34 4] He had a former girlfriend named Renee Listopad, whom he dated for six or seven months. [ROA V34 4-5] Mary Parent was his fiancée. She lived in South Carolina with his four or five month old son. [ROA V34 6] Dessaure had two children with Melissa Madley, John Thomas Madley and Kayla Lynn Madley. They lived in Tarpon. He had another child, Brittany Renee Allison, who lived in Tennessee with her mother, Holly Deanna Allison Palmer. [ROA V34 7-8]

Dessaure said he moved into the apartment at 1307 Amanda Lane a week before Christmas. He had known Tim Connole for eight to ten years. [ROA V34 8-9] Dessaure lost two jobs while living there. [ROA V34 9] Riedweg moved in next door about two weeks before the interview. Dessaure introduced himself to her while she was moving in and offered to help, but he did not know her that well. [ROA V34 9-10] Dessaure said he got up at a quarter to twelve that morning and smoked a cigarette. [ROA V34 11] Amy left for school while he was sleeping. [ROA V34 13] Tim and his friend Ivan left around twelve. Dessaure ate some spaghetti for lunch and played a video game. [ROA V34 12-14] He turned on the radio and started to clean around 2:00 or 2:30. He took the garbage

out to the dumpster around 2:45 and saw Riedweg sunbathing with her eyes closed. She was wearing an orange, multi-colored bikini. [ROA V34 14-18] When he returned from the dumpster he did not notice whether Riedweg was still outside because he looked down while he walked. [ROA V34 17-21] Dessaure put detergent and bleach in water in the sink and began washing a knife. The knife slipped and cut the palm of his hand. He put the knife down and ran water on the cut. [ROA V34 21-24] Dessaure said he finished drinking a cup of water and wanted another cup of cold water. The ice tray was empty, so he filled it and put it and a cup in the freezer. [ROA V34 24] Dessaure went to Nathan's apartment to get some ice, but Nathan wasn't at home. Dessaure saw a black guy in the parking lot. He asked the man if he had seen Tim or Amy. The man said no, he did not know who they were. Dessaure asked if he knew Nathan, and he said no. [ROA V34 24-27] Dessaure went back into his apartment to get his cup, then he went next door to Riedweg's apartment. He knocked on the door and yelled for Cindy. He noticed that her stuff was still outside. He found that her door was unlocked, opened it, and called for her. Dessaure went inside. He did not see anyone, so he walked to the kitchen. When he came back from the kitchen he saw her lying on the floor with blood on her. He left the apartment without touching anything. [ROA V34 27-29] Dessaure waved to the man in the parking lot, told him he thought the lady was dead, and asked him for help. The man told him to call the police and walked away. [ROA V34 28-29] Dessaure picked up Riedweg's phone, which was by her lawn chair, and called the police. While he was on the phone, he went back inside his apartment to look for a cigarette. [ROA V34 29] He picked up the knife to clean it and cut himself again in the same spot. He yelled, the dispatcher asked what was wrong, and he told her he cut himself again. [ROA V34 30-

31] Detective Pupke asked Dessaure about using bleach to wash the dishes. Dessaure said it wasn't bleach, it was dish detergent. There was bleach in the house, but he thought it was kept in the bathroom. The only time he used it was to clean an old refrigerator. [ROA V34 31] Dessaure said the dispatcher told him the police were on the way. He thanked her and hung up. He went outside. He threw the phone on the lawn chair, but it must have fallen off because he saw it on the ground later. [ROA V34 31-32] The fire truck arrived first. Dessaure showed them where Riedweg was. Dessaure followed the first man into the apartment, but he was told not to touch anything and to leave. He went outside, paced on the sidewalk, then went to the middle of the parking lot. He saw the Police arrive. Dessaure had never been in Riedweg's apartment before that day. [ROA V34 32] Dessaure wore his gray and black "Z-shirt," which had blood on it from his hand, and sandals. The tape was stopped for a break at 9:06 p.m. [ROA V34 34] The tape resumed at 10:18 p.m. Detective Pupke stated that he read Dessaure his Miranda warnings, and he waived his rights and agreed to speak to them. Dessaure said he woke up around 11:30. Amy had already gone to school. Dessaure smoked a cigarette and used the bathroom. [ROA V34 35] Tim and Ivan left around twelve. Dessaure played a video game until about 2:30. [ROA V34 36] While playing the game, Dessaure received calls from Tim, his fiancée, Renee, and two other people. [ROA V34 37] He asked his fiancée, who was in South Carolina, if she was cheating on him. She had denied cheating on him a couple of weeks before. That was nothing new between them, they argue and yell. She wanted to come back to Florida, and he wanted her to come back. He had a dream about her cheating, and usually his dreams are true. [ROA V34 37-38] He hung up on her. He had

been trying to break up with Mary but wasn't sure whether he wanted to be with her or Renee. He had seen Renee the other day. [ROA V34 39]

Dessaure and Mary had been together for about two and a half years. He had messed around with Renee last year, and they slept together two days before the statement. He wasn't cheating with Renee because Mary told him they were broken up the day before that. [ROA V34 40-41] During their argument on the day of the statement, Mary accused Dessaure of cheating on her, and he accused her of cheating on him. [ROA V34 41, 43] Dessaure and Mary had been fighting ever since she had been gone. He fought with her before he slept with Renee. [ROA V34 42] He fought with Mary the day of the statement and hung up on her. Tim prank called him, then he called Mary back. [ROA V34 42-43] Dessaure started cleaning after all of the calls. He did not look at the clock to see what time it was. [ROA V34 43-44] Detective Pupke asked if Riedweg was a good looking woman. Dessaure answered yeah. [ROA V34 44] Dessaure had never gone to her apartment to ask her for anything other than ice. She was not home that much. She had never invited him into her apartment. He opened her door and went into the apartment because he was worried about her. The Detectives said that made no sense. Dessaure replied that he did it to all his friends if he knows they are there; he knocks on their door and opens it. [ROA V34 45-46] He called Cindy's name and felt that something was wrong because she did not answer. [ROA V34 46, 48] He walked into the apartment without looking to his right. [ROA V34 46-47] When he came back out from the kitchen, he looked to his left and saw her lying there. He did not know what caused her injury. [ROA V34 47-48] Dessaure said the guy he saw in the parking lot could verify

that he was not in the apartment more than a couple of minutes. [ROA V34 47] Riedweg was bloody, had no clothes on, and was lying on her stomach. [ROA V34 48-49]

Dessaure denied the Detectives' allegations that he wanted sex from Riedweg and fought with her when she resisted. [ROA V34 49-50] They accused him of planning it since she moved in. Dessaure said he had not been there to watch her, he had been working. They said he had not worked in two weeks. He said he had been looking for a job for a week. [ROA V34 50] Pupke accused him of being "pissed off" because he argued with his girlfriend. Dessaure replied that he had been arguing with his girlfriend for two months, and he did not take out things on other people. Pupke asked if Riedweg was in the bedroom when he first saw her. Dessaure said he had no clue what Pupke was talking about and denied being there. Dessaure said, "I did not, I didn't, I did not hurt this lady man, I did not hurt this lady." [ROA V34 51] Dessaure denied killing Riedweg and challenged the Detectives to prove it. Klein said there was blood all over the sink. Dessaure said it was from his hand when he cut himself. Klein asked how he would explain it if tests showed it was her blood. Dessaure said if the test came back to her blood then they would arrest him. Klein asked how he would explain the blood on the back of his shirt. Dessaure said it was his. [ROA V34 52] Dessaure said he cut himself every time in the same spot. Pupke said his roommate never saw him cut himself when he was cleaning. Dessaure told them to arrest him or he would not go on with the interview. He said they were not going to talk to him anymore until he had a lawyer because he did not kill that lady. Klein accused him of killing her, and Dessaure denied killing her. Dessaure said he was through with the conversation and asked the Detectives to let him go home. [ROA V34 53] The tape ended at 10:40 p.m. [ROA V34 54] After the

interview, Klein arrested Dessaure on an unrelated matter. [ROA V34 1380-81] When he told Dessaure he was under arrest, Dessaure said he was leaving and started fighting with the Detectives, causing his hand to bleed. [ROA V 34 1381, 1405]

Klein took Dessaure's shorts and green plaid boxer shorts. [ROA V31 1010-12; V34 1374] Greg Mason, a Forensic Science Specialist, photographed Dessaure and took his fingerprints, footprints, and fingernail clippings on February 10, 1999. [ROA V30 845-49] Klein obtained a blood sample from Dessaure pursuant to a Warrant on June 9, 1999. [ROA V34 1382-83] Dessaure was not arrested for the murder until August 26, 1999, after he was indicted. [ROA V34 1383] Klein interviewed and obtained a blood sample and prints from Stuart Cole. [ROA V31 1012-13; V34 1375-76] Klein investigated to determine where Cole was at the time of the murder, interviewing Gerald Daniel, Kent Cavedra, and Dan Copeland. [ROA V34 1377] Klein went to the Fox Hollow Golf Course near New Port Richey in Pasco County, 13.8 miles from Riedweg's apartment. [ROA V34 1377-78] He reviewed a tee time starter sheet at the golf course and confirmed Cole's whereabouts for the hours of 1:50 p.m. to 6:00 p.m. [ROA V34 1378-79] He determined that Cole had been at Riedweg's apartment earlier in the day. Cole made a cell phone call in front of her apartment at 11:20 a.m. and left the apartment around 1:00 p.m. [ROA V34 1401, 1410] Connole saw Cole at his vehicle around 12:00. [ROA V34 1411] Klein identified a copy of Cole's Death Certificate. He died in a traffic accident. [ROA V34 1376-77] Kent Cavedra played golf with Stuart Cole twice a week on a regular basis. [ROA V34 1428] Cole had an intense relationship with Riedweg and spent some of his days with her. [ROA V34 1428-30] Cavedra, Cole, Dan Copeland, and Gerald Danling played golf at the Fox Hollow Golf and Country Club on the afternoon of

February 9, 1999. Cole arrived between 1:45 and 2:00 p.m. [ROA V34 1430-31] They teed off at 2:13 and played until 6:00 or 6:30. [ROA V34 1432-33]

Brandy Adams and Nathan Phillips lived in an apartment at the Villas of Countryside. Adams was home all day on February 9, 1999, with her windows and door open. Dessaure did not come to her apartment that day. Phillips came home around 3:00 or 3:30. They went to a restaurant about an hour later, before the Paramedics came.

Amy Cockrell came to their apartment after they came back. [ROA V34 1414-25] Dessaure was not authorized to enter their apartment without knocking. [ROA V34 1426]

Detwiler returned to the apartment on February 10 and made a sketch of the scene, which he displayed and described for the jury. The body was in the hallway between a closet and the bedroom. Upon entering the apartment, he reached the area of the chair in the living room before seeing the body. A maroon towel was on the vanity. [ROA V30 825-28] Detwiler lifted several latent prints from the floor of the kitchen, including a ridge detail from a foot. [ROA V30 830-34] He also observed blood smears on the bathtub and processed it for latent prints. [ROA V30 835-38] None of the technicians smoked in the apartment. [ROA V30 838-39]

Giovo returned to Dessaure's apartment on the afternoon of February 10 and conducted a luminal test of the carpet in the living room and the floor of the kitchen. The tests produced false positive and negative results. [ROA V28 579-80] Later that evening, he obtained Riedweg's prints, including her palms and feet. [ROA V28 580-81, 601] On March 20, 2001, Giovo examined a comforter under a luma light, then sent it to FDLE. [ROA V 28 585-86, 594]

John Huff, a Forensic Science Specialist, examined the comforter with a scan light, cut out pieces with visible stains, and sent the cuttings to the FDLE. [ROA V30 884-88]

On February 10, 1999, John Mauro, a Forensic Science Supervisor, Specialist Robert Rast, and Specialist Melissa Colbath went to the Medical Examiner's Office. [ROA V30 910-12, 924-25] They photographed the body. [ROA V30 912] Rast collected 21 blood samples from the body. [ROA V30 923, 927] Rast received a known sample of Riedweg's blood from the Medical Examiner. [V30 925-27] Counsel stipulated that the deceased person found in the apartment and upon whom the autopsy was performed was Cindy Riedweg. [ROA V30 891-92]

Dr. Laura Hair, an Assistant Medical Examiner [V35 1465-68], observed Riedweg's body at the apartment on February 9, 1999, and performed the autopsy on February 10. [ROA V35 1468-75, 1481] Riedweg was 5'6" tall and weighed 136 pounds. [ROA V35 1476] She was 27 years old. [ROA V35 1495] Hair found that she had suffered a total of 53 wounds, including three bruises, fifteen scrapes and pick marks, sixteen superficial cuts, fifteen deeper cuts, and four stab wounds. There were five defensive wounds to the hands, three wounds that penetrated the trachea, three that damaged and collapsed the lungs, two that cut the exterior jugular vein, one that cut the liver, one that struck a vertebra, and one that cut a spinal nerve. [ROA V35 1476- 77, 1483-1527] Riedweg could have remained conscious for four to six minutes after her lungs collapsed; she could have survived from four to ten minutes. [ROA V35 1528-29] Electrical activity could have continued for a few minutes more, perhaps ten to fifteen minutes. [ROA V35 1530] Multiple stab wounds of the torso and neck were the cause of

death. [ROA V35 1535] All 53 wounds occurred around the same time. [ROA V35 1535] Riedweg had not started her menstrual cycle. [ROA V35 1539] The rape kit came back negative. [ROA V35 1540]

David Brumfield, the Coordinator of the Crime Scene Technology program at St. Petersburg College and a blood spatter analyst, examined and photographed the blood stains in Riedweg's bathroom and hallway on February 9, 1999, before her body was removed, and continued his examination on February 10. He displayed and explained the photographs and his analysis for the jury. [ROA V30 932- 93] The shower curtain had been pulled to the right away from the toilet. There were blood stains on the bottom right corner of the shower curtain. [ROA V30 945] There was much less blood in the bathroom than in the hallway. [ROA V30 946] There were blood stains across the top of the shower, behind the toilet, on the side of the toilet, and on the back wall. [ROA V30 947, 955-56] The amount of blood in the bathroom indicated that she had been cut, but was not bleeding heavily enough for it to be life threatening. [ROA V30 948] There were blood droplets which fell into the bathtub and onto the outside edge of the tub. [ROA V30 949-54] There was a blood swipe on the outside of the tub. [ROA V30 953] It appeared that she grabbed part of the tub. The droplets increased in size. [ROA V30 954-55] Most of the blood was down low except at the back of the tub, where it was above the edge of the tub. [ROA V30 955980-81] There were stains where Riedweg's legs, stomach, and hand made contact with the tub. [ROA V30 956-58] There was blood on the carpet. [ROA V30 959] Smear stains indicated that she went down and made contact with the floor, then moved. [ROA V30 960-61] The hallway was the main area where the bloodletting occurred. [ROA V30 961] Riedweg was found lying halfway in

the bathroom and halfway out in the hall. [ROA V30 966] The highest blood stains in the hallway were 12 to 18 inches above the floor. [ROA V30 968] Most of the blood spatter in the hallway was the result of downward motion. [ROA V30 976-80] The highest point the blood could have originated from was 18 to 24 inches above the floor. [ROA V30 980] The blood stains on Riedweg's face showed that she was lying face down on the right side of her face, then she moved so that the left side of her face was on the floor. [ROA V30 985] Blood from her neck wounds did not run down her back, so she was down and leaning forward when the wounds started bleeding. [ROA V30 986-87] There was a fine mist of blood on her back and buttocks and air bubbles in droplets of blood consistent with wounds penetrating her lungs. [ROA V30 987-89, 995] Blood droplets running to each side, but not down, were consistent with her being down and rotating her body. [ROA V30 988] There was no blood on the bottom of her feet, so she was down on her knees, or completely down during the time the injuries occurred; she did not step in any blood. [ROA V30 992] Brumfield believed that the initial cutting took place just outside the bathtub. Riedweg went into the bathtub face first. She grabbed a hold, pushed herself up, then dropped face forward away. Sherwood initially testified that she identified only three prints: Dessauere's footprint, one print from Riedweg, and one print from Cambensy from the tub. [ROA V30 863-64] She came out a couple more steps to where the rest of the offense occurred. [ROA V30 996] Michelle Sherwood, a Latent Print Examiner for the Pinellas County Sheriff's Office, identified a latent footprint found on Riedweg's kitchen floor as Kenneth Dessauere's right foot. [ROA V30 853, 859-60] Sherwood also had known prints from Riedweg, Stuart Cole, Timothy Connole, Joann Cambensy, Doreen Chaluka, Lance Stutterman, Robert Denson, and Donald Cambensy.

[ROA V30 861-62] She received a total of 91 latent prints. [ROA V30 862] She identified 28 of the prints as those of Cindy Riedweg, and seven of the prints from the kitchen table as those of Donald Cambensy.⁵ [ROA V30 896-97] Two other prints had sufficient ridge detail for comparison, one from a mirror at the entrance, and another from the vase on the television, but she was unable to identify them. The remaining latent print lifts were of no value for comparison. [ROA V30 864-65, 877-79]

Counsel stipulated that Richard Hohl, an FDLE Fingerprint Analyst, examined three knives found at the scene but found no latent fingerprints suitable for comparison. [ROA V30 891]

John Wierzbowski, a former FDLE Crime Lab Analyst, examined a silver gray T-shirt, a pair of black denim shorts, and a pair of flip-flop sandals to conduct a blood stain pattern analysis. [ROA V30 899-900, 908] He found a transferred blood stain inside the right front pocket of the shorts, but he could not determine what object made the stain; it could have been any object covered with blood. [ROA V30 901-04, 907-09] The other stains on the shorts were not sufficient for blood stain pattern analysis. [ROA V30 905-06, 909] There were no stains of value for analysis on the sandals or shirt. [ROA V30 905, 907]

Tina Delaroche, an FDLE Forensic Serologist [ROA V31 1015-47, 1073- 74] performed polymerase chain reaction (PCR) DNA analysis using manufactured test kits. [ROA V31 1048-49] She examined Dessaure's black shorts and found six blood stains for analysis. [ROA V31 1057-67] Stain 6A was from the right front pocket and was consistent with the DNA profile of Riedweg. [ROA V31 1066] Stain 6C was also consistent with Riedweg. [ROA V31 1066-68] Using the FBI database, the chances of a

random match for each of those stains were 1 in 3,980 Caucasians, 1 in 2,550 African Americans, and 1 in 5,150 Southeastern Hispanics. [ROA V31 1075-76] Stain 6B from the lower left leg of the shorts was consistent with Dessaure. [ROA V31 1066] The chances of a random match for 6B were 1 in 193,000 Caucasians, 1 in 16,600 African Americans, and 1 in 87,700 Southeastern Hispanics. [ROA V31 1077] Stain 6D from the bottom of the right leg of the shorts was a mixture in which Riedweg, Dessaure, and Stuart Cole could be included, but Donald Cambensy and Timothy Connole were excluded. [ROA V31 1067-71] The chances of a random match for 6D were 1 in 12 Caucasians, 1 in 3 African Americans, and 1 in 11 Southeastern Hispanics. [ROA V31 1077] Stain 6E from the center of the left leg of the shorts was a mixture in which Riedweg and Cole were included, Dessaure could not be excluded, and Cambensy and Connole were excluded. [ROA V31 1071-72] The chances of a random match for 6E were 1 in 22 Caucasians, 1 in 8 African Americans, and 1 in 21 Southeastern Hispanics. [ROA V31 1077-78] Stain 6F from the back right pocket of the shorts was a mixture in which Riedweg, Dessaure, Cole, and Cambensy were included, and Connole could not be excluded. [ROA V31 1072-73] The chances of a random match for 6F were 1 in 2 Caucasians, 1 in 2 African Americans, and 1 in 3 Southeastern Hispanics. [ROA V31 1078] Delaroche examined the sexual assault kit, including vaginal, oral, and rectal swabs from the autopsy of Riedweg, and found no semen were present. [ROA V31 1080-81] She examined Dessaure's shirt and found a faint blood stain on the front and a stronger blood stain on back. Her tests showed that the DNA profile from the stronger stain was consistent with Dessaure. The chances for a random match were 1 in 193,000 Caucasians, 1 in 16,600 African Americans, and 1 in 87,700 Southeastern Hispanics.

[ROA V31 1081-83] She tested two faint stains from the shirt, but was unable to obtain DNA profiles for them. [ROA V31 1083-84] She examined the towel from Riedweg's bathroom; a crusty white stain tested positive for semen. The DNA profile of the semen was consistent with Dessauere. The chances for a random match were the same as for the blood stain on the shirt. [ROA V31 1084-87] Delaroche tested samples taken from Riedweg's living room floor and chair and found that all were positive for blood. [ROA V31 1088-89] Two samples from the chair were too small for DNA testing. [ROA V31 1089] Samples from the living room floor were consistent with the DNA profile of Riedweg. [ROA V31 1089-90] One sample from the chair was consistent with Stuart Cole. [ROA V31 1090-91] Delaroche examined three knives from Riedweg's apartment; all were negative for blood. [ROA V31 1091-92] Samples from Riedweg's bathroom floor all tested positive for blood. [ROA V31 1092-93] Sample 90A was a mixture. The stronger profile in the mixture was consistent with Riedweg. Cambensy and Connole were included in the minor component of the mixture, while Dessauere and Cole were excluded. [ROA V31 1093-94] Samples 90B through I and K through T were consistent with Riedweg. Sample 90J was too small to obtain a complete profile. [ROA V31 1095-97] Blood stains on the knife from Dessauere's kitchen were consistent with Dessauere. The chances of a random match were the same as for the blood stain on his shirt. [ROA V31 1098-99] Delaroche examined the cutting from Riedweg's comforter. The white stains tested positive for semen, and she observed sperm cells through a microscope. She submitted it for STR DNA testing. [ROA V31 1099-1100] Riedweg's fingernail clippings tested positive for blood and were submitted for STR testing. [ROA V31 1101-02] Dessauere's fingernail clippings tested positive for blood. The DNA profile was consistent

with Dessaure. [ROA V31 1104-05] Several swabs from Dessaure's hands tested positive for blood. The DNA profile was consistent with Dessaure. [ROA V32 1134-36] Twenty-one swabs from Riedweg's body tested positive for blood, but no DNA testing was done on them. [ROA V32 1136-37, 1140-41] Numerous swabs from Dessaure's apartment tested positive for blood, but none of them were consistent with Riedweg. [ROA V32 1141-44] None of the tested blood samples from Riedweg's apartment were consistent with Dessaure. [ROA V31 1147-48]

Robyn Ragsdale, an FDLE Forensic Serologist, conducted short tandem repeat (STR) DNA analysis. [ROA V32 1194-1200] STR analysis is more discriminating than the PCR analysis done by Delaroche because it involves more loci, thirteen alleles instead of six, and there are more possible combinations at each of the loci. [ROA V32 1206-09] Ragsdale tested the blood stains from Dessaure's shorts. [ROA V32 1211] She found that the DNA profile for stain 6A from the pocket matched Riedweg at all 13 loci and amylogenic (a determination of gender). [ROA V32 1207, 1211-13] The frequency of this profile is 1 in 4.63 quadrillion Caucasians, 1 in 29.6 quadrillion African Americans, and 1 in 3.98 quadrillion Southeastern Hispanics. [ROA V32 1213] These frequencies are based on an FBI database with about 200 people from each ethnic group. [V33 1261] The frequencies are an approximation with a factor of 10 margin of error -- the frequencies could be ten times larger or smaller. [ROA V33 1259-60] Stain 6C and the major component of the mixture from stain 6E matched Riedweg at 7 loci and amylogenic. There was only enough DNA to test 9 loci, and she did not obtain results for 2 of them. She could not determine who the other contributor to the mixture was. [ROA V32 1215-18] The frequency of this profile is 1 in 39.1 million Caucasians, 1 in 112 million African

Americans, and 1 in 32.4 million Southeastern Hispanics. [ROA V32 1221] Stain 6D was a mixture. Assuming that Dessaure was the contributor to the minor component, the major component matched Riedweg at 8 loci and amylogenic, with the result at 1 of the loci inconclusive. [ROA V32 1218-19] The frequency of this profile is 1 in 171 billion Caucasians, 1 in 354 billion African Americans, and 1 in 159 billion Southeastern Hispanics. [ROA V32 1222] Stain 6F was a mixture. Ragsdale excluded Dessaure as the contributor of the minor component. The major component matched Riedweg at all 9 loci and amylogenic. [ROA V32 1219-20; V33 3276] The frequency of this profile is 1 in 1.42 trillion Caucasians, 1 in 2.78 trillion African Americans, and 1 in 1.31 trillion Southeastern Hispanics. [ROA V32 1222] Stuart Cole and Donald Cambensy were excluded as contributors to 6C, 6D, 6E, and 6F [ROA V33 1274] The contributor to the minor component for 6F was unknown. [ROA V33 1277] The stain from Dessaure's shirt matched Dessaure at 9 of 13 loci, with the other loci inconclusive. The frequency for this profile is 1 in 234 billion Caucasians, 1 in 283 billion African Americans, and 1 in 1.93 trillion Southeastern Hispanics. [ROA V32 1220- 21] The stain on the maroon hand towel matched Dessaure at 12 of 13 loci and amylogenic with 1 of the loci inconclusive. The frequency for this profile is 1 in 27.9 quadrillion Caucasians, 1 in 114 quadrillion African Americans, and 1 in 125 quadrillion Southeastern Hispanics. [ROA V32 1222-23] A swabbing from Riedweg's bathroom floor matched Riedweg at all 13 loci and amylogenic. The frequency for this profile is 1 in 4.63 quadrillion Caucasians, 1 in 29.6 quadrillion African Americans, and 1 in 3.98 quadrillion Southeastern Hispanics. [ROA V32 1224] The stain from the knife in Dessaure's apartment matched Dessaure at 10 of 13 loci and amylogenic, with the other loci inconclusive. The frequency for this profile is

1 in 5.9 trillion Caucasians, 1 in 14.8 trillion African Americans, and 1 in 66.1 trillion Southeastern Hispanics. [ROA V32 1226-27] The swabbing from Dessauere's right hand matched Dessauere at all nine tested loci and amylogenetic. The swabbing from Dessauere's fingernails also matched Dessauere at all nine tested loci and amylogenetic. The frequency for this profile is 1 in 46 trillion Caucasians, 1 in 18.3 trillion African Americans, and 1 in 65.1 trillion Southeastern Hispanics. [ROA V32 1227-28] The stain from the living room chair did not match Riedweg or Dessauere. It matched Stuart Cole at 8 of 9 loci and amylogenetic. [ROA V32 1228-29] The parties stipulated that Riedweg's white sofa and chair had been in her prior apartments in Fort Meyers and the Tampa Bay area and that Stuart Cole had been in those apartments while the furniture was there. [ROA V34 1344-45] Ragsdale obtained incomplete profiles from Riedweg's fingernails which were consistent with Riedweg. [ROA V32 1229-30] The stain from the comforter matched Dessauere at 12 loci and amylogenetic. The frequency for this profile is 1 in 27.9 quadrillion Caucasians, 1 in 114 quadrillion African Americans, and 1 in 125 quadrillion Southeastern Hispanics. [ROA V32 1230-31] A sample from the strap of the left sample matched Connole at 11 of 13 loci and amylogenetic. Riedweg, Dessauere, Cole, and Cambensy were excluded. [ROA V33 1274-75]

Valdez Hardy, a former prison inmate with nine or ten felony convictions, was in the same cell pod in the Pinellas County Jail as Kenneth Dessauere beginning in September, 1999. [ROA V28 620-26] Hardy had been a paid drug informant in 1997 and 1998. [ROA V28 652] He was charged with burglary as a career criminal. [ROA V28 645-47] When he allegedly obtained information about the present case, Hardy called someone in the vice and narcotics squad hoping to obtain help. Homicide Detectives

came to talk to him. [ROA V 653-54] When he first spoke to the Prosecutor, he asked if she could do something for him, but she told him no. [ROA V28 654-55] Hardy gave a sworn statement to the Prosecutor on November 4, 1999. [ROA V28 640] He pled to a trespass charge. No one from the State Attorney's Office spoke on his behalf when he was sentenced in April, 2000. He went to prison for 26 months for violating probation. [ROA V28 648-51] Hardy was deposed by the defense on November 9, 2000. [ROA V28 641] Assistant State Attorney Brian Daniels testified that he was not aware of Hardy being a potential witness in a homicide case before the resolution of Hardy's cases. [ROA V29 682, 685, 690] Hardy claimed that one afternoon Dessauere said he was concerned about a washrag that might have his semen on it. [ROA V28 629-30] Dessauere said he came home one morning and saw the young lady sunbathing in a lawn chair. He went upstairs, then came back down to take out the trash. He winked at her when he walked by. He went back upstairs. When he came back down, she was gone. [ROA V28 631, 659] She left her phone and a cup by her chair. He went to the door and found that it was open. He went inside. She saw him and "started tripping." Hardy thought he meant that she was screaming or getting nervous. [ROA V28 631] Dessauere said the washrag was "the only thing that can really prove that." They already knew he was there because he called 911. When he was leaving the apartment a guy saw him. He told the man that a girl was in there dead. The man told him to call the police. Dessauere said he went outside, picked up her phone, and called 911. Hardy asked if there was a lot of blood, and Dessauere answered, yeah. A few days later he said she was naked on the floor. [ROA V28 632] Dessauere said the Paramedics came first. He was outside smoking a cigarette, and he was nervous. They asked where the body was, he walked inside and motioned

with his head, and they saw her. The Detectives questioned him and asked where he got the cut on his arm. He said he cut himself on a knife. They took him to his house, and he showed them the knife. They saw blood on his underwear. [ROA V28 633] Dessaure said that when he went to the police station, he asked the Police why he called 911 if he killed her. They told him he was facing the death penalty. When he got up like he was going to leave, one of the Detectives grabbed him, slammed him against the wall, and arrested him. [ROA V28 661] Dessaure said they took his roommate's shoes because he had changed shoes. He had been wearing flip-flops. He said his main concern was the washcloth. [ROA V28 634] He said something about a foot or a scuff mark in the kitchen. [ROA V28 635] According to Hardy, Dessaure said that "can't nobody say he killed her. Don't nobody know what happened but him and her." [ROA V28 635] Dessaure said he had seen her a few times, and she had just moved there. [ROA V28 635, 637-38] Hardy told Dessaure to say that he had been seeing her and had oral sex with her in order to explain why his semen was on the washrag. [ROA V28 636-37] Hardy suggested saying he had seen her that night, but Dessaure said she worked at night. [ROA V28 637] Dessaure was not going to say that he dated her, just that they were seeing each other, he was talking to her, and they got together now and then. [ROA V28 638]

Hardy denied that this conversation occurred on October 1, 1999, after a Corrections Officer left a newspaper with an article about Dessaure's case in the cell pod. [ROA V28 655] He denied that he read the article, which stated that semen matching Dessaure's DNA profile was found on a towel in Riedweg's bathroom. [ROA V28 656, 660, 665] After reading the article in court, Hardy said there was nothing in it about taking out the trash, scuff marks on the kitchen floor, leaving her naked on the kitchen

floor, having an immaculate house, a phone by the chair, his roommate's shoes, Paramedics arriving first, her working nights, flip-flops, the Detectives slamming him to the floor, seeing a guy as he was leaving, telling the guy she was dead, the guy telling him to call the Police, nor that he cut himself. [ROA V28 662-64] Hardy also denied seeing or reading any police reports or depositions in Dessaure's case. [ROA V28 639-40]

Nineteen year old Shavar Sampson was serving nineteen years in prison for seven felonies committed when he was seventeen. [ROA V35 1441-42] On December 3, 1999, Sampson turned eighteen and was put in pod 4F9 of the Pinellas County Jail with Valdez Hardy, Kenneth Dessaure, and Carl Bercher. [ROA V35 1442-45] Sampson testified that Dessaure told him about his case. Dessaure said he saw the woman outside sunbathing. He wanted to talk to her, but she did not want to have a conversation with him. The next day Dessaure went inside her apartment while she was outside sunbathing because he wanted to surprise her. When she came inside, he tried to talk to her, but she did not want to talk. She punched him. He punched her back and knocked her unconscious. He took off her two piece bathing suit and began to have sex with her. [ROA V35 1448, 1462-63] The woman regained consciousness and began fighting to get him off of her. [ROA V35 1449, 1462-64] Dessaure had a knife and stabbed her a lot of times. He removed his clothing and put on something he brought from home. He called 911 to summon an ambulance. [ROA V35 1449] Dessaure said his sperm went inside her while they were having sex. [ROA V35 1449, 1458-60] Her period started, blood got on his underwear, and he had to change underwear. [ROA V35 1449, 1462] Dessaure said the State had a weak case; they had no witnesses and could not win. [ROA V35 1450] In February, 2000,

Sampson was in pod 2F7. Dessaure came in, saw Sampson, then filled out a form requesting a transfer to another pod. [ROA V35 1450-51, 1545-49] Sampson was sentenced in March, 2000. [ROA V35 1451] In December, 2000, the State Attorney's Office had Sampson transferred back to Pinellas County, and he spoke to them about Dessaure's statements for the first time. [ROA V35 1452] Sampson had not asked the State for help and nothing had been done to help him. [ROA V35 1454-55] The week before trial, Rodney Stafford called him a snitch. [ROA V35 1453]

The Defense

Susan Pullar, a Forensic Scientist who examined photos and a video of the crime scene and police reports [ROA V33 1279-82], testified that she would expect the assailant in this case to have impact blood spatter on his body, or at least his arms, because of the force used in inflicting the stab wounds. [ROA V33 1283-89, 1311-12] Some of the blood on Riedweg's body was not coming directly from a wound and could have come from the assailant, someone else bleeding, or from the knife. This blood should have been collected and analyzed to determine whose blood it was. [ROA V33 1291-93, 1303, 1315] If the assailant was bleeding from a hand wound, you could find blood in the crime scene other than on the body. [ROA V33 1316] She did not see aspirated blood mixed with air on the body, but there was some spatter less than a millimeter that might be aspirated. [ROA V33 1294- 96, 1302] There was no clear pattern to the contact blood stain in Dessaure's shorts pocket to show what the source of the blood was. [ROA V33 1296-97] Pullar said it appeared that there had been a struggle in the bathroom. It was possible that the bloodletting came from the tub out to where Riedweg was lying. [ROA V33 1304-05] She was never standing after the two wounds to

her back. She may have been up on her hands or elbows, but not for very long. [ROA V33 1306-11, 1313] It is possible that a fingerprint or ridge detail which is insufficient for comparison could be sufficient to eliminate someone. [ROA V33 1328] Pullar had some early training with latent prints, but she had never worked as a Latent Fingerprint Examiner. [ROA V33 1329]

Dr. Edward Willey, a Forensic Pathologist and former Medical Examiner [ROA V35 1558], examined a photo of the cut on Dessaure's hand and police reports and concluded that the cut would have bled. Opening and closing the hand would disrupt the cut and cause additional bleeding. [ROA V35 1559-60] There may have been two cuts, but he was not certain. [ROA V 35 1561-62] There was no evidence of scar tissue from prior cuts. [ROA V 35 1563]

Diane Strahan, the Manager of the Villas of Countryside, was in the parking lot near apartments 1307 and 1308 during the evening of February 9, 1999, after dark while the Police were there. She saw and spoke to Riedweg's boyfriend. She saw him again several days later in her apartment. [ROA V35 1565-70]

Deputy Christopher Hamilton spoke to John Hayes on February 9, 1999. Hayes said he had seen Dessaure go into and come out of Riedweg's apartment. Dessaure waived him over and said there was a dead lady in the apartment. Hayes told Dessaure to call 911 and went on his way. [ROA V35 1571-74]

Daniel Copeland was Stuart Cole's friend and business partner. They played golf at Fox Hollow on February 9, 1999, from about 2:00 p.m. until just after dark. There was nothing unusual about Cole's demeanor. [ROA V35 1578, 1580-82] Around 11:00 p.m. that evening Cole called, and Copeland turned on the television news. Copeland saw

Riedweg's car being moved and told Cole about it. [ROA V35 1579] Defense counsel proffered Copeland's testimony that Cole was prone to smoke marijuana while they played golf. Copeland did not know whether Cole smoked marijuana before they played golf on February 9 and did not recall Cole smoking it at the golf course that day. [ROA V35 1583-85] Defense counsel argued that the Court should permit him to present evidence of Cole's marijuana usage and the marijuana cigarettes found in Riedweg's apartment to provide an alternative explanation for the ashes found in her sink. [ROA V35 1586- 88] The court excluded the evidence. [ROA V35 1588] The court cautioned the State about its use of the evidence of the ashes in the sink but did not rule on whether the State could comment about it. [ROA V35 1588-89]

Amy Cockrell testified that when she returned home on February 9, Connole and Dessaure were confined in a small area. She provided Connole with a cigarette by handing the pack to an Officer. She found Hup sitting across the parking lot and sat down to talk to him. She did not get into her apartment that evening. [ROA V35 1590] She went to Nate and Brandy's apartment. [ROA V35 1593] Cockrell was allowed back into her apartment on February 10. She noticed that "the dishes were in the process of being done." Dessaure did most of the cleaning, including the dishes. [ROA V35 1591-92] Cockrell did not recall her prior statement on May 14, 1999, that she found an ice tray in the freezer. [ROA V35 1594-96, 1598, 1600] She saw a purple cup in the freezer. [ROA V35 1600, 1602]

William Birchard, a prison inmate, was in pod 4F9 of the Pinellas County Jail with Dessaure and Valdez Hardy in the fall of 1999. [ROA V36 1607] Hardy showed Birchard a newspaper article about Dessaure. [ROA V36 1609] Hardy tried to talk to

Dessaure about his case, but Dessaure did not respond. [ROA V36 1610-11] Birchard asked Hardy why he was concerned about Dessaure's case. Hardy said he was trying to get information so he could make a deal on his own case. [ROA V36 1611-12] Hardy had no information about Dessaure's case except what was in the newspaper. [ROA V36 1612] Birchard had been convicted of five felonies in Pinellas County. The Prosecutor's co-workers prosecuted him for each of the felonies. [ROA V36 1613] The Prosecutor asked, "And we are currently responsible for you serving a life sentence right now?" [ROA V36 1613- 14] Defense counsel objected and moved for a mistrial on the ground that inquiring about the length of the sentence was impermissible impeachment. The court denied the motion for mistrial. [ROA V36 1614] The Prosecutor then asked if he was serving a mandatory life sentence and if her office was responsible for the imposition of the sentence. Birchard answered yes to both questions. [ROA V36 1615] The Prosecutor asked Birchard to read the newspaper article, then elicited his testimony that the article did not contain numerous specific facts about Dessaure's case. [ROA V36 1615-19] The article did contain a reference to semen on a hand towel, which is what Hardy asked Dessaure about each time he tried to pump him for information. [ROA V36 1619] Birchard did not know if Hardy had any other sources of information. [ROA V36 1619-20] Dessaure did not keep paperwork or police reports in his cell. [ROA V36 1620-21]

Rodney Stafford, a prison inmate with four felony convictions, was in pod 4F9 in the Pinellas County Jail in the fall of 1999 with Dessaure, Hardy, and Birchard. [ROA V36 1621-22] As soon as Stafford arrived in the pod someone told him Hardy was a snitch so he should not talk about his case in the pod. Dessaure and Birchard were aware

of this. [ROA V36 1623-24] Shavar Sampson was also in the pod. [ROA V36 1624] Stafford had seen Sampson in the jail recently and asked him what was going on. [ROA V36 1624-25] Sampson and Hardy were friends. [ROA V36 1625] Stafford did not know, but did not contest the Prosecutor's assertion that he did not come into pod 4F9 until December 13, 1999, nor that Hardy gave a statement to the State Attorney's Office on November 4, 1999. [ROA V36 1626] The Prosecutor asked if Stafford was currently serving a mandatory life sentence courtesy of her office, and Stafford answered yes. The court overruled defense counsel's objection. [ROA V36 1627] The Prosecutor then asserted that there was nothing Stafford could do to hurt himself or to help himself because it was a mandatory life sentence, and Stafford agreed. He denied having any hard feelings against her office. He said Dessaure was his friend. [ROA V36 1628] Stafford denied telling the Prosecutor that he wanted to stay real to the hood. He agreed that he would stay loyal to his friend. Dessaure did not tell him what happened. [ROA V36 1629] Stafford denied telling the Prosecutor that he doesn't help the Police or cooperate with the State. He denied telling her that he did not know who Sampson was. Stafford was in prison with Sampson's brother and went to school with Sampson. [ROA V 36 1630-31] When Stafford arrived at the jail the week before trial, he encountered Sampson at the telephones and asked him to call his brother. [ROA V36 1631] Stafford denied telling someone on the phone that he was back as a witness for his home boy who killed a white girl. [ROA V36 1632]

Mary Parent was Dessaure's fiancée. They had a baby, Tyler, born in September, 1998. In November, 1998, Parent took the baby and went to South Carolina with her mother. She planned to return to Florida by Valentine's day to marry Dessaure. While she

was gone, they talked on the telephone every day. [ROA V36 1633-35, 1643, 1645] On February 9, 1999, Parent called Dessaure during her lunch break. They argued about cheating on each other, and Dessaure hung up. She called him back, they said they loved each other, then she returned to work. [ROA V36 3635-42] It was normal for them to argue about cheating on each other. [ROA V36 1639-70] Dessaure liked to fill up his cup with ice when he drank water, juice, or soda. [ROA V36 3637]

State's Rebuttal Evidence

Counsel stipulated that Rodney Stafford entered pod 4F9 at the Pinellas County Jail on December 13, 1999, and remained there until February 10, 2000; Dessaure entered pod 4F9 on September 22, 1999, and remained there until December 4; Dessaure returned to pod 4F9 on December 13, 1999, and stayed there until December 24; Valdez Hardy was in pod 4F9 from May 25, 1999, through February 7, 2000. [ROA V36 1657-58] When Shavar Sampson was returned to the Pinellas County Jail from prison within two weeks prior to his appearance at trial, he saw paperwork stating that he was to be kept separate from Rodney Stafford. [ROA V36 1658-59] While Sampson was talking to his father on the telephone, Stafford was standing next to him talking on another phone. Stafford said he was there to testify for his home boy who killed a white girl. Afterwards, they were watching television when Stafford noticed Sampson's identification arm band. Stafford asked if he was a Sampson, and said he was housed with Robert Sampson. [ROA V36 1660] Stafford did not know who Sampson was. [ROA V36 1660-61] When they were in the same school, Stafford was a senior, and Sampson was a freshman. Sampson denied being in the same pod with Stafford, Hardy, Birchard, and Dessaure. [ROA V36 1662]

Penalty Phase

The Prosecutor argued that the first aggravating circumstance was that the Defendant was on community control. Defense counsel stipulated that Dessauere was on community control at the time of the offense. [ROA V38 1853] The Prosecutor said the second aggravator was that the Defendant had been convicted of resisting arrest with violence. Defense counsel acknowledged that the judgment, sentence, and fingerprints to be submitted by the State were Dessauere's. [V38 1854] The Prosecutor said that the third aggravator was that the Defendant was engaged in a burglary, and the fourth was that the crime was heinous, atrocious, or cruel based on the infliction of 53 wounds, including defensive wounds, and the Medical Examiner's testimony that it would take four to six minutes for the person to lose consciousness. [ROA V38 1854-57] The second Prosecutor introduced the judgment and sentence for resisting an Officer with violence and the judgment, sentence, change of plea form, probation order, probation violation, and community control order for conspiracy to commit armed robbery. [ROA V38 1858] The community control was revoked because of the resisting arrest, and Dessauere was sentenced to 30 months in prison. He had not been pardoned. [ROA V38 1865-68] The Prosecutor displayed photos of Riedweg's injuries introduced at trial and argued that the murder was heinous, atrocious, and cruel. [ROA V38 1858-62] She presented an exhibit pertaining to Riedweg's character put together by her coworkers as victim impact evidence. [ROA V38 1862-64] She presented victim impact testimony by Rebecca Pierce, Riedweg's supervisor [ROA V38 1870, 1876-78], and Doreen Cosenzino, Riedweg's friend. [ROA V38 1878- 81] The victim advocate read victim impact statements by Brenda Smith, Riedweg's sister, and Riedweg's mother. [ROA V38 1882-

86] Defense counsel proffered, by oral summary, the mitigating evidence he would have presented if Dessaure had not waived it, including the testimony of Dessaure's delinquency case manager and counselor, his mother, half-brother, older brother, half-sister, "surrogate mother," grandmother, Mary Parent, Amy Cockrell, and Dr. Maher, a Psychiatrist. [ROA V38 1888-1905] Dessaure waived the testimony of each proposed witness. [ROA V 38 1891, 1895, 1897, 1899, 1900-03, 1905] Dessaure waived the presentation of any legal argument by his counsel against the aggravating circumstances. [ROA V38 1906] The Prosecutor proffered rebuttal evidence concerning the mitigating circumstances. [ROA V38 1907-12] Defense counsel asserted that Dr. Maher found Dessaure competent to decide to waive mitigation and asked the court to consider Dessaure's demeanor throughout the proceedings as a mitigating circumstance. [ROA V38 1912] The court granted the Prosecutor's request to order a presentence investigation. [ROA V38 1915-20]

Spencer Hearing

Mary Parent testified that she and Dessaure had a son, Tyler, born September 10, 1998. During the two and a half months they were all together, Dessaure was a caring father who rocked Tyler to sleep, changed him, fed him, and gave him baths. [ROA V24 4426-29] While Parent was pregnant, Dessaure's son, John Thomas (JT) lived with them for three months. Dessaure taught him how to read and count. [ROA V24 4432] JT and Dessaure's daughter, Kayla, would also visit on weekends. Dessaure had two other daughters, Brittany, who lived out of state, and Sierra. [ROA V24 4433] On the night she went into labor, Parent panicked and smacked Dessaure, resulting in his grandmother telling him to pack his things and leave her house. [ROA V24 4430-31] Parent left the

state on Thanksgiving weekend, because her family offered to help her for a few months. She planned to return before Dessauere's birthday, January 28, but she was delayed and then hoped to return by Valentine's Day. [ROA V 24 4430-32]

Louise Randall, Dessauere's grandmother, testified that Dessauere and his brothers came to live with her when he was 13 months old because they were malnourished and the State of New York was threatening to take them away. She moved to Largo, Florida, with the boys in 1980. Dessauere stayed with her until he was 13 or 14 years old [ROA V24 4434-37] Dessauere's father had no contact with them after moving to Florida and did not provide any support. Dessauere's mother did not help to support her sons. [ROA V24 4437] Dessauere's older brother Adolf was killed in 1994. After his death, Dessauere acted like he did not care whether he lived or died. [ROA V24 4438-39] They lived in a bad neighborhood, with a lot of drug activity. [ROA V24 4439-40] Mrs. Randall said she asked Dessauere to leave her house not long before February, 1999, because some of his friends were no longer welcome in her home. She denied that it was because of a domestic dispute. [ROA V24 4441-42]

Kenneth Dessauere testified that at the end of the February 9, 1999, police interview he tried to leave, Detective Klein grabbed his left wrist and told him he was going to arrest him for violating house arrest. Detective Pupke grabbed his right wrist and pulled his arm. The door came open. One of the Officers yelled for help. [ROA V24 4443-44] Other Officers came running to the door. Dessauere yelled that he was not fighting. They tripped and fell to the floor. The Officers handcuffed him and threw him into a chair. Dessauere told one of the Officers he would sue them, and the Officer told him to shut up and hit him in the eye. Dessauere sat there and fell asleep. [ROA V24 4445]

He accepted a plea deal that included the resisting arrest charge just to get it over with. [ROA V24 4445-46] Dessauere earlier requested the death penalty because he was angry about being charged with and convicted of the murder. He changed his mind and requested a life sentence. [ROA V24 4446-47, 4454] Being a father was important to Dessauere because he never had a father. He was 23 years old. [ROA V24 4447] His daughter Sierra was three years old. They took her to hamburger restaurants, the park, and the beach so he could talk to her and play with her. [ROA V24 4448] His daughter Brittany lives in Tennessee. He moved to Tennessee with them when he was fourteen. He got her a jacket and shoes. He moved back to Florida and could no longer find them. [ROA V24 4448-49] He had frequent contact with JT and Kayla, but their mother used them as pawns to try to get him to marry her. [ROA V24 44450] Sierra was born on October 21, 1993, when Dessauere was fifteen. Brittany was born on June or July 21, 1994, when he was sixteen. She was seven at the time of the hearing. Dessauere last saw her when she was one. He wasn't there when she was born because he came down to Florida when his brother was killed. John Thomas was born April 16, 1995, when he was seventeen. Kayla was born May 14, 1996, when he was eighteen. He did not see her for seven months because he was in jail. Tyler was born September 10, 1998, when he was twenty. [ROA V24 4450-52, 4454, 4456] He was court ordered to pay child support for JT, Kayla, and Brittany. [ROA V24 4455-57] Dessauere admitted that he was convicted of resisting arrest with violence and conspiracy to commit armed robbery and that he was on community control on the day of the murder. [ROA V24 4452] He violated his community control. [ROA V24 4453]

Defense counsel asked the court to consider in mitigation that Dessaure's courtroom demeanor was exemplary, and that he had just turned twenty-one at the time of the offense. [ROA V24 4459] Detective Thomas Kline testified that Dessaure said he was leaving at the end of the interview. The Officers told him to sit down because he was being charged with violation of house arrest. Dessaure put his hand on the door knob to leave. Klein tried to get him from the door and was afraid that Dessaure would try to go for his gun. [ROA V24 4463-64] Dessaure resisted their efforts to arrest him by trying to push them away, moving, and squirming. The Officers moved Dessaure away from the door. Dessaure went to the floor, and the Officers secured him. Klein denied that anyone punched Dessaure. [ROA V24 4465] Dessaure's hand started bleeding again. None of the Officers was injured. [ROA V24 4466-67]

Post Conviction Evidence

SUMMARY OF EVIDENCE AT HEARING

At the evidentiary conducted before the Circuit Court on, Mr. Dessaure's 3.851 Motion, the following evidence was presented:

DR. HENRY DEE:

Dr. Dee testified that he is a Clinical Psychologist and Neuropsychologist (PC-ROA VOL VII 10) He was proffered and accepted by the Court as an expert in forensic neuropsychology (PC-ROA-VOL VII -12). He found in his interview of Mr. Dessaure that Mr. Dessaure had attempted suicide on several previous occasions (PC-ROA-14). These suicide attempts included the drinking of diluted bleach, ingesting nitroglycerine, and holding a gun to his head at age 19 (PC ROA VOL VII -14). According to the

records of Dr. Michael Maher, Mr. Dessaure had attempted suicide seven times (PC-ROA VOL VII 14).

Dr. Dee outlined several factors which would be considered mitigating circumstances: (1) Dysfunctional childhood - Mr. Dessaure was given to his grandmother to be raised at thirteen months of age. He felt his father was uninterested in him, and he ultimately came to feel the same way about his mother when he moved in with her during his early teenage years, when he was around the age of 11 or 12 years old (PC-ROA-VOL VII. 15). His grandmother's home had been very structured, but his mother's home was the opposite, as there was no structure and he could essentially do whatever he wanted (PC ROA VOL VII 15). He became chronically depressed (PC ROA VOL VII. 16). Dr. Dee diagnosed Mr. Dessaure as having major depression since early adolescence until the present time (PC ROA VOL VII 16). He also suffers from paranoid personality disorder. He constantly searches for signs of rejection and interprets that as being a threat (PC ROA VOL VII 17).

Mr. Dessaure looked up to his older brother, Adolph, and his death from a motorcycle accident led Mr. Dessaure to attempt suicide at age 16 (PC ROA VOL VII 17). His mother essentially abandoned him (PC ROA VOL VII 18). His mother sold drugs and had Mr. Dessaure help her, and he also became a user (PC ROA VOL VII. 18). Mr. Dessaure started using drugs at an early age, marijuana at 13, LSD and mushrooms at 16, Special K, ecstasy, MDMA, and heroin at 14 (PC ROA VOL VII. 19). His use of drugs was his way of dealing with despair and loneliness (PC ROA VOL VII. 19). Dr. Dee found that Mr. Dessaure's major depression was a statutory mental mitigating circumstance in Mr. Dessaure's case (PC ROA VOL VII 19). Dr. Dee stated that Dr.

Maher's diagnosis of post-traumatic stress disorder was not inconsistent with his diagnosis (.PC ROA VOL VII 20).

Dr. Dee stated that he was familiar with the standards for competency evaluations in death penalty cases (PC ROA VOL VII. 21). He outlined what a competency evaluation consists of, including an analysis of the Defendant's understanding of the functions of various officers of the court, his relationship with his attorney, and his ability to understand his defense (PC ROA VOL VII 22-23). Dr. Dee reviewed the waiver of mitigating circumstances that Mr. Dessaure signed (PC ROA VOL VII. 23-24). Dr. Dee reviewed a court exhibit, Defense Exhibit #1, which was a "Waiver of Argument for life Sentence," which stated that "Kenneth Dessaure waives argument by counsel in favor of a life sentence in this cause. Further, **I join in the State in seeking a death sentence.**" (2 PC ROA VOL VII 5, *emphasis added*). Dr. Dee stated that in 30 years of practice in the forensic area in death penalty cases, he had never encountered such a waiver (PC ROA VOL VII 25). Dr. Dee states that signing such a form was obviously suicidal, and should have triggered a competency evaluation at that time (PC ROA VOL VII 26). Even if Mr. Dessaure had been evaluated four months prior to signing the form, it would NOT have been a substitute for a formal competency evaluation at the time he signed the form (PC ROA VOL VII. 26). Dr. Dee outlined an incident where Mr. Dessaure put a .38 caliber pistol to his head and the Police had to be called (PC ROA VOL VII. 30). He opined that Mr. Dessaure's signing of a waiver was based upon his continuing depression and a competency evaluation should have been conducted (PC ROA VOL VII 31).

On cross examination, Dr. Dee stated that Mr. Dessaure tested within normal limits on neuropsychological testing, had normal intelligence, was not in a psychotic or

true paranoid state, but suffered from major depression (.PC ROA VOL VII 33). He also suffered from personality disorder. Neither condition would necessarily render someone incompetent (PC ROA VOL VII 33). He acknowledged that the waiver form indicated he was signing against his attorney's wishes, and he knew he had a right to put on mitigation (PC ROA VOL VII 33). He stated that, except for the incident with the .38 revolver, all the suicide attempts were self reported by Mr. Dessaure (PC ROA VOL VII 34). His grandmother was a loving adult figure (.PC ROA VOL VII 35). His drug use started at an early age, but he was not under the influence at the time of the offense (.PC ROA VOL VII 36).

Dr. Dee further stated that, in his opinion, Mr. Dessaure's signing the waiver, in light of his continuing depression and suicidal tendencies, indicated he was not competent to proceed at that time (.PC ROA VOL VII 38).

On re-direct examination, Dr. Dee testified that Mr. Dessaure signing a form joining the State in seeking his own death called into question the competency criteria of whether he could assist in his own defense (.PC ROA VOL VII 41). He further stated that the mitigating evidence presented at the Spencer hearing was incomplete and revealed an inadequate investigation into his mental state of mind (PC ROA VOL VII 42). Dr. Maher's diagnosis of post-traumatic stress disorder was not addressed or considered in the sentencing order. On re-cross examination, Dr. Dee reiterated his opinion that there had been an inadequate investigation into Mr. Dessaure's extremely dysfunctional family (PC ROA VOL VII. 43). He acknowledged that Mr. Dessaure had been somewhat reluctant to cooperate with Dr. Maher.

On re-re-direct, Dr. Dee stated that Mr. Dessaure's depression influenced his lack of cooperation with Dr. Maher (PC ROA VOL VII 45). He also stated that the lack of cooperation by Mr. Dessaure was not an excuse for not conducting a competency examination when Mr. Dessaure signed a form joining the State in seeking his own execution (PC ROA VOL VII 45).

Upon examination by the Court, Dr. Dee testified that he felt that Mr. Dessaure was qualified to be Baker-Acted and involuntarily committed at the time he signed the waiver form (PC ROA VOL VII. 46).

DR. HEIDI HANLON:

Dr. Hanlon testified that she is a Psychotherapist with experience and expertise in death penalty cases and presentation of mitigating circumstances (.PC ROA VOL VII 55). She was qualified as an expert witness in the field of psychotherapy and polysubstance abuse (PC ROA VOL VII. 58). She outlined Mr. Dessaure's substance abuse history as having started at age 15 with drinking alcohol daily, around 15 to 16 he experimented with Xanax, LSD and hallucinogenic mushrooms. At 18, he tried cocaine, and used it in binges (PC ROA VOL VII. 60). At 19, he started using ecstasy on weekends, and at 21, used Special K/Ketamine. Prior to his arrest, he was using alcohol, marijuana, and ecstasy regularly, and had smoked marijuana the night before the homicide (.PC ROA VOL VII 60). She stated that his diagnosis was polysubstance dependence (PC ROA VOL VII. 60). She stated that polysubstance dependence has an influence on the ability to make rational decisions.

Dr. Hanlon further outlined the suicide attempts of Mr. Dessaure during his life. He had (1) drank bleach when at 15; (2) cut himself at 16, after his brother was killed; (3)

held a gun to his head at 16; (4) ingested some pills on two different occasions at age 19; and (4) tried to strangle himself with shoelaces at 20 (after a fight with his girlfriend) (6 PC ROA VOL VII 1-62).

On cross examination, Dr. Hanlon reiterated that Mr. Dessaure suffers from polysubstance abuse (.PC ROA VOL VII 63). She stated that she had no evidence that Mr. Dessaure used any drugs while incarcerated, or during the time he signed the waiver form (PC ROA VOL VII 66). She could not say whether Mr. Dessaure was having a major episode of depression at the time of the homicide (PC ROA VOL VII. 68).

RITA BRUNO:

Rita Bruno testified that she is an Investigator with the Public Defender's Office (PC ROA VOL VII. 71). She worked on Mr. Dessaure's case for Barry Cobb, the Public Defender assigned to the case at that time (PC ROA VOL VII 73). She spoke to family members and gathered records and other information for mitigation (.PC ROA VOL VII 73). Later, the Public Defender's Office withdrew and Mr. Schwartzberg and Mr. Watts were appointed on the case (PC ROA VOL VII 74). She spoke to Mr. Watts, but not Mr. Schwartzberg, about her findings regarding her investigation PC ROA VOL VII (74). During the course of her investigation, Mr. Dessaure vacillated as to whether he wanted mitigating circumstances presented on his behalf (PC ROA VOL VII 75). It is not unusual to have a defendant vacillate on that issue (PC ROA VOL VII. 75). Mr. Dessaure never directed her to stop investigating mitigation aspects of her case (PC ROA VOL VII 76). She furnished Dr. Maher with her information, as he was the mental health expert (PC ROA VOL VII 76). She had obtained a police report of a suicide attempt by Mr. Dessaure where he had been at a friend's house and obtained her father's gun and

pointed it at his head. He was arrested for improper exhibition of a firearm and eventually discharged to his mother to receive some sort of treatment (PC ROA VOL VII 79). This report was given to Dr. Maher (PC ROA VOL VII 79). She also said that Mr. Dessaure had tried to hang himself and ingest bleach in previous suicide attempts (.PC ROA VOL VII 80). She reviewed the waiver form that Mr. Dessaure had signed, stating that **he joined the state in seeking his execution.** (PC ROA VOL VII. 83). She had never seen such a form in over ten years of working on capital cases (.PC ROA VOL VII 83).

On cross examination, she stated that Mr. Dessaure was very depressed, breaking down in tears on one occasion, and wishing to “join his brother Adolph.” (PC ROA VOL VII. 86). Despite his depression, he was cooperative (PC ROA VOL VII 86).

On examination by the Court, she stated that Mr. Dessaure seemed very depressed during the times he stated he did not want to go forward with presenting mitigation in the case (PC ROA VOL VII 90).

DR. MICHAEL MAHER:

Dr. Maher testified that he is a Physician and Psychiatrist licensed to practice in the State of Florida (PC ROA VOL VIII. 99). He has testified in many death penalty cases, and has been qualified as an expert witness (PC ROA VOL VIII 100).

He was first contacted on April 18, 2001, by Barry Cobb, of the Office of the Public Defender, and was asked to evaluate Mr. Dessaure for competency and also for mitigation and sentencing proceedings (PC ROA VOL VIII 102). He saw Mr. Dessaure in February and March of 2001 PC ROA VOL VIII (102). Those were the only two occasions where Dr. Maher physically visited with Mr. Dessaure (PC ROA VOL VIII

102). After he initially visited Mr. Dessaure he drafted a memo to Barry Cobb, stating the following:

Does not appear to be strong support for mental health mitigation, although the defendant is certainly, at this point, hiding anything that might be present, there was some limited references to suicidal episodes in the past. I hope to speak to the attorney first and talk to family members to try to develop some background information. Certainly there does appear a history and background consistent with a chronic and abusive upbringing, which would be relevant and then it says, I'll need to talk to Nicky, his sister. (PC ROA VOL VIII 104)

After the second meeting with Mr. Dessaure, in March of 2001, Dr. Maher made a diagnosis of post-traumatic stress disorder based upon childhood experiences of a chronic nature (1 PC ROA VOL VIII 105). The traumatic events were selling of cocaine out of the house that he lived in by his mother, and living in an environment and neighborhood where there was a tremendous amount of violence and drug related crime (.PC ROA VOL VIII 107). He informed the defense team of his diagnosis of post-traumatic stress disorder, specifically Mr. Cobb (PC ROA VOL VIII 107). He stated that the existence of a diagnosis of anti-social personality disorder would not have been a basis for not putting on the mental mitigation evidence as to post-traumatic stress disorder (PC ROA VOL VII 108). After his second meeting with Mr. Dessaure, he had minimal contact with his attorneys (.PC ROA VOL VIII 110-111).

Mr. Dessaure gave two reasons for not wanting to go forward with mitigation: (1) He wanted his attorneys to focus on guilt phase issues; and (2) the uncovering of mitigating circumstances was very emotional and difficult for him due to his background and family history (PC ROA VOL VIII 112). Because of the existence of PTSD, it was difficult for him to speak of his upbringing (1 PC ROA VOL VIII 13). Dr. Maher did not view his role as investigative in nature, to uncover information from family members, for

example, but rather relied upon the defense attorneys to provide him with information (PC ROA VOL VIII. 114).

Dr. Maher had obtained information from Mr. Dessaure that he had attempted suicide by “doing things” to himself (.PC ROA VOL VIII 115). Dr. Maher produced all documents he had received from Mr. Dessaure’s counsel, and no independent evidence of suicide attempts was provided (11 PC ROA VOL VIII 5). Dr. Maher was told to be available to testify at Mr. Dessaure’s trial in September of 2001, but was never called (PC ROA VOL VII 119). He was told several months after the trial, by Mr. Watts, that Mr. Dessaure had signed a waiver (PC ROA VOL VIII 119). He absolutely was not contacted at the time Mr. Dessaure signed the waiver (PC ROA VOL VIII 120). Dr. Maher was NOT contacted by anyone from Mr. Dessaure’s defense team about evaluating Mr. Dessaure to determine if he was competent to sign the waiver form, joining the state in seeking his execution. (.PC ROA VOL VIII 120 *emphasis added*). Dr. Maher had never seen such a form in any other death penalty case. (PC ROA VOL VIII 121). Dr. Maher was asked about whether he would have advised Mr. Dessaure’s counsel to have a competency evaluation conducted prior to his signing of the waiver form, Dr. Maher testified as follows:

Q. Had you been informed of this by defense counsel, would you have wanted to personally evaluate Mr. Dessaure at that point in time to see if, in fact, he was competent to make that decision to join in the State in seeking his own execution?

A. I would have strongly recommended that such an evaluation take place.

Q. Why would you have done so?

A. Well, this was literally a life and death matter, and at the very least Mr. Dessaure had recently experienced the stress of a trial. He had a background that was consistent with mental illness, as well as substance

abuse, and had a life pattern of behavior of taking risks and engaging in dangerous activity without reasonable regard for his well-being. All of those things would suggest that he might have made such a decision as is reflected in this waiver foolishly, under duress, involuntarily, without a full knowing and voluntary consent.

Q. And what would you have done at that point in time in terms of an evaluation, can you take us through how you would have evaluated his competency at that point?

A. Yes, I would have insisted that he speak to me directly, that he meet with me privately as well as meet with me and his defense attorneys. I would have asked him to explain in his own words exactly what his present legal situation was. I would have first consulted with his attorneys to ensure I understood exactly what it was. I would have asked him about what it was more particularly that he was waiving. I would have reminded him that I spoke to him about some matters that might be related to this previously and that he was now apparently waiving the opportunity to present anything along the lines of some of the information he had refused to discuss with me, his family history, personal background, and so on. And I would have asked him to speak at least somewhat about what information might, in fact, come forward if he didn't waive this, and I would have made a conclusion based on that kind of inquiry and been prepared to present it in to whoever was appropriate. (PC ROA VOL VIII 121-122)

Dr. Maher was not asked to conduct a competency evaluation of Mr. Dessaure at the time he signed the waiver, joining the state in seeking his execution.

BARRY COBB:

Mr. Cobb testified that he is an attorney for the Public Defender's Office, and had been so for 22 years (PC ROA VOL VIII 132). He was assigned to Mr. Dessaure's case along with Jill Menadier (PC ROA VOL VIII 133). He tried to do a social history investigation of Mr. Dessaure, and contact family members, in order to prepare a mitigation defense (Tr. 136). He spoke to several members of Mr. Dessaure's family (.PC ROA VOL VIII 137). He was worried that Mr. Dessaure might become a volunteer for the death penalty (PC ROA VOL VIII 137). After the Public Defender's Office

withdrew from Mr. Dessaure's case, Mr. Cobb went to Mr. Watts office to discuss what mitigation had been uncovered (PC ROA VOL VII 140). He recalled that Dr. Maher had diagnosed Mr. Dessaure with post-traumatic stress disorder (PC ROA VOL VIII 142). He felt the mitigating evidence was "strong" and Dr. Maher's testimony was important (.PC ROA VOL VII 142). At certain times, Mr. Dessaure would want to participate in a mitigation investigation, and other times not participate (.PC ROA VOL VIII 144). He recalled, after being shown a police report, an incident where Mr. Dessaure had put a gun to his head and threatened to commit suicide (PC ROA VOL VII 145-146).

Mr. Cobb was shown the waiver form that Mr. Dessaure signed, where he **joined with the state in seeking his own execution.** (PC ROA VOL VIII 149 *emphasis added*).

He was questioned as to his professional opinion about the form and stated:

Q. Have you ever seen a defendant execute such a form in your years of experience in death penalty litigation?

A. No client of mine has ever signed a form like that. And if one sought to do that, **I would seek another immediate mental health examination to make sure that person who was trying to make that decision was at the time competent to do so.** (PC ROA VOL VIII 149).

RICHARD WATTS:

Mr. Watts was appointed to Mr. Dessaure's case after the withdrawal of the Office of the Public Defender. He had worked on 30-40 capital cases (PC ROA VOL VIII 163). His co-counsel was Mr. Schwartzberg. Mr. Watts was the penalty phase attorney (PC ROA VOL VIII 164).

There was no investigator to assist Mr. Watts in conducting a penalty phase investigation. He stated that he relied upon the investigation already done by the Office of the Public Defender, Dr. Maher, and speaking to family members and Mr. Dessaure

(PC ROA VOL VIII 165). He stated that he visited Mr. Dessaure about 15 times (PC ROA VOL VIII 171). It would not surprise him if jail records showed no visits to Mr. Dessaure by Mr. Schwartzberg (.PC ROA VOL VIII 172). He did not know why the Motion to Suppress Mr. Dessaure's statement was withdrawn (PC ROA VOL VIII 174). He could not articulate any reason why the defense would allow the comments from the police in the statement that "we know you're guilty" and "we know you killed her" (.PC ROA VOL VIII 175). He had no recollection of any strategic decisions regarding Mr. Hayes and why he may not have been questioned about seeing Mr. Dessaure enter the victim's apartment, and then leave the apartment (PC ROA VOL VIII. 176). He also could not articulate any strategic decision of not cross examining Tim Connole as to any charges he was facing at the time (.PC ROA VOL VIII 177). He said he did not have a fresh recollection as to strategic decisions in the guilt phase (PC ROA VOL VIII 178). He could not recall information about suicide attempts by Mr. Dessaure before he went to jail (Tr. 182). He stated that Mr. Dessaure did not want to conduct a penalty phase in any way shape or form (Tr. 184). The reason stated by Mr. Dessaure as to why he didn't want a penalty phase was that **he didn't want to be rejected by the jury.** (.PC ROA VOL VII 185 *emphasis added*). Mr. Watts acknowledged that Mr. Dessaure had been rejected his whole life (PC ROA VOL VII 185).

Mr. Watts said he probably would have used Dr. Maher had there been a penalty phase (PC ROA VOL VIII 187). He further acknowledged that when Mr. Dessaure made the ultimate decision not to present any mitigating evidence in the penalty phase, **he had not been seen by a mental health professional for six months.** (.PC ROA VOL VIII 192, *emphasis added*). When the jury came back in, Mr. Watts could detect a lightness in

the jury that indicated to him that they would be receptive in the penalty phase. He then tried to convince Mr. Dessaure to go forward with mitigation to the jury (PC ROA VOL VII 194). He felt that the jury would not bring in a recommendation for capital punishment (PC ROA VOL VIII 195). Mr. Watts had prepared the penalty phase waiver form a few days before the trial began (PC ROA VOL VIII 196). He said he remembered talking to Dr. Maher about whether Mr. Dessaure was competent to waive penalty phase, but could not be specific about when the conversation took place (PC ROA VOL VIII 197-199). The fact that Mr. Dessaure had said that he was waiving because he did not want to be rejected by the jury, did not cause Mr. Watts to question his competency (PC ROA VOL VIII 200). He never considered having Dr. Maher re-evaluate his competency (PC ROA VOL VIII 200).

Mr. Watts reviewed the waiver form that Mr. Dessaure signed which said, “Defendant further waives argument to counsel in favor of a life sentence and, **I join the State in seeking a death sentence.**” (PC ROA VOL VIII 201). Mr. Watts then gave the following testimony as to the component of the waiver where Mr. Dessaure stated he was joining with the state in seeking his own execution:

Q. Okay sir, taking a look at Exhibit #2, did you prepare that document?

A. Yes, sir.

Q. And does that say that the defendant, Kenneth Dessaure, hereby waives argument to counsel in favor of a life sentence. Further, comma, I join in the State in seeking a death sentence. Did you write that?

A. Yes.

Q. Why did you write that document?

A. Well, I wrote it because that was our position.

Q. That was your position? You were joining the State in seeking the death sentence?

A. Well, that was his position.

Q. You already had one waiver, why did you need another one?

A. And I'm not sure why we came up with another one, but I know that this was prepared after the first one.

Q. Is there a distinction between waiving mitigation and joining the State in seeking a death sentence against me? I want a death sentence?

A. Well, when I saw that, I was – I was surprised that it was there, and I can't - - I don't have a distinct recollection of drafting it, but - -

Q. Why would you be surprised that it was there?

A. Well, because I wouldn't have put it there, it wouldn't be something that I would do, but this was for Mr. Dessaure's signature. I signed it as his lawyer, but that was his language, and I put it in there. That was his - - quite likely would have been his request. It's not something I would have put in on my own account.

Q. But that's your signature on it.

A. Well, that's my signature that I certified service. That's not my signature that I adopt what was said. That's Mr. Dessaure's signature. That's his waiver. That's his expression.

Q. But you're surprised that you drafted this document?

A. I'm surprised that I don't remember that. See, I wouldn't have drafted it for myself that way. I wouldn't have put that in there.

Q. You don't remember that you drafted for your client to sign something to say that he wants to join the state to seek a death sentence? You didn't remember doing that?

A. No, sir.

Q. That wasn't a significant event?

A. It was a significant event. And it's not what I would have chosen to do, but I did that at the behest of Mr. Dessaure.

Q. Did he force you to do it?

A. No sir, No sir, I represented him; as he asked me to do that, I did that.

Q. And that didn't put up any red flags to you as to his competency that he actually wanted to join the State in seeking his execution?

A. He was consistent with that throughout.

Q. Well, isn't there a distinction between I don't want to put any mitigation on, let it ride, and I am – I'm along with the State. I'm asking to be executed" Isn't that taking everything a step further?

A. It is taking it a step further, and –

Q. Were you concerned about that?

A. Not enough to make any changes. It was consistent with Mr. Dessaure's position, that - - that he - - was an expression of how he felt about the death penalty. And - - and I think he articulated that more than once. That if he didn't win the guilt phase, he - -

Q. Did you ever tell Dr. Maher that not only does Mr. Dessaure want to waive the presentation of mitigation, but he wants to join the State in seeking his death sentence?

A. No, sir, I didn't tell that to Dr. Maher.

Q. So, you didn't get any input from Dr. Maher as to what he thought about that vis-à-vis his competence?

A. No sir. (PC ROA VOL VIII 200-204)

Mr. Watts could not recall discussing the waiver with Mr. Schwartzberg (PC ROA VOL VII 205). Mr. Watts could not state why Dr. Maher was not called at the Spencer hearing (2 PC ROA VOL VII 07). He stated that the information put forth at the Spencer hearing was what Mr. Dessaure wanted to present (.PC ROA VOL VIII 207). He did not consider asking Dr. Maher's proffer to be used as substantive evidence (PC ROA VOL VII. 208). He did not notify Dr. Maher that Mr. Dessaure had changed his

mind and wanted some evidence put for the at the Spencer hearing (PC ROA VOL VII 209).

KENNETH DESSAURE:

Mr. Dessaure testified that in February of 1999 he lived at 1307 or 1308 Amanda Lane (PC-ROA VOL IX. 237). He had been living there about a month and a half prior to the incident, with Tim and his girlfriend, Amy (PC-ROA VOL IX 240). He had had no contact with the victim, Cindy (PC-ROA VOL IX 241). He had seen her move in (PC-ROA VOL IX 241). He had a girlfriend at the time named Mary Parent (.PC-ROA VOL IX 241).

On February 9, 1999, he had gotten up around a quarter to twelve (PC-ROA VOL IX 242). Tim and Ivan were still in the apartment (PC-ROA VOL IX 242). They had been playing Risk all night (PC-ROA VOL IX 242). He had gone to sleep at around 3:30 the previous morning (PC-ROA VOL IX. 243). He had smoked some weed the night before, but no alcohol (PC-ROA VOL IX 243). Ivan and Tim left around 12:00, and Mr. Dessaure asked him to give him a game out of Tim's truck for the Sony Play Station (PC-ROA VOL IX 244). Ivan brought the game back in and left (.PC-ROA VOL IX 245). Around 1:00, Mr. Dessaure started calling Chad, because he was supposed to pick him up (.PC-ROA VOL IX 246). He also called Mary Parent and had a brief argument with her (PC-ROA VOL IX. 247). The argument ended and they made up (.PC-ROA VOL IX 248). He was serving a 24 month house arrest sentence, and needed to check in (PC-ROA VOL IX 250). He was in good standing at the time of the incident (PC-ROA VOL IX 251). He kept playing the video game, listened to some music, and began cleaning the Apartment (PC-ROA VOL IX. 251). He took some trash out to the dumpster (. 25 PC-

ROA VOL IX 2). He was wearing black jean shorts, a black and gray flannel shirt, and flip flops (. 25 PC-ROA VOL IX 2). He saw John Hayes when he took out the trash (PC-ROA VOL IX 253). He returned to the apartment and began washing dishes (PC-ROA VOL IX. 253). He cut his hand while washing dishes and listening to music (.PC-ROA VOL IX 253). He went to Nate and Brandy's door to get some ice, but they weren't home, and he saw Mr. Hayes standing in the parking lot (PC-ROA VOL IX 254).

He wanted to get some ice for his hand, so it would not swell (PC-ROA VOL IX 254). He also wanted the ice for a drink (PC-ROA VOL IX 255). He had opened the freezer, found the ice tray empty, and filled it with water and closed the freezer door (PC-ROA VOL IX 255). He wrapped his hand with a paper towel, and went over to Cindy's house with a cup to borrow ice (PC-ROA VOL IX. 255). On the way to Cindy's apartment, Mr. Dessauere saw Mr. Hayes again (PC-ROA VOL IX 256). He knocked on her door, and heard gurgling sounds, and walked into the apartment (PC-ROA VOL IX. 257). He saw her lying in the hallway face down, hands underneath her, and saw a lot of blood (PC-ROA VOL IX 257). He checked her pulse, and found she had none 9PC-ROA VOL IX 257). He had touched her neck to see if she had a pulse PC-ROA VOL IX (. 258). He was not wearing sandals (PC-ROA VOL IX 258). She did not have clothes on. Mr. Dessauere became very nervous and upset over what he had witnessed (PC-ROA VOL IX 259). He was in the apartment less than one minute (PC-ROA VOL IX 259). He left the apartment and called John Hayes over (.PC-ROA VOL IX 260). He wiped the blood from her off inside his pocket (PC-ROA VOL IX 260). He told Mr. Hayes what he had seen (. PC-ROA VOL IX 261). He called 911 and went back into his apartment (PC-ROA VOL IX 261). He went back to the sink again where the dishes were, and was

speaking to the 911 operator (. PC-ROA VOL IX 262). He cut his hand again, while on the phone with the Police (.PC-ROA VOL IX 262). He then “threw the phone toward her chair” and went out to meet the Paramedics (PC-ROA VOL IX. 263). He showed them where her body was located (PC-ROA VOL IX 263). The Paramedics asked everyone to leave Cindy’s apartment, and Mr. Dessaure went back to his apartment. He put his sandals back on (PC-ROA VOL IX 264).

Mr. Dessaure then went into Tim and Amy’s room to get a cigarette (PC-ROA VOL IX 264). He called Renee to come over until everything was calmed down (.PC-ROA VOL IX 265). He then went outside and spoke again with John Hayes (PC-ROA VOL IX 265). The Police started to arrive (PC-ROA VOL IX 265). He started to speak to the first arriving Officer (PC-ROA VOL IX 266). The Police were not letting anyone inside either apartment (.PC-ROA VOL IX 267). They would not let Amy go inside the apartment either (.PC-ROA VOL IX 268). Then, the two homicide detectives showed up, and Mr. Dessaure informed them of what he had witnessed (PC-ROA VOL IX. 268). They then told Mr. Dessaure that he would have to come down to the police station (Tr. 269). Mr. Dessaure showed the Police where he had cut himself (PC-ROA VOL IX 269). The Officers took pictures of the knife Mr. Dessaure had cut himself with, the sink, and the contents of the freezer (. PC-ROA VOL IX 271).

Mr. Dessaure then explained how his semen ended up in the victim’s apartment (PC-ROA VOL IX 271). He stated that he had gone through a crawl space in the attic that led to the victim’s apartment (. PC-ROA VOL IX 272). That had occurred either Sunday or Monday. Tim had crawled in her apartment through the crawl space before, to find things to steal and pawn. Mr. Dessaure entered for that same purpose (.PC-ROA VOL IX

272). Tim owed someone money from ecstasy pill sales, and he was trying to get money to help him (PC-ROA VOL IX. 273). Mr. Dessaure ended up masturbating inside the victim's apartment, and not stealing anything (PC-ROA VOL IX 273). He ejaculated on the comforter, and used a towel in the bathroom to wipe it off (.PC-ROA VOL IX 273). He attempted to clean the comforter, and then crawled back into his apartment (PC-ROA VOL IX 274). He did not tell the Police about this, because he didn't want a burglary charge or to have a violation of his community control (PC-ROA VOL IX 274).

When Mr. Dessaure went down to the police station, he informed them about what had happened that day, concerning his finding the girl next door (PC-ROA VOL IX 278). He did not tell the Police about touching the body because he was nervous (PC-ROA VOL IX. 280).

Mr. Dessaure then described how he came to meet the snitches that ended up testifying against him in the case (PC-ROA VOL IX 281). He described meeting Mr. Valdez Hardy in August or September of 1999 (PC-ROA VOL IX 282). He denied ever speaking to Valdez Hardy because Theron Bell was already confiding in him (PC-ROA VOL IX 283). He did not want to confide in Mr. Hardy (PC-ROA VOL IX 284). He also did not view Mr. Hardy as a man of God (PC-ROA VOL IX 284). Mr. Dessaure did tell Valdez Hardy about finding the girl in her apartment, and reporting it to the Police (PC-ROA VOL IX 286). Mr. Hardy did show Mr. Dessaure newspaper clippings about his case (PC-ROA VOL IX 287). He did not tell Valdez Hardy that he had come home from somewhere, and saw the young lady in a lawn chair (PC-ROA VOL IX 288). He had not gone anywhere to come home from. He also did not tell Mr. Hardy that he went upstairs, because there was no upstairs (PC-ROA VOL IX 288). He did not tell Mr.

Hardy that he went inside her apartment and she “started tripping” (PC-ROA VOL IX . 289). He did not mention anything to Mr. Hardy about a wash rag, but the newspaper article Mr. Hardy had referenced it (PC-ROA VOL IX 290). Mr. Hardy had suggested that Mr. Dessaure make up a story about the victim giving him head the night before, to explain his semen on the washrag (PC-ROA VOL IX 291).

As to Shavar Sampson, the only time Mr. Dessaure talked to him was when they were playing poker with Mr. Hardy (PC-ROA VOL IX 294). He did not ever tell Mr. Sampson that he had gotten into the victim’s apartment, and surprised her when she came in from sunbathing (PC-ROA VOL IX 296). Mr. Dessaure did not tell Mr. Sampson that the victim had punched him, and that he knocked her out (.PC-ROA VOL IX 297). Mr. Dessaure had told a story at one of the poker games with Mr. Sampson that he had knocked a girl unconscious at a Halloween party (PC-ROA VOL IX 297). Mr. Dessaure denied telling Mr. Sampson that he had been having sex with the victim, when she awakened from being knocked out and began kicking and fighting for him to get off (PC-ROA VOL IX 299). He did not tell Mr. Sampson that he began stabbing her and that later he went back to his apartment to change clothes (.PC-ROA VOL IX 300). He also did not tell Mr. Sampson that he had came inside her, and that she was on her menstrual cycle and blood got all over her underwear (PC-ROA VOL IX 300). Mr. Dessaure had told a story at one of the poker games with Stan and Mr. Hardy about having oral sex with other women who were on their menstrual cycle (PC-ROA VOL IX 301). Mr. Dessaure further did not tell Mr. Sampson that the girl had struggled and scratched his back with her nails (PC-ROA VOL IX 307). Mr. Dessaure had told a story in his cell during poker games that girls he had previously had sex with had scratched his back (PC-

ROA VOL IX 307). Dessaure told Mr. Schwartzberg that much of the information the snitches had testified to came from information he had given during the poker games about totally unrelated incidents (PC-ROA VOL IX 308). Mr. Dessaure was also never told that Mr. Schwartzberg was waiving the Motion to Suppress (PC-ROA VOL IX 309).

SUMMARY OF THE ARGUMENT

ISSUE I The lower court erred in determining that Mr. Dessaure's counsel was not ineffective in the penalty phase by failing to have Mr. Dessaure evaluated for competency when he waived his right to a penalty phase before the jury. Counsel's action in having Mr. Dessaure sign a statement that he was joining the State in seeking his own execution, given Mr. Dessaure's suicidal background and mental impairments, did constitute ineffective assistance of counsel. Under the circumstances, competent counsel would have had a competent mental health expert evaluate Mr. Dessaure for competency before allowing him to execute a form calling for his own execution.

ISSUE I (a) The lower court erred in denying Mr. Dessaure's postconviction claim that his counsel was ineffective for failing to present available mitigating circumstances at the *Spencer* hearing.

ARGUMENT

ISSUE I

THE LOWER COURT ERRED IN DENYING MR. DESSAURE'S CLAIM THAT HIS COUNSEL WAS INEFFECTIVE IN THE PENALTY PHASE BY (1) FAILING TO HAVE MR. DESSAURE EVALUATED FOR COMPETENCY WHEN HE WAIVED HIS RIGHT TO A JURY RECOMMENDATION AS TO SENTENCING AND SIGNED A FORM JOINING THE STATE IN SEEKING HIS OWN EXECUTION AND (2)

FAILING TO PRESENT MITIGATING EVIDENCE AT
THE SPENCER HEARING

I-INEFFECTIVENESS CONCERNING THE WAIVER OF PENALTY PHASE

This issue is a mixed question of law and facts requiring a de-novo review pursuant to *Stephens v. State*, 748 So.2d 1028 (Fla. 1999).

In Claim IV of the Motion for Postconviction Relief, Mr. Dessaure claimed that his counsel was ineffective by allowing him to waive the penalty phase before the jury without conducting a competency evaluation. (PC ROA VOL. I 29-34).

Mr. Dessaure presented evidence before the lower court in support of this claim. Two extraordinary documents were presented by Mr. Dessaure's counsel concerning his waiver of the penalty phase. In one, dated September 6, 2001, it states "I, Kenneth Dessaure, the defendant herein, wish to retain my counsel, and understand that society has a **significant interest in determining whether a convicted murderer deserves to die**, and to preserve the ability for a meaningful appellate review, I direct counsel to challenge the State's case and present mitigation on my behalf to the Court, in summary form, without calling witnesses". (PC-ROA Vol. V 72, *emphasis added*). The second, dated September 11, 2001, states "The defendant, Kenneth Dessaure, hereby waives argument by counsel in favor of a life sentence in this cause. Further, **I join the state in seeking a death sentence**" (PC-ROA VOL.V – 73, *emphasis added*).

These two documents constitute a complete abandonment of Mr. Dessaure by his penalty phase counsel. No criminal defense attorney is going to prepare a document for his client's signature, and submission to the court, in which the client seeks to join the state in seeking his death sentence. That is especially true in this case, where counsel also

failed to request a competency evaluation by a mental health expert to determine whether his client was competent to waive mitigation and take the additional step of joining the state in seeking a death sentence against himself. The facts and circumstances surrounding the submission of these “waivers” clearly establish that penalty phase counsel was ineffective under the *Strickland* standard and did not provide adequate representation as contemplated by the Sixth Amendment.

The Lower Court denied Claim IV of the Postconviction Motion, by finding that (1) Because there was a pre-trial evaluation of Mr. Dessauere by Dr. Maher, counsel was not ineffective; (2) Attorney Barry Cobb, who represented Mr. Dessauere before Mr. Watts had arranged for a competency evaluation; (3) Attorney Watts believed that the Defendant was competent: (PC ROA VOL. III 15-17). As will be demonstrated below, each of the reasons cited by the Judge is not supported by the record.

THE PRE-TRIAL EVALUATION

While it is true that Dr. Maher had evaluated Mr. Dessauere in March of 2001, this fact is not a basis for denying the claim. Mr. Dessauere did not waive his penalty phase until September of 2001, more than six months after the evaluation by Dr. Maher. Furthermore, the analysis by the court leaves out an essential fact that counsel for Mr. Dessauere prepared a form in which Mr. Dessauere joined with the state in seeking his own execution. Dr. Dee testified that this action on the part of Mr. Dessauere, given the evidence of his numerous suicide attempts in the past, required that a competency evaluation take place. Dr. Dee specifically stated that, even if Mr. Dessauere had been evaluated months before, that would not have been a substitute for a formal competency evaluation at the time he signed the form. (PC ROA VOL VII 26). Dr. Dee further

testified that Mr. Dessaure's signing of the waiver indicated he was not competent to proceed at that time. (PC-ROA VOL VII 38). He felt that due to the severe depression Mr. Dessaure met the criteria for an involuntary commitment at the time he signed the waiver form. (PC-ROA VOL VII. 46).

Dr. Maher, whose initial evaluation findings were relied upon and accepted by the court, also addressed the issue of an evaluation of Mr. Dessaure when he signed the form seeking his own execution. Dr. Maher said he had never seen a waiver form like the one prepared by counsel and submitted to the court, where the defendant sought his own execution. (PC-ROA VOL VIII 120). Dr. Maher specifically stated that, had he ever been informed by Mr. Dessaure's defense counsel of the signing of the form, he would have strongly recommended an evaluation for competency. (PC-ROA VOL VIII 120). Dr. Maher was clear in his testimony that no one ever told him about Mr. Dessaure signing the form until several months after the trial. (PC-ROA VOL VIII 119). In denying Claim IV, the lower court cited the case of *Boyd v. State*, 910 So.2d 167, 188-189 (Fla. 2005) for the proposition that once a defendant is determined to be competent to stand trial, a presumption of competency attaches to the defendant in later proceedings. However, the *Boyd* case is clearly distinguishable from the present case, as evidenced by the following excerpt from the case:

Once a defendant is determined competent to stand trial, a presumption of competence attaches to the defendant in later proceedings. [*Durocher v. Singletary*, 623 So. 2d 482, 484 \(Fla. 1993\)](#). However, another competency hearing is required if a bona fide question as to the defendant's competency has been raised. [*Hunter v. State*, 660 So. 2d 244, 248 \(Fla. 1995\)](#). **[**42]** We will affirm the trial court's decision absent an abuse of discretion. *Id.*

We hold that the trial court did not err in refusing to order a second competency hearing. The record reflects

that [*188] the trial judge interviewed Boyd on the issue of what mitigation was to be presented and determined that he understood the potential consequences of his decision, that his decision was deliberate, and that he made the decision freely and voluntarily. The record reflects no new evidence that should have raised a bona fide question as to Boyd's mental capacity sufficient to require another hearing, nor did defense counsel specifically ask for a competency hearing. See [Hall v. State, 742 So. 2d 225, 230 \(Fla. 1999\)](#) (trial judge had no obligation to order competency hearing or make determination of competency when defendant did not request a hearing, and there was no reason to believe defendant's mental capacity had changed at 1990 resentencing since he had been found competent at 1978 trial).

Boyd at 910 So.2d 167, 188-189 (Fla. 2005)

There was no finding of competency by the court in Mr. Dessaure's case. Also, unlike in Boyd, in Mr. Dessaures case there was clearly a bona fide question as to Mr. Dessaures competency – due to his signing a form seeking his own execution prepared by his own attorney.

ATTORNEY COBB'S COMPETENCY EVALUATION.

The lower court relies upon Mr. Cobb having ordered a competency evaluation during the two years he represented Mr. Dessaure, as reason to deny Claim IV of the Motion for Postconviction relief. However, this reasoning suffers from the same flaw as the reliance on the earlier evaluation by Dr. Maher. The form signed by Mr. Dessaure, seeking his own execution, is never addressed or considered by the Lower Court. Mr. Cobb stated he had worked on 30-40 capital cases. When shown the form Mr. Dessaure signed he stated if a client of his had ever signed a form like that, he would seek another immediate mental health examination to make sure that person who was trying to make that decision was at the time competent to do so. (PC-ROA VOL VIII 149).

ATTORNEY WATTS' BELIEF AS TO COMPETENCY

The Lower Court relied upon Mr. Watts' testimony that he personally did not question Mr. Dessaure's competency. . However, Mr. Watts admitted that he never informed Dr. Maher that Mr. Dessaure wanted to join the State in seeking his own execution. (PC-ROA VOL VIII204). He got no input from Dr. Maher concerning what he thought about Mr. Dessaure signing the form, regarding his competency. (.PC-ROA VOL VIII 204). It is incomprehensible that a criminal defense attorney would not inform the mental health expert that his client wants to join the State in seeking his own execution. It is hard to imagine an action more demonstrative of complete abandonment of the interest of a client, especially in light of Mr. Dessaure's known and documented prior suicidal tendencies. The evidence is uncontroverted that Dr. Maher would have recommended further competency evaluation had he been given this information. Contrary to the ruling of the lower court, Counsels failure to obtain the opinion of Dr. Maher on this issue, and get a further competency evaluation, was ineffective assistance of counsel.

This Court has outlined the standard for review of ineffective assistance of counsel claims. In State v. Pearce 994 So.2d 1094 (Fla. 2008) this Court stated:

Following Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), this Court held that ^{HN2}in ineffective assistance of counsel claims two requirements must be satisfied: (1) the claimant **[**10]** must identify a particular act or omission of the lawyer that is outside the broad range of reasonably competent performance under prevailing professional standards, and (2) the clear, substantial deficiency shown must further be shown to have affected the fairness and reliability of the proceeding so that confidence in the outcome is undermined. See Maxwell v. Wainwright, 490 So. 2d 927, 932 (Fla. 1986). As to the first prong, the defendant must establish 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 687; see also Cherry v. State, 659 So. 2d 1069, 1072 (Fla. 1995). There is a strong presumption that trial counsel's performance was not ineffective. See Strickland, 466 U.S. at 690. A fair assessment of attorney performance requires that every

effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. See [id. at 689](#); see also [Rivera v. Dugger, 629 So. 2d 105, 107 \(Fla. 1993\)](#). For the second prong, the reviewing court must determine whether **[**11]** the deficiency affected the fairness and reliability of the proceeding so that confidence in the outcome is undermined. See [Strickland, 466 U.S. at 695](#). "Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable." [Id. at 687](#).

This Court has further extended the [Strickland](#) analysis to situations where counsel was deemed ineffective in a defendant's waiver of presentation of mitigating evidence. In [Pearce](#) 1098 the Court stated:

The State asserts that the trial court erred in granting Pearce a new penalty phase based on the ineffective assistance of counsel because Pearce, as opposed to counsel, was responsible for the failure to present mitigation. Pearce asserts that his waiver of mitigation was invalid since trial counsel failed to investigate potential penalty phase mitigation and hence he could not knowingly, voluntarily, and intelligently waive the presentation of mitigation evidence. The trial court held an evidentiary hearing on this claim at which Pearce called **[**16]** numerous witnesses. In its final order, the trial court concluded that trial counsel failed to do anything to prepare for the penalty phase of the trial and that there was mitigation that counsel should have investigated and presented. These findings are supported by competent, substantial evidence.

Pearce's two trial attorneys testified at the hearing. Alfred Ivie was lead counsel. Since his representation of Pearce he has had a number of medical problems, which has made his ability to recall details significantly compromised. Mark Ware was appointed as co-counsel in the case. He was responsible for performing the penalty phase with Ivie's assistance. At the time of Pearce's trial, Ware had never done a capital case, never attended any death penalty seminars, and was not familiar with the ABA standards regarding investigations. Ivie was aware that Ware had never tried a capital case before, so he gave Ware a "Life over Death" book to familiarize himself on the type of things he would be doing during the penalty phase. However, Ware did not completely read the text on "Life over Death" or read any other text on the penalty phase. Counsel spent very little time readying for the penalty **[**17]** phase proceedings. In fact, Ware testified that he did not conduct any preparation for the penalty phase of the trial. Counsel did not obtain any medical, school, probation, or Department of Children and Family Services records.

Counsel never contacted any of Pearce's family members in an attempt to discover potential mitigation. At the evidentiary hearing, postconviction counsel demonstrated that the following information

regarding Pearce was available if a reasonable investigation had been conducted: (1) during his marriage he had a loving relationship with his children; (2) growing up in their household there was a lot of discipline that consisted of getting "whoopings" with a belt or switch; (3) his ex-wife would physically abuse him; (4) he ran away from home as a child; (5) he engaged in temper tantrums and mood swings as a child; (6) his son was diagnosed with fetal alcohol syndrome; (7) his older brother **[*1102]** was diagnosed with a bipolar disorder; (8) he was a drug user; and (9) he was involved in car accidents and demonstrated different behavior afterwards. The evidence presented also indicated that Pearce fell down the stairs as a baby, received head injuries when he fell out of **[**18]** a truck, and was diagnosed with dyslexia that he possibly received from a brain injury.

At the evidentiary hearing, defense counsel presented the testimony of Dr. Richard Carpenter, Dr. Henry Dee, and Dr. Robert Berland. Based on the records and his examination of Pearce, Dr. Carpenter, a licensed psychologist, could have testified to the following mitigating factors: (1) Pearce suffers from a bipolar disorder; (2) he is predominantly manic and goes for long periods of time in manic states; (3) he was a substance abuser; (4) he was operating under extreme emotional or psychological distress at the time of the offense; and (5) he is not an inherently violent person. Dr. Henry Dee, a licensed clinical psychologist and clinical neuropsychologist, also testified for the defense. After evaluating Pearce, Dr. Dee found that Pearce's impaired memory, increased impulsivity, and increased irritability indicated he has prefrontal lobe damage, a cerebral injury that is permanent. Dr. Dee administered four tests on Pearce: Wechsler Adult Intelligence Scale (WAIS), third edition; Denman Neuropsychology Memory Scale; Multilingual Aphasia Examination; and Wisconsin Card Sorting test. After conducting **[**19]** the neuropsychological evaluation of Pearce, Dr. Dee's overall opinion was that Pearce showed clear evidence of brain damage in the right hemisphere. Dr. Dee further concluded that Pearce was under the influence of extreme mental or emotional disturbance when the offense was committed. Dr. Dee found that Pearce's brain damage and cognitive problems, Pearce's mood disorder, Pearce's drug abuse, and the impulsivity that is part of the brain damage constituted major mental or emotional disturbance. Dr. Robert Berland, a board certified forensic psychologist, reached a similar diagnosis. Dr. Robert Berland found evidence of a chronic or long-standing psychotic disturbance, a biologically caused mental illness. Dr. Robert Berland concluded that the felonies were committed while Pearce was under the influence of extreme mental or emotional disturbance, and the capacity of Pearce to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

Defense counsel indicated that Pearce did not want any form of mitigation presented during the penalty phase. However, ^{HNS} an attorney's obligation to investigate and prepare for the penalty portion **[**20]** of a capital case cannot be overstated because this is an integral part of a capital case. See [State v. Lewis, 838 So. 2d 1102, 1113 \(Fla. 2002\)](#) (citing [Rose, 675 So. 2d 567](#)) (holding that an

attorney's failure to conduct a reasonable investigation for possible mitigating evidence may render counsel's assistance ineffective)). Although a defendant may waive mitigation, he should not do so blindly. Counsel must first investigate and advise the defendant so that the defendant reasonably understands what is being waived and reasonably understands the ramifications of a waiver. The defendant must be able to make an informed, intelligent decision. *See, e.g., Lewis, 838 So. 2d at 1113* (citing *Koon v. Dugger, 619 So. 2d 246, 249 (Fla. 1993)*); *Deaton v. Dugger, 635 So. 2d 4, 8 (Fla. 1993)*.

We find there is competent, substantial evidence to support the trial court's finding that counsel did not spend sufficient time to prepare for mitigation prior to Pearce's waiver. In preparing for the penalty phase, counsel never investigated Pearce's background, never interviewed members of Pearce's family, and never investigated mental health issues. Therefore, [*1103] counsel was unable to advise Pearce as to [*21] potential mitigation. Thus, the evidence supports the trial court's finding that Pearce's waiver of the presentation of mitigating evidence was not knowingly, voluntarily, and intelligently made. Pearce suffered prejudice based on this lack of a knowing waiver because there was substantial mitigating evidence which available but undiscovered. We affirm the trial court's conclusion that Pearce established a claim for ineffective assistance of counsel in the penalty phase of the trial.

Id. (See also *Lewis V. State, 838 So.2d 1102 (Fla. 2002)*).

Applying the legal principals outlined in the above case, it is clear that Mr. Dessauere's counsel was ineffective in presenting the waiver of the presentation of mitigating evidence to the jury. One of the key components to the analysis is whether counsel conducted an adequate investigation prior to the waiver. In this case counsel did not even contact the mental health expert to inform him that Mr. Dessauere wanted to join the State in seeking his execution. Instead of investigating Mr. Dessauere's mental state through a competency evaluation, Mr. Watts relied upon his own assessment that Mr. Dessauere was competent.

Furthermore, there was inadequate investigation into Mr. Dessauere's background concerning his suicidal tendencies. Dr. Heidi Hanlon testified at the evidenciary hearing concerning the frequency and details of the suicide attempts. Specifically, she stated that Mr. Dessauere had (1) drank bleach when at 15; (2) cut himself at 16, after his brother was

killed; (3) held a gun to his head at 16; (4) ingested some pills on two different occasions at age 19; and (4) tried to strangle himself with shoelaces at 20 (after a fight with his girlfriend) (PC-ROA VOL VII 61-62). Also, she testified as to Mr. Dessaure's polysubstance dependence and drug history with Xanax, LSD, and hallucinogenic mushrooms. (PC-ROA VOL VII 60).

Based upon the foregoing evidence and law, the Lower Court erred in denying Mr. Dessaure's Claim that his counsel was ineffective in the waiver of his right to a penalty phase before the jury.

II – INEFFECTIVENESS AT THE SPENCER HEARING

In Claim V(b) of the Motion for Postconviction relief, Mr. Dessaure claimed that his counsel was ineffective in the penalty phase for failing to present mitigating circumstances at the Spencer Hearing. (PC-ROA Vol I p. 47).

In this case Dr. Maher was ready, willing and able to present testimony concerning his findings at the Spencer Hearing. Counsel Watts could not state why he did not present the testimony of Dr. Maher at the Spencer hearing. Dr. Maher did explicitly testify that he was not contacted by attorney Watts to testify at the Spencer hearing. Due to this failure, the Lower Court never heard the testimony from Dr. Maher that Mr. Dessaure suffered from Post Traumatic Stress Disorder, rising to the level of extreme emotional disturbance and a statutory mental health mitigator. Inexplicably, counsel proffered to the court that Dr. Maher was prepared to offer evidence as to the statutory mitigator, but then failed to present this evidence at the Spencer hearing. At the time of the Spencer hearing, Mr. Dessaure had changed his mind about presentation of mitigating

circumstances, yet counsel failed to bring forth the most compelling mitigation – the existence of statutory mental health mitigators. (ROA VOL 24 4446-4454)

Because of this failure, the Lower Court found only minimal mitigating circumstances that (1) the defendant was 21 years old; (2) the defendant had the capacity to be a loving parent; (3) the defendant's family life was dysfunctional while he was growing up, his parents abandoned him to be raised by his Grandmother, and his older brother died in a traffic accident; (4) The defendant has the capacity to form personal relationships. (5) The defendant was well behaved in court. (ROA VOL 24 4362-4364)

Had counsel presented the compelling mental mitigation evidence by calling Dr. Maher, there is a reasonable probability that the outcome would have been different as a life sentence would have been imposed. Thus, the dictates of *Strickland* are implicated and the Lower Court erred in denying the claim.

CONCLUSION

The Appellant, Kenneth Dessaure, hereby requests that this Court grant him a new penalty phase in this case, and requests Oral Argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail on August 20, 2009, to: Steven Ake, Assistant Assistant Attorney General, Office of the Attorney General, Concourse Center 4, Ste 200, 3507 E. Frontage Road, Tampa, Florida 33607-7013 and Kristen J. Howatt, Assistant State Attorney, State Attorney's Office, P.O. Box 5028, Clearwater, Florida 33758.

CERTIFICATE OF COMPLIANCE AS TO TYPE SIZE AND STYLE

I HEREBY CERTIFY that this Brief of Appellant complies with the font requirements of Fla. R. App. Pro. 9.210(a)(2) typed in Times New Roman, 12 point type, not proportionally spaced, this date, August 20, 2009.

ERIC C. PINKARD, ESQ.
Counsel for Appellant
Florida Bar No. 651443
Robbins Equitas
2639 Dr. MLK Jr. Street N.
St. Petersburg, Florida 33704
(727) 822-8696 – Tel
(727) 471-0616 – Fax
ecpinkard@robbinsequitas.com