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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-2170

TAVARES DAVID CALLOWAY,
Appellant/Cross-Appellee,

vs.

THE STATE OF FLORIDA,
Appellee/Cross-Appellant.

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, CRIMINAL DIVISION

AMENDED ANSWER BRIEF OF APPELLEE/INITIAL BRIEF OF CROSS-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF CASE AND FACTS

On January 21, 1997, Latonya Taylor called her fiancé, Adolphus "Tank" Melvin, between 1:30 and 2 p.m. about going shopping after she returned from work. (T/5574-75, 5576, 5581) Around 3 p.m., Tiffany Diggs spoke to her boyfriend Derwin Copeland via cell phone about getting a ride home from work. (T/6461-64) Copeland stated that he was with Melvin, his uncle, so he would pick her up from her aunt's home. (T/6464-66)

That afternoon, Anthony Strachan was in his apartment, which was two doors down from Gary St. Charles' apartment. (T/6641-56) At one point, he went into his kitchen and saw St. Charles downstairs in the street with an African-American man wearing a hat and heavy clothing. (T/6657-58) The hat was brown and similar in style to a hat the State showed him. (T/6689-90) The jacket was a military field jacket and similar in color to an item the State showed him. (T/6690-94) The person had dark skin and a medium build and appeared older than 18. (T/6702-03) There was another African-American man standing nearby smoking a cigarette. (T/6661-62) After 5 to 10 seconds, Strachan returned to his living room. (T/6659, 6662-63) Later, Strachan returned to his kitchen and saw St. Charles and the first man come up the stairs and turn toward St. Charles' apartment through the jalousie window on his kitchen door. (T/6663-69) After 5 seconds, Strachan again returned to his living room. (T/6665, 6669) Still later, Strachan heard some loud

booming noises and felt vibrations like he had previously heard and felt when his neighbor turned up his stereo. (T/6672-74) He went to his front door and opened it so he could hear what he believed to be music. (T/6673-74) After a minute, he closed his front door again because the sounds had stopped. (T/6674)

Later, Strachan went down to his mother's car, retrieved an item and returned to his apartment. (T/6675-77) As he reached his front door, Strachan heard the screen door to St. Charles' apartment open and saw a man walking toward the stairs, carrying a box that St. Charles had frequently carried. (T/6677-78, 6701-02) Strachan and the man nodded to each other, and Strachan entered his apartment and closed the door. (T/6678)

When Diggs attempted to reach Copeland through the cell phone and pager after work, she was unable to do so. (T/6466, 6468) When Taylor got home, Melvin was not there, and she received a call informing her that Melvin had not picked their son up from daycare. (T/5574-77, 5582) After unsuccessfully attempting to reach Melvin through his pager and cell phone, Taylor picked up their son from daycare and attempted to locate Melvin. (T/5582-83, 6446-52) Eventually, she then went to St. Charles' apartment building and observed Melvin's car in the parking lot. (T/5583-84, 5578, 5584-85) She went upstairs, heard loud music coming from one apartment and decided to knock on that door. (T/5585) When no one answered, she pushed on the door open and saw shadows of

bodies on the floor. (T/5585-86)

Frightened, Taylor picked up her son and ran to Melvin's sister's apartment, left her son there and returned to the apartment with Terrance, Melvin's sister's boyfriend. (T/5586) Terrance entered the apartment, noticed everyone appeared to be dead and took Taylor to a phone booth to call the police. (T/5586-87) When the police arrived at approximately 7:25 p.m., Taylor accompanied Cmdr. Ethel Jones to the apartment and observed Melvin lying dead on the floor, wearing only underwear and having duct tape binding his wrist and ankles and covering his eyes. (T/5587-88, 5609-13, 6695) Jones went into the apartment and observed 5 bodies. (T/5616-17, 5620-21, 5623-25) She heard a moan from the one, who had duct tape on his eyes and mouth, a hole in the top of his head and did not respond. (T/5617-18) Rescue subsequently took the person who moaned to the hospital. (T/5621-22, 5677-82) The dead bodies were subsequently identified as St. Charles, Melvin, Copeland and Thomas. (T/7102-03) The person who was found alive was identified as Fred McGuire. (T/7103) Each of the dead bodies was dressed only in underwear, and they were bound at the ankles and wrist with duct tape and had duct tape over their mouths and eyes. (T/9131-32)

Crime Scene Tech. Fabrice Nelson was assigned to process the scene. (T/5697-5707) He observed that the apartment building had two staircases, one on each end. (T/5710-11) The apartment in which the murders occurred was in the

middle of the floor. (T/5717) The building was next to I-95 and faced the road. (T/5713-14) The road noise in the area was deafening. (T/7122) There was a catwalk used to cross the I-95 a block north of the building, and a walkway between the building and the catwalk. (T/5715, 7119-20) It was possible to use the walkway to travel between the building and the apartments in which Dwight "Frank" Campbell lived. (T/7110, 7119-20)

In the apartment, Nelson found 5 .45 caliber shell casing, 4 bullet fragments, the center of a roll of duct tape and a pile of clothing on the floor in the living room. (T/5738-39, 5796-97, 5799, 5811-31, 5862-64) The apartment had been ransacked. (T/5739-40) An examination of the apartment and the clothing revealed no cash, wallets, cell phones or pagers. (T/5741-42, 5799-5802, 5806-08) The only jewelry found was one gold medallion under Melvin's body. (T/5742, 5808-11) Only a small amount of marijuana was found in Melvin's shirt pocket. (T/5742, 5895-96) However, there were a large supply of manila and plastic envelops, some of which had been stamped, that were consistent with containers used to sell drugs. (T/5742-46, R158/5831-34) A calculator, notebooks containing tally sheets, stamps, an ink pad and scales were also found in the apartment. (T/5788-95) The scene was processed for fingerprints. (T/5838-45, 5870-71) Nelson lifted prints from the door to the freezer, the wall above of a bedroom dresser and a piece of duct tape from the dining table. (T/5878-87) The police conducted several area

canvases and found no one who would provide information about the crime. (T/7123-26, R182/8628-29) After diligently investigating the matter for months, the police were unable to identify a suspect. (T/7135-38, 7154-55)

On May 11, 1998, Sgt. George Law received information that caused him to want to speak to Defendant as a witness in a case regarding Michael Gosha and regarding this matter. (T/6035-39, 6049, 6058-60, 7156) On May 13, 1998, Defendant was brought into the station by Det. Kelvin Knowles around 3 p.m. (T/6061, 7157, 8341, 8200-01, 8626, 8631-40) Law and Lt. Al Borges then went into an interview room to speak to Defendant. (T/6066, 7089, 7156-59, 7166) At the time, Law had not been involved in the investigation of this case and was not privy to information about it. (T/6071-74, 7159-60)

Upon entering the room, Law introduced himself and Borges and offered Defendant refreshments. (T/6077) Defendant responded that he was a born again Christian and was fasting. (T/6077, 8207-08) Law then informed Defendant that he had an outstanding arrest warrant for a traffic matter and that he and Borges both wanted to speak to him regarding their cases. (T/6079) Defendant provided Law with background information and looked and acted much older than his age of 19. (T/6079-81) Law then read Defendant his *Miranda* rights, and Defendant executed a written waiver of those rights at 3:31 p.m. (T/6081-89, 7167-68) After the waiver, Law spoke to Defendant about the Gosha matter for 45 minutes to an hour.

(T/6089-90, 7168-69) Borges then questioned Defendant about this case. (T/6090-91, 7169) Defendant responded to Borges' questions by telling him to find the facts. (T/6091-93, 7169-71, 7183-84, 8208-09) Borges showed Defendant a couple of close-up photos of victims' faces taken at the crime scene. (T/7171-75, 7178, 7181-82, 7842) Around 5 p.m., Law and Borges left the interview room. (T/6093, 7184) Later, Sgt. Eunice Cooper entered the interview room to check to see if Defendant, who was alone, needed anything. (T/8352-53) Defendant snapped at Cooper, and she admonished him about his tone. (T/8353) Defendant apologized, and Cooper left the room. *Id.*

Around 7 p.m., Sgt. Ervens Ford, who had been involved in the investigation of the Gosha matter but not this case, went into the interview room. (T/8762, 8770-73, 8793) In an attempt to establish rapport, Ford talked to Defendant about his background. (T/8797-98) During this discussion, Defendant indicated that he was very knowledgeable about the Bible and suggested that he could demonstrate his knowledge if Ford had a Bible so Ford got one. (T/8798-8800) Defendant then began reciting Bible verses about God's vengeance from memory while Ford checked the verses in the Bible. (T/8800-02) In doing so, Defendant indicated that the Angel Gabriel's job was to right wrongs. (T/8802) When Ford asked Defendant if he considered himself to be Gabriel, Defendant responded that everyone had some Gabriel in them. (T/8802-03) When Ford asked if God had punished the

victims, Defendant responded that they should have seen it coming because of their drug dealing. (T/8803-04) Det. Tony Davis, who had also not participated in the investigation, saw Defendant with the Bible from the observation room and believed that Defendant was paying more attention to it than the interview. (T/7946-51) As a result, he entered the interview room, said "Thou shall not kill," took the Bible from Defendant and left the room. (T/7951-52, 8641, 8805) Ford followed Davis out of the room. (T/8806)

Knowles then went into the interview room around 8 p.m. (T/8640-42) Defendant told Knowles that he was being questioned about murders he had not committed. (T/8644) Knowles told Defendant that he should tell the police what he knew if he knew anything and that he did not know anything if he knew nothing. (T/8644) Defendant then stated that the victims were bad people, drug dealers and worked for the devil. (T/8645) After listen to Defendant for 10 to 15 minutes, Knowles left. (T/8646)

Around 9 p.m., Sgt. Jose Granado, who had also not previously been involved in the investigation, went into the interview room. (T/8719, 8721-24) He spoke to Defendant briefly about the need to confess his sins. (T/8723) After less than 3 minutes, Granado left the room because he did not have any rapport with Defendant. (T/8723, 8726-28) About 15 minutes later, Granado poked his head in the interview room door to see if Defendant needed anything and left again.

(T/8728-30) At 9:45 p.m., Det. Manuel De La Torriente came to work and checked the interview rooms as a matter of routine. (T/6996-7001) Prior to that time, he had not been involved in this case. (T/7002-03) When he checked the interview room, he saw Defendant was alone and asked if he needed any refreshments or the use of the facilities. (T/7003-04) Defendant was fairly quiet but did indicate that he was alright. (T/7004) After confirming with Borges that Defendant was being supervised, De La Torriente picked up his work and left the station. (T/7004-05)

At 11 p.m., Sgt. Juan Gonzalez entered the interview room and spoke to Defendant for 30 minutes. (T/7204-08, 7217-18) During this time, Gonzalez told Defendant the police had fingerprints connecting him to the crime, and Defendant responded that his fingerprints might have gotten on the door by him touching a door in a hardware store. (T/7217-18)

After midnight, Law returned because Lt. George Pereira from the Miami-Dade Police had arrived to speak to Defendant. (T/6094-98, 6973-75, 6976-79) Pereira knew nothing about this case, and nothing was discussed regarding this case when he spoke to Defendant. (T/6568, 6975-76, 6983) However, Defendant did acknowledge that he had previously been informed of his rights and agreed to waive them. (T/6979-81) Defendant also refused Pereira's request to tape their conversation. (T/6981) Around 1:30 a.m., Law and Pereira exited the interview room. (T/6098, 6981)

Around 2:30 a.m., Borges decided that the police were getting no where with Defendant and prepared an arrest affidavit regarding an outstanding warrant. (T/7335-36) Around 3 a.m., Gonzalez again went into the interview room. (T/7218) Defendant told him that he lived near Frank but did not know him well. (T/7218-19) When Gonzalez stated that Defendant's fingerprint had been found on duct tape used to bind the victims, Defendant responded that he used duct tape frequently but could not explain how any duct he might have touched would have been found at the murder scene. (T/7219) Defendant also acknowledged that he disliked Melvin and considered him to be a snitch. (T/7219) After being in the room for more than 30 minutes, Gonzalez left. (T/7285-86) When Borges learned of Defendant's statements to Gonzalez, he changed his mind about arresting Defendant. (T/7336, 7339-40) However, since everyone was tired, he decided that they should all get some rest before continuing in the morning. (T/7342-44) Before everyone rested, Cooper again checked on Defendant. (T/8357) When she did so, Defendant asked how long he would be there, and Cooper answered as long as he wanted to be. (T/8357-58)

Around 8 a.m., Law checked on Defendant and found him sleeping. (T/6100-02) Defendant awoke, and Law escorted him to the bathroom. (T/6102-03, 8211-12) When Defendant exited the bathroom, he asked to use the phone and was permitted to do so. (T/6103-05, 8212-13, 9019) During the call, Defendant's

demeanor changed, and he became emotional. (T/6105-06) Because of the change, Law decided to try to question Defendant again. (T/6107, 8216) As they returned to the interview room, Cooper brought Defendant a tray of food. (T/6108-09, 8363, 8214) Sgt. Willie Everett, who also had not been previously involved in the investigation, then joined them. (T/6109, 8217, 8220) Law told Defendant that his prints had been found on the door and duct tape so the police knew he had been at the murder scene. (T/6110, 8219) He suggested that a good Christian would confess. (T/6110, 8221) Everett told Defendant the police knew he was wearing camouflage. (T/6373, 8219-20) Defendant broke down in tears and ate his breakfast. (T/6110-11, 8217-18, 8222)

Around 9 a.m., Defendant stated that he had planned to rob the victims and not to kill them. (T/6112) Before the crimes, he had gone to a flea market and purchased camouflage clothing and sunglasses. (T/6112) On the day of the crime, Gosha picked him up and took him to the Frank's home. (T/6113) From there, Defendant and Antonio Clark walked by the catwalk toward St. Charles' apartment. (T/6113, 6160) As they approached the apartment, they saw St. Charles getting out of his car. (T/6113) Defendant, who was armed with a .45, grabbed St. Charles and forced him up to the apartment. (T/6113) As he entered the apartment, Defendant saw Melvin and the other victims sitting at the dining table eating. (T/6113) Defendant ordered the victims to get on the floor and take off their

clothing and jewelry while demanding the location of the drugs and money. (T/6113) Defendant ordered Clark to restrain the victims. (T/6113-14)

When Clark found nothing to do so, Defendant directed Clark to go to the store and get tape, which Clark did. (T/6114) When Clark returned, he started to bind the victims with the tape but soon ran out of tape. (T/6114) As a result, Clark had to go back to the store. (T/6114) When Clark finished restraining the victims, Defendant then put tape over the victims' eyes. (T/6114) Unsure of what to do, Defendant had Clark go to Frank's house for further instructions. (T/6114) When Clark returned, he stated that Frank had said to kill 2 of the victims. (T/6114) Defendant told Clark that the victims knew him and that he believed they would kill him if he did not kill them. (T/6114) After Clark made another trip to Frank's house, it was agreed that all of the victims would be killed. (T/6114) Defendant turned up the radio. (T/6115) He then shot each of the victims once in the head, beginning with the person near the dining table, then Melvin, then the other two victims and finally St. Charles. (T/6116) Defendant and Clark then took marijuana they found in the apartment, as well as the victims' jewelry, money, cell phones and pagers, and went to Frank's house before going to another friend's house. (T/6116, 6119) After laying low for a couple of days, Defendant threw the gun into a field along a set of railroad tracks and had Gosha put him in touch with a family member named Adolphus, who could pawn jewelry. (T/6119, 6135)

Defendant then agreed to give a stenographically recorded statement. (T/6120-22, T/8230) In that statement, Defendant acknowledged that he had waived his rights and that he had not been threatened or coerced. (T/6146-56, 8262) He then reiterated what he had previously told the police, adding that he was wearing an army hat, that it took Clark 20 to 30 minutes to get tape the first time, that Melvin plead with him before his mouth was taped, that he was in the apartment for 3 hours, that the property was divided at his friend's home, that the plan had originally been to rob a different person and that Gosha's family member was in federal prison for tax fraud. (T/6157-83)

Diane Odom, Defendant's girlfriend, was brought to the station. (T/6125-26, 8647-48, 9011-15, 9020) Once the recorded statement was completed, Defendant went to the bathroom again and then met privately with her. (T/6127, 8236-38, 9020) During this meeting, Defendant told Odom that he had to come clean and get right with God. (T/9022) He did not complain about the way the police had treated him or ask for a lawyer. (T/9022) He also did not suggest that Odom or his family were in danger. (T/9028-29) Defendant then agreed to show the police where he had thrown the gun. (T/6129, 8238-39) As a result, Defendant, Odom, Law and Everett went out in an unmarked van, and Defendant pointed out the flea market and where he had disposed of the gun. (T/6130-35, 8240-43, 9024-26) They were unable to locate the gun among the debris in the field. (T/6135-36, 8245-47)

Before returning to the station, Defendant was permitted to visit his cousin, at whose home Odom was dropped off, and his grandmother and to eat lunch. (T/6137-44, 8247-54, 9027-28)

Following up on the information Defendant provided, the police learned that Gosha had an uncle named Aldophus Thornton who was in federal prison for tax fraud and interviewed him. (T6226-28, 6884, 6893, 6894-95, 7354-55) Thornton confirmed that Defendant visited him a few days after the murders and attempted to sell him a bracelet. (T/6885-88) Thornton agreed to pawn it for Defendant and did so. (T/6888-89) When he subsequently heard that Melvin had been one of the victims in this case, Thornton realized the bracelet had been Melvin's. (T/6890-91)

As a result, Defendant and Clark were charged by indictment with (1) the first degree murder of McGuire, (2) the first degree murder of Thomas, (3) the first degree murder of Copeland, (4) the first degree murder of St. Charles, (5) the first degree murder of Melvin, (6) the armed robbery of the five victims, (7) the armed kidnapping of St. Charles and (8) the armed burglary of St. Charles' apartment with an assault and battery. (R/94-100) Defendant moved to suppress his confession. (R/291-93, 4394-4418) During discovery in preparation for the hearing on the motion, the State learned that the trial court had held ex parte hearings regarding discovery of information from Richard Ofshe, a defense expert in police interrogations, and ruled that certain matters did not need to be disclosed.

(R/3936, 2782-83) During the course of a hearing regarding this discovery issue, the trial court engaged in further ex parte communication with Defendant about the scope of discovery off the record. (R/2783) As a result, the State then moved to disqualify the judge, and the motion was denied. (R/2822-3134, 3399) The State then filed a petition for writ of certiorari regarding the discovery issue and a petition for writ of prohibition regarding the disqualification order in the Third District. On February 22, 2006, the Third District issued an opinion, granting the writ of prohibition and granting in part the writ of certiorari. *State v. Calloway*, 937 So. 2d 139 (Fla. 3d DCA 2006).

After the writ of prohibition had issued, the State filed a motion for leave to call a substitute medical examiner. (R/4192-93, 4236-39) Defendant filed a response, asserting that the original medical examiner was available, that the autopsy report should be considered testimonial hearsay and that the testimony would violate the Confrontation Clause. (R/4240-44) The trial court granted the State's motion. (R/798-801)

On October 25, 2007, the State moved in limine to exclude Ofshe's testimony. (R/4285-4305) It argued that the subject matter of Ofshe's testimony was not beyond the understanding of lay people, that it would amount to a comment on the credibility of witnesses and a conduit to hearsay, and that theory on which Ofshe's testimony was based was not generally accepted in the scientific

community. Defendant responded that there was no basis to require him to show that Ofshe's testimony was based on a generally accepted methodology because other trial courts had admitted his testimony and his testimony would assist the jury in determining if his confession was voluntary. (R/4330-84) The State replied that the fact that trial courts had ruled Ofshe's testimony admissible did not show that it was not new evidence that was generally accepted. (R/4421-28) The trial court agreed to consider the admissibility of Ofshe's testimony during the suppression hearing. (T/994-95, 1056)

At the suppression hearing, the officers provided testimony regarding the circumstances of the confession consistent with their trial testimony, adding that they had received a tip identifying Defendant and Clark as the perpetrators in this case and Defendant as Gosha's killer, that Clark had been interviewed before Defendant and provided information implicating Defendant, that Defendant mentioned his involvement in a robbery in a different jurisdiction at the beginning of the interrogation and that Defendant had confessed to that robbery when Pereira arrived. (T/990-1944) When State rested, Defendant indicated that he did not plan to present any lay evidence. (T/1913-14) The State then moved to exclude Ofshe's testimony because it would serve as a conduit for hearsay. (T/1914-21) The trial court expressed skepticism of whether Ofshe's testimony would be admissible without some evidence of Defendant's version of the interrogation but indicated

that it saw no reason to address whether Ofshe's testimony was generally accepted in the scientific community. (T/1927-30) Defendant subsequently filed a pleading asking the trial court to permit Ofshe to testify even though he had not testified at the suppression hearing. (R/5035-40) After considering these arguments, the trial court permitted testimony from Ofshe at both the suppression hearing and trial because Defendant was charged with 5 counts of first degree murder and the trial court wanted to ensure he received a fair trial. (T/1951-52)

The State then moved the trial court to rehearing its oral denial of a *Frye* hearing. (R/5235-39) It pointed out that this Court had just held that Ofshe's testimony was subject to a *Frye* hearing and that he could not serve as a conduit for hearsay even if he was allowed to testify. *Id.* Defendant filed a response in which he insisted that the testimony was admissible because other trial courts had admitted it and he could testify regarding hearsay. (R/5276-84) After considering these arguments, the trial court refused to reconsider its denial of a *Frye* hearing but stated that it would rule regarding the scope of testimony that Ofshe could offer at trial after hearing his testimony at the suppression hearing. (T/1994) When Defendant subsequently announced that he was not calling Ofshe at the suppression hearing, the State renewed its arguments that Ofshe should not be permitted to testify at trial. (T/2079-80, 2086-89) The trial court rejected these arguments.

On April 15, 2009, the State filed a motion in limine, in which it requested that Defendant be prevented from attempting to argue lingering doubt about his guilt during the penalty phase and from introducting evidence about the health and character of his family members without a showing that condition of the family member contributed to his actions. (R/5566-67) In a separate motion, the State noted that Defendant had been questioned about an unrelated robbery during the time he was also questioned about this case. (R/5572-74) It agreed that the subject matter of that questioning was not relevant but asserted the fact that Defendant was reminded of his rights and waived them was relevant as was the fact that Defendant had refused to have his confession regarding the unrelated crime recorded. *Id.* As such, it sought guidance from the court regarding how to present the information. *Id.* In another separate motion in limine, the State noted that Odom had engaged in a series of phone calls for months beginning on the date he was questioned and argued that this information would be admissible hearsay. (R/5575-79) Defendant filed his own motion in limine. (R/5568-71) He sought to exclude statements made by Clark's attorney, any mention of Gosha's murder, any mention of the robbery, any mention of the tip and any testimony that Ofshe testimony was not generally accepted in the scientific community. *Id.*

At the hearing on these motions, Defendant agreed that the State could discuss the fact that Defendant acknowledged he had waived his rights during

questioning about the robbery, did not seek to assert his rights and refused to be recorded without mentioning the subject matter of the questioning. (T/2178-79) Regarding the matter of how to explain the circumstances of the interview, the State asserted that it should be able to explain that the police wanted to speak to Defendant as a witness regarding the Gosha murder to explain why they sought out Defendant but was concerned that Defendant's arguments would open the door to explaining that Defendant was questioned about several different cases, that he made admissions regarding some crimes at certain points and that he refused to do so regarding others. (T/2221-25) The trial court indicated that it did not believe that the fact that Gosha had been murdered needed to be mentioned but that it agreed that Defendant could open the door to specifics about the interview. (T/2225) The parties subsequently agreed that the State would initially elicit only that the police sought to question Defendant regarding an investigation concerning Gosha because they were associated without mentioning the murder. (T/2226)

When the State then indicated that it planned only to elicit that the police received information and that as a result of that information, it checked Clark's fingerprint against a print on the duct tape, found a match and then questioned Defendant, Defendant insisted that the State should not be able to mention Clark's matching fingerprint. (T/2247-49) The trial court rejected this position. (T/2249-52) Regarding Odom, the State indicated that it was concerned about statements

Defendant made to her weeks after the interview during a phone call about threats. (T/2258) Defendant argued that his statements weeks later would be admissible for their effect on Odom and would not be hearsay. (T/2258-59) The trial court rejected this argument because the effect of Defendant's statement on Odom would not be relevant. (T/2260-61)

Regarding Ofshe's testimony, Defendant argued that this Court had already held that his testimony was generally accepted so the State should not be allowed to question its general acceptance. (T/2365) The State indicated that testimony from its expert that Ofshe's testimony was not accepted science was relevant to the weight to be given his testimony. (T/2366) The trial court agreed that such testimony was acceptable so long as the court ruling was mentioned. (T/2366)

During voir dire, the appropriate scope of questioning on aggravators and mitigators was discussed several times. (T/2828-30, 2914-23, 3193-3282) Throughout these discussions, Defendant insisted that it was appropriate to inquire about the jury's acceptance of specific aggravators, combinations of aggravators and specific mitigators. (T/2829, 2915-16, 2917, 2920-23) The State objected to going into specifics. (T/2830, 2923) Eventually, the trial court ruled that Defendant could ask questions about legal concepts but could not ask the venire to commit to a particular recommendation based on the expected evidence in the case. (T/3196-3203) Instead, it found that asking general questions and hypothetical questions

was appropriate. (T/3203, 3225-32) It also allowed Defendant to ask the venire about their ability to consider both recommendations fairly in light of specific facts already before the venire, like the fact that Defendant was charged with multiple counts of murder. (T/3232-34) It also permitted questions about attitudes toward types of mitigation like mental health. (T/3234-38, 3245-48, 3262-82)

During the State's questioning, veniremembers indicated that they would consider matters in aggravation that were not statutory aggravators. (T/3312-17, 4247-48) Others indicated that certain facts that would establish aggravators would weigh heavily with them. (T/3317-18, 3393, 3404, 4250, 4387-88) Several veniremembers volunteered that they would not willingly consider certain types of mitigation. (T/3335-38, 3350-55) Another indicated that certain facts that would be mitigating would weigh especially heavily with him. (T/3590-93, 4353-55) These individuals did so even though the State did not ask for their opinions on the specific aggravators and mitigators directly other than as permitted by the trial court's ruling. (T/3292-3425, 3496-3521, 3547-65, 3576-3635, 4198-4389)

During his questioning, Defendant was able to elicit opinions regarding what the venire would consider in aggravation and whether the mere fact that he had been convicted of murdering 5 people would automatically result in a death recommendation. (T/3657-58, 3662-67, 4401-09, 4415-16) He was also able to inquire about the venire's personal feelings about the death penalty. (T/3667-70,

3676-77, 3678-82) Veniremembers also volunteered that certain facts that would concern aggravation would influence their decisions. (T/4425-26) The trial court intervened and sustained objections when Defendant phrased his questions in manner that required a veniremember to commit to a particular recommendation or finding based on certain facts (T/3659-61, 3662-63, 4434-42) It also sustained objections when Defendant asked if knowing facts that would support aggravators would cause the veniremembers to be more inclined to recommend death and when he asked if the death penalty should be a "normal procedure" for a murder conviction. (T/3675, 3677-78, 4402, 4404) It did so when Defendant started asking about combination of aggravators as well. (T/4409-13) During a sidebar concerning combining aggravators, Defendant indicated that he had planned to ask if the venire would find death appropriate if all of the aggravators he believed were present were combined until the trial court precluded it. (T/4412-13)

In discussing the State's use of demonstrative aids before opening statement, Defendant asserted that there was no dispute regarding the causes of death. (T/5443) At trial, Taylor testified that Melvin routinely wore a gold chain, a bracelet and a ring. (T/5579) The bracelet consisted of three strands of gold links held together by a diamond encrusted centerpiece. (T/5580) After the murder, Melvin's jewelry, his pager, his cell phone and his wallet were missing. (T/5580-81) She also stated that Melvin routinely carried money in his pants' pocket.

(T/5582) Jones testified that she was informed that a juvenile may have been in an apartment down the hall from the crime scene either the day of the murders or the next day. (T/5626-27) However, she never saw or spoke to this juvenile. (T/5627) Law testified that he never saw any note that was slipped under the door. (T/6122-23) He did not know Val Williams' children and never spoke to her or her children about this case. (T/6124-25) He also received no information about this case from Cooper. (T/6125)

Strachan testified that he could hear people using the staircase near his apartment in certain circumstances. (T/6687-88) However, he could not always hear people on that staircase and never heard anyone using the other staircase. (T/6688-89) When the bodies were discovered, people asked Strachan if he had seen anything, and he went inside his apartment and closed the door. (T/6694-95) He then called his mother who directed him not to speak to anyone. (T/6696) He followed his mother's instruction. (T/6697) When his mother got home, they left the apartment and never returned. (T/6697-98)

A long time after this event, he told his mother what he had seen. (T/6698-99) He did not provide her with a detailed account. (T/6778) On April 28, 2008, he provided a tape statement to the police. (T/6699-6700) After it was typed up, he made changes to the statement because he was felt some of the information was not accurate. (T/6701) On cross, Strachan admitted that he had previously made

inconsistent statements regarding whether the door to his apartment was opened, whether he had seen people enter St. Charles' apartment and the timing of his observations. (T/6721-30, 6736, 6738, 6744)

The fingerprint on the duct tape was identified as belonging to Clark. (T/7138-39, 7968-8000, 8003-04) The prints on the freezer were identified as belonging to Clark and St. Charles, and the print from the bedroom was identified as belonging to Clark. (T/8001-03) Of the 128 latents lifted from the crime scene, only 64 were of value and 32 were never identified. (T/8009, 8017-18) The ballistic evidence showed that only one .45 caliber gun was used in the murders. (T/7416, 7426, 7886-7991) Most .45 caliber semi-autos have clips that hold 7 bullets. (T/7937) Borges testified that after the day of the murders, he became aware that Val Williams lived in an apartment near St. Charles. (T/7147) He spoke to her on January 23, 1997, and was told she knew of no information about the crimes. (T/7148-49, 7824) In 2008, Borges learned that Strachan, Williams' son, might have some information and interviewed him. (T/7151-52)

During cross of fingerprint examiner Guillermo Martin, Defendant elicited that the ability to identify prints was limited by the ability of the crime scene technician in lifting prints. (T/8030, 8035-36, 8070) He also had Martin admit that he had not checked the work of Nelson, that he did not know if Nelson attempted to left prints from the door and that it was common for prints to be submitted from

the point of entry. (T/8031-35) On redirect, the State elicited that the large number of latents submitted suggested that Nelson had done a thorough job processing the scene without objection. (T/8102)

Cooper testified that after she learned that Defendant was being cooperative for Law and Everett, she wrote several questions on a piece of paper and slid it under the interview room door. (T/8370-71) When Everett finished interviewing Defendant, he asked Cooper the source of her questions, and she refused to say. (T/8373-74) Cooper was acquainted with Williams and saw her occasionally with her children at a grocery store. (T/8376-77) Sometime after the crime and before August 1997, Cooper, who was not in homicide at the time, had a conversation with Williams about her son and used what she gleaned from that conversation in formulating some of the questions on the note. (T/8381-83)

During cross, Defendant inquired whether her department had a policy that required that felons be handcuffed when transported. (T/8146-47) Cooper responded that there was a policy but it allowed officer discretion in whether to handcuff an individual. (T/8147) On redirect, Cooper again acknowledged that officers had discretion in handcuffing people and noted that officers in investigative units were in a good position to exercise the discretion because they spent more time with suspects and had the opportunity to build rapport and get a feel for the suspect. (T/8176-77) She added that if an officer was comfortable with

the person, they would not handcuff the person. (T/8177) The State then inquired if Everett was a capable supervisor, and Defendant objected that the question called for an opinion, sought character evidence about a witness and bolstered evidence. (T/8177) The trial court overruled the objection, and Cooper responded that Everett was capable and used his discretion. (T/8177-78) During cross of Everett, Defendant again elicited that Defendant was not handcuffed during the time of the van ride. (T/8299-8300) Everett also testified that officers had discretion in deciding whether to handcuff people. (T/8300)

On the day Odom was called, the State reminded the trial court that it had previously granted a motion in limine preventing Defendant from attempting to elicit statement that he had made to Odom subsequent to the day of his arrest. (T/8913-15) Defendant responded that he recalled the ruling and would abide by it unless he obtained a change in the ruling at sidebar. (T/8915)

The State limited its direct examination of Odom to the nature of her relationship with Defendant prior to his arrest, the fact that he called her the morning of May 14, 1998 and her interactions with him and the police from the time she was picked up until the time she was dropped off. (T/9011-29) On cross, Defendant extensively questioned Odom regarding whether she and Defendant's family moved after the arrest. (T/9032-34) Odom responded that while she stayed with Defendant's family for a couple of weeks, she did not move and did not know

if Defendant's family moved. *Id.* Defendant then elicited that Odom stayed with Defendant's family because she was scared. (T/9034) When Defendant attempted to elicit why Odom was scared, the State objected, and the trial court sustained the objection. (T/9034) Defendant then attempted to question Odom directly about whether Defendant had made statements about his family being in danger at another time, the State again objected, and the trial court again sustained the objection. (T/9034) At sidebar, Defendant insisted that the State had opened the door to statements Defendant made to Odom at other times by asking about the interaction on May 14, 1998. (T/9035-36) When the trial court rejected that position, Defendant claimed that Odom would testify that Defendant told her about threats during the phone call during the interrogation.[1] (T/9036-40) When the trial court inquired why Defendant had not presented this argument at the hearing on the motion in limine, Defendant asserted that the State had not opened the door at that time. (T/9040) The trial court rejected the argument that the State had opened the door. (T/9040-45) Defendant then argued that the statements were admissible under the rule of completeness even though they were made at a different time than

[1] Defendant relied on Odom's September 10, 1999 statement for this assertion. (R/6334-57) In that statement, Odom had not mentioned any threats or mistreatment being discussed during their May 14, 1998 call when she was first asked. (R/6340-41) Later in the statement, Odom stated that she and Defendant had discussed the circumstances of his confession during a call weeks after his arrest and claimed Defendant mentioned being followed in the May 14, 1998 call. (R/6352-56)

the statements the State had elicited to explain Odom's state of mind. (T/9046-47) The trial court rejected this assertion, finding Odom's state of mind was not relevant. (T/9047) Despite these rulings, Defendant continued to attempt to elicit the statement indirectly. (T/8054, 8055, 8090) Each time he did so, the State objected, and the trial court sustained the objection. (T/8054, 8055-59, 8090-91) He did elicit that Odom never saw Defendant with a gun. (T/9061)

Prior to Hyma being called, Defendant renewed his objection that having him testified created a confrontation violation. (T/9086-91) The trial court confirmed the causes of death were not at issue. (T/9094-95) Defendant then objected that admitting the legal ID photos at the time of Hyma's testimony violated his right to confrontation. (T/9098) However, he acknowledged that he was stipulating to the legal ID of the victims. (T/9098-99)

Hyma, the medical examiner, then testified that he had reviewed the files regarding the victims' autopsies. (T/9101-17) Based on that review, Hyma opined that each of the victims died of a gunshot wound to the head consistent with a .45 caliber bullet. (T/9137-69, 9189) While Thomas was shot at fairly close range, the other victims were not. (T/9149-50, 9161, 9166) He confirmed that the opinions he expressed were his own and were mainly based on photos. (T/9226) On cross, Hyma stated that the medical evidence did not reveal the sequence in which the victims were shot. (T/9207-09) After Hyma testified, the trial court read the jury

the stipulation regarding legal ID without objection. (T/9234-35)

Defendant testified that he did not commit the murders. (T/9280-81) He admitted that he spoke the words in his confession but insisted that it was not a confession and that he only uttered the words because the police told him his family was somehow in danger. (T/9281) He averred that he was born in Georgia on July 27, 1978, and moved to Miami with his mother when he was 2 because she wanted to be near her family and had a dispute with his father. (T/9281-82) After that, he was raised by his mother and grandmother. (T/9286) He attended school until the 11th grade and left because of a misunderstanding at school. (T/9282) He then attempted to get his GED while working odd jobs. (T/9282-83) While his family was religious, they did not attend church regularly, and he did not join a church until the 8th grade. (T/9283-84)

Prior to his arrest, Defendant claimed that he was working as a busboy, going to school and involved in his relationship with Odom. (T/9284-85, 9287-89) He averred that he planned to continue to be active in his church and to become a computer technician and minister because he wanted to do something positive. (T/9285-86) On a daily basis, he walked Odom's children to school around 7 a.m., went to his own school, went to work for 8 to 10 hours after school and walked Odom's children home from school when his schedule allowed. (T/9300-03)

Defendant stated that he had heard of the crimes on TV at the time they

occurred but did not recall where he was when they occurred. (T/9284-85) He also claimed that he was generally familiarity with the neighborhood where the murders occurred and had heard that Melvin and St. Charles, with whom he claimed to have a general acquaintance, and Thomas, who he knew of, had been victims. (T/9312-19, 9323) He averred that he had considered the murders unjustified because the victims did not have violent characters and were not wealthy despite being drug dealers. (T/9319-21) He claimed to have heard gossip that the murders occurred during a robbery, that Melvin was shot and that Frank may have been involved. (T/9324-25) Defendant claimed that he was familiar with Clark from seeing him in the neighborhood but that they were not friends and generally did not interact. (T/9418) He averred that he did not really know Frank. (T/9418-19)

Around 2 a.m. on May 13, 1998, his aunt informed him that the police had been to her home looking for him. (T/9303-04) The following morning he got the contact information the police had left and called them. (T/9305) He averred that Knowles told him that he had an outstanding warrant and that some detectives wanted to speak to him so he agreed to go to the station. (T/9305) He claimed that he had been fasting for 3 days at the time. (T/9306-07) Defendant claimed that he asked Knowles why the police wanted to talk to him when he was picked up, and that Knowles had mentioned the warrant and the need of homicide detectives to speak to him. (T/9309) He claimed he assumed that the questioning would concern

Gosha. (T/9309-10) During the drive, Defendant asserted he spoke to Knowles about God and the change in his life. (T/9310-11)

Defendant claimed that he was introduced to Law and Everett as he entered the homicide section of the police station before being placed in the interview room. (T/9420-21) After about 30 minutes, Law then entered the interview room alone, carrying a manila folder. (T/9423) He averred that after asking background questions, Law handed him a waiver form and told him to read it and sign it. (T/9423-24) He admitted that he signed the form knowing it was a waiver form but claimed that he believed it was insignificant and that he did not know he was waiving his rights. (T/9424, 9462-63) Defendant insisted that Law then left the room, immediately returned with Everett and questioned him regarding Gosha. (T/9424-25) He averred that he and Gosha had been friends but that Gosha was involved in shady activities in which Defendant was not involved. (T/9426) After Defendant answered the questions about Gosha, Everett left the room, and Borges entered, carrying a different type of manila folder. (T/9425, 9427) Borges asked him if he knew about this case, and he responded that he only knew what he had heard in the news. (T/9427-28) When asked if he knew any of the victims, Defendant admitted that he knew Melvin and St. Charles and had heard of Thomas. (T/9428) Borges then offered to show Defendant pictures to see if he could recognize anyone, and he accepted the offer out of curiosity. (T/9428) Borges then

opened his folder and handed Defendant a large stack of loose crime scene photos and allowed him to look through them until he identified Melvin and St. Charles. (T/9429-30) Defendant claimed that he learned details of the scene, the location of the bodies and the nature of the victims' injuries from viewing the pictures. (T/9430-42) According to Defendant, Borges became aggressive with him and started accusing him of the crimes once he took the photos away. (T/9442, 9446-48) Defendant became defensive with Borges. (T/9448-51) Defendant claimed that Borges responded to his defensiveness by pulling out a report and showing Defendant that it said his fingerprints had been found at the scene before taking it back. (T/9451-54) Defendant claimed that Borges then became more aggressive so he asked for a lawyer and that Borges became visible angry at the request and told him he was going to fry. (T/9454-60, 9464-65) Borges then left the room, but Law remained and urged Defendant to confess. (T/9465-66) Everett then came back into the room, asked about what happened with Borges and urged Defendant to keep talking. (T/9467-68) Everett allegedly again mentioned the fingerprint, and Defendant allegedly again asked for a lawyer. (T/9469) Law and Everett then both left the room. (T/9469-72) Defendant claimed that he believed that he needed to wait for the lawyer but that he also thought he would be allowed to go home after doing so. (T/9473-74)

According to Defendant, he was then left alone for about 30 minutes and

that a string of detectives then came in and out of the room and questioned him. (T/9473-75) He recalled discussing the Bible during this time and claimed that he chatted with the detective until they mentioned the case at which point he refused to answer questions, requested a lawyer and asked to go home. (T/9475, 9549-50) He also claimed that one of the officers told him the victims were bad people who deserved to die and that he never made such a statement. (T/9478-80, 9486, 9498-9502, 9508-09) He recalled Davis coming into the room and taking the Bible. (T/9518) He claimed that he attempt to convince Knowles that the police had it wrong because he recognized him from the neighborhood. (T/9521-23) He also averred that other officers provided him with information about the type of gun used and other information about the crime and the police theory of the case. (T/9538-42, 9547, 9563, 9573-75) He claimed that one officer promised him leniency if he confessed. (T/9548) Defendant asserted that during the conversation, an officer said that he knew where the gun Defendant usually carried was and he denied owning a gun. (T/9539-40) He acknowledged that he spoke to Law and a white detective at one point about another matter and claimed that he was not able to be helpful about that matter. (T/9554) Defendant asserted that he never slept during the time he was at the station and that officers were in and out of the room most of the night. (T/9523, 9551-53, 9577-81, 9583) According to Defendant, Law entered the room after he had been left alone for a period of time, and Law had a

wild look on his face and said he had been speaking to Gosha, who had told him who had killed him. (T/9585-88) He averred that he responded that Gosha would tell him about Defendant's character and he was not the type of person to kill people. (T/9589)

In the morning, Law returned and started mentioning Defendant's family and detailed information about them and Defendant's daily routine. (T/9592-94) Law then took off his badge and told Defendant that he knew he had not committed the crimes but that he had heard the people who killed Gosha were after him. (T/9594-97, 9604) Defendant averred that he responded that there was no reason for anyone to harm him because he had not done anything to anyone. (T/9604) Defendant claimed that he responded that he would leave town to avoid the people if they could not be arrested and that Law replied that the people would go after Defendant's family. (T/9605-09) Law then proposed that he provide a false statement that would be used to flush out the real killers within a couple of months to avoid the situation. (T/9609-10, 9613, 9631) After Defendant allegedly rejected the suggestion, Law took him to the bathroom and allowed him to call Odom. (T/9609-10) Defendant decided to accept Law's deal after he heard how upset Odom was. (T/9610-13) He claimed that Law told him what to say in his statement and that he and Everett rehearsed the statement before it was taken. (T/9621, 9627-28, 9633-34) He asserted that during the rehearsal, Everett told him

to add Frank and camouflage. (T/9636-37)

Defendant admitted that he made the comment about getting right with God to Odom when she came to the station. (T/9613-14) He averred that he did not tell her about the alleged threat at the time because he did not want to panic her. (T/9614) However, he later claimed that he had explained the whole situation to her after he entered his alleged deal, told her to move out of her apartment and gave her Cooper's card so that she could contact Cooper if she needed protection. (T/9625-26) Still later, Defendant again changed his testimony and insisted that he did not provide this information to Odom to keep from upsetting her and to allow the alleged plan to work. (T/9809-10) He also claimed to have pretended to assist the police in finding the gun for Odom's benefit. (T/9810-12)

Defendant admitted that he was unaware of Cooper's note during the interview. (T/9637) However, he averred that anything in the note that was in the confession was there because he was told to say it. (T/9637-44) He did admit that he added some details regarding buying clothes, the catwalk, Gosha, the planning at Frank's house, the door to the apartment being opened when he arrived, using St. Charles as a shield when entering the apartment, Clark going to the store for tape, the conversation with Melvin, finding marijuana, Clark's trips to Frank's house, the length of time he was in the apartment, his reason for killing all the victims, wiping down the apartment, seeing a woman while exiting the apartment,

Twon being a getaway driver and the location at which he disposed of the gun on his own. (T/9640-41, 9658-59, 9653, 9665, 9667-68, 9674, 9700, 9715, 9727, 9730, 9734, 9742, 9745-48, 9775-76) He stated that he was aware that Thornton was a fence through his association with Gosha and just decided to name him. (T/9794-95) He was adamant that he only mentioned Clark in his statement because the officer had insisted he do so. (T/9667-68)

Defendant admitted that Melvin, St. Charles and Thomas would have all recognized him. (T/9671) However, he insisted that he had no reason to fear retaliation because he was known for not living a "ruggish, thuggish" lifestyle. (T/9671) He also asserted that he had never robbed anyone. (T/9788) Defendant asserted that Law told him to say that he had a .45 caliber gun. (T/9701) He also insisted that the police told him how many bullets fit in a .45 caliber clip because he did not know and that he used that information to create the statement that there were 2 bullets left in the gun. (T/9738) He pointed to his reference to a clip as a hammer as evidence of his ignorance of guns. (T/9738-39)

Prior to beginning its cross, the State informed the trial court outside the presence of the jury that it believed that Defendant had opened the door to evidence regarding the robbery he had committed with Gosha and his confession to that crime to Pereira through his testimony and regarding his prior plea to the carrying a concealed weapon and resisting arrest with violence. (T/9832-40) The

State noted that it was not seeking to present evidence regarding Defendant's entire, extensive criminal history even though Defendant had elected to place his character at issue. (T/9840-41) The trial court agreed that the totality of Defendant's testimony had created the impression that he had no knowledge of criminal activity and had opened the door. (T/9842) The State also averred that Defendant's testimony was also inconsistent with the handwritten and taped statements he had provided to Ofshe and that Defendant's claim to have made up the fact that he sent Clark out of the apartment at various times had opened the door to the introduction of evidence that Clark had confessed to these same details. (T/9857-66) It also noted that during the taped interview, Ofshe had confronted Defendant over his claim to have made up information contained in Clark's confession and that the door to the information would be further opened should Ofshe testify. (T/9866-67) It argued that it should be permit to cross examine Defendant with his prior statement that he had been accused of killing Gosha during the interview. (T/9887-97) Defendant insisted that presentation of evidence regarding Clark's confession would violate his right to confrontation and that it was irrelevant that he had opened the door. (T/9868-71) The trial court rejected this argument but initially limited the State to questioning Defendant on cross regarding whether Defendant had sent Clark on trips out of the apartment unless he denied having done so. (T/9884-87)

Regarding the information about the Gosha murder, Defendant argued that the information was more prejudicial than probative. (T/9899-9901) The State then indicated that it would be satisfied if it could ask Defendant about the fact that some of the questioning concerned the Gosha murder and that Defendant had spontaneously admitted to participating in a robbery with Gosha, and subsequently confessed to that crime, as a result. (T/9901-02) Defendant argued that the information about the robbery should not be admitted because the evidence consisted of testimony about his confession, he had yet to be tried on that charge and there was some inconsistency regarding the evidence in that case. (T/9903-05) He also averred that he had not opened the door to information about guns because he had allegedly limited his testimony on direct to a statement that he did not own a gun. (T/9906-07, 9912-14) The State pointed out that Defendant's direct testimony was not so limited and instead suggested that Defendant never had any involvement in any criminal activity. (T/9909, 9914-17) After considering the argument, the trial court limited the State to asking Defendant if he had possessed a gun on the date of his prior case, asking Defendant if he had been the one to send Clark out of the apartment during the crime, asking Ofshe if he was aware of those parts of Clark's statement and asking Defendant if he had planned a robbery with Gosha and informed Law of the plan. (T/9920-34)

On cross, Defendant admitted that he was aware of the charges in this matter

and the potential sentences but insisted that they gave him no reason to color his testimony. (T/9938-39) When asked if he had been prepared before he testified, Defendant claimed not to understand the question. (T/9939-40) When the State attempted to discuss Defendant access to the discovery materials in this case, Defendant was evasive but did admit he had seen some of them. (T/9940-43) He insisted that he had not looked at all of the photos in the case during its pendency. (T/9949-51) He initially denied having written notes about his version of the interrogation but eventually admitted that he had done so. (T/9943-44) He would not say whether his memory of what occurred was better when he wrote the notes. (T/9944-45) However, he recognized the notes, and they were admitted into evidence. (T/9945-47) He also acknowledged giving a recorded interview to Ofshe and recognized a transcript of that interview, which was also admitted. (T/9947-49)

Defendant admitted that he had testified that he had allegedly asked Borges for a lawyer early in his interview but would not say how long into the interview he made the request. (T/9952-54) When confronted with the fact that he had written in his notes that he made the request to Law the following morning, he averred that he had not been careful in writing the notes for his defense. (T/9954-56) He admitted that he had told Ofshe that he had requested a lawyer after being confronted about an incident regarding someone named Big Bay. (T/9956-58) He averred that the police had asked him questions about numerous crimes during his

interview. (T/9958-59) He insisted any perceived differences in his interview with Ofshe were a result of his speak pattern. (T/9959-66, 9970-72, 9990-93) He claimed that he had not taken the *Miranda* warning seriously because he was young and naïve. (T/9973-74)

Defendant admitted that he had been in possession of a 38 caliber automatic firearm on February 6, 1996, and that he was charged with carrying a concealed firearm as a result. (T/9978) He added that it was a misunderstanding and that he did not become a convicted felon as a result. (T/9978-79) When the State attempted to question Defendant about the alleged misunderstanding, Defendant was evasive. (T/9979) The trial court then called the attorneys sidebar and indicated that Defendant had opened the door to further questioning. (T/9980-83)

When the State inquired if the last time Defendant had seen Gosha was when they had planned a robbery 3 days before Gosha's death, Defendant responded that it was not true and asked to be able to explain. (T/9983) The trial court permitted Defendant to explain if he wanted, and Defendant averred that he had told Law that he had been a victim of a robbery the last time he saw Gosha. (T/9983-84) He admitted that the officers to whom he made his initial statement knew nothing about that crime because it was committed in a different jurisdiction, that Pereira was from that other jurisdiction and had no allegiance to the officers questioning him. (T/9984-85) He claimed not to remember discussing his rights with Pereira

and admitted that he did not tell Pereira that he had been mistreated by the other officers. (T/9985) He averred that he did so because he was merely speaking to Pereira about being a crime victim. (T/9985) When the State attempted to clarify why Defendant would not have asked Pereira for help if he had asked all of the officers who had spoken to him before then for a lawyer without success, Defendant insisted that he only asked Law, Everett and Borges for a lawyer. (T/9985-86) He then claimed not to understand that officers were from different jurisdiction and to have been attempting to provide assistance in solving the Gosha murder. (T/9987) He also insisted that Law mentioned the robbery to him before he claimed to have been a victim, that Pereira merely came to take a statement from him as a witness and that Pereira never offered him the opportunity to have his statement taped. (T/9988-89)

Defendant acknowledged that he had claimed to have been fasting for 3 days before his interview but had really eaten breakfast on May 13, 1998. (T/9996) He averred that he did not consider eating not to be fasting because he was cheating and "technically fasting." (T/9996) He admitted that he was not hungry during the interview. (T/9998) When questioned about prior statements in which he had asserted that a person name TC had killed both Gosha and the victims in this case, Defendant at times answered yes and at times no. (T/9998-10000) When asked if he knew Gosha robbed people including other drug dealers, Defendant insisted that

he knew Gosha had to be involved in criminal activity but did not know about it. (T/10000-01) He insisted that while he knew Melvin was a drug dealer, he would have had money. (T/10001-02)

When asked if the purpose of the van ride was to look for the gun, Defendant insisted that the primary purpose was to allow him to visit with Odom but acknowledged that they did stop to look for the gun. (T/10002-03) He admitted that he did not tell Odom she was in danger during the van ride or at the station but claimed to have done so at some time in a phone call. (T/10003-05) He admitted that he had told Ofshe that Everett was not up on his game and was not involved. (T/10007) However, he insisted that he did not really mean what he said. (T/10008-10) Defendant acknowledged that Law and Everett did not have to be concerned that he might run during the van ride because they were armed. (T/10015-16) He averred that the purpose of the van ride was to publicize that he had been arrested. (T/10016-17) However, he acknowledged that there was nothing going on during the van ride that would have done so. (T/10017) When the State asked Defendant to repeat the order in which the victims were allegedly shot, he could not do so and claimed to be dyslexic. (T/10021-23)

Defendant acknowledged that he was claiming that Law told him all of the information that he put in his confession but had told Ofshe that Law only told him about what happened in the apartment. (T/10042-44) He admitted that he had also

told Ofshe that he had made up sending Clark to Frank for instructions and for duct tape but claimed that it was a misunderstanding. (T/10048-59) He averred that what he really meant was that the police had made it up and that he got confused because he was ignorant and naive. (T/10059-66)

Immediately before Ofshe was called, Defendant presented the court with a demonstrative aid. (T/10151) In this document, Defendant had taken piece from a variety of documents and testimony and had listed conclusions that should be drawn from them. (R/6804-16) The State objected that the document listed conclusions regarding what evidence was credible and contained statements regarding what evidence the jury had heard that were not consistent with the evidence that had been presented. (T/10152-60) Defendant insisted that it was proper for an expert in false confessions to draw such conclusions. *Id.* The trial court rejected this assertion. *Id.* It also noted that the information in the document was not consistent with the testimony. (T/10160) The trial court precluded Defendant from using the demonstrative aid. (T/10161)

Defendant later presented a new version of his demonstrative aid in which he continued to have the version of the evidence that he believed was before the jury and statements regarding how the confession and other evidence conflicted. (T/10386, R/6843-54) The State argued that the aid continued to be objectionable because it had nothing to do with testimony regarding factors that caused a false

confession and remained factually inaccurate regarding the evidence. (T/10388-39) The trial court ruled that Ofshe could testify regarding the factors that caused a false confession and the factors that suggested that a confession was false but could not testify regarding his understand of the evidence in the case. (T/10404-08) It also precluded the use of the demonstrative aid. (T/10409-14) It also permitted testimony because on hypothetical questions based on the evidence that did not mention other witnesses' testimony. (T/10415-16)

Ofshe testified that he had a doctorate in sociology and had studied, and written about, human decision making and the influences that affect it. (T/10186-10206) He averred that the analysis of how an interrogation was conducted was broken into 2 sections: what occurred before the person decided to confess and what occurred after. (T/10308) In looking at the reliability of the confession, one considered whether the manner in which the confession was elicited was such that person was volunteering information or being asked leading questions and whether the information the person provided was consistent with other evidence that was not publically available. (T/10308-13, 10458-59) He stated that a confession would not be considered reliable if it provided information that was inconsistent with the other evidence. (T/10459-60) He opined that in conducting this evaluation, it was important to consider whether the information in the confession had been provided by the police. (T/10460-62) He also suggested the easy with which the information

that was consistent with the other evidence could have been the result of a guess should be considered. (T/10462)

Ofshe opined that 3 factors influenced a person's decision to confess: the setting in which the questioning occurred, actions that caused the person to believe that his situation is hopeless and actions that provide a motivation to confess. (T/10316-28) He averred that the type of setting that induces a confession is one in which the interrogator is able to control the person's actions and the person is deprived of support. (T/10316-17) He asserted that the type of actions that caused a person to believe that his situation is hopeless include being confronted by confident interrogators and claims regarding the amount of evidence against the person. (T/10317-22) He stated that examples of motivation actions included suggesting that confessing could lead to less punishment and that not confessing could lead to more punishment, appealing to the person's character and suggesting that certain statements would be acceptable to the interrogator. (T/10323-28) He opined that some actions used to motivate a confession were so psychologically coercive they produced false confessions. (T/10330-32, 10445-46) Ofshe defined contamination as a situation in which the interrogator provides information to the subject about the crime. (T/10336)

In this case, Ofshe reviewed numerous depositions of police officers, prior testimony from police officers, police reports, Odom's statement, Strachan's

statement and notes he had Defendant prepare regarding what he experienced during the interrogation. (T/10338-39) He also interviewed Defendant. (T/10399) Based on this review, he believed that the police had used false claims about the strength of the evidence to break down Defendant but that they were unsuccessful. (T/10448-49) He also believed that most of the actions that the police took to motivate Defendant to confess were unsuccessful. (T/10450) However, Ofshe averred that Defendant succumbed to a threat that he and his family would be killed. (T/10451-52)

Ofshe also believed that Defendant's statement included information that was publically available and that the police provided to Defendant and did not contain any other information. (T/10464, 10501) He averred that Defendant's attempts to justify the presence of his fingerprint were a common reaction to being confronted with statements about the evidence against a person. (T/10467-68) He believed that the interrogation in this case was badly conducted because he lasted too long and involved too many interrogators who knew too little about the case. (T/10471-72) He believed that statements to Defendant regarding how the perpetrator was dressed provided information to Defendant that he included in his confession. (T/10482-83)

Prior to cross, the State reminded the trial court that it had already ruled that Defendant's testimony had opened the door to questions about Clark's trips out of

the apartment. (T/10539) It added that Ofshe had himself recognized the problem with the fact that Defendant had confessed to specific facts that he claimed to have invented that were corroborated by Clark's confession during his interview, which impacted Ofshe's credibility. (T/10540-42) Defendant again argued that permitting the State to ask these questions would create a confrontation violation. (T/10543-45) He also asserted that the manner in which Clark's statement had been provided to the police made it inadmissible. (T/10547-49) After reviewing what had occurred between Ofshe and Defendant, the trial court found that the area was permissible impeachment. (T/10551-52, 10563-65)

The State later argued that it should be able to discuss the robbery with Gosha with Ofshe because Defendant had told Ofshe the same lie about the robbery and Ofshe had testified in deposition that his opinion would change if Defendant was shown to have lied to him. (T/10606-09) Defendant argued that asking Ofshe would be improper collateral crimes evidence. (T/10611-12) The trial court ruled that the State could ask Ofshe about the robbery. (T/10614)

On cross, Ofshe testified that he relied on parts of what Defendant told him during the interview but claimed not to have understood everything Defendant said. (T/10617-18) He also had Defendant's notes regarding what he claimed happened during the interview. (T/10619) He admitted that it was proper for the police to interrogate suspects as permitted by law. (T/10648) Ofshe admitted that

Defendant had never mentioned Everett in the notes he prepared for him before Everett died but his trial testimony was full of accusations against Everett. (T/10649-50) He acknowledged that he had also not claimed that the officers who talked to him during the night provided him facts, that he had not been permitted to sleep or that Borges was foaming at the mouth in his notes. (T/10650-51) He averred that there were many things Defendant claimed in his testimony that were neither in his notes or interview because Defendant was better prepared to testify. (T/10654) He admitted that Defendant had claimed in the notes to have only discussed where the gun was left after speaking to Odom in the interview room but had provided a location for the gun in his confession. (T/10674-75)

Ofshe admitted that there would be no basis for a claim that the confession was false if the police were believed. (T/10676) He averred that one had to accept Defendant's statements generally to believe the confession was false. (T/10677) When confronted with the fact that Defendant had said he was fasting for 3 days before the interrogation but admitted to eating a full breakfast that morning, Ofshe insisted that Defendant was simply using his own language because Ofshe considered it stupid to have lied about fasting. (T/10678-80) He admitted that he did not consider the religious discussions during the interview to have been coercive. (T/10680) Ofshe admitted that the false statements by the police about his fingerprint did not influence Defendant's decision to confess. (T/10683-85) He

then volunteered that the fact Defendant was not influenced explained why Law would have offered the alleged deal for the allegedly false statement. (T/10685-86) When asked if one had to accept Defendant's claims about a deal to accept that explanation, Ofshe volunteered that one could consider other evidence such as Strachan's testimony in accepting the explanation. (T/10686)

Ofshe admitted that all his education was in sociology and that all of his teaching positions were in sociology. (T/10697-69) He averred that social psychology was a subspecialty of sociology. (T/10699) He averred that calling himself a social psychologist did not suggest that he was a psychologist, which he was not. (T/10700-13) He acknowledged that he made a significant part of his income being a witness. (T/10715-18) He also admitted that he was the only sociologist testifying as an expert in this area. (T/10733) He reluctantly admitted that a number of his publications were from scientific journals. (T/10737-48) Ofshe admitted that he had no expertise in determining who was telling the truth. (T/10825-26) However, he insisted that he was not simply accepting Defendant's claim that Law offered the alleged deal because he considered the claim consistent with the other evidence. (T/10831-32) He admitted that he believed that the police did not record interrogations to hide evidence that they acted inappropriately. (T/10856-57) He also acknowledged that more than 90% of his testimony was for defendants. (T/10875) Ofshe admitted that the young and people with mental

health issues are more susceptible to giving a false confession. (T/10869-70) He admitted that there was nothing to suggest that Defendant fell in either category. (T/10870-71) He acknowledged that false confessions were rare. (T/10871)

When the State attempted to question Ofshe about whether there was evidence in the interview that he conducted with Defendant that met Ofshe's criteria for an unreliable statement, Ofshe insisted that the interview merely showed problems with memory. (T/10886-87) When the State then asked specifically about the fact that Defendant told him that he had made up the trips to Frank's house but that Ofshe was aware that there was other evidence showing the trips occurred, Ofshe claimed not to know. (T/10887-89) When shown the portion of the interview in which he had confronted Defendant with this inconsistency, Ofshe eventually admitted that he had known of information that was in conflict with Defendant's claim. (T/10889-93) He also admitted that there was a conflict with Defendant's claims and the fact that Clark had also provided information about the trips for tape but suggested that it could have been a memory problem. (T/10892-95) Ofshe admitted that he had pointed out these inconsistencies to Defendant and suggested how to fix them during the interview but averred that Defendant may have had a memory problem. (T/10896-98) When questioned about the fact that he had Defendant had claimed to have made up the camouflage and that Ofshe had asked questions suggesting that he had been provided that

information by the police, Ofshe insisted that this portion of the interview merely reflected memory problems and his inability to understand Defendant. (T/10889-19011) When confronted with the fact that Defendant had told Ofshe that he used the word camouflage to mean an outfit that was designed to blend in, Ofshe insisted that while wearing something other than army clothing could be consistent with that definition, Defendant must have meant military clothing because military clothing had been suggested to Defendant. (T/10911-22) He admitted that evidence that showed that a person knew of the disposition of property taken during a crime would be evidence showing the confession was true. (T/11222) He averred that it was proper for him to ignore what Defendant told him because he considered it confusing. (T/10922-23) During the course of this discussion, Ofshe mentioned the note. *Id.* When the State inquired what Ofshe knew about the note, Ofshe admitted that his beliefs about the note were based largely on his assumptions that were not supported by evidence. (T/10924-28)

Defendant then argued that the State had opened the door to all the hearsay on which Ofshe relied. (T/10928-31) The State responded that it had only asked a question about the note because Ofshe had volunteered his beliefs about the note and that it had expected Ofshe to limit his statements to the actual evidence. (T/10931-40) After considering these arguments and having the testimony read back, the trial court found that the State had not opened the door because Ofshe

had brought up the note in a nonresponsive answer to a question. (T/10940-60)

Ofshe admitted that the life experience and familiarity with one's legal rights were factors that made a person vulnerable to giving a false confession. (T/11151-52) He acknowledged that his opinion would change if Defendant had lied to him. (T/11223) He averred that he had attributed certain conflicts in the information Defendant provided to him as memory problems. (T/11223)

On redirect, Ofshe admitted that experts in his field did not opinion about the reliability of confessions. (T/11374) When he started to discuss his views of Cooper's note and Strachan's testimony, the State objected. (T/11397) At sidebar, Defendant admitted that the State had not discussed what he wanted to question Ofshe about but claimed that it had opened the door. (R200/11403-04) The trial court found the door had not been opened and sustained the objection. (R200/11404-05)

Defendant then called Rupert Butcher, fingerprint examiner who had previously worked as a crime scene technician. (T/11468-71) Butcher first became involved in this case in 2003, when he was asked to review the fingerprint work that had previously been done. (T/11471-73) In 2008, he was asked to look at some duct tape. (T/11473) When Nelson brought him the tape, some of the pieces of duct tape had been removed from their individual bags and commingled. (T/11477-48) Butcher stated that if he had impounded the duct tape, he would have

separately packaged the pieces of tape. (T/11481-83) When he analyzed the pieces of tape, he would have ensured it returned to its separate package to avoid contamination. (T/11484-85) He did not believe the manner in which the bags were labeled was helpful. (T/11488-89) He did not know if any of the tape was submitted for DNA analysis. (T/11495) When he looked at the tape in 2008, he was attempting to determine whether it was still possible to find fingerprints on the tape. (T/11501) He was able to identify the piece of tape from which Clark's fingerprint had been lifted and found a new print that was subsequently identified as belonging to Georgi Borghi from the crime lab. (T/11502-09)

On cross, the State elicited that Butcher had confirmed the fingerprint results obtained by Martin when he was first involved in this case. (T/11514) Butcher admitted that he did not know if the duct tape had been properly packaged when it was first impounded. (T/11514-15) He acknowledged that the tape had been submitted to testing that removed prints before he saw it. (T/11516) He admitted that Nelson processed the tape for prints at the scene and that the tape was not originally packaged as he saw it. (T/11519-20) As such, he had no reason to believe Nelson did a bad job. (T/11520-22) When the State then asked if Nelson had done a good job processing the scene, Defendant objected that the State was seeking to elicit an improper opinion. (T/11523) The trial court overruled the objection, and Butcher responded that it appeared Nelson had done a good job

given the amount of evidence he had preserved. (T/11523)

Prior to the rebuttal testimony of Law, the trial court instructed the jury that it was admissible for the limited purpose of considering the credibility of the witnesses. (T/10985) During the initial questioning, Law asked Defendant when he saw last Gosha. (T/11031) Defendant responded that he had last seen Gosha on April 21, 1998, when they had planned a robbery together and provided information placing that crime in Miami-Dade Police jurisdiction. (T/11033-36) Defendant claimed to have pretended to be a victim in the robbery. (T/11035) Based on these statements, Law spoke to the Miami-Dade Police, learned that the robbery Defendant described had occurred and had them send Pereira to whom Defendant made similar statements about the robbery. (T/11035-36) Pereira testified that he had not been involved in the investigation of the robbery Defendant had mentioned before going to interview him. (T/11106-07) The trial court then repeated its limiting instruction regarding the evidence about the robbery. (T/11108) He averred that Defendant confessed his involvement in the planning of the robbery. (T/11108-10)

Dr. Michael Welner, a board certified psychiatrist, testified that he reviewed documents about the case and Defendant, Defendant's confession, a transcript of an interview with Odom, the notes Defendant wrote for Ofshe, the transcript of the interview with Ofshe and numerous depositions. (T/11668, 11677-78) He

acknowledged that false confessions did exist but asserted that they were rare. (T/11639-40, 11679-80) There were 5 experts who generally testified about allegedly false confessions. (T/11711-12) Generally false confessions came from people who were vulnerable and were taken by people who exploited those vulnerabilities. (T/11715, 11722) He noted that there was very little research why people truly give false confessions. (T/11716-20) However, most of the people who were known to have given false confessions were mentally retarded or actively psychotic. (T/11792-93) Welner averred that the vulnerabilities generally fell in two categories: suggestability and compliance. (T/11731) He noted that these conditions made a person distrust their own memories and trust the police. (T/11794-95) Experience with the criminal justice system impacted a person's suggestability. (T/11942) Ofshe had acknowledged these vulnerabilities in his writings. (T/11803-04) Welner opined that Defendant was not compliant. (T/11763) He also was not psychotic or retarded. (T/11796)

The assertion that type of room in which the questioning occurred caused false confessions had not been proven. (T/11832-33) Welner averred that the manner in which Ofshe used the phrase psychologically coercion was not consistent with science and had not been studied. (T/11834-38) He also averred that Ofshe's alleged method of evaluating the reliability of a confession had not been researched. (T/11839-40) Instead, there were many reasons why a true

confession would contain mistakes. (T/11840-43) He averred that there was also insufficient research to make a cause and effect relationship between police actions and false confessions. (T/11845-46)

During its initial closing argument, the State discussed the factors that showed Defendant's testimony and Ofshe's testimony were incredible and the evidence that supported the elements of the crime. (T/12557-12723) In the course of doing so, the State noted that Defendant had told Law about the robbery and that Defendant's claim that Law accused him of the robbery was not credible because he had no way to know of the robbery and no one suspected Defendant. (T/12591-93) It mentioned that Pereira questioned Defendant about the robbery and that Defendant had claimed that the officers had twisted his words. (T/12605) It discussed Odom's testimony about what Defendant said to her in the interview room and noted that he did not tell her about the alleged threat at that time or during the van trip. (T/12640-41, 12648-49) In discussing Ofshe's bias, it pointed to the portion of his interview with Defendant in which Ofshe pointed out that Defendant's claim to have invented Clark's trips did not make sense and needed to be changed. (T/12653-57)

During his closing argument, Defendant asserted that he was innocence and that his confession should be rejected because it was not consistent with the other evidence, his account of the interrogation was credible and the officers' account

was not. (T/12745-13007) In the course of doing so, he argued that if the jury thought that it was possible that what Defendant claimed was true, they had to acquit him. (T/12755-57) He averred that the police thoroughly processed the scene for fingerprints and did not find his prints. (T/12760-61) He insisted that since Odom allegedly moved out of her home after his arrest and she noted that Defendant had not told her about the threat at the times the prosecutor asked, he must have told her of the threat on the phone call. (T/12934) At the beginning of its rebuttal argument, the State averred that this case was based on a credibility contest. (T/13008) Defendant objected that the comment misstated the evidence, and the trial court overruled the objection. (T/13008) In discussing why the jury should not find Defendant credible, the State again pointed to the fact that Ofshe had commented that it did not make sense that Defendant had made up Clark's trips and suggested that Defendant change his story. (T/13013-14) It also noted that Defendant had portrayed himself as a angel and pointed to his possession of the firearm and admissions to the robbery as evidence showing he was incredible. (T/13016-17) After considering the evidence, the jury found Defendant guilty as charged on all counts. (R/7060-64, T/13198-99) The trial court adjudicated Defendant in accordance with the verdict. (R/7073-75, T/13205)

Prior to trial, Defendant filed a motion claiming that Florida's capital sentencing scheme was unconstitutional and violated *Ring v. Arizona*, 536 U.S.

584 (2002). (R/2387-21) The trial court denied the motion. (T/13432-34, 2284)

The day before the penalty phase, Defendant disclosed his father's medical records from 2002. (T/13541-42, 13572-74) When the State objected that they were not relevant, Defendant insisted that the records were relevant because they corroborated testimony regarding his father's behavior in the 1980's even though he acknowledged that he could not show the records accurately reflected the father's mental state at the time, Defendant was not in contact with his father in 2002, and they did not affect his expert's opinion about Defendant's mental state. (T/13545-46, 13564, 13566-68, 13596) He argued that evidence regarding his parents' background was admissible without any link to Defendant's character. (T/13571) The trial court sustained the State's objection. (T/12583-86)

During his opening statement, Defendant repeatedly suggested that the State could not prove any aggravators because it was relying on his confession, which he averred was controversial. (T/13673-76) The State objected to referring to the statement as controversial, and the trial court sustained the objections. *Id.*

During the penalty phase, the State admitted the judgment of conviction in this matter and victim impact evidence. (T/13716-57, 13767-13800, SR/24-40) Eugene Hill, Defendant's grandfather, testified that Defendant, his mother and his brother moved in with him and his wife in small apartment when he was young. (SR/42-54) Defendant's mother neglected her children, and they had little contact

with their father. (SR/55, 61-62) While Hill would spend time and play with Defendant, he was injured in 1988 and could no longer do so. (SR/57-59) When the mother moved out, she was frequently evicted, and the boys had to live with relatives at times. (SR/60, 65-67, 70) Defendant was good to his brother and bought him things with money he earned working odd jobs. (SR/68-69) Defendant also helped out Hill's brother because he was sick. (SR/71) Defendant was very smart. (SR/81, 83-84)

Odom testified that she met Defendant in February 1998, and he moved in with her and her children 2 weeks later. (SR/95-98) Until his arrest, Defendant assisted her with her children and acted as a friend to them. (SR/98-100) Defendant went to church a couple times a week and was attempting to get his GED. (SR/100-01) She believed that Defendant was 25 when she met him because he acted very mature. (SR/102-03)

Juanita Perry and Rev. Joan King met Defendant when began attending their church. (SR/139-40, T/14009-14) Defendant attended services 3 days a week and was also involved in events at the church. (SR/140-46, T/14014-17) He helped out around the church and assisted the senior citizens. (SR/146-48, T/14018-19) During the time Defendant was with the church, church members tutored Defendant, and Perry would take Defendant to her home, where he acted as a mentor to her children. (SR/148-49) Perry also bought clothes for Defendant for

Easter. (SR/150)

Reginald Calloway, Defendant's brother, testified that he was 2 years younger than Defendant and did not recall ever living with their father. (SR/158-63) Their mother had a drug problem, neglected them and did not provide for them. (SR/163-67, 173-78, 180) They lived in bad neighborhoods. (SR/180-81) While their grandfather was involved in their lives, he was strict and could not be questioned. (SR/167-68) Defendant would frequently challenge his grandfather and would be beaten with a belt as a result. (SR/168-69, 172) Defendant was responsible for caring for Reginald and encouraged him to get an education. Defendant eventually became involved in a church and went frequently. (SR/190)

Shante Anderson, Defendant's cousin, recalled Defendant and his family living with his grandparents when he was young. (T/13814-20) While Defendant's grandfather provided for the family's basic needs, he did not spend time with them or provide money for other desires. (T/13821-22) The grandfather strictly controlled what happened in his house and was a disciplinarian. (T/13822-23) Defendant's mother was neglectful, Defendant raised his brother, he lived in a bad neighborhood and he frequently had to stay with relatives. (T/13827-31, 18334-44) Anderson's husband gave Defendant work with his carpet business, and Defendant twice gave money for her son. (T/13846-48, SR/110-14, 124-25) He also gave money to other family members and was great with kids. (T/13849-50) Defendant

encouraged Anderson's children to get an education. (T/1385)

Shirley Hill, Defendant's mother, never married or lived with Defendant's father. (T/13871) She described him as an unhelpful father who was physically abusive toward her. (T/13871-73) When Defendant was about 18 months old, Hill moved into a small trailer with Defendant and Reginald. (T/13873-74) At the time, Hill routinely used marijuana, and Defendant's father used cocaine. (T/13895-96) Defendant's father would stop by the trailer and beat her when Defendant was in the trailer. (T/13874-77) After doing so, he would make Defendant recite the alphabet and hit him too. (T/13877) During one beating, Defendant brought Hill a bat. (R233/13894) Defendant's father once attempted to take the children from her for financial reasons. (T/13882, 13891)

Hill moved to Miami with the children when Defendant was about 5 to be with her parents and away from Defendant's father. (T/13881-82) Defendant's father then displayed no interest in the children and did not support them. (T/13927-28) Once the family was in Miami, Hill became heavily involved in drug use and neglected her children, leaving them to rely on the family for support. (T/13893-13909) When Defendant was about 14, they ended up in the Scott Projects, in which drugs and violence were rampant. (T/13904, 13909-10) While Defendant bought gifts for her and his brother, she never bought him gifts. (T/12925) He also visited her cousin who was ill. (T/13927)

Defendant moved the trial court to instruct the jury that lingering doubt was valid mitigation. (R/9141-47) The trial court denied the request. (T/14133-34) During his closing argument, Defendant acknowledged that the jury had already determined that he was guilty but asserted that the jury now needed to consider whether there was sufficient, reliable evidence to support the aggravators. (T/14193) He asserted that there was no corroboration for his confession. (T/14194) The State objected, and the trial court sustained the objection. (T/14194-14207) After considering the evidence presented, the jury recommended that Defendant be sentenced to death for each of the 5 murders by a vote of 7 to 5. (R/9181-85, T/14311-12)

At the *Spencer* hearing, Dr. Jethro Toomer, a psychologist, testified that he interviewed Defendant, spoke to Defendant's family members, reviewed police reports and testimony and administered tests to Defendant. (T/14334-60) Based upon this evaluation, Toomer opined that Defendant was raised without structure and experienced abandonment, which affected Defendant's functioning, particularly his ability to think before acting and his self esteem. (T/14361-80, 14384-93) He averred that while Defendant had alternatives, he was unable to avail himself of them because of a lack of support. (T/14380-84) He insisted that Defendant was exposed to violence, which caused him to behave violently, and that having to be responsible for his brother impacted his development. (T/14393-

98) He also averred that Defendant lacked impulse control and that his mental age was lower than his chronological age. (T/14419-22) Toomer insisted that Defendant's impulsivity did not prevent Defendant from being able to plan. (T/14448-52) He admitted that Defendant could appreciate the criminality of his conduct and conform his conduct to the requirements of the law. (T/14461) He acknowledged that Defendant was manipulative. (T/14465) Defendant made a statement to the trial court. (T/14485-87)

On October 1, 2010, the trial court followed the jury recommendation and sentenced Defendant to death for each of the 5 murders. For each murder, the trial court found 6 aggravators: prior violent felony, based on the contemporaneous convictions for the other murders,-great weight; during the course of a kidnapping-great weight; avoid arrest-great weight; pecuniary gain-great weight; heinous, atrocious or cruel (HAC)-exceptionally great weight; and cold, calculated and premeditated (CCP)-extremely great weight. (R/9833-59) It found the statutory age mitigator and assigned it some weight. *Id.* It rejected Defendant's assertion that he committed the murders while mentally or emotionally disturbed. *Id.* As nonstatutory mitigation, the trial court found that Defendant moved a lot-slight weight; that his mother abandoned him-some weight; that his father beat his mother-slight weight; that his intelligence level was below average-minimal weight; that he was raised in a bad neighborhood-slight weight; that he was

emotionally deprived-little weight; that he was exposed to violence-little weight; that he lacked nurturing-little weight; that he was raised in poverty-slight weight; that he was raised in a dysfunctional family-minimal weight; that violence was normal during his upbringing-little weight; that he lacked guidance-slight weight; that his living conditions were unstable-little weight; that he was a father figure to his ex-girlfriend's children-some weight; that he encouraged his cousins to do well-minimal weight; that he was good to his family and friends-some weight; that he assisted in solving the crimes-some weight; that he did not receive any counseling-some weight; that he had been employed-slight weight; and that his behavior is impulsive-minimal weight. *Id.* It gave no weight to Defendant's claims that he lacked role models, that he was religious, that family members died while he was in pretrial detention, that he did not flee from the police, that his mother still loved him, that he would never be released from prison, that his codefendant was sentenced to life and that he was a follower. *Id.* This appeal follows.

SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in refusing to permit Defendant to pretry his case during voir dire or in precluding Ofshe from testifying regarding matters that did not require specialized knowledge, would have commented on the credibility of evidence, would have invaded the province of the jury and would have made him a conduit for inadmissible evidence. It also did not abuse its

discretion in finding the State had not opened the door to the admission of his statements to Odom but that he had opened the door to information regarding his possession of a gun and confession to a robbery. It also did not abuse its discretion in allowing the State to impeach Ofshe with his own statements about Clark's confession, in allowing testimony that was a fair response to evidence Defendant had elicited, in overruling an objection to a comment in closing or in allowing a substitute medical examiner. Defendant's convictions are support by sufficient evidence. The trial court did not abuse its discretion in refusing to allow Defendant to argue lingering doubt during the penalty. It also did not abuse its discretion in excluding evidence that were not relevant to Defendant's character or record. Florida's sentencing scheme is constitutional, and Defendant's sentence is proportionate. However, the trial court erred in admitting Ofshe's testimony without conducting a *Frye* hearing.

ARGUMENT

I. PRETRYING THE CASE DURING VOIR DIRE.

Defendant first asserts that the trial court erred in refusing to permit him to question the venire about their feeling regarding particular aggravators. However, the trial court did not abuse its discretion in refusing to allow Defendant to pretry

his case during voir dire.[2]

While a trial court is required to permit a defendant to questions regarding a particular legal doctrine, it is improper to permit questions that seek to have the veniremembers "indicate, in advance, what their decision will be under a certain state of evidence or upon a certain state of facts." *Franqui*, 699 So. 2d at 1322-33 & n.5. As a result, this Court has held that a trial court did not abuse its discretion in refusing to permit a defendant to ask the venire if they would consider a particular fact that could support a particular mitigator in making its sentencing decision. *Id.* at 1323.

Here, while Defendant suggests that the trial court precluded him from asking about the venire's views on legal doctrines related to aggravating circumstances and that he was not asking the venire to prejudge the case, the record reflects that this is not true. Instead, when the issue of the scope of voir dire was first addressed by the trial court, Defendant insisted that he needed to be able to ask the venire whether they would consider specific mitigators, whether they would be able to recommend a life sentence if the State proved all of the specific aggravators he believed the State planned to prove and what reaction the venire would have to evidence that established aggravation. (T/2829, 2915-16, 2917,

[2] Decisions regarding the scope of voir dire are reviewed for an abuse of discretion. *Franqui v. State*, 699 So. 2d 1312, 1322 (Fla. 1997).

2920-23, 3248-49) In fact, Defendant admitted that he believed it was appropriate to ask the venire to commit to returning a specific recommendation based upon the facts of the case. (T/3203-05) Thus, the record reflects that Defendant was not seeking to question the venire merely about their biases toward legal concepts but was seeking to pretry his case.

Moreover, the trial court did not preclude Defendant from asking about legal concepts and biases. Instead, it specifically ruled that Defendant could ask questions about the venire's views on legal concepts and general and hypothetical questions about mitigation and aggravation. (T/3195-96, 3203, 3206-07) It even ruled that Defendant could ask if the venire could consider both recommendations fairly if the State proved that certain facts inherent in the indictment that would constitute aggravators were proven. (T/3232-34) It indicated that it believed those inherent facts included the number of counts of first degree murder, the fact that the murders occurred during felonies and the fact the murders were financially motivated. (T/3232-34, 3262-82) Since this ruling was entirely consistent with this Court's precedent regarding the scope of voir dire, it was not an abuse of discretion. *Franqui,* 699 So. 2d at 1322-23.

Moreover, the trial court's application of its ruling was also not an abuse of discretion. It only sustained about objections to Defendant's questions when Defendant asked the venire to commit to a particular recommendation or finding

based on the facts, asked if finding facts that made aggravators applicable would make the venire more likely to recommend the death penalty and asked questions in which he combined specific aggravating circumstances. (T/3659-61, 3675, 3677-78, 3662-63, R147/4402, 4404, 4409-13, 4434) It permitted questions regarding whether the venire would automatically return a death sentence if certain aggravators were proven and the venire's general opinions on aggravation. (T/3657-58, 3662-67, 4401-09, 4415-16) As such, the trial court did not abuse its discretion in its rulings regarding the scope of voir dire.

This is all the more true as the scope of questioning the trial court permitted allowed Defendant to uncover biases regarding aggravation and mitigation. Through general questioning, veniremembers volunteered their views on what facts would constitute aggravation to them, what aggravators would weigh heavily with them, what mitigation they would not consider and what mitigation would weigh heavily with them. (T/3312-18, 3335-38, 3360-55, 3393, 3404, 3590-93, 4247-48, 4250, 4353-55, 4387-88, 4425-26) As such, the trial court did not abuse its discretion and should be affirmed.

II. LIMITATIONS ON OFSHE'S TESTIMONY.

Defendant next asserts that the trial court erred in refusing to permit Ofshe to provide his version of the facts based on hearsay in offering his opinion. However,

the trial court did not abuse its discretion.[3]

Expert testimony is only admissible when it will assist the jury in understanding an issue that requires specialized knowledge. *Frances v. State*, 970 So. 2d 806, 814 (Fla. 2007). Further, experts are not permitted to comment on the credibility of evidence. *Feller v. State*, 637 So. 2d 911, 915 (Fla. 1994). While experts may offer opinion on an ultimate issue, they cannot offer opinions that merely tell the jury how to decide the case. *Town of Palm Beach v. Palm Beach County*, 460 So. 2d 879, 882 (Fla. 1984). Moreover, even when expert testimony is properly admissible, an expert cannot become a conduit for the admission of inadmissible evidence even though an expert can rely on such evidence in reaching his opinions. *Mendoza v. State*, 87 So. 3d 644, 666 (Fla. 2011); *Linn v. Fossum*, 946 So. 2d 1032, 1037-38 (Fla. 2006). Applying these standards here, the trial court did not abuse its discretion in its ruling regarding the permissible scope of Ofshe's testimony.

While Defendant acts as if the trial court had excluded all of Ofshe's testimony, this is not true. The trial court permitted Ofshe to testify regarding factors that can cause false confessions, his opinion regarding whether those factors existed in this case and his beliefs regarding how one determined whether a

[3] This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Ray v. State*, 755 So. 2d 604, 610 (Fla. 2000).

confession was false. (R194/10397-99, R194/10404-08, 10415-16) It only precluded Ofshe from offering his opinion regarding whether he believed that Defendant's confession was true based on his beliefs about the other evidence in the case. This ruling was not an abuse of discretion.

According to Ofshe, consideration of whether a confession was true was based on whether it included verifiable information that was not publically available and was not provided by the police. Determining whether evidence is consistent with other evidence is a job juries are instructed to do every day and requires no specialized knowledge. Moreover, the jury heard competing version of what information was provided to Defendant and was provided with the media accounts and testimony about them from which it was capable of determining whether Defendant's confession contained information that was not provided by the police or publically available. Since the application of this standard did not require specialized knowledge, the trial court did not abuse its discretion in refusing to permit Ofshe from testifying regarding this information. *Frances,* 970 So. 2d at 814.

Moreover, as review of the demonstrative aid Ofshe wanted to use shows, he wanted to comment on the credibility of other evidence, direct the jury on the conclusions to be draw from the evidence and serve as a conduit for inadmissible evidence. In the slides he prepared, Ofshe laid out his version of what evidence

Strachan provided, what information he had gleaned from Cooper's note, what information Defendant provided in his confession and, in the first set, what conclusion the jury should draw about the confession based on that information. (R/6804-16, 6843-54) He provided his version of the Strachan's testimony based on cherry-picking what he chose to believe was true from Strachan's initial statement to the police, his deposition and his trial testimony. As a result, Ofshe not only wanted to present the jury with inadmissible information but also with information that could not be considered by the jury for their truth. For example, in his first two slides, Ofshe suggested that Strachan's testimony included that the entire criminal episode lasted 24 minutes. (R/6804-05) However, while Strachan admitted that he had made such prior statements, he averred those statements were inaccurate, he could not provide an accurate length of the criminal episode and it probably lasted for hours. (T/6641-6744) As such, Strachan's prior statement that the crime lasted 24 minutes was only properly before the jury as it bore on Strachan's credibility. *See Morton v. State*, 689 So. 2d 259, 261-65 (Fla. 1997). Yet, Ofshe wanted to present it as the truth. Given all of these circumstances, Ofshe's testimony regarding how the jury should apply his standard for determining whether a confession was false would have commented on the credibility of other evidence, instructed the jury on what decisions it should make and allowed him to become a conduit for inadmissible evidence. The trial court did

not abuse its discretion in excluding this testimony. *Feller*, 637 So. 2d at 915; *Town of Palm Beach*, 460 So. 2d at 882; *Mendoza*, 87 So. 3d at 666.

Moreover, Defendant's suggestion that the State opened the door to this evidence on cross is specious. The State never asked about the application of Ofshe's standard to the confession. Instead, the State limited its questioning to whether nothing had happened during the interrogation that would have caused a false confession if the police were believed, whether one had to accept Defendant's statements generally to find that something that would have caused a false confession occurred and whether there was evidence, other than Defendant's statement, regarding the alleged deal with Law. (T/10676-77, 10685-86) Since the State never inquired about Ofshe's beliefs regarding other evidence about the crime or his beliefs about the reliability of the statement, the trial court did not abuse its discretion in finding the State had not opened the door. *Ramirez v. State*, 739 So. 2d 568, 578-81 (Fla. 1999).

Further, Defendant's suggestion that the State's expert was permitted to present opinions that were excluded during Ofshe's testimony is simply false. Ofshe was permitted to testify the same areas as Welner. As such, there was no abuse of discretion.

Even if the trial court had erred in limiting Ofshe's testimony, any error was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). Despite the limitations,

Ofshe repeatedly, and nonresponsively, indicated that the Cooper note and Strachan's testimony were important considerations in his decision. The jury had the Cooper note and Strachan's testimony before it. It knew how Ofshe believed the confession could be evaluated. As such, the jury was in a position to conduct the evaluation that Ofshe wanted to present to it on its own. As such, it cannot be said that refusing to allow the jury to hear Ofshe's version of the facts contributed to the verdict.

III. ATTEMPT TO ELICIT HEARSAY THROUGH ODOM.

Defendant next asserts that the trial court erred in refusing to allow him to elicit that he had told Odom that he had been told she and his family were in danger. However, the trial court did not abuse its discretion in refusing to admit this statement.[4]

During its examination of Odom, the State never asked a single question regarding the content of the phone call between Defendant and Odom before he confessed. (T/9011-29) It limited its questions regarding whether Defendant told her about threats to the time period when she and Defendant were at his aunt's home with the police after he had confessed. (T/9028-29) Moreover, Odom's answers to these questions did not imply that Defendant never told her about

[4] This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Ray*, 755 So. 2d at 610.

threats. *Id.* This Court has previously held that questions that did not attempt to elicit a portion of a statement and that did not mislead the jury did not permit the introduction of otherwise inadmissible evidence. *Ramirez*, 739 So. 2d at 578-81; *see also Jordan v. State*, 694 So. 2d 708, 712 (Fla. 1997); *Reese v. State*, 694 So. 2d 678, 684 (Fla. 1997).

This is all the more true as the statement Defendant relied upon to claim that Defendant had conveyed the threats to her during an earlier phone call did not support his claim. Much of what Defendant quoted to the trial court as having been conveyed during the call before the confession actually concerned a phone call made weeks later when Defendant was in jail. (T/9039-40, R/6352-54) The only thing that Defendant conveyed to Odom during the phone call was that the police had made statements to him that indicated that law enforcement was following him. (R/6355-56) Since the alleged threats were from the "real killers" and concerned them attempting to kill Defendant and his family, these statements did not support Defendant's assertions. As such, the trial court did not abuse its discretion. *Jordan*, 694 So. 2d at 712; *Reese*, 694 So. 2d at 684.

Additionally, while Defendant acts as if it was the State that tricked the trial court into excluding the statements pretrial and then relied on that trick to mislead the jury, the record reflects that it is Defendant whose motives should be questioned. When the State indicated that the threats had only been communicated

weeks after Defendant's arrest during the hearing on its motion in limine, Defendant did not contest the timing of the communication and merely argued that the threats were admissible for a nonhearsay purpose. (T/2258-61) When the State again brought up the motion in limine the day Odom testified, Defendant indicated that he would abide by the prior ruling. (T/8913-15) After the State completed its direct, Defendant still did not seek reconsideration of the motion in limine. Instead, he attempted to elicit the threats by asking Odom why she had stayed with Defendant's family after her arrest. (T/9034) It was only after the trial court had sustained objections, brought Defendant sidebar to admonish him and the trial court rejected Defendant initial argument that the State questioning had opened the door to anything Defendant said to Odom at any time that Defendant suddenly claims the statement were contemporaneous. (T/9035-40) Given these circumstances, it was not the State that mislead anyone but Defendant that invited the trial court to exclude the statement. *See San Martin v. State*, 705 So. 2d 1337, 1347 (Fla. 1997). The trial court should be affirmed.

Moreover, any error in the trial court's ruling would be harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). While the trial court precluded Defendant from eliciting the alleged communication of the threats during the State's case, Defendant testified that he had communicated the threats to Odom during the phone call. (T/9625-26) However, Defendant also made statements inconsistent

with his having communicated the threats. (T/9614, 9809-12) Further, Defendant did not even contest the elements of the crimes other than his identification as the killer, and he had provided a detailed confession that showed that he was guilty, which was corroborated by the presence of Clark's fingerprint and Strachan's testimony. Defendant was amply impeached on other issues, as was Ofshe. While Defendant suggested that Odom and his family had immediately moved because he had communicated the threats, Odom initially denied have moved at all and stated that she did stayed with his family for 2 weeks after his arrest and did not know if his family ever moved. (T/9032-34) Further, the statement Defendant relied upon did not support that assertion. Given all of these circumstances, the trial court's exclusion of Odom's testimony would be harmless.[5]

IV. IMPEACHMENT OF DEFENDANT

Defendant next asserts that the trial court erred in finding that Defendant's direct testimony regarding his alleged ignorance of firearms and his alleged criminal naiveté opened the door to testimony regarding his prior criminal acts. However, the trial court did not abuse its discretion in finding that Defendant had opened the door to the evidence.[6] Moreover, Defendant's assertion that the State

[5] This evidence was sufficient to sustain Defendant's convictions. *See Heyne v. State*, 88 So. 3d 113, 120-21 (Fla. 2012).

[6] This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Ray*, 755 So. 2d at 610.

should have been limited to asking him about his participation in the robbery is unpreserved and meritless.

As this Court has recognized, a defendant opens the door to otherwise inadmissible evidence to presenting testimony that could mislead the jury. *Rodriguez v.* State, 753 So. 2d 29, 42-43 (Fla. 2000). Moreover, when a defendant chooses to present evidence regarding his character, the State is permitted to present evidence of actions inconsistent with Defendant's claims about his character. *Butler v. State*, 842 So. 2d 817, 826-27 (Fla. 2003). Here, because Defendant both placed his character as an allegedly law abiding citizen at issue and attempted to mislead the jury regarding his involvement of guns, what occurred during the interrogation and his knowledge of robberies, the trial court did not abuse its discretion in finding that Defendant had opened the door.

In attempting to convince this Court, Defendant selectively cites to his testimony without acknowledging the full extent of his testimony, the context in which the statements were made or the fact that he placed his character. However, when the full extent of Defendant's testimony is considered and considered in context, it is clear that Defendant opened the door to the evidence and placed his character in issue. Defendant began his testimony by presenting extensive evidence regarding his background, future plans and daily routine. (T/9281-9303) Through this testimony, Defendant portrayed himself as a hard-working family man who

was training to become a minister. *Id.* When he began testifying about what occurred during the interrogation, he implied that while Gosha may have been involved in shady activities, he had no direct knowledge of those activities or involvement in them. (T/9426) He also averred that he had never done anything to anyone. (T/9604) He claimed to have urged the police to looking into his character because he was not the type of person who would kill anyone. (T/9589) He also asserted that he did not lead a "ruggish, thuggish" lifestyle and had to make up the portions of his confession regarding his conversations with the victims during the crimes from movies because he had never robbed anyone. (T/9671, 9788)

Defendant portrayed his actions during the course of the interrogation as an attempt to be helpful while the police randomly accused him of crimes that he politely denied. (T/9424-9606) In fact, he described his interaction with Pereira as attempting to assist him in an investigation into an unrelated matter. (T/9554) He made it seem as if the only incriminating statements he made were those in his confession, which were either based on information the police provided or he invented. He insisted that he thought throughout the interrogation that the police realize he was innocent and that he would be permitted to go home. (T/9473-74) In fact, he claimed that he did not realize he was truly being charged with the crimes until 4 months after his arrest. (T/9824-25) Defendant claimed that he had made a statement about not owning a gun in response to an officer claiming to know where

the gun he usually carried was. (T/9539-40) He averred that the police had to tell him the capacity of a .45 caliber pistol and volunteered that his reference to a clip as a hammer was evidence of his ignorance of guns. (T/9738-39) Moreover, he had already elicited from Odom that she had never seen him with a gun. (T/9061)

Given the totality of this testimony and the context in which the statements were made, the trial court did not abuse its discretion in finding that Defendant had opened the door to cross examination questions showing that Defendant had previously been found in possession of a semiautomatic firearm and had provided information to the police about a planned robbery about which they knew nothing. (T/9920-34) *Rodriguez*, 753 So. 2d at 42-43; *Butler*, 842 So. 2d at 826-27.

Moreover, it should be remembered that despite the fact the trial court carefully limited the evidence that it would permit the State to use at that point, Defendant continued to open the door during cross. When the State attempt to impeach Defendant's testimony regarding when and to whom he had first requested an attorney with prior inconsistent statements he made to Ofshe, Defendant volunteered that the police had accused him of numerous crimes. (T/9958-59) When the State questioned him about his prior possession of a firearm, Defendant volunteered that the incident was some form of misunderstanding and attempted to evade questions regarding the alleged misunderstanding. (T/9978-83) When the State questioned Defendant about having

planned the robbery, Defendant insisted that it was Law who had brought up the robbery, that he had claimed to have been a victim and that his interaction with Pereira had been as a crime victim. (T/9983-89) Given these circumstances, the trial court did not abuse its discretion in finding that Defendant had further opened the door to testimony showing that it was Defendant who had mentioned the robbery to Law who had no way to know about the robbery and had claimed to be involved in it and that Defendant had confessed to his involvement in the robbery to Pereira. (T/11031-36, 11106-07) It should be affirmed. *Rodriguez*, 753 So. 2d at 42-43; *Butler*, 842 So. 2d at 826-27.

Further, contrary to Defendant's assertions, the trial court actually carefully limited the evidence even at that point. It refused to allow the State to elicit all the facts regarding the robbery. (T/10979-80) Moreover, Pereira was only permitted to testify that Defendant had told him that he had planned the robbery, that he had participated in the robbery by leaving the door open and that he had not claimed to have been a victim. (T/11108-09) Further, the trial court expressly provided limiting instructions about this evidence. (T/10985, 11108) The State only made limited references to this information in closing and did so in the context of discussing Defendant's credibility. (T/12591-93, 12605) Thus, the trial court did not abuse its discretion in admitting this evidence. It should be affirmed.

Additionally, while Defendant suggests that the trial court permitted the

State to elicit evidence regarding the robbery from Welner, this is not true. While the State did mention that Defendant had made a spontaneous statement about the robbery during redirect of Welner (T/12267), it did so as part of a long hypothetical question it was attempting to ask. (T/12266-70) Before the State could complete the question, the trial court ruled that the State could not ask the question. (T/12270-72) As a result, the State pursued a different line of questioning and no testimony about the robbery was elicited from Welner. (T/12266-72) The trial court could not have abused its discretion in allowing such nonexistent testimony.

Further, while Defendant now claims that the State should have been required to accept Defendant's answers regarding the robbery during cross and should not have been able to present extrinsic evidence to contradict his testimony, this issue is not preserved. Defendant did not object to allowing the State to call Law and Pereira on rebuttal on this basis. (T/10801-07, 10968-80, 11102-04) As such, this issue is unpreserved. *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982).

Even if the issue was preserved, it would be meritless. Not only did Defendant open the door to questions about his planning the robbery on direct, he also attempted to mislead the jury on cross by incorporated information regarding his statements about the robbery into his story regarding how he had been mistreated during the interrogation. What occurred during the interrogation was the central issue in the case. As such, the trial court did not abuse its discretion. *See*

State v. Statewright, 300 So. 2d 674, 678 (Fla. 1974).

V. IMPEACHMENT WITH EVIDENCE REGARDING CLARK'S STATEMENT.

Defendant next asserts that the trial court erred in permitting the State to cross examine Ofshe regarding codefendant Clark's confession. However, the trial court did not abuse its discretion in allowing the State to impeach Ofshe with his own prior comments.[7]

The United States Supreme Court has recognized that a codefendant's confession that would normally be inadmissible as substantive evidence may be presented at trial as impeachment. *Tennessee v. Street*, 471 U.S. 409 (1985). In that case, as here, the defendant had provided a detailed confession, and the state was relying upon that confession at trial. *Id.* at 411. In that case, as here, the defendant had testified at trial that he was not involved in the crime, that his confession had been coerce and that it was based on information the police had provided to him. *Id.* at 411. In that case, the trial court permitted the state to have the officer who took the confession read the codefendant's entire confession in rebuttal. *Id.* at 411-12. The Court held that this use of the codefendant's statement did not violate the Confrontation Clause because the codefendant's statement was not offered to prove the truth of the matter asserted. *Id.* at 414. In fact, the Court stated that

[7] This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Ray*, 755 So. 2d at 610.

because the confession was central to the state's case and the defendant was challenging it, not permitting the state to admit the codefendant's confession "would have been at odds with the Confrontation Clause's very mission-to advance the accuracy of the truth-determining process in criminal trials." *Id.* at 415.

Given *Street*, the trial court did not abused its discretion in limiting the State to impeaching both Defendant and Ofshe with the transcript of the interview with Defendant. (T/10048-66, 10886-98) During that interview, Defendant had clearly and repeatedly claimed that he had invented the portions of the confession in which he discussed Clark making trips out of the apartment. (R/6793-96) In fact, he continued to do so when Ofshe pointed that Clark's statement included similar information and Ofshe proceeded to coach Defendant to change his testimony. (R/6794-96) Thus, the trial court did not abuse its discretion in allowing this limited impeachment.

This is all the more true as Ofshe's awareness of Clark's statement was direct impeachment of his own direct testimony. On direct, Ofshe testified that Defendant's confession contained no evidence that was not publically available or provided by the police. (T/10458-59, 10464, 10501) However, as he eventually admitted on cross, he was aware of Clark's statement, which was not publically available and which Defendant repeatedly told him was not provided to him by the police. As such, Ofshe's knowledge of Clark's statement was directly contrary to

his testimony on direct and proper impeachment. §90.608, Fla. Stat.

Moreover, it should be remembered that this Court has held that it is permissible to admit evidence about an expert's willingness to alter evidence to better favor a defense position because it shows that the expert is corrupt and biased. *Tanzi v. State*, 964 So. 2d 106, 115-16 (Fla. 2007). Here, the fact that Ofshe was willing to point out to Defendant that what Defendant was saying to him was inconsistent with an opinion favorable to Defendant and suggest how to change the statement to "make that come out right" evidenced such a willingness to alter evidence. As such, the trial court did not abuse its discretion.

Further, contrary to Defendant's assertion, the State did not use this evidence was substantive evidence. Instead, it merely commented in closing that this evidence showed that Ofshe was biased and that Defendant was not credible because he took Ofshe's suggestion and changed his story. (T12653-57, 13013-14) As such, the trial court did not abuse its discretion and should be affirmed.

VI. POLICE OPINIONS

Defendant next asserts that the trial court erred in allowing the State to elicit testimony regarding the quality of work done by two police officers. However, the trial court did not abuse its discretion in admitting the brief testimony.[8]

[8] This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Ray*, 755 So. 2d at 610.

While Defendant attempts to make it seem as if the State asked Cooper about Everett's capacity as a police officer generally to bolster his credibility, the record reflects a far different story. During his cross of Cooper, Defendant questioned her about whether the department had a policy on handcuffing suspects being transported even though Cooper had no involvement in transporting Defendant. (T/8146-47) During redirect, the State directed Cooper's attention to the policy and had her explain how detectives were in the best position to exercise the discretion provided under that policy. (T/8176-77) In this context, the question regarding Everett's capability and the answer to the question were clearly limited to the area of the discretion afforded by the handcuff policy. (T/8177-78) Moreover, given that it was Defendant who broached this subject with Cooper in an attempt to make it seem as if Everett had acted improperly, he opened the door and invited this testimony. *Rodriguez*, 753 So. 2d at 42; *San Martin*, 705 So. 2d at 1347. The trial court did not abuse its discretion in allowing the State to present it.

Similarly, Defendant opened the door to Butcher's testimony and invited any error in it. Butcher's only involvement in this case had been as a fingerprint examiner reviewing the results of a prior analysis by Martin and looking for fingerprints on the duct tape. (T/11471-73) Despite this limited involvement, Defendant devoted the majority of his direct examination to establishing that Butcher had previously worked as a crime scene technician and to eliciting his

opinion regarding whether Nelson and others had properly handled the duct tape. (T/11468-11509) Given these circumstances, Defendant opened the door and invited the State to inquiry whether that was truly Butcher's opinion. *Rodriguez*, 753 So. 2d at 42; *San Martin*, 705 So. 2d at 1347.

Even if the trial court had erred in admitting this evidence, it was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). Both of the answers were brief in a lengthy trial. The opinions were not mentioned in closing. Defendant did not contest the elements of the crime other than his identity as a participant in it before the jury, and the State presented ample evidence that the crimes were committed. The State also presented Defendant's confession. The claim that the confession was false was supported only by the testimony of Defendant and Ofshe, both of whom were amply impeached. Moreover, to accept their testimony, the jury would have had to believe that Law, who was not involved in the investigation of this case before Defendant confessed, would have offered Defendant a deal for a false confession and that Defendant would have accepted that deal. As such, the brief testimony that Everett was a capable supervisor and that Nelson appeared to have done a good job was harmless. The trial court should be affirmed.

VII. COMMENT IN REBUTTAL CLOSING.

Defendant next asserts that the trial court erred in allowing the State to make a comment in rebuttal closing that he claims misstated the burden of proof.

However, Defendant did not preserve this issue, and it provides no basis to reversal.

To preserve an issue regarding a comment in closing, a defendant must have made a contemporaneous objection to the comment on the grounds asserted on appeal. *Braddy v. State*, 111 So. 3d 810, 837-38, 839 (Fla. 2012). When an issue regarding a comment is not preserved for review, this Court will only consider the issue if the comment constitutes fundamental error. *Hayward v. State*, 24 So. 3d 17, 40-41 (Fla. 2009). In demonstrating fundamental error, a defendant has a "high burden" of showing that the error was such that it "reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." *Id.* at 41.

Here, Defendant claims on appeal that the State's comment at the beginning of its rebuttal closing misstated the burden of proof. However, at trial, he objected to the comment on the grounds that it misstated the evidence. (T/13008) Since these are not the grounds asserted on appeal, this issue is unpreserved. *Braddy*, 111 So. 3d at 839.

Moreover, Defendant is entitled to no relief because this comment does not constitute fundamental error. First, while Defendant suggests that the comment in this case was the same as the comments in *Gore v. State*, 719 So. 2d 1197, 1200-01 (Fla. 1998), *Mitchell v. State*, 118 So. 3d 295, 296 (Fla. 3d DCA 2013), and

Sempier v. State, 907 So. 2d 1277, 1278 (Fla. 5th DCA 2005),[9] this is not true. In *Gore*, the State directly and repeatedly told the jury that it could find the defendant guilty if it believed that he had lied in his testimony and the defendant objected. *Gore*, 719 So. 2d at 1200-01. In *Mitchell*, the State argued repeatedly that the jury had to believe that all of the state witnesses lied to acquit the defendant. *Mitchell*, 118 So. 3d at 296. In *Sempier*, 907 So. 2d at 1278, the State had argued that the defendant was only not guilty if the jury believed him. Here, in contrast, the State never asserted that Defendant was guilty if he lied, that the jury had to believe that all the state witnesses lied or that the jury could only acquit Defendant if it believed him. Instead, the State was merely pointing out that the central issue in the case was whether Defendant's confession was reliable, which depended on a credibility determination by the jury regarding what had happened during Defendant's interview. (T/13008) Thus, the comment was not similar to the comments in the cases upon which Defendant relies.

This is particularly true when one considers the context in which the comment was made. During its initial closing argument, the State had discussed at length how its evidence, including Defendant's confession, proved every element of every charge and why the confession was reliable and Defendant's contrary

[9] Defendant also cites to *Freeman v. State*, 717 So. 2d 105 (Fla. 5th DCA 1998). However, in that case, the State made a large number of improper comments, including improperly bolstering its witnesses.

claims were incredible. (T/12557-12723) Defendant had devoted his entire, lengthy closing argument to asserting that his confession should be rejected based largely on the assertion that his account of what occurred during the interrogation was credible and the officers' testimony was not. (T/12745-13007) He made no real attempt to contest the manner in which the crimes were committed. *Id.* The Fifth District had found under similar circumstances that telling a jury that they could acquit a defendant if they disbelieved the evidence on the only contested issue did not improperly shift the burden. *Rivera v. State*, 840 So. 2d 284, 286-89 (Fla. 5th DCA 2003). Further, the comment at issue was brief and was merely used as an introduction as to why the State was limiting its remarks in rebuttal closing to the contested issue in the case. Thus, it cannot be said that this brief comment deprived Defendant of a fair trial.

VIII. SUBSTITUTE MEDICAL EXAMINER.

Defendant next asserts the trial court erred in allowing Hyma to testify because he did not conduct the autopsies and the doctor who did conduct the autopsy was not shown to be unavailable. However, the trial court did not abuse its discretion in allowing Hyma to testify.[10]

In *Williams v. Illinois*, 132 S. Ct. 2221 (2012), the Court addressed the issue

[10] This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Ray*, 755 So. 2d at 610.

of whether one expert testifying to his opinions based on information obtained from others would violate the Confrontation Clause and found that there was no violation. *Id.* at 2228. It explained that this was true, even where the expert referenced the information gleaned from others in explaining the basis of his opinion, because in doing do the expert was not testifying to the truth of the matters on which he relied but merely explaining the basis for his own opinion. *Id.* at 2233-41. It distinguished *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011), and *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), because those cases involved admissions of reports from nontestifying experts for the truth of the matters asserted in those reports. *Williams*, 132 S. Ct. at 2232-34, 2240-41. Moreover, the Court was addressing an expert's testimony based a report containing a DNA profile extracted from a sample from the crime prior to the time the defendant had become a suspect. *Id.* at 2228. Because the report was prepared before the defendant became a suspect and did not directly implicate the defendant in the crime when it was prepared, the Court also held that the report was not the type of testimonial evidence that the Confrontation Clause addressed. *Id.* at 2242-44. Consistent with this approach, this Court held in *Schoenwetter v. State*, 931 So. 2d 857, 870-71 (Fla. 2006), that allowing one medical examiner to testify to his conclusions based on information gleaned from the work of a different medical examiner did not violate the Confrontation Clause.

Given *Williams* and *Schoenwetter*, the trial court did not abuse its discretion in permitting Hyma to testify. While Hyma may have relied on information from the photos and autopsy reports, he expressly stated that he was he was offering his own opinions. (R185/9226) The autopsy reports themselves were not entered into evidence. Moreover, the reports were generated shortly after the murders, and Defendant did not become a suspect in this matter until 15 months after the murders. These reports would be even less incriminating of Defendant than the DNA report in *Williams*. As such, the trial court did not abuse its discretion in allowing Hyma to testify. This is all the more true as the only specific statement during Hyma's testimony to which Defendant objected on confrontation grounds was his identification of the case numbers assigned to the autopsies, which did not incriminate Defendant at all. (T/9107-9231).

Defendant's reliance on *United States v. Ignasiak*, 667 F.3d 1217 (11th Cir. 2012), does not compel a different result. *Ignasiak* was decided before the Court issued *Williams. Compare Williams*, 132 S. Ct. at 2221 *with Ignasiak*, 667 F.3d at 1217. Thus, to the extent there is a conflict, *Williams* would control. Additionally, the autopsy reports themselves were actually admitted as substantive evidence, and the Eleventh Circuit's analysis of the issue focused primarily on whether the admission of the reports violated the Confrontation Clause. *Ignasiak*, 667 F.3d at 1229-33. Given these circumstances, Defendant's reliance on *Ignasaik* is

misplaced.

Moreover, even if the admission of Hyma's testimony was error, the error was harmless. Defendant admitted from the very beginning of trial that the cause of the victims' deaths was not being contested in this case and did so again immediately before Hyma testified. (T/5443, 9094-95) During his lengthy closing argument, he did not contest that the victims had all died of a single gunshot wound to their head when they were bound. (T/12745-13007) Moreover, Defendant stipulated to the legal identification of the victims. (T/9234-35) As such, there is no reasonable doubt that Hyma's testimony on uncontested issues did not affect the jury's verdicts. The trial court should be affirmed.

IX. PENALTY PHASE CLOSING.

Defendant next asserts that the trial court erred in refusing to permit him to argue regarding the reliability of his confession during the penalty phase closing argument. However, the trial court did not abuse its discretion in sustaining objections to comments that Defendant made in closing that sought to rely on lingering doubt and were not consistent with the evidence.[11]

This Court has repeatedly recognized that a defendant may not attempt to relitigate his guilt at a sentencing hearing or attempt to rely on lingering doubt.

[11] This Court review trial court rulings regarding the scope of closing argument for an abuse of discretion. *Breedlove v. State*, 413 So. 2d 1, 8 (Fla. 1982).

Way v. State, 760 So. 2d 903, 916-18 (Fla. 2000); *Waterhouse v. State*, 596 So. 2d 1008, 1015 (Fla. 1992). This Court has recognized that attempts to challenge the reliability of a defendant's confession during a sentencing hearing are improper attempts to present lingering doubt evidence. *Franqui v. State*, 965 So. 2d 22, 31-32 (Fla. 2007).

During his closing argument, Defendant repeatedly attempted to suggest that his confession was unreliable, and the trial court sustained objections to these comments. (T/14194-141207) While Defendant insists that he was merely attempting to challenge evidence regarding the manner in which the crimes were committed to challenge the applicability of HAC and CCP, the trial court did not abuse its discretion in finding that Defendant was actually attempting to argue lingering doubt. Since lingering doubt is not a proper subject in a sentencing hearing, the trial court did not abuse its discretion in sustaining the objections.

During his opening statement, Defendant asserted that the State would not be able to prove any aggravators because they all relied on his "controversial" confession. (T/13673-76) He did so despite the fact that the jury had convicted him of 5 counts of first degree murder, kidnapping and robbery, which proved the prior violent felony, during the course of a kidnapping and pecuniary gain aggravators. Moreover, as Defendant repeatedly asserts, the jury had to have believed his confession to convict him. The only evidence regarding aggravation presented

during the penalty phase was the judgment of convictions in this case. Thus, there was no evidence to support a claim that the crimes had not occurred as he outlined in his confession. Moreover, Defendant actually sought to have the jury instructed that it could consider lingering doubt. (R/9141-47, T/14133-34) Given these circumstances, the trial court properly construed Defendant's attempt to argue that his confession was uncorroborated as an attempt to urge the jury to rely on lingering doubts about his confession in sentencing. Since doing so is improper, the trial court did not abuse its discretion in refusing to permit Defendant from doing so.

This is all the more true as there was evidence to corroborate the confession. Clark's fingerprints were found at the crime scene, and Defendant's confession admitted he committed these crimes with Clark in a manner that explained the fingerprints. Moreover, Strachan's testimony corroborate the time period over which the crimes occurred. As such, the trial court did not abuse its discretion. It should be affirmed.

X. FATHER'S MEDICAL RECORDS.

Defendant next asserts that the trial court erred in refusing to permit him to present his father's medical records. According to Defendant, these records were relevant to his background because they would have allegedly corroborated his mother's testimony regarding his father's violent behavior. However, the trial court

did not abuse its discretion in refusing to permit Defendant to present evidence that was not relevant to his character, background or the circumstances of the offense.[12]

As this Court has held, a trial court does not abuse its discretion in excluding evidence in mitigation that "focused substantially more on the witnesses's character than on appellant's." *Hill v. State*, 515 So. 2d 176, 177-78 (Fla. 1987). Here, in offering the father's records, Defendant acknowledged that he was not claiming a connection between Defendant's father's diagnoses listed in the records and Defendant's character. (T/13577) Instead, he averred that he needed the records because they would explain why Defendant's father was abusive to his mother and why he chose to abandon Defendant. (T/13584) However, while the fact that Defendant's father was violent and that he abandoned Defendant were relevant mitigation, the reason why Defendant's father behaved in that manner concerned the father's character and not Defendant's. As such, the trial court did not abuse its discretion in excluding the records.

This is all the more true as the records concerned diagnoses from 2002. (T/13572-74) However, the abuse and abandonment occurred before Defendant moved to Florida, sometime between 1980 when Defendant was 2 according to his trial testimony and 1983 when he was 5 according to his mother's testimony.

[12] This Court reviews a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *Ray*, 755 So. 2d at 610.

(T/9281-82, 13881-82) Thus, as Defendant himself admitted, he could not show that the diagnoses accurately reflected Defendant's mental state at the time of the actions the mental state alleged corroborated. (T/13596) Moreover, as the trial court recognized, Defendant's father's actions may have been attributable to other causes. (T/13585) As such, even to accept Defendant's theory required the pyramiding of interference that the conditions existed and caused the actions, which is impermissible. *Mendoza v. State*, 964 So. 2d 121, 130 (Fla. 2007). Given these circumstances, the trial court did not abuse its discretion in refusing to admit Defendant's father's medical records. It should be affirmed.

In attempting to convince this Court that it was error to exclude these records without a connection between his character and background and the records, Defendant resorts to little more than misstating the law. First, Defendant asserts that the United States Supreme Court had held the Eighth Amendment precludes the exclusion of any evidence a defendant wants to present in mitigation. However, this is not true. Instead, the Court had only held that it is unconstitutional to preclude a defendant from presenting evidence of his character and background and the circumstances of the offense. *Eddings v. Oklahoma*, 455 U.S. 104, 110-12 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604-05 (1978) It has held that states have broad discretion in structuring their capital sentencing schemes so long as they permit such evidence and narrow the class of death eligible defendants. *Kansas v.*

Marsh, 548 U.S. 163, 174-75 (2006). Thus, Defendant's suggestion that the Eighth Amendment required admission of evidence unrelated to his character and background is simply false.

Second, Defendant suggests that *Tennard v. Dretke*, 542 U.S. 274 (2004), held that there was no requirement that a defendant establish a nexus between the proffered evidence and him. However, in *Tennard*, the Court was address a requirement imposed by the Fifth Circuit that mitigation be "constitutionally relevant" because it showed a defendant had "uniquely severe permanent handicap" and that the crime was attributable to the handicap. *Tennard*, 542 U.S. at 283. The Court rejected this requirement because mitigation did not have to be based on a defendant's handicap nor did it have to have caused the crime. *Id.* at 284-86. Thus, while *Tennard* held that a nexus to the crime was not required, it did not suggest that a nexus to the defendant was not.

Even if the trial court could be said to have abused its discretion in refusing to admit the records, any error would be harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). While Defendant acts of if he was somehow prevented from adducing evidence regarding his childhood because the records were excluded, this is not true. Defendant's mother testified extensively about Defendant's father's behavior. Other than impeaching her with her prior inconsistent statements regarding how often the father was around and whether she was the primary target

of his violence, the State did not challenge this evidence. (T/13956-58) Defendant's brother and grandfather confirmed that Defendant's father was not even a part of his life after he moved to Miami as a young child.

Moreover, the other evidence presented in mitigation consisted of testimony regarding the fact that his mother was also neglectful, that he lived in bad neighbors, that he cared for his brother and other family members, that he was religious, that he behaved impulsively and that he was young when he committed these crimes. In aggravation, the trial court found prior violent felony, during the course of a kidnapping, for pecuniary gain, avoid arrest, HAC and CCP. Since the mitigation was weak and the aggravation was strong, the exclusion of the records was harmless error at best.[13]

XI. THE *RING* CLAIM.

Defendant finally asserts that his death sentences are unconstitutional because the death recommendations were not unanimous and there was allegedly never a jury determination of the facts that made him eligible for the death penalty. However, this claim is meritless.

This Court had repeatedly rejected the argument that Florida's capital sentence scheme is unconstitutional because jury recommendations do not have to

[13] Given the strength of the aggravation and the weakness of the mitigation, Defendant's death sentences are proportionate. *Doorbal v. State*, 837 So. 2d 940 (Fla. 2003); *Knight v. State*, 746 So. 2d 423 (Fla. 1998).

be unanimous. *Kimbrough v. State*, 125 So. 3d 752, 754 (Fla. 2013); *Robards v. State*, 112 So. 3d 1256, 1267 (Fla. 2013). Moreover, this Court has also repeatedly rejected *Ring* claims when the death sentence was based on the during the course of a felony and prior violent felony aggravators, particularly where the prior violent felonies were additional convictions found at the guilt phase. *Doorbal v. State*, 837 So. 2d 940, 963 (Fla. 2003). Thus, this claim is meritless and should be rejected.

XII. ADMITTING OFSHE'S TESTIMONY WITHOUT A *FRYE* HEARING.

The trial court admitted Ofshe's testimony without conducting a hearing on its admissibility. In doing so, the trial court erred.[14]

This Court has held that a trial court errs in admitting new scientific evidence without first conducting a *Frye* hearing even when the evidence is only new because it extends existing science into a new area. *Ramirez v. State*, 542 So. 2d 352, 354-55 (Fla. 1989). This Court has explained that a complete *Frye* hearing must be held because the decision regarding whether *Frye* is satisfied is an issue for the trial judge and not a matter of the weight of the evidence for the jury. *Ramirez v. State*, 651 So. 2d 1164, 1166-67 (Fla. 1995).

[14] Trial court rulings on the admissibility of evidence under *Frye v. United State*, 293 F. 1013 (D.C. Cir. 1923), are reviewed de novo. *Haddon v. State*, 690 So. 2d 573, 579 (Fla. 1997).

Here, the trial court permitted Ofshe to testify regarding actions that can influence a person to make a false statement to the police. This Court has held that Ofshe's testimony on influences that cause a person to make a false statement to the police must be subjected to a *Frye* hearing before it can be admitted. *Williamson v. State*, 994 So. 2d 1000, 1008-11 (Fla. 2008). This Court has also questioned whether testimony from experts in false confessions is admissible. *Derrick v. State*, 983 So. 2d 443, 451 n.7 (Fla. 2008). Given these circumstances, the trial court erred in admitting this evidence without first conducting a *Frye* hearing.

Moreover, had the trial court conducted a *Frye* hearing in this case, it would have realized that Ofshe's testimony was not admissible because it did not concern a subject on which expert testimony was properly admitted. *Frances*, 970 So. 2d at 814. While Ofshe testified that if Defendant's version of the interrogation was believed, the police had used several tactics that could cause a false confession, he also testified that they were not the cause of the confession in this case. Instead, he averred that Defendant provided the false confession because of the alleged deal with Law. He admitted that if the police version that there had been no deal was accepted, the confession would be proper. As such, this case did not present an issue that required expert testimony at all. As such, the trial court admission of Ofshe's testimony without a *Frye* hearing was error.

CONCLUSION

For the foregoing reasons, the judgment and sentence of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF OF APPELLEE** was furnished by email to **Scott Sakin**, sakinlaw@hotmail.com, 1411 N.W. North River Drive, Miami, Florida 33125, this 28th day of July 2014.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is typed in Times New Roman 14-point font.

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