IN THE SUPREME COURT OF FLORIDA

JOHN STEVEN HUGGINS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC11-219

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY MATTERS

Huggins was convicted and sentenced to death for the June 10, 1997, murder of Carla Larson. His first conviction and sentence was set by the trial court, and that result was affirmed by this Court. Huggins was re-tried, and was convicted of first degree murder and sentenced to death. This Court affirmed the conviction and sentence on direct appeal. *Huggins v. State*, 889 So. 2d 743 (Fla. 2004). Huggins then began collateral attack on his conviction and sentence. The trial court denied relief following an evidentiary hearing, and this appeal follows.

STATEMENT OF THE CASE AND FACTS

The statement of the facts contained in Huggins' brief is argumentative and incomplete. The State relies on the following statement of the case and facts.

THE COMPETENCY PROCEEDINGS

The trial court held an initial hearing on November 27, 2006, to determine Huggins' competency. (V13, R1-57).

Pursuant to the reports and opinions submitted to the court from Dr. Henry Dee, Ph.D. (now deceased), Harry McClaren, Ph.D., and Jeffrey Danziger, Ph.D., the trial court issued an order on November 27, 2006, finding that Huggins was temporarily incompetent to proceed with his post-conviction proceedings and that Huggins met the criteria for commitment as set forth by

916.13(1) of the *Florida Statutes*. (V2, R334). Huggins was involuntarily committed to the Department of Children and Family Services for treatment "to restore him to competency to proceed in post-conviction proceedings." (V2, R335). The Florida Department of Corrections was to retain physical custody at the transitional Care Unit at Union Correctional Institution or another appropriate facility. (V2, R335).

Pursuant to Huggins' objection to the course of treatment ordered for him, a status hearing was held on June 6, 2007. (V15, R1-107). The court heard testimony from the following experts: Dr. Jorge Villalba, M.D., Dr. Joe Thornton, M.D., Dr. Myron Bilak, Ph.D., Chuck Blessington, Mental Health Counselor, and Dr. Robert Berland, Ph.D.

Dr. Jorge Villalba, forensic psychiatrist, has conducted competency evaluations for fifteen years. (V15, R11). Villalba spent four hours evaluating Huggins on March 15, 2007. (V15, R19, 29). In Villalba's opinion, Huggins "displays systemized delusions persecutory in nature involving conspiracies in all stages of the government." As a result, Huggins is unable to assist his attorneys in giving "factual information based on reality regarding his case." In Villalba's opinion, Huggins competency would be restored if he was administered "psychopharmacological intervention, in particular, antipsychotics." (V15, R21). In addition, in Villalba's opinion,

the course of treatment that the Department of Children and Family Services considered using for Huggins, according to the "Competency Training Book," would not restore Huggins' competency. (V15, R22-3). Villalba said delusional people respond to antipsychotic medications and administration of the drugs would also indicate whether or not a person was malingering. (V15, R32-3). The standard of care in treating a person with delusions is administration of psychotropic medications. (V15, R34).

Villalba said Huggins has a rational understanding of facts but that he interprets them in a delusional manner. (V15, R24). Huggins believes his own attorneys "are part of a conspiracy to have him executed." (V15, R24). Although Huggins in capable of giving his own history and the facts to his attorneys, he does not "because of his delusions, he is unable to do so." (V15, R24-5). In Villalba's opinion, Huggins' delusions are false interpretations of actual facts. (V15, R26). Huggins does not have an impaired memory. (V15, R27). In Villalba's opinion, Huggins is not malingering. Huggins' delusions and psychotic symptoms are not exaggerated in the form seen in a malingerer. (V15, R29, 30).

Villalba administered objective diagnostic testing to Huggins in which Huggins scored in the psychotic range. (V15, R27). However, Villalba said individuals can fake psychosis and

delusions. (V15, R31). Villalba did not speak with any of the doctors that recommended Huggins' course of treatment. (v15, R32).

Dr. Joe Thornton, psychiatrist, is the medical director for the North Florida Evaluation and Treatment Center, which is the State facility responsible for restoring criminal individuals to competency after courts have found them incompetent. (V15, R41, 42).

Thornton evaluated Huggins on February 14, 2007. (V15, R42). He reviewed the reports of Drs. Dee, McClaren and Danziger. (V15, R55). In Thornton's opinion, Huggins presented some complaints of his beliefs "that were irrational and didn't seem to make sense ... they were primarily limited to his case." (V15, R43-4). Thornton said these are called "isolated delusional symptoms." (V15, R44). In Thornton's opinion, Huggins "could have had a delusional syndrome or the behaviors were also consistent with malingering, given the context." (V15, R44). In Thornton's opinion and experience, Huggins' type of delusions typically **do not respond to psychopharmacology**. (V15, R44, 46). Thornton said Huggins told him that his medical record "is replete with numerous medication trials that were reported to be ineffective." (V15, R44-5, 46). Thornton recommended a "therapy-type" plan to treat Huggins. (V15, R45, 52, 57).

In Thornton's opinion, Huggins does not suffer from a

mental illness that prevents him from having a rational understanding of the proceedings against him. (V15, R47). Thornton doubts that Huggins suffers from delusions. (V15, R59). In Thornton's medical opinion, medications are not necessary to treat Huggins. (V15, R53). Thornton concluded that Huggins "had a delusional syndrome NOS or delusional disorder NOS ... or either for or both malingering." (V15, R56). In addition, Thornton said Huggins "wasn't fully cooperative with the assessment." (V15, R57). Thornton opined that Huggins' "delusions are saving his life right now." Without them, "his life is in jeopardy." (V15, R59-60).

Thornton said if Huggins was administered psychotropic drugs, he could suffer side effects that included sleepiness, tremors, ectasia, inner restlessness, breast discharge, and osteoporosis. (V15, R61). In addition, if Huggins was malingering, he could suffer from the ability to think clearly. (V15, R61).

Dr. Myron Bilak, psychologist, is the director of psychological services at North Florida Evaluation Treatment Center. (V15, R63). In Bilak's opinion, Huggins should be treated with "individual competency training." (V15, R64). Huggins was cooperative with the exception of refusing to take a psychological test. He told Bilak, "I have learned not to answer certain questions." (V15, R65-6). In Bilak's opinion, competency

training would assist in determining whether or not Huggins was malingering. (V15, R66). Bilak said Huggins' delusional thoughts do not interfere with his ability to obtain competency. "I think he may be exaggerating his symptoms ... a delusional belief system for purposes of secondary gain." (V15, R68, 69). In Bilak's opinion, Huggins was malingering. (V15, R70).

Chuck Blessington, licensed mental health counselor, is employed by the North Florida Evaluation and Treatment Center. (V15, R74-5). Blessington was assigned to counsel Huggins in restoring him to competency. (V15, R76).

Dr. Robert Berland, psychologist, said it was significant that Huggins was administered the Minnesota Multiphasic Personality Inventory test ("MMPI") in 1995, prior to the offense in this case. Huggins was in the middle of a custody dispute during a divorce and, in Berland's opinion, Huggins should have been "trying to look as normal as possible." (V15, R81, 82-3). However, tests results indicated "significant attempts to hide the nature and the severity of his mental health problems at that time in November, 1995, but that despite that the test reflects the presence of delusional and paranoid thinking in him as of November 30, 1995." (V15, R83, 87). There was no indication of any attempt to exaggerate or fake mental illness - to the contrary, Huggins made "attempts to hide his mental illness." (V15, R83, 87). Several scales were elevated -

the K scale and the L scale. (V15, R87, 92). In Berland's opinion, Huggins attempted to influence the results of the test. (V15, R87).

In Berland's opinion, the MMPI result is viable as it relates to Huggins' case because Huggins' "psychotic disturbance is a biologically determined disturbance." Further, Berland said Huggins is "manipulative." However, the evidence from the MMPI and Berland's current contact with him[1] indicate Huggins "is genuinely psychotic in additional to the possibility that he's manipulative." (V15, R84). Further, an IQ test given to Huggins at the Seminole County Detention Center in 1975 indicted "the presence of impaired functioning."[2] (V15, R84). Berland concluded that, "even if he's exaggerating, some people can be so disabled by their mental illness that they needn't have exaggerated because they're still incompetent. I think we have **some** reason to believe that he fits that category." (V15, R86).

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[1] Berland met with Huggins for 54 minutes on September 19, 2006, approximately two months prior to this hearing. He did not administer any tests. (V15, R86).

[2] Huggins was 13 years old when the IQ test was administered. (V15, R96). Huggins' verbal IQ score was a 90; and his performance IQ score was a 98; full scale IQ score was a 92. (V15, R89, 90). In Berland's opinion, the 41-point variation between Huggins' subtest scores, a low of 80 to a high of 121, indicated brain damage. (V89-90). However, Huggins could have tested higher or lower later in life -- "there is variation in the scores." (V15, R96).

Berland said the IQ result and MMPI result are secondary sources of information that help explain Huggins' symptoms of psychosis. Berland said, "if he's psychotic" the "only treatment for it is medical." (V15, R97).

Subsequent to the November 27, 2006, hearing, the trial court found Huggins was incompetent to proceed. (V2, R332-73).

The trial court held a hearing on August 15, 2007, since Huggins refused to cooperate with his treatment to restore him to competency. (V16, R5).

Dr. Myron Bilak testified that Huggins was "less than willing to cooperate ... setting up roadblocks to cooperation." (V16, R5). Huggins refused to see the medical staff on three occasions -- July 17, 2007, July 31, 2007, and August 9, 2007. (V16, R6). Bilak said Huggins told him, "he was living under a stressful environment ... was in a fight for his life ... and reiterated that he didn't declare himself incompetent but that this was done by others to him." (V16, R7). Huggins said "I am not interested in your treatment." (V16, R7). In Bilak's opinion, Huggins lack of cooperation and his current actions and the method that he was using indicated Huggins was "in fact, very competent." (V16, R12, 13). Bilak concluded that Huggins should be moved back to death row. (V16, R14).

Dr. Thornton testified that Huggins indicated he did not want treatment -- "that his goal was to get in front of Judge

Perry, hoping to have a hearing." (V16, R8). Huggins informed Thornton (and Bilak) that he was okay but did not want to talk to them. (V16, R9, 10). Prison staff indicated Huggins "was not acting like a typical mental health patient and **there was no aberrant behavior on his part**." (V16, R10). In Thornton's opinion, there was no reason why Huggins could not participate in an assessment of him. (V16, R13).

At the conclusion of the hearing, the trial court ordered that Huggins be returned to death row to continue treatment. (V3, R412-13; V16, R21).

On October 17, 2007, the trial court ordered that Huggins be re-evaluated for competency. (V3, R414-19).

The trial court held a hearing on November 28, 2007, regarding the status of expert reports. (V17, R1-16).

On January 25, 2008, the trial court held a second competency hearing. (V18, R1-145).

Dr. Henry Dee, psychologist, (now deceased), re-evaluated Huggins on November 30, 2007. (V18, R16). Dee said that when he initially evaluated Huggins in 2001 prior to his second trial, Huggins showed signs of brain damage. Dee was not asked to evaluate Huggins for competency. (V18, R20-1). In Dee's opinion, Huggins "certainly had a history of delusional disorder in 2001." (V18, R22).

Dee said Huggins told him that Dr. Jeffrey Danziger, M.D.,

had evaluated him in an earlier case unrelated to this one and found him to be competent. Huggins was concerned about Danziger's findings. (V18, R23-4). In Dee's opinion, Huggins is factually competent to proceed "but not realistically competent." The only area where Huggins is incompetent is in his rational use of the facts that he knows and understands. (V18, R24). Huggins "possibly" was malingering. (V18, R25). Although Dee did not see any evidence of a delusional disorder diagnosis for Huggins, he was aware that several doctors had diagnosed Huggins with antisocial personality disorder. (V18, R25). As a result, Dee said there could be "a heightened concern" that Huggins was malingering but there was a "low probability." (V18, R26, 36). Huggins denied that he was incompetent several times. (V18, R26). Huggins made it clear that he was competent and that his only problems were "merely legal." (V18, R27). Dee did not administer any tests to Huggins to determine if he was malingering. Nonetheless, Dee concluded that Huggins was not competent to proceed. (V18, R29, 37). He recommended anti-psychotic medications for Huggins but **"would certainly defer to Dr. Danziger to which particular ones would be most appropriate because that's part and parcel of his expertise."** (V18, R31, 33). In Dee's opinion, Huggins' treatment will not be successful if he is not administered anti-psychotic medication. (V18, R34, 35).

Dr. Harry McClaren, psychologist, evaluated Huggins in 2006 and re-evaluated him on December 6, 2007. (V18, R39). In his opinion rendered in 2006, McClaren recommended that Huggins get treatment as an inpatient wherever the best security could be provided as well as "probably include medication." (V18, R47).

During the 2007 evaluation, Huggins was "minimally" cooperative with McClaren but refused to take any tests. Huggins "appeared to be almost, like playing cat and mouse." (V18, R44). McClaren also reviewed records from the Transitional Care Unit ("TCU") at Union Correctional Institution. The records did not indicate that prison personnel perceived Huggins as suffering from any significant thought or mood disorder. (V18, R40). In addition, McClaren reviewed the notes from prison psychologist Ms. Sagel, who "thought he was delusional at one point," "possibly malingering," but she deferred making a diagnosis. (V18, R41, 42).

In McClaren's opinion, Huggins knows what he has been convicted of and understands the theoretical roles of the court system. In addition, McClaren said Huggins "does have a delusional system that interferes with him working with his attorneys." (V18, R45). McClaren said Huggins would **"absolutely"** benefit from the administration of psychotropic drugs. Huggins is a danger to himself as well as others. (V18, R46). Huggins' refusal to cooperate impeded McClaren's ability to come to a

sound opinion with regard to competency. As a result, based upon the information he had, McClaren concluded that Huggins was not competent to proceed. (V18, R48, 49). McClaren said "there certainly is some possibility" that Huggins was exaggerating his delusional beliefs but that he was not malingering. (V18, R49, 51-2).

Dr. Jeffrey Danziger, psychiatrist, evaluated Huggins in October 2006 and re-evaluated him on November 16, 2007. (V18, R54, 56). Danziger also administered a competency evaluation to Huggins in September 1998, prior to his first trial in this case. (V18, R55). At that time, Danziger diagnosed Huggins with alcohol abuse, sedative hypnotic abuse, opiate and amphetamine abuse, and a low level of bipolar disorder, but ultimately opined that Huggins was competent to proceed. (V18, R55).

Prior to the 2006 evaluation, Danziger reviewed a 1992 evaluation conducted on Huggins after he was admitted to a psychiatric facility due to demonstrating paranoid delusions. (V18, R56). In 1995, Huggins was again evaluated by Dr. Jewel Euto, who did not note any psychotic symptoms but diagnosed Huggins with alcohol abuse and **antisocial personality disorder**. (V18, R56). During a dependency hearing involving Huggins' children, Huggins was evaluated by Dr. Tressler who diagnosed Huggins with alcohol dependence and **antisocial personality disorder.** Tressler did not observe any psychotic symptoms in

Huggins. (V18, R57). Due to the antisocial personality disorder diagnosis, Danziger said "it is certainly a possibility" that Huggins was malingering. (V18, R57).

Danziger administered tests which indicated Huggins was not mentally retarded, demented, or grossly cognitively impaired. As far as intellectual functioning, Huggins has average ability to understand issues in his case and the roles of various people involved. (V18, R58). In Danziger's opinion, Huggins has a factual understanding of the proceeding involved. (V18, R59). However, Danziger said, "It would be fair to say that while in my opinion more likely than not he is truly psychiatrically ill, I cannot 100 percent exclude malingering and it is a possibility." (V18, R60). Danziger spoke with Drs. Dee and McClaren, who all reached the conclusion that Huggins is psychotic and that "antipsychotic medications would be appropriate." (V18, R61, 64, 73). Danziger also spoke to correctional officers at the prison who also indicated Huggins was mentally ill. (V18, R62). In Danziger's opinion, Huggins is a danger to himself as well as others because "he's suffering from an active mental illness" as well as "paranoid psychosis." He has a "history of violence, he is quite paranoid." Danziger opined, "If left to his own devices, the risk of violence would be quite high." (V18, R66).

Danziger said a course of treatment for administration of

medication "typically" is about 12 weeks for psychotics. (V18, R68). If the initial medication is not successful, then another 12 weeks is needed. Danziger estimated a six-month period would be necessary for administering medication, followed by a reassessment. In addition, Huggins would need to be on a maintenance medication to prevent a return of his symptoms and "competency is once again lost." (V18, R69-70).

Danziger said he was not comfortable with being the forensic psychiatrist as well as the treating psychiatrist. **The treating psychiatrist would make the ultimate decision about what drugs would be used to restore Huggins to competency.** (V18, R70). If Huggins was malingering, potential side effects could include weight gain, elevations in blood sugar, elevations in triglycerides, sedation, and some neurological effects. (V18, R71). Nonetheless, in Danziger's opinion, to a reasonable degree of medical certainty, "with treatment, competency can be restored." (V18, R73). In Danziger's opinion, Huggins was incompetent to proceed. (V18, R74).

Dr. Joe Thornton, psychiatrist, issued a report on October 8, 2007, finding that Huggins did not have a major mental disorder. (V18, R75, 78, 79). Thornton said, however, that "all parties agreed" that Huggins has antisocial personality disorder. In addition, in Thornton's opinion, Huggins was malingering, which accounted for the behaviors they observed.

(V18, R81). Further, if Huggins suffered from a delusional disorder, he would not try "to hide the symptoms if you don't know you have them." Huggins would be more elaborate in his delusions if he suffered from a disorder. In addition, he would have other symptoms such as hallucinations. (V18, R84). **In Thornton's opinion, Huggins does not meet the ethical requirements for treating someone against their will with psychotropic medications.**[3] (V18, R87). In Thornton's opinion, Huggins is not a danger to himself or others based on his behavior from the past year. (V18, R87-8). In Thornton's opinion, "because we cannot find that he's suffering from a mental illness, I believe he's competent to proceed" and "has a sufficient present ability to consult with counsel with a reasonable degree of rational understanding" and "has a rational understanding of the proceedings." (V18, R91).

Thornton said if a prescribed medication is given to someone for a disorder that doesn't exist, "they won't get better." In addition, the person is exposed to the risk of side effects. (V18, R109). Further, if medication is forced on a person, there is a risk of injury, as well. (V18, R110).

On January 28, 2008, the trial court issued an order

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[3] As the treating physician, Dr. Thornton is the proper person to make the ultimate determination about the use of medication.

finding Huggins was incompetent to proceed. (V3, R514-22; SR, V1, R16-23).

On May 2, 2008, the trial held a status hearing to discuss Huggins' cooperation with his treatment plan. (V19, R1-38).

Dr. Chris Carr said that Florida requires medical personnel attend a conference that discusses certification in the field to make a determination of competency. (V19, R7). Carr said no one at the Department of Corrections ("DOC") was qualified to make a determination within the legal definition of competency. (V19, R7).

Sheron Wells, DOC legal counsel, said medical personnel had performed weekly evaluations on Huggins, but Huggins was uncooperative with interaction. Huggins "seemed to be functioning just fine." (V19, R8).

Dr. Sara D'Marie, psychologist, has been employed by DOC for 12 years. (V19, R10). She spoke with Drs. Dee and McClaren regarding Huggins' delusional disorder. (V19, R9). In addition, she spoke to security and nursing staff at TCU who had not observed anything unusual in Huggins' behavior. (V19, R10). However, she is not a forensic psychologist, has not had forensic training, and has not performed competency evaluations. (V19, R11).

On May 5, 2008, the trial court issued its amended order finding Huggins incompetent to proceed and ordered Huggins'

commitment to DOC treatment facility. (V3, R525-33).[4]

On May 4, 2009, the trial court issued a second amended order finding Huggins incompetent to proceed. (V4, R669-680).

On September 18, 2009, the Department of Children and Families filed correspondence with the trial court which stated that a competency evaluation had been administered to Huggins on September 11, 2009, by Dr. Stephen Kopetskie, psychologist, Florida State Hospital, and stated that Huggins was "**competent to proceed**" and "**no longer meets** the criteria for continued involuntary commitment." (SR, V1, R27-39).

On October 9, 2009, Huggins filed an Emergency Motion for Competency Evaluations. (V4, R691-98).

On October 15, 2009, the trial court held a competency hearing. (V22, R1-98).

The trial court heard argument on Huggins' Emergency Motion for Competency Evaluation and ultimately denied it. (V22, R4-14; V4, R704-05).

Dr. Stephen Kopetskie is the senior psychologist at Florida State Hospital. (V22, R17). Huggins was admitted to the hospital on June 23, 2009. (V22, R19). Kopetskie and his recovery team[5]

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[4] On June 2, 2008, DOC filed a Petition for Review to this Court which was voluntarily dismissed on March 6, 2009.

[5] The recovery team/treatment team included Judy Hamilton, mental

met with Huggins on a daily basis. Some of those meetings were brief; others were "excessive" depending on the issues that Huggins wished to discuss. In addition, Huggins completed psychological testing[6] on July 22, 2009. (V22, R19, 20, 23). Huggins "was reluctant" to participate in a psychological assessment, and only completed the test after three attempts were made to administer it. (V22, R24, 25, 48, 54-5). During Huggins' initial weeks at the hospital, all of the members of the recovery team met with him together. Over time, some did not attend. (V22, R35). There were some days Huggins refused to meet with the team. (V22, R37).

Kopetskie conducted five to six extended interviews with Huggins. (V22, R20, 29). They discussed Huggins' case and various aspects of it. (V22, R23, 31, 38). Huggins moved from topic to topic. (V22, R31). At times, Huggins discussed the "purported conspiracy" against him. (V22, R38).

Kopetskie conducted a competency evaluation of Huggins on September 11, 2009. (V22, R21, State Exh. 1). Kopetskie said that Dr. Sandra Raheb, psychiatrist, also evaluated Huggins to

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health professional; Wiley Scott, social worker; Dr. Raheb, psychiatrist; and Joe Jones, registered nurse. (V22, R35).

[6] The Personality Assessment test ("PAI") was administered, which is a 341-item test that assessed Huggins' psychological functioning, interpersonal relationships, and whether or not he believed he needed treatment. (V22, R24).

determine if he suffered from a mental illness that required administration of psychotropic medication. (V22, R23). Raheb also discussed Huggins' family history and social history with him. (V22, R31, 70). Kopetskie said Huggins also discussed his conspiracy theory with Raheb. (V22, R38). Kopetskie said that it was Raheb's opinion that psychotropic medications were not indicated in Huggins' case. (V22, R23). **Raheb indicated to Kopetskie that Huggins' "mental health problems were rooted in personality disorders and those are not amenable to psychiatric treatment."** (V22, R74).

In Kopetskie's opinion, Kopetskie diagnosed Huggins with the following: Axis 1) polysubstance dependence, in remission, in controlled environment; malingering. Axis 2) **antisocial personality disorder**; paranoid personality disorder. (V22, R26, 50-51). The recovery team met with Huggins and discussed the PAI results and the team's diagnoses. They did not mention malingering. (V22, R45, 46). In Kopetskie's opinion, he found Huggins was malingering based on his interviews with Huggins and the results of the PAI. (V22, R26, 36, 77). In Kopetskie's medical experience, people who have authentic delusional disorders are consistent in their statements over time. Huggins, however, made inconsistent statements - some were subtle, "but still significant." (V22, R27). For example, Huggins stated that his attorneys kept his family from visiting him. On another

occasion, Huggins stated that his mother could not visit due to illness. Kopetskie said, "Inconsistencies like that are - - are just incongruent with authentic delusional disorder." (V22, R27). In addition, when prompted by Kopetskie, Huggins would not elaborate on his delusional ideas -- "he tended to provide very minimal responses." (V22, R44, 58). In Kopetskie's opinion, Huggins is competent to proceed -- as he put it, "competent but unwilling to proceed." (V22, R22, 27).

Kopetskie said Huggins is not psychotic and not delusional. (V22, R28). Kopetskie said Huggins told him that he is competent and "he felt he was ready to go, to proceed with his appeal." (V22, R32). Huggins was offered counseling on several occasions and declined to do so. (V22, R67). Huggins indicated that "he didn't believe he had any -- existing mental health problems he wanted to address at this time." (V22, R67). Huggins was discharged from the hospital on October 15, 2009. (V22, R20).

Kopetskie said that "hypothetically," if Huggins' conspiracy belief was sincere, it could be a reason why Huggins refused to cooperate with his attorneys. (V22, R39-40). Huggins also told Kopetskie that he "didn't believe he could work with anyone who was appointed by the court" but "**would be willing to cooperate with private counsel.**" (V22, R40). However, Huggins admitted that he did not have the resources to hire a private attorney. (V22, R42).

Kopetskie explained that his recovery team had several advantages in treating Huggins over the other previous treatment plans administered to Huggins at UCI and NFETC. Kopetskie explained that his team met with Huggins on a daily basis, security personnel observed Huggins "24/7," and the team had access to a lot more data and information. In addition, Kopetskie reviewed the prior findings of Drs. Danziger, McClaren, and Dee. Based on the team's evaluation, it was determined that Huggins was competent to proceed but unwilling to do so. (V22, R71-2, 74, 78).

On October 16, 2009, the trial court issued its order finding Huggins competent to proceed. (V4, R706-15).

On July 1, 2010, Huggins filed a certified motion for competency determination. (V4, R751-57). Subsequent to a hearing held on July 15, 2010, (V26, R1-66), the trial court issued its order granting Huggins' motion. (V4, R759-64).

The evidentiary hearing on Huggins' postconviction claims was held on August 23-26, 2010. (V31-34, R1-619).

On October 8, 2010, the trial court held a hearing and informed Huggins that it needed to make a final ruling on competency and, on October 11, 2010, issued an order that Huggins must meet with the appointed experts. (V5, R908-11).

On November 18, 2010, the trial court issued its order finding Huggins was competent and denying Huggins'

postconviction claims. (V5, R914-47).[7]

THE EVIDENTIARY HEARING FACTS

Dr. Richard Carpenter, psychologist, reviewed several psychological reports relevant to Huggins.[8] (V31, R27). The reports included the following: Dr. Harry McClaren's report from 2007; Dr. Jeffrey Danziger's report from 2007; Dr. Henry Dee's report dated July 17, 2002; handwritten notes of Huggins' wife at the time of the murder, Angel Huggins; Angel Huggins' trial testimony; Dr. Jeffrey Danziger's report dated September 24, 1998; Dr. Daniel Tressler report dated November 30, 1995; a court-ordered report by Dr. Euto dated September 30, 1995; Petition for Involuntary Examination/Commitment (Baker Act) filed by ex-wife Marianne Huggins and related ex-parte order dated September 21, 1992; and a county jail psychological report from November 13, 1975, when Huggins was 13 years old. (V31, R29-30, 32).

In Carpenter's opinion, based upon his review of Marianne Huggins' petition for involuntary examination, Carpenter said Huggins has "a bipolar disorder with mood swings characterized

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[7] The pertinent orders are discussed in greater detail in the argument section of this brief.

[8] On several occasions, Huggins refused to see the court appointed mental health experts. (V31, R12-13, 14; V32, R195).

by mania, rage reactions, physical violence, delusional thinking, paranoia, and a history of having been treated for these mood swings while in prison prior to this report being entered." (V31, R31, 32). In Carpenter's opinion, the 1992 Petition/Baker Act report was significant because: 1) it predated the events for which Huggins was convicted by approximately five years;[9] and 2) it related to the issue of reliability of a diagnosis. (V31, R32). Carpenter said Dee's 2002 report indicated Huggins had a history of mood swings, delusional thinking, and brain dysfunction or brain damage. In Carpenter's opinion, this was "further evidence of a history of mood swings" as well as "delusional thinking." (V31, R33). Further, with respect to the testing conducted by Dee, Carpenter said Dee's "conclusions were accurate" that Huggins "had cerebral damage." (V31, R33, 34). Carpenter said Huggins' cerebral damage ultimately caused poor impulse control and an inability to control his emotions. (V31, R34-5).

Carpenter reviewed Danziger's 1998 report which indicated Huggins had several suicide attempts, mood swings, and believed "there were people present that weren't there." In Carpenter's

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[9] Carla Larson was murdered on June 10, 1997. *Huggins v. State*, 889 So. 2d 743 (Fla. 2004).

opinion, this report strengthened the conclusions that Huggins suffered from bipolar disorder. (V31, R35). With respect to Tressler's 1995 report, Tressler administered the Minnesota Multiphasic Personality Inventory Test ("MMPI")[10] which indicated an elevation on the paranoia scale. Huggins had reported a "conspiracy by his ex-wife." Tressler also noted impulsivity in the MMPI results. (V31, R35-6). Carpenter said Huggins scored a 4-6 high point pair on the first MMPI administered to him, and a 4-9 high-point pair on the second MMPI. Scale four is the psychopathic deviant scale. (V31, R46). Carpenter said a 4-9 high point pair indicates impulsivity, reckless behavior, and **antisocial personality disorder**. (V31, R47). Tressler's primary diagnosis of Huggins was **antisocial personality disorder**, a diagnosis Huggins has had several times. (V31, R47). Carpenter said McClaren's report indicated Huggins was psychotic. Huggins had not previously been diagnosed as psychotic. (V31, R48).

Carpenter was aware of the facts and knew Huggins and his wife had argued the night before Larson was killed. (V31, R36, 51). Carpenter reviewed the statements made by Huggins' wife, Angel, in which she said Huggins had choked her after they argued. Carpenter said this was significant because Larson had

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[10] The MMPI consists of 567 true/false questions which make up three validity scales and ten clinical scales. (V31, R46).

been strangled to death. (V31, R37-8). The medical examiner's report indicated a "prolonged strangulation" which Carpenter said indicated Huggins was emotionally disturbed.[11] (V31, R44). However, Carpenter could not say whether or not a "slow" strangulation would be probative of Huggins' "state of mind." (V31, R63).

In Carpenter's opinion, Huggins suffers from bipolar disorder. Huggins had a history of psychotic thinking as well as domestic violence. In Carpenter's opinion, Huggins "was in an extreme state of emotional and psychological conflict about his feelings toward [his wife] that were unresolved and he displaced this unresolved emotional conflict onto the victim." (V31, R40, 51). Further, Huggins had a "tremendous amount of emotion ... bottled up inside ... and the only way that he knew to discharge it was to act out against the victim." (V31, R41). Carpenter said it was not unusual that there was a time lapse between Huggins' argument with his wife and Larson's murder. Huggins' displaced aggression was against Carla Larson and therefore, he had redirected his anger. Carpenter said, "It's not unusual for someone to stew and percolate." (V31, R42). And, after murdering Larson, Huggins then attempted to make-up with his wife, to "try to make good ... sort of that domestic violence cycle." (V31,

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[11] Carpenter seems to assume Huggins' guilt.

R41). Carpenter had no evidence as to the length of time Huggins stayed in "these moods." (V31, R60). He did not have any evidence as to the mood Huggins was in when he first approached Larson or what his emotional state was during the events that led to her murder. (V31, R60).

Carpenter said Huggins' frontal lobe damage/brain damage prevented him from properly channeling emotion. In Carpenter's opinion, Huggins "couldn't come up with any other way of dealing with this." (V31, R43). However, Carpenter had not interviewed Huggins. (V31, R43, 48).

Carpenter had "no idea" why Huggins stole Larson's car. However, "it's entirely possible" he stole her jewelry for monetary gain. (V31, R53). Larson was completely nude when she was found, which Carpenter said "fits with some of the behavior that he's exhibited in the past, ripping off the clothes, things of this nature." (V31, R54).

Illene Manning worked at a Publix Supermarket in Celebration, Florida, in June 1997. (V31, R65). Manning assisted Carla Larson several times at the deli counter. (V31, R67). On June 10, 1997, Manning took a phone order for Larson called in by a male. A male[12] picked up the order, as well. (V31, R69).

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[12] Manning identified Larson's husband as having "eyes" that resembled the male who picked up Carla Larson's order. (V31,

Manning initially said she spoke to police three days after Larson's murder and told them about Larson's order. The store manager, Mr. Fountain, was also present. (V31, R87, 88, 91, 94). Manning later said she did not know the date police interviewed her, "I only know the year." (V31, R89).

Forest Sparks worked at DisneyWorld as a superintendent of roadways and drainage systems in 1997. (V31, R106). On June 12, 1997, Sparks saw two of Larson's co-workers (John Ricker and Mike Munson) in an underdeveloped, locked, gated area on the DisneyWorld property.[13] (V31, R108, 110). Sparks drove his vehicle through the gate to meet up with them. He could not recall whether or not the gate was actually locked. (V31, R111). Sparks did not know if either of the men had a key to the gate because the company they worked for had numerous jobs on the Disney property. (V31, R115). After Sparks told the men about an unidentified SUV he had seen two days earlier, the three men then drove to that location. (V31, R112).[14] Sparks said the area

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R73, 74, 76). Manning also identified a photograph of Kevin Smith as a person who had "eyes" similar to the person who picked up Larson's order at Publix on June 10, 1997. (V31, R82, 83). Smith was a friend of Huggins. *Huggins v. State*, 889 So. 2d 743, 752 (Fla. 2004).

[13] This area was about two miles from where Larson's body was eventually found. (V31, R108).

[14] Sparks testified at trial that he saw an SUV parked in an

where the three men drove to was a difficult area to maneuver because it was very wet and undeveloped. (V31, R114).

Tammy Creighton[15] is Huggins' former sister-in-law. Creighton's sister Angel was married to Huggins in 1997. (V31, R117). Creighton recalled that she, her children, and her friend Lillian Vandellis visited Creighton's mother (Fay Blade) in the Orlando area in 1997. (V31, R117). At some point, "on a Tuesday,"[16] Creighton, Huggins, and some of his and her children visited the Disney area. They were together for the next two days, and stayed at the Royal Mansions in Orlando. (V31, R118-19, 120-21). Creighton admitted that she and Huggins were having an affair. (V31, R121).

The group used Creighton's Chevrolet Lumina for

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unauthorized area of the woods on June 10, 1997. Sparks was not able to investigate it at that time. On June 12, Sparks encountered Larson's co-workers John Ricker and Mike Munson on the DisneyWorld Property. The two men had instituted a search for Larson. Sparks mentioned the SUV he had seen two days earlier. Sparks then went to the point on Osceola Parkway from where he had seen the SUV and, via hand-held radios, directed Larson's co-workers to a point where he could see them. Due to an odor, Ricker and Munson found Larson's body about 200 feet away. *Huggins v. State*, 889 So. 2d 743, 750-751 (Fla. 2004).

[15] Creighton did not testify at Huggins' trial. (V31, R117). Her 1998 deposition is mentioned by the State at V31, R124. The deposition appears to have been filed in the court clerk's office on or around February 18, 1999.

[16] Creighton did not specify at what point in time she visited Florida in 1997. Larson disappeared on Tuesday, June 10, 1997. *Huggins v. State*, 889 So. 2d 743, 750 (Fla. 2004).

transportation. Creighton did not see Huggins drive any other car. (V31, R119, 122). Initially, Creighton said she and Huggins were continuously together from Tuesday through Thursday. (V31, R119, 120). However, Huggins may have left their hotel room to go to a store while she stayed behind.[17] (V31, R122-23, 126-27). Creighton returned to her home in Maryland within the week. (V31, R120).

Charlotte Green owned an excavation/land clearing company in 1997. (V31, R133-34). On Tuesday, June 24, 1997, Green was driving on the highway in the Melbourne area when Huggins came up "real fast" driving a Ford Explorer, and passed her. Huggins "jumped in front of" her. Green noticed that the all-white vehicle he was driving had been painted black on the rear door. (V31, R134, 137, 149). The next day, Green saw a television news report that Larson was missing along with her vehicle. (V31, R134-35, 138, 148). On Thursday, June 26, Green was driving to Shawny Kronfeld's[18] house when saw the same vehicle that had passed her on the highway was now parked near a fishing dock. Huggins was cleaning it out. (V31, R135, 137, 144; See, DAR,

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[17] Creighton said during her May 18, 1998, deposition, that she and Huggins visited his friend Kevin Smith on a "Tuesday" to buy marijuana. (V31, R125).

[18] Kronfeld was a contractor associated with Charlotte Green's excavation business. (V31, R133, 135).

V24, R999-1000). On Friday, June 27, Green went to Kronfeld's home to get a check that was owed to her, and again passed by the parked Ford Explorer. Green noticed that it was burned. (V31, R145). Sometime later, Green saw Huggins' picture in a newspaper after he had been arrested. (V31, R138-39, 150).

Corrections Officer Mark Thornton has worked in corrections since 1988. (V32, R169). In 1997 and 1998, he was working at the Orange County Jail. (V32, R167). Thornton saw Huggins almost every day and, in 1998, Thornton worked in the cell block where Huggins was housed. (V32, R168). Thornton recalled there was a problem with lice infestation among several inmates in the housing unit where Huggins was placed. He did not recall one way or the other if Huggins had the problem. (V32, R170, 173).

Sometime during the lice infestation problem, Thornton recalled a particular day when he was serving food to the inmates, including Huggins. (V32, R174-75). Huggins had stepped out of a shower when Thornton noticed Huggins' head was "stark white" as well as Huggins' pubic area. (V32, R176). Thornton said, "It was just kind of shocking" and "not typical" for an inmate to shave all the hair off his body. (V32, R187, 190). Thornton did not assume Huggins had shaved due to the lice problem, saying "I couldn't come to those conclusions." (V32, R187). At some point, Thornton said Huggins told him that he had shaved himself due to lice infestation. (V31, R176-77, 180, 186,

188). Thornton did not recall if he asked Huggins why he shaved or if Huggins volunteered the information. (V32, R177). Thornton told Huggins' trial attorney Robert Wesley that Huggins had shaved himself. (V32, R178).[19]

Raudel Vitier was an investigator for the public defender's office and worked on Huggins' trials. (V32, R234, 235). Vitier met with Huggins several times but could not recall specifics regarding the mitigation investigation. (V32, R236, 238, 258). Vitier did not have any concerns about Huggins' mental health. (V32, R258).

Vitier obtained Huggins' school records and contact information. He spoke to some of Huggins' family members. He

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[19] At this point, Huggins moved to dismiss his CCRC attorneys. Huggins asserted that CCRC had not provided him with any archived documents filed by the state attorney's office or any other law enforcement agency since 2005. He also claimed his lawyers had not investigated issues that "should be raised in the 3.851 motion." (V32, R204). The trial court informed Huggins that he could discharge his attorneys and represent himself; or the court could find cause for Huggins to dismiss them and appoint new attorneys. (V32, R220). It appears from Huggins' statements that the result he desired was delay in the proceedings. (V32, R226). After asking Huggins numerous questions, and determining Huggins had "certain issues dealing with his mental health," the trial court denied Huggins' motion to discharge counsel, making lengthy findings. (V32, R228-32). The court stated, "A defendant cannot choose when to cooperate and not cooperate when it benefits him." (V32, R221-23, 228-32). The court further denied Huggins' motions to dismiss CCRC and represent himself. (V32, R232, 233, 242, 280, 283; V33, R356-63). Huggins refused to answer the Court's repeated inquiry into the basis for the claim of incompetence on the part of CCRC. (V33, R362-4).

reported directly to Huggins' attorney, Robert Wesley. (V32, R256, 257). In addition, Vitier timed the drive from the Publix location where Larson was last seen to the dirt road where her vehicle was seen coming out of the wooded area near DisneyWorld. (V32, R262, 263, 264).

Vitier said Huggins' attorneys developed many leads and directed Vitier to follow up. (V32, R257). Vitier said Huggins "had a really strong command of the discovery documents." (V32, R258). Huggins pointed out inconsistencies in statements as well as timing issues related to witnesses' whereabouts. (V32, R269). However, Vitier said Huggins believed there was a "conspiracy" against him and "the powers that be" were "just trying to frame him" for Larson's murder. (V32, R259, 260-61).

Vitier was the contact person for potential witness Preston Ausley.[20] He kept in touch with Ausley prior to Huggins'

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[20] Preston Ausley was an "engineer" who worked at the Orange County Courthouse. *State v. Huggins*, 788 So. 2d 238, 241 (Fla. 2001). After Huggins' first trial had concluded, defense counsel learned of a statement Ausley had made to the State after he saw television coverage of Huggins' first trial. Ausley had claimed he saw a female, resembling Angel Huggins, driving Larson's car subsequent to Larson's murder. Ausley's statements were not disclosed to the Defense. Subsequent to learning of Ausley's statements, Huggins filed a petition for a writ of habeas corpus in the trial court, alleging that the State had withheld *Brady* material. *Brady v. Maryland*, 373 U.S. 83 (1963). Due to the pending petition, this Court relinquished jurisdiction over Huggins' first direct appeal. After an evidentiary hearing, the trial court granted Huggins a new trial, finding that the State

second trial. (V32, R265). Ausley indicated he was available and would testify at the trial. (V32, R266). However, after the trial started, "someone else" coordinated "who is doing what." (V32, R270). Vitier did not know why Ausley was not called as a witness in Huggins' second trial. (V32, R270).

Gregory Hill, co-counsel with Robert Wesley, joined the defense team just prior to Huggins' second trial. (V32, R284, 285). Hill questioned one witness during the guilt phase -- Officer Thornton. (V32, R285-86). Hill could not recall how Thornton had any knowledge whether or not Huggins had lice. (V32, R291). Hill was aware at the time of trial that the State possessed judgments and sentences for Huggins' prior felony convictions. Hill also knew the State could impeach any of Huggins' hearsay statements with his prior convictions. Therefore, Hill did his best to present evidence to the jury that Huggins had lice without presenting hearsay statements. (V32, R293). It was Hill's intent that the jury conclude Huggins had shaved himself because he had lice and not because he was trying to hide evidence. (V32, R293-94).

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had violated the dictates of *Brady*. The State appealed that ruling but this Court affirmed, finding that the suppressed evidence was material and failure to disclose it "resulted in a verdict not worthy of confidence." *See State v. Huggins*, 788 So. 2d 238, 244 (Fla. 2001). In the end, Ausley was not called as a witness in Huggins' second trial. (V32, R269).

Detective Cameron Weir, lead detective, received the missing persons report for Carla Larson on June 10, 1997. He met with Larson's husband Jim later that day. (V32, R299-300, 304). Weir interviewed John Ricker, Carla Larson's co-worker, on June 11. (V32, R305). Weir said Ricker told him what clothing Larson was wearing when she disappeared. Ricker said he had last seen Larson driving on Osceola Parkway before she disappeared. (V32, R306, 308, 309). Ricker also told Weir that he had not gone by himself to the location where Larson was eventually found. (V32, R318).

Robert Wesley, public defender for the Ninth Judicial Circuit, was Huggins' attorney for both trials. (V33, R365). Wesley, co-counsel Tyrone King,[21] or a staff member saw Huggins every week. Someone from the defense team had "very, very, frequent" contact with Huggins. (V33, R366, 367). Wesley was responsible for the mental health issues for Huggins' first trial in 1999. (V33, R368). Wesley "didn't have any concerns about (Huggins) competence. He was active and engaged with us at all times." (V33, R368). Huggins did not voice any concerns to Wesley about a conspiracy of people who acted in concert to get

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[21] Huggins fired Tyrone King subsequent to the conclusion of Huggins' first trial and after a new trial was granted. (V33, R367-68).

him accused and charged with this crime. (V33, R369). Wesley did not want to present a mental health expert on Huggins' behalf because "if we opened him up to examination by putting mental status into evidence, we would be fighting antisocial allegations ... and that was my overwhelming concern." (V33, R371). In Wesley's opinion, antisocial personality disorder is not a nonstatutory mitigator as "it's the most destructive evidence a jury can hear" because it allows the prosecutor to create a "great risk of having it poison the jury." (V33, R371).

Wesley had several mental health experts examine Huggins pre-trial. However, Wesley did not provide Huggins' Baker Act reports to them because, in his opinion, Huggins' ex-wife initiated the proceedings due to "more of a domestic feud rather than being based on a disorder." (v33, R373).

Wesley said Huggins was involved in charity work, religious ceremonies, and that his children loved him and relied on him. (V33, R375). Huggins was "extraordinarily involved and decisions were made with his counsel and with his consultation." (V33, R375). However, it was the defense team's strategy that Wesley would not present evidence during the 1999 penalty phase because "if the jury convicted ... they would be disbelieving of the lawyer that presented the information and argued that Mr. Huggins was not guilty." (V33, R375, 376). Wesley handled the guilt phase and the pre-trial penalty phase preparation. Co-

counsel Tyrone King, "being a young lawyer and even being nervous to argue for a man's life" presented evidence during the penalty phase. (V33, R376, 377).

Wesley consulted with Huggins on the 1999 penalty phase strategy. Although Huggins provided some information, "there was trauma he would not let me discuss." (V33, R377, 378). Wesley takes "directions from clients." (V33, R379, 382). Huggins was "very, very much a hands-on client," and was extremely involved in the discovery and preparation of the factual elements of his case. (V33, R383, 408). Wesley had daily discussions with Huggins. (V33, R385).

During the preparation for the 2002 penalty phase,[22] Wesley said Huggins "had made it clear that he was not as motivated at all to work on penalty and we proceeded on those grounds." (V33, R379, 380). Huggins fired Wesley and co-counsel Greg Hill prior to the penalty phase. Wesley became stand-by counsel. (V33, R380). However, "there was never a conflict" between Wesley and Huggins. (V33, R382). Many tactical decisions Wesley made were at Huggins' direction. (V33, R438). Huggins was "sophisticated" in statements he made to Wesley. (V33, R438, 439). Huggins supplied Wesley with "pieces" of information, but, rather than

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[22] Wesley did not have much contact with Huggins between the 1999 and 2002 trials. (V33, R381).

present "four, five different false versions" Wesley used the State's evidence to develop his defense. (V33, R439). However, it was a problem that Huggins said in a television interview, "I don't know if I killed Carla Larson or not." (V33, R458).

Wesley and Huggins did not have an acrimonious relationship -- Huggins worked hard with Wesley to sort through the evidence. (V33, R457-58).

At Huggins' direction, Wesley interviewed Huggins' sister as a potential witness for the penalty phase. (V33, R384). However, Wesley would not have called her as a witness because she would have argued that Huggins was not guilty, and therefore, would not have contributed to telling Huggins' "life story." In Wesley's opinion, she "would have been harmful rather than helpful." (V33, R384, 385). Wesley would have called Dr. Dee[23] as a witness for the penalty phase. (V33, R387). **Ultimately, Huggins directed Wesley not to subpoena any witnesses for the penalty phase**. (V33, R385).

Wesley said he and Officer Thornton were from the same area and talked about "high school football" when Wesley visited Huggins in the jail. Based upon their relationship, Wesley felt

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[23] Dr. Dee's July 17, 2002, report indicated Huggins suffered from brain damage as well as "a fairly long history of psychiatric abnormality." (V33, R388).

it was best to have Greg Hill examine Thornton "on a very simple matter" (the lice infestation). (V33, R391-92, 393). It was important that Huggins explain to the jury the reason why an individual would shave off all their body hair, and that it was not done for a nefarious purpose. (V33, R453, 456). However, Wesley did not know if Huggins had actually reported to jail personnel that he was infested with lice. (V33, R456). Wesley believed Thornton would testify about the "process" of reporting a lice problem, and not testify that Huggins made hearsay statements to him. (V33, R395-96, 453). Wesley would not speculate as to whether or not he would have done things differently than his co-counsel. (V33, R399, 400). Wesley and Hill did not discuss staying away from this issue because it was not "the crucial piece of evidence to break the case." (V33, R456-57).

Wesley deposed Shawny Kronfeld on April 2, 2002, prior to Huggins' second trial. (V33, R400). Wesley said Kronfeld indicated Charlotte Green could not have gotten a check from her until July 2, 1997, and not as Green said at trial.[24] (V33, R404). However, Huggins wanted Wesley to press the issue that a

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[24] Green testified at both the trial and the evidentiary hearing that Kronfeld issued a check to her on June 27, 1997. (See, DAR, V24, R1007, 1008; V31, R145).

Ford Explorer was not involved in this case. Huggins wanted Wesley to concentrate his cross-examination of Green on that issue. (V33, R405). In addition, Wesley said it was an issue that Green identified Huggins as the person driving the burned Ford Explorer, which was later identified as Larson's vehicle. (V33, R405, 452). Nonetheless, Wesley tried to present Green as a "Johnny-come-lately" who testified about something she had seen two years prior to the trial. (V33, R406).

Wesley did not call Tammy Creighton as an alibi witness for Huggins because Creighton and her sister, Angel Huggins, had reconciled before trial. Wesley said that, as a result of their reconciliation, Creighton would have been "unreliable." (V33, R407). Wesley did not call Preston Ausley as a witness due to "tremendous credibility" problems. (V33, R411). In Wesley's opinion, "The Ausley Issue"[25] made "Angel Mansfield Huggins the killer, and I thought for a manual strangulation case, that was going to be difficult, if not impossible." (V33, R451). In addition, Wesley thought Ausley was "a conspiracy theorist" as Ausley told Wesley that the State Attorney's Office "recorded" conversations that were held in the public defender's office. (V33, R451).

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[25] See footnote 20, above.

Wesley produced "as much activity as I ever remember" for the possibility of other suspects. (V33, R411). Most of the tip sheets from the police were pursued. (V33, R419). Huggins gave Wesley names of potential suspects. (V33, R411). However, Wesley did not believe John Ricker was a "credible suspect" for Larson's murder. (V33, R412). If he had presented Ricker as a potential suspect, Wesley believed the jury would think he was "slinging mud." (V33, R449).

The defense team constructed timelines for everyone, including Jim Larson. (V33, R417). Carla Larson went missing shortly after noon, and never returned home. Ricker was in the company of two co-workers from 12:00 p.m. until 1:00 p.m., and attended a work meeting from 1:00 p.m. until 1:30 p.m. (V33, R449, 450). As a result, Wesley determined **there was not sufficient time for Ricker[26] to commit the murder and timely return to work for his afternoon meeting.** (V33, R417). In addition, Wesley did not want to point "at everybody" as a potential suspect because he would "lose credibility." Further, "a skillful trial lawyer can't go and attack everybody in sight without it coming back on them." (V33, R418-19). Wesley's strategy was to point guilt at Kevin Smith because he was in

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[26] Wesley was aware of Ricker's prior arrest but said he did not know the full details. (V33, R418).

possession of the radar detector from Larson's vehicle. (V33, R450).

Wesley did not recall Huggins wearing a leg brace during the guilt phase of his second trial. (V33, R434, 435). He did not recall Huggins complaining about a leg brace, either. (V33, R436).

Wesley said Huggins was "a very motivated, involved client." Huggins was "somewhat combative" but Wesley is "a servant of a client. That's my job." (V33, R442). Wesley did not prevent Huggins from testifying, nor would he have done so if Huggins had chosen to testify. (V33, R442, 443). Huggins did not specifically tell Wesley that he drove Larson's vehicle to Brevard County but Wesley assumed Huggins had done so. (V33, R444). Huggins insisted that Larson's vehicle "was never spray painted." Therefore, Wesley took this statement as "direct knowledge." (V33, R445). Huggins also insisted "there was no ligature" used on Larson. (V33, R447). In addition, there was some direct confirmation from Huggins that he was present when Larson's vehicle was burned. (V33, R446-47).

Subsequent to Huggins' guilty verdict, Wesley said he was sure that Huggins would make his own presentation for the penalty phase. (V33, R448-49).

Wesley said he "might have done better" in presenting Huggins' case but only because "the jury convicted my client."

However, Wesley said he is "very self-critical" when he loses a case. (V33, R452).[27]

Dr. Robert Berland, forensic psychologist, reviewed voluminous documents related to Huggins which included the following: his notes from a September 19, 2006, interview he conducted with Huggins' mother; his notes from a joint interview conducted with Huggins and his former defense counsel Eric Pinkard along with Pinkard's investigators; and the results of the Minnesota Multiphasic Inventory Test ("MMPI") administered by Dr. Tressler to Huggins in 1995. (V33, R463-64, 465, 468). Berland also prepared a written report dated September 26, 2006. (V33, R475, 501). In Berland's opinion, he is "completely certain" that Huggins has "a long-standing psychotic disturbance, that he has been trying to hide it, that it particularly involves delusional, paranoid thinking, and that it pertains fairly specifically to his involvement in the legal process." (V33, R466). Berland said Huggins' mental illness is "biological ... once you have it, you have it for life, even

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[27] Huggins' attorney called Tyrone King as the next witness. King only represented Huggins during Huggins' first trial -- this Court vacated that conviction and sentence and remanded for a new trial. Because King only represented Huggins for his first trial, and the postconviction motion only applied to the second trial, and Huggins would not waive attorney-client privilege, the trial court excused King as a witness. (V33, R460-62).

though the symptoms may wax and wane." (V33, R466).

Berland said the MMPI[28] measures symptoms of mental illness and objectively measures the test-taker's attitude. Test results indicate whether the person is answering honestly, trying to appear more disturbed that they really are, or trying to hide disturbance. (V33, R468-69). Huggins "avoided" identifying items on the MMPI "if the content was obvious" but if the item had subtle content, he responded more appropriately. (V33, R471). In Berland's opinion, Huggins' results on the MMPI indicated he has problems which he is "trying very hard to hide." Huggins' elevated score on the "K" scale was an indication of delusional, paranoid thinking. (V33, R470). In Berland's opinion, even though Huggins was "trying not to admit to mental illness" he did so "in spite of himself." (V33, R472).

Berland explained that delusional, paranoid thinking occurs when a person believes he is vulnerable or in danger from something, but no amount of evidence will dissuade him. However, medication "dramatically" diminishes delusions. (V33, R472).

Berland reviewed the 1992 Baker Act report pertaining to Huggins. In Berland's opinion, the report supports a diagnosis for Huggins that he was a paranoid psychotic at the time of

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[28] Berland only administers an "incomplete MMPI" -- 370 of the 567 questions.

Larson's murder. (V33, R480, 481). However, a 1995 report written by Dr. Tressler indicated that, in Tressler's opinion, Huggins has antisocial personality disorder. (V33, R484, 485, 495). Based upon the Baker Act report and Tressler's report, in Berland's opinion, it would have been beneficial to "look beyond what that expert said, and investigate further in terms of mental health issues." (V33, R487-88). Berland said "it would be speculation" on his part to try to explain how Huggins' "mental illness" caused him to do what he did on the day of Larson's murder. (V33, R489). In Berland's opinion, Huggins was psychotic at the time of the offense. (V33, R491). Berland did not have any "evidence" that Huggins suffers from poor impulse control. (V33, R502). In addition, Berland could not say whether or not Huggins murdered Larson as a result of displaced aggression that was directed toward his wife, Angel. (V33, R502).

Berland did not discuss the facts of the murder with Huggins or Huggins' thought processes that occurred at that time. (V33, R492, 494, 504).

Berland said it is not uncommon for psychologists to arrive at different conclusions regarding a diagnosis. (V33, R494). However, Berland could not identify any authoritative treatises in the field of psychology that say an elevated K scale is associated with delusional, paranoid thinking. (V33, R499). Huggins' elevated K scale was indicative of an attempt to hide

mental illness. (V33, R506).

Berland concluded that Huggins suffers from paranoid schizo-affective disorder complicated by brain injury. (V33, R501). Berland said that he has diagnosed "a substantial number" of defendants as being paranoid. (V33, R507).

W.H.[29] testified against John Ricker in a 1983 criminal case. (V34, R518, 519). She said she would have been available to testify, albeit unwillingly, if she had been called at Huggins' 2002 trial and her testimony would have been consistent with the deposition she gave in 2006. (V34, R520, 521). Her deposition was proffered as an indication of the facts she would have provided. (V4, R379-405, V34, R523).

Jeffrey Ashton was the prosecutor in both of Huggins' trials. (V34, R542). The trial court sustained the State's objection to compelling Ashton to reveal his "state of mind" during the trial's closing argument regarding witness Charlotte Green. (V34, R542-53).

On November 18, 2012, the circuit court entered an order denying the post-conviction relief motion. (V5, R914-47). Notice of appeal was filed on December 7, 2010.

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[29] W.H. accused Ricker of sexual battery in Seminole County Case No. 83-2159CFA. (V4, R379-405).

SUMMARY OF ARGUMENT

The first two issues in Huggins' brief challenge his competency to proceed with his post-conviction relief proceedings. The collateral proceeding trial court found that Huggins was competent following lengthy evaluations and extensive testimony. Competent substantial evidence supports the finding that Huggins was competent to proceed.

Multiple claims of ineffectiveness of counsel are contained in Huggins' brief. The collateral proceeding trial court entered a detailed order denying relief on each claim. The denial of relief is supported by competent substantial evidence, and should not be disturbed. Further, a substantial number of the claims contained in Huggins' brief are insufficiently briefed, and do not supply a basis for relief for that additional separate and independently adequate reason.

Huggins' claim that the prosecutor violated *Giglio* by "knowingly arguing false facts" was denied following a hearing. The collateral proceeding trial court properly found this claim to be both procedurally barred and, alternatively, meritless.

The claim about "reward money" having been paid to Huggins' ex-wife Angel Huggins fails because, as the trial court found, there was a failure of proof. This "claim" is wholly speculative, and, since Angel Huggins did not testify, she is completely irrelevant to the case.

Huggins' "shackling" claim fails because it is procedurally barred, and because there was a failure of proof as to any guilt stage component of this claim, as the trial court correctly found.

ARGUMENT

ISSUES 1 AND 2: THE COMPETENCY CLAIM

On pages 44-67 of his brief, Huggins says that he was not competent to proceed at the time of the evidentiary hearing.[30] The post-conviction court found that Huggins was competent (after the proceedings over several years set out at pages 1-21, above). That result, when the histrionics of Huggins' brief are stripped away, is correct, and should not be disturbed.

The standard of review of a trial court's ruling on competency to stand trial is whether competent, substantial evidence supports the trial court's findings. *Mason v. State*, 597 So. 2d 776, 779 (Fla. 1992). However, there is at least some authority for the proposition that the findings of the trial court are reviewed for abuse of discretion. *See, Hardy v. State*, 716 So. 2d 761, 764 (Fla. 1998); *Hunter v. State*, 660 So. 2d 244, 247 (Fla. 1995). And, "[i]n situations where there is conflicting expert testimony regarding the defendant's

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[30] Issues 1 and 2 concern the same facts, and are combined here for convenience.

competency, it is the trial court's responsibility to consider all the evidence relevant to competency and resolve the factual dispute. *Hunter v. State*, 660 So. 2d 244, 247 (Fla. 1995), *cert. denied*, 516 U.S. 1128, 116 S.Ct. 946, 133 L.Ed.2d 871 (1996); *Watts v. State*, 593 So. 2d 198, 202 (Fla. 1992)."). *Hardy v. State*, 716 So. 2d 761, 764 (Fla. 1998). There is no error in the trial court's resolution of this claim, which remained in active litigation for 3 years.[31]

In finding Huggins competent to proceed, the collateral proceeding trial court entered an order that discussed, at length, the proceedings on the issue and the evidence produced. That court ultimately found as follows:

> In order to determine whether a defendant is competent to proceed at trial or in postconviction proceedings, the court must decide whether the defendant "has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960); *Carter v. State*, 706 So. 2d 873 (Fla. 1997); *see also* § 916.12(1), *Fla. Stat.*; *Fla. R. Crim. P.* 3.211(a)(1), 3.851(8)(A). In cases where there is conflicting expert testimony regarding the defendant's competency, it is the court's responsibility to resolve the factual dispute. *Hunter v. State*, 660 So. 2d 244, 247 (Fla. 1995).
>
> Applying the *Dusky* standard and based upon the evidence presented at the hearing, this Court has no

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[31] On page 45 of his brief, Huggins fails to mention the extraordinary writ proceedings in Case Number SC10-1614.

> hesitation in concluding that the Defendant is competent to proceed in this postconviction proceeding. Although the experts appointed by this Court previously found that the Defendant suffered from an active mental illness or was delusional and in need of psychotropic or antipsychotic medications, these experts did not have the opportunity to observe the Defendant on a daily basis. Further, two of the three court appointed experts stated or implied that the Defendant could be malingering and he should be placed in a state forensic facility for treatment and observation. The expert at the state forensic facility, Dr. Kopestskie, observed the Defendant over a period of time, tested the Defendant and consulted with the other experts and concluded that the Defendant is feigning his psychiatric symptoms and is competent to proceed. This Court finds Dr. Kopestskie's testimony and report to be convincing and therefore finds that the Defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him. Further, this Court finds that the Defendant has the capacity to manifest appropriate courtroom behavior, as he did so during the hearing on this matter. Finally, this Court finds that the Defendant has the capacity to testify relevantly.

(V4, R713-4). That order is supported by competent substantial evidence, is not an abuse of discretion, and should not be disturbed. When the constitutional pretensions of Huggins' brief are stripped away, nothing remains beyond Huggins' dissatisfaction with the result.

Throughout Huggins' various arguments about the competency issue, an underlying theme is Huggins' (or maybe counsel's) complaint that Huggins was not "medicated" in an effort to "make him competent." This argument comes from Huggins' evident belief that if an **evaluating** mental health professional (who by

definition will not be treating the defendant) suggests that psychotropic medication might (or by inference might not) benefit the defendant, then the **treating** mental health professional has no choice but to administer medication regardless of whether the defendant meets the established criteria for the forcible administration of such medication. As set out above, the physicians responsible for treating Huggins were of the opinion that medication was not indicated. See Pages 4-5, 15, 19, above. It is simply absurd to suggest that those physicians were not in the best possible position to determine the efficacy of psychotropic medication in this case. And, had Huggins been forcibly medicated, that would likely be the claim before this Court.[32]

Moreover, the record of the evidentiary hearing includes numerous interactions between the trial court and Huggins. Those exchanges show Huggins to be alert, articulate, and focused in his statements. Moreover, those arguments by Huggins indicate a desire to derail the proceedings by being allowed to discharge CCRC, "review the discovery," **and then decide how he wanted to proceed**. (V32, R223). Those actions are not the actions of an incompetent individual -- they are the actions of a death row

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[32] To the extent that Huggins says he did not "have his own" competency expert, the true facts are that Dr. Carpenter testified for Huggins, as did Dr. Berland.

inmate who clearly understands that delay of any sort is to his advantage.[33]

Further, in its order denying post-conviction relief, the trial court said:

> On October 20, 2009, the Court entered an Order Finding Defendant Competent to Proceed. The Florida Supreme Court granted the State's Motion to Dismiss Unauthorized Appeal; *Huggins v. State, 29* So. 3d 291 (table) (Fla. 2010).
>
> On December 15, 2009, Mr. Huggins filed a *pro se* Motion to Vacate 3.851 Motion, which was not considered because he was (and continues to be, as of the date of this Order) represented by counsel.
>
> On July 1, 2010, CCRC filed a Certified Motion for Competency. Determination based on Dr. Richard Carpenter's testing and analysis. After a hearing on July *15, 2010,* the Court granted the Motion and appointed Drs. Danziger and McClaren. However, Mr. Huggins refused to cooperate with them.
>
> On August 11, 2010, the Court entered an Order on Claims to be Heard at Evidentiary Hearing, ruling that all claims set forth in the June 6, 2006 Motion to Vacate Judgment and Sentence could be addressed and that the hearing could proceed under *Florida Rule of Criminal Procedure* 3.851(g)(1), regardless of the status of Mr. Huggins' competency, because none of the claims required his input.
>
> On August 17, 2010, CCRC filed a Petition for Writ of Prohibition in the Florida Supreme Court, seeking to

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[33] Huggins' actions certainly suggest that he does not like his CCRC attorneys. However, not liking one's attorney is not legally sufficient reason to discharge them and replace them with counsel who, for the moment, is "liked" by the defendant. Assuming *arguendo* that *Nelson v. State,* 274 So. 2d 256 (Fla. 4th DCA 1973) is applicable to a 3.851 proceeding, Huggins did not satisfy its requirements.

stop the evidentiary hearing from proceeding until the issue of Mr. Huggins' competency had been resolved. The Florida Supreme Court denied the writ on August 23, 2010; *Huggins v. State,* 2010 WL 3385470 (table) (Fla. August 23, 2010) (unpublished disposition). The hearing proceeded as scheduled.

The evidentiary hearing was conducted over the course of four days, from August 23, 2010 to August 26, 2010. John Steven Huggins was present each day, along with David Gemmer and James Viggiano of CCRC. Ken Nunnelly and Jeff Ashton were present on behalf of the State of Florida.

Mr. Huggins addressed the Court on several occasions, expressing his wish to fire CCRC and dismiss the pending Rule 3.851 motion, which he argued was illegally filed by CCRC. He asserted that he was competent and that his attorneys had failed to provide him with any documents regarding the case or conduct adequate preparation.

The Court reminded Mr. Huggins that he had been given the opportunity to appear telephonically from the Department of Corrections on July 30, 2010 to address his complaints about counsel, but he had refused to participate. The Court also advised him: "The only way to get to the bottom of this is for you to cooperate with the experts to assess your mental condition at this time." However, Mr. Huggins consistently responded that he would refuse, fearing the doctors would again find him incompetent.

The Court noted that Mr. Huggins was presumed to be competent, since that was the most recent ruling, but counsel had raised a last-minute challenge to his competency again in the July 1, 2010 motion. In an abundance of caution, the Court ordered the additional evaluations and concluded it would be necessary to make a new ruling on Mr. Huggins' competency before allowing him to make decisions such as firing his attorneys or withdrawing the pending Rule 3.851 motion. **If Mr. Huggins had agreed to be evaluated by the doctors, the issue might have been resolved prior to the evidentiary hearing, but his own actions thwarted such an outcome. Therefore, the Court refused to consider his request to fire CCRC prior to or during the hearing.**

> Finally, the Court notes that Mr. Huggins denied participating in the preparation of the instant Motion or even signing it. However, the pleading filed on June 5, 2006 contains an oath of verification with his signature, which is consistent with the signature affixed to the various letters and pro se pleadings he has sent. Therefore, the Court finds that he did sign the Motion to Vacate Judgment of Conviction and Sentence prior to any suggestion that he was incompetent, and that there is no procedural impediment to going forward with a ruling on the merits.

(V5, R915-17). Those findings are correct and should not be disturbed.

Finally, a review of the claims contained in Huggins' *Initial Brief* establishes that Huggins' input was not required as to the claims addressed at the evidentiary hearing. None of those claims required his input, as he quite simply could add nothing to them

Ultimately, Huggins' claim of incompetency fails because he is not incompetent -- the testimony from the treating physicians after long-term treatment establishes that fact by clear and convincing evidence. In addition, Huggins' behavior during the evidentiary hearing, and his interaction with the trial court, leaves no doubt about his competence to proceed. His complaint about being required to attend the evidentiary hearing is spurious. Huggins has no right to the tried *in absentia*, and the fact that it did not help his cause for the trial court to observe his behavior and demeanor means nothing. His presence in court aided the court in its truth-seeking function, which,

after all, is the reason for the proceeding in the first place. Any other result would be a gross manipulation of the system by a defendant who has proven adept at doing so. The denial of relief should be affirmed.

ISSUE 3. THE INEFFECTIVENESS OF COUNSEL CLAIMS

On pages 68-91 of his brief, Huggins raises multiple specifications of ineffective assistance of counsel at the guilt and penalty phases of his capital trial. Each discrete claim was addressed by the post-conviction trial court, which properly denied all relief.

The standard of review applied by an appellate court when reviewing a trial court's ruling on a rule 3.850 motion following an evidentiary hearing is: "As long as the trial court's findings are supported by competent substantial evidence, 'this Court will not "substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court."'" *Blanco v. State*, 702 So. 2d 1250, 1252 (Fla. 1987), *quoting Demps v. State*, 462 So. 2d 1074, 1075 (Fla. 1984), *quoting Goldfarb v. Robertson*, 82 So. 2d 504, 506 (Fla. 1955); *Melendez v. State*, 718 So. 2d 746 (Fla. 1998). Whether counsel was ineffective under *Strickland v. Washington*, 46 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), is reviewed *de novo*. *Stephens v. State*, 748 So. 2d 1028 (Fla.

1999) (requiring *de novo* review of ineffectiveness of counsel claims); *Sims v. State*, 754 So. 2d 657, 670 (Fla. 2000). Both prongs of the *Strickland* standard, deficient performance and prejudice, present mixed questions of law and fact, which are subject to *de novo* review. *Cade v. Haley*, 222 F.3d 1298, 1302 (11th Cir. 2000) (stating that, although a district court's ultimate conclusions as to deficient performance and prejudice are subject to plenary review, the underlying findings of fact are subject only to clear error review, *citing Byrd v. Hasty*, 142 F.3d 1395, 1396 (11th Cir. 1998); *Strickland,* 466 U.S. at 698 (observing that both the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact).

The collateral proceeding trial court made extensive findings as to the various claims contained in Huggins' brief.[34] Those findings, which are set out herein, are correct, are supported by competent substantial evidence, and should not be disturbed in any way:

> Mr. Huggins alleged counsel failed to adequately present evidence of viable alternative suspects, whom he identified as John Ricker, Deryck Katwaroo, Sashtri Harninan, Rishan Sagar, and Calvin Rewis. He argued this would have raised a reasonable doubt as to his

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[34] The claims are addressed in the order in the same order in which they appear in Huggins' brief. Circuit court claims which have been abandoned on appeal are omitted.

guilt.

John Ricker: Mr. Ricker was the Centex Rooney employee who discovered Carla Larson's body on June 12, 1997. Mr. Huggins noted that on December 29, 1983, Mr. Ricker was arrested and thereafter charged with the kidnapping, sexual battery, and battery of a-young blond woman in Seminole County, citing case number 83-002159CFA. He argued counsel should have presented the facts of this case under the "Reverse *Williams'* rule," as well as evidence that Mr. Ricker had the opportunity to murder Carla Larson on June 10, 1997.

In its written Answer, the State argued there was no reasonable probability of a different outcome from such a strategy, because Mr. Ricker was with Ramon Walby and Fred Kitchens at the time the offenses were committed. The three testified they were on their way to lunch in the same vehicle when Ms. Larson passed them, and they remained in each other's company continuously until all three returned to the job site at about 1:00 p.m. In addition, Brad Wilson and Barry O'Hearn testified they saw a white SUV being driven by a man in the same area and at the same time that Ms. Larson disappeared, and Floyd Sparks testified he saw a white SUV in the area where her body was subsequently discovered. *See* Exhibits A, B, and C attached to the State's Response, as well as the portions of the 1999 and 2002 trial transcripts cited in the Response.

> [FN1]*Williams v. State,* 110 So. 2d.654, 658-663 (Fla. 1959); *see also* §90.404(2), Fla. Stat.; *Simpson v. State, 3 So.* 3d 1135, 1145 n.6 (Fla. 2009) (reverse *Williams* rule evidence is evidence of a crime committed by another person that a defendant offers to show his or her innocence of the instant crime)

On August 26, 2010, during the evidentiary hearing, Mr. Huggins called [W.H.], the victim in the 1983 case, as a witness. She testified she would have been available to testify, albeit unwillingly, if she had been called at the trial in 2002 and her testimony would have been consistent with the deposition she gave in 2006. Her deposition was proffered as an indication of the facts she would

have provided.

Mr. Huggins also called trial counsel Bob Wesley as a witness. However, Mr. Wesley testified he did not consider Mr. Ricker to be a credible suspect. The defense team made a strategic decision to focus on Kevin Smith as a suspect and believed it would be a poor strategy to "attack everybody in sight."

Although both victims were young, blond women who were abducted, taken to wooded areas, and choked, Ms. [H] was sexually assaulted with a flashlight while there was inconclusive evidence of sexual battery on Ms. Larson; Ms. [H] was handcuffed at the wrists and tied with shoestrings at the legs while Ms. Larson was not; and Ms. Larson was murdered while Ms. [H] was not. Furthermore, counsel for Mr. Huggins acknowledges that Mr. Ricker entered a plea to a substantially lesser charge.

The Court finds that the facts of the 1983 case were not sufficiently similar to those in the instant case to qualify for admissibility as reverse *Williams* rule evidence. Furthermore, the Court finds that Mr. Ricker was not a viable alternative suspect and there is no reasonable probability that the outcome of Mr. Huggins' trial would have been different if defense counsel had attempted to portray him as such.

. . .[35]

Claim I-B: Mr. Huggins alleged counsel failed to properly challenge the State's "consciousness of guilt" evidence, noting the State theorized that he shaved his pubic region to avoid the collection of physical evidence. Crime scene technician Norman Henderson testified he could not collect a hair sample on May 12, 1998 because the doctor said the area was "devoid of hair." Mr. Huggins argued counsel should have filed a motion to preclude this testimony because the

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[35] The omitted part of the order concerns ineffectiveness with respect to other "alternative suspects" that has been abandoned on appeal.

witness had no personal knowledge of when the shaving occurred and thus, the State would not have been able to pursue the consciousness of guilt argument.

In addition, defense witness Mark Thornton, a corrections officer, testified there were infestations of body lice at the Orange County jail and Mr. Huggins shaved his pubic region after complaining of lice. When asked how he knew it was because of the lice, Mr. Thornton responded, "that's what he said." The State used this hearsay statement to introduce nine prior felony convictions, and Mr. Huggins now argues counsel opened the door to this damaging impeachment evidence by presenting Mr. Thornton's testimony in a manner that called for a hearsay response. He also argues counsel should have called as witnesses jail inmates who had also shaved their pubic hair because of the lice outbreak.

In its written Answer, the State argued Mr. Thornton "placed the act of Huggins shaving himself as a single occasion shortly before the State representative arrived to take pubic hair samples" and contends that no objection would have been sustained because consciousness of guilt evidence was admissible. The State did not address the claims relating to the introduction of prior felony convictions or the calling of inmate witnesses.

On August 24, 2010, Mr. Thornton testified as follows. There were problems with crab lice on Mr. Huggins' wing at the jail. The usual procedure required the inmates to show an officer the lice on a piece of tape, whereupon they would receive medicated shampoo and a change of clothes and linens. Mr. Huggins said he had shaved because of the lice infestation, which was not a typical reaction. **The only way Mr. Thornton would have known Mr. Huggins had lice was because Mr. Huggins told him.**

Also on August 24, 2010, trial counsel Gregory Hill testified as follows. He was the defense team attorney who questioned Mr. Thornton. He believed he could address the lice issue without having to elicit hearsay testimony, and expected only a yes or no response to the question of whether Mr. Thornton had personal knowledge of whether Mr. Huggins had lice. The goal of this line of questioning was to convey to

the jury that Mr. Huggins shaved because of the lice and not because he was trying to hide evidence.

On August 25, 2010, trial counsel Bob Wesley testified as follows. Mr. Hill's question allowed the prosecutor to admit numerous conviction documents. He believed it was his error in allowing another attorney to handle that part of the case, but he thought Mr. Thornton was being called solely to address the procedure the jail used when an inmate had lice.

During closing arguments on August 26, 2010, counsel for Mr. Huggins argued that Mr. Thornton's testimony was only intended to cover the procedures for discovering and treating lice. The State argued that it appeared defense counsel had been trying to convince the jury of a fact he could not actually prove by asking a compound question - "after Mr. Huggins complained of lice, did you see him with his hair shaved?" - believing it would be answered affirmatively. If Mr. Thornton had simply said yes, the defense team could have argued to the jury its interpretation of the response. Furthermore, the Court had instructed the witness not to give a hearsay response, but he did so anyway, perhaps not understanding the instruction.

There was no indication that Mr. Huggins told his defense counsel about his statement to Mr. Thornton, or that Mr. Thornton told counsel what Mr. Huggins had said. It is undisputed that Mr. Hill asked a question that was inherently "dangerous." He did not know exactly how the corrections officer would respond, and in retrospect, it is clear the question had the potential to elicit a hearsay response and *thereby* open the door to impeachment. However, while Mr. Huggins may have established deficient performance on the part of trial counsel, he cannot establish prejudice. **There is simply no reasonable probability that the introduction of the prior convictions made a difference in the outcome of the case.**

Claim I-C: Mr. Huggins alleged counsel failed to present available documentary and witness testimony that would have raised a reasonable doubt as to his guilt. He listed Preston Ausley, Eileen Manning,

Benjamin Akers, Shawny Kronfield, Lillian Brandell, Tammy Creighton, Angel Huggins, Jonathan Huggins, and Robin Mansfield.

Preston Ausley:[36] Mr. Huggins alleged Mr. Ausley would have testified to "seeing a female similar in appearance to Angel Huggins driving a white car with a tag number virtually identical to the tag affixed to Carla Larson's white Ford Explorer" after June 10, 1997. He argued this would have cast doubt on the state's theory that he was the only one who possessed the vehicle between June 10, 1997 and June 26, 1997; linked Ms. Huggins to evidence in the murder; and substantiated a conspiracy between Ms. Huggins, Kevin Smith, and Faye Blades to pin the murder on him.

In its written Answer, the State presented a lengthy argument. It was the State's initial failure to disclose to the defense the fact that Mr. Ausley contacted the State Attorney's office after seeing Angel Huggins on the television coverage of the first trial that led to a new trial. However, in his 1999 habeas petition, Mr. Huggins alleged the value of Mr. Ausley's testimony lay primarily in the fact that it would have contradicted the testimony Ms. Huggins had given in the 1999 trial,[FN2] whereas in the 2002 trial, Ms. Huggins was not called as a witness, so there was nothing to impeach. The State further argued that it would have been detrimental to the defense to offer testimony showing that Mr. Huggins' wife, who had traveled to Orlando with him, was in possession of the murder victim's vehicle. Finally, the State argued Mr. Ausley would have been impeached with his multiple conflicting statements, citing nine examples.

On August 25, 2010, trial counsel Mr. Wesley testified that he thought Mr. Ausley had "tremendous credibility

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[36] At the November 11, 2000, argument on the State's appeal from the grant of a new trial, Huggins' attorney told this Court that he would "definitely" call Ausley in a retrial. His later testimony about Ausley's "tremendous credibility problems" raises several issues, but does not affect the outcome of this proceeding.

problems." He also opined the State "did a great job of modifying its case and taking the Angel Huggins issue away" from the defense. After discussing the issue with Mr. Huggins, Mr. Wesley decided not to call Mr. Ausley as a defense witness.

> [FN2] Mr. Huggins alleged: "It is important to note the majority of the State's case stemmed from the assertion of Angel Huggins that John Huggins was in possession of a white Ford Explorer. She attempted to gain credibility by stating that she was never inside the vehicle. The evidence from Preston Ausley is favorable to the Defendant." *See* his Argument and Memorandum in Support of a Finding a Violation of *Brady v. Maryland,* dated June 1, 1999, a copy of which is attached to the State's. Response as Exhibit E.

There was no need for the defense to present a witness to contradict Ms. Huggins' testimony, **since she was not a witness at the second trial, and Mr. Ausley would have been impeached with his inconsistent statements. There is no reasonable probability the outcome of the trial would have been different if counsel had called him.**

Eileen Manning: Mr. Huggins alleged Ms. Manning would have testified that while she was working at Publix on June 10, 1997, a white male with short blondish hair picked up an order of sandwiches for "Carla." He argued Ms. Manning was familiar with Ms. Larson and had seen her in the store to pick up food on other occasions, and this man was a viable alternative suspect in the murder.

In its written Answer, the State argued the testimony of Ms. Larson's co-workers would have contradicted that of Ms. Manning. Cynthia Garris, an office manager with Centex Rooney, testified that Ms. Larson was going to pick up food for a meeting and get lunch. Ms. Larson intended to drive to a Goodings, but Ms. Garris recommended the nearby Publix, which had only been open for a month, and gave Ms. Larson directions to the store, because Ms. Larson did not know where it was. **There was no testimony that Ms. Larson called in a deli order or bought one or more sandwiches; by**

contrast, the receipt of her transaction, which was entered into evidence at trial as State's Exhibit 11, showed that she bought pita bread, fruit, and pretzels.

On August 23, 2010, Ms. Manning testified she had served Ms. Larson two or three times and asserted she had come in with co-workers wearing construction outfits. She claimed to have taken an order for a turkey sub, but it was not a girl's voice on the phone; a man picked up the order, but she did not speak to him. When asked if anyone reminded her of the person who picked up the sandwich, she identified Jim Larson, the victim's husband, saying he had eyes similar to those of the person she saw.

Ms. Manning would not have been a credible witness. Her testimony would have been contradicted by Mr. Larson's co-workers, and it is likely the transaction she recalled had nothing to do with Ms. Larson. There is no reasonable probability the outcome of the trial would have been different if counsel had called her.

. . .

Shawny Kronfield: Mr. Huggins alleged Ms. Kronfield could have testified to witness Charlotte Green's "motivation to be in the limelight and center of attention." He argued this would have impeached Ms. Green, who had identified him as driving the white Ford Explorer. He contended the State relied heavily on her testimony but acknowledged the State admitted her alleged sightings were not credible as to location.

In its written Answer, the State argued this claim was insufficient because Mr. Huggins failed to specifically identify the testimony counsel could have elicited from Ms. Kronfield. The State further argued it was impossible to determine whether "what sounds like reputation impeachment evidence" would even have been admissible.

On August 23, 2010, the defense called Charlotte Green rather than Ms. Kronfield and attempted to introduce her deposition to show inconsistencies in her testimony. At trial in 2002, she claimed that a white SUV, partially painted black, nearly ran her off the

interstate (I-95) as she was on the way to deliver a check to Ms. Kronfield on June 24, 1997; on June 26, 1997, she saw the SUV parked near the river, then she saw it burned out; and finally, she saw it being loaded onto a wrecker.

Ms. Kronfield's testimony about Ms. Green's desire to be in the limelight would not have been admissible, because it was merely a lay opinion, and it would have been cumulative to other impeachment. There is no reasonable probability the outcome of the trial would have been different if counsel had called her.

Lillian Brandell:[37] Mr. Huggins alleged Ms. Brandell would have provided "valuable alibi testimony" about his location when Ms. Green allegedly saw him driving the white Ford Explorer. He further alleged she could have testified about phone calls that would have placed him at the Royal Mansion Hotel when the Explorer was burned on June 26, 1997.

In its written Answer, the State argued Ms. Brandell's testimony at the 1999 trial demonstrates that she would not have been a helpful witness. She testified that starting on June 22, 1997, she had stayed five nights at a rental condominium complex with Mr. Huggins, Tammy Creighton, and their children, and she walked on the beach for most of that time. Thus, she could not have refuted Ms. Green's testimony about seeing Mr. Huggins driving the white Ford Explorer on I-95, because she was not with Mr. Huggins

Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have called Ms. Brandell as a witness. **Therefore, the Court finds that he has failed to meet his burden of proof.** Furthermore, there is no reasonable probability the outcome of the trial would have been different if counsel had called her.

Tammy Creighton: Mr. Huggins alleged Ms. Creighton

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[37] On page 86 of his brief, Huggins says this claim required his "input." He does not explain why that is true, nor does he explain any other aspect of this claim.

also could have provided valuable testimony as to his whereabouts on the dates Ms. Green allegedly saw him driving the white Ford Explorer. He further alleged she would have established Angel Huggins' motivation to fabricate evidence against him and would have provided an alibi for the evening of June 26, 1997, when the Explorer was seen burning.

In its written Answer, the State acknowledged that Ms. Creighton (like Ms. Brandell) was with Mr. Huggins from June 22, 1997 through June 26, 1997 at the beachside condominium. However, she admitted that on June 24 (when Ms. Green claimed the SUV nearly ran her off the road), Mr. Huggins might have taken her van and gone out to get cigarettes. She also admitted in her deposition that she was drinking to the point of intoxication, which would have provided a basis for impeaching her recollection of the details of anything that happened that week. Finally, the State argued that Mr. Huggins did not specify how Ms. Creighton could have shown that Ms. Huggins had a motive to fabricate evidence.

On August 23, 2010, Ms. Creighton testified she was with Mr. Huggins continuously from "Tuesday through Thursday" (June 24-27, 1997) and admitted they were having an affair at the time. However, she acknowledged that she was "not saying he was never out of my sight." Furthermore, Mr. Wesley testified that by the time of trial, Ms. Creighton had reconciled with her sister, Angel Huggins, and he believed that she would be unreliable as an alibi witness.

Counsel had a reasonable, strategic reason for not calling Ms. Creighton as an alibi witness, and there is no reasonable probability the outcome of the trial would have been different if counsel had called her.

Angel Huggins:[38] Mr. Huggins alleged that Ms. Huggins'

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[38] Huggins says his "input" was needed on this claim. He does not explain why that is so, and has not carried his burden. In addition to having been correctly decided by the circuit court,

testimony would have established "her strong motivation to fabricate evidence" against him. He argued she wanted to obtain reward money, she was angry about his affair with Ms. Creighton, she was personally involved in criminal activity with him, she wanted to keep secret her involvement in the adult entertainment industry, and she wanted to hide "her own and/or Kevin Smith's involvement with the murder of Carla Larson." He noted there was a "magical discovery" of Ms. Larson's jewelry at the home of Ms. Huggins' mother, Fay Blades, in a shed that police had searched several times. Finally, he argued the jury never heard that Ms. Huggins told Robin Mansfield she blacked out for two hours on June 19, 1997 or that she tried to influence his son Jonathan to implicate him.

In its written Answer, the State argued several of these issues (the reward money, the affair, the criminal activity, the searches of her mother's house) were brought out during the 1999 trial but made no difference in the outcome of that case. The State further argued it was not clear how her desire to keep her exotic dancing career secret was related in any way to a motive to implicate her husband in the murder, and pointed out that her blackout was the result of Mr. Huggins choking her into unconsciousness following an argument, which counsel did not want the jury to hear. Finally, the State argued that at the 2002 trial, Mr. Wesley and Mr. Huggins jointly decided not to ask Jonathan (Mr. Huggins' son) any more questions about whether Ms. Huggins influenced his statement, so it would have made no sense to call Ms. Huggins to pursue the matter. Her testimony in 1999 placed him directly across the street from the Publix where Ms. Larson was kidnapped, and she said he returned later that day, winded and sweaty,

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this claim is insufficiently briefed, and relief should be denied for that additional, independently adequate, reason. *Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990) ("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived."); *see also Simmons v. State*, 934 So. 2d 1100 (Fla. 2006) (same).

with a bump or scratch on his head, driving a white Ford Explorer.

Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have called Ms. Huggins as a witness. Therefore, the Court finds that he has failed to meet his burden of proof.

Furthermore, Ms. Huggins had given highly incriminating testimony on behalf of the prosecution during the 1999 trial. **It would not have been reasonable for counsel to believe that she would have suddenly become useful to the defense during the 2002 trial.** There is no reasonable probability the outcome of the trial would have been different if counsel had called her.

Jonathan Huggins:[39] Mr. Huggins alleged his son would have testified how Angel Huggins influenced his testimony and could have described the car he (Mr. Huggins) was driving on June 10, 1997, which would have shown that it was not Ms. Larson's white Ford Explorer. He argued the State was permitted to read Jonathan's prior testimony into evidence.

In its written Answer, the State offered no argument with respect to this claim.

Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have called Jonathan as a witness. Therefore, the Court finds that he has failed to meet his burden of proof. There is no reasonable probability the outcome of the trial would have been different if counsel had called him.

Robin Mansfield:[40] Mr. Huggins alleged Ms. Mansfield

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[39] Huggins says his "input" was needed on this claim. He does not explain why that is so, and has not carried his burden. This claim is insufficiently briefed. *Duest, supra; Simmons, supra.*

[40] Huggins says his "input" was needed on this claim. He does not explain why that is so, and has not carried his burden. This

would have testified that Ms. Huggins claimed to have suffered a "black out" for a period of time on June 10, 1997. He argued Ms. Mansfield's testimony of what Ms. Huggins told her was "incriminating as to Angel's involvement in the murder of Carla Larson and provides further evidence of Angel's motivation .to fabricate evidence against Mr. Huggins."

In its written Answer, the State argued this claim was insufficient, and further restated the argument set forth above that Ms. Huggins suffered a black out because Mr. Huggins choked her into unconsciousness following an argument. The State contended it would have been "the height of folly" for counsel to call this witness to put this damaging testimony before the jury.

Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have called Ms. Mansfield as a witness. Therefore, the Court finds that he has failed to meet his burden of proof. There is no reasonable probability the outcome of the trial would have been different if counsel had called her.

Claim I-D: Defendant alleged counsel failed to challenge the State's case; citing Christopher Smithson, Charlotte Green, Kevin Smith, Charles Lacorte, Dr. Sashi Gore, the reward money paid to Angel Huggins and others, the jewelry found in the shed, and his own testimony.

Christopher Smithson:[41] At trial, Mr. Smithson identified Mr. Huggins as the driver of a white Ford Explorer he saw in a wooded area near the Osceola Parkway.

Mr. Huggins alleged counsel failed to use expert

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claim is insufficiently briefed. *Duest, supra; Simmons, supra.*

[41] This is the only claim that is addressed out of order in Huggins' brief. This component, which is found on page 89 of the *Initial Brief,* is insufficiently briefed,. *Duest, supra; Simmons, supra.*

witness testimony to describe the time, distance, speed, and line of sight available to Mr. Smithson at that location, and argued this would have shown the jury that the identification was not credible. He also alleged counsel should have used E-Pass documents that would have placed the Explorer many miles from Mr. Huggins on June 10, 1997.

On August 24, 2010, collateral counsel asked Detective Cameron Weir about photos which appeared to show barricades in the road that would, in theory, have made it impossible for the Ford Explorer to have turned in the direction to which Mr. Smithson had testified at trial. There was no other evidence or testimony regarding Mr. Smithson at the hearing. It is unlikely that questions regarding the barricades would have cast doubt on the credibility of Mr. Smith's identification of Mr. Huggins as the driver of the vehicle. The Court finds that there is no reasonable probability the outcome of the trial would have been different if trial counsel had asked these questions. Counsel asked no questions regarding E-Pass documents and offered no argument regarding this issue. Therefore, Mr. Huggins did not meet his burden of proof.

Charlotte Green: At trial, Ms. Green was another witness who placed Mr. Huggins in possession of a white Ford Explorer. Mr. Huggins alleged counsel failed to cross-examine her about her prior inconsistent statements and also failed to bring out newspaper articles stating the white vehicle had been painted black in an unprofessional manner. He argued this would have refuted the State's argument that Ms. Green could not possibly have known the vehicle had been painted black unless she had seen it herself, since the fact of the painting was widely published in the media.

At the evidentiary hearing, Ms. Green repeated her 2002 trial testimony that she saw Mr. Huggins driving the white Ford Explorer, the back of which had been painted black, and she saw the vehicle two days later, after it had been burned. When shown her 2006 deposition and asked about the apparent inconsistencies, she acknowledged hearing about the

case in the media and did not mean to say otherwise. **She explained that she only meant she had not seen any news reports about Mr. Huggins being arrested.**

In closing argument, the State argued Ms. Green was thoroughly impeached at trial and additional impeachment would not have made a difference. She adequately explained the inconsistency at the evidentiary hearing. This Court finds that there is no reasonable probability the outcome of the trial would have been different if trial counsel had attempted to conduct additional impeachment.

Kevin Smith: At trial, Mr. Smith testified that Mr. Huggins dropped off a white Ford Explorer at his residence in the Cocoa Beach area, and he later discovered a radar detector. Mr. Huggins alleged counsel should have presented Mr. Smith's prior statement that he wiped the radar detector clean for fingerprints before hiding it, arguing this would have established "consciousness of guilt" on Mr. Smith's part. He also alleged counsel failed to investigate Mr. Smith's alibi, investigate the identities of the occupants of the duplex where Mr. Smith lived with Kimberly Allred, and present evidence of the relationship between Mr. Smith, Angel Huggins, and Ms. Allred, which would have demonstrated the opportunities they had to manufacture evidence against him.

On August 25, 2010, trial counsel Bob Wesley testified that the defense was focused on portraying Mr. Smith, who discovered the victim's body, as the real suspect, rather than John Ricker. Mr. Wesley wanted to show that Mr. Smith had the vehicle and could have painted it and also focused on Mr. Smith's relationship with Ms. Huggins. However, collateral counsel asked few questions about the allegations set forth above and failed to present any substantive evidence or testimony. Therefore, the Court finds that Mr. Huggins has failed to meet his burden of proof.

Furthermore, the Florida Supreme Court opined that there was competent, substantial evidence presented at trial to support the carjacking, kidnapping, petit theft, and murder convictions and that the evidence was inconsistent with the defense theory that Mr.

Smith was the killer. *See Huggins v. State, 889* So. 2d 743, 766-767 (Fla. 2004):

> We also conclude that evidence presented at trial was inconsistent with the defendant's theory of events. The primary issue in dispute at trial was identity. Defense counsel argued to the jury that the State's case was circumstantial in nature and did not preclude the possibility that Kevin Smith was the killer or that the victim voluntarily accompanied her killer from Publix. However, testimony identifying Huggins as the driver of a white Ford Explorer which exited the wooded area where Larson's body .was found, placing an unfamiliar white SUV at Huggins' mother-in-law's house, and identifying Huggins as the driver of a partially spray-painted SW in the area where Larson's spray-painted vehicle was later burned contradicts the Smith-as-killer theory. Furthermore, testimony indicating Larson expected to return to work shortly after going to Publix, together with the reasonable inference that Larson, a wife and mother, would not have voluntarily accompanied Huggins from Publix to a wooded area, contradicts the hypothesis that [Larson] was not kidnapped prior to her murder.

The Court finds that there is no reasonable probability the outcome of the trial would have been different if trial counsel had pursued Mr. Smith as an alternate suspect.

. . .

Dr. Sashi Gore:[42] At trial, Dr. Gore testified that

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[42] In addition to having been correctly decided by the circuit court, this claim is insufficiently briefed, and relief should be denied for that additional, independently adequate, reason. *Duest, supra; Simmons, supra.*

Carla Larson's cause of death was strangulation. Mr. Huggins alleged Dr. Gore "detailed the constant fear the victim would suffer through `intermittent strangulation,' and argued that although counsel properly objected, counsel should have called an independent medical examiner to dispute these speculations. He also alleges counsel should have objected to Dr. Gore's testimony regarding maggots on the body and the existence of bone exposure due to an animal "chewing through."

Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have challenged Dr. Gore's testimony. Therefore, the Court finds that he has failed to meet his burden of proof.

Furthermore, counsel filed a motion *in limine* at trial to prohibit testimony about the psychological effects of strangulation. The trial court denied the motion but limited testimony regarding fear, and the Florida Supreme Court found no error on appeal. *Huggins v. State*, 889 So. 2d 743, 764-765 (Fla. 2004). Finally, the medical examiner's testimony regarding maggots and bone exposure was relevant to establish how long the victim had been deceased when her body was found. The Court finds there is no reasonable probability the outcome of the trial would have been different if counsel had challenged Dr. Gore's testimony.

Reward money paid to Angel Huggins and others:[43] In her deposition, Ms. Huggins testified that she received a $5,000 reward from Centex Rooney, Inc. Mr. Huggins alleged counsel failed to investigate the timing and circumstances of the payment of the reward money, and argued counsel would have been able to show the jury that the initial tip linking him to the murder was motivated by financial reward. He further alleged counsel failed to discover the payment of reward money

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[43] In addition to having been correctly decided by the circuit court, this claim is insufficiently briefed, and relief should be denied for that additional, independently adequate, reason. *Duest, supra; Simmons, supra.*

to other state witnesses and/or informants.

Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have raised the issue of the reward money paid to Angel Huggins or anyone else. In addition, he failed to identify anyone else who received reward money. Therefore, the Court finds that he has failed to meet his burden of proof.

Furthermore, Ms. Huggins did not testify at the 2002 trial, so there was no need to impeach her and no way to introduce this particular evidence.[44] The Court finds there is no reasonable probability the outcome of the trial would have been different if counsel had attempted to do so.

Jewelry found in the shed:[45] At trial, Fay Blades testified that in a shed behind her house, she found jewelry that was later identified as belonging to Carla Larson. Mr. Huggins alleged counsel failed to file a motion in limine based on the State's failure to produce a witness who saw him enter the shed between June 10, 1997 and the time the jewelry was discovered. He argued no witness had personal knowledge of who put the jewelry there and its discovery was not relevant since he had no ownership interest in the shed or any dominion and control over its contents.

Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have raised the issue of the jewelry found in the shed. Therefore, the Court finds that he has failed to meet his burden of

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[44] Huggins says that his "unavailability" kept him from developing this claim. *Initial Brief*, at 89. Since Angel Huggins did not testify at trial, nothing Huggins could have said on the subject would have been relevant and admissible.

[45] In addition to having been correctly decided by the circuit court, this claim is insufficiently briefed, and relief should be denied for that additional, independently adequate, reason. *Duest, supra; Simmons, supra.*

proof.

Furthermore, Fay Blades was Mr. Huggins' mother-in-law at the time of the murder, which made the discovery particularly relevant. **The Court finds there is no reasonable probability a motion *in limine* would have been granted merely because no one saw Mr. Huggins place the jewelry in the shed or because he had no right to ownership or control over its contents.**

Testimony of Mr. Huggins: Mr. Huggins alleged counsel failed to call him as a witness on his own behalf. He argued his testimony would have raised a reasonable doubt as to his guilt. He further argued the harm was exacerbated by counsel's opening the door to the introduction of his prior felony convictions, which "eviscerated any strategic reason for counsel not calling [him] to the stand."

Mr. Huggins did not allege that he told counsel he wanted to testify, nor did he set forth the specific testimony he would have given, and he did not present any evidence or testimony during the evidentiary hearing to support this claim. Therefore, the Court finds that he has failed to meet his burden of proof.

Furthermore, trial counsel Bob Wesley testified that although he had no specific recollection of discussing the issue with Mr. Huggins, he did so with every client, and Mr. Huggins was very involved in the case. He asserted that he "never put a seat belt on the chair" or told a client he was not getting up [to testify] because he was a "facilitator" and testifying is a defendant's constitutional right.

(V5, R918-42). (emphasis added). Those finding are correct, are supported by the evidence, and should not be disturbed. Further, a number of the claims contained in Huggins' brief, which are identified above, are insufficiently briefed in that they contain no more than a conclusory argument for relief that does nothing to identify any alleged error by the trial court.

Regardless, this claim turns entirely on its facts, and those facts were found by the trial court and establish no basis for relief.

On pages 90-91 of his brief, Huggins raises a claim of penalty phase ineffectiveness as well as a claim of "cumulative error." Huggins was *pro se* at the penalty phase of his trial, and, for that reason, no ineffectiveness of "penalty phase counsel" claim will lie. Huggins' representation of himself cannot, by definition, have been constitutionally ineffective. To the extent that Huggins says that he should have been allowed to litigate the ineffectiveness of counsel at the first, vacated, penalty phase, the true facts are that that proceeding was set aside on Huggins' motion. The retrial was a wholly new proceeding as a matter of law. *See, e.g., Lebron v. S*tate, 982 So. 2d 659-660 (Fla. 2008). To the extent that the sentencing court gave Huggins the benefit of the doubt by considering the mitigation evidence from the vacated trial, **there was no requirement that the trial court do that, and there would have been no error had that review not been undertaken**. As it is, Huggins received a windfall. That did not, however, pierce the attorney-client privilege in the face of Huggins' explicit refusal to waive the privilege as to prior penalty phase counsel. *Johnson v. State*, 608 So. 2d 4, 10 (Fla. 1992). In any event, the benefit devolved to Huggins, since the State was

deprived of any opportunity to inquire into prior counsel's work in this case. Huggins received all of the benefit, and suffered no prejudice.

In addition, the collateral proceeding trial court made the following findings with respect to this claim, which are correct in all respects:

> Mr. Huggins alleged counsel failed to investigate mental mitigation evidence to present in his case. He argued counsel failed to develop testimony that at the time of the murder, his ability to conform his conduct to the requirements of law was substantially impaired and he was under the influence of extreme mental or emotional disturbance. He acknowledged that counsel retained a mental health expert, but argued the expert was not provided with prior MMPI records, juvenile records, court records, school records, DOC records, and lay witness testimony. Finally, he alleged counsel should have retained an expert who could have investigated psychological mental illness beyond brain damage issues. He concluded that because counsel had not developed the available mental mitigation evidence, he could not make a well-informed decision whether to act as his own counsel during the penalty phase (which he did).
>
> On August 25, 2010, Mr. Wesley testified that Mr. Huggins was "extraordinarily involved" in preparing for the penalty phase and all decisions were made with his counsel and consultation. Mr. Wesley believed if the defense team opened Mr. Huggins to examination, they "would be fighting anti-social allegations in this case" which would have been the most destructive evidence the jury could hear, because it presented a great risk of allowing the prosecution to poison the jury. Finally, he testified Mr. Huggins would not discuss trauma associated with his parents' divorce, and it was very difficult to obtain information about his childhood. Mr. Wesley concluded that it was Mr. Huggins' direction *not* to put on a substantial penalty phase presentation.
>
> **Cumulative effect**: Mr. Huggins asked the Court "not to

> view the ineffectiveness claims in a piecemeal fashion but to consider the deficiency and prejudice prongs of the *Strickland* analysis in a cumulative fashion.
>
> The Florida Supreme Court has held: "The legal standard is reasonably effective counsel, not perfect or error free counsel." *Teffeteller v. Dugger,* 734 So. 2d 1009, 1022 n.14 (Fla. 1999). Although trial counsel candidly admitted to certain mistakes, the Court finds his performance was outside the wide range of reasonable professional assistance.
>
> On the contrary, Mr. Wesley's testimony at the evidentiary hearing established that he was thoroughly prepared for trial, made reasonable strategic decisions, and provided Mr Huggins with quality legal representation throughout both trials.

(V5, R942-43). The claim that an "effective mitigation case at the first trial" would have compelled a different result at the second trial is frivolous -- there is no legal support for that claim. Likewise, the claim that Huggins' decision to proceed *pro se* at the penalty phase was not an informed one has no legal basis. There is no requirement that a defendant be informed of every possible bit of mitigation before he can be permitted to proceed *pro se*, and, in any event, any claim of inadequacy in the waiver of counsel should have been raised on direct appeal. That claim is procedurally barred here. In any event, there is no support in the evidence for the claim that there was anything less than a full investigation of mitigation, which succeeded in doing no more than demonstrating that Huggins is an anti-social personality disordered individual. That does not help. There is no basis for relief,

and the collateral proceeding trial court should be affirmed in all respects.

ISSUE 4: THE "*GIGLIO*"-CLOSING ARGUMENT CLAIM

On pages 91-95 of his brief, Huggins says that the State committed a *Giglio* violation by "knowingly arguing false facts" to the jury. The circuit court denied this claim following a hearing, and the standard of review is that set out at pages 54-55, above.

The trial court said:

> The prosecutor argued Charlotte Green "had absolutely no way of knowing that the car had been painted black other than by seeing it." He argued the State had expressly caused the information about the "unprofessional paint job" to be broadcast in the hope of finding a witness who had seen a white Ford Explorer with black paint.
>
> Mr. Huggins was not referring to the testimony of a witness, but to a statement by the prosecutor. This was actually a substantive claim of an improper closing argument, which should have been raised on direct appeal. Therefore, this claim is procedurally barred. *Ferrell v. State,* 29 So. 3d 959, 977 (Fla. 2010).
>
> Furthermore, to establish a *Giglio* violation, it must be shown: (1) the testimony given was false, (2) the prosecutor knew the testimony was false, and (3) the statement was material. *Id.* at 976-977 (Fla. 2010), *citing Guzman v. State, 868* So. 2d 498, 505 (Fla. 2003). The evidence is material if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. *Id.* **Ms. Green acknowledged that she heard about the case in the media, but she was adamant that she personally saw a white Ford Explorer that had been partially spray-painted black.** This Court finds that Mr. Huggins cannot establish that her testimony was false or that the prosecutor knowingly made a false statement. Alternately, the Court finds the statement was not

material in the sense that it could have affected the judgment of the jury.

(V5, R944). (emphasis added). This claim, as the trial court found, is procedurally barred because it could have been but was not raised on direct appeal. Alternatively and secondarily, this claim is meritless, as the trial court also found. Both of those findings are correct, and both should be affirmed in all respects.

ISSUE 5: THE "ANGEL HUGGINS-REWARD" ISSUE

On page 95 of his brief, Huggins says that he "does not waive" a *Brady* claim related to the payment of a reward to Angel Huggins because his "incompetence" prevented him from "providing input" into this claim. Because Higgins was not incompetent to begin with, that claim fails. In any event, this claim was denied following an evidentiary hearing, and the standard of review set out at pages 54-55, applies.

In ruling on this claim, the trial court said:

> Mr. Huggins alleged the State committed a *Brady* [footnote omitted] violation by failing to reveal impeaching information that state witnesses had been paid monetary rewards. He argued Angel Huggins admitted in deposition that she received $5,000 from Centex Rooney, and newspaper articles outlining the reward offer through Crimeline indicated there was at least $15,000 available. He further argued payment of reward money by Centex Rooney, through Crimeline, was imputed to the State, and at least $10,000 of reward money was not accounted for.
>
> As set forth above, Mr. Huggins did not present any evidence or testimony during the evidentiary hearing to explain why counsel should have raised the issue

> of the reward money paid to Angel Huggins [FN4] or anyone else. **Furthermore, he failed to identify anyone else who received reward money. It was merely speculative to assert that any of the additional money available was paid to any witness. Therefore, the Court finds that he has failed to meet his burden of proof.**
>
> [FN4] Mr. Huggins obviously knew about the reward money paid to Ms. Huggins.

(V5, R945). (emphasis added). Those findings are correct in all respects and should be affirmed. Any suggestion that Huggins' "input" is necessary as to this claim makes no sense. The fact that Angel Huggins received some reward money was known to trial counsel based on her deposition taken before the first trial. It is equally well known that Angel Huggins did not testify in the second trial, making her irrelevant to the case in all respects. Huggins' "input" was simply not possible as to this claim, and the claim to the contrary has no basis in fact.

ISSUE 6: THE "SHACKLING" CLAIM

On pages 95-99 of his brief, Huggins says that he was "shackled" during his trial, and that counsel was ineffective for not objecting to that fact. This claim was denied following an evidentiary hearing, and the standard of review is that set out at pages 54-55, above.

In its order denying relief on this claim, the circuit court said:

> Mr. Huggins alleged he was compelled to wear a leg brace during the guilt and penalty phases of his trial, and counsel failed to effectively object

during the guilt phase. He argued he raised the issue twice when representing himself during the penalty phase but the Court denied relief both times based on his prior convictions and sentences and findings that the restraints were not visible to the jury.

On August 25, 2010, Mr. Wesley testified that he remembered a restraint being used at the trial in Jacksonville [the 1999 trial]. He described it in detail as a hinged metal brace with belted fasteners and a spring-loaded pin that could lock the knee in place. However, he did not remember a brace being used in Tampa [the 2002 trial] and also did not remember Mr. Huggins complaining about it, although he did not have a present recollection of either.

Mr. Huggins did not present any evidence or testimony to support the claim that he was shackled during the guilt phase of the 2002 trial. Therefore, the Court finds that he has failed to meet his burden of proof. [FN5] **Furthermore, the nature and extent of the 17-page argument set forth in the instant motion indicated that he was actually challenging the trial court's denial of his *pro se* request to remove whatever shackle he might have been wearing rather than counsel's purported failure to object. Such a claim is procedurally barred because it could have been raised on direct appeal.** *Floyd v. State,* 18 So. 3d 432, 457 (Fla. 2009).

> [FN5] Collateral counsel did make a last-minute effort to obtain this information from authorities in Hillsborough County, without success. Counsel also sought a continuance to address this issue at a later time, which was denied.

(V5, R945-46). Those findings are correct, and should be affirmed in all respects. The procedural bar finding is correct, and disposes of this claim. Likewise, the failure of proof finding as to any guilt stage component is correct.

This claim is also contained in Huggins' contemporaneously-

filed petition for writ of habeas corpus, which is case number SC12-2161. That is where this claim belongs, rather than in this proceeding.

CONCLUSION

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

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by U.S. E-MAIL on February 12, 2013: **David R. Gemmer**, gemmer@ccmr.state.fl.us and support@ccmr.state.fl.us.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,

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