

APPENDIX

A

ORDER DENYING DEFENDANT'S
MOTION FOR POST CONVICTION RELIEF

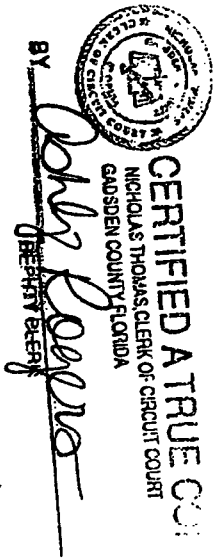
IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND FOR
GADSDEN COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO. 2005-844CF

HERNANDEZ DANIELS
DEFENDANT



ORDER DENYING DEFENDANT'S
MOTION FOR POST CONVICTION RELIEF

THIS CAUSE came before the Court on a series of documents filed by Defendant's Hernandez Daniels asserting various claims under Rule 3.850 Florida Rules of Criminal Procedure.

Defendant's Documents

Mr. Daniels filed the following documents asserting claims under Rule 3.850.

- a. Application Motion Under Rules 3.850 to Vacate, set aside or correct sentence filed on January 14, 2013.
- b. Memorandum of Points and Authorities in Support of Motion for Post-Conviction Relief Pursuant to Florida Rules of Criminal Procedure 3.850 filed January 14, 2013.
- c. Motion to Amend Memorandum of Points and Authorities in Support of Motion for Post-Conviction Relief Pursuant to Florida Rules of Criminal Procedure 3.850 filed March 26, 2013.
- d. Mr. Daniel's Response in Opposition to the State's Response to Mr.

Daniel's Motion for Post-Conviction Relief filed April 13, 2013.

The Court issued an Order setting Claims 1, 3, and 11 for evidentiary hearing. The Court denied Claims 2, 4, 5, 6, 7, 8, 9, and 10.

An evidentiary hearing was conducted on July 22, 2016. The Defendant was not present but appeared by telephone. The Defendant currently has a Federal life sentence. The Court found that Defense Counsel made every reasonable effort to secure the presence of the Defendant to no avail.

At the conclusion of the evidentiary hearing, the Court permitted the parties to file closing arguments. The Court has reviewed the record and the closing arguments and responses thereto and otherwise being fully advised in the matter hereby finds as follows:

Claim One

Defense trial counsel rendered deficient performance by failing to call alibi witness Renardo Daniels at trial.

Defendant alleges that trial counsel was ineffective for failing to call as an alibi witness his brother., Renardo Daniels. Mr. Renardo Daniels testified at the hearing that he was present at the trial and was never called as a witness either by the State of Florida or by the defense. Mr. Renardo Daniels testified at the evidentiary hearing that had he been called by the defense to testify that he would testified before the jury that his brother was nowhere near the murder in that he was delivering medical supplies. Mr. Renardo Daniels testified that the night of the murder his brother picked him up around 8PM and he was with him

until he completed his deliveries around 4am. He testified that at no time did he or his brother come near to where the victim was murdered.

Clyde Taylor trial counsel testified that he did not see the need to call Renardo Daniels as a witness considering the State's theory of the case. The State of Florida theory of the case was that the Defendant Daniels was a principal to murder not the actual killer.

Under the standard set out in Strickland vs. Washington, 466 US 668, 104 S.Ct. 2052, 80 L. Ed2d 674 (1984) and Johnston vs. Tucker, 70 So.3r 472, in order for a Defendant to prevail in an ineffective assistance of counsel claim he must satisfy two requirements. First, a defendant must show that counsel's action or omissions were deficient and, second, the deficiency established must further be shown to have affected the proceeding that confidence in the outcome is undermined.

Under the first prong of the standard set forth in Strickland, "judicial scrutiny of counsel's performance must be highly deferential" and added that "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance". Id

The Court clarified that this reference to "highly deferential scrutiny" referred only to the first or performance prong of the test and meant that:

"...the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'"

Strickland v. Washington. 466 U.S. at 689-691.

The Court added that:

“strategic choices made after through investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments supports limitations or investigation. In other words, counsel has a duty to make a reasonable decision that makes particular investigations unnecessary.” Id.

Trial Counsel testified that the defense had two theories, “one was the evidence clearly suggested that the homicide was committed by one person” ... The second theory of defense was someone else did it, specifically Anna Chukes. Mr. Taylor testified that the State’s theory of the case was the principal theory of felony murder. The State theorized that the Defendant hired another person to kill the victim and did not actually commit the homicide himself. Under the State’s theory, the need for Mr. Daniel to be present at the crime scene did not exist. Mr. Taylor testify that under the State’s theory and the defense theories the need for an alibi witness for the early morning hours of the shooting never really came to the fore with the defense team.

Mr. Taylor’s decision not to pursue a theory of defense which would have necessitated an alibi witness was one of strategy and must be given deference by this Court. A review of the hearing transcript demonstrates that the defense had a strategy that did not contemplate the use of an alibi witness. The Court finds the Defendant has not put forth any evidence that the failure to call an alibi witness was not a reasoned trial strategy of the trial counsel. Further, the

defendant has failed to establish that the strategy put forth by the trial counsel was outside of the standard of professionalism as required by Strickland vs. Washington, Id.

Claim one is hereby DENIED.

Claim Three

Trial counsel rendered deficient performance by failing to call Tara Daniels at trial.

Mr. Daniel alleges that trial counsel rendered insufficient performance for his failure to call as a defense witness the Defendant's wife at the time of trial and ex-wife at the time of the evidentiary hearing. The Defendant alleges that had Ms. Daniel been called as a defense witness she would have testified that when the Defendant arrived home on the night/early morning of the murder his demeanor did not appear to be out of character.

The Court does not note that Ms. Daniels failed to appear at the post-conviction hearing. Mr. Baya Harrison advised the Court that he personally spoke with Ms. Daniels and that she was served with a subpoena.

Trial counsel, Clyde Taylor testified that just as he did not believe there was a need for an alibi witness in the defense strategy he did not believe he needed testimony from the Defendant's wife, Tara Daniels that the Defendant did not behave differently when he came home 5:30AM. Mr. Taylor testified that the State's theory of the case against which he was defending did not suggest the Defendant committed the murder. Because the Defendant was not alleged to have

been the actual shooter Mr. Taylor did not see the need to call Ms. Daniel as a witness.

Mr. Taylor's decision not to pursue a theory of defense which would have necessitated calling as a witness Tara Daniels was one of strategy and must be given deference by this Court. A review of the hearing transcript demonstrates that the defense had a strategy that did not contemplate the Defendant as the actual shooter so his demeanor was not at issue. The Court finds the Defendant has not put forth any evidence that the failure to call Tara Daniels was not a reasoned trial strategy of the trial counsel. Further, the Defendant has put forth no evidence that the strategy engaged in by the trial counsel was outside of the standard of professionalism as required by Strickland vs. Washington, Id.

Claim Three is hereby DENIED.

Claim Eleven


Trial counsel rendered deficient performance by failing to object to a Brady violation for failure of the State to disclose two "cardboard notebook backs" containing notes taken from one of the State's witnesses.

The Defendant alleges that a Brady violation occurred because the State failed to produce the notes of witness Willie Nelson written on the back of a cardboard notebook. Further trial counsel was deficient in his performance because he failed to object or filed a Brady violation motion.

The testimony of trial counsel as does the Court record refute this claim.
The records were produced on May 22, 2006. Claim Eleven is therefore DENIED.

IT THEREFORE ORDERED AND ADJUDGED that the Defendant's
Motion for Post-conviction relief for the reasons set forth above is hereby
DENIED. The Defendant is hereby advised that he has thirty (30) calendar days
from the date of rendition of this order to seek review in the First District Court of
Appeals 2000 Drayton Drive Tallahassee, Florida 32399-0950.

DONE AND ORDERED in Chambers at Quincy, Gadsden County, Florida
on this ¹⁴20 day of May 2019.


Barbara K. Hobbs
Circuit Judge

Copies provided:

Hernandez Daniels, Defendant
Baya Harrison, Defense Attorney
Stephanie Morris, ASA

APPENDIX

B

**FIRST DISTRICT COURT OF APPEAL
ORDER AFFIRMED DECISION**

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-260

HERNANDEZ DANIELS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Gadsden County.
Barbara K. Hobbs, Judge.

August 28, 2020

PER CURIAM.

AFFIRMED.

ROBERTS, OSTERHAUS, and M.K. THOMAS, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

Hernandez Daniels, pro se, Appellant.

APPENDIX

C

SUPREME COURT OF FLORIDA ORDER
DISMISSING PETITIONER'S CASE

Supreme Court of Florida

MONDAY, NOVEMBER 9, 2020

CASE NO.: SC20-1632

Lower Tribunal No(s).:

1D20-260; 202005CF000844AXXXMX

HERNANDEZ DANIELS

vs.

STATE OF FLORIDA

Petitioner(s)

Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

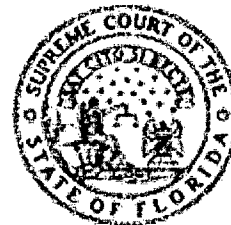
A True Copy

Test:



John A. Tomasino

Clerk, Supreme Court



td

Served:

TRISHA MEGGS PATE

HERNANDEZ DANIELS

HON. BARBARA KAYE HOBBS, JUDGE

HON. NICHOLAS THOMAS, CLERK

HON. KRISTINA SAMUELS, CLERK

APPENDIX

0

FDLE INVESTIGATIVE REPORT

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On August 3, 2002, a confidential source identified as Constance Dupont who was working for the Florida Department of Law Enforcement was executed inside her residence in the City of Havana. The execution was determined to be the result of her cooperation with law enforcement, and involved an individual who had been a major supplier of narcotics in the Gadsden County area.

This investigative report is predicated on the interview of Willie Nelson (Nelson). On March 14, 2005, Special Agent (SA) James Biddle met with Nelson at the Coleman Federal Correctional Institution in Coleman, Florida. The interview was in reference to obtaining a sworn taped statement from Nelson documenting his knowledge of the Dupont murder.

On January 3, 2005, SA Biddle met with Nelson and obtained a statement from him with regard to his knowledge of the Dupont murder. (See Investigative Report #94 of this case file.)

In his interview on March 14, 2005, Nelson stated that while in the Federal Detention Center in Tallahassee, Florida, he met Hernandez Lopaz Daniels. Nelson had made some statements that he wanted an individual in one of his cases killed. Daniels overheard Nelson and told him of his friend, Fernando Taylor (AKA: Wolf). Daniels said that for a fee, he could get Taylor to take care of any business that Nelson needed. Daniels gave Nelson a scenario as to how he had a female named Constance (Dupont) murdered. Daniels told Nelson that the murder took place in Havana, Florida. Daniels told Nelson that he took Taylor over to where Dupont lived and Taylor shot through the window of Dupont's home. After the murder happened, Daniels said they took off running. Daniels said that he knew the job had been taken care of, and that Dupont was dead.

Nelson added during this interview that Daniels and his brother, Delovontez Washington, had a problem with an investigator from the area named Jim Corders. (Jim Corders is a member of the Gadsden County Sheriff's Office Narcotic Unit.) Nelson stated that Corders had investigated Daniels and Washington. Daniels said that he and Washington followed Corders from Quincy into Tallahassee. Daniels said that they followed Corders to an area pool hall. Daniels told Nelson that Washington was going to hurt Corders, and that they had followed him to the pool hall for that specific reason. Daniels said that Washington did not follow through with the plan. Daniels said that the time and location was just not right for Washington to go through with it. Nelson was unable to provide any additional information with regard to the investigation.

Case Number: TL-01-0060	Serial #: 107
Author: Biddle, Walter James	Office: Tallahassee
Activity Start Date: 03/14/2005	Activity End Date: 03/14/2005

Approved By: Ellis, Michael Richard

Description: Taped sworn statement received from Willie Nelson

THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

Case Number:	TL-01-006f	
IR Number:	107	

The audiocassette tape and transcript of Nelson' statement will be maintained in the Related Items Section of this case file and entered as Related Item #60.

Nelson provided two (2) cardboard notebook backs in which he took notes of what Daniels and he and discussed during their encounter back in January 2004. The notes will be maintained in the Related Items Section of this case file and entered as Related Item #61.

The investigation into the murder of Constance Dupont is ongoing.

TESTIMONY OF APPELLANT

B

APPENDIX

1 A She could testify to that.

2 Q Is there anything else she could testify to?

3 A No.

4 Q All right. Did you tell Mr. Taylor about what she
5 might be able to testify to?

6 A Yes.

7 Q You did. And did you ask him to call her as a
8 witness?

9 A Yes. Ms. Monica also Jordan also, she could
10 testify to it.

11 Q All right. Now, I'd like to ask you about your
12 claim number 11. Judge Sjostrom ruled that you were
13 entitled to an evidentiary hearing on claim number 11. He
14 summarized it on page 13 of his order as follows. Alleged
15 Brady violation for failure to disclose two cardboard
16 notebook backs containing notes taken by one of the
17 witnesses.

18 which witness had information about two cardboard
19 notebook backs, or had written something on those backs?
20 Who was that witness?

21 A Willie Nelson.

22 Q Okay. And do you recall what Willie Nelson
23 testified to at your trial? Did he testify for you or
24 against you?

25 A Against me.

1 Q Against you. And what did he say that was
2 damaging to you? What did he say that you claim was not
3 true?

4 A Say that again.

5 Q What did Willie Nelson testify to at trial, as you
6 recall?

7 A That was not true? That I admitted to him that I
8 had Constance DuPont killed, that I paid Fernando Taylor to
9 do it. That I went to Sunshine Trailer Park in Leon County
10 and knocked on her door and walked up to -- then Fernando
11 Taylor walked up to her door, shot her and ran off.

12 Q All right.

13 A And more stuff, but I can't remember everything.

14 Q Okay. Let me ask you this. What is it that was
15 written on the cardboard notebook back? What were the notes
16 that were written?

17 A I don't know. They wasn't ever disclosed to us.
18 I never received a copy of the cardboard notes.

19 Q Well --

20 A Due to the cross examination.

21 Q Okay. And you feel those would have been
22 important for you and for your --

23 A It would have contradicted his story from the
24 stand. Backing up the notes would have been the same as
25 what he testified to.

1 Q All right. Did you tell Mr. Taylor about this?

2 A No. I only discovered the notes -- about the
3 cardboard notes when I was doing my 3.850 motion. Mr.
4 Taylor filed a motion for the State to turn over all Brady
5 materials.

6 Q All right.

7 A They didn't turn over that. They had that
8 evidence, and didn't turn it over.

9 MR. HARRISON: All right. Your Honor, since we're
10 limited to those claims, and since I believe Mr. Taylor
11 is going to testify and I can ask him about claim 11,
12 there's no need to have to do this twice, those are all
13 the questions I have.

14 THE COURT: All right. Cross.

15 MR. COMBS: Just a couple of questions.

16 CROSS EXAMINATION

17 BY MR. COMBS:

18 Q Mr. Daniels, you knew Fernando Taylor, correct?

19 A Yes.

20 Q And he was often referred to as Wolf?

21 A Yes.

22 Q That was his nickname. And I understand that when
23 you met with your attorney, Mr. Taylor, you told Mr. Taylor
24 you did not pay Fernando Taylor to kill Constance DuPont, is
25 that correct?

APPENDIX

F

TRIAL ATTORNEY MR. TAYLOR'S TESTIMONY

1 Q John Miller? Do you recall what he said in his
2 statements about that we -- that I and somebody went there,
3 I and Mr. Taylor went to the apartment and killed her, but
4 then the testimony on the stand that was a lie, that I
5 didn't tell him none of that, and other snitches are lying
6 on me, because --

7 A Yes, I know a couple of the snitches were making
8 statements that were not consistent with non snitch
9 witnesses.

10 Q But John Miller, the actual witness for the State,
11 was called by the State, but he changed the testimony to
12 tell the truth --

13 A Miller came in and said he was not going to say
14 what the State wanted him to say. It was so powerful that
15 we did not even cross examine Mr. Miller when he came in.

16 Q Okay. Did the State Attorney ever reduce the two
17 cardboard notebooks, or a copy of them? They never did --
18 reduce those, did they?

19 A We keep talking about the cardboard. All I know
20 is I saw written documents or notes that were supposedly
21 taken, and there were some that were block printed. We made
22 a big deal about that, and the issue concerning these
23 specific ones I don't recall right now, but I had everything
24 at the time of the trial and I had the documents in order to
25 cross examine the witnesses that the State put on. And I

1 think the record shows that.

2 Q Okay. But the State never did produce a copy of
3 those?

4 A I'm sorry?

5 Q Did you ever get a copy -- ask for the Brady
6 material, and did the State produce a copy of those, a
7 physical copy of the two cardboards? They never produced
8 that, did they?

9 A I didn't get the cardboard, no. But we had the
10 documents. We had copies of writings of witnesses. I don't
11 know how to answer that question.

12 Q What I'm trying to go at, the statement never had
13 the actual words that came over the cardboard. It's just
14 had the words through the cardboard that was written, and
15 the State never produced those two cardboards copies of
16 those cardboards for you. After you asked for all the Brady
17 materials, and even though it was Brady, most of that, they
18 didn't produce all the evidence around. So what I'm saying
19 is that they never physically actually produced a copy of
20 those cardboards to you. They produced a copy of the
21 overall, but never actually produced a copy, a physical copy
22 of those two cardboards. Is that correct?

23 A I don't recall that. My recollection is that I
24 had all the discovery, and before we start a trial we go
25 down through the checklist of everything that has been

1 provided, and basically one or two of us read off a
2 document, and then we find it and make sure it's there. I
3 don't see anything to indicate I didn't have that discovery,
4 so I don't know how to answer that question. I can't tell
5 you what I don't recall.

6 Q Okay. But it still doesn't say -- they didn't
7 actually give you a copy of the cardboard notes. That's all
8 I'm saying.

9 A I don't recall seeing cardboard notes, copy of
10 statement --

11 Q That's all I'm asking you, sir.

12 A Okay.

13 Q And as far as the witness list, Ms. Monica Jordan,
14 she's very good at what she do, because I got to know her
15 real good, she would go over that stuff, she would put in
16 her -- she would inject her opinion who I need to call as a
17 witness, right, and -- is that correct?

18 A I didn't hear.

19 THE COURT: He said would she interject in her
20 opinion as to who should be called as a witnesses, and
21 give it to you?

22 THE WITNESS: Talking about Ms. Jordan?

23 BY THE DEFENDANT:

24 Q Yes.

25 A Yeah, the whole defense team would have input from

WITNESS OVERVIEW

6

APPENDIX

To: Hernandez Daniels fil

From: MLJ

Date: 10-6-08

Re: Witness overview

Chadric Anderson
Inmate Register #: 11947 117
Yazoo City FCI
Yazoo, Mississippi
Serial #119

According to the FILE report, Anderson claims in 2003 or 2004, while Wolf was working on Anderson's car they began talking about Anderson being the victim of a shooting. Wolf wanted to know what Anderson was going to do about it and offered to take care of the problem for a fee. Wolf went on to state that he wished that Lopez had handled his own business. According to Anderson, Wolf never came out and said that he was the one that killed Dupont. I have Anderson's certified convictions and judgement

Horace Austin
14925 Fairbanks Ferry Road
Tallahassee, Florida 3231
Serial#104

Close friend and neighbor of Constance Dupont. He was at his apartment when the shooting took place. He did not see the person who shot Constance. Horace believes that Lawrence Edmond saw the shooter but is too afraid to say.

Malinda Black

Girlfriend of Dell Washington at the time of Constance Dupont's murder. She was home the night of murder and Dell came home after midnight when she went to sleep. She identifies Dell's voice as the caller on the call to police department re: disturbance at hardware store. MJ needs to find and interview

***Toddrick Reyes Brown (needs to be listed as witness)
566-2346

Daniels brother, would drive for Daniels when he went to Bonifay because he was tired.

Nan Campbell
Chattahoochee, Florida

FLB and LCSO learned of Nan and Jimbo Campbell from the wiretaps on Lopez's telephone after the murder of Constance Dupont. Nan made one controlled buy from Lopez in October 2002. Lopez knew she was a CI after the deal because he followed the cops that were following Nan home. Nan purchased the same amount of cocaine/crack \$250 worth from Lopez that Constance Dupont had in July. In keeping with the State's theory of elimination a witness, why didn't Lopez kill her?

Greg Carter

Anna Chukes
fugitive

On June 14, 2002, Paul Jackson, went to the Havana Police Department and wanted to advise police that he had a verbal altercation with Anna Chukes earlier in the day. Ann threatened Paul Jackson by stating, "I'll call my people and have them knock you off." Jackson wanted the incident documented in case something happened to him.

On July 2, 2002, Anna was arrested with Constance Dupont by Havana Police Department for DWLSR, Possession of Cocaine with intent to Sell and Possession of Paraphernalia. Constance provided information about the cocaine being Anna Chukes' which led to Anna's arrest. Constance was not charged.

On August 2, 2002, Anna was released from jail. She made statements to John Frazier, that Constance would be dead within 24 hours.

Law enforcement questioned Anna Chukes on August 3, 2002. Serial #10 gives accounting of Chukes' whereabouts for August 2, 2002, according to Anna. She agreed to take a polygraph and the results are non-truthful regarding telling anyone she was going to kill Constance, did she shoot Constance, telling anyone she wanted Constance dead or knowing who shot Constance.

On September 25, 2002, a capias was issued for Chukes' arrest. She was arrested on October 8, 2002 and ROR'd.

On October 23, 2002, Chukes was adjudicated guilty of Possession of Cocaine, giving False ID to Leo. Pled no contest. Count 2, DWLSR was dismissed. Chukes was placed on probation for 30 months and given 58 days credit for jail time.

Anna Chukes has a 1991 prior of Aggravated Assault with a Deadly Weapon.

Law enforcement is in the process of determining when she absconded and obtaining all of her certified judgement and convictions.

***Renardo Vontell Daniels (needs to be listed as witness, notice of alibi)
850-556-6456

Daniels brother alibi - was riding with Daniels to Bonifay, he would drive because Daniels would get tired. Was riding with Daniels in the early morning hours of Dupont's death because learned of her death the next morning. Got back to Renardo's house around 4:15 a.m.

APPENDIX

H

ATTORNEY GENERAL RESPONSE

actual words that came over the cardboard. It's just had the words through the cardboard that was written, and the State never produced those two cardboards copies of those cardboards for you. After you asked for all the Brady materials, and even though it was Brady, most of that, they didn't produce all the evidence around. So what I'm saying is that they never physically produced a copy of those cardboards to you. They produced a copy of the overall, but never actually produced a copy, a physical copy of those two cardboards. Is that correct?

A I don't recall that. My recollection is that I had all the discovery, and before we start a trial we go down through the checklist of everything that has been provided, and basically one or two of us read off a document, and then we find it and make sure it's there. I don't see anything to indicate I didn't have that discovery, so I don't know how to answer that question. I can't tell you what I don't recall.

Q Okay. But is still doesn't say - - they didn't actually give you a copy of the cardboard notes. That's all I'm saying.

A I don't recall seeing cardboard notes, copy of statement - -

Q That's all I'm asking you, sir.

A Okay.

(R. 401-03) -----

In denying this claim for relief, the trial court found that the testimony of trial counsel and the court record refuted Appellant's claim. Trial counsel and the record show that trial counsel had all of the documents he needed during Petitioner's trial to cross examine the witnesses that the State put on the witness stand. (R. 401) Even though trial counsel did not

recall having "cardboard" given to him in discovery, he said that he did not make any notes about missing anything, and that he was aware of what Mr. Nelson would be testifying about, and his notes. (R. 392) Even if trial counsel did not have the cardboard, Petitioner's claim that the cardboard notes would have made a difference in his case were entirely speculative as he admitted that he did not know what they said.

Under the facts of this case, the trial court did not abuse its discretion in denying Appellant's Brady claim. Nor did it abuse its discretion in finding that trial counsel was not ineffective for failing to pursue the "cardboard backs" or push for a Brady violation. Trial counsel cannot be considered ineffective for failing to raise an issue that has little likelihood of success. Card v. State, 497 So.2d 1169, 1177 (Fla. 1986); Branch v. State, 952 So. 2d 470, 476 (Fla. 2006) (finding counsel not ineffective for failing to file motion which would have been properly denied)

Next, Appellant argues that trial counsel was ineffective for failing to call an alibi witness, Renardo Daniels, at his trial. Mr. Renardo Daniels testified at the evidentiary hearing that, had he been called by the defense to testify, he would have testified before the jury that his brother was nowhere near the murder because he was delivering medical supplies at the time of