USCA 11 No: 20-10808

IN THE

SUPREME COURT OF THE UNITED STATES

STEVE L. STANALAND, JR.,
Petitioner

v.

STATE OF FLORIDA,
Respondent.

APPENDIX FOR WRIT OF CERTIORARI

Appendix A	**Affidavit**
Appendix B	**Affidavit**
Appendix C	**Affidavit**
Appendix D	**U.S. Supreme Court-Time Extension**
Appendix E	**Court order 150 days from date of the order denying timely petition for rehearing.**
Appendix F	**U.S. Court of Appeals for the Eleventh Circuit**

Appendix G- Trial Transcript

Appendix H- Eleventh Circuit Opinion dated 7-7-20

Appendix I- U.S. District Court Middle District of Florida order dated 1-24-20

Note: Most of Petitioner's court documents were destroyed left behind; Hurricane Michael at Gulf Correctional Institution also had to leave to evacuate to Mayo Correctional Institution, the next day October 10, 2018-October 11, 2018.

CONCLUSION

It was clear in Mr. Stanaland's case the prosecutor was solely concerned in achieving another conviction. In all the ways they went about it. That's to include intimidating Mr. Stanaland's remarried ex-wife Becky Foster, among all the other violations of Mr. Stanaland's due process rights.

That's also to include making a false documentary film, regarding the cold-case. While Mr. Stanaland was on appeal in the Fifth District Court of Appeal in Daytona Beach, Florida in 2016.....

I declare under penalty of perjury that the foregoing is true and correct, Executed on April 16th, 2021.

Steve L. Stanaland, Jr.

Steve L .Stanaland, Jr.
D.C. #593240

Exhibit "A"

AFFIDAVIT

I, Genie Cote, am of sound mind and do hereby swear that the following statement is true and correct and made of my own free will and from my own personal knowledge.

DEAR STEVE, 9/10/16

I'm SURE you'll be SHOCKED WHEN YOU FIGURE OUT WHO THIS IS. WE DATED FOR A SHORT TIME WAY BACK IN ABOUT 1989-1990. CAN'T REMEMBER EXACTLY WHEN. I LIVED ON LIGHTSEY RD. AND HAD HORSES. WE WENT OUT TO YOUR SISTER'S AND I TRIED TO HELP HER WITH THAT CRAZY HORSE SHE HAD. WE WENT FISHING TOGETHER SEVERAL TIMES. EVEN STAYED OUT ALL NIGHT GIGING FOR FLOUNDER. AND WE DID A BUNCH OF DRINKING TOGETHER. ANYWAYS, THOSE WERE GOOD TIMES! I MOVED AWAY TO TENN. AFTER THAT. BUILT A LOG CABIN ON THE SIDE OF A MOUNTAIN. OPENED UP MY OWN BARBERSHOP IN A NEAR TOWN. DID PRETTY WELL FOR MYSELF. A YEAR AGO AUGUST I GOT HOME SICK FOR FL. AND MOVED BACK. I BOUGHT A SMALL HORSE FARM IN INTERLACHEN AND OPENED A NEW BARBERSHOP IN HAWTHORNE. THREE MORNINGS AGO ON THE NEWS I HEARD THEM SAY A MURDER CASE FROM ST. JOHNS COUNTY WAS GOING TO BE FEATURED ON THE COLD CASE FILES ON MONDAY NIGHT. THE MURDER OF PEE WEE WHITLEY. I WAS SHOCKED. TO REMEMBER WHEN

ALL THAT WAS GOING ON. SO, I LOOKED IT UP ON MY PHONE TO SEE IF I COULD SEE WHO WAS CHARGED AND YOUR NAME POPPED UP. I WAS IN TOTAL DISBELIEF. THE STEVE I KNEW COULD NEVER DONE THIS. I HAVE RESEARCHED IT AND READ EVERYTHING, AND I'M GOING TO WATCH THE I.V. SHOW BUT I DON'T BELIEVE AND WILL NEVER BELIEVE THAT YOU DID THIS. 9/27/16

THE MORE I READ AND FIND OUT ABOUT YOUR CASE THE MORE I'M CONVINCED THAT #1 YOU ARE INNOCENT AND #2 YOU DIDN'T HAVE A FAIR TRIAL. THAT LIST OF DRUGS THAT WAS GIVEN TO YOU IN ST JOHN'S CO. IS INCREDIBLE. I DON'T KNOW HOW YOU COULD EVEN STAND UP NONE OF THEM SHOULD HAVE BEEN GIVEN TO YOU AT THE SAME TIME. I'M CURIOUS WHY ISN'T BECKY BEHIND BARS? WHY ARE YOU? THE WHOLE THING JUST BLOWS MY MIND. YOU ARE SUCH A GOOD GUY. WELL, I WATCHED THE

the story on I.V. and it really made me mad. The actor that was suppose to be you was this tall skinny guy with shoulder length black ~~hair~~ hair and a long black beard to boot. He looked like a murderer. He looked like Charles Mason! Anyone watching would say "yup look at him, he did it! For some reason it just pissed me off! I remember when Pee Wee was found. The cops pulled a bunch of y'all in for questioning and just let it go. I remember a cop telling me it was no big deal. Whoever killed him did everyone a big favor by taking another drug dealer off the streets of St. Aug. Just wanted to let you know that I'm thinking about you. A blast from the past. Forever your friend,

Gene Cote 185 Persimmon Trail
Interlachen, Fl. 32148

(3.)

STATE OF FLORIDA)
)
COUNTY OF Alachua)

Genie Cote

Sworn and subscribed before me by Genie Cote this

11e day of July, 2019.

NOTARY PUBLIC

(SEAL)

MARTA K-A WATERS
Commission # GG 160315
Expires November 14, 2021
Bonded Thru Budget Notary Services

Personally known_____ or produced identification FLDL.

Type of identification produced: C300-280-49-506-0

Exhibit "B"

AFFIDAVIT

I, Steve Leslie Stanaland, JR., am of sound mind and do hereby swear that the following statement is true and correct and made of my own free will and from my own personal knowledge.

In the late summer of 1990, I met Mr. Jesse Whitley through a mutual friend. This mutual friend worked for me previously and told me that Mr. Whitley needed a job. At the time I was an owner and operator of a small construction business (Native Concrete), and I was a licensed, bonded and insured concrete specialty contractor in and for St. John's County and the city of St. Augustine, and St. Augustine Beach. I went through alot of laborers doing this type of work during the summer months as you can imagine. I hired Mr. Whitley as a laborer. Mr. Whitley and myself started off well and we actually even fished and hunted together. At the time we were both functioning alcoholics. There were various times where Mr. Whitley would tell me that he "wasn't going back to jail again," and that "[He] would shoot the next son-of-a-bitch that tries him and take him back to jail." I knew that when I hired Mr. Whitley that he was on probation/and community control. These comments disturbed me initially, but I pretty much passed them off as "drunk-talk." In late December of 1990, I had a girlfriend

at that time her name was Becky Smith. Also, at that time, known as (Pee Wee) his nickname (Mr. Whitley) ended-up getting Becky hooked on Cocaine. This upset me to no end. This event ended my relationship with Mr. Whitley. During his employment with me (Mr. Whitley would use my work-truck, a '87 Ford stepside pick-up, red and white. He drove it so much that people began to think it was his truck. After the events between (Mr. Whitley and my girlfriend Becky Smith regarding the Cocaine, I fired (Mr. Whitley). (Mr. Whitley still possessed my truck, however, at the time, I demanded it be returned. On January 10th, 1991, at night (Mr. Whitley drove my red & white truck to my residence and then proceeded to try to trade me a stereo system for the pick-up truck. I told him that I was not interested in the deal. At the time myself and (Mr. Whitley) were then standing on the front porch. Becky Smith was most of the time, living with me at my residence on Forbes Rd. Becky had told me previously that (Mr. Whitley) "Pee Wee," had Raped Her while she was doing and hooked on the Cocaine that (Mr. Whitley) gave her the night of the party at my place and I had left, and she decided to give him a ride home to where he lived 2 miles away in Vermont Hgts.

When she (Becky) told me this, she said, "I just couldn't believe it! I had never seen him act that way." Becky after what had happened to her, being ashamed and embarrassed, this had overwhelmed her. Becky said to me, that she didn't want anyone else to know about this, incident. Becky wanted to kill (Mr. Whitley because he had Raped her, and disrespecting her privilege of to consent of having sex with someone by "Sexually Assaulting" her with physical abuse & force. Contrary to her story. On the bar in the trailer that belonged to me & my family, Was myself and Becky and (Mr. Whitley) were all at during the night of Jan. 10th 1991. Was Mr. Whitley's .357 magnum pistol that he had brought that, he had just recently been attempting to try & trade now, with this Stolen Stereo System (Mr. Whitley) had brought over to me as a payment towards keeping the Red & White Ford pick-up truck. I already owned a .357 mag. pistol that I had bought Legally at Spiller's Gun Shop. I really didn't need another one. That's when Ms. Becky Smith grabbed (1) one the (2) pistol's off the Bar in the Kitchen on her own accord. Apparently after (Mr. Whitley) and I went out of the trailer, onto the porch to talk. Becky then came up from behind us, My self and (Mr. Whitley) from inside the trailer maybe 5-10 minutes had elapsed between the time we left to go onto the front porch and Becky showed-up with

a gun. I looked over my right shoulder and saw Becky Smith standing behind me & (Mr. Whitley) just inside the doorway of the trailer. And she had a gun in her hands. And that's when I asked her, and stated "What are you doing with that?," Becky did not respond to my question and all of sudden, "boom," she had fired to gun at (Mr. Whitley). I could see that Becky had been crying (Mr. Whitley and (Myself, kinda ½ jumped, dove) off the porch after the shot rang-out. (Mr. Whitley) then pulled out a handgun and started to shoot at me and Becky. I then went to retrieve my shotgun that always was propped-up against the inside corner of the wall next to the main entrance attached to the porch, roughly 10 feet away. I fired a warning shot and yelled "STOP SHOOTIN Man," But, (Mr. Whitley) refused to stop. (Mr. Whitley) then pointed the gun, he had, in his hand, at Becky Smith, who was now unarmed, because, I took the pistol that she had in her hand, from her, I then shot at (Mr. Whitley), who then returned fire. We exchanged several shots, unknown and/or really don't remember, it's been nearly 30 yrs. ago and it all happened so fast, then the shot's ceased between us. I was in fear of my life and I was in fear for Becky's life through-out this incident. Becky Smith & I Steve Stanaland, were at a location, of my residence, that we, Becky & I had a lawful-right to be at. (Mr. Whitley) was a convicted felon and was in

CONCLUSION

unlawful possession of a firearm, which the one he had, was concealed, when he came onto my property. So why was (Mr. Whitley armed that night? The reason why we did not call the authorities was out of fear of "retaliation," from (Mr. Whitley's) friends and relatives after they found out about this incident. So we decided to dispose of the body at Riverdale Park where he would eventually be found for a proper burial and funeral. These fears were we founded as well because a couple day's after (Mr. Jesse (Pee-Wee) Whitley's) disappearance, his brother (Tommy Whitley) came onto my road, in front of my property/residence armed with a "Shotgun," looking for Jesse Whitley. Just imagine what the outcome would have been had he known fully of the incident, at that time. And if Sgt. Glen Litsey from the St. Johns Sheriff's Dept had not been there at that time, Sgt. Glen Litsey can verify & confirm this Fact that Tommy Whitley came out to my property because Det. Glen Litsey told me he was, when he was out-there at my property questioning me about (Mr. Jesse (Pee Wee) Whitley's) disappearance When Tommy Whitley showed up-out-front of my residence-property with a shotgun, looking for me, to shoot me... I assume, because, he must have known about his brother (Mr. Jesse (Pee Wee) Whitley) Raping Ms. Becky Smith, my fiance'/girlfriend.

STATE OF FLORIDA)
)
COUNTY OF Bradford)

Sworn and subscribed before me by Steve Staniland this 17th day of December, 2020

NOTARY PUBLIC

(SEAL)

ANDREW S WINNINGHAM
MY COMMISSION # GG 078385
EXPIRES: March 1, 2021
Bonded Thru Budget Notary Services

Personally known_____ or produced identification ✓.

Type of identification produced: FDC # S93280

Exhibit "C"

AFFIDAVIT

I, Steve L, Stanaland, JR. DC# 593240, am of sound mind and do hereby swear that the following statement is true and correct and made of my own free will and from my own personal knowledge.

I would like to point out some facts that are mostly in the record, and from my own personal knowledge to the court and the Attorney General's office. What I think is being [Overlooked] here in this case is certain facts about the character of the victim Jesse Whitley aka, (Pee Wee) and "That is a real vital issue," What his posture was and status at the time in question 91' of this incident that took place. He was in the commission of a felony at the time by being in possession of a firearm by a convicted felon every time he left his house. This is fully supported by the [APPENDIX] sent by Robin A. Compton, Asst. Attorney General. Where J. Whitley's girlfriend Karen (Osborne) McLaughlin (App. 278--306). Testified under oath that J. Whitley carried a gun on him everywhere he went and called it his baby (App. 296-306). There are [numerous witnesses] that can still confirm that these [FACTS] are true. That he was a very intimidating and a dangerous person, motivated by his drug habits and wrongful/unlawful doings. Also, the fact he was on State Probation/Community-(House Arrest-Control at the time in question (App. at pgs. 300-302) and running the streets stealing and robbing people of their belongings to do dope (mostly cocaine) powder & Also "CRACK" Cocaine, to support his dope-habit's, while on State Probation and Community Control (House Arrest) for possession of stolen property & possession of a firearm by a convicted felon, etc... The law was getting wise to his unlawful-activity's and had begun closing in on him (App. at page 301).

Now, I had only hired this man part-time to help me to pour concrete, for I owned and had a legal small Construction Business. (Native Concrete) I was at the time a License, Bonded, & Insured, Concrete Special Contractor, in 1991, In and For St. John's County & the City of St. Augustine, Fla and St. Augustine Beach, Fla. I went through "ALOT" of laborer's doing this hard work. When I first met this individual in summer of 1990, I had no idea of what he was into/or the chain of events that would take place and transform into this nightmare, still going on now nearly 30 yrs. later In 1991 his three (3) brothers and friends turned-out to be anything but pleasant and nothing short of domestic terrorist (violent) small-time drug dealer's & thieves, common rogues and criminals. Karen Losborne McLaughlin's own children where taken away from her, that's to include Jesse Whitley's daughter, the youngest she claimed as his. (App. p 298-line 16) "I can honestly say, I at least never saw them anywhere, I was when around St. Augustine, Fla." / Things got worse with every social-interaction w/ this individual. I [REALIZED] later on, obviously, I should have called the law on Mr. Whitley, and he would be the one in prison, and got restraining order's issued from the Court's in-stead of trying to deal with those problem's on my own. But, of a major concern here was the potential retaliation, before by his brother's and alot of local people he was associated with. Specifically, his older brother Tommy Whitley who showed-up at my residence shortly after the victim-

Dated:

/s/ Steve L. Stanaland, Jr. DC# 593240
New River C.I
P.O. Box 900
Raiford, FL 32083

- Jesse Whitley was reported missing, just so happens, the Sheriff's Dept. was out there at my property/residence on (forbes 1861 rd.) in St. Augustine, Fla. St. Johns Co. questioning me about his where abouts the victim (Jesse Whitley) in January of 1991. The sheriff's dept's officer questioning me was Det. Glen Lightsey, Who just so happens lives on Lightsey Rd. as well as [Genie Cote] Whos AFFIDAVIT - ENCLOSED: With this [AFFIDAVIT]/Det. Glen Lightsey can ★ verify this statement, for he's the one that told me that Tommy Whitley was out front of my property out on the road, with a shotgun. Even though Becky [Morris] [Smith] [Stanaland] [Foster] she's been married now (3) three times that I know of ?!!

B.F. She stated: when questioned by law enforcement in her initial interview on audio/video on the recording. When she, "Becky Foster" was asked about having a possible relationship of a romantic nature w/ Jesse Whitley. She said; O'no-way!, I wouldn't have, because he's [White-Trash] Remarkably though Becky Foster never testified to the [FACT] that we both were terrorfied of those people. Becky Foster, Simply Put, "said and testified" to "whatever", She had to! inorder to avoid a prison sentence herself. There are ALOT of FACTS RE: This case the lower Courts are not aware of and that were not brought forth in the Trial and/or also, being [overlooked]

Dated:

/s/ Steve L. Stanaland, Jr. DC# 593240
New River C.I.
P.O. BOX 900
Raiford, FL 32083

Jesse Whitley had been saying for awhile, he clearly stated on several occasion's, at beer party's, etc.,. and at other locations where I saw him. He said, he wasn't going back to jail again. And would shoot and kill the next law enforcement agent or officer, that tried to arrest him or bring him in, to custody. His hero was Claude Dallas, a notorious poacher from Out-WEST in Colorado or Wyoming, somewhere back in the 70-80's?, J. Whitley had a VCR Tape/movie -that showed a campsite when approached by (2) two Game Wardens about Trapping Animals without a license he pulled a pistol- Claude Dallas did then Shot both officers to death and then leaving the area and them, laying on the ground near to his tent, by a creek, that flowed through the valley between the mountains, Later found by a Sheriff's helicopter. A [true story] that really happened one time in the past. I really don't want to keep Bad mouthing Mr. Whitley; But, he was odium in the public eye. even the St. John's Co. Jail's chaplain's wife stated: Who-ever shot him, did society a favor. A Lt. Welborne from the St. John's Co. Sheriff's even stated also back in 1991. That it was just another drug-dealer off the streets. [Please see; the Conclusion of Genie Cotes letter] thats Enclosed: The same police or maybe another officer of the law's Statement!?

Dated:

/s/ Steve L. Stanaland, Jr. DC# 593240
New River C.I.
P.O. BOX 900
Raiford, FL 32083

There are other people, good citizen's like [Ron Moore & Eddie Doss] who both lived in Vermont Heights in Elkton, Fla. in the same neighbourhood as the victim J. Whitley, that can be called as [witnesses] to testify about alot of these facts re: Jesse Whitley's reputation & infamous demeanor, back in 91; In addition, J. Whitley wanted the red & white truck to go on the run from the law. Unknown to Karen (Osborne) McLaughlin who was 6 months behind on her lease & bills she owed in Vermont Hgts, J. Whitley had no intentions on paying any bills like that or hanging around to go to jail. He was a [desperate] & [dangerous] person, on [drugs] intending on leaving the State of Fla. to go to Alabama where his father Mr. Whitley lived at that time frame in 91

*[Enclosed]: Medical Examiner's Report in autopsy, Reveals there was [alcohol & cocaine] in the victims system.

*Further, There is no [physical evidence] in this case, that I'm aware of, that will be presented to the jury that would link Mr. Stanaland to this crime. (App. 262-263)

*Medical Examiner doesn't (know) who fired the gun. He can describe injuries are consistent with this type of weapon. "(And, you know, we want to be respectful to Mr. Whitley and his family,)" and I have no intention or willingness to say anything disparaging about the man, because no one deserves to be shot and be killed. - Mr. Whitley had perhaps what may be described as a colorful life, Criminal - Activity, Stealing. '91 there were a number of roads that law enforcement were traveling down, to see who may have been responsible for Mr. Whitley's demise. (App. 263)

Dated: /s/ Steve L. Stanaland Jr. DC#593240
New River C.I.
P.O. Box 900
Raiford, FL 32083

STATE OF FLORIDA)
)
COUNTY OF Bradford)

Sworn and subscribed before me by Steve Stanaland this 17th day of December, 2020.

NOTARY PUBLIC

(SEAL)

ANDREW S WINNINGHAM
MY COMMISSION # GG 078385
EXPIRES: March 1, 2021
Bonded Thru Budget Notary Services

Personally known_____ or produced identification ✓.

Type of identification produced: FDC # 593240

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 7, 2021

Steve L. Stanaland
#593240 D1-107u
New River Correctional Institution
Faith Character Base Dorm, POB 900
Raiford, FL 32083

RE: Stanaland v. Florida
Time Extension

Dear Mr. Stanaland:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked December 17, 2020 and received December 30, 2020. The application is returned for the following reason(s):

It is returned in light of the order of this Court dated March 19, 2020. That order grants an additonal 60 days (the maximum amount) in which to file all petitions due on or after that date. A copy of that order is enclosed.

Sincerely,
Scott S. Harris, Clerk
By: [redacted]

Michael Duggan
(202) 479-3025

Enclosures

D

USCA No.: 20-10808

IN THE SUPREME COURT OF THE UNITED STATES

Steve L. Stanaland, Jr. - Petitioner

(AMENDED) APPLICATION FOR AN EXTENSION OF TIME

COMES NOW, the Petitioner, Steve L. Stanaland, Jr., pro se, MOTIONS this Honorable Court for an Extension of Time to Appeal and To File a Petition For a Writ of Certiorari, I will send a correct type version of this application when after the quarantine is over and I can go to the prison law library.

1. This delay to meet the 90 day (DEADLINE) request has been due to being under a quarantine by prison officials because another inmate tested positive for the COVID-19 virus.
2. There are many questions regarding a fair-trial in ways that conflict with relevant decisions of the Supreme Court in the instant case before the Honorable Judge and Supreme Court, of the U.S.A.
3. This cases involves Extraordinary Circumstances, existing with several issues and questions of law that require to be settled by this Honorable Supreme Court.
4. Another consideration is the "importance" to the public of the issues. (A.) This could also affect people across the Nation's firearm cases, setting a new precedent.
5. This is an argument made out of Constitutional, Fundamental fairness, and Mr. Stanaland's due process rights.

6. When the State of Florida's going for the Death Penalty, due process is heightened in all those different things.

7. Regarding Death-Penalty Case: On record in Mr. Stanaland's case he was convicted on hearsay witnesses testimony and an ex-wife as the only "eyewitness," against an incompetent defendant over-medication on a person while in pre-trials, up to trial and the penalty phase, while recovering from a major head injury, and alcohol dementia. In the St. Johns County Jail.

8. Attorney's offered-up no defense and advised the defendant to take the stand and testify in his own behalf. Also, being the only defense-witness that was called in his case in the guilt-phase of the trial, while the State of Florida was actively seeking the death penalty. On a circumstantial evidence case with no gun.

9. Evidence existed that's also on record all the information supra is on the record-on-appeal in Mr. Stanaland's case, discussed here. Specifically the copious amounts of the medical evidence records existed of a mental defense that would have **NEGATED** the (1) one count of Pre-Meditated Murder w/ a Firearm. [A case from 1991, nearly 30 years old, January 10, 1991.] During the (2) guilt phase of the trial. The outcome of the trial would have been different an acquittal.

10. [The statue of limitations had long run out on any lesser degree charges]. Eliminating the penalty-phase. The only time the medical record evidence was brought forth and the over-medication while in the county jail issue was exposed when the (2) two D.R.'s were called for the (penalty phase mitigation). Not in the guilt phase where needed most. 1st Degree Pre-Meditation and the intent to form Pre-Meditated murder.

11. There were character witness's called only in the penalty-phase for the defense, would have been more helpful in the guilt-phase. Due to the 404 Bad character of evidence that I now have available from a newly discovered evidence witness who, was in Tennessee at the time of the trial in 2011. Who also has wrote an affidavit regarding this case, and the victim that was shot. A statement made by a law enforcement officer stating he was a drug dealer the victim in this case. There is also evidence of self-defense.

12. Had this valuable evidence been brought out in the trial for the jury to hear. Also, presently a BRADY VIOLATION by the State regarding the law officer stating the victim was a drug dealer and who-ever had shot him did the people in St. Augustine a big favor and got another (1) one drug dealer off the streets; Id. See: Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). A newly discovered evidence claim and a discovery violation.

MERIT AND ARGUMENT

1. Id. Petitioner avers trial counsel was ineffective for omitting to investigate evidence of Petitioner's mental illness as a basis for a mental defense to first-degree murder.

2. Id. Petitioner hereby relies upon *Jennings v. Woodford, 290 F.3d 1006 (9th Cir. 2002)* in support of (1) one of his claims; supra see: Also *Seidel v. Merkle, 146 F.3d 750, 753 (9th Cir. 1998)* regarding; Negate the charge during the guilt phase, supra.

3. Id. *U.S. v. Bryant, 769 F.3d 671 (9th Cir. 2014)* indigent criminal defendant's have right to appointed counsel in any State or Federal case where term of imprisonment is imposed[1].

1 These are just a few issue's out of several law questions and ground's for post-conviction relief in the instant "case subjudice."

4. Id. Defendant in the instant case is also requesting counsel, see also: regarding trial counsel, supra; *U.S. v. Cavallo, 790 F.3d 1202 (11th Cir. 2015)* A trial is deemed unfair if the accused is denied counsel at a critical stage of his trial.

5. **Manifest Injustice** Id. e.g. This was brought up in the trial court and on appeal was a motion filed to conflict out the State Attorney's Office in St. Johns County, St. Augustine, Florida; and a motion file also to strike the entire jury panel in from the trial court; trial court is in error for not granting these (2) two motions and proceeded with the trial when this direct, obvious, and observable error before the trial court by this action seriously undermines the integrity of the judicial system of the United States of America.

   * *These are just a few issues out of several law questions and ground's for post-conviction relief in the instant "case subjudice."*

6. Further, in addition, another conflict of interest with his Assistant State Attorney who two (2) of the members of the jury panel identified him in front of the rest of the jury panel, as the former county circuit judge. Tainting the rest of the jury panel members, even though these (2) two potential juror's were struck from being in the jury, the damage had already been done. By throwing a skunk in the jury box.

7. This former judge was also bias and prejudice from previous legal encounters with the Defendant who was then acting as the State Attorney who signed the legal document seeking the death-penalty against Mr. Stanaland.

8. Who suffered undue prejudice from these (2) two officials. Even the Defendant Mr. Stanaland's attorney stated and put in the motion to conflict out the entire state attorney's office, in that court in St. John's County, St. Augustine, Florida; below: stating that:

9. Another State Attorney's Office may not pursue a prosecution of the (1) count of premeditated murder and/or even seek the death-penalty. Which is and has been said by the Attorney's Michael Neilsen and Jeff Dowdy that this is not a death-penalty case. Mr. Stanaland was over-medicated during the court pre-trials and up to the trial itself. And was incompetent during the trial. Going through withdrawals from all the psyc-meds given to him by the jail's medical staff. And not properly prepared to take the stand to testify or even the trial itself.

10. Supporting the claim supra, the Petitioner relies on the supporting case laws and they include the following.

Id. *Reynolds v. State,* 177 So. 3d 296; 2015 Fla. App. Lexis 14830' 40 Fla. Weekly D 2253 Case No.: 1D15-2390 October 6, 2015 opinion filed

cf. In Mr. Stanaland's case the trial court never held a competency hearing after appointing experts to evaluate nor to my knowledge ever enter a written order of competency memorializing its finding of competency its finding of competency or incompetency. Fla. R. Crim. P. 3.210(b) and 3.212(b).

e.g. See also; in *Dougherty v. State,* the Florida Supreme Court held that the rules of criminal procedure require the trial court to hold a hearing when the Court has reasonable grounds to question the defendant's competency. 149 So. 3d 672 (Fla. 2014) (citing Fla. R. Crim. P. 3.210(b); see also *Cochran v. State,* 925 So. 2d 370 {177 So. 3d 298} (Fla. 5th DCA 2006). ([O]nce the trial court enters an order appointing experts upon a reasonable belief that the defendant may be incompetent, a competency hearing must be held.").

cf. See also, *Dougherty,* 149 So. 3d at 677 reversal is required.

cf. Id. In Mr. Stanaland's case, the judge did hold a colloquy whether he was "clear headed today, and understood and what his rights were when the judge said, I am going to let you testify on the stand, this was the only time the attorney actually prepared the defendant on what to say, Mr. Stanaland, just- agree with whatever the trial judge says to you! See Id. *Pate*

v. Robinson, 383 U.S. 375, 384, 86 S. ct. 836, 15 L. Ed. 2d 815

IN CONCLUSION

* I am now of sound mind after nearly 10 year of no alcohol or pysch-medication taken in the Dept. of Corr's and the mental health professionals in the prison have cleared me to be cometent and of a sound mind.

* Your Honor, a law school graduate from Notre Dame Law School first in your class.

* You also know that it's Constitutionally Impermissible to take an incompetent or someone unfit for trial, thru a court proceeding,

* Specifically, when the death-penalty is on the table, against the defendant.

* This is a mis-carriage of justice. A grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime.

Also, when unable to understand the proceedings that are against him or her, in a court of law. A new trial and/or a resentencing and release are the proper remedies I believe here; "I need your help";

Thank you! for your time.

Sincerely and Respectfully,

Steve L. Stanaland, Jr.

Steve L. Stanaland, Jr.
D.C. #593240

OATH

I HEREBY DECLARE, under penalty of perjury that I have read the foregoing document and the facts stated in it are true.

Dated: 12-17-2020

Steve L. Stanaland, Jr.

Steve L. Stanaland, Jr.
D.C. #593240

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document have handed over to prison officials for further processing via: U.S. Mail, this 17th day of November, 2020 to : The United States Supreme Court 1.) Department of Justice, The Office of U.S, Attorney General, 950 Pennsylvania Ave. NW, Washington, D.C. 20530.
2.) Judge Amy Coney Barrett. Supreme Court of The U.S,
3.) Clerk of Court.

Steve L. Stanaland, Jr.

Steve L. Stanaland, Jr.
D.C. #593240
New River Correctional Institution
P. O. Box 900
Raiford, Fl 32083

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10808-G

STEVE L. STANALAND, JR.,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Steve Stanaland moves for a certificate of appealability ("COA") to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition. To merit a COA, Stanaland must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Stanaland's motion for a COA is DENIED because he failed to make the requisite showing.

Stanaland's motions for leave to proceed *in forma pauperis* and for appointment of counsel are DENIED AS MOOT.

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

H

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10808-G

STEVE L. STANALAND, JR.,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeals from the United States District Court
for the Middle District of Florida

Before: WILSON and NEWSOM, Circuit Judges.

BY THE COURT:

Steve Stanaland, Jr., has filed a motion for reconsideration of this Court's order dated July 7, 2020, denying his motions for a certificate of appealability, leave to proceed on appeal *in forma pauperis*, and appointment of counsel, following the district court's denial of his underlying habeas corpus petition, 28 U.S.C. § 2254. Because Stanaland has not alleged any points of law or fact that this Court overlooked or misapprehended, his motion for reconsideration is DENIED.

F

of the office, who's in charge of Mr. Mathis, being Mr. Stanaland's former probation officer, and then you have Mr. Mathis, the prosecutor, being his former judge. And we believe that if this was given to an independent or another State Attorney's Office that, perhaps, they would view the light what the State views -- the way the Defense views the case and, perhaps, not even proceed or at least change their position in reference to the death penalty.

So I don't -- there's no case law I could find that had a factual scenario that I thought was analogous to support it. It's an argument made out of constitution, fundamental fairness and Mr. Stanaland's due process rights. And, of course, as Your Honor knows, when going for the death penalty, due process is heightened in all those different things.

So, you know, I think it might be in everyone's interest. If it went the way the State wanted it and they got the jury to recommend death and you gave Mr. Stanaland the death penalty, this could be something that later, you know, might bring the case back.

So for all those different reasons -- and I think maybe I could make a -- we're asking that the Court find -- make a finding that this particular State

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 07, 2020

Clerk - Middle District of Florida
U.S. District Court
300 N HOGAN ST
JACKSONVILLE, FL 32202

Appeal Number: 20-10808-G
Case Style: Steve Stanaland, Jr. v. Secretary, Florida Department, et al
District Court Docket No: 3:18-cv-00163-HLA-JBT

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

X All pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

X Reply to: Lee Aaron, G/csg.
Phone #: 404-335-6172

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

Cert

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

STEVE L. STANALAND, JR.,

Petitioner,

vs. Case No. 3:18-cv-163-J-25JBT

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Respondents.

ORDER

I. INTRODUCTION

Through a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Petition) (Doc. 1), Petitioner, Steve L. Stanaland, Jr., challenges his state court (St. Johns County) conviction for first degree murder with a firearm. Respondents filed a Response to Petition (Response) (Doc. 7).[1] Petitioner

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[1] The Court will hereinafter refer to the exhibits in the Appendix (Doc. 8) as "Ex." Where provided, the page numbers referer[illegible] this opinion are the Bates stamp numbers at the bottom c[illegible] page of the exhibit. Otherwise, the page number on the d[illegible]

responded with a Reply to the State's Response (Reply) (Doc. 10). The Court granted Petitioner's request to supplement his Reply with three exhibits (Docs. 11-1; 11-2; 11-3). Order (Doc. 12). The Petition is timely filed. Response at 5-7.

II. EVIDENTIARY HEARING

"In a habeas corpus proceeding, the burden is on the petitioner to establish the need for an evidentiary hearing." Jones v. Sec'y, Fla. Dep't of Corr., 834 F.3d 1299, 1318 (11th Cir. 2016) (citations omitted), cert. denied, 137 S. Ct. 2245 (2017). See Chavez v. Sec'y, Fla. Dep't of Corr., 647 F.3d 1057, 1060 (11th Cir. 2011) (opining a petitioner bears the burden of establishing the need for an evidentiary hearing with more than speculative and inconcrete claims of need), cert. denied, 565 U.S. 1120 (2012); Dickson v. Wainwright, 683 F.2d 348, 351 (11th Cir. 1982) (same). A petitioner must make a specific factual proffer or proffer evidence that, if

---

will be referenced.

★ How about the Affidavits and the 206 pgs. that were [2] Suppressed from 2008. That Support Self-Defense.

true, would provide entitlement to relief. Jones, 834 F.3d at 1319 (citations omitted). Conclusory allegations will not suffice. Id.

In this case, the pertinent facts are fully developed in this record or the record otherwise precludes habeas relief;[2] therefore, the Court can "adequately assess [Petitioner's] claim[s] without further factual development," Turner v. Crosby, 339 F.3d 1247, 1275 (11th Cir. 2003), cert. denied, 541 U.S. 1034 (2004). Petitioner has not met his burden as the record refutes the asserted factual allegations or otherwise precludes habeas relief. Thus, the Court finds Petitioner is not entitled to an evidentiary hearing. Schriro v. Landrigan, 550 U.S. 465, 474 (2007).

III. PETITION

Petitioner lists thirteen grounds for habeas relief; however, he presents multiple claims (eight claims) in ground one. Thus, a total of twenty-one claims are

2 The Court notes Petitioner received an evidentiary hearing on some grounds in the state court.

raised in the Petition. Ground 1A is "whether the trial court erred in denying Stanaland's motion to disqualify the St. Johns County State's Attorney's Office[.]" Petition at 9. Ground 1B is "whether the trial court erred in denying Stanaland's motion to strike venire panel." Id. In ground 1C, Petitioner asserts that "fundamental error occurred with the use of an unauthorized transcript used at trial." Id. at 10. This is followed by ground 1D, in which Petitioner contends: "Assistant State Attorney Mathis was prejudicial [sic] against Stanaland from previous legal encounters." Id. In ground 1E, Petitioner claims his "14th Amendment Rights were violated by local media blitz for 2½ years causing manifest Constitutional error." Id. In ground 1F, Petitioner claims his "[d]efense counsel erred in court as stating a crime of self defense was actually a crime of passion constituting manslaughter causing fundamental error[.]" Id. Ground 1G alleges "[t]he appearance and use of a leg brace (electric shock anklet) at trial affected the presumption of innocence [and] was

plain error[.]" Id. Finally, in ground 1H, Petitioner contends he "was placed on multiple medications that caused serious side effects of confusion, hyper excitability thus causing fundamental error." Id.

The remaining grounds present claims of ineffective assistance of counsel: (Ground 2) the ineffective assistance of counsel for failure to move for a change of venue; (Ground 3) the ineffective assistance of counsel for failure to advise Petitioner of the defense of voluntary intoxication where evidence existed to warrant the defense; (Ground 4) the ineffective assistance of counsel for failure to challenge by motion to suppress Petitioner's former wife's testimony regarding marital communications that fell within the spousal privilege and were elicited without Petitioner's consent; (5) the ineffective assistance of counsel for failure to file a pre-trial motion in limine to exclude testimony or statements that Petitioner was a fugitive from justice; (6) the ineffective assistance of counsel for failure to make a "standing/renewed" objection to the

trial court's denial of the defense's motion in limine to exclude any mention and allegations of domestic violence by Petitioner; (7) the ineffective assistance of counsel for advising Petitioner to testify in light of Petitioner's mental illness; (8) the ineffective assistance of counsel for failure to object to the prosecutor's highly inflammatory comments during closing arguments; (9) the ineffective assistance of counsel for failure to file a motion in limine to preclude Lisa Welliver's testimony that she was afraid for her and her daughter; (10) the ineffective assistance of counsel for failure to consult and/or procure a ballistics and firearms expert to impeach or refute Becky Foster's testimony; (11) the ineffective assistance of counsel for failure to file a facially sufficient motion for new trial; (12) the ineffective assistance of counsel for failure to investigate and properly authenticate the recording of the controlled phone call; and (13) the cumulative effect of trial counsel's errors rendered

counsel's assistance ineffective and deprived Petitioner of a fair trial.

IV. HABEAS REVIEW

Petitioner seeks habeas relief, claiming to be detained "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §§ 2241(c)(3). In undertaking its review, this Court must recognize that its authority to award habeas corpus relief to state prisoners "is limited-by both statute and Supreme Court precedent." Knight v. Fla. Dep't of Corr., 936 F.3d 1322, 1330 (11th Cir. 2019). The relevant statute, the Antiterrorism and Effective Death Penalty Act (AEDPA), governs a state prisoner's federal petition for habeas corpus and limits a federal court's authority to award habeas relief. See 28 U.S.C. § 2254; Shoop v. Hill, 139 S. Ct. 504, 506 (2019) (per curiam) (recognizing AEDPA imposes "important limitations on the power of federal courts to overturn the judgments of state courts in criminal cases").

Applying the statute, federal courts may not grant habeas relief unless one of the claims: "(1)'was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,' or (2) 'was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.' 28 U.S.C. § 2254(d)." Nance v. Warden, Ga. Diagnostic Prison, 922 F.3d 1298, 1300-1301 (11th Cir. 2019), petition for cert. filed, (U.S. Dec. 9, 2019) (No. 19-6918). As recently imparted by the Eleventh Circuit,

> A decision is "contrary to" clearly established federal law "if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts." Williams [v. Taylor, 529 U.S. 362 (2000)] at 413, 120 S. Ct. 1495. A state court decision involves an unreasonable application of federal law "if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." Id. To justify

> issuance of the writ under the "unreasonable application" clause, the state court's application of Supreme Court precedent must be more than just wrong in the eyes of the federal court; it "must be 'objectively unreasonable.'" Virginia v. LeBlanc, --- U.S. ----, 137 S. Ct. 1726, 1728, 198 L.Ed.2d 186 (2017)(quoting Woods v. Donald, --- U.S. ---, 135 S. Ct. 1372, 1376, 191 L.Ed.2d 464 (2015)); see also Bell v. Cone, 535 U.S. 685, 694, 122 S. Ct. 1843, 152 L.Ed.2d 914 (2002) (explaining that "an unreasonable application is different from an incorrect one.").

Knight, 936 F.3d at 1330-31.

Thus, to obtain habeas relief, the state court decision must unquestionably conflict with Supreme Court precedent, not dicta. Harrington v. Richter, 562 U.S. 86, 102 (2011). If some fair-minded jurists could agree with the lower court's decision, habeas relief must be denied. Meders v. Warden, Ga. Diagnostic Prison, 911 F.3d 1335, 1351 (11th Cir. 2019), cert. denied, No. 19-5438, 2019 WL 5150550 (U.S. Oct. 15, 2019). As noted in Richter, unless the petitioner shows the state court's ruling was so lacking in justification that there was

error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement, there is no entitlement to habeas relief. Burt v. Titlow, 571 U.S. 12, 19-20 (2013).

A district court is not obliged "to flyspeck the state court order or grade it." Meders, 911 F.3d at 1349. Moreover, even state court rulings for which no rationale or reasoning is provided are entitled to AEDPA deference, "absent a conspicuous misapplication of Supreme Court precedent." Id. at 1350 (citation and quotation marks omitted).

Of importance, a state court's finding of fact, whether a state trial court or appellate court, is entitled to a presumption of correctness under 28 U.S.C. § 2254(e)(1). But, this presumption of correctness applies only to findings of fact, not mixed determinations of law and fact. Brannan v. GDCP Warden, 541 F. App'x 901, 903-904 (11th Cir. 2013) (per curiam) (recognizing the distinction between a pure question of

fact from a mixed question of law and fact), cert. denied, 573 U.S. 906 (2014).

Where there has been one reasoned state court judgment rejecting a federal claim followed by an unexplained order upholding that judgement, federal habeas courts employ a "look through" presumption: "the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning." Wilson v. Sellers, 138 S. Ct. 1188, 1192 (2018) (Wilson).

Supreme Court precedent also limits the federal court's authority to award habeas relief. Unless pierced by one of two narrow exceptions: (1) new rules that are substantive rather than procedural, and (2) watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding, the rule of nonretroactivity set forth in Teague v. Lane, 489 U.S. 288, 300-301 (1989) (plurality opinion), providing

that the federal court cannot disturb a state court conviction based on a constitutional rule announced after a conviction is final, is applicable. Knight, 936 F.3d at 1331 (citing Schiro v. Summerlin, 542 U.S. 348, 352-53 (2004)) (quotations and citations omitted). The "threshold Teague analysis" must be conducted if properly raised by the state, and the state prisoner must clear both hurdles, deference mandated by AEDPA and the rule of nonretroactivity, to successfully obtain federal habeas relief. Knight, 936 F.3d at 1331 (citation omitted).

Thus, a state habeas petitioner is faced with two constraints, AEDPA's generally formidable barrier to habeas relief except in specified circumstances, and the general principle of nonretroactivity limiting the disturbance of a state conviction based on a constitutional rule announced after a conviction became final except in two narrow exceptions. Even if the petitioner satisfies the hurdle demanded by Supreme Court precedent, state-court judgments will not easily be set

aside due to the applicability of the highly deferential AEDPA standard that is intentionally difficult to meet. See Richter, 562 U.S. at 102. Although AEDPA does not impose a complete bar to issuing a writ, it severely limits those occasions to those "where there is no possibility fairminded jurists could disagree that the state court's decision conflicts" with Supreme Court precedent. Id. In sum, application of the standard set forth in 28 U.S.C. § 2254(d) ensures that habeas corpus is a guard against extreme malfunctions in the state criminal justice systems, and not a mechanism for ordinary error correction. Richter, 562 U.S. at 102-103 (citation and quotation marks omitted).

V. GROUND ONE

A. Ground 1A

In ground 1A, Petitioner asks this Court to determine whether the trial court erred in denying a motion to disqualify the St. Johns County State's Attorney's Office. Petition at 9. In his supporting facts, Petitioner suggests that his previous encounter with

Assistant State Attorney Robert Mathis, previously a state-court judge, "could" have clouded Mathis's judgment in prosecuting Petitioner and seeking the death penalty. Id.

Respondents contend Petitioner cannot demonstrate prejudice and it is pure speculation that a different, specially appointed State Attorney would have prosecuted the case differently. Response at 10-11. Furthermore, Respondents argue Petitioner has failed to support his claim with allegations of specific, prejudicial conduct by Mr. Mathis. Id. at 11.

Of import, the Indictment charging Petitioner with first degree murder with a firearm is signed by Assistant State Attorney Matthew D. Cline, not Mr. Mathis. Ex. A at 15. The Notice of Intent to Seek the Death Penalty, however, is signed by Mr. Mathis. Id. at 36. Petitioner, through counsel, filed a Motion to Conflict Out the Saint Johns County State Attorney's Office, claiming Mr. Mathis was a judge in 1995 and presided over a case in which Petitioner was the defendant and was

convicted, and the elected State Attorney, Mr. Larizza, is the former community control officer for Petitioner. Id. at 279-80. Petitioner argued the State Attorney's Office "is potentially biased and prejudiced against the Defendant[.]" Id. at 279.

The trial court conducted a hearing on January 10, 2011. Ex. B. Petitioner's counsel argued that based on fundamental fairness and Petitioner's due process rights, a different state attorney's office should prosecute Petitioner, not the Seventh Judicial Circuit. Id. at 3-6. Mr. Mathis explained that he was not in the State Attorney's Office at the time Petitioner was indicted. Id. at 7. Mr. Mathis said Petitioner was indicted "by Mr. Tanner's regime" and Mr. Cline signed the indictment. Id. Mr. Mathis revealed he had no inside information on Petitioner, and that everything that occurred between them had taken place long ago and was all quite removed from the current case. Id. at 8.

The court found there was no conflict with the State Attorney's Office, finding Mr. Cline, the attorney that

advised the grand jury, is no longer employed with the State Attorney's Office, and that Mr. Larizza was not in office at the time of the Indictment. Id. at 9. The court, on January 26, 2011, denied the motion, finding Petitioner's allegations failed to meet the actual prejudice requirement to disqualify counsel. Ex. A at 314-16. The court opined: "[t]he mere fact that Mr. Mathis is a former judge who once presided over a case in which the Defendant was tried and convicted is not, without more, an indication of actual prejudice." Id. at 316 (citation omitted). Additionally, the court found Mr. Larizza's role as a community control officer assigned to Petitioner did not amount to actual prejudice. Id.

Petitioner's Assistant Public Defender raised the issue in an Anders brief.[3] Ex. E at 9-10. Petitioner expounded upon this claim in his pro se brief on appeal, adding allegations beyond those presented in the Motion

3 Anders v. California, 386 U.S. 738 (1967).

to Conflict Out the Saint Johns County State Attorney's Office or addressed in the hearing on that motion. Ex. F at 10-12. The Fifth District Court of Appeal (5th DCA), on May 22, 2012, affirmed per curiam the decision of the trial court. Ex. G.

Florida law provides: "[i]n order to disqualify a state attorney, actual prejudice must be shown. State v. Clausell, 474 So. 2d 1189 (Fla. 1985), approving original opinion, Clausell v. State, 455 So. 2d 1050 (Fla. 3d DCA 1984). Actual prejudice is something more than the mere appearance of impropriety." Meggs In and For Second Jud. Cir. of Fla. v. McClure, 538 So. 2d 518, 519 (Fla. 1st DCA 1989). Consequently, disqualification is reserved for those instances when it is necessary to disqualify a state attorney "to prevent the accused from suffering prejudice that he otherwise would not bear." Id. at 519-20. For example, if the prosecutor had previously represented Petitioner in a criminal matter in which the prosecutor received privileged information through confidential communications, the actual prejudice

requirement to justify disqualification would be met. Reaves v. State, 574 So. 2d 105, 107 (Fla. 1991) (per curiam). Also, if the prosecutor overheard confidential communications between a defendant and his attorney, a petitioner may be able to satisfy the actual prejudice requirement. Nunez v. State, 665 So. 2d 301, 302 (Fla. 4th DCA 1995).

Here, Petitioner failed to show the trial court that the prosecutor, who had been a state court judge for a criminal case of Petitioner's fourteen years prior to the filing of the notice of intent to seek the death penalty in the murder case against Petitioner, had obtained special knowledge or information that could be useful in the present prosecution. See Trotter v. State, 576 So. 2d 691, 693 (Fla. 1990) (opining it may have been better if the prosecutor had not participated, but acknowledging, without special knowledge relating to the current charge, there is no error).

The trial court's conclusion that there was no conflict with the State Attorney's Office is not

unreasonable. The record shows Mr. Mathis did not present the case to the grand jury and Mr. Larizza was not in office at the time of the Indictment. The record also does not support a conclusion that Mr. Mathis received privileged information through confidential communications which concerned the murder case. Moreover, the 5th DCA's affirmance of the trial court's decision was not based upon an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States.

Petitioner's allegations in support of the motion to disqualify the prosecutor failed "to raise a credible claim of prosecutorial misconduct, conflict of interest, or improper bias" on Mr. Mathis's part. Willis v. United States, No. 2:09cv930-MEF, 2012 WL 1161431, at *14 (M.D. Ala. 2012), report and recommendation adopted, 2012 WL 1158845 (M.D. Ala. Apr. 6, 2012). Indeed,

> The disqualification of government counsel is a "drastic measure and a court should hesitate to impose it except where necessary." United States v. Bolden, 353 F.3d 870, 878 (10th

> Cir.2003) (citing Bullock v. Carver, 910 F.Supp. 551, 559 (D. Utah 1995)). Accordingly, courts have allowed disqualification of government counsel only in limited circumstances. See, e.g., Young v. United States, 481 U.S. 787, 807, 107 S. Ct. 2124, 95 L.Ed.2d 740 (1987) (actual conflict of interest because appointed prosecutor also represented another party); United States v. Heldt, 668 F.2d 1238, 1275 (D.C. Cir. 1981) (bona fide allegations of bad faith performance of official duties by government counsel in a civil case); United States v. Prantil, 764 F.2d 548, 552-53 (9th Cir. 1985) (prosecutor who will act as a witness at trial).

Willis, 2012 WL 1161431, at *14.

Petitioner did not adequately demonstrate a basis for disqualification of Mr. Mathis, Mr. Lazzara, or the State Attorney's Office of the Seventh Judicial Circuit. Mr. Mathis did not acquire inside information, he had never represented Petitioner in the past, and everything that occurred through his official actions as a prior judge occurred so long ago that it had nothing to do with the murder case or with any information derived from

Petitioner. Ex. B at 8.[4] As such, the request for removal was appropriately denied.

The 5th DCA's decision affirming the trial court's decision is not contrary to, nor an unreasonable application of controlling Supreme Court precedent. Ex. G. Petitioner is not entitled to habeas relief on this ground. Ground 1A is due to be denied.

B. Ground 1B

In the next ground, ground 1B, Petitioner raises the issue of whether the trial court erred in denying Petitioner's motion to strike the venire panel. Petition at 9. To support this claim, Petitioner points to one panel member's statement that she knew "Judge Mathis." Id. Petitioner states his counsel objected to the entire

4 Although Petitioner's trial counsel made a due process argument, arguing Petitioner was deprived of fundamental fairness because Mr. Mathis, a former judge in one of his prior criminal cases, sought the death penalty in the murder case, Ex. B at 5, Petitioner did not receive the death penalty. Ex. D at 1092, 1100. The jury provided an advisory sentence that the court impose a sentence of life imprisonment with a minimum mandatory of 25 years, and the court adjudicated Petitioner guilty of murder in the first degree and imposed that sentence. Id. Petitioner does not meet the actual prejudice requirement.

panel and renewed his objection based on this disclosure heard by the entire panel. Id. Petitioner's appellate counsel raised this claim in an Anders brief. Ex. E at 10-11. The 5th DCA affirmed. Ex. G.

The record demonstrates that prospective juror Key said he knew "Judge Mathis." Ex. D at 28-29. The court immediately corrected Mr. Key and referred to the prosecutor as "Mr. Mathis[.]" Id. at 29. Attorney Michael W. Nielsen moved to strike the panel. Id. at 29-30. Mr. Mathis commented that Ms. Alexander, another panel member, raised her hand because she knows Mr. Mathis. Id. at 30. Mr. Nielsen renewed his motion to have Mr. Mathis and his office conflicted out of the case. Id. at 35. Mr. Mathis said he did not remember Mr. Stanaland being before him. Id. at 37.

The court did not strike the panel or grant the conflict motion. Id. at 37-44. Upon inquiry, both prospective jurors said they did not discuss the fact that Mr. Mathis was a former judge in front of other members of the panel. Id. at 43. Thereafter, the

parties agreed to a stipulation excusing the two jurors that recognized or knew Mr. Mathis. Id. at 44. The court excused the two potential jurors. Id. The defense accepted the jury. Id. at 205. Eventually, the defense moved to strike juror Konz for other reasons, and the trial court released her and called up the alternate juror. Id. at 229-32.

A defendant has a constitutional right to a fair trial by a panel of impartial and indifferent jurors. Irvin v. Dowd, 366 U.S. 717, 722 (1961). Petitioner has not shown the alleged error by the trial court in refusing to grant the defense's motion to strike the entire jury panel deprived him of a fair trial. The decision as to whether to strike a panel is left to the sound discretion of a trial judge. Franklin v. Inch, No. 1:17cv314-MW/CAS, 2019 WL 4007354, at *7 (N.D. Fla. July 31, 2019) (citing United States v. Jones, 696 F.2d 479, 492 (7th Cir. 1982)), report and recommendation adopted, 2019 WL 3997692 (N.D. Fla. Aug. 23, 2019). Notably, "[i]t is within the discretion of the trial court to determine

whether remarks made by veniremen during the examination of the panel are prejudicial; and the trial court's decision not to quash the panel will not be disturbed absent an abuse of that discretion." Bauta v. State, 698 So. 2d 860, 862 (Fla. 3d DCA 1997) (quotation and citation omitted).

Here, the trial court decided the entire jury panel was not tainted by the isolated comment of prospective juror Key referring to the prosecutor as Judge Mathis. The court immediately corrected Mr. Key. No further references were made concerning the prosecutor being a former judge before the panel, and both panel members who knew or recognized Mr. Mathis were excused by stipulation. The record shows, before excusing the jurors, the court determined the two panel members did not discuss the fact that Mr. Mathis was a former judge in front of other panel members.

Based on the record, Petitioner has failed to demonstrate any constitutional violation in the trial

court's refusal to dismiss the entire jury panel due to isolated comment of Mr. Key. In this regard,

> Ultimately, the question is whether a defendant's "trial was not fundamentally fair." Murphy v. Florida, 421 U.S. 794, 799 (1975). Petitioner has the burden to show "essential unfairness," Beck v. Washington, 369 U.S. 541, 558 (1962) (quoting United States ex rel. Darcy v. Handy, 351 U.S. 454, 462 (1956)). "The petitioner must "show that setting of the trial was inherently prejudicial or that the jury selection process of which he complains permits an inference of actual prejudice." Coleman v. Zant, 708 F.2d 541, 545 (11th Cir. 1983) (quoting Murphy, 421 U.S. at 803). The court will not disturb a trial court's finding of juror impartiality absent a finding of "manifest error," Patton v. Yount, 467 U.S. 1025, 1031 (1984), and a trial court's finding that the jurors are impartial is entitled to a high degree of deference in a habeas proceeding. White v. Wheeler, 136 S. Ct. 456, 460 (2015).

Franklin, 2019 WL 4007354, at *7.

Petitioner has failed to show actual prejudice based on the jury selection process. Further, he has not shown manifest error in the trial court's finding that the jury panel could be impartial and indifferent in providing

Petitioner a fair trial. Giving due deference to the court's necessarily determined finding that the remaining jurors on the panel could be impartial while also giving the high degree of deference under AEDPA to the 5th DCA's decision denying relief on this ground, Petitioner is not entitled to habeas relief.

In conclusion, Petitioner has failed to demonstrate he was prejudiced by the trial court's decision or that the trial itself was essentially unfair. He has not demonstrated that the adjudication of the 5th DCA was contrary to or an unreasonable application of any clearly established federal law as determined by the Supreme Court or an unreasonable determination of the facts. Therefore, habeas relief will be denied.

C. Ground 1C

In his next ground, Petitioner claims fundamental error occurred with the use of an unauthorized transcript at trial. Petition at 10. Petitioner raised a due process claim, pro se, on direct appeal. Ex. F at 7-9. The 5th DCA affirmed. Ex. G.

contrary to, or an unreasonable application of, clearly established federal law; therefore, AEDPA deference is due to the state court's decision rejecting this claim. Thus, Petitioner is not entitled to habeas relief.

D. Ground 1D

Petitioner claims Assistant State Attorney Mathis was prejudiced against Petitioner due to previous legal encounters. Petition at 10. Petitioner, on appeal, alleged Mr. Mathis, in 1995, "was a witness" to Petitioner's divorce from Becky Foster (a state's witness).[5] Ex. F at 11. Petitioner also alleged that, in 1998, Judge Mathis sentenced Petitioner to five months in county jail for a reduced battery charge. Id. Neither of these allegations were presented to the trial court, either in the motion to conflict out or in any ore tenus motion before the trial court. The 5th DCA affirmed. Ex. G.

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5 Petitioner does not explain how Judge Mathis was a witness or whether he played any role in the divorce proceedings.

participation as a prosecutor in the murder case. Ex. A at 29, 34, 36.

The Fifth DCA's affirmance is entitled to AEDPA deference. The decision is not contrary to, nor an unreasonable application of controlling Supreme Court precedent. As such, Petitioner is not entitled to habeas relief on this ground.

E. Ground 1E

Petitioner, in ground 1E, claims his Fourteenth Amendment Rights were violated by a local media blitz for two-and-one-half years. Petition at 10. In his Reply, Petitioner states a significant amount of publicity was generated by the trial, and one panel member admitted to hearing about the case through media coverage. Reply at 5. Petitioner submits that this media blitz deprived him of a fair trial by an impartial jury. Id. at 5-6. Respondents, in their Response, highlight the fact Petitioner failed to point out anything that the jurors overheard or considered due to media coverage and

Petitioner's acceptance of the jury without objection. Response at 13-14.

The record demonstrates that one panel member, Mr. Key, read something about the case in the newspaper. Ex. D at 27-28. This became a non-issue because Mr. Key was excused by stipulation because he knew Mr. Mathis, the prosecutor. Id. at 44. The record also shows the defense accepted the jury without objection. Id. at 205. Of import, during the trial, every time the jurors were brought back after recess, the court would inquire as to whether anything occurred over the recess that would make it difficult for any one of the them to render a fair and impartial verdict in the case. See Ex. D at 234. Each time, the jury responded in the negative. See id.

Importantly, the court instructed the jury not to conduct any investigation, including reading newspapers, watching television, or using a computer, cell phone, the Internet, and electronic device, or any other means at all to obtain information related to the case, the people, and the places involved in the case. Id. at 237.

The jurors were told the instruction applies to the courthouse, home, or anywhere else. Id. Also, the jurors were directed not to have discussions with friends or family members about the case or even let family members ask questions or make comments about the case. Id.

Petitioner raised this ground in his pro se brief on direct appeal. Ex. F at 13-14. He said the media blitz occurred two years prior to trial and continued throughout the trial. Id. at 13. Petitioner surmised that the jurors must have been exposed to news coverage and daily articles in the local newspaper or conversations about the news stories because they went home each night of the trial. Id. at 14. The 5th DCA affirmed the conviction and sentence. Ex. G.

Based on the record, only one panel member had some knowledge about the case based on news coverage, and that panel member was promptly excused by stipulation for other reasons. Thus, the record shows pre-trial publicity did not interfere with Petitioner's right to a

fair trial and it was not so pervasive that it saturated the community. The trial court carefully instructed the jury not to conduct any investigation or to discuss the case with family members or friends or undertake any sort of technology related discussion or investigation. The jurors repeatedly assured the judge that nothing had taken place during recesses that would affect their ability to be fair and impartial. Petitioner has offered no operative facts or evidence to support his supposition that one or more jurors violated these instructions of the court.

"Due process requires that the accused receive a trial by an impartial jury free from outside influences." Sheppard v. Maxwell, 384 U.S. 333, 362 (1966). In this vein, it is clear:

> The Sixth Amendment guarantees to a defendant the right to be tried by an impartial jury whose verdict is "based on evidence received in open court, not from outside sources." Sheppard v. Maxwell, 384 U.S. 333, 351 (1966). The failure to give an accused a fair hearing violates standards of due process. Irvin v. Dowd, 366 U.S. 717,

> 722 (1961). When pretrial publicity or an inflamed community atmosphere precludes the seating of an impartial jury, a change of venue or a continuance is required. See Rideau v. Louisiana, 373 U.S. 723 (1963); Sheppard, 384 U.S. 333. However, due process does not require that qualified jurors be totally ignorant of the facts and issues involved in a case. See Murphy v. Florida, 421 U.S. 794 (1975).

Geralds v. Inch, No. 5:13-CV-167-MW, 2019 WL 2092977, at *64 (N.D. Fla. May 13, 2019), appeal filed by No. 19-13562 (11th Cir. Sept. 11, 2019).

Here, the trial court took strong measures to ensure that pretrial publicity had not saturated the community and prevented the selection of an impartial and fair jury, and the trial court made sure that publicity during the proceedings did not threaten the fairness of the trial. Based on this record, the Court is not convinced that Petitioner's murder trial was tried in a carnival or inflamed community atmosphere constituting actual prejudice or justifying presumed prejudice. See Coleman v. Zant, 708 F.2d 541, 546 (11th Cir. 1983) (record does not show "prejudicial publicity saturated the

community"). Furthermore, Petitioner has not shown either actual or inherent prejudice by focusing on the jurors who "actually sat." Levitan v. Morgan, No. 3:12cv117/MCR/CJK, 2016 WL 1267574, at *8 (N.D. Fla. Feb. 25, 2016) (citing Woods v. Dugger, 923 F.2d 1454, 1457 (11th Cir. 1991) & Spivey v. Head, 207 F.3d 1263, 1273 (11th Cir. 2000)), report and recommendation adopted by 2016 WL 1275627 (N.D. Fla. Mar. 31, 2016). Petitioner has failed to support his claim that the due process requirements of the Fourteenth Amendment and the provision of the Sixth Amendment securing a defendant a fair trial were violated or undermined pretrial or during trial proceedings. Therefore, Petitioner is not entitled to relief on this ground.

The Fifth DCA's decision is not contrary to, nor an unreasonable application of controlling Supreme Court precedent or based on an unreasonable determination of the facts. Accordingly, AEDPA deference is due under 28 U.S.C. § 2254(d). Ground 1E is denied.

F. Ground 1F

In ground 1F, Petitioner contends his defense counsel erred by relying on a theory of self-defense rather than asserting the killing was the result of a crime of passion constituting manslaughter. Petition at 10. Petitioner raised this claim in his pro se brief on direct appeal. Ex. F at 15-18. The 5th DCA affirmed. Ex. G. As noted by Respondents, this claim is both without merit and illogical because the jury was instructed on the crime of manslaughter and manslaughter was a lesser included offense on the verdict form, but the jury rejected this option and found Petitioner guilty of the highest offense, first degree murder with a firearm charge. Response at 14.

The record demonstrates defense counsel relied on the defense that Becky Foster shot the shotgun that killed the victim. Ex. D at 756-57, 760, 762. Defense counsel urged the jury to consider lesser charges of second-degree murder and manslaughter. Id. at 763-64. He also asked the jury to consider whether it was a crime

of passion, as addressed in the instruction on justifiable homicide. Id. at 764. Counsel implored the jury to consider these lesser charges "[be]cause I would submit that that man is not guilty of first-degree premeditated murder, not guilty of that." Id.

The court instructed the jury that if it decided the main accusation, murder, had not been proven beyond a reasonable doubt, the jury would then decide if the defendant is guilty of any lesser-included crime. Id. at 783. The court instructed the jury on second-degree murder and manslaughter. Id. at 783-85. Also, the court instructed the jury on justifiable or excusable homicide, including a "killing that occurs by accident and misfortune in the heat of passion upon any sudden or sufficient provocation[.]" Id. at 785-86.

The trial court was necessarily convinced there was enough evidence and testimony presented at trial to justify the giving of these instructions. Petitioner was fully aware of defense counsel's strategy as Petitioner agreed to the waiver of the statute of

limitations on the crime of manslaughter so that it would be charged. Ex. D at 687-90. The record shows defense counsel asked that the jury be instructed on second degree murder and manslaughter. Id. at 687-88. Petitioner told the court he wanted to waive the statute of limitations and have the lesser included offenses go to the jury. Id. 689-90. The court found it to be a knowing and voluntary waiver and instructed the jury on the lesser charges. Id. at 690.

The jury returned a verdict of guilty as charged in the indictment of first degree murder, although given the option of selecting a lesser-included offense of second degree murder, a lesser-included offense of manslaughter, or not guilty. Ex. A at 397. Since the jury found the evidence sufficient to establish Petitioner's guilt of the primary offense of murder, under Florida law, the jury would not have been allowed to find Petitioner guilty of a lesser offense; therefore, the possibility of a jury pardon does not satisfy the calculus of prejudice in assessing the conduct of counsel. Rosato

v. Sec'y, Dep't of Corr., No. 8:14-cv-3040-T-35AEP, 2018 WL 8895808, at *28 (M.D. Fla. Mar. 29, 2018).

Upon examination, the evidence presented at trial sufficiently supports the verdict. The jury found the accusation of murder proven beyond a reasonable doubt. In finding the state proved all elements of the offense, the jury completed its deliberation. The Court assumes the jury followed the law and the instructions. Therefore, once the jury found the main accusation proven beyond a reasonable doubt, the jury's deliberation was complete. "A defendant has no entitlement to the luck of a lawless decisionmaker[.]" Strickland v. Washington, 466 U.S. 668, 695 (1984).

Petitioner is not entitled to habeas relief on this ground. The 5th DCA's decision is entitled to deference. The decision is not inconsistent with Supreme Court precedent, and the state court's adjudication of this claim is not contrary to or an unreasonable application of Supreme Court law or based on an unreasonable determination of the facts.

G. Ground 1G

In ground 1G, Petitioner claims the appearance and use of a leg brace (electric shock anklet) at trial affected the presumption of innocence and was plain error. Petition at 10. Petitioner submits that allowing him to appear before the jury in an anklet device was inherently prejudicial, undermining the presumption of his innocence and the right to a fair trial. Reply at 6. Respondents counter this assertion by submitting that nothing in the record indicates that the jury ever saw any leg restraints or that Petitioner was denied a fair trial. Response at 16.

The Court has undertaken a thorough review of the record, and there is nothing in the record supporting a claim that the jury observed leg restraints or inquired as to whether Petitioner was in leg restraints. The record shows Petitioner wore both a leg brace and an electric shock anklet. Ex. D a 371. As noted by Respondents, Petitioner "had many verbal outbursts during trial." Response at 15.

Outside the presence of the jury, the court considered Petitioner's complaint of discomfort. Id. at 371-72. The record reflects that Petitioner had attempted to remove the "Bandit" (electric shock anklet) the day before, and the officers duct taped it to his leg. Id. at 372. There were no complaints about visibility of the device from the defense, only of discomfort. Id. at 373. Outside the presence of the jury, the "Bandit" was adjusted. Id. at 374-76. Before the jury was brought back into the courtroom, Petitioner confirmed that the device was now comfortable. Id. at 376.

Petitioner raised the issue on direct appeal in his pro se brief, claiming leg devices caused him to walk in a stiff-legged fashion. Ex. F at 20-22. He did not allege the leg devices were visible to the jury. The 5th DCA affirmed. Ex. G.

The Constitution does not permit the state "to use visible shackles routinely in the guilt phase of a criminal trial." Deck v. Missouri, 544 U.S. 622, 626,

(2005). Shackles are permitted during the guilt phase "only in the presence of a special need." Id. Moreover, since there is a presumption that a defendant is innocent until proven guilty, it follows that "[v]isible shackling undermines the presumption of innocence and the related fairness of the factfinding process." Id. at 630 (citation omitted). Also, it is important to maintain the dignity and decorum of the courtroom and to allow for ready communication between the accused and his counsel. Id. at 631.

The Court recognizes, however, that criminal trials are not conducted in a "crystalline palace," and often, security measures must be taken to ensure the safety and security of the judge, the lawyers, the jury and courtroom personnel. Allen v. Montgomery, 728 F.2d 1409, 1413 (11th Cir. 1984). See United States v. Mayes, 158 F.3d 1215, 1225 (11th Cir. 1998) (finding the decision to restrain the defendants with leg irons reasonable, based on a careful and informed decision), cert. denied, 525 U.S. 1185 (1999); Zygadlo v. Wainwright, 720 F.2d

1221, 1223 (11th Cir. 1983) (noting the previous escape attempt of the defendant, the court entering upon the record the reasons for the decision to shackle the legs of the defendant, and the opportunity given to defense counsel to enter objections outside the presence of the jury), cert. denied, 466 U.S. 941 (1984).

It is settled, if the jury could not see the shackles or restraints, "there can be no prejudice." Moon v. Head, 285 F.3d 1301, 1317 (11th Cir. 2002), cert. denied, 537 U.S. 1124 (2003). As the chief concern is to preserve the presumption of innocence and to avoid "portraying the defendant as a bad or dangerous person[,]" an incidental viewing by the jury of a defendant in restraints is not necessarily prejudicial. Gates v. Zant, 863 F.2d 1492, 1501 (11th Cir.) (per curiam), cert. denied, 493 U.S. 945 (1989). A possible momentary, chance sighting of the accused in restraints does not necessarily nullify the presumption of innocence.

After a thorough review of the record, the Court concludes the record does not contain any initial

proceeding or other record explaining why Petitioner was restrained in leg restraints for trial or who made the decision that Petitioner should be restrained for trial. However, the trial record demonstrates a leg brace is a standard courtroom security device utilized in St. Johns County and the Bandit was an additional device used for Petitioner's first degree murder trial. Ex. D at 371. The courtroom bailiff explained: "I just want to make you aware that what he's wearing is what everyone else wears when they come for *these trials*. He's not being treated any different than anyone else." (emphasis added). Id. at 372. The court explained that "in these types of cases" the Bandit is routinely used. Id. at 373. The court repeatedly advised Petitioner he had to wear it and the court was not going to direct its removal. Id. at 373-75.

Petitioner complains that he walked in a stiff-legged fashion due to the leg devices. The Court concludes, even if counsel had objected to the wearing of the device after it was adjusted for comfort, it is highly unlikely

that any objection would have been successful due to the unobtrusiveness of the leg brace and anklet device and the need to protect the occupants of the courtroom from Petitioner who was short-tempered and disruptive during the proceedings. Most importantly, the devices were not visible to the jury and a stiff-legged walk is not necessarily caused by a restraint device. See Floyd v. State, 18 So. 3d 432, 458 (Fla. 2009) (per curiam) (denying post-conviction relief noting, "without presenting any evidence that anyone in the courtroom - especially the jurors- noticed the brace, [Petitioner] fails to demonstrate that he was prejudiced[.]" Id.

The Court is convinced that Petitioner is not entitled to relief on this ground. Petitioner was on trial for first degree murder and facing the death penalty. He exhibited volatile behavior and attempted to remove one of the security devices. Upon Petitioner's complaint of discomfort, the trial judge was adamant that the Bandit would not be removed but it would be adjusted to provide comfort. Petitioner expressed satisfaction

after the anklet was adjusted. Furthermore, Petitioner has not demonstrated that any juror noticed the leg brace, anklet device, or Petitioner's stiff-legged walk or questioned his stride. Petitioner has not shown he was deprived of a fair trial under these circumstances. Therefore, this ground is due to be denied.

The adjudication of the state court resulted in a decision that involved a reasonable application of clearly established federal law, as determined by the United States Supreme Court. Thus, Petitioner is not entitled to relief on this ground because the state court's decision was not contrary to clearly established federal law, did not involve an unreasonable application of clearly established federal law, and was not based on an unreasonable determination of the facts. The Court concludes AEDPA deference is due and Petitioner is not entitled to federal habeas relief.

H. Ground 1H

Petitioner, in his last claim in ground one, contends he was placed on multiple medications that caused the

serious side effects of confusion and hyper excitability, which resulted in fundamental error [as he was incompetent to proceed]. Petition at 10. On direct appeal, in his pro se brief, Petitioner raised the same issue, claiming he was placed on multiple medications by the county jail doctor. Ex. F at 23. He complains he was overmedicated at trial and exhibited erratic behavior due to the side effects of the medication. Id. at 26. He alleges the combination of prescribed medications made him incompetent to proceed. Id. at 25-25C. The 5th DCA affirmed. Ex. G.

The adjudication of the state appellate court resulted in a decision that involved a reasonable application of clearly established federal law, as determined by the United States Supreme Court. Ex. G. Therefore, Petitioner is not entitled to relief on this ground because the 5th DCA's decision was not contrary to clearly established federal law, did not involve an unreasonable application of clearly established federal law, and was not based on an unreasonable determination

of the facts based on the evidence presented in the state court proceedings. This ground is due to be denied.

Alternatively, this claim has no merit. At his evidentiary hearing on a Rule 3.850 motion, Petitioner stated he quit taking the medication before trial because he feared it would interfere with his defense at trial. Ex. N at 909. Both Petitioner and his attorney apparently made the trial court aware that Petitioner had stopped taking some psychotropic medications before the trial commenced. Id. at 932. This testimony certainly contradicts Petitioner's assertion that he was overmedicated at trial, taking multiple, contradicting medications.

Respondents contend there is no evidence supporting a claim of incompetence to stand trial. Response at 17. Indeed, attorney Nielsen attested that none of the defense team thought Petitioner was incompetent. Ex. N at 940-41. The team included lead attorney Nielsen; Mr. Dowdy, co-counsel; Dr. Mings, a neuropsychologist; Dr. Danzinger, a psychiatrist; and, a criminal investigator.

Id. Dr. Mings and Dr. Danzinger both opined Petitioner was competent to proceed. Id. at 941.

Mr. Nielsen testified Petitioner was not in a fog or a daze during the trial. Id. at 943. Indeed, Mr. Nielsen described Petitioner as participating in his defense and being actively involved in the defense, without any suggestion of incompetence. Id. at 969. While noting Petitioner was very smart, Mr. Nielsen also found Petitioner had behavioral issues, exhibited much anger, and was a racist. Id. at 969-70, 993.

Although Dr. Mings and Dr. Danzinger testified at the penalty phase, neither testified that Petitioner was incompetent or had been incompetent. Dr. Mings testified Petitioner had a low-average IQ of 82, with his biggest weakness being processing speed and working memory, which explained Petitioner's attention and concentration deficits. Ex. D at 866, 868. Dr. Mings also found Petitioner affectively labile, meaning disinhibited. Id. at 876. Dr. Mings described Petitioner as easily angered, distracted, and upset. Id. Dr. Mings

recognized Petitioner had a history of head injuries and alcohol abuse. Id. at 877. Of import, Dr. Mings did not find Petitioner to be "mentally retarded" or crazy. Id. at 883.

Dr. Danzinger noted Petitioner had been in facilities for alcohol detoxification, was a heavy drinker, and had blackouts. Id. at 897, 906-907. Dr. Danzinger testified Petitioner had not been diagnosed as bipolar, but he exhibited mood instability. Id. at 937. Dr. Danzinger concluded Petitioner was not crazy or psychotic. Id. at 937-38.

Although Petitioner may be mentally ill, "affectively labile," have a mood disorder and other behavioral issues, he was not deemed incompetent to proceed by the medical professionals. His lawyers found him able to participate in his defense and actively involved in his case. The trial court, although faced with dealing with Petitioner's behavioral issues, never suggested, raised or opined that Petitioner may be incompetent to proceed.

Petitioner has failed to demonstrate he was incompetent or that he was on multiple contradicting medications at the time of trial that caused him to become incompetent. In fact, he testified he quit taking the medications for trial.[6] It is quite apparent that Petitioner has behavioral issues and mood instability, but his mental problems, based on the experts' testimony, do not amount to his being psychotic and they did not render him incompetent to proceed to trial.

The trial court did not err in allowing Petitioner to proceed through trial without conducting a competency hearing. Defense counsel testified he never had any concerns that Petitioner was incompetent during the trial. The trial record does not support Petitioner's claim of incompetency. Based on the above, Petitioner is not entitled to habeas relief and this ground is due to be denied.

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6 Although Petitioner may have been prescribed and given medications at the jail, he testified he stopped taking the medications for trial.

VI. REMAINING CLAIMS

In the remaining grounds (two through thirteen), Petitioner raises claims of ineffective assistance of counsel. Petitioner adequately exhausted these claims of ineffective assistance of trial counsel in the state court system by presenting the claims in his post-conviction motion and appealing the denial of post-conviction relief. Ex. M; Ex. N; Ex. O; Ex. P. The 5th DCA affirmed per curiam. Ex. Q. The mandate issued on July 25, 2017. Ex. U.

To prevail on a Sixth Amendment claim, Petitioner must satisfy the two-pronged test set forth in Strickland, 466 U.S. at 688, requiring that he show both deficient performance (counsel's representation fell below an objective standard of reasonableness) and prejudice (there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different). See Brewster v. Hetzel, 913 F.3d 1042, 1051-52 (11th Cir. 2019) (reviewing court may begin with either component).

To obtain habeas relief, a counsel's errors must be so great that they adversely affect the defense. To satisfy this prejudice prong, the reasonable probability of a different result must be "a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

The standard created by Strickland is a highly deferential standard, requiring a most deferential review of counsel's decisions. Richter, 562 U.S. at 105. Not only is there the "Strickland mandated one layer of deference to the decisions of trial counsel[,]" there is the added layer of deference required by AEDPA: the one to a state court's decision. Nance, 922 F.3d at 1303. Thus,

> Given the double deference due, it is a "rare case in which an ineffective assistance of counsel claim that was denied on the merits in state court is found to merit relief in a federal habeas proceeding." Johnson v. Sec'y, DOC, 643 F.3d 907, 911 (11th Cir. 2011). And, for the reasons we have already discussed, it is rarer still for merit to be found in a claim that challenges a strategic decision of counsel.

Nance, 922 F.3d at 1303.

A. Ground Two

Petitioner claims his counsel was ineffective for failure to move for a change of venue, alleging the case received an extreme amount of media attention, and it was impossible to obtain a fair trial with an impartial jury in a small, rural town. Petition at 11-12. After recognizing the Strickland two-pronged standard of review, the trial court rejected this claim finding Petitioner was not prejudiced by his counsel's failure to file a motion for change of venue. Ex. M at 279-281. The court found the newspaper coverage was "not of an extent and nature that would require a change of venue." Id. at 281. Furthermore, after extensive questioning of the venire, only one potential juror indicated any knowledge about the case, and that person was excused by stipulation on other grounds. Id. Consequently, the court found Petitioner would not have been entitled to a

change of venue and Petitioner did not demonstrate prejudice under Strickland. Id.

Without satisfying the prejudice component, Petitioner cannot prevail on his claim of ineffective assistance of counsel. See Reaves, 872 F.3d at 1151. Even if this Court were to address the performance prong, Petitioner has not demonstrated deficient performance on the part of defense counsel. This is certainly not a case where the media coverage deprived Petitioner of a fair and impartial jury. Indeed, as demonstrated by the trial record, only one panel member had some knowledge of the case, revealing that members of the community selected for the panel were not following what Petitioner has described as a "media blitz." There is no evidence of an inflamed community atmosphere that precluded the seating of an impartial jury. Petitioner did not challenge any members of the jury as being unfair or unable to be impartial. Indeed, there was no real difficulty in selecting an impartial jury. "If the defendant shows no undue difficulties in selecting a fair

and impartial jury, then no legal basis would have existed for a change of venue—and trial counsel would not have been deficient in failing to move for one." Carter v. State, 175 So. 3d 761, 776 (Fla. 2015) (per curiam).

As the state court reasonably determined the facts and reasonably applied federal law to those facts in rejecting the claim of ineffective assistance of counsel, Petitioner is not entitled to habeas relief. The state court's ruling is entitled to AEDPA deference. The 5th DCA affirmed the trial court's decision. Its decision is not inconsistent with Supreme Court precedent, and the state court's adjudication of this claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. Thus, AEDPA deference is due, and Petitioner is not entitled to relief on ground two.

B. Ground Three

In ground three, Petitioner raises a claim of ineffective assistance of counsel for failure to advise Petitioner of the defense of voluntary intoxication where

evidence existed to warrant such defense. Petition at 14. Petitioner exhausted this claim by raising it in his post-conviction motion. After conducting an evidentiary hearing, the trial court, in a detailed order, denied relief on this ground. Once again, the trial court applied the Strickland standard in addressing Petitioner's contention that he was deprived of his Sixth Amendment right to reasonable assistance under prevailing professional standards. Ex. M at 756.

The court summarized Petitioner's testimony concerning this issue:

> At the hearing, Defendant testified that he was an alcoholic and Mr. Nielson was aware of the problem. Defendant testified that Mr. Nielsen should have discussed raising voluntary intoxication as a defense at trial and should have requested a special jury instruction. Defendant testified that he is not sure what he was drinking at the time of the murder because he is not sure when the victim was shot. Although Defendant stated there was "plenty of evidence," he did not offer evidence that he was intoxicated at the time the victim was shot.

Id. at 756-57.

At the evidentiary hearing, Mr. Nielsen testified that Petitioner admitted being involved in the shooting but did not blame the shooting, at any point, on being intoxicated. Ex. N at 937. The attorney for the state inquired of Mr. Nielsen:

> Q And other than the general knowledge you had about his alcoholism, did he ever get into you - get into the issue of how much he had had to drink or any other drugs on the night of the murder?
>
> A What I do recall about it more had to do with afterwards, because I think after the killing there was a lot of probably consuming of alcohol.
>
> That seems to be kind of sticking out in my mind, but it was more like during the clean-up, disposal of the body and even perhaps later they went over [to] some neighbor's house and very well, I'm sure he was drinking over there with his buddy.

Id. at 937-38.

Significantly, in closing, the state relied on the fact that Petitioner testified he did not even remember if he was present at the homicide. Id. at 926, 1010. Based on this testimony, the state argued Petitioner

Alcohol was a defense Before

Blackouts are common with extreme use of Alcohol, specifically when a person drinks copious amounts.

After hearing the testimony, the trial court made a credibility determination, finding Mr. Nielsen's testimony to be credible. Ex. M at 757. "Federal habeas courts have 'no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them.'" Consalvo v. Sec'y for Dep't of Corr., 664 F.3d 842, 845 (11th Cir. 2011) (per curiam) (quoting Marshall v. Lonberger, 459 U.S. 422, 434 (1983)), cert. denied, 568 U.S. 849 (2012).

The court also found counsel's performance well within the broad range of reasonable assistance under prevailing professional norms. Id. The court concluded that Mr. Nielsen could not be expected to suggest or raise a voluntary intoxication defense when Petitioner did not allege he was intoxicated at the time of the shooting. Id. The court was not convinced that Petitioner "would have been able to present evidence of his intoxication sufficient to establish he was incapable of forming intent necessary to commit the crime." Id. at 757-58. The court also noted that Petitioner

testified at the trial that he acted in self-defense; therefore, the presentation of a voluntary intoxication defense would have been incompatible with the self-defense strategy. Id. at 758. The court also opined, even if Petitioner had relied on testimony that Becky Foster killed the victim, voluntary intoxication would not have been compatible with the trial strategy. Id.

In conclusion, the court held:

> The Court finds that Mr. Nielson acted within the broad range of reasonable assistance under prevailing professional standards and Defendant fails on the first prong of Strickland. However, even if Defendant satisfied the first prong of Strickland, there is no evidence that but for Mr. Nielson's alleged failure the outcome of the trial would have been different. Assuming Defendant chose to admit that he killed the victim, but alleged he was too intoxicated to form the requisite intent, **Defendant has presented no evidence to support this claim.**

Ex. M at 758 (emphasis added).

Finding neither deficient performance nor prejudice, the trial court denied relief. The 5th DCA affirmed. Ex. Q.

The Court is not convinced defense counsel's performance fell below an objective standard of reasonableness. Indeed, counsel's actions were well within the scope of permissible performance. The standard is reasonable performance, not perfection. Brewster, 913 F.3d at 1056 (citation omitted). In addition, Petitioner has failed to show resulting prejudice, the second prong of the Strickland standard. There is no reasonable probability that the outcome of the case would have been different if trial counsel had taken the action suggested by Petitioner as Petitioner has failed to show that the evidence would have supported the instruction.

The Court concludes AEDPA deference is warranted. The record shows the 5th DCA affirmed the decision of the trial court, and the Court presumes that the appellate court adjudicated the claim on its merits, as there is an absence of any indication of state-law procedural principles to the contrary. Since the last adjudication is unaccompanied by an explanation, it is Petitioner's

burden to show there was no reasonable basis for the state court to deny relief. He has failed in this endeavor. Thus, the Court finds the state court's adjudication of this claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. As such, ground three is due to be denied.

C. Ground Four

In ground four of the Petition, Petitioner claims his counsel failed to meet Sixth Amendment standards by failing to challenge, through a motion to suppress, his former wife's testimony regarding marital communications given without Petitioner's consent, that fell within the spousal privilege. Petition at 18. This claim was presented in a post-conviction motion and summarily denied. The court set forth the Strickland standard before addressing this claim. Ex. M at 279. The court explained the husband-wife privilege extends to communications made during the marriage, citing Fla. Stat. § 90.504. Ex. M at 281-82. This privilege is

meant to prevent the disclosure of communications which were intended to be made in confidence between the spouses **while they were husband and wife.** Hanger Orthopedic Group, Inc. v. McMurray, 181 F.R.D. 525, 528 (M.D. Fla. 1998) (emphasis added).

The communication at issue was the controlled telephone call between Petitioner and his former wife. When applied to Petitioner's case, it is quite apparent that Petitioner was not married to Ms. Foster at the time of the murder in January 1991; therefore, the communications made during that time do not fall under the privilege. Ex. M at 282. Also, they were not married at the time of the controlled call in 2008. Id. As a result, the communications with Ms. Foster were not privileged, providing no basis for a motion to suppress those communications between Petitioner and Ms. Foster. Id.

Defense counsel cannot be ineffective for failure to present a futile motion. It would have been a futile act to file a motion to suppress as the motion would not

have obtained Petitioner any relief. Petitioner has neither shown deficient performance nor prejudice to the outcome. Therefore, he is not entitled to relief on this ground.

The 5th DCA affirmed without an opinion and explanation. Ex. Q. This decision, although unexplained, is entitled to AEDPA deference. Applying the look through presumption described in Wilson, the state court's ruling is based on a reasonable determination of the facts and a reasonable application of the law.

Thus, the Florida court's decision is not inconsistent with Supreme Court precedent, including Strickland, and the state court's adjudication of the claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. Ground four is due to be denied.

D. Ground Five

In ground five, Petitioner claims the ineffective assistance of counsel for failure to file a pre-trial

motion in limine to exclude testimony or statements that Petitioner was a fugitive from justice. Petition at 21. At trial, Detective Howard "Skip" Cole testified that, after obtaining an arrest warrant for Petitioner, the Sheriff's Office contacted the United States Marshal's Fugitive Task Force to assist the Office with locating and apprehending Petitioner. Ex. D at 389-90. Petitioner's counsel did not object nor had he filed a pre-trial motion in limine.

Petitioner raised this issue in his Rule 3.850 motion and the trial court denied relief after conducting an evidentiary hearing. Ex. M at 758-60. Mr. Nielson explained that he did not file a motion to exclude testimony that Petitioner was a fugitive because the testimony concerned the warrant in the murder case, not some other case; therefore, the testimony did not constitute evidence of other crimes. Id. at 759. Although the jury heard testimony about the investigation and events leading up to Petitioner's arrest, Mr. Nielson did not object because the state, under Florida law,

could argue evidence of flight to prove consciousness of guilt. Id.

During the evidentiary hearing, the court specifically inquired as to whether the warrant concerned the murder case. Ex. N at 811. Petitioner assured the court that it did. Id. Mr. Nielson explained that he did not object because it did not concern evidence of other crimes improperly admitted into the case. Id. at 939. He further explained that Detective Cole's testimony was directly related to the investigation and the events leading up to Petitioner's arrest, and, based on this evidence, the state argued "evidence of flight to show the jury what they call a consciousness of guilt[.]" Id. Mr. Nielson attested he believed he could not curtail the detective's testimony as it was evidence of flight and admissible to prove consciousness of guilt. Id.

The court found defense counsel's view well-founded based on the case law in Florida. Ex. M at 759. The court found Mr. Nielson acted within prevailing

professional standards and Petitioner failed to meet the first prong of Strickland. Id. The court further found that even if Petitioner had satisfied the performance prong, he did not satisfy the prejudice prong. Id. The court determined "there is not a reasonable probability the outcome of the case would have been different had Mr. Nielson filed a motion in limine regarding the testimony characterizing Defendant as a fugitive." Id. at 760.

To the extent Petitioner is complaining about a ruling regarding the admissibility of evidence under Florida law, the claim is not cognizable in this federal habeas proceeding. See Baxter v. Thomas, 45 F.3d 1501, 1509 (11th Cir.) (concluding federal habeas is not the proper vehicle to correct an evidentiary ruling), cert. denied, 516 U.S. 946 (1995). Unless a fundamental constitutional protection is at issue, a federal court must give state courts wide discretion in determining the admission of evidence. Alderman v. Zant, 22 F.3d 1541, 1555 (11th Cir.), cert. denied, 513 U.S. 1061 (1994); Boykins v. Wainwright, 737 F.2d 1539, 1543 (11th Cir.

1984), cert. denied, 470 U.S. 1059 (1985). Indeed, "it is not the province of a federal habeas court to reexamine state-court determination on state-law questions." Estelle v. McGuire, 502 U.S. at 67.

Defense counsel need not make meritless motions or lodge futile objections that would not have obtained relief. Brewster, 913 F.3d at 1056 (citations omitted). Under these circumstances, defense counsel would not have prevailed on a pre-trial motion in limine or through an objection, as evidenced by the decision of the trial court. The 5th DCA affirmed the decision of the trial court. Ex. Q. The 5th DCA's affirmance is an adjudication on the merits and is entitled to deference under 28 U.S.C. § 2254(d). Applying Wilson's look-through presumption, the rejection of the claim of ineffective assistance of counsel for failure to file a motion in limine to exclude the testimony concerning Petitioner being a fugitive from justice was based on a reasonable determination of the facts and a reasonable application of Strickland. Finally, the decision is not

inconsistent with Supreme Court precedent nor is it contrary to Strickland.

Petitioner has failed to satisfy the Strickland requirements and he is not entitled to habeas relief on ground five. Therefore, ground five is due to be denied.

E. Ground Six

In ground six, Petitioner raises another claim of ineffective assistance of counsel, contending his counsel performed deficiently for failure to ask for a standing objection to the denial of his motion in limine to exclude mention and allegations of domestic violence committed by Petitioner on Becky Foster. Petition at 22. Petitioner raised this issue in his post-conviction motion and the trial court summarily denied this ground finding the claim refuted by the record and without merit. Ex. M at 282-83.

It is abundantly clear that Petitioner is not entitled to relief on this ground. Defense counsel filed a Motion in Limine asking that testimony and comments by Becky Foster be limited concerning any allegations that

Petitioner beat and raped her. Ex. A at 308-309. The court heard argument on the motion. Ex. B at 13-19. At trial, the state proffered Ms. Foster's testimony. Ex. D at 411-15. Defense counsel renewed his argument concerning the motion in limine. Id. at 415-17. The court placed parameters on what Ms. Foster could testify to and disallowed any detail on how the relationship got physical and limited the testimony on the threats and the gun. Id. at 420-21. Once defense counsel obtained the trial court's ruling, he did not need to seek a standing objection because with the definitive ruling on the record, there was no need to renew an objection to preserve the claim of error for appeal. Tolbert v. State, 922 So. 2d 1013, 1017 (Fla. 5th DCA 2006). See Powell v. State, 79 So. 3d 921, 923 (Fla. 5th DCA 2012) (finding, normally, a motion in limine followed by a definitive ruling will preserve an argument for appeal).

The 5th DCA affirmed the trial court's decision that defense counsel did not act outside the broad range of reasonable assistance under prevailing professional

standards by not making a standing or subsequent objection regarding the admission of evidence of domestic violence. Ex. Q. Pursuant to Wilson, it is assumed the 5th DCA adopted the reasoning of the trial court in denying the motion. The state has not attempted to rebut this presumption. Deference under AEDPA should be given to the last adjudication on the merits provided by the 5th DCA. The Florida court's decision is not inconsistent with Supreme Court precedent, including Strickland and its progeny. Moreover, the state court's adjudication of this claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. Thus, ground six is due to be denied.

F. Ground Seven

Petitioner, in ground seven, claims his counsel was ineffective for advising Petitioner to testify. Petition at 23. Petitioner contends he was ill-advised to testify as he is mentally ill and should have been evaluated for competency. Id. at 23-26. The trial court

conducted an evidentiary hearing on this ground. The court noted that Petitioner testified he was mentally ill due to alcohol dementia, brain cell loss, a major head injury from a car crash, alcoholism, and brain shrinkage. Ex. M at 760. The court acknowledged post-conviction counsel's argument that Petitioner was not competent to proceed as exhibited by his inappropriate courtroom behavior. Id. at 761.

As noted previously, defense counsel did not believe Petitioner was incompetent, and counsel relied on the opinion of two doctors, Dr. Mings and Dr. Danziger, in making the assessment of Petitioner's condition and in determining his ability to proceed to trial. "Mr. Nielson testified that he specifically spoke with the doctors about whether Defendant was competent because he exhibited odd behavior at times and both doctors opined that Defendant was competent to proceed." Id. Mr. Nielson said Petitioner, at trial, did not exhibit being in a "fog," instead he was "amped up" and well versed. Id. at 762. The court referred to Mr. Nielson's

testimony that Petitioner was adamant that he was not responsible for killing the victim, and the fact counsel believed, due to the strong evidence against Petitioner, it would be advisable for Petitioner to present his side of the story. Id. at 762-63.

The record demonstrates that the trial court conducted a colloquy to ensure Petitioner understood his decision to testify:

> THE COURT: Okay. Mr. Stanaland, have you had a chance to talk to your lawyers about whether or not you wish to testify?
>
> THE DEFENDANT: Yes, ma'am, I have.
>
> THE COURT: All right. And what's that decision?
>
> THE DEFENDANT: I'm ready to testify.
>
> THE COURT: Okay. And you understand you have an absolute right to remain silent, you don't have to - you don't have to take the stand if you don't want to do so; it's your decision and your decision alone? You understand that?
>
> THE DEFENDANT: Yes, ma'am.

> THE COURT: And has anybody placed any force or pressure or intimidation on you to get you to make the decision to testify?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: You're doing it of you own free will?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: All right. Okay. Then we will let you testify.

Ex. D at 615.

The court found Mr. Nielson's testimony regarding Petitioner's competency and decision to take the stand to be credible. Ex. M at 764. This Court has no license to re-address the state court's credibility determination. The court also found counsel acted within the range of prevailing professional standards. Id. Finding Petitioner failed to satisfy the first prong under Strickland, the court denied relief. The 5th DCA affirmed. Ex. Q. Without satisfying the performance component, Petitioner cannot prevail on his claim of ineffective assistance of counsel.

Petitioner appealed the denial of his Rule 3.850 motion. Pursuant to Wilson, it is assumed the 5th DCA adopted the reasoning of the trial court in denying the motion. The state has not attempted to rebut this presumption. Deference under AEDPA should be given to the last adjudication on the merits provided by the 5th DCA. Upon review, the Florida court's decision is not inconsistent with Supreme Court precedent, including Strickland and its progeny. Moreover, the state court's adjudication of this claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. As such, ground seven is due to be denied.

G. Ground Eight

In ground eight, Petitioner raises a claim of the ineffective assistance of counsel for failure to object to numerous improper closing remarks of the prosecutor. Petition at 26. The trial court set forth the two-pronged Strickland standard before addressing grounds for relief. Ex. M at 756. In a very thorough and well-

reasoned decision, the trial court rejected this claim of ineffectiveness after conducting an evidentiary hearing. The court concluded defense counsel's performance was not deficient for failure to object to the state's closing remarks. Id. at 765-68. Denying the performance prong of Strickland, the trial court did not reach the prejudice prong. Id. at 768.

Upon review, defense counsels' actions were reasonable. Mr. Dowdy conducted closing argument and Mr. Nielsen was present. Apparently, Petitioner is complaining defense counsel failed to object to four comments made during closing arguments and Mr. Nielsen failed to prompt co-counsel to object.[7] The comments are: (1) Becky Foster was not being charged in the murder of the victim but she could be as there is no statute of

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7 Petitioner alleged four improper comments in his Rule 3.850 motion. In the instant Petition, he focuses on the comment that Becky Foster was not being charged in the murder, but Ms. Foster could be charged. Petition at 26-27. Since Petitioner generally claims counsel was ineffective for failure to object to inflammatory comments by the prosecutor during closing arguments, in an abundance of caution, the Court will address this ineffectiveness claim considering all four comments as raised in and considered by the state post-conviction court.

limitations on first degree murder; (2) Petitioner invented the gun fight between himself and the victim to create a defense of self-defense; (3) Petitioner, in 2009, said Becky Foster shot the victim with a shot gun; and (4) Becky Foster's black eye was due to Petitioner slapping her around. Ex. M at 765.

Mr. Nielsen, co-counsel, testified that the first comment was a fair comment on the evidence and a true and accurate statement as Ms. Foster could be charged with first degree murder. Id. at 948-49. Mr. Nielsen also testified the second comment was a fair comment on Petitioner's testimony on cross-examination when Petitioner presented "a new theory of defense" of a gun battle. Id. at 949, 977-78. With respect to the third comment, a comment concerning Petitioner's 2009 pre-trial statement, Mr. Nielsen said the defense tried to exclude the statement, but the trial court denied the defense's request. Id. at 949-50. Finally, Mr. Nielsen testified he remembered evidence that Ms. Foster had a black eye, and that what was said was "either very close or what was

Note: Not True! 206 pages of Suppressed Evidence from Mr. Standlands' Interview when arrested on Nov. 7th 2008, Supports. The defense of Self-defense Mr. Standland Explains to the Detective of how the victim had pulled a gun and started shooting 80 at him and he grabbed it and shot Becky

in the evidence[.]" Id. at 950. He believed the prosecutor's comment was a fair comment on the evidence although there was some dispute how Ms. Foster suffered a black eye. Id. at 951.

Upon review, the first comment was a fair comment on the evidence. At trial, Becky Foster testified the assistant state attorney did not make any promises that Ms. Foster would not be prosecuted if she continued to speak to Detective Cole. Ex. D at 460. Ms. Foster reiterated that she did not know if she would be prosecuted as no promises had been made by the prosecutor. Id. at 473.

The record shows the second comment at issue was also a fair comment on the evidence. Petitioner did testify as to the gunfight. Ex. D at 630-31. Petitioner testified he shot Mr. Whitley to defend himself and prevent Mr. Whitley from shooting Ms. Foster. Id. at 631, 635-37.

Regarding the third statement at issue, the court said the state could impeach Petitioner with what he said

in prior statements. Ex. D at 652. The court found once Petitioner became a witness in the case, the state could ask him about previous statements. Id. at 655. When the prosecutor asked about the statement, Mr. Nielsen objected. Ex. D at 677. The court allowed the state's inquiry. Id. at 678-79. The comment in closing was based on Petitioner's testimony; therefore, the prosecutor's comment was a fair comment on evidence. As explained during closing at the evidentiary hearing: "[i]t was actually an objection on the way Mr. Mathis was going about impeaching him, just that it was improper predicate, and Judge Berger allowed the impeachment and then, therefore, the comment in closing." Ex. N at 1024.

Finally, Petitioner complains that counsel failed to object to the prosecutor's comments concerning Ms. Foster's black eye. Ms. Foster testified she had a black eye from shooting a pistol at the scene. Ex. D at 501. In the state's first closing argument, the prosecutor referenced Ms. Foster's testimony that the pistol hit her in the eye, and asserted the evidence was consistent with

that testimony. Id. at 742. In the defense's closing argument, Mr. Dowdy argued Ms. Foster's black eye was more likely the result of the kick from a shotgun, not a pistol. Id. at 756. Mr. Dowdy questioned whether the black eye raised red flags with the police. Id. The prosecutor, in second closing argument, addressed this comment by suggesting Ms. Foster's black eye did not raise red flags for the police because there was a history of domestic violence. Id. at 770. NOTE: No Reports by Police of any domestic violence

Upon review, the record shows Becky Foster testified Petitioner's anger became physical. Id. at 432. She also testified the pistol hit her in the face and she suffered a black eye. Id. at 501. When asked if Petitioner physically abused Ms. Foster when Petitioner thought Ms. Foster had slept with the victim, Petitioner testified he may have slapped Ms. Foster around. Id. at 643.

The trial court found the comment that the black eye was the result of physical abuse not to be improper or objectionable, and even if it were objectionable,

prejudice was diminished because the jury heard testimony, from both Petitioner and Ms. Foster, that Petitioner was abusive towards Ms. Foster. Ex. M at 766. The trial court found the comment that Ms. Foster could be charged with the murder did not warrant an objection and Petitioner was not ineffective for failure to object. Id. With reference to state's use of the comment that Petitioner invented a gunfight, the trial court found the state's characterization of Petitioner's testimony did not warrant an objection, and once again, defense counsel was not ineffective for any failure to object. Id. The court opined that even if the prosecutor's use of the term "invented" might be considered an attempt to ridicule the defense, the failure to object did not so affect the fairness and reliability of the proceeding that confidence in the outcome is undermined, particularly when the comment was relatively minor and brief. Id. at 766-67 (quotations and citations omitted).

Finally, the trial court held:

> Regarding the State's reference in its closing to statements Defendant made during a pretrial hearing in 2009 (that Ms. Foster shot the victim with a shotgun in self-defense after the victim shot her), Mr. Nielson was not ineffective for failing to object. Mr. Nielson previously objected to the statements' admissibility and was overruled. Further, even if Mr. Nielson's failure to object was ineffective, it did not amount to prejudice under Strickland.

Id.

The court found the comments did not have an adverse effect on the defense as the jury had heard Petitioner's testimony on cross-examination. Id. The court found neither deficient performance nor prejudice based on Petitioner's claim of failure to object to prosecutorial comments. Id. at 768.

Attorneys are allowed wide latitude during closing argument as they review evidence and explicate inferences which may reasonably be drawn from it. Tucker v. Kemp, 762 F.2d 1496, 1506 (11th Cir. 1985). Failure to object during closing argument rarely amounts to ineffective assistance of counsel, particularly if the errors, if

any, are insubstantial. To establish a substantial error by counsel for failure to object to prosecutorial misconduct, the comments must "either deprive the defendant of a fair and impartial trial, materially contribute to the conviction, be so harmful or fundamentally tainted as to require a new trial, or be so inflammatory that they might have influenced the jury to reach a more severe verdict than it would have otherwise." Walls v. State, 926 So. 2d 1156, 1167 (Fla. 2006) (per curiam) (citation omitted). Also, there must be a showing that there was no tactical reason for failure to object. Id. Without a showing of the above, a petitioner fails to demonstrate the requisite prejudice. Id.

For the reasons stated by the trial court, the prosecutor's comments were not so egregious or unfounded to require objection. There was no deficiency in counsel's performance because the prosecutor's comments were not improper as they were based on logical inferences based on testimony and evidence. Also, the

comments were not so harmful as to require a new trial or so inflammatory that the jury reached a more severe verdict based on the comments. As such, any failure on defense counsel's part to object during closing argument did not prejudice Petitioner. There is no reasonable probability that the outcome of the proceeding would have been different had counsel objected to the comments Petitioner references in ground eight.

In this case, the comments of the prosecutor did not deprive Petitioner of a fair and impartial trial. Upon review, there was substantial and very strong testimonial evidence presented at trial against Petitioner. Indeed, the trial court, after considering the trial evidence, concluded "that the controlled call between Defendant and Ms. Foster coupled with the fact that the victim died from three shotgun wounds and Defendant admitted to shooting the victim with a shotgun, along with the testimony of Becky Foster, Lisa Welliver, and Alan Elliot constituted **overwhelming evidence against the Defendant.**" Ex. M at 773-74 (emphasis added). Thus,

Hearsay Witnesses

Only eye witness

I Question this term Over whelming

In this case,

any failure on defense counsel's part to object to the state's closing argument did not contribute significantly to the verdict.

* Trial Judge was appointed in the 5th DCA a yr. later on this same Appeal.

Petitioner appealed the denial of his Rule 3.850 motion. Pursuant to Wilson, it is assumed the 5th DCA adopted the reasoning of the trial court in denying the Rule 3.850 motion. The state has not attempted to rebut this presumption. Deference under AEDPA should be given to the last adjudication on the merits provided by the 5th DCA. Ex. Q. Upon review, the Florida court's decision is not inconsistent with Supreme Court precedent, including Stickland and its progeny. The state court's adjudication of this claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. As such, ground eight is due to be denied.

H. Ground Nine

In ground nine, Petitioner claims his counsel was ineffective for failure to file a motion in limine to preclude the testimony by Lisa Welliver that she was

afraid for her and her daughter. Petition at 27. Petitioner raised this claim in his post-conviction motion and the trial court denied relief after conducting an evidentiary hearing. Ex. M at 768-69. The 5th DCA affirmed. Ex. Q. As noted previously, the court set forth the two-pronged Strickland standard of review before addressing the claim of ineffective assistance of counsel. Finding no deficient performance or prejudice, the trial court denied relief. Ex. M at 768-79.

Petitioner claims his attorney was ineffective for failure to move to exclude Ms. Welliver's prejudicial testimony, to object to her testimony, or to move for a mistrial. Petition at 27. Petitioner complains the information was elicited to further inflame the jury and its admission was highly prejudicial to the defense. Id.

At the evidentiary hearing, Mr. Nielsen testified he did not believe he had grounds for a valid objection. Ex. N at 980. He said Ms. Welliver never testified Petitioner threatened her. Id. Ms. Welliver said she was afraid for herself and her daughter.

The trial record demonstrates that when asked whether she knew she was lying about facts underlying a murder investigation at the time she wrote her affidavit in 1991, Ms. Welliver said she was scared, she was keeping herself and her daughter alive, and she wrote untruthful things in her statement. Ex. D at 568. When asked whom she was afraid of, Ms. Welliver named her husband, Petitioner, and Ms. Foster. Id. On cross-examination it was revealed that Ms. Welliver never went to law enforcement to tell them she had lied in her affidavit. Id. at 573. The record shows Mr. Dowdy, in closing argument, argued Ms. Welliver was not afraid of Petitioner. Ex. D at 759.

At the close of the evidentiary hearing on the post-conviction motion, the state argued it was sound strategy for Mr. Nielsen to cross-examine Ms. Welliver concerning her change in story, and even if this amounted to deficient performance, Petitioner was not prejudiced by the "sole statement" that Ms. Welliver was generally in fear. Ex. N at 1030-31.

The trial court addressed this ground:

> Mr. Nielson testified that he did not file a motion to exclude or object to Lisa Welliver's testimony that she was afraid, because it would not have been compatible with his trial strategy. Mr. Nielson testified that he thought it would be more effective for him to highlight Ms. Welliver's inconsistent statements than to not cross-examine her at all. Ms. Welliver's explanation for why she did not come forward sooner was that she was in fear for herself and her daughter. Mr. Nielson testified that if Ms. Welliver had said that Defendant threatened her, he would have objected. Mr. Neilson testified that she did not say that Defendant threatened her; she was merely explaining how she felt at the time and why she did not come forward. Ms. Peoples argued that Ms. Welliver's statement was highly prejudicial and that Mr. Nielson should have moved for a mistrial. Ms. Dutton argued that Mr. Nielson cross-examined Ms. Welliver on her change in story and Ms. Welliver had to address why she lied to the police. Ms. Dutton argued that Ms. Welliver said she was afraid of all three individuals involved and that no further detail was discussed.

Ex. M at 768.

In denying the claim, the court said:

> Mr. Nielson would be expected to cross-examine a witness who had admittedly lied on an affidavit and changed her story by the time of trial. Although Ms. Welliver's explanation regarding why she did not come forward sooner was not favorable to Defendant, Mr. Nielson was not ineffective for choosing not to object. Ms. Welliver's statement was not objectionable as she was simply explaining how she felt at the time. At trial, Ms. Welliver testified that she was afraid of her husband, the Defendant, and Ms. Foster because of what happened and "because of what they all knew had happened." She did not elaborate as to why she was fearful of Defendant specifically. Trial counsel acted within the broad range of reasonable assistance under prevailing professional standards and the Defendant fails on the first prong of Strickland. Even assuming Defendant met this burden, he fails on the second prong of Strickland because he has not met the burden of showing prejudice.

Ex. M at 768-69. The trial court deemed the evidence against Petitioner overwhelming and held Petitioner failed to establish prejudice. Id. at 769.

As noted by the trial court, there was every expectation that the defense would use cross-examination to attack Ms. Welliver's credibility and veracity by

highlighting the inconsistencies between her affidavit and her trial testimony. Mr. Nielsen wanted to cross-examine this witness and emphasize her changed story and eventually argue her lack of credibility. This is evidenced by closing argument, when Mr. Dowdy said Ms. Welliver was not afraid of Petitioner. Even assuming deficiency, the court found Petitioner failed to establish prejudice.

*Here's your prejudice

*The (Lower Court) Sentencing Judge Wendy Berger became a judge on the panel in the 5th DCA (1) one year later while the def. was on Appeal there, in Daytona Beach Fla

There is an adjudication on the merits by the 5th DCA and it is entitled to AEDPA deference. Ex. Q. Applying Wilson's look-through presumption, the rejection of the claim of ineffective assistance of counsel for failure to file a motion in limine to preclude testimony by Ms. Welliver that she was afraid for her and her daughter was based on a reasonable determination of the facts and a reasonable application of the law. The 5th DCA's decision affirming the lower court is not inconsistent with Supreme Court precedent, Strickland and its progeny, and the state court's adjudication of the claim is not contrary to or an unreasonable application

*Same Judge Then she Recused Herself only after I filed a Motion.

* Certainly, The 5th DCA Judges, "then were (exposed) to her OPINIONS!

of Strickland or base on an unreasonable determination of the facts. As such, ground nine is denied.

I. Ground Ten

In ground ten, Petitioner asserts his counsel was ineffective for failure to consult with and/or procure an expert witness in ballistics and firearms to impeach or refute Ms. Foster's testimony. Petition at 28. Petitioner asserts he wanted an expert to refute Ms. Foster's claim that she received a blackeye from a pistol's kickback and to provide evidence that the "exit wound" on the back of the victim was actually an "entrance wound." Id.

This claim is exhausted as it was presented in Petitioner's post-conviction motion, and, after denial by the trial court, affirmed on appeal. Ex. Q. In denying post-conviction relief, the trial court, after conducting an evidentiary hearing, found defense counsel's performance was not rendered deficient for failing to call an expert to testify. Ex. M at 770. The trial court referenced Petitioner's testimony at trial

that he shot the victim in self-defense. Id. The court found that hiring a ballistics expert to show it was more likely that Ms. Foster was holding the shotgun that killed the victim would not have furthered Petitioner's defense strategy and testimony claiming self-defense. Id. The trial court found counsel's performance well within the range of the standard of reasonableness. Id. Furthermore, the court found Petitioner failed to satisfy the prejudice prong of Strickland because the purported possible testimony of the expert "is purely speculative." Ex. M at 770.

Review of the evidentiary hearing transcript reveals Mr. Nielsen attested there was no monetary concern or budgetary limitation as it was a death penalty case, so he would have hired an expert if he believed it to be beneficial to the defense. Ex. N at 954. He testified that Petitioner's position was self-defense and Petitioner did not contend he did not shoot the victim. Id. at 955. Another reason Mr. Nielsen did not believe an expert would be beneficial is the victim's body had

been in the water for ten days before it was recovered, and it had been eighteen years since the crime was committed so there was no crime scene to investigate. Id.

Defense counsel's representation was not so filled with serious errors that defense counsel was not functioning as counsel guaranteed by the Sixth Amendment. Petitioner failed to satisfy both the performance and prejudice prongs of Strickland.

The state court's determination is consistent with federal precedent. Counsel is given wide latitude in making tactical decisions, like selecting whom to call as a witness. The failure to consult with and hire a ballistics expert under these circumstances was not so patently unreasonable that no competent attorney would have made that decision.

The 5st DCA per curiam affirmed the trial court's decision. Ex. Q. The Court will presume the state court adjudicated the claim on its merits as there is an absence of any indication or state-law procedural principles to

the contrary. Applying the "look-through" presumption of Wilson, the rejection of the claim of ineffective assistance of counsel for failure to procure and/or consult an expert witness in ballistics and firearms was based on a reasonable determination of the facts and a reasonable application of Strickland. Petitioner has failed to show there was no reasonable basis for the 5th DCA to deny relief. The state court's adjudication of this claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. Therefore, Petitioner is not entitled to habeas relief on this ground.

J. Ground Eleven

Petitioner, in ground eleven, claims counsel was ineffective for failure to file a facially sufficient motion for new trial. Petition at 29. Petitioner describes the motion for new trial as merely boiler-plate. Id. The record belies this claim.

The Motion for New Trial provides that Petitioner was convicted of first degree murder on May 19, 2011

following a trial. Ex. M at 171-72. It also states that it has been less than ten days since the verdict. Id. at 171. Counsel submitted eight reasons to support Petitioner's claim of entitlement to a new trial:

1. The state's evidence was insufficient to warrant a conviction;

2. The verdict is contrary to the weight of the evidence;

3. The State Attorney presented testimony of witnesses that was inconsistent with prior statements of the witnesses, specifically, Becky Foster, Michael Clarkson, Lisa Wellver [sic] and Allan Elliott;

4. The State Attorney personally attacked the Defendant's character and veracity;

5. The State Attorney expressed his personal belief that the Defendant was guilty;

6. The Office of the State Attorney has a conflict of interest in the matter;

7. The jury was advised early in the trial that the Defendant was in custody; and

* The Trial Court's in Error for Not Granting the Motion for New Trial.

* Note: It was (2) two members of the jury that Identified the prosecutor as the former County Judge Mathis.

* Not (1) one as the Appellate Lawyer was ineffective for stating (1) jury member.

> 8. The trial court should have granted the Defendant's motion for judgment of acquittal.

Id.

Based on the record, the Court finds defense counsel did not file a "boilerplate" or *pro forma* motion for new trial. Instead, counsel selected eights significant reasons for seeking a new trial. Well, then a New Trial should be granted

Petitioner raised this ground in his post-conviction motion. The trial court denied a portion of this ground before the evidentiary hearing and the remaining portion of this ground after the evidentiary hearing. Ex. M at 284-85, 771-72. The court summarily found the claim that his attorney failed to adequately raise the issue of inconsistent statements by several witnesses refuted by the record. Id. at 284. The court also summarily found Petitioner would not have been entitled to a new trial on the improper admission of a privileged communication or on the admission of testimony regarding domestic violence. Id. at 285. After an evidentiary hearing,

the court denied paragraphs eight, ten, eleven, and twelve of the ground for relief. Ex. M at 771-72.

After considering what Petitioner wanted to raise and what was raised, the post-conviction court found defense counsel's handling of the motion for new trial was within the acceptable levels of practice, all that is required under Strickland. Id. at 771. The court further found that, "it is highly unlikely that the trial court would have granted a more detailed motion for new trial." Id. Finding the state produced overwhelming evidence against Petitioner, the court concluded Petitioner failed to establish there was any error at trial which seriously affected the fairness of the trial, meaning a new trial would not be justified, and held Petitioner failed to show the trial court abused its discretion in denying the motion for new trial. Id. at 771-72. As such, the court denied relief on this claim. Id. at 772. The 5th DCA affirmed. Ex. Q.

The 5th DCA's decision affirming the trial court's decision is not contrary to, nor an unreasonable

application of controlling Supreme Court precedent. The 5th DCA's decision is not based on an unreasonable determination of the facts. Although every attorney may not have chosen the same approach to the motion for new trial, Petitioner's counsel's performance did not so undermine the proper functioning of the adversarial process that Petitioner was deprived of a fair trial. Therefore, Petitioner has failed to satisfy the Strickland requirements and he is not entitled to habeas relief on this ground.

K. Ground Twelve

Petitioner claims, in ground twelve, his counsel rendered ineffective assistance by failing to investigate and properly authenticate the recording of a controlled phone call. Petition at 30. Petitioner complains that counsel failed to object to the genuineness of the tape and to the chain of custody. Id. He also asserts counsel's performance was deficient for misadvising Petitioner that a motion to suppress/motion in limine could not be used to exclude the controlled call. Id.

Petitioner exhausted this ground by raising it in his post-conviction motion. The court, after conducting an evidentiary hearing, denied this claim. Ex. M at 772-73. The 5th DCA affirmed the decision of the trial court. Ex. Q.

Mr. Nielsen testified that Petitioner never said he was not the male speaker on the call. Ex. N at 957. Mr. Nielsen attested he did not feel he had a good faith basis to challenge the phone call because he believed it was Petitioner's male voice on the call. Id. at 958. Mr. Nielsen found no viable grounds to seek to suppress the controlled phone call. Id. He surmised, the only possible angle was to argue Ms. Foster became an agent for the police, but he did not consider that to be a strong or very viable argument, nevertheless, he did object to the recording on that basis. Id. at 959.

If fact, the record demonstrates Mr. Nielsen objected, stating he realized the controlled phone call was legal under the current state of the law, and on that basis, he decided not to file a motion to suppress

beforehand, but he stated he did want to place an objection on the record, outside the presence of the jury. Ex. D at 463-64. The court denied the objection finding it an exception "under Florida Statute 934." Id. at 464.

The post-conviction court considered the case law and found it supported defense counsel's understanding of the law concerning the admissibility of controlled phone calls. Ex. M at 773. The court also found Mr. Nielsen's testimony credible. Id. The Court has no license to re-address that credibility determination. Finding defense counsel acted within the broad range of reasonable assistance under prevailing professional norms, the court found Petitioner failed to satisfy the performance prong of Strickland.

Without satisfying the performance component of the Strickland test, Petitioner cannot prevail on his claim of ineffective assistance of counsel. Reaves, 872 F.3d at 1151.

Under Wilson, the Court assumes the 5th DCA adopted the reasoning of the trial court in denying the motion. The state has not attempted to rebut this presumption, thus AEDPA deference should be given to the last adjudication on the merits provided by the 5th DCA. The 5th DCA's decision is not inconsistent with Supreme Court precedent, including Strickland. The 5th DCA's adjudication of this claim is not contrary to or an unreasonable application of Strickland or based on an unreasonable determination of the facts. This ground is due to be denied.

L. Ground Thirteen

Petitioner in his thirteenth and final ground claims cumulative errors deprived him of a fair and impartial trial. To the extent Petitioner is claiming trial counsel's errors deprived Petitioner of a fair trial in violation of the Fourteenth Amendment's Due Process Clause, the Court concludes he is not entitled to habeas relief. Petitioner failed to present sufficient separate and individual ineffective assistance of counsel

claims; therefore, even considered cumulatively, his assertions do not render the claim of ineffective assistance of counsel sufficient. Robertson v. Chase, No. 1:07-CV-0797 RWS, 2011 WL 7629549, at *23 (N.D. Ga. Aug. 12, 2011) (citations omitted), report and recommendation adopted by 2012 WL 1038568 (N.D. Ga. Mar. 26, 2012), aff'd by 506 F. App'x 951 (11th Cir. 2013), cert. denied, 571 U.S. 842 (2013). As such, Petitioner is not entitled to habeas relief.

In considering a claim of cumulative error under the cumulative error doctrine, the district court considers whether:

> "an aggregation of non-reversible errors (i.e., plain errors failing to necessitate reversal and harmless errors) can yield a denial of the constitutional right to a fair trial, which calls for reversal." United States v. Baker, 432 F.3d 1189, 1223 (11th Cir. 2005) (internal quotation marks omitted). We address claims of cumulative error by first considering the validity of each claim individually, and then examining any errors that we find in the aggregate and in light of the trial as a whole to determine whether the appellant was

> afforded a fundamentally fair trial. See United States v. Calderon, 127 F.3d 1314, 1333 (11th Cir. 1997).

Morris v. Sec'y, Dept. of Corr., 677 F.3d 1117, 1132 (11th Cir. 2012). In Forrest v. Fla. Dep't of Corr., 342 F. App'x 560, 564 (11th Cir. 2009) (per curiam) (citing United States v. Cronic, 466 U.S. 648, 659 n.26 (1984)), cert. denied, 562 U.S. 589 (2010), the Eleventh Circuit explained, although the Supreme Court has not specifically addressed the applicability of the cumulative error doctrine when addressing an ineffective assistance of trial counsel claim, it has held there is no basis for finding a constitutional violation unless the petitioner can point to specific errors of counsel which undermined the reliability of the finding of guilt. Thus, a cumulative errors of counsel claim lacks merit without a showing of specific errors of counsel which undermine the conviction in their cumulative effect, amounting to prejudice.

Petitioner has not demonstrated any of his trial counsel's alleged errors, considered alone, rise to the

level of ineffective assistance of counsel; therefore, there are no errors to accumulate, and Petitioner is not entitled to habeas relief. See Spears v. Mullin, 343 F.3d 1215, 1251 (10th Cir. 2003) (when the sum of various zeroes remains zero, the claim of prejudicial effect of cumulative errors is nil and does not support habeas relief), cert. denied, 541 U.S. 909 (2004). As the threshold standard of Strickland has not been met, Petitioner has failed to demonstrate that his trial was fundamentally unfair and his counsel ineffective. Moreover, the Court finds Petitioner has not shown specific errors which undermine the conviction in their cumulative effect; therefore, he has failed to demonstrate prejudice.

Not only is Petitioner not entitled to relief on his Sixth Amendment claim, he is also not entitled to habeas relief on his Fourteenth Amendment claim that he was deprived of the right to a fair trial. Through his Petition, Petitioner has not shown he was deprived of a fair trial:

> [he] has not demonstrated error by trial counsel; thus, by definition, [Petitioner] has not demonstrated that cumulative error of counsel deprived him of a fair trial. See Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993) (explaining that because certain errors were not of constitutional dimension and others were meritless, petitioner "has presented nothing to cumulate").

Miller v. Johnson, 200 F.3d 274, 286 n.6 (5th Cir.), cert. denied, 531 U.S. 849 (2000).

The state court decision passes AEDPA muster as singularly or cumulatively, the proposed deficient conduct does not meet the Strickland standard and Petitioner was not deprived of a fair trial.

Based on the above, the Court denies federal habeas relief. Therefore, it is now

Accordingly, it is now

ORDERED AND ADJUDGED:

1. The Petition for Writ of Habeas Corpus (Doc. 1) is **DENIED.**

2. This action is **DISMISSED WITH PREJUDICE.**

3. The **Clerk** shall enter judgment accordingly and close this case.

4. If Petitioner appeals the denial of his Petition for Writ of Habeas Corpus (Doc. 1), **the Court denies a certificate of appealability.**[8] Because this Court has determined that a certificate of appealability is not warranted, the **Clerk** shall terminate from the pending motions report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

DONE AND ORDERED at Jacksonville, Florida, this 23 day of January 2020.

UNITED STATES DISTRICT JUDGE
Sr. Judge Henry Lee Adams, Jr.

[8] This Court should issue a certificate of appealability only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, Petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," Tennard v. Dretke, 542 U.S. 274, 282 (2004) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)). Upon due consideration, this Court will deny a certificate of appealability.

USCA No.: 20-10808

IN THE SUPREME COURT OF THE UNITED STATES

Steve L. Stanaland, Jr. - Petitioner

APPENDIX

COMES NOW, the Petitioner, Steve L. Stanaland, Jr., pro se, adding this Appendix with helpful information regarding the legal action by which this case is being presently brought to this higher court for review, and to express the need for justice in the following Affidavit's and Memorandum of Law.

In addition, the need for an Attorney in this nearly 30 year old case. This includes a film documentary that was made from a ex-wife's testimony suborning perjury with the made-up story's from 30 yrs ago;

That if called, "their are witnesses" that can "refute", this state witness and false claims against Mr. Stanaland and regarding the (victim) Mr. Whitley in this case.

1. Ms. Genies Cotes Affidavit Exhibit A
2. Mr. Stanaland's Affidavit Exhibit B
3. Mr. Stanaland's Affidavit Exhibit C
4. Memorandum of Law-Fed R. Evid. 404(a)(1). See: page 3 of the (Amended) APPLICATION FOR AN EXTENSION OF TIME.

MEMORANDUM OF LAW

In support, of these Exhibits And The AFFIDAVIT. Mercury Rule Evidence: The principle that a defendant is entitled to offer character evidence as a defense to a criminal charge. Fed. R. Evid. 404(a)(1).

The guidelines encourage a judge to depart downward based on mitigating factors such as the victim's conduct; see, e.g., *Blankenship v. U.S.*, 159 F. 3d 336, 339 (8th Cir. 1998) (downward departure justified because victim's possession of firearm and status as a convicted felon[1]. Contributed to defendant's criminal behavior).

3.6(f) Justifiable Use of Deadly Force

The petitioner had a legal right to own and possess a firearm, And [IF] this shooting did occur at the petitioner's residence and was attacked he had no duty to retreat and had the lawful right to stand his ground meet force with force.

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1 Petitioner has [No} prior felony convictions.
Aggressor §776.041, Fla. Stat.

(ORDER LIST: 589 U.S.)

THURSDAY, MARCH 19, 2020

ORDER

In light of the ongoing public health concerns relating to COVID-19, the following shall apply to cases prior to a ruling on a petition for a writ of certiorari:

IT IS ORDERED that the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3.

IT IS FURTHER ORDERED that motions for extensions of time pursuant to Rule 30.4 will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to COVID-19 and if the length of the extension requested is reasonable under the circumstances. Such motions should indicate whether the opposing party has an objection.

IT IS FURTHER ORDERED that, notwithstanding Rules 15.5 and 15.6, the Clerk will entertain motions to delay distribution of a petition for writ of certiorari where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties relating to COVID-19. Such motions will ordinarily be granted by the Clerk as a matter of course if the length of the extension requested is reasonable under the circumstances and if the motion is actually received by the Clerk at least two days prior to the relevant distribution date. Such motions should indicate whether the opposing party has an objection.

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IT IS FURTHER ORDERED that these modifications to the Court's Rules and practices do not apply to cases in which certiorari has been granted or a direct appeal or original action has been set for argument.

These modifications will remain in effect until further order of the Court.

IN THE

SUPREME COURT OF THE UNITED STATES

STEVE L. STANALAND, JR.,
Petitioner

v.

U.S. SOLICITOR GENERAL, et al.
U.S. ATTORNEY GENERAL OFFICE,
Respondent(s).

PROOF OF SERVICE

I, Steve L. Stanaland, Jr., do swear or declare that on this date, December 17th, 2020, as required by Supreme Court Rule 29 I have served the ENCLOSED MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS to the above proceeding on An Extension of time and this MOTION FOR APPOINTMENT OF COUNSEL, by depositing an envelope containing the above documents in the United States mail properly addressed to them and with first class postage prepaid, or by delivery to a third party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows: Solicitor General of the U.S., Rm. 5614, Dept. of Justice/Office of U.S. Attorney General, 950 Pennsylvania Ave. N.W., 20530-0001; Washington, D.C.; Supreme Court Justice, Judge Amy Coney Barrett, Clerk of the Court, Supreme Court of the U.S.; 1 First St. N.E., Washington, D.C. 20543-0001.

I declare under penalty of perjury that the foregoing is true and correct, Executed on April 16th, 2021.

Steve L. Stanaland, Jr.
Steve L .Stanaland, Jr.
D.C. #593240