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IN THE UNITED STATES SUPREME COURT

AURLIEAS DANTE MCCLARTY #C02126

Petitioner,

VS.

CASE NO.

LT, CASE NO. 48-2000-CF-15767

ATTORNEY GENERAL OF THE STATE
OF FLORIDA AND/OR SECRETARY
OF FLORIDA DEPT. OF CORRECTIONS

Respondent.

FEB 17 2022

OFFICE OF THE CLERK

EXTRAORDINARY ORIGINAL GREAT
WRIT OF HABEAS CORPUS

COMES NOW, PURSUANT TO A STATE COURT JUDGMENT AURLIEAS DANTE MCCLARTY, IN CUSTODY AT JACKSON CORRECTION INSTITUTION 5563 10TH STREET MALONE, FL 32445 PETITIONER, PETITIONS THIS COURT BY AN EXTRAORDINARY ORIGINAL GREAT WRIT OF HABEAS CORPUS, THROUGH A QUESTION OF LAW, OF GREAT PUBLIC IMPORTANCE, WHICH HAVE A GREAT EFFECT OF THE PROPER CONSTITUTIONAL ADMINISTRATION OF JUSTICE OF EQUAL PROTECTION OF LAW.

BASIS FOR INVOKING JURISDICTION

THIS COURT HAS JURISDICTION TO SUCH AUTHORIZATION TO GRANT THIS ORIGINAL GREAT WRIT OF HABEAS CORPUS, PURSUANT TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 13 OF THE DECLARATION OF RIGHTS,

RECEIVED

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U.S. SUPREME COURT

PRISONER / PRO SE

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* QUESTION PRESENTED *

"WHETHER, THE EIGHTH AMENDMENT PROHIBITS THE USE OF A PROCEDURE BAR, UPON A CONDEMNED PRO SE PRISONER TO PREVENT AN OPPORTUNITY FOR FULL AND FAIR LITIGATION IN STATE COURT, PRECLUDING HABEAS CORPUS REVIEW UNDER 28 USC. IN FEDERAL COURT OF STATE PRISONERS SIXTH, AND FOURTEENTH AMENDMENT CLAIMS RAISED IN A PRIOR MOTION, OR PETITION AS HE WAS INCOMPETENT TO PROCEED BY A REVIEWING COURT. COMPORTS WITH THE FUNDAMENTAL HUMAN DIGNITY THAT THE AMENDMENT PROTECTS AND/OR THE DENIAL OF EQUAL PROTECTION OF THE LAW."

* LIST OF PARTIES *

- * BARRET, JUNIOR - TRIAL CO-COUNSEL
- * BURDIC, DRAN LINDA - AST STATE ATTORNEY BAR# 826928
- * FAGAN, SUSAN - APPEALS COUNSEL BAR# 0845566
- * INCH, MARK - SECRETARY OF FLORIDA DEPT OF CORRECTIONS
- * LENNACO, FRANCIS - TRIAL COUNSEL BAR# 0841994
- * MOODY, ASHELY - ATTORNEY GENERAL OF FLORIDA
- * WATTLES, BOB - TRIAL JUSTICE

* OPINIONS BELOW *

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF HABEAS CORPUS BE ISSUE, TO REVIEW THE JUDGMENT. THE OPINION OF THE HIGHEST STATE COURT TO REVIEW THE MERITS APPEARS AT (EXHIBIT-A), AND THE STATE SUPREME COURT (EXHIBIT-B).

* CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED *

* USCA, CONST. AMEND - 6th "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION, TO BE CONFRONTED WITH THE WITNESS AGAINST HIM, TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESS IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."

* USCA, CONST. AMEND - 8th "EXCESSIVE BAIL SHALL NOT BE REQUIRED NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED."

* TABLE OF AUTHORITIES CITED *

* ADAMS V. STATE, 957 So. 2d 1183 (Fla. 3rd DCA 2006)

* BAKER V. STATE, 878 So. 2d 1236 (Fla. 2004)

* BENNETT V. UNITED STATES, 119 F. 3d 468, 469-70 (7th Cir. 1997)

* BETTS V. BRADY, 316 U.S. 455, 476, 86 L. Ed. 1595 62 S. Ct 1252 (1942)

* BITTER V. UNITED STATES, 389 U.S. 15, 16, 88 S. Ct 6, 7, 19 L. Ed. 2d 15 (1968)

* BRECHT V. ABRAHAMSON, 113, S. Ct 1710 (1993)

* CALDERON V. UNITED STATES, 163 F. 3d 530, 535 (9th Cir. 1998)

* CARTER V. STATE, 706 So. 2d 873 (Fla. 1997)

* DENNIS V. DEES, 278 F. Supp. 354 (Ed. LA 1968)

* DERAS V. STATE, 54 So. 3d 1023 (Fla. 3rd DCA)

* DORMAN V. UNITED STATES, 140 US APP. DC. 313, 435 F. 2d 385 (1970)

* EVITTS V. LUCEY, 105 S. Ct 830 (1985)

* GIDEON V. WAINWRIGHT, 372 U.S. 335, 344, 9 L. Ed. 2d 799, 83 S. Ct 792, 93 ALR 2d 733 (1963)

* GRADY V. ARTUZ, 831 F. Supp 1048, 1061 (SDNY 1996)

* HARDEE V. KUHLMAN, 581 F. 2d 330, 332 (CA. 2. 1978)

- * HARRINGTON V. RICHTER, 562 U.S. 86, 103, 131, S.Ct. 776, 786-87, 178 L.Ed. 624 (2011)
- * HARRIS V. HUTCHINSON, 209 F.3d 325, 330 (4th Cir. 2000)
- * HOLBROOK V. FLYNN, 475 U.S. 1026, 105 S.Ct. 3499, 87
- * IRVING V. STATE, 559 So.2d 374 (Fla. 1st DCA 1990)
- * JACKSON V. DEPT OF CORR, 790 So.2d 398 (Fla. 2001)
- * LAMARCA V. SECY DEPT OF CORR, 568 F.3d 929, 934 (11th Cir. 2009)
- * LAWTON V. STATE, 731 So.2d 60, 61 (Fla. 2nd DCA 1999)
- * MCCLOSKEY V. BOSLOW, 349 F.2d 119 (CA 4-1965)
- * MARTINEZ V. RYANN, 566 U.S. 132 S.Ct. 1309, 182 L.Ed. 2d 272, 2012, 2317
- * MILLER-EL V. COCKRELL, 537 U.S. 322, 337 (2003)
- * MOORE V. STATE, 768 So.2d 1140, 1142 (Fla. 1st DCA 2000)
- * MURRY V. CARRIER, 477 U.S. 478, 496 (1986)
- * NICHOLS V. STATE, 721 So.2d 807 (Fla. 5TH DCA 1998)
- * PEEDE V. STATE, 748 So.2d 253, 257 (Fla. 1999)
- * PEOPLE V. MENDOLA, 2 N.Y. 2d 270, 159, N.Y. 5.2d 473, 140 N.E. 2d 353
- * POE V. STATE, 746 So.2d 1211, 1213-14 (FLA. 5TH DCA 1999)
- * RICKMAN V. DUTTON, 864 F. Supp. 686 (Md. Tenn 1994)
- * SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000)
- * SMITH V. MCGINNIS, 208 F.3d 13, 17 (2nd Cir. 2000)
- * SMITH V. SECY DEPT OF CORR, 572 F.3d 1327, 1342 (11th Cir. 2009)
- * STANTON V. STATE, 746 So.2d 1229 (Fla. 3rd DCA 1999)
- * STATE V. BYRNES, 116 R.T. 925, 927, 357 A.2d 448, 449 (1976)
- * STATE V. MCBRIDE, 848 So.2d 287, 291 (Fla. 2003)
- * STATE V. KARSLAS, 28 So. 3d 913, 914-15 (FLA-5TH DCA 2010)
- * STEED V. HEAD, 214 F.3d 1298, 1300 (11th Cir. 2000)
- * UNITED STATES V. ASH, 413 U.S. 300, 309, 37 L.Ed. 2d 619, 93 S.Ct. 256
- * UNITED STATES V. CRONIC, 466 U.S. 648, 80 L.Ed. 2d 657, 104 S.Ct. 2034
- * UNITED STATES V. POWELL, 765 F. Supp. 90 (SD. OHIO 1990)
- * WILLIAMS V. STATE, 110 So.2d 654 (Fla. 1954)
- * WRIGHT V. HOPPER, 169 F.3d 645, 703 (11th Cir. 1999)
- * U.S. L.Ed. DIGEST, CRIMINAL LAW 46.4
- * U.S. L.Ed. DIGEST, CRIMINAL LAW 46.6

* FLORIDA § 90.403

* FLORIDA § 90.601

* FLORIDA § 90.615 (2)

* FLORIDA § 782.04

* FLORIDA § 812.13 (2) (A)

* APPLICATION (AND/OR) STATEMENT OF THE CASE *

THE PETITIONER WAS CHARGED WITH FIRST-DEGREE MURDER WITH A FIREARM IN COUNTS 1 AND 2 AND ROBBERY WITH A FIREARM IN COUNT 3. ON OCTOBER 4, 2004, THE COURT DECLARED A MISTRIAL DUE TO CONCERNS REGARDING PETITIONER'S COMPETENCY. ON OCTOBER 6, 2004, THE COURT FOUND HIM INCOMPETENT TO PROCEED AND COMMITTED HIM TO THE DEPARTMENT OF CHILDREN AND FAMILIES. ON OCTOBER 25, 2007, THE COURT FOUND HIM COMPETENT TO PROCEED (EXHIBIT-C). JURY VOLDIR COMMENCE APRIL 2008, BEFORE THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN ORANGE COUNTY, FLORIDA CASE NUMBER 48-2000-CF-15767-A-D, AND ENTERED THE JUDGEMENT OF CONVICTION ON MAY 07, 2008 BEFORE JUDGE BOB WATTLES FOR ALL COUNTS, WHICH THE PETITIONER PLEAD NOT GUILTY TO ALL COUNTS NOR TESTIFIED. ON MAY 13, 2008 THE JURY RECOMMENDED A SENTENCE OF LIFE IN PRISON ON COUNTS 1 AND 2 BY A VOTE OF SIX TO SIX THE SAME DAY BEFORE OFFICER(S) OF THE COURT BURDIC, DRAN LINDA-AST. STATE ATTORNEY * LENNACO, FRANCIS - TRIAL COUNSEL * BARRET, JUNIOR - TRIAL CO COUNSEL. THE COURT SENTENCED THE PETITIONER TO CONSECUTIVE TERMS OF LIFE IN THE DEPARTMENT OF CORRECTIONS WITH A 25 YEAR MINIMUM MANDATORY ON COUNTS 1 AND 2, AND A TERM OF 250.8 MONTHS WITH A 25 YEAR MINIMUM MANDATORY ON COUNT 3 RUNNING CONCURRENT TO COUNT 1. PETITIONER RECEIVED CREDIT FOR FIVE YEARS AND 240 DAYS (EXHIBIT-D).

THE FIFTH DISTRICT COURT OF APPEAL PER CURIAM AFFIRMED PETITIONER'S JUDGMENT AND SENTENCE AND REQUEST FOR A WRITTEN OPINION ITS MANDATE ISSUE ON MAY 17, 2010. > MCCLARTY V. STATE, 34 So.3d 14 (Fla. 5th DCA 2010).

ON SEPTEMBER 28, 2010 PETITIONER FILED A MOTION FOR POST-CONVICTION RELIEF AND SUPPORTING FACTS AND SUPPLEMENTS. ON SEPTEMBER 28, 2010 HE FILED A MOTION TO SUPPLEMENT THE RECORD OF PETITIONER'S POST-CONVICTION MOTION AS SUPPORTING FACTS FOR REVIEW. ON NOVEMBER 16, 2010 HE FILED AN AMENDED MOTION FOR POST-CONVICTION RELIEF AND SUPPORTING FACTS AS SUPPLEMENTS. ON DECEMBER 22, 2011 HE FILED AN AMENDED MOTION TO SUPPLEMENT THE RECORD OF PETITIONER'S POST-CONVICTION RELIEF MOTION AS SUPPORTING FACTS FOR REVIEW. ON MARCH 16, 2012 HE FILED A MOTION TO WITHDRAW UNAUTHORIZED MOTION BY PRO SE DEFENDANT. THE COURT SUMMARILY DENIED THE MOTIONS ON APRIL 27, 2012 (EXHIBIT-E). THE FIFTH DISTRICT COURT OF APPEAL PER CURIAM AFFIRMED AND ITS MANDATE ISSUED ON OCTOBER 22, 2012. > MCCLARTY V. STATE, 98 SO 3d 584 (FLA. 5TH DCA 2012).

THE PETITIONER, FILED A PETITION FOR HABEAS CORPUS 28 U.S.C § 2254 RELATED TO THIS CONVICTION AND SENTENCE WITH THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION CASE # 0612-CV-1752-ORL-31 GJK WHICH NO EVIDENTIARY HEARING WAS HELD AND THE PETITION WAS DENIED DECEMBER 29, 2015. THE PETITIONER PETITION FOR CERTIFICATE OF APPEALABILITY TO THE ELEVENTH CIRCUIT UNITED STATES COURT OF APPEALS WHICH WAS DENIED SEPTEMBER 2, 2016. THE PETITIONER PETITION THE SUPREME COURT OF THE UNITED STATES, A WRIT OF CERTIOR WHICH WAS DENIED FEBRUARY 21, 2017.

THE PETITIONER FILED A SUCCESSIVE MOTION FOR POST-CONVICTION RELIEF ALLEGING NEWLY DISCOVERED EVIDENCE ON JANUARY 7, 2016 FOLLOWED BY A SUPPLEMENT ON MARCH 4, 2016. THE COURT SUMMARILY DENIED RELIEF ON MARCH 23, 2016.

THE FIFTH DISTRICT COURT OF APPEAL PER CURIAM AFFIRMED AND ISSUED ITS MANDATE ON OCTOBER 5, 2016. > MCCLARTY V. STATE, 199 So.3d 283 (Fla. 5th DCA 2016).

THE PETITIONER FILED A SECOND SUCCESSIVE MOTION FOR POST-CONVICTION RELIEF ON APRIL 6, 2018. ON APRIL 17, 2018 THE TRIAL COURT DENIED THE MOTION, AND CAUTIONED THE PETITIONER THAT THE CONTINUAL FILING OF PROCEDURALLY BARRED MOTIONS WOULD RESULT IN THE COURT ORDERING HIM TO SHOW CAUSE WHY HE SHOULD NOT BE BARRED FROM FUTURE PRO SE FILINGS.

THE FIFTH DISTRICT COURT OF APPEAL PER CURIAM AFFIRMED AND ITS MANDATE ISSUED ON SEPTEMBER 9, 2016. > MCCLARTY V. STATE, 255 So.3d 332 (Fla. 5th DCA 2018).

THE PETITIONER FILED A MOTION TO CORRECT ILLEGAL SENTENCE JANUARY 9, 2020 FOLLOWED BY SECOND MOTION FOR POST-CONVICTION RELIEF JANUARY 15, 2020 WAS BOTH DENIED MARCH 3, 2020 (EXHIBIT-H).

THE FIFTH DISTRICT COURT OF APPEAL DENIED THE APPEAL JANUARY 22, 2021 CASE# 5D20-2701 (EXHIBIT-A).

THE SUPREME COURT OF FLORIDA DENIED REVIEW FEBRUARY 3, 2021 CASE# SC21-148 (EXHIBIT-B).

REASON FOR GRANTING THE WRIT

GROUND-ONE

"WHETHER, THE EIGHTH AMENDMENT PROHIBITS THE USE OF A PROCEDURE BAR, UPON A CONDEMNED PRISONER TO PREVENT "AN OPPORTUNITY FOR FULL AND FAIR LITIGATION" IN STATE COURT, PRECLUDING HABEAS CORPUS REVIEW UNDER 28 USC. IN FEDERAL COURT OF STATE PRISONER'S SIXTH AND FOURTEENTH AMENDMENT CLAIMS RAISED IN A PRIOR MOTION, PETITION AS HE WAS INCOMPETENT TO PROCEED. BY A REVIEWING COURT COMPORTS WITH THE FUNDAMENTAL HUMAN DIGNITY THAT THE AMENDMENT PROTECTS AND/OR THE DENIAL OF EQUAL PROTECTION OF THE LAW."

STANDARD FOR REVIEW

IN THIS HABEAS CORPUS PROCEEDING, THE PETITIONER IS ENTITLED TO A DE NOVO REVIEW OF THE LOWER COURTS LEGAL CONCLUSION AND A DE NOVO EVIDENTIARY HEARING ON THE QUESTION OF HIS COMPETENCE ON STATE APPEALS BECAUSE FLORIDA'S STATUTORY PROCEDURES FOR DETERMINING A CONDEMNED TO LIFE IN PRISON UNTILL HIS DEATH, PRISONER'S SANITY ARE DEFECTIVE AND INADEQUATE TO PRECLUDE FEDERAL REDETERMINATION OF CONSTITUTIONAL ISSUES. >
MISKEL V. KARNES, 397 F.3d 446, 451 (6th Cir 2005)

THE PETITIONER CONTENDS THAT THE EIGHTH AMENDMENT PROHIBITS THE EXECUTION OF THOSE WHO ARE UNAWARE OF THE PUNISHMENT THEY ARE ABOUT TO SUFFER, AND WHY THEY ARE TO SUFFER IT, AND A COURT SENTENCE OF LIFE WITHOUT PAROLE ONCE A COURT PROCEDURE BAR IS IMPOSED TO PREVENT FURTHER REVIEW IS A DEATH SENTENCE; AND THAT THE PETITIONER'S CLAIM OF INSANITY AT THE TIME OF HIS STATE COLLATERAL PROCEEDINGS AND INITIAL FEDERAL HABEAS CORPUS PROCEEDINGS FIT WITHIN THIS STANDARD; THAT FLORIDA'S PROCEDURES FOR DETERMINING THE ACCUSED'S SANITY DID NOT COMPORT WITH DUE PROCESS, BECAUSE HE WAS DEPRIVED OF THE OPPORTUNITY OF HIS SIXTH AND FOURTEENTH CONSTITUTIONAL CLMS A FULL AND FAIR LITIGATION IN A STATE, AND FEDERAL COURT REVIEW PROCEEDING; AND THAT, ON REVIEW, THIS COURT MUST CONSIDER THE ACCUSED'S COMPETENCY AT THE TIME OF HIS COLLATERAL PROCEEDINGS, A MATERIAL STAGE OF THE UNITED STATES CRIMINAL PROCEEDING. > CARTER V. STATE, 706 So.2d 873 (Fla. 1997). FURTHERMORE, THE MENTAL COMPETENCY OF A PRO SE LITIGANT IS VITAL UNDER THE DUE PROCESS CLAUSE OF THE STATE AND FEDERAL CONSTITUTION, AND THE PETITIONER IS NOT LEGALLY REQUIRED TO KNOW HE HAS A MAJOR MENTAL DISORDER SEVERE ENOUGH TO SUBSTANTIALLY AFFECT THE PETITIONER'S ABILITY TO REPRESENT HIMSELF IN THE DEFENSE OF HIS LIFE. LIKEWISE, COULD NOT BEEN DISCOVERED PREVIOUSLY THROUGH THE EXERCISE OF DUE DILIGENCE DUE TO EXTRAORDINARY CIRCUMSTANCES WHICH WAS OUT OF THE PETITIONER'S CONTROL, "HIS OWN MENTAL DISORDER" WHICH AFFECT HIS THOUGHTS, PERCEPTIONS, BEHAVIOR FROM THE AGE 12 YEARS OLD TILL NOW AFTER

SUCCESSFUL MENTAL HEALTH TREATMENT BY THE FLORIDA DEPARTMENT OF CORRECTIONS, THAT RESTORED COMPETENCY LATE 2020, AFTER THE PETITIONERS PRO SE INITIAL DIRECT APPEAL, INITIAL RULE 3.850 POST-CONVICTION MOTION, AND FEDERAL PETITIONS. MOREOVER, THE STATE COURTS ADJUDICATION OF THIS CLAIM, RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES; OR RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED ON THE FACE OF THE STATE COURT RECORD BY (FIRST): THE STATE COURT RECORD DEMONSTRATES AT THE TIME OF THE PETITIONERS PRO SE INITIAL POST-CONVICTION RULE 3.850 MOTION PROVIDED TO THE FLORIDA DEPT OF CORRECTIONS LAKE C.I FOR MAILING ON 09/27/2010. THE COURT WAS INFORMED ON PAGE ONE UNDER "ATT CLERK OF COURT" THAT THE PRESENT MOTION WAS PRE-PAIRED PRO SE AS HE WAS INCOMPETENT AT THE TIME:

"I AM A INMATE AT NORTHWEST FLORIDA RECEPTION CENTER 4455 SAMMITCHELL DRIVE CHIPLEY FLORIDA, BUT AM HOUSED AT LAKE CORRECTIONAL INSTITUTION 19225 US HWY 27 CLERMONT, FL 34715 DUE TO MY MENTAL HEALTH ISSUE, IN SIDE A MENTAL HEALTH UNIT, PER OATH IN DOC RULES I MUST PUT THE RETURN ADDRESS OF THE CAMP I AM AT NOW."

(EXHIBIT-I)

(SECOND): THE STATE COURT RECORD DEMONSTRATES AT THE TIME OF THE PETITIONERS TRIAL, DIRECT APPEAL, AND PRO SE DIRECT APPEAL THE PETITIONER WAS

INCOMPETENT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AFTER THE STATE COURTS UN-SOUND COMPETENCY/ DETERMINATION AT THE FOUNDATION OF THE PETITIONERS CASE, "FRUIT OF THE POISONOUS TREE DOCTRINE", WHICH RENDER HIM IN-COMPETENT DURING ALL STATE, AND FEDERAL COLLATERAL STAGES, WHICH HIS COMPETENCY PREJUDICIALLY, PREJUDICE HIM FROM SHOWING PREJUDICE AS STATED BY THE RESPONDENTS IN THE PRIOR DENIALS OF HIS INITIAL CONSTITUTIONAL ERROR CLAIM, AND SUCCESSIVE CLAIMS, WHICH OTHER COURTS OF APPEALS GRANTED OTHER PETITIONERS RELIEF FOR THE SAME FACTS IN THESE CONSTITUTIONAL CLAIMS, RELATING TO VARIOUS ASPECTS THROUGH OUT THE PETITIONERS JURY TRIAL, THAT HAD A SUBSTANTIAL AND INJURIOUS EFFECT ON CONSTITUTIONAL DUE PROCESS RIGHTS AND EQUAL PROTECTION OF THE LAW, AFTER THE UN-SOUND DISCRETION DETERMINATION OF COMPETENCY FINDING. A CLEAR MISCARRIAGE OF JUSTICE AFTER NO EVIDENCE ESTABLISHES THE THIRD COURT ORDER COMPETENCY EVALUATION WAS CONDUCTED BY THE "FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES", AFTER THE SECOND COMPETENCY FINDING "UN-RESTORABLE" OPINION BY "NORTH FLORIDA EVALUATION TREATMENT CENTER" WAS REJECTED BY THE STATE COURT, AND ORDER HIM TRANSFER TO "FLORIDA STATE HOSPITAL" FOR THE THIRD COMPETENCY EVALUATION AFTER THE OCTOBER 4, 2004 COURT DECLARED MISTRIAL, DUE TO CONCERNS REGARDING PETITIONERS COMPETENCY, COMMITTING HIM TO THE "DEPARTMENT OF CHILDREN AND FAMILIES", AFTER THREE YEARS INVOLUNTARY COMMITMENT, UPON THE RETURN TO THE ORANGE COUNTY

JAIL. THE PETITIONER'S TRIAL COUNSEL PLACED THE PETITIONER'S COMPETENCY AT ISSUE, "OBJECTING" TO THE FINDING OF "FLORIDA STATE HOSPITAL", ARGUING "HE STILL LACKS THE ABILITY TO CONSULT WITH COUNSEL TO A REASONABLE DEGREE OF RATIONAL UNDERSTANDING." THUS, THE TRIAL COURT ORDER A COMPETENCY HEARING MAY 11, 2007. AT THIS HEARING "DR. ERIC MINGS," RESPONSIBLE FOR THE STATE COURTS IN-COMPETENT TO PROCEED 2004 FINDING MIS-TRIAL, TESTIFIED AFTER REVIEWING THE PETITIONER'S MENTAL HEALTH HISTORY, AND HIS OWN EVALUATION "OPINIONED" THE PETITIONER SUFFERS FROM "PARANOID SCHIZOPHRENIA," AND HIS CONDITION HAD PROGRESSIVELY WORSE OVER THE YEARS, AND IS IN-COMPETENT TO STAND TRIAL. ADDITIONALLY, THE STATE COURT CALLED UPON "DR. JOSEPH D. AGOSTINO" RESPONSIBLE FOR THE COURT ORDER THIRD COMPETENCY EVALUATION OPINION BY THE "DEPARTMENT OF CHILDREN AND FAMILIES" AT THIS TIME DR. AGOSTINO, TESTIFIED "IT'S HIS MEDICAL OPINION THE PETITIONER IS COMPETENT TO STAND TRIAL DO TO THE NATURE AND LEVEL OF HIS HEINOUS CRIMES HE STANDS ACCUSED OF, AND DID NOT TEST THE PETITIONER'S COMPETENCY AS TO THE COURT ORDER WHILE IN HIS CARE ON BEHALF OF "FLORIDA STATE HOSPITAL. THE PETITIONER'S COUNSEL, OBJECTED TO THE STATE COURT, AND REQUESTED THE EXAMINER TO COMPLY WITH THE COURT ORDER. HOWEVER, DR. AGOSTINO, TESTIFIED "HE WILL NOT TEST THE PETITIONER'S COMPETENCY BECAUSE HE WAS INFORMED BY "NORTH FLORIDA EVALUATION TREATMENT CENTER," THEIR UN-RESTORABLE COMPETENCY FINDING" OF THE PETITIONER WAS FRAUDULENTLY PRODUCED ON BEHALF OF THE "FLORIDA

DEPARTMENT OF CHILDREN AND FAMILIES, SPECIAL ANNUAL CLINICAL SUMMERY SEP/7/2005. PREJUDICIALLY, THE TRIAL COURT FAILED TO HOLD AN EVIDENTIARY HEARING INTO THE RISK OF A DUE PROCESS VIOLATION, AND CRIMES AFTER THE COURT WAS INFORMED BY ONE OF THE AGENCY WITHIN THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES MAY HAVE PRODUCE FRAUDULENT MEDICAL COMPETENCY REPORTS ON FLORIDA CRIMINAL DEFENDANTS AS EVIDENCE USED BY THE STATE COURTS IN COMPETENCY FINDINGS. MOREOVER, THE STATE COURT RECORDS DEMONSTRATES AT THE PENALTY PHASE OF THE PETITIONERS CAPITAL TRIAL, "DR. ERIC MINGS TESTIFIED "THE PETITIONER WAS IN-COMPETENT TO STAND TRIAL" [T.1019-1159; VOL. 7]. THEREFORE, THE PETITIONER HAS MADE AN EXTRAORDINARY SHOWING BY THE FACE OF THE STATE COURT RECORD; THE STATE COURT ORDER DISMISSING HIS LATEST MOTION AND IMPOSE OF A PROCEDURE BAR WAS BASED ON AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, OF EXTRAORDINARY CIRCUMSTANCES WHICH WAS OUT OF THE PETITIONER'S CONTROL TO GET HIM OVER THE CHARGE, AND PREJUDICE HURDLE IN ORDER TO HAVE A SECOND PETITION HEARD BY REVIEWING COURT DUE TO THE PETITIONER INCOMPETENT AT THE TIMES OF HIS PROSE DIRECT APPEAL, INITIAL STATE COLLATERAL STAGES, AND INITIAL FEDERAL § 2254 PETITION. > STEED V. HEAD, 219 F.3d 1298, 1300 (11th Cir 2000); HARRIS V. HUTCHINSON, 209 F.3d 325, 330 (4th Cir 2000); MURRAY V. CARRIER, 477 U.S. 478, 496 (1986); WRIGHT V. HOPPER, 169 F.3d 695, 703 (11th Cir. 1999); SMITH V. SEC'Y DEPT OF CORR, 572 F.3d 1327, 1342 (11th Cir. 2009); BENNET V. UNITED STATES, 119 F.3d 468, 469-70 (7th Cir. 1997).

LIKEWISE, A FUNDAMENTAL PRINCIPLE OF JUSTICE WAS BETRAYED BY THE STATE COURT AFTER THE COURT DISMISSED THE CLAIM ON PROCEDURAL GROUNDS, "THE CLAIM WERE PREVIOUSLY RAISED BY THE DEFENDANT IN PREVIOUS MOTIONS FOR POST CONVICTION RELIEF, SPECIFICALLY HIS INITIAL 3.850 FILINGS THAT WERE SUMMARILY DENIED BY THE COURT ON APRIL 27, 2012" (EXHIBIT-E). THE PETITIONER ASSERTS HIS LATEST CLAIM IS AN CONSTITUTION RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL U.S.C.A AMENDMENT SIX, CONCLUDING SURROUNDING THE REPRESENTATION OF THE PETITIONER SHALL MANDATE AN INFERENCE THAT COUNSEL WAS UNABLE TO DISCHARGE HIS DUTIES OF EFFECTIVE ASSISTANCE OF COUNSEL, GIVING RISK ON THE ABILITY OF THE PETITIONER TO RECEIVE A FAIR TRIAL AND CHALLENGING THE RELIABILITY OF THE TRIAL PROCESS WITHOUT INQUIRY INTO COUNSEL'S ACTUAL PERFORMANCE AFTER A BREAKDOWN IN THE ADVERSARIAL PROCESS, RELATING TO VARIOUS ASPECTS OF THE PETITIONERS TRIAL, AS A WHOLE. U.S LEd DIGEST, CRIMINAL LAW 46.4 (AND) 46.6; UNITED STATES V. CRONIC, 466 US 648. 80 L.Ed 2d 657. 104 S.Ct 2039. NOT, AN CONSTITUTION RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL U.S.C.A AMENDMENT FOURTEEN BASE ON COUNSEL'S ACTUAL PERFORMANCE OR, TRIAL COURT ERRORS AS STATED IN THE DENIAL BY THE STATE COURT, THEREFORE, THE CLAIM IS A NEW CLAIM AND THE MERITS HAS NOT BEEN RULED ON AND NOT SUCCESSIVE OR ABUSE OF THE POST CONVICTION PROCESS, AND A INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM UNDER, MARTINEZ V. RYANN, 566 U.S 132 S.Ct 1309, 182 L.Ed 2d 272, 2012, 2317 HAS BEEN FOUND BY SOME COURTS TO EXCUSE A PROCEDURE BAR, AND A DENIAL OF THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER U.S.C.A AMENDMENT

SIX, SURROUNDING THE REPRESENTATION OF THE PETITIONER SHALL MANDATE AN INFERENCE THAT COUNSEL WAS UNABLE TO DISCHARGE HIS DUTIES OF EFFECTIVE ASSISTANCE OF COUNSEL, IS A INEFFECTIVE ASSISTANCE CLAIM THAT HAS NOT BEEN RAISED, AND RUIED ON. >

UNITED STATES V. CRONIC, 466 U.S. 648, 80 L.Ed 2d 657,

104 S. Ct 2039. THEREFORE, A MISCARRIAGE OF JUSTICE HAS OCCURRED BY THE STATE COURTS UTILIZING OF A PROCEDURAL BAR OR STATE DOCTRINE OF LAW IN IT'S DENIAL OF THIS CLAIM WHICH RESULTED IN A

DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW. LIKEWISE, A MISCARRIAGE OF JUSTICE

WHEN THE STATE COURT DID NOT TAKE INTO ACCOUNT OF THE PETITIONERS MENTAL DEFECTS PREVENTING A SHOWING OF PREJUDICE IN HIS CONSTITUTIONAL CLAIM SUPPORTED BY THE STATE COURT RECORD, AND

CASE LAW. > ADAMS V. STATE, 957 So. 2d 1183 (Fla 3rd DCA 2006),

DERAS V. STATE, 54 So. 3d 1023 (Fla 3rd DCA). WHERE THERE EXIST EXTRAORDINARY EVIDENCE THAT COUNSELS PERFORMANCE WAS INEFFECTIVE UNDER THE SIXTH

AMENDMENT GUARANTEES OF EFFECTIVE ASSISTANCE OF COUNSEL DUE TO THE FUNDAMENTALLY UNFAIR OR IMPROPER EVENTS BY THE STATE COURT CONCLUDEING

THAT WITH OUT ANY SATISFACTORY DEGREE OF CERTAINTY, THAT THE PETITIONER'S CASE WAS ADEQUATELY PRESENTED. >

BETTS V. BRADY, 316 U.S. 455, 476, 86 L.Ed. 1595, 62 S. Ct 1252 (1942), AND JURIST OF REASON FOUND THE CONSTITUTIONAL ERRORS BY THE STATE COURT RELATING TO VARIOUS ASPECTS OF THE PETITIONERS TRIAL

DEBATABLE WHETHER THE STATE COURT WAS CORRECT IN IT'S RULING. > SLACK V. MCDANIELS, 529 U.S. 473,

484 (2000), LAMARCA V. SEC'Y DEPT OF CORR, 568 F.3d 929, 934 (11th Cir. 2009), LIKEWISE, NO REASONABLE

JUROR WOULD HAVE FOUND THE PETITIONER ELIGIBLE FOR A SENTENCE OF LIFE IN PRISON UNDER CONSTITUTIONAL LAW, AFTER A BREAKDOWN IN THE ADVERSARIAL PROCESS, RELATING TO VARIOUS ASPECTS OF THE PETITIONER'S TRIAL SHOWN AS FOLLOWS. THE STATE COURT RECORDS DEMONSTRATES THE PETITIONER OBJECTED TO THE COURTROOM ARRANGEMENT MADE UP OF [13] ORANGE COUNTY CORRECTION OFFICERS, AND [3] ORANGE COUNTY SHERIFF OFFICERS (T. 8; VOL. 1),

DEFENDANT. "WHAT IS THE MINIMUM WITH THE OFFICERS, THAT'S THE ONLY PROBLEM I HAVE, I DON'T SEE THE PURPOSE (T. 8-11; VOL. 1).

JUSTICE. "IT'S BECAUSE YOU HAVE BEEN CHARGED WITH MURDER, BECAUSE YOU'RE LOOKING AT THE DEATH PENALTY, BECAUSE THEY'VE GOT RULES. THEY'RE AFRAID YOU'RE GONNA GO NUTS AND KILL ANOTHER BUNCH OF PEOPLE. I MEAN THEY DON'T KNOW THEY DO THE SAME THING WITH EVERY DEATH PENALTY PERSON" (T. 9-10; VOL. 1),

AND CONTENDS THE EXPLANATION OF THE JUSTICE WHEN VIEWED IN ITS ENTIRETY IS A CLEAR SHOWING OF A DEPARTURE FROM NEUTRALITY, AND AN EXPRESSION OF HIS OWN PREJUDICE TO THE PETITIONER'S ALLEGED GUILT BEFORE ANY EVIDENCE WAS PRESENTED TO THE JURY AFTER NO EVIDENCE ESTABLISHES ANY COUNTY JAIL RULES DURING THE GUILT PHASE OF A CAPITAL TRIAL REGARDING THE ORANGE COUNTY CORRECTIONS OFFICERS ACTING AS A SECURITY FORCE IN ITS OWN SECURITY UNIFORM, FULL WEAPONRY ALONG WITH THE STANDARD COURT SECURITY ORANGE COUNTY SHERIFF OFFICERS IN ITS OWN UNIFORM WITH FULL WEAPONRY WHEN NO EXTRA SECURITY WAS PRESENT DURING THE FIRST TRIAL AND JURY VOTING.

COURTY DEPUTY. "WE DON'T HAVE CONTROL OVER THE CORRECTIONS OFFICERS FROM THE JAIL. THERE WERE NORMALLY TWO DEPUTIES AND A TRAINER IN THE COURTROOM WITH THE TRIAL JUDGE AND THE JAIL HAD SENT CORRECTIONS OFFICERS TO THE COURT" (T. 31-34; VOL. 1).

THE FACTS ACCEPTED BY THE REVIEWING COURT, OF CORRECTIONS OFFICERS ACTING AS A SECURITY FORCE IN THIS CRIMINAL COURTROOM IS IN CONFLICT WITH THE STATE COURT RECORD, AND UNSUPPORTED BY FACTUAL EVIDENCE OF THE ALLEGED FEAR IN THE JUSTICE EXPLANATION, BY A POLL TAKEN OF THE CORRECTIONAL OFFICER OR A HEARING. > UNITED STATES V. POWELL, 765 F.SUPP 926 (SD. OHIO 1991). THEREFORE, FOR EACH OF THESE REASONS THE PETITIONER WAS PREJUDICE BY THE DENIAL OF A FAIR TRIAL BEFORE AN IMPARTIAL JUSTICE IN WHICH EVERY DEFENDANT STANDS EQUAL BEFORE THE LAW. > GIDEON V. WAINWRIGHT, 372 U.S. 335, 344. 9 L.Ed. 2d 799, 83 S.Ct 792, 93 ALR 2d 733 (1963).

ADDITIONALLY, THE STATE COURT RECORDS DEMONSTRATES AFTER THE PETITIONERS OBJECTION TO THE EXTREME SECURITY MEASURES EMPLOYED BY THE TRIAL COURT, AND THE TRIAL JUSTICE EXPLAINED THE COURTROOM ARRANGEMENT WHICH IT'S CONCLUSION FAIL TO COMPORT WITH CONSTITUTIONAL LAW. > BITTER V. UNITED STATES, 389 U.S. 15, 16. 88 S.Ct 6, 7, 19 L.Ed 2d 15 (1968) (T. 9-10; VOL. 1).

LIKEWISE, THE COURT DEPUTY OF SECURITY TESTIFIED THE COURTROOM ARRANGEMENT WAS A STANDER DEPARTURE OF PRACTICE BY THIS COURT. > STATE V. BYRNES, 116 R.T., 925, 927, 357 A.2d 448, 449 (1976) (T. 30-32; VOL. 1). THE PETITIONERS COUNSEL OBJECTED TO THE EXTREME COURTROOM ARRANGEMENT, AND HIS OWN FEAR NOW PRESENTED.

COUNSEL. "WE WOULD LIKE TO TALK ABOUT THE SECURITY SITUATION. THE LAST TIME I COUNTED THERE WAS (13) LAW ENFORCEMENT PRESENT" (T. 11-12; VOL. 1).

COUNSEL. "WE HAVE UNIFORMED DEPUTIES IN THE ROOM RIGHT NOW SURROUNDING US, MAKEING IT APPARENT TO ANYONE WHO MIGHT BE HERE THAT THERS IS AN EXTREME DANGER THAT WE COULD ALL DIE AT ANY MOMENT. IF THAT'S THE CASE I LIKE TO KNOW WHY. IVE DONE MANY MURDER CASES, SO HAS MR. BARRET AND IVE NEVER SEEN IT APPROACHING THIS LEVEL OF SECURITY" (T. 13-14; VOL. 1).

THE PETITIONERS TRIAL COUNSEL TESTIFIED THE OBJECTED SUPPLEMENT SECURITY WORKING ALONG WITH THE STANDER ORANGE COUNTY SHERIFF COURT SECURITY IN FULL UNIFORM, WAS MADE UP OF CORRECTIONS OFFICERS IN ITS OWN FULL UNIFORMS WITH CORRECTIONS INSIGNIAS ON THEM AS A SHOWING OF CONTINUOUS CUSTODY. > PEOPLE V. MENDOLA, 2 N.Y. 2d 270, 159, N.Y. 5. 2d 473, 140 N.E. 2d 353.

COUNSEL. "I GUESS AT THIS POINT WE SHOULD BRING UP SOMETHING THAT MCCLARTY MENTIONED. NOW THERE IS ONLY ONE OF THE CORRECTIONS PEOPLE IN THE COURTROOM. THERE WERE FOUR EARLIER, AND HE BROUGHT UP A GOOD POINT THEY ALL SAY CORRECTIONS ON THEIR UNIFORM AND PRIOR EXPERIENCE ELSE WHERE IN THE COURTROOM EVERYONE HERE IN UNIFORM HAS THAT REFERENCE TO CORRECTIONS IT WILL MAKE IT OBVIOUS TO THE JURY" (T. 36-37, VOL. 1).

JUSTICE. "WE CAN ONLY ACCOMMODATE TO A CERTAIN LEVEL I WILL STILL LET THEM HAVE FOUR. I JUST ASK THEY BE UNOBTUSIVE" (T. 37, VOL. 1).

HOWEVER, PETITIONERS TRIAL COUNSEL TESTIFIED THE COURTROOM ARRANGEMENT WAS OBTUSIVE, AND FORMED A SEMI-CIRCLE AROUND THE PETITIONER AND WEAPONRY SUGGESTED PARTICULAR OFFICIAL CONCERN OR ALARM. > HARDEE V. KUHLMAN, 581 F.2d 330, 332 (CA2 1978); DENNIS V. DEES, 278 F. SUPP. 354 (E.D. LA 1968).

COUNSEL. "THERE WERE TIMES WE HAD FOUR NEAR THE DEFENDANT AND OTHERS TIMES NONE. THEY HAVE'T BEEN THEY'VE BEEN COMEING IN AND OUT WEARING ALL COMBAT GEAR AND MAKEING A SHOW" (T. 56-57, VOL. 1).

THE STATE COURT RECORDS DEMONSTRATES AFTER HIS OBJECTION

THE PETITIONERS TRIAL COUNSEL REQUESTED A ESSENTIAL STATE INTEREST HEARING, AND A SHOWING OF ANY COUNTY JAIL RULES REGARDING THE OBJECTED EXTREME SECURITY MEASURES EMPLOYED BY THE TRIAL COURT, WHICH GAVE RISK TO THE PETITIONERS PHYSICAL INDICIA OF INNOCENCE WHICH WAS DENIED BY THE TRIAL COURT. > HOLBROOK V. FLYNN, 475 U.S. 1026, 105 S.Ct. 3499, 87 L.Ed. 630 (1985).

COUNSEL: "JUST FOR THE RECORD JUDGE IM OBJECTING TO THE LARGE LAW ENFORCEMENT PRESENCE AT THE VERY LEAST, I REQUEST WE HAVE A HEARING TO DETERMINE WHETHER ITS PURSUANT TO SOME REGULATION THAT THERE'S THAT MANY REQUIRED AS YOU KNOW GENERALLY SPEAKING WE DONT HAVE SECURITY OTHER THAN THE COURT DEPUTIES WHO HAVE IN ALL THE YEARS DONE AN ABSOLUTELY FABULOUS JOB KEEPING ORDER IN THE COURT FOR SOME REASON IN THIS PARTICULAR CASE WE HAVE A MUCH LARGER CONTINGENT OF EXTRA DEPUTIES THERE DRESS MOUNT TO PARAMILITARY COMBAT GEAR AND I THINK IT SHOWS INEVITABLE THE IMPRESSION THAT THERE'S SOME KIND OF EXTREME HEIGHTENED SECURITY RISK IN THIS CASE" (T. 57-58; VOL. 1).

JUSTICE: "NOTED FOR THE RECORD THERE ARE FOUR EXTRA CORRECTIONS PEOPLE AND ARE FOUR EXTRA CORRECTIONS PEOPLE AND TWO STANDARD TRAINEE THE FOUR OBJECTED TO ARE FROM THE ORANGE COUNTY CORRECTIONAL FACILITY THEY'RE ALL WEARING GREEN/OLIVE GRAB PANTS, AND SHIRTS, INSIGNIA ON THE SHOULDERS. THEY DONT APPEAR TO BE VERY NOTICEABLE AND THE COURT HAS DIRECTED THEM TO BE DISCREET AS POSSIBLE GOING IN AND OUT OF THE COURTROOM —

-BUT THERE ARE ONLY FOUR OF THEM, AND THE COURT WOULD DECLINE TO ORDER ANY LESSER NUMBER RESERVING THE RIGHT TO BRING UP THE ISSUE AGAIN IF WE GET BACK INTO A SITUATION MONDAY THAT WAS TOO MANY THE (15) OR WHATEVER THEY WERE" (T. 58; VOL. 1).
COUNSEL: "FOR THE RECORD I WOULD DESCRIBE THESE UNIFORMS AS WHAT APPEARS TO BE COMBAT TYPE GEAR THEY ARE ALL WEARING AT LEAST TWO FULL AMMUNITION CLIPS ON LARGE UTILITY BELTS, FIREARMS, RADIOS, AND NIGHT STICKS" (T. 58; VOL. 1).
JUSTICE: "I MADE A RULING ON THAT FOUR IS FINE THEY HAVE BEEN VERY GOOD FOR FOUR DAYS YOU HARDLY EVEN KNOW THEY'RE HERE AFTER A WHILE BUT NOTED" (T. 58-59; VOL. 1).

THE EXTREME SECURITY MEASURES EMPLOYED THROUGHOUT THE PETITIONER'S TRIAL WAS CLEARLY ERRONEOUS AFTER NO EVIDENCE ON THE STATE RECORD ESTABLISHED ESSENTIAL STATE INTEREST AFTER THE RECORD ESTABLISHED THE COURTROOM ARRANGEMENT WAS A STANDARD DEPARTURE OF PRACTICE BY THIS STATE COURT. THE JUSTIFICATION BY THE JUSTICE TO THE PETITIONER ON RECORD AFTER HIS OBJECTION "THEY'RE AFRAID YOU'RE GOING TO GO NUTS AND KILL ANOTHER BUNCH OF PEOPLE" (T. 9-10; VOL. 1), IS NOT SUFFICIENT TO REBUT THE ALLEGATIONS AND PROOFS BY THE PETITIONER'S CHALLENGE TO THE EXECUTION OF LAW BY THE TRIAL COURT, SUPPORTED BY THE STATE COURT RECORDS WHERE THERE HAS BEEN NO EVIDENTIARY HEARING TO THE FACTUAL ALLEGATIONS TO THE EXTENT THE RECORD DOES NOT REFUTE. > PEEDE V. STATE, 748 SO. 2d 253, 257 (FLA. 1999).
FURTHERMORE, A PERSON CHARGED WITH A CRIME CANNOT BE SUBJECTED BEFORE CONVICTION TO ANYMORE

RESTRAINT THAN NECESSARY FOR HIS DETENTION TO ANSWER THE CHARGE AND HAS A RIGHT TO BE TRIED IN AN ATMOSPHERE FREE OF PARTIALITY CREATED BY THE USE OF EXCESSIVE GUARDS EXCEPT WHERE SPECIAL CIRCUMSTANCES SUCH PROCEDURES SHALL NOT BE PERMITTED EXCEPT TO PREVENT THE ESCAPE OF THE ACCUSED OR TO PREVENT A DEFENDANT FROM INJURING OTHERS, AND TO MAINTAIN A QUIET, AND PEACEABLE TRIAL. ONE REASON UNDERLYING THIS RIGHT THAT GUARDS SEATED AROUND OR NEXT TO THE DEFENDANT DURING A JURY TRIAL ARE LIKELY TO CREATE THE IMPRESSION IN THE MINDS OF THE JURY THAT THE DEFENDANT IS DANGEROUS OR UNTRUST WORTHY. LIKEWISE, THE PLACEMENT OF GUARDS IN RELATION TO THE PETITIONER MATERIALLY INTERFERES WITH HIS ABILITY TO CONSULT WITH COUNSEL. > MCCLOSKEY V. BOSLOW, 349 F.2d 119 (CA4-1965); DORMAN V. UNITED STATES, 140 U.S. APP. DC 313, 435 F.2d 385 (1970).

ADDITIONALLY, THE STATE COURT RECORD DEMONSTRATES THE STATES APPLICATION OF THE STATE OF FLORIDA LAW § 90.615(2) Fla. Stat. (1997), RESULTED IN A DECISION CONTRARY TO OR INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW. SHOWN BY THE RECORD THAT IT CANNOT BE SAID THAT THE TRIAL JUSTICE ELICITED RELEVANT INFORMATION NOT BROUGHT OUT BY THE STATE OR DEFENSE OR ATTEMPTED TO CLARIFY DIRECT OR CROSS-EXAMINATION WAS IN THE INTERESTS OF JUSTICE SO REQUIRE TO CLARIFY AN ISSUE. > POE V. STATE, 746 SO.2d 1211, 1213-14 (Fla. 5th DCA 1999).

JUSTICE. "FROM THE TIME THAT YOU ENTERED THE STORE UNTIL THE TIME THE OFFICER GOT THERE DID YOU SEE OR HEAR ANY OTHER PERSON INSIDE THAT STORE" (T.135, Vol.1).

WITNESS: "NO I DIDN'T" (T.135; VOL.1).

JUSTICE: "WHEN YOU ARRIVED AT THE STORE AND TURNED INTO THE PARKING LOT YOU PARKED RIGHT IN FRONT OF THE STORE" (T.135-140; VOL.1).

WITNESS: "YES SIR" (T.135-140; VOL.1).

JUSTICE: "WERE THERE ANY OTHER VEHICLES THERE I DONT MEAN U-HAUL VEHICLES BUT SAY A CAR OR TRUCK OR ANY OTHER MOTORCYCLE OR ANY OTHER KIND OF VEHICLE" (T.135-140; VOL.1).

WITNESS: "I WOULDN'T BE ABLE TO RECALL THAT WHETHER THERE WAS ANOTHER CAR THERE" (T.135-140; VOL.1).

JUSTICE: "THAT'S FINE WHAT WERE YOU DRIVING A CAR OR TRUCK" (T.135-140; VOL.1).

WITNESS: "I HAD A BLACK 5-10 PICKUP CHEVROLET" (T.135-140; VOL.1).

JUSTICE: "AS YOU DROVE YOU WERE ON DBT AND THEN TURNED INTO THE STORE AM I CORRECT" (T.135-140; VOL.1).

WITNESS: "YES SIR IF IM NOT MISTAKEN THERE IS A LIGHT BEFORE YOU ACTUALLY GET TO THE STORE WAS ON THE RIGHT HAND SIDE" (T.135-140; VOL.1).

JUSTICE: "I HAVE A QUESTION WAS THE BODY MALE OR FEMALE" (T.268-269; VOL.2).

WITNESS: "YOU WANT ME TO ANSWER THAT. MALE" (T.268-269; VOL.2).

JUSTUS: "AND THERE WAS ONLY ONE BODY PRESENT WHEN YOU WERE THERE" (T.268-269; VOL.2).

WITNESS: "YES SIR" (T.268-269; VOL.2).

JUSTUS: "OKAY FOLLOW UP" (T.269-270; VOL.2).

THE PETITIONER WAS PREJUDICED WHEN A SERIOUS RISK OF INJUSTICE INFECTED THE TRIAL ITSELF WHEN THE TRIAL COURT ABUSED ITS DISCRETION, INTERFERING WITH THE DEFENSE TRIAL STRATEGY. WHEN ITS INTERRUPTIONS, AND EXAMINATIONS OVERSHADOW THE COURTS STATED PURPOSE OF UNCOVERING THE TRUTH, AND A RISK TO THE

IMPRESSIONS IN THE MINDS OF THE JURY THAT THE DEFENDANT IS DANGEROUS OR UNTRUSTWORTHY, WHEN THE COURT APPEARED TO TAKE ON THE ROLE OF CO-PROSECUTOR. 7 NICHOLS V. STATE, 721 So. 2d 807 (Fla. 5th DCA 1998). IN NICHOLS THE COURT STATED "THE TRIAL COURT IS GIVEN LIMITED DISCRETION TO PROPOUND QUESTIONS TO WITNESSES TO CLARIFY TESTIMONY, OR TO AID IN THE FACT FINDING PROCESS WHICH CAN NOT BE SAID IN THE PETITIONERS CASE, AND INTERFERED WITH DEFENSE TRIAL COUNSELS STRATEGY ADMITTED BY TRIAL COUNSEL HIMSELF ON THE RECORD.

COUNSEL. "JUDGE WE OBJECT TO THE COURT ASKING QUESTIONS OF THE STATE'S WITNESS IT'S THE STATES RESPONSIBILITY TO PRESENT THEIR CASE THE INQUIRY BY THE COURT SHOWES BIAS BY BRINGING THINGS OUT TO THE JURY IN HIS OWN EXAMINATION OF STATE WITNESS AND UNDERMIND THE DEFENSE STRATEGY CHOICE" (T. 135-136, Vol. 1).

ADDITIONALLY, THE STATE COURT RECORD DEMONSTRATES THE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE CROSS-EXAMINATION OF STATE WITNESS SANJAY BROWN DURING JURY TRIAL CAUSED BY THE ABUSED DISCRETION BY THE TRIAL COURT THROUGH ITS ORDERING OF AN MENTAL IN-COMPETENT STATE MATERIAL WITNESS TO TESTIFY AFTER THE WITNESS, COURT CLERK AND STATE ATTORNEY PLACE THE WITNESS COMPETENCY AT ISSUE. 7 90.601 Fla. stat.; STATE V. KARELAS, 28 So. 3d 913, 914-15 (Fla. 5th DCA 2010). THE JUSTUS ACKNOWLEDGING THE RISK OF INJUSTUS INFECTING THE TRIAL WHEN HE PASS HIS LEGAL DUTY TO MAKE FINDING IN REGARDS TO THE WITNESS COMPETENCY ABILITY TO UNDERSTAND THE DUTY TO TELL THE TRUTH PERCEIVE, AND REMEMBER THE EVENTS BEFORE THE JURY, CONSULT MEANINGFULLY WITH THE STATE ATTORNEY AND DEFENSE COUNSEL, AND UNDERSTAND THE NATURE OF THE CHARGE.

COURT CLERK: "JUDGE THE ORANGE COUNTY JAIL HAS A MEDICAL HOLD ON MR. BROWN (T. 386-390; VOL. 3).

JUSTUS: "WELL THATS OKAY MR. BROWN IVE SIGNED AN ORDER RELEASING YOU, ITS MY WARRANT THAT PICKED YOU UP IVE SIGNED AN ORDER RELEASING YOU THEY SAY YOU HAD A MEDICAL HOLD ON YOU" (T. 386-390; VOL. 3).

WITNESS: "BUT I STILL PREFER I GOT SCHIZOPHRENIA SO IVE GOT TO GO TO THEM LIKE SAY EVERY MONTH OR TWO TO GET MEDICATION TO CONTROL IT" (T. 386-390; VOL. 3).

JUSTICE: "WELL I SIGNED AN ORDER RELEASING YOU AS SOON AS YOUR TESTIMONY IS DONE TODAY, ONE OF THE DEPUTIES IS GONNA GIVE YOU YOUR COPY OF THAT ORDER AND THERE'S GONNA BE A COPY FAXED TO THE JAIL NOW IF THEY HAVE SOME SORT OF HOLD OR DETAINER ON YOU THEY HAVE TO HANDLE THAT WITH YOU BUT I HAVE RELEASED YOU AFTER YOU HAVE TESTIFIED" (T. 386-390; VOL. 3).

WITNESS: "THE JAIL THAT IM AT RIGHT NOW I TAKE THE MEDICATION, SO THAT" (T. 386-390; VOL. 3).

JUSTICE: "SO ITS NOT A PROBLEM TO CHECK YOU OUT BEFORE YOU GO I JUST WANT YOU TO KNOW AS LONG AS YOU TESTIFY TRUTHFULLY AND THE BEST OF YOUR ABILITY HERE YOUR A STATE WITNESS AND THE STATE EXCUSES YOU THEY'RE GONNA TAKE YOU BACK TO THE JAIL AND HAVE PAPER WORK, AND THERE IS NO WARRANT HOLDING YOU ANYMORE" (T. 386-390; VOL. 3).

JUSTICE: "LADIES AND GENTLEMEN QUESTION CHRY COUNSEL APPROACH" (T. 425-426; VOL. 3).

STATE ATTORNEY: "OKAY, YOUR GONNA GET A CRAZY ANSWER BUT THIS WILL BE COVERED BY ANOTHER WITNESS" (T. 425-426; VOL. 3).

FURTHERMORE, THE STATE COURT RECORD SUPPORTS A "CONFRONTATION CLAUSE" VIOLATION OF THE FIRST MAGNITUDE BY THE WITNESS ON TESTIMONY BEFORE THE JURY, AND STATE ATTORNEY'S OWN TESTIMONY REGARDING THE WITNESS PRIOR TESTIMONY BEFORE THE JURY DURING HER EXAMINATION AND CROSS-EXAMINATION BY THE DEFENSE, AFTER SHE WAS ADVISED AFTER HIS TESTIMONY THE JURY HAS A QUESTION FOR THE WITNESS TO CLARIFY HIS TESTIMONY OR AID IN THE FACT FINDING PROCESS RESPONSE, "OK BUT YOU WILL GET A CRAZY ANSWER" (T.425-426, Vol.3).

THE COMPETENCY WAS VITAL TO THE DEFENSE WHOM WAS CHALLENGING ACTUAL INNOCENCE OF THE STATE OF FLORIDA'S CHARGING OF § 782.04 Fla. Stat. COUNTS ONE AND TWO AGGRAVATING FACTORS THE STATE MUST PROVE AND FACTS THE PETITIONER WAS INDICT UNDER THAT OCCURRED JULY 18, 2000 APPROXIMATELY BETWEEN 6:00 AM AND 8:00 AM, WHICH LAW ENFORCEMENTS INVESTIGATION, PROBABLY CAUSE, GRAND JURY INDICTMENT SOLEY RESTED ON THE KEY PROSECUTIONS EXCULPATORY WITNESS "SANJAY BROWN" WHOM RECANTED HIS TESTIMONY BEFORE THE JURY. > HERRICK V. STATE, 50.2d 1109 (Fla. 2nd DCA 1991). FURTHERMORE, STATE COURT RECORDS DEMONSTRATES SANJAY BROWN TESTIFIED DURING PRE-TRIAL DEPOSITIONS "THAT IN JULY 2000 ONE OF HIS CO-WORKERS WHOM HE IDENTIFIED AS MCCLARTY FROM A PHOTO COMPOSITE INQUIRE ABOUT A FIREARM WHICH HE SOLD TO ON JULY 17, 2000, AND RETURNED THE FIREARM BACK ON JULY 18, 2000 SAYING THE GUN DID NOT WORK, AND THE ONE LAW ENFORCEMENT RECOVERED THE FIREARM FROM" (SR. DEPOSITION). MOREOVER, THE STATE COURT RECORDS DEMONSTRATES SANJAY BROWN BEFORE THE JURY TESTIFIED THAT HIS PAST DEPOSITIONS AND STATEMENTS TO LAW ENFORCEMENT WAS MISCONSTRUED, THAT HE DID NOT TELL LAW ENFORCEMENT HE SOLD THE PETITIONER A GUN ON JULY 17, 2000, NOR CAN HE IDENTIFY THE FIREARM PRESENTED AS EVIDENCE BEFORE THE JURY, AND THAT HE DID NOT TELL LAW ENFORCEMENT OR THE STATE ATTORNEY HE SOLD THE PETITIONER A FIREARM ON JULY 17, 2000,

IT WAS ON JULY 18, 2000 AROUND NOON FOR (30) MINUTES, THEN THE PETITIONER RETURN THE FIREARM, MAKING THE WITNESS IN POSSESSION OF THE FIREARM ON JULY 18, 2000 6:00 AM TO 8:00 AM THE DAY AND TIME OF THE CRIME" (T.390-425; VOL.3)

COUNSEL: "NOW YOU WERE THE ONE WHO PERSONALLY GAVE THE GUN TO THE PERSON THAT WANTS TO BUY A GUN CORRECT" (T.407; VOL.3).

WITNESS: "I DID NOT GIVE IT TO HIM PERSONALLY" (T.407; VOL.3).

COUNSEL: "THIS PERSON EVER GIVE YOU ANY MONEY FOR THE WEAPON" (T.419; VOL.3).

WITNESS: "NO HE DID NOT BECAUSE HE HAD THE MONEY AND ON HAVING IT HE WENT TO LIKE I SAY A GUNSMITH OR SOMETHING AND IN THE TECHNICALITY OF THE SHORT SPACE OF TIME WHICH WAS LESS THAN AN HOUR" (T.420; VOL.3).

COUNSEL: "IN ONE OF THE INTERVIEWS YOU DID WITH DETECTIVE DO YOU RECALL TELLING THE DETECTIVE THAT YOU SOLD HIM THE GUN FOR THREE HUNDRED DOLLARS" (T.420; VOL.3).

WITNESS: "I DON'T YEAH I PROBABLY SAID SOLD BUT IT WASN'T A SALE BECAUSE HE DIDN'T TAKE THE GUN OR MONEY I MEAN HE DIDN'T" (T.420; VOL.3).

COUNSEL: "ARE YOU NOW SAYING THAT THE PERSON NEVER ACTUALLY TOOK THE GUN FROM YOU" (T.420; VOL.3).

WITNESS: "YEAH HE TOOK IT AND THEN WENT FROM MY APARTMENT AND THEN CALLED ME BACK LIKE SHORT SPACE OF LIKE LESS THAN AN HOUR SAY IT WASN'T WORKING BUT HE CLAIMED HE WAS AT A GUN SHOP" (T.420; VOL.3).

COUNSEL: "SO JUST TO MAKE SURE I UNDERSTAND YOU HE DID GIVE YOU THREE HUNDRED DOLLARS BUT HE DIDN'T KEEP THE GUN FOR LONG IS WHAT YOU'RE SAYING" (T.420; VOL.3).

WITNESS: "YEAH" (T.420; VOL.3).

COUNSEL: "SO YOU GAVE HIM BACK THE THREE HUNDRED DOLLARS" (T. 420; VOL. 3).

WITNESS: "YEAH SO IT WASN'T A SALE I DIDN'T SELL IT TO HIM" (T. 420; VOL. 3).

COUNSEL: "JUST A MATTER OF HOURS THAT WHAT YOUR SAYING" (T. 420-421; VOL. 3).

WITNESS: "HE WENT TO THE GUNSMITH OR PAWNSHOP AND BY (15) MINUTES TO AN HOUR HE WAS BACK SAYING IT'S NOT WORKING, AND I END UP GIVING HIM BACK THE MONEY" (T. 421; VOL. 3).

COUNSEL: "AND YOU SAID YOU CAN'T IDENTIFY THE WEAPON RIGHT" (T. 421; VOL. 3).

WITNESS: "I CAN'T IT JUST LOOKS SILVER LIKE A SILVER GUN YOU KNOW LIKE A DOLLAR COLOR TO MY IQ TO MY INTELLIGENCE I COULD SAY YEAH IT LOOKS LIKE THAT BECAUSE ALL GUNS LOOK LIKE THE SAME" (T. 421; VOL. 3).

COUNSEL: "SO THE MOST YOU CAN SAY IS IT MAY LOOK LIKE THE GUN BUT YOU CAN'T LOOK AT THE WEAPON AND SAY THIS IS THE GUN" (T. 421; VOL. 3).

WITNESS: "YEAH I COULDN'T SAY THIS THAT WOULD BE STATING THE IMPROPER" (T. 421; VOL. 3).

COUNSEL: "WHEN DID YOU GET THE GUN BACK" (T. 421-422; VOL. 3).

JUSTICE: "THAT'S ENOUGH" (T. 421-422; VOL. 3).

WITNESS: "THE SAME DAY EVERYTHING HAPPENED ON THE SAME DAY" (T. 422; VOL. 3).

STATE ATTY: "I WANT TO TALK TO YOU ABOUT THE TIMING OF ALL THIS DO YOU RECALL EARLIER GIVING A STATEMENT TO DETECTIVE GAUSE AND DETECTIVE WRIGHT" (T. 422; VOL. 3).

WITNESS: "YEAH HE ASK ME IF I MIND IF I HAVE IT ON TAPE AND I SAID NO I DIDN'T CAUSE I DIDN'T DO ANYTHING" (T. 423; VOL. 3).

STATE ATTY. "I'M SAY IT THIS WAY, DO YOU RECALL TELLING THE DETECTIVE HOW MUCH TIME PASSED BETWEEN WHEN YOU GAVE THE GUN TO THIS CO-WORKER AND WHEN YOU GOT IT BACK" (T. 423; VOL. 3).

WITNESS. "YEAH I TOLD HIM IT WAS A SHORT SPAN OF HOURS PROBABLY LIKE SAYING IT WAS A SHORT SPACE OF TIME LESS THAN A DAY OR AN HOUR IT WAS PROBABLY 10 ~~SAY~~ 20 MINUTES OR SO HIM CALLING AND SAYING 'HE IS AT THE GUNSMITH AND ITS NOT WORKING'" (T. 423; VOL. 3).

STATE ATTY. "ALL RIGHT HERE IN FRONT OF YOU IS A STATEMENT 10/26/2000 ON PAGE THREE - CAN YOU READ THIS TO YOURSELF AND TELL ME IF THIS REFRESHES YOUR RECOLLECTION AS TO THE CONVERSATION YOU HAD WITH LAW ENFORCEMENT REGARDING THE PASSAGE OF TIME" (T. 424; VOL. 3).

WITNESS. "I'M NOT FAMILIAR WITH THAT NO" (T. 424; VOL. 3).

STATE ATTY. "DOES THAT REFRESH YOUR RECOLLECTION AT ALL ABOUT THE INFORMATION THAT YOU PROVIDED TO LAW ENFORCEMENT BACK IN OCTOBER OF 2000 ABOUT HOW MUCH TIME PASSED FROM WHEN YOU GAVE THE GUN TO THIS PERSON TO WHEN YOU GOT IT BACK" (T. 424; VOL. 3).

WITNESS. "NO BECAUSE IT WAS THE SAME DAY" (T. 425; VOL. 3).

STATE ATTY. "DID YOU TELL THEM THAT HE BROUGHT IT BACK THE NEXT DAY" (T. 425; VOL. 3).

WITNESS. "NO I TELL THEM THAT HE BROUGHT IT BACK THE SAME DAY" (T. 425; VOL. 3).

STATE ATTY. "THATS ALL I HAVE YOUR HONOR" (T. 425; VOL. 3).

THEREFORE, THE STATE COURT ERRED IN FAILING TO GRANT AN EVIDENTIARY HEARING AT THE START OF THE STATES EXCULPATORY WITNESS SANJAY BROWN'S TESTIMONY AFTER THE COURT WAS INFORMED BY THE WITNESS HE HAS SCHIZOPHRENIA, AND THE COURT CLERK ADVISING THE COURT THE WITNESS HAS A MEDICAL HOLD ON HIM BY THE COUNTY JAIL HE WAS HOUSED AT BUT GRAVELY "BAKER ACT" AFTER HIS TESTIMONY THROUGH THIS MEDICAL HOLD (EXHIBIT-J). LIKEWISE, AFTER MR. BROWN'S OWN TESTIMONY OF CONFLICTING DENIALS, AND UNABLE TO PERCEIVE, AND REMEMBER THE EVENTS, AND LACK OF CAPACITY TO CONSULT MEANINGFULLY WITH OFFICERS OF THE STATE COURT. THE STATE COURT HAS NOT ADEQUATELY SHOWN THAT THE PETITIONER'S CLAIM IS EITHER FACIALLY INVALID OR CONCLUSIVELY REFUTED BY THE RECORD TO THE EXTENT THE PETITIONER'S CLAIM THE STATE COURT ABUSED ITS DISCRETION IN ORDERING AN INCOMPETENT WITNESS TO TESTIFY DENYING HIM EFFECTIVE CROSS-EXAMINATION THUS, A CONFRONTATION CLAUSE VIOLATION, > PEEDE V. STATE, 748 SO. 2d 253, 257 (Fla. 1999), AND "ACTUAL INNOCENCE" DEFENSE.

ADDITIONALLY, THE STATE COURT RECORD DEMONSTRATES THE TRIAL COURT ABUSED ITS DISCRETION BY THE INTRODUCTION OF PREJUDICIAL EVIDENCE, AFTER IT FAILED TO FILE A WILLIAMS RULE NOTICE TO THE PETITIONER'S COUNSEL INDICATING THAT THE STATE WAS GOING TO PRESENT EVIDENCE OF ANOTHER BAD ACT UNDER FLORIDA LAW. > § 90.403 Fla. stat.; WILLIAMS V. STATE, 110 SO. 2d 654 (Fla. 1954), WHICH EVIDENCE INFUSED THE PETITIONER'S TRIAL WITH UNFAIRNESS AS TO DENY DUE PROCESS OF A FAIR TRIAL. > RICKMAN V. DUTTON, 864 F. SUPP 686 (MD TENN 1994). THE PREJUDICIAL ADMITTED OF EVIDENCE GAVE A MISLEADING ADMISSION OF GUILT BY THE PETITIONER BEFORE THE JURY AND DID NOT MEET THE STRICT STANDARD OF RELEVANCE, AND ADMISSIBLY BOTH THE CHARGED OFFENSE AND COLLATERAL OFFENSE WERE NOT STRIKINGLY SIMILAR, OTHER THEN A DEATH

BY A FIREARM, UNIQUE CHARACTERISTICS OR COMBINATION OF CHARACTERISTICS WHICH SETS THEM APART FROM OTHER OFFENSE. THE DEATH OF A FRIEND BY A FIREARM DONT ESTABLISH IDENTITY, MOTIVE, OPPORTUNITY, PLAN, KNOWLEDGE, OR ABSENCE OF MISTAKE TO BE USED AS EVIDENCE IN THIS CASE AFTER THE COURT WAS TOLD THE INCIDENT BEHIND THE STATEMENT WHEN ASK, FURTHERMORE, EVEN IF THE STATE PROVED THE EVIDENCE WAS RELVANT TO THIS ROBBERY CASE ITS PROBATIVE VAIVE WAS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE CONFUSION OF ISSUES MISLEADING THE JURY OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE. > SIMS V. SINGLETARY, 1155 F.3d 1297, 1312 (11th Cir. 1998).

COUNSEL: "AT THIS POINT WE WOULD OBJECT TO ANY DISCUSSION ABOUT THE STATEMENT OF MCCLARTY DO YOU NEED A SEPARATE OBJECTION REGARDING THE REOACTION OF THE TAPE FOR THIS POINT OR WOULD A STANDING OBJECTION COVER IT ALL" (T. 594; VOL. 4). JUSTICE: "OVERRULED" (T. 598; VOL. 4).

COUNSEL: "JUDGE I AM AGAIN OBJECTING MAY WE APPROACH EXCUSE ME MAY WE APPROACH JUDGE NOT ONLY AN OBJECTION AS TO RELEVANCE BUT ANY POSSIBLE PROBATIVE VAIVE IS CLEARLY OUTWEIGHED BY PREJUDICE IN THIS CASE HE IS TALKING ABOUT THE DISCUSSION WITH THE SMELL OF GUNPOWDER AND ITS CLEARLY NOT RELEVANT TO THIS IT CERTAINLY NOT RELEVANT TO THIS IT CERTAINLY DOESN'T GO TO THIS CASE IN FACT THE CLIENT IN THE INTERVIEW TOLD THE DETECTIVE THAT HE HAD BEEN PRESENT WHEN A FRIEND HAS BEEN SHOT AND THATS THE EXPLANATION HE WAS GIVEN THE JURY IS GONNA BE LEAD TO BELIEVE THAT SOMEHOW THIS RELATES TO THIS HOMICIDE AND THAT HES TALKING ABOUT THE SMELL OF GUNPOWDER FROM THE

SHOOTING THAT OCCURRED AND THERE'S NO EVIDENCE AT ALL CONNECTION THAT DISCUSSION TO ANYTHING THAT OCCURRED IN THIS ROBBERY CASE" (T. 598-599; VOL. 4).

COUNSEL: "JUDGE HE EXPLAINED LATER ON HE WAS TALKING ABOUT A DIFFERENT MATTER NOT THIS MURDER SO REGARDLESS OF WHEN HE TOLD THEM HE WAS TALKING ABOUT SOMETHING ELSE THE FACT REMAINS HE WAS AND THEREFORE IT'S IRRELEVANT IF IT WAS GOING TO BE PRESENTED IT SHOULD HAVE BEEN A WILLIAMS RULE NOTICE TO INDICATE THAT SOME OTHER BAD ACT" (T. 599; VOL. 4).

DETECTIVE GAUSE: "HE ASKED ME IF I EVER KILLED ANYONE AND I SAID NOT AS A POLICE OFFICER ONLY IN WAR AND THEN HE MADE A COMMENT TO ME ITS LIKE YOU'RE IN ANOTHER WORLD YOU SMELL SMOKE YOU CANT BELIEVE WHAT YOU DID ITS LIKE WOW DID I REALLY DO THIS" (T. 600; VOL. 4).

CONCLUSION

THE PETITIONER HAS MADE AN EXTRAORDINARY SHOWING OF CONSTITUTIONAL AMENDMENT SIX VIOLATIONS, ON ALL ASPECTS THROUGH OUT THE PETITIONERS JURY TRIAL. THAT HAS BEEN FOUND BY OTHER COURTS OF APPEAL TO HAVE HAD A SUBSTANTIAL, AND INJURIOUS EFFECT ON OTHER PETITIONERS CONSTITUTIONAL DUE PROCESS RIGHT TO A FAIR TRIAL, AND EQUAL PROTECTION OF THE LAW BUT FOR CONSTITUTIONAL ERROR NO REASONABLE FACTFINDER WOULD HAVE FOUND THE PETITIONER GUILTY OF THE UNDERLYING OFFENSE. THE INHERENTLY PREJUDICIAL CONSTITUTIONAL DUE PROCESS VIOLATIONS IS WELL UNDERSTOOD BY THE FACE OF THE STATE COURT RECORD AS SHOWN, AND COMPREHENDED IN EXISTING LAW BEYOND ANY POSSIBILITY FOR FAIR MINDED DISAGREEMENT. > HARRINGTON V. RICHTER, 562 U.S. 86, 103, 131 S. CT 770 786-87, 178 L. Ed 624 (2011). CREATING A PREJUDICE

IN FAVOR OF THE STATE, INTERFERING WITH THE PETITIONERS COUNSELS TRIAL STRATEGY, AND SUBJECTING THE PROSECUTION CASE TO A MEANINGFUL ADVERSARIAL TESTING THUS, INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO SURROUNDING CIRCUMSTANCES, SURROUNDING THE REPRESENTATION OF THE PETITIONER SHALL MANDATE AN INFERENCE THAT COUNSEL WAS UNABLE TO DISCHARGE HIS DUTIES OF EFFECTIVE ASSISTANCE OF COUNSEL CONSTITUTION AMENDMENT 6TH, NOT AMENDMENT 14TH AS RAISED IN THE PETITIONERS INITIAL RULE 3.850 (EXHIBIT-E), > UNITED STATES V. CRONIC, 466 U.S. 648, 80 L.Ed. 2d 657, 104 S.Ct. 2039, US L Ed DIGEST, CRIMINAL LAW 46.4 AND 46.6, PRESENTED TO THE STATE COURT FOR THE FIRST TIME THROUGH. > MARTINEZ V. RYAN, 566 U.S. 132 S.Ct. 1309, 182 L.Ed. 2d 272, 2012, 2317, THEREFORE, NOT A SUCCESSIVE CLAIM DUE TO THE MERIT NOT BEING RULED UPON BY THE STATE COURT THUS, AN ERROR BY THE STATE COURT IN ITS UTILIZING OF A PROCEDURAL BAR AND/OR STATE DOCTRINE OF LAW IN ITS DENIAL OF THIS CLAIM DEPRIVING THE PETITIONER OF A MEANINGFUL OPPORTUNITY TO CONTEST HIS CONVICTION. LIKEWISE, JURIST OF REASON FOUND DEBATABLE WHETHER THE STATE COURT WAS CORRECT IN ITS RULING. > SLACK V. MCDANIELS, 529 U.S. 473, 484 (2000); LAMARCHA V. SECY DEPT OF CORR, 568 F.3d 929, 934 (11th Cir. 2009); MILLER-EL V. COCKRELL, 537 U.S. 322, 337 (2003). MOREOVER, THE PETITIONER HAS MEET THE REQUIREMENTS TO GET HIM OVER THE CAUSE, AND PREJUDICE HURDLE IN ORDER TO HAVE THIS PETITION WARRANT A FULLER EXPLORATION OF THIS CONSTITUTIONAL VIOLATION CLAIM SEEKING A SECOND WRIT OF HABEAS CORPUS, COMPELLING THE FLORIDA DEPT OF CORRECTIONS TO RELESS THE PETITIONER BACK TO THE TRIAL COURT WHOM IS BEING UN-LAWFUL DETAIN, DUE TO EXTRAORDINARY CIRCUMSTANCES BEYOND HIS CONTROL BY THE SUBSTANTIAL SHOWING ON THE STATE COURT RECORD OF THE CONTINUOUS MENTAL INCOMPETENCY AFTER THE STATE COURTS UN-SOUND COMPETENCY DETERMINATION AT THE FOUNDATION OF THIS CASE

TRIAL, STATE DIRECT APPEAL, STATE POST-CONVICTION STAGES,
AND FEDERAL PETITIONS. AND/OR AT INITIAL POST-CONVICTION
STAGES, AND INITIAL FEDERAL PETITION DUE TO INCOMPETENT
TO PROCEED DUE TO A MENTAL DISORDER WHICH PREVENTED
THE PRO SE PETITIONER TO COMPETENTLY LITIGATE HIS
CONSTITUTIONAL VIOLATIONS CLAIMS BEFORE REVIEWING COURTS
AS TO SHOWING CAUSE AND PREJUDICE, AS STATED IN THE
RESPONSE BY THE REVIEWING COURTS, AFTER CLEAR AND
CONVINCING EVIDENCE OF OBVIOUS CONSTITUTIONAL ERRORS
ON THE FACE OF THE STATE COURT RECORD THAT SERIOUSLY
AFFECTED THE FAIRNESS INTEGRITY OR PUBLIC REPUTATION
OF THE JUDICIAL PROCEEDINGS SUPPORTED BY THE STATE
COURT RECORD. INITIAL POST-CONVICTION RULE 3.850
NOTICE "ATT CLERK OF COURT" THE PETITIONER IS IN
A D.O.C MENTAL HEALTH UNIT WHEN THE MOTION WAS
PRE-PARED RECEIVING CRISISHELP (EXHIBIT-1). THUS
A MISCARriage OF JUSTICE AND CRUEL AND UN-USUAL PUNISHMENTS
INFLICTED BY THE CONTINUOUS IMPOSING OF A BAR PREVENTING
THE PETITIONER A FULL FAIR REVIEW AND RULE ON THE MERIT
OF THIS CLAIM NOW THAT HE IS COMPETENT TO PROCEED AND MADE
A PRIMA FACIE SHOWING ON THE FACE OF THE RECORDS, AND HAS
DEMONSTRATED AND CITED TO SUFFICIENT EVIDENCE IN SUPPORT OF
HIS CONTENTIONS, SUCH TECHNICALITIES THAT PREVENT HIM RELIEF
SUCH AS TIME BARS AND SUCCESSIVE CLAIMS ARE SUBJECT TO AN
EXCEPTION UNDER THE MANIFEST INJUSTICE DOCTRINE. THEREFORE, THE
STATE COURTS DECISION WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE
APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED
BY THE SUPREME COURT OF THE UNITED STATES, OR RESULTED IN A
DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION
OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED. THE PETITION SHOULD
BE GRANTED AND WOULD BE A MISCARriage OF JUSTICE BY THIS COURT IF NOT GRANTED
AFTER THE COURT WAS AWARE OF THE MENTAL
DEFICIENCY OF THE PETITIONER AT HIS PREVIOUS
FILINGS LIKE THE STATE COURT WAS AWARE. (34)

RESPECTFULLY SUBMITTED

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