

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

CASE NO: 53-1988-CF-002346-A100-XX

DIVISION: F4

LEO R. SCHOFIELD, Jr.

Defendant.

STATE'S RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and herein responds to the Court's Order to Show Cause rendered January 13, 2017.

Defendant has filed multiple motions for postconviction relief or for collateral DNA testing; in 1991, 2003, 2006, and 2016. The 2006 and 2016 motions were based on the same allegedly newly discovered evidence, which Defendant recycles for this motion, adding a new twist which will be detailed in argument *infra*. Defendant's 2006 claims were subject to and denied after evidentiary testing, with hearing held in 2010. The instant *Second Amended Motion for Postconviction Relief (Defendant's Motion)* appears to be properly sworn.

Among other things, in this response the State will take position that the claims Defendant advances are procedurally barred and based on evidence inadmissible at a collateral hearing or in any retrial awarded; further, they are neither timely nor of such a character as to lead to Defendant's

acquittal in any retrial. The instant claim is that Jeremy Scott, to whom Defendant wishes to assign blame for Defendant's 1987 murder of Michelle Saum Schofield, has recanted his sworn testimony denying culpability at the 2010 hearing. See generally *Defendant's Motion*. Defendant's *Motion* fails the test provided at law for newly discovered evidence, and should be **denied without hearing**. Defendant's claims relating to violation of *Brady v. Maryland*, 363 U.S. 83 (1963), at the 2010 postconviction hearing also should be **denied without hearing** as not amenable to collateral attack. See *District Attorney's Office v. Osborne*, 557 U.S. 52, 68-70 (2009); see also *In re Bolin*, 811 F.3d 403, 410 (11<sup>th</sup> Cir. 2016).

#### I. Procedural History

Defendant's 2006 successive collateral motion claimed newly discovered evidence in the identification of fingerprints identified as belonging to Jeremy L. Scott from latent lifts taken from the Schofield car, which was abandoned on Interstate Highway 4 in Polk County in February 1987, at or about the time of Michelle Schofield's murder. See *Order After Remand et al., State v. Schofield*, CF88-2346A1-XX at 3 (Fla. 10<sup>th</sup> Cir. Ct. Jun. 14, 2010) (2010 order). It also made claims relating to failure to preserve certain evidence and violation of due process thereto. See *id.* Initially, Defendant's motion was summarily denied; when that was reversed on appeal, Defendant's claims

were subjected to evidentiary testing by order of the district court of appeal, and Defendant's 2006 motion was then denied by order rendered June 14, 2010. See 2010 order. Denial of relief was affirmed by district court mandate rendered September 21, 2011. See *Schofield v. State*, 67 So. 3d 1066 (Fla. 2d DCA 2011) (rev. den. *Schofield v. State*, 95 So. 3d 214 (Fla. 2012)).

The following factual basis is taken from the undersigned's response to the Court's Order to Show Cause regarding Defendant's 2006 motion.

The Defendant's case arises from the February 24, 1987 murder of his eighteen year old wife, Michelle Schofield. See *Trial Transcript, State v. Schofield*, Case No. CF88-2346A1-XX at 584 (Fla. 10<sup>th</sup> Cir. Ct. Mar. 8, 1989) (*Trial Transcript*). She received 26 stab wounds. See *id.* at 1061.

Witnesses testified that the Defendant and his wife had a violent relationship, including fights in which the Defendant would drag her by the hair. See, e.g. *Trial Transcript* at 1016; 1105-6. The Defendant was known to become especially angry when Mrs. Schofield was late meeting him, and he would become physically violent with her on those occasions. See *id.* at 964. The night Mrs. Schofield was murdered, she was late meeting the Defendant at the home of friends, and the Defendant "was at wit's end." *Defendant's [2006] Motion* at 8; see also *Trial Transcript* at 796. That morning, an eyewitness saw the Defendant and Mrs. Schofield getting out of Mrs. Schofield's car, at their home, between 1:00 a.m. and 1:30 a.m. See *id.* at 1109-11. The witness, Alice Scott, was positive that she had witnessed the Defendant and Mrs. Schofield together. See *id.* at 1111-12. The Defendant now admits that he left a friend's house alone at approximately 1:15 a.m., after reporting Mrs. Schofield missing. See *Defendant's [2006] Motion* at 8. The home of Leo Schofield, Sr., the Defendant's father, is four blocks

from that location, approximately one mile. See *Trial Transcript* at 1496.

Mrs. Scott heard the sounds of a fight, "arguing and screaming," and sounds as if the Defendant was "pushing [Mrs. Schofield] against the walls" of their trailer. *Trial Transcript* at 1112, lines 16-18. The Defendant exited the home, alone, and drove away in the car. See *id.* at 1113. Shortly after, he returned, opened the hatchback, and went in the house. See *id.* He carried out a heavy object and put it into the back of the car. See *id.* at 1114. The next morning, the Defendant used a carpet cleaner in the residence. See *Trial Transcript* at 1119.

The Defendant's work supervisor, Jim Anderson, related that on that day, the Defendant made statements to him to the effect that he "had a feeling" that Mrs. Schofield was dead, before the car was discovered. See *id.* at 956, lines 21-22. He made similar statements to Mr. Anderson's wife, before the car was found, and stated that he hoped the police did not find the victim in water. See *id.* at 799. The day the car was discovered, the Defendant further stated to Mr. Anderson that law enforcement would blame him if the victim were found dead. See *id.* at 961. He asked Mr. Anderson to procure an attorney for him, before the car was found. See *id.*

The Schofields' car was abandoned on Interstate 4 in Polk County, and located on February 25, 1987 by Chris Peck, a friend of the Defendant. See *Trial Transcript* at 997-99. Peck, the Defendant, and his father discovered the vehicle before law enforcement did. See *id.* at 962-63. The doors all were locked, and the radiator had only a small amount of fluid within. See *id.* at 1004, 1102. Mrs. Schofield's body was discovered in a canal located in a heavily wooded area on the morning of February 27, 1987, by Leo Schofield, Sr. See *id.* at 912-13. Mr. Schofield, Sr. claimed at various times that God's voice or a premonition led him to her body, or that an "inner force" had driven him to the location. See *id.* at 945, 1246; *id.* at 1476, lines 21-24. On the night of Michelle Schofield's death, a vehicle similar in description to Leo Schofield, Sr.'s Chevrolet truck was seen at the location where her car was disposed of, and later

another witness saw a similar truck where her body was disposed, and two well-dressed white men were seen coming out of the woods at the truck. See *id.* at 989, 1511; see also Defendant's [2006] Motion at 17. At autopsy, Mrs. Schofield's wedding ring was intact on her finger. See *id.* at 1464. Mrs. Schofield had multiple bruises, inflicted within 24 hours of her death. See *id.* at 1068. Following her death, she was dragged on the ground. See *id.* at 1069.

Crime scene evidence recovered from the Schofield car included several hairs and latent fingerprints that were not examined during the investigation. See Defendant's [2006] Motion at 16, ¶ 21. The Defendant's Trial Counsel, the late Jack T. Edmund, Esq., was aware of these and advanced Argument as to them during the trial. See *id.* at 19, ¶ 29.

During the investigation, Mr. Schofield, Sr. interfered with law enforcement when they attempted to survey the master bedroom in the trailer, a possible crime scene. See *Trial Transcript* at 1463. That area was in disarray, with dresser drawers broken and the sheets missing from the bed. See *id.* at 1462. Mr. Schofield, Sr. became angry and actively barred law enforcement from entering the trailer on the day the victim was discovered. See *id.* at 1465. The Defendant was with him at that time. See *id.* at 1466.

Jim Anderson is the person who arranged for Michelle Schofield's funeral. See *id.* at 968. The Defendant's behavior following the funeral was "unusual." See *Trial Transcript* at 966. Immediately following Mrs. Schofield's funeral, he was going out to clubs and dating other women. See *id.* at 966-67. He left Florida two weeks after the murder, and struck up a romantic relationship with a female cousin in Massachusetts, who he wanted to bring back to Florida. See *id.* at 967, 980-81. Mr. Anderson had set up a trust fund to account for Mrs. Schofield's funeral expenses, and the Defendant wanted the money for himself. See *id.* at 968-69. The Defendant did not assist with planning the funeral. See *id.* at 979.

The Defendant was convicted by Jury Verdict on March 23, 1989. See Defendant's [2006] Motion at 3. This was affirmed *per curiam* on direct appeal. See *Schofield v.*

State, 592 So. 2d 634 (Fla. 2d DCA 1991) (Table). The Defendant's [initial] Motion for Postconviction Relief under Fla. R. Crim. P. 3.850 was timely filed, and an evidentiary hearing held in 1993 and 1994. See Defendant's Motion at 4. This Motion did not address forensic evidence testing. See *id.* at 3-4. Denial of the [initial] Motion for Postconviction Relief was affirmed on appeal. See *Schofield v. State*, 651 So. 2d 736 (Fla. 2d DCA 1996).

*Response to the Court's Order to Show Cause, Schofield v. State*, CF88-2346A1-XX at 2-6 (Fla. 10<sup>th</sup> Cir. Ct. May 30, 2007).

The trial court's order denying postconviction relief in 2010 set out the trial evidence similarly as adduced in the State's original response to the order to show cause. See 2010 order at 6. Additionally, the presiding judge, Tenth Circuit Judge Keith P. Spoto, observed that Mrs. Schofield's body was under a board, not in plain view; further, trial testimony from Defendant himself showed that stereo equipment was missing from the Schofield car. See *id.* at 5-6.<sup>1</sup> Additionally, Mrs. Schofield's purse and wallet were left in the Schofield home. See *id.* at 6.

Jeremy Scott rendered testimony under oath at the evidentiary hearing in 2010. See 2010 order at 6. Judge Spoto determined that

[a]t the evidentiary hearing, Mr. Scott testified that, during the time period of the victim's murder,

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<sup>1</sup> Compare to Defendant's Motion at 10, affirmatively attempting to mislead the Court relating to photographs showing the stereo head still in Ms. Schofield's car. This is wholly disingenuous, given that at trial Defendant himself testified consistently with Mr. Scott's 2010 evidentiary hearing testimony regarding missing stereo equipment, as Judge Spoto detailed.

he engaged in the practice of stealing stereos from cars abandoned in the approximate area in which her vehicle was found along Interstate 4. He detailed a modus operandi by which he and another individual would steal the stereos. He testified that, after seeing photographs of the inside of the victim's car, he recognized the car as one from which he had stolen a stereo. Although Mr. Scott may not be an entirely credible witness in many respects, the Court found his explanation of why his fingerprints were found in the victim's car to be credible.

2010 order at 6. Judge Spoto further observed that

it is of interest that that Lieutenant [Louis] Gia[m]pavolo [the Polk County Sheriff's deputy who investigated Defendant's claims regarding Scott] testified at the evidentiary hearing that when he first confronted Mr. Scott with the fact his fingerprints had been found in the victim's car, Mr. Scott inquired as to whether the stereo was missing. Mr. Scott made this inquiry before being told the stereo was, in fact, missing.

*Id.* at 7. Furthermore, the judge related that

Although there was testimony at the evidentiary hearing by Mr. Scott and his former girlfriend, [Jami] Nelams, that Mr. Scott was apparently familiar with the general area in which the victim's body was found, there was also testimony that the area was an area occasionally frequented by teenagers. Testimony and exhibits introduced at trial and at the evidentiary hearing indicate the location where the body of the victim was found was near the intersection of Interstate 4 and Highway 33, immediately off of Highway 33. It was a location that was frequently travelled and was easily accessible to anyone who happened to be driving in the area. Although the area was wooded and in an unpopulated area, it was not a particularly secluded area known to few people. It would have provided an easily accessible location for anyone, including the Defendant, to attempt to hide a body.

Lieutenant Gia[m]pavolo testified at the evidentiary hearing that after his visit with Mr. Scott in prison

he had phone calls by Mr. Scott to his grandmother recorded. The Defendant suggested at the evidentiary hearing that the substance of these calls indicate a consciousness of guilt on the part of Mr. Scott as to the victim's murder. However, the Court finds that the substance of these calls is consistent with his concern for being incorrectly blamed for the murder of Michelle Schofield as opposed to indicating any consciousness of guilt as to her murder, as suggested by the Defendant. The Court finds that the substance of the phone calls is consistent with his assertions that he may have stolen a stereo from the victim's abandoned car but did not murder the victim.

*Id.* at 7. Judge Spoto then found that

there was no evidence that the victim had been robbed or sexually assaulted. There was no evidence that Mr. Scott had any connection to the victim as a friend, acquaintance, or in any other capacity. There is no evidence that Mr. Scott had any motive to stab the victim 26 times. Although the Defendant points to robbery as a potential motive and suggests the victim may have had \$13 in tips on her person the night she was killed, the Court finds the theft of \$13 unlikely as a motive for her murder. She was still wearing jewelry, to include her wedding ring, when her body was found. Although Mr. Scott may have had a violent nature as testified to by Ms. Nelams, the robbery of \$13 would not appear to provide a motive to engage in such a vicious and repeated stabbing of a robbery victim. Given Mr. Scott's past history and modus operandi, there is every reason to believe he simply stumbled upon the victim's car after her murder and after her body had been hidden, stole stereo equipment from the car, thereby leaving his fingerprints in the vehicle.

The Court finds that the circumstantial evidence presented at trial against the Defendant was strong and sufficient for a jury to convict the Defendant. The Court finds that the evidence concerning Mr. Scott was not of a sufficient nature, when considered in a light most favorable to the Defendant, to create a reasonable doubt in a juror's mind such that it would probably produce an acquittal on retrial. Although the Court is not unmindful that this newly discovered



evidence might give one pause in an evaluation of whether reasonable doubt exists, the Court, in the final analysis, finds the evidence does not weaken the case against the Defendant so as to give rise to a reasonable doubt as to his culpability. The Court notes that the test to be applied in this case is not whether the newly discovered evidence could possibly or might conceivably produce an acquittal on retrial, but whether it would probably produce an acquittal on retrial. The Court finds that the newly discovered evidence is not of such nature that it would probably produce an acquittal on retrial.

*Id.* at 7-8.

On appeal, the district court of appeal endorsed Judge Spoto's well-reasoned opinion. *See Schofield*, 67 So. 3d at 1072. Importantly, the *per curiam* panel held that of all the evidence presented at the 2010 evidentiary hearing,

the only *admissible* newly discovered evidence offered was the evidence of the fingerprint identification itself and Jeremy Scott's testimony explaining how his fingerprints could have been found in Michelle's car. To that end, Scott testified that he used to drive up and down the stretch of I-4 through Lakeland looking for abandoned cars. When he found one, he would break into it and steal stereo equipment. Scott offered this explanation to detectives before he was told that speakers and a power amp were missing from Michelle's car when it was found abandoned on I-4. He also offered this explanation before he knew that his fingerprints were found on the inside of the windshield of Michelle's car. The postconviction court accepted Scott's explanation as credible, and it based its denial of Schofield's motion in part on that credibility assessment.

*Schofield*, 67 So. 3d at 1069-1070 (emphasis in original).

Defendant's attempts on appeal to re-weigh the credibility of trial witnesses (such as Alice Scott, *see Defendant's Motion*

at 3) were not supported by the law. See 67 So. 3d at 1070. Additionally, Jeremy Scott's criminal history and the testimony of Jami Nelams regarding Mr. Scott's alleged propensity for violence were inadmissible. See *Schofield*, 67 So. 3d at 1070-71, quoting *Hitchcock v. State*, 413 So. 2d 741, 743-44 (Fla. 1982); citing *Howard v. Risch*, 959 So. 2d 308, 313 (Fla. 2d DCA 2007) (description and details of prior crimes inadmissible in impeachment); *Livingston v. State*, 682 So. 2d 591, 592 (Fla. 2d DCA 1996) (same); *Parks v. Zitnik*, 453 So. 2d 434, 437 (Fla. 2d DCA 1984) (same).

The district court also found Defendant's allegations, particularly his reliance on an allegation that Mr. Scott had previously been involved in a murder and was involved in a subsequent murder, not to meet the standard for reverse *Williams* rule evidence. See *Schofield*, 67 So. 3d at 1071, citing *Drake v. State*, 400 So. 2d 1217, 1219 (Fla. 1981) (reverse *Williams* rule evidence must be of such a character as to "pervade" the compared factual situations and must have a "special character or be so unusual as to point to the defendant"); *Rivera v. State*, 561 So. 2d 536, 540 (Fla. 1990) (reverse *Williams* rule evidence must be so similar and specific as to exclude other potential culprits)); *Fulton v. State*, 335 So. 2d 280, 282-83 (Fla. 1976) (evidence of arrest not resulting in conviction is inadmissible)); *Jordan v. State*, 107 Fla. 333; 144 So. 669, 670

(1932)(improper to interrogate witnesses on former arrests not resulting in conviction)). Finally, the district court reminded Defendant that postconviction courts are bound by the rules of evidence and failure to follow same is subject to *de novo* review; the fact that the lower court allowed Defendant's inadmissible evidence to be heard did not render it admissible at law. See 67 So. 3d at 1072.

Following denial of the 2006 motion and affirmances on appeal, Defendant filed the instant motion, which will be discussed below in further detail. In it, Defendant makes claims procedurally barred by the time bar of Rule 3.850 and the law of the case, raising a new claim that Mr. Scott recants his testimony at the 2010 evidentiary hearing, which is unsupported by affidavit and does not stand the legal test required for evidentiary testing. He additionally makes claims under *Brady* of evidence suppression at the 2010 hearing, which the law and available facts do not support, and a cumulative error claim that is both refuted by the available record and fails on the merits for a lack of showing of individual error. Defendant's *Motion* should be denied without hearing.

## II. Defendant's Motion

It is important to review the allegations Defendant puts forth and compare them against the trial record. Once this is done, the State will lay out the substance of Defendant's new

allegations. They are troubling, not for their content, but because of the way Defendant went about obtaining them and how they are presented in his motion. Defendant is attempting to manipulate the Court into affording relief on allegations that are recycled, procedurally foreclosed, lack timeliness and due diligence, and in one case constitutes a potentially sanctionable attempt to mischaracterize the trial evidence. Further, the record suggests that a borderline-intellectually disabled inmate may have been induced-one hopes inadvertently-to confess to a crime that he did not commit. The State begins with Defendant's recitation of past facts.

**A. Issues with Defendant's recitation of the procedural history**

In the instant *Motion for Postconviction Relief*, after a review of evidence with little attribution to the trial record, Defendant begins by attacking the testimony of Alice Scott, inviting the Court to re-weigh that testimony by adducing hearsay and speculation from Mrs. Scott's husband, reported in a newspaper article, that Mrs. Scott could not have seen what she saw. See *Defendant's Motion* at 1-3. This was held inadmissible by the district court in *Schofield*, 67 So. 3d at 1070, and Defendant should not be allowed to re-argue it. Further, the relevance and probative value of that evidence is negated by the law of the case, as those findings were affirmed on appeal. See, e.g. *State v. J.P.*, 907 So. 2d 1101, 1121-22 (Fla. 2004).

Notably, the trial record comprehensively refutes these allegations. In sworn testimony at trial, something that should carry more weight than the media hearsay upon which Defendant relies, Robert Scott related that he saw Defendant drag Mrs. Schofield out of the car by her hair. See *Trial Transcript* at 1016. He also related that the night Mrs. Schofield was murdered, Mrs. Scott woke him up, saying something was wrong at the adjacent Schofield residence, and he told her to "shut up and go to sleep." See *id.* at 1017. He verified that "something was wrong over there" at the Schofield residence that night. *Id.* at 1020. Photographs showing the positioning of the residences adjacent to one another were in evidence. See *id.* at 1461. Polk County Sheriff's Detective Robert Weeks, the investigating officer, verified at trial that Mrs. Scott could have made the observations that she testified to having made, from her bathroom window. See *id.* at 1472-73.

Defendant claims that evidence of Defendant's prior bad acts was inappropriately admitted at trial. See *Defendant's Motion* at 3-4. Respectfully, Defendant's case is final on direct appeal and has been through other postconviction proceedings. Defendant could have raised those claims in his 1991 postconviction proceedings; thus, such claims now are procedurally barred and may not be re-litigated on collateral

attack. See, e.g. *Bond v. State*, 931 So. 2d 1043, 1044 (Fla. 3d DCA 2006), and cases therein cited.

Defendant points to Jeremy Scott's criminal record and to the testimony of Jami Nelams at the 2010 postconviction evidentiary hearing, relating to alleged specific bad acts on Jeremy Scott's part. See *Defendant's Motion* at 4-7. These claims were raised in the 2006-2010 collateral proceeding, and found both to be inadmissible for impeachment purposes, and inadmissible in a motion for postconviction relief; thus, they are inadmissible at any hearing on Defendant's present collateral motion. See *Schofield*, 67 So. 3d at 1071.<sup>2</sup> Further, as was the evidence relating to Alice Scott, the relevance and probative value of the evidence of Jami Nelams is procedurally barred by the law of the case, as those findings were affirmed on appeal. See, e.g. *J.P.*, 907 So. 2d at 1121-22.

Defendant claims that Jeremy Scott and Michelle Schofield were acquainted at the time of the murder. See *Defendant's Motion* at 5. This allegation was resolved adversely to Defendant in the 2010 motion. See *2010 order* at 5-7. The allegations within the unnotarized affidavit of Larry Hall, Defendant's "Exhibit D," are unsworn and thus not compliant with the

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<sup>2</sup> Notably, the Clark of Court's records here attached plainly show that Defendant is misleading the Court as to Mr. Scott's prior record. Case No. CF85-2110A1-XX, on an indictment for capital murder and robbery, upon which Defendant relies in his motion at 7, resulted in a verdict of not guilty rendered on September 13, 1985. Defendant misleads the Court as to that case by omitting that most salient fact from his motion.

requirements of Rule 3.850, and could have been discovered and presented in the 2006-2010 collateral attack proceedings with the exercise of due diligence, thus, they are not timely filed pursuant to Rule 3.850(b) and therefore are procedurally barred. In his instant motion, Defendant does not attempt to excuse his lack of diligence as to this information.

Defendant's claim, in his *Motion* at 10, that Scott had been in the general vicinity of the location where Mrs. Schofield's body was found was rejected as having probative value both by Judge Spoto and by the district court of appeal as described *supra*. Judge Spoto held that the location was frequently traveled by local teenagers and accessible to anyone. See 2010 order at 7. Further use of this information therefore is procedurally barred by the law of the case and it should not be considered again.

In his *Motion* at 10, Defendant further claims that the stereo system was still in the car; therefore, he opines, Mr. Scott's claim that he removed the stereo cannot be believed. Defendant appears to be resorting to what may colloquially be described as "alternative facts"<sup>3</sup> in this claim, as that was resolved adversely to Defendant by the 2010 order, where Judge Spoto held that Defendant himself rendered sworn trial testimony that stereo equipment was missing from the car. See 2010 order

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<sup>3</sup> *Meet The Press* (NBC Jan. 22, 2017) (tv broadcast)

at 6; see also *Trial Transcript* at 1986. And contrary to Defendant's insinuation that Judge Spoto got it all wrong in his order, at trial Defendant testified under oath that

I noticed that they had stole—whoever had the car stole the speakers and the power booster out of the dash.

*Trial Transcript* at 1986, lines 5-6.

This is entirely consistent with the testimony of Mr. Scott at the 2010 evidentiary hearing, set forth in the *Record on Appeal, Schofield v. State*, No. 2D10-2918 at 1006, 1016 (Fla. 2d DCA 2010), where Mr. Scott testified that he regularly stole stereo equipment and speakers from unattended vehicles. Defendant's present claim otherwise, based upon misinterpreting the 1987 crime scene photographs, potentially subjects him to sanction under Fla. R. Crim. P. 3.850(n). This should be considered as the Court considers whether to afford a hearing on Defendant's allegations.

#### **B. Allegation of newly discovered evidence**

Defendant claims that on September 29, 2015, his postconviction counsel sent a letter to Jeremy Scott asking for further information. See *Defendant's Motion* at 11. That letter appears nowhere in Defendant's attachments to his instant motion for postconviction relief. Defendant claims that Mr. Scott responded on July 5, 2016, asking to speak to collateral counsel "one on one" and wanting to know "what was in it" for Mr. Scott.



*Id.* This also is not appended to Defendant's motion. Defendant then claims that collateral counsel, sight unseen, was able to make arrangements with a state correctional facility to speak with Jeremy Scott by telephone on July 29, 2016. See *id.* at 12.

Mr. Scott allegedly recanted his 2010 testimony in that telephone conversation, which allegedly was witnessed by an unassociated attorney, Sean Costis. See *id.* Mr. Costis relates that in that call, Mr. Scott claimed to have killed Mrs. Schofield. See *id.* at Exh. G. Specifically, Mr. Costis takes position that Mr. Scott claimed that he had approached Mrs. Schofield in the rain at a telephone booth, asked for a ride, directed her to a "hidden lake," as opposed to a canal, and stabbed her. See *id.* No motive was given for the alleged murder, no description of the weapon used was given other than claiming that the type of knife was such that it would not have resulted in bleeding in the car, and no detail relating to what, if anything, was taken was given. See *id.* Notably, as described *supra*, Mrs. Schofield's purse and wallet were still in the Schofield trailer after her death, leaving one to wonder how they got there if Mrs. Schofield did not return home at any time after leaving her job.

Mr. Costis claims that no promises were made to Scott during the call. See *id.* However, there is nothing in Defendant's motion indicating what other contacts were had

between Defendant's attorneys and Mr. Scott. Mr. Costis further claimed that according to Mr. Scott, he had been promised by the "prosecutor who interviewed him" prior to the 2010 hearing that the prosecutor would speak favorably for Mr. Scott at a parole hearing. *Id.* Mr. Scott allegedly claimed to be willing to submit to polygraphy. *See id.* Significantly, Mr. Scott now refuses to cooperate with defense collateral counsel, refused to complete an affidavit attesting to the above, and will not speak to defense investigators. *See Defendant's Motion* at 13-14.

Furthermore, Defendant admits that Jeremy Scott is mentally impaired, suffering from an adjustment disorder, attention deficit disorder, brain damage, and is borderline intellectually disabled. *See id.* at 13, citing *Scott v. State*, 603 So. 2d 1275, 1277 (Fla. 1992) (reversing an override of a jury's life recommendation in a capital murder case based on mental health mitigation). Defendant fails to apprise the Court that the high court quashed a death sentence in Jeremy Scott's murder case, in part based on the mental impairments catalogued *supra* and set forth in mitigation at his trial, that led to an improperly-overridden jury recommendation of life imprisonment. *See generally Defendant's Motion; see also Scott*, 603 So. 2d at 1277. In view of the record of Mr. Scott's diminished mental capacity, it is particularly disturbing that Defendant has chosen not to provide the Court with a complete record of all

communications his collateral counsel had with Jeremy Scott before the alleged telephone conversation of July 29, 2016. This too should be considered against the law set out *infra*.

### III. General Legal Standards

Florida Rule of Criminal Procedure 3.850(b) sets forth in relevant part that a motion for postconviction relief may not be considered if filed more than two years after judgment and sentence becomes final. In *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998), the supreme court observed that to be "newly discovered," evidence must have been unknown by the proponent, counsel, or the trial court; it must appear that counsel could not have discovered it with due diligence; and the evidence must be such as to cause a probable acquittal.

The heart of Defendant's claim centers on alleged recantation of Mr. Scott's testimony at Defendant's prior evidentiary hearing, relating to Defendant's attempts to blame Mr. Scott for a murder that Mr. Scott did not commit. As to recantation of testimony, in *Armstrong v. State*, 642 So. 2d 730, 735 (Fla. 1994), the high court held that

[r]ecantation by a witness called on behalf of the prosecution does not necessarily entitle a defendant to a new trial. In determining whether a new trial is warranted due to recantation of a witness's testimony, a trial judge is to examine all the circumstances of the case, including the testimony of the witnesses submitted on the motion for the new trial. "Moreover, recanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it

is not satisfied that such testimony is true. Especially is this true where the recantation involves a confession of perjury." Only when it appears that, on a new trial, the witness's testimony will change to such an extent as to render probable a different verdict will a new trial be granted.

Quoting *Bell v. State*, 90 So. 2d 704, 705 (Fla. 1956); see also *Lambrix v. State*, 39 So. 3d 260, 272 (Fla. 2010); *Archer v. State*, 934 So. 2d 1187, 1196 (Fla. 2006). The reviewing court must be satisfied that (1) the recantation is truthful; and (2) that it probably would cause a different outcome. See *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2009).

An evidentiary hearing normally is required to determine the credibility of a recantation. See *Padron v. State*, 827 So. 2d 393 (Fla. 2d DCA 2002). However, this is not always so. Where an affidavit purporting to recant former testimony is inherently incredible, an evidentiary hearing is not necessary. See *Andrews v. State*, 919 So. 2d 552, 553 (Fla. 4<sup>th</sup> DCA 2005). There, an affidavit that a co-defendant rendered to support Andrews in his sentencing directly conflicted with the co-defendant's testimony at his own sentencing and with the testimony of several witnesses to the crime. See *id.* The district court held that such an inherently incredible recantation did not need to be explored at an evidentiary hearing. See *id.*

Additionally, where a defendant preserves a claim for appellate review, that claim is procedurally barred in

postconviction. See *Smith v. State*, 445 So. 2d 323, 325 (Fla. 1983) (holding that "[i]ssues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack"). Additionally, the Florida Legislature expects trial courts and appellate courts to employ procedural bars rigidly. See § 924.051(8) Fla. Stat. (2016). The appellate doctrine of the law of the case is one such. It is

the principle that questions of law decided on appeal to a court of ultimate resort must govern the case in the same court, and the trial court, through all subsequent stages of the proceedings and will seldom be reconsidered or reversed, even though they appear to have been erroneous. Or, as otherwise stated, "whatever is once established between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decisions were predicated continue to be the facts in the case.

*McGregor v. Provident Trust Co.*, 119 Fla. 718, 728; 162 So. 323 (1935). Finally, the time bar of Fla. R. Crim. P. 3.850(b) applies where a defendant could have presented a claim in prior collateral proceedings but fails to for want of due diligence. See *Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1991).

#### IV. Defendant's Claims

##### A. First Claim

Defendant's first assignment of error posits that he has newly discovered evidence that Mr. Scott confessed to Mrs. Schofield's murder. See *Defendant's Motion* at 16. Defendant

relies on *Aguirre-Jarquín v. State*, 202 So. 3d 785 (Fla. 2016), claiming that it compels relief. See *Defendant's Motion* at 17. *Aguirre-Jarquín* is distinguishable on its facts, and does not resemble the instant case as much as Defendant claims. Additionally, Defendant seeks an evidentiary hearing to admit third-party hearsay before the Court, which pursuant to *Lightbourne v. State*, 644 So. 2d 54, 57 (Fla. 1994), is inadmissible in collateral proceedings. Defendant seeks to circumvent the requirement in Fla. R. Crim. P. 3.850(c) requiring production of an affidavit of the declarant swearing to such a recantation by resorting to the statement against interest hearsay exception and *Chambers v. Mississippi*, *supra*.

As observed in *Armstrong*, *supra*, a recantation involving a confession of perjury is "exceedingly unreliable," and before the Court awards relief it must be satisfied above all that the recantation is truthful and that it would comprise the proverbial game-changing factor that would compel acquittal on retrial. And Mr. Scott's recantation is, as *Andrews*, *supra*, describes, inherently incredible when all of the surrounding facts are considered. As the Court will see, the tremendously suspicious circumstances Defendant relates surrounding the alleged "confession" make an already exceedingly unreliable recantation of sworn testimony unworthy of evidentiary testing under these circumstances; further, the alleged confession is

hearsay, not admissible at law, and the exceptions Defendant posits do not apply under these circumstances. Defendant's first claim should be denied without hearing.

**1. The evidence fails the second Jones component.**

The State concedes that the alleged statement of Jeremy Scott could not have been known to Defendant, his trial counsel, or the court at the time of trial. See *Jones*, 709 So. 2d at 521. However, the evidence is not such as would make acquittal probable, and the State will address this throughout its following arguments *infra*.

**2. Aguirre-Jarquín is distinguishable.**

Defendant opines that *Aguirre-Jarquín* is "strikingly similar" to his own case. But that is not so. While both cases were on collateral attack, Defendant's allegations already have been subject to detailed evidentiary testing in a process lasting over four years and culminating in a postconviction hearing. Mr. *Aguirre-Jarquín* was on his initial motion for collateral relief under Fla. R. Crim. P. 3.851, relating to evidence discovered during collateral DNA testing. See 202 So. 3d at 789. He then discovered evidence of Samantha Williams' alleged statements to three persons taking responsibility for the murder, and timely brought a successive motion alleging those claims, causing a relinquishment of jurisdiction prior to any appellate rulings in the matter. See *id.* at 790. Compare to

Defendant's case, where extensive litigation had gone to conclusion both in the district court and the Florida Supreme Court, establishing the law of the case. See *Schofield*, 67 So. 3d at 1072; *Schofield*, 95 So. 3d 214.

Additionally, Ms. Williams spontaneously made her inculpatory statements to three friends or neighbors over a period of time contemporaneous with Mr. Aguirre-Jarquin's then-ongoing initial collateral attack proceeding, as opposed to making an unrecorded statement to the counsel for the collateral defendant and to an inmate law clerk, years after the conviction was rendered final on direct appeal, and after both initial and successive collateral attack motions were heard and denied. See *Aguirre-Jarquin*, 202 So. 3d at 792-93; see also generally *Defendant's Motion*.

More disturbing to the high court in *Aguirre-Jarquin* was the fact that Samantha Williams was a key witness in that trial. See 202 So. 3d at 794. Ms. Williams is the one who linked Mr. Aguirre-Jarquin to the crime scene, putting him inside it uninvited prior to the murders. See *id.* Her testimony rebutted his reasonable hypothesis of innocence as to how the victims' blood came to be present on his clothing. See *id.* She denied that a weapon such as the murder weapon was in the home. See *id.* Compare to the instant case, where Mr. Scott was not a trial witness and only became known when his fingerprints were matched



to latent lifts taken from Mrs. Schofield's vehicle. Defendant himself testified that stereo equipment was missing from the Schofield car, and at the evidentiary hearing on Defendant's last collateral motion, Lt. Giampavolo testified that upon learning that his fingerprints were found there, he asked whether stereo equipment was missing before Lt. Giampavolo told him it was. *See Record on Appeal, Schofield v. State*, No. 2D10-2918 at 926 (Fla. 2d DCA 2010).

Furthermore, as Judge Spoto found, there was no evidence linking Defendant to Mrs. Schofield. That has not changed. Defendant now presents an unsworn affidavit of Mr. Scott's co-defendant in the murder case for which Mr. Scott now is incarcerated, claiming that Mrs. Schofield was present at certain parties in the late 1980s, and that Mr. Scott had commented that he liked her. *See Defendant's Motion*, Exhibit "D." But Defendant exaggerates the importance of this revelation from Mr. Scott's co-defendant in an unrelated case.

First, Mr. Hall's alleged claim proves nothing relating to whether Mr. Scott and Mrs. Schofield actually were acquainted. It only shows that they attended parties at the same time and Mr. Scott perhaps found her attractive. Second, Mr. Hall's comments are inadmissible hearsay and may not be considered in postconviction proceedings. *See Lightbourne*, 644 So. 2d at 57. Third, Lt. Giampavolo testified that Mr. Hall was one of the

witnesses he spoke with during his investigation immediately prior to Defendant's 2006 postconviction motion; with the application of due diligence Mr. Hall could have been discovered as a witness, and this evidence presented for whatever worth it may have. *See Record on Appeal, Schofield v. State*, No. 2D10-2918 at 916 (Fla. 2d DCA 2010). It is inadmissible now, and the law of the case is that, as Judge Spoto found, no admissible evidence exists even remotely connecting Mr. Scott to Mrs. Schofield. And even ignoring the law, Mr. Hall's evidence only establishes, at most, a very tangential connection without any indication that Mr. Scott and Mrs. Schofield knew each other more than having attended parties contemporaneously. This alone distinguishes the instant case from *Aguirre-Jarquin*. And notably, Defendant presents no motive for Mr. Scott to murder Mrs. Schofield, whereas Defendant had reasons to kill his wife, as the prosecutor set forth in detail at Defendant's trial.

The newly discovered evidence of Samantha Williams changed Mr. Aguirre-Jarquin from a midnight prowler to the unwitting scapegoat for her crimes. *See* 202 So. 2d at 795. Defendant, on the other hand, wrongfully is attempting to cast blame for his crime upon a man who in 1987 was a mentally ill, small time criminal<sup>4</sup> that, by happenstance, broke into the Schofield car

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<sup>4</sup> Mr. Scott's own reprehensible later conduct does not excuse Defendant's ongoing attempts to blame him unjustly for Defendant's crime. And again,

after it was abandoned on the highway, to steal stereo equipment from it. *Aguirre-Jarquín* provides no safe harbor for Defendant. His motion should be denied without hearing.

**3. The alleged "confession" is inadmissible and incredible.**

Defendant takes position that Mr. Scott is unavailable to testify. See *Defendant's Motion* at 11-12, 24. He fails to submit the affidavit of Mr. Scott required under Fla. R. Crim. P. 3.850(c) for that reason. See *id.* And hearsay is inadmissible in postconviction proceedings. See *Lightbourne*, 644 So. 2d at 57. To compensate for his failure to follow the Rule, Defendant spends much time attempting to lay a foundation for the introduction of hearsay through his collateral counsel, invoking the hearsay exception for statements made against one's penal interest. See *id.* at 23-24. However, assuming *arguendo* that Mr. Scott is not available by invocation of his right against compelled self-incrimination, Defendant's analysis of the rules surrounding the penal-interest hearsay exception and his invocation of cases including *Chambers v. Mississippi*, 410 U.S. 284 (1973), is flawed. Defendant does not show the factors required for admission of the alleged confession. To obtain an evidentiary hearing, therefore, he must be required to follow Rule 3.850(c) and submit Mr. Scott's sworn affidavit recanting

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Defendant neglects to mention that a jury acquitted Mr. Scott relating to one of the serious crimes in which he was alleged to have been involved.

his testimony in deposition and evidentiary hearing in 2010. And even if he were to do that, Mr. Scott's recantation is, under these circumstances, inherently incredible and does not require evidentiary testing. See *Andrews, supra*.

a. The statement against interest exception does not apply.

Defendant is correct in his assertion that § 90.804(2)(c) Fla. Stat. sets forth the statement against interest hearsay exception. And the law is that his claims are taken as truthful to the extent that the Record does not refute them, therefore we assume *arguendo* that Mr. Scott made the incriminating statements Defendant attributes to him and that he now refuses to cooperate. See e.g. *Charles v. State*, 41 Fla. L. Weekly D 1016 (Fla. 3d DCA Apr. 27, 2016). So, on its face, this statement may appear to qualify as a statement against Mr. Scott's interest and obtain for him the hearing that he seeks. But the legal inquiry is not nearly so shallow as this.

First, at the outset it is questionable whether the statement really does operate against Mr. Scott's interest when placed against the law. And if it does, Defendant, in citing to *Voorhees v. State*, 699 So. 2d 602 (Fla. 1997), takes position that the criteria for admissibility of a statement against interest is (1) unavailability of the witness, (2) relevance of the statements, (3) inculcation of the declarant and exculpation

of the defendant, and (4) corroboration. See *Defendant's Motion* at 23. And assuming *arguendo* that Mr. Scott will exercise his right not to incriminate himself at any hearing, and further assuming *arguendo* that the statement bears relevance and is both inculpatory of Mr. Scott and exculpatory of Defendant, it is in the fourth factor, corroboration, where Defendant's claim fails.

1. Not against Mr. Scott's interests.

As to the statement being against Mr. Scott's interest, *Marek v. State*, 14 So. 3d 985, 994-95 (Fla. 2009), is instructive. Marek, a condemned murderer, claimed that a man named Wigley, a co-defendant convicted as principal to the same murder, confessed, to a third party, actually being the one who committed the murder. See *id.* at 994. But the high court reasoned that the confession was inadmissible, because it did not inure against Wigley's interest.<sup>5</sup> Wigley already was serving a life sentence as principal to that murder. See *id.* He could not be retried for it. See *id.* Additionally, a confession of perjury years after the fact lends itself to a conclusion that the inmate believed he would not be prosecuted for the perjury itself. See *id.*, citing *Lightbourne*, 644 So. 2d at 57. And by the time of the alleged statement, civil liability long would have lapsed under applicable statutes of limitation. See *id.*

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<sup>5</sup> Wigley also was, conveniently, dead at the time Marek made his claim. See 14 So. 3d at 992. Interestingly, the high court did not use this in analysis of whether the statements truly were against Wigley's interest at the time they allegedly were made.

Assuming *arguendo* that Mr. Scott made the statements attributed to him, the first thing to consider is that he did so while asking Defendant's counsel what was in it for Mr. Scott. See Defendant's Motion at 11. As Defendant proclaims, Mr. Scott already is serving a life sentence for murder. See *id.* at 7. Further, Defendant helpfully points out that Mr. Scott, being under age eighteen at the time of Mrs. Schofield's death, would not be eligible for a sentence of death; he therefore cannot obtain more prison time than he already has received. See Defendant's Motion at 30; see also *Brennan v. State*, 754 So. 2d 1, 11 (Fla. 1999). Frankly, he would not be eligible for life without parole absent review within 25 years. See, e.g. *Falcon v. State*, 162 So. 3d 954 (Fla. 2015). Like Wigley, Jeremy Scott has nothing to lose by falsely confessing to Mrs. Schofield's murder, and therefore, as Marek sets forth, such a statement is manifestly not against his interest. It therefore is not admissible under the statement against interest hearsay exception, regardless of Mr. Scott's availability.

## 2. Corroboration fails.

The *sine qua non* of the corroboration factor is that the corroborating circumstances attending a statement against interest must demonstrate indicia of trustworthiness. See *Sims v. State*, 754 So. 2d 657, 661 (Fla. 2000). *Sims*, a condemned murderer then under a death warrant, brought a claim of newly

discovered evidence in the postconviction context, which appears to have been resolved without evidentiary hearing. See 754 So. 2d at 659. These centered around the claim, preserved in an affidavit, of a witness named Joyce Gray, to the effect that a man named Baldree stated that Sims had nothing to do with the murder at issue. See *id.* Sims presented a second affidavit, given by Steven Milliken, who claimed that a man named Terry Gale admitted the murder. See *id.* at 660. Two more affidavits were submitted, from attorneys who discovered Gray. See *id.*

The trial judge denied Sims' motion for postconviction relief, holding that the statements of Baldree did not meet the requirement of trustworthiness in corroborating evidence. See 754 So. 2d at 660. The supreme court discussed the claim thusly:

[A]ccording to Gray, when Baldree was confronted by Jerry Lawrence about "snitching," Baldree allegedly responded that "he did what he had to." As corroborating evidence, Sims points to Jerry Lawrence's affidavit, wherein Lawrence claims that when he confronted Baldree about "snitching" on someone who was not present at the crime, Baldree merely shrugged his shoulders. While the affidavits apparently describe the same conversation, neither account is specific and neither Sims' nor Gayle's names were mentioned. Further, Lawrence did not provide any statements by Baldree upon being confronted.

*Id.* at 661. The high court held that trustworthiness of the corroboration had not sufficiently been established, and affirmed. See *id.*

Compare *Sims*, a case under sentence of death, to the instant case. Baldree's alleged statements had not previously been subjected to evidentiary testing. Here, Mr. Scott was deposed, and took the stand at a hearing, and rendered consistent sworn testimony in both venues denying culpability-testimony that the trial judge found credible under the circumstances; a finding approved by the district court of appeal, and for which the high court denied certiorari.

To say that these circumstances do not lend themselves to a finding of trustworthiness is to beg the question. Sworn affidavits from Mr. Scott recanting his prior testimony, as required by Rule 3.850(c) for claims such as this, do not exist and according to Defendant, Mr. Scott began his communications with Defendant's counsel by asking him to speak "one on one" and asking "if he helped Defendant, 'what was in it for him'?" Defendant's Motion at 11. Defendant's motion is silent as to how Defendant's counsel answered that question. In fact, Defendant chooses not to include in the exhibits to his motion any of the correspondence between himself and Mr. Scott that allegedly led to the so-called "confession." It also does not inform as to what other communications between Defendant's counsel and Mr. Scott took place, or whether any of those communications gave Mr. Scott any idea that Defendant's counsel would assist him in return for his confession to murder.



Further, Defendant's Exhibit "G," the affidavit of attorney Costis, does not indicate that Defendant was sworn when he made his alleged inculpatory statement, and the interview was done remotely, not face to face; there is no indication as to how Mr. Scott even was identified as the speaker. Mr. Scott, according to Defendant, is a mentally impaired individual who is nearly illiterate. See Defendant's Motion at 13. Yet Defendant does not indicate what safeguards were in place to prevent a false confession from Mr. Scott, in the hope of getting something out of it. And moreover, in the instant motion Defendant went so far as to attempt affirmatively to mislead the Court regarding the stereo equipment missing from the Schofield car-using crime scene photos showing the stereo head, while failing to inform the court that Defendant himself testified at trial that the speakers and power amplifier were missing. See Trial Transcript at 1986, lines 5-6. Additionally, it makes little sense that Mrs. Schofield would pick Mr. Scott up after leaving work, and then go from there right to her death, as Defendant now claims Mr. Scott related, while leaving her purse and her wallet in the Schofield residence.

As noted in *Armstrong*, 642 So. 2d at 735, quoting *Bell*, 90 So. 2d at 705, recantations of sworn testimony are "exceedingly unreliable." The courts bear a duty to deny motions for new trial where they cannot thoroughly be convinced that a

recantation is truthful. See *id.* And this is even more the case when a confession of perjury-as here-is at issue. *Id.* Coupled with the more-than-questionable circumstances surrounding Mr. Scott's alleged statement to Defendant's attorneys, an "exceedingly unreliable" recantation of sworn testimony-one that Mr. Scott apparently now refuses to acknowledge even occurred-cannot entitle Defendant to evidentiary testing, and the alleged "confession" is not admissible under the statement against interest exception. Accordingly, any such evidence must come directly from Mr. Scott, and Defendant should not be allowed to circumvent the rules requiring production of an affidavit recanting prior testimony, as required by Rule 3.850, before being allowed a hearing on this claim.

If Mr. Scott refuses to endorse his alleged statements, and Defendant wishes to admit hearsay from Defendant's attorneys, then he must prove up an exception to the hearsay rule and this, he cannot do. "The absence of direct testimony by the alleged recanting witness is fatal" to a claim such as Defendant's. *Robinson v. State*, 707 So. 2d 688, 691 (Fla. 1998). In *Robinson*, a murder co-defendant named Fields recanted his sworn trial testimony implicating Robinson by way of a sworn affidavit. See 707 So. 2d at 691. Fields refused to submit himself to cross-examination, and the high court held that failure to endorse the recantation on the witness stand was fatal to the claim of newly

discovered evidence of the recantation. See *id.* Applying *Lightbourne*, 644 So. 2d at 57, the high court held that no hearsay exception sufficed to allow the statement into evidence, and it observed that in *Lightbourne* the court specifically rejected the statement against interest exception, noting that in that case, eight years had lapsed between trial and recantation, meaning that the declarant in *Lightbourne* therefore could not seriously believe that he was subject to a perjury prosecution. See *id.* at 692. This case strongly resembles *Robinson*. Defendant's motion should be **denied without hearing**.

**b. Chambers does not apply.**

In *Bearden v. State*, 161 So. 3d 1257, 1264 (Fla. 2015), the Florida Supreme Court observed that *Chambers* essentially held that it may violate due process to exclude hearsay evidence of a third party's confession to a crime. *Bearden* set out the following four-factor test for claims brought under *Chambers*:

(1) the confession or statement was made spontaneously to a close acquaintance shortly after the crime occurred; (2) the confession or statement is corroborated by some other evidence in the case; (3) the confession or statement was self-incriminatory and unquestionably against interest; and (4) if there is any question about the truthfulness of the out-of-court confession or statement, the declarant must be available for cross-examination.

*Bearden*, 161 So. 3d at 1265. Viewed against this framework, the problems with Defendant's claims should be painfully obvious.

First, the statement at issue was not made spontaneously to a close acquaintance, in close time proximity to the crime. Rather, the statement was allegedly made to Defendant's lawyers under suspicious circumstances twenty-nine years after the fact, and after sworn testimony otherwise had been had in deposition and at hearing nearly six years before, and preceded by a request for what the lawyers could do for him. The claim thus fails the first *Chambers* component. Second, Defendant himself claims that Mr. Scott is not available-that is the basis of his claim under the statement against interest hearsay exception, thus causing Defendant's claim to fail on the fourth *Chambers* component. Third, corroboration is lacking, and the appearance of Mr. Scott's fingerprints is explained readily by evidence Defendant blithely ignores-he stole the stereo equipment from the car, as he testified at Defendant's hearing the last time he brought this claim. The district court held that the other so-called corroborating circumstances relating to Mr. Scott's criminal history and associated matters were inadmissible. See *Schofield*, 67 So. 3d at 1070-71.

Continuing with the corroboration analysis, and returning to *Marek*, 14 So. 3d at 995, the high court held there that one thing a defendant invoking *Chambers* must show is that the statements sought to be admitted are reliable; i.e., that they can be trusted. In *Bearden*, 161 So. 3d at 1264, the trial court

erred because it passed upon the credibility of the declarant in denying admissibility of statements against interest to a third party, as opposed to whether they were trustworthy. Credibility and reliability under the circumstances are evaluated differently. Here, it is not necessary to determine whether the statements attributed to Jeremy Scott are credible. Rather, the problem is that they are not reliable. *Marek* sheds light on this analysis. The high court held that

*Chambers* was limited to "the facts and circumstances of th[at] case" in which the excluded testimony "bore persuasive assurances of trustworthiness and thus was well within the basic rationale of the exception for declarations against interest." 410 U.S. at 302-03. This Court has repeatedly explained that *Chambers* provides for the admission of hearsay only where the confession sought to be admitted bears indicia of reliability.

*Marek*, 14 So. 3d at 995. The high court held that the statements allegedly related to *Marek's* witnesses were not reliable. See *id.* And here, given the substantial questions surrounding the alleged recantation of Mr. Scott's 2010 deposition and evidentiary hearing testimony, and his subsequent refusals to do so under oath, lead to the inescapable conclusion that this claim fails reliability analysis under *Chambers*. Again, recantations involving confessions of perjury are

exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. Especially is this true where the recantation involves a confession of perjury.

*Bell*, 90 So. 2d at 705. *Chambers* does not change the analysis, as it, like the analysis of the statement against interest exception to the hearsay rule, turns upon reliability.

**c. Mr. Scott's statement is inherently incredible.**

Even if the Court sets the law aside and considers Defendant's claim of Mr. Scott's recantation for whatever value it may have, it is on its face inherently incredible. Compare with *Andrews*, 919 So. 2d at 553, where an affidavit that a co-defendant rendered to support Andrews in his sentencing directly conflicted with the co-defendant's testimony at his own sentencing and with the testimony of several witnesses to the crime. See *id.* The district court held that such an inherently incredible recantation did not need to be explored at an evidentiary hearing. See *id.* Here, even the most casual observer can see how Mr. Scott's alleged statement reeks of suspicion, and that even before it is construed against the law.

First, as described *supra*, Defendant misleads the Court relating to the stereo equipment taken from the Schofield car, using crime scene photos while failing to disclose Defendant's own contrary testimony at trial. Defendant also relies on a catalog of claims relating to Mr. Scott's prior specific bad acts, omitting to mention that he relies in one case upon a crime for which Mr. Scott was acquitted by jury verdict, and

failing to mention that the district court of appeal already has held none of it to be admissible. He attacks the testimony of State witness Alice Scott with news media hearsay attributed to her husband, neglecting to mention that Robert Scott rendered contrary sworn testimony at trial. He does share with us that Jeremy Scott's first question to his counsel was what was in it for Jeremy Scott if he helped Defendant, and Defendant omits all the correspondence to which he refers from the attachments to his motion.

Mr. Scott has a demonstrated history of mental illness, and Defendant did not consider it important that the Court should be aware that it resulted in quashal of a death sentence in the murder for which Mr. Scott was convicted-one which does not resemble the murder of Michelle Schofield in the slightest. Defendant failed to mention the case law distinguishing the hearsay exceptions for statements against interest from his claim. And he provides no motive for Mr. Scott to kill Mrs. Schofield; surely, a competent counsel would have asked a man confessing to murder and perjury and giving details relating to the weapon used, why he killed his victim. That Defendant did not include that information reveals that Mr. Scott had no such motive, because he did not murder Mrs. Schofield and, if he made the statements Defendant attributes to him, he did so in hope for whatever assistance Defendant's lawyers might provide him.

Notably, that was the first thing he asked defense counsel, and in the face of his present life sentence he had nothing whatsoever to lose by confessing falsely.

Added to all of this is the law, dating back to *Bell* in 1957, that a recantation of sworn testimony is "exceedingly unreliable," and this, all the more so, where the claim involves one of perjury. See *Armstrong*, 642 So. 2d at 735. Even if the Court were wholly to ignore the law surrounding the statement against interest hearsay exception, ignore the fact that Defendant cannot show three of the four *Chambers* elements, order a hearing despite the command of the Legislature in § 924.051(8) Fla. Stat. that procedural bars are rigidly to be employed, ignore *Lightbourne*, *supra*, and admit unsworn hearsay through Defendant's lawyers, and even if Mr. Scott himself now were to endorse the statement, with all the infirmities surrounding it the Court never could be certain sure that Mr. Scott's recantation was in fact the truth. And as *Davis*, 26 So. 3d at 526, requires, above all the Court must be sure that such a claim is true before it can award relief.

Defendant's first claim should be **denied without hearing**, because Defendant failed to produce an affidavit of Jeremy Scott offering a sworn recantation of his former testimony, and because he cannot show application of an exception to the hearsay rules to permit Defendant's attorneys to supply the



evidence in his stead. See Fla. R. Crim. P. 3.850(c); see also § 924.051(8) Fla. Stat. (2016) (requiring courts to apply procedural bars to relief in postconviction cases). Additionally, the Court should deny Defendant's claim because the statement is on its face inherently incredible when placed against the totality of the surrounding circumstances.

#### B. Second Claim

Defendant's second assignment of error claims newly discovered evidence of Mr. Scott making incriminating statements to an inmate law clerk named Paul Kline, similar to those Defendant attributes to Mr. Scott in the telephone call described *supra*. See Defendant's Motion at 28. Though under *Jones*, 709 So. 2d at 521, Mr. Kline's evidence could not have been known at time of trial, it would not cause a reasonable probability of acquittal, for the reasons described *supra*.

Mr. Kline takes the position that Mr. Scott was interviewed in 2005 by detectives, then spoke to Mr. Kline, who advised him that the sentence of death was possible in the Michelle Schofield murder. See *id.* at Exhibit "I." Mr. Kline withheld this information for eleven years, only coming forward when defense counsel contacted him and he then came to believe that the death penalty no longer was in play for Mr. Scott. See *id.*

Assuming *arguendo* that Defendant is correct and that Mr. Scott will not cooperate with him, this information is

inadmissible hearsay. See *Lightbourne*, 644 So. 2d at 57. It does not qualify as a statement against interest, nor does it qualify under *Chambers*, for the same reasons as described *supra*. As a juvenile in 1987, Mr. Scott was ineligible for the death penalty for Mrs. Schofield's murder as of 1999, six years before he allegedly made this statement to Mr. Kline. See *Brennan*, 754 So. 2d at 11. That concern thus cannot credibly be said to have influenced Mr. Kline's eleven-year silence, since as a paralegal he certainly would have had access to *Brennan*. See *Defendant's Motion* at Exhibit "I." With death not in play, and Mr. Scott already serving life, confession to another murder for which he could not be executed would not seriously be against his interest. See *Marek*, *supra*. Moreover, the fact that Mr. Kline withheld this information as long as he believed the sentence of death to be at issue further reinforces the conclusion that Mr. Scott did not make a statement against his interest.

Again, Rule 3.850(c) requires that claims of newly discovered evidence be accompanied by an affidavit of the person recanting testimony for the motion to be legally sufficient. That person is Mr. Scott. And if Mr. Scott refuses to endorse his alleged statements, and Defendant wishes to admit hearsay from Mr. Kline, then he must prove up an exception to the hearsay rules and this, he cannot do. Mr. Scott's sworn testimony was consistent with his deposition, both of which are

attached in full to this response. *Lightbourne* stands in the way of the evidence absent proof of the hearsay exceptions in law.

Here, as described *supra*, serious questions exist regarding the reliability of Mr. Scott's alleged inculpatory statements, militating against application of the statement against interest hearsay exception and militating against acquittal on retrial in the face of the strong evidence of Defendant's guilt, as Judge Spoto reviewed in his 2010 order. Mr. Scott refuses to complete an affidavit recanting his prior testimony, and is not cooperating with Defendant. His reticence contravenes Rule 3.850(c)'s requirement of an affidavit from a recanting witness, and underscores the lack of reliability in a recantation that is not so accompanied. The law, set forth in argument *supra*, is that recantations are "exceedingly unreliable." Assessed cumulatively with collateral counsel's claims relating to the telephone call only reveals the circumstances to be less reliable. Collateral counsel supplies none of the correspondence referred to, provides no information as to the number of contacts between himself and Mr. Scott, or alludes to what promises may have been given Mr. Scott, and Mr. Scott himself only spoke to collateral counsel amid a demand to know what collateral counsel could do for Mr. Scott. No matter what Mr. Scott said or did, he is not subject to more jeopardy than he already faces with his life sentence, and this is therefore not

a statement against his interest. Mr. Kline's hearsay is not admissible, nor does it change the facts. Under the totality of all the circumstances, it is inherently incredible consistent with *Andrews, supra*.

As Judge Spoto found, Mr. Scott's testimony in 2010 shows precisely why his fingerprints were in the Schofield car, Defendant's assertion that the stereo equipment was not removed is refuted by Defendant's own trial testimony, and two courts have passed on the credibility of Mr. Scott's testimony. It should not be revisited with evidence so questionable. Absent Mr. Scott's affidavit recanting his prior testimony, Defendant's second claim should be **denied without hearing**. See Fla. R. Crim. P. 3.850(c); see also § 924.051(8) Fla. Stat. (2016).

### C. Third Claim

Defendant's third assignment of error claims a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), during the 2010 postconviction proceedings. See *Defendant's Motion* at 36-37. The Court reviews this claim via the lens of *Steinhorst v. State*, 636 So. 2d 498 (Fla. 1994) and *Cannon v. State*, 2016 Fla. App. LEXIS 18578 (1<sup>st</sup> DCA Dec. 16, 2016). See *Order to Show Cause*. The Court should deny the claim because it is based upon inadmissible hearsay, and because *Brady* claims do not attach to prior collateral attack proceedings.

First, Defendant's third claim rests upon hearsay from Mr. Scott that he will not endorse by sworn affidavit, and Defendant has indicated that Mr. Scott is not a cooperating witness. Therefore, the information Defendant relies upon is inadmissible hearsay, as argued extensively *supra*, and Defendant must demonstrate an exception to the hearsay rules before the Court may consider whether evidentiary testing is warranted on evidence that may not otherwise be admitted before the Court. See *Lightbourne*, 644 So. 2d at 57. Defendant does not attempt to show how this particular hearsay is admissible (clearly, none of the exceptions in §§ 90.803-804 Fla. Stat. apply), and his claim therefore lacks sufficiency to require evidentiary testing.

Second, neither *Cannon* nor *Steinhorst* actually are helpful to the Court in construing this claim. Both involved disqualification of a postconviction trial court, the reason for which was discovered subsequent to postconviction proceedings, not discovery of *Brady* information relating to a prior postconviction proceeding. See *Cannon*, 2016 Fla. App. LEXIS at \*6-\*7, discussing *Steinhorst*. Neither *Steinhorst* nor *Cannon* extended *Brady* obligations to the postconviction context. See *id.* Second, contrary to Defendant's assertions otherwise, the

law is that *Brady* does not apply in the postconviction context. See *Osborne*, 557 U.S. at 68.<sup>6</sup>

In *Bolin*, 811 F.3d at 408, condemned Florida murderer Oscar Ray Bolin raised a claim that during collateral proceedings the prosecution obtained evidence of the confession of another man to the instant murder. That man later committed suicide. See *id.* The State failed to alert Bolin to that correspondence, and Bolin raised a *Brady* claim regarding that. See 811 F.3d at 408. The 11<sup>th</sup> Circuit rejected it, holding that

[i]n *Brady*, the Supreme Court held that due process requires a prosecutor to disclose material exculpatory evidence to the defendant before trial. *Brady*, 373 U.S. at 87, 83 S. Ct. at 1196-97. The Supreme Court has also concluded that ***Brady* does not apply in the post-conviction context**, reasoning that "[a] criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man." *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68-69, 129 S. Ct. 2308, 2319-20, 174 L. Ed. 2d 38 (2009) (reversing the Ninth Circuit's

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<sup>6</sup> The only Florida case to apply *Osborne*, *State v. Gibson*, 150 So. 3d 1240 (Fla. 3d DCA 2014), does not apply it for this point of law. Other appellate courts routinely apply *Osborne* to reject *Brady* claims aimed at prior postconviction hearings, as a defendant's postconviction due process rights are limited compared to pre-trial. See, e.g. *Tevelin v. Spencer*, 621 F.3d 59 (1<sup>st</sup> Cir. 2010); *Estrada v. Healey*, 647 Fed. Appx. 335, 338 (5<sup>th</sup> Cir. 2016) (*Brady* not extended to the postconviction context); *Jones v. Ryan*, 733 F.3d 825, 837 (9<sup>th</sup> Cir. 2013) (*Brady* the "wrong framework" for exploring due process concerns in postconviction); *Browning v. Trammell*, 717 F.3d 1092, 1105 (10<sup>th</sup> Cir. 2013) (same); *Turner v. United States*, 116 A.3d 894, 918 (D.C. App. 2015) (same); *Reid v. State*, 2015 WL 357500 (Id. Jan. 23, 2015) (unpub.) (same); *Moore v. Commonwealth*, 2011 Ky. LEXIS 91, \*39 (Ky. Jun. 16, 2011) (*Brady* "simply inapplicable" in postconviction); *Haddock v. State*, 295 Kan. 738, 766; 238 P.3d 837 (2012) (*Brady* "wrong framework" postconviction due process claims); *State v. Twardus*, 2013 ME 74; 72 A.3d 523, 532 (2013) (same); *Commonwealth v. Willis*, 616 Pa. 48, 103; 46 A.3d 648 (2012) (citing *Osborne* for the proposition that *Brady* does not apply in postconviction); *Reger v. Crim. DA*, 2011 Tex. App. LEXIS 6413, \*21 (2d Dist. Ct. App. Aug. 11, 2011) (same); *DeLoge v. State*, 2010 WY 60, P29; 231 P.3d 862 (2010) (same).

conclusion that a state prisoner had a due process right to access DNA evidence in a post-conviction proceeding analogous to the right to be provided with exculpatory evidence prior to trial under *Brady*). The Supreme Court noted that "nothing in our precedents suggest[s] that [Brady's] disclosure obligation continue[s] after the defendant [is] convicted and the case [is] closed." *Id.* at 68, 129 S. Ct. at 2319-20.

*Bolin*, 811 F.3d at 409 (emphasis added).

Even assuming *arguendo* that the prosecutor promised Mr. Scott that he would speak at Mr. Scott's parole hearing in return for his testimony, a claim the State in no way endorses, *Brady* is not Defendant's avenue for postconviction relief relating to a prior postconviction proceeding. As the *Osborne* Court observed, and the 11<sup>th</sup> Circuit reiterated, "nothing in our precedents suggest[s] that [Brady's] disclosure obligation continue[s] after the defendant [is] convicted and the case [is] closed." *Bolin*, 811 F.3d at 409 (quoting *Osborne*, 557 U.S. at 68) (alterations in *Bolin*). As *Bolin* shows, *Osborne* forecloses *Brady* relief in the postconviction context. The *Cannon/Steinhorst* framework requires courts to consider claims relating to newly discovered evidence following prior collateral proceedings under Rule 3.850. See *Cannon*, 2016 Fla. App. LEXIS at \*6-\*7. Again, neither *Cannon* nor *Steinhorst* held that *Brady* obligations extend into the postconviction context. Because *Osborne* forecloses *Brady* relief in postconviction, see *Bolin* and cases cited at n. 5 *supra*, Defendant's claim should be denied.

#### D. Cumulative Effect

In argument *supra*, the State has set forth the cumulative effect of all the circumstances surrounding the alleged statements made to Defendant's lawyers and to Mr. Kline. The law is that the Court must be convinced of the truthfulness of a recantation, particularly one involving a confession of perjury, as must be the case here. And given the abundant suspicion surrounding this statement, Mr. Scott's own request for assistance from Defendant's counsel combined with Mr. Scott's history of mental illness, the omissions from Defendant's motion, the prior exclusions from evidence, and Defendant's attempts to mislead as to certain of the attendant facts, the Court can never be certain sure that a recantation of Mr. Scott's prior testimony is in any way truthful. Moreover, as Judge Spoto previously has held, "the evidence presented at trial by the State was substantial and convincing as to the Defendant's guilt." 2010 Order at 3. Additionally, where individual error is not shown in a postconviction case, claims of cumulative error also must fail. See *Griffin v. State*, 866 So. 2d 1, 22 (Fla. 2003). Defendant's motion should be **denied without hearing.**

#### V. Conclusion

In any case involving newly discovered allegations of a recantation of prior testimony, before a court awards relief it



must both be satisfied that the recantation is the truth, and that it describes factors that would compel a different result at the original proceeding. Recantations that involve a confession of perjury are exceedingly unreliable, and deserving of the highest skepticism. Failure of the declarant of such a statement to testify is fatal to such claims. And such statements are not admissible in court as hearsay absent a showing at law that the relevant exceptions to the law apply; the most important component of analysis into which being that the proffered statements are reliable.

Defendant's claims satisfy none of these and attempt to mislead the Court as to the character of the evidence and gloss over prior binding rulings of the appellate court of jurisdiction in this case. Defendant's claims are so infected by this that the Court can never be sure that these statements are true regardless of the rigor with which it tests them. And given the quality and quantity of the evidence produced at trial, a finding that is the law of this case, the statements here at issue would not result in Defendant's acquittal on retrial. Defendant's motion should be **denied without hearing**, and it is time for Defendant's challenges to his conviction on these grounds to cease. As Judge Thomas of the First District Court of Appeal recently observed,

[t]here must come a time in which judicial labor in a case must end, if there is to be a reasonable and rational application of the rule of law. This does not mean that colorable claims of actual innocence cannot be raised appropriately, but it does mean that courts are not inexhaustible reservoirs of resources to reconsider every decision in a criminal case years later. No branch of government can long enjoy public confidence if it repeatedly allows challenges to prior legal decisions *ad infinitum*." *Smith v. State*, 40 Fla. L. Weekly D 2136, D2137 (Fla. 1<sup>st</sup> DCA Sep. 11, 2015) (Thomas, J. dissenting).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and forgoing was provided by mail to J. Andrew Crawford, Counsel for Defendant, 5200 Central Ave., St. Petersburg, FL 33707 on this 31 day of January 2017.



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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

CASE NO: 53-1988-CF-002346-A100-XX

DIVISION: F4

LEO R. SCHOFIELD, Jr.

Defendant.

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APPENDIX TO STATE'S RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

1. *Order After Remand et al., State v. Schofield*, CF88-2346A1-XX
2. *Schofield v. State*, 67 So. 3d 1066 (Fla. 2d DCA 2011)
3. *Schofield v. State*, 95 So. 3d 214 (Fla. 2012)
4. *Deposition of Jeremy Scott, State v. Schofield* (2010)
5. *Testimony of Jeremy Scott, State v. Schofield* (2010 Ev. Hrg.)
6. Clerk's Automated Docket, *State v. Scott*, CF85-2110A1-XX
7. Excerpts of Trial Transcript, *State v. Schofield*

IN THE CIRCUIT COURT  
OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: CF88-002346A1-XX

LEO SCHOFIELD, JR.,

Defendant.

**ORDER AFTER REMAND and ORDER DENYING DEFENDANT'S VERIFIED  
MOTION FOR POST-CONVICTION RELIEF**

THIS MATTER is before the Court upon Remand from the Second District Court of Appeal, issued on September 15, 2009, and the Court's *Order After Remand*, issued on October 5, 2009.

**Case History**

On December 4, 2006, Defendant filed his *Defendant's Verified Motion for Post-Conviction Relief* and *Defendant's Memorandum of Law in Support of Verified Motion for Post-Conviction Relief* pursuant to Rule 3.850, Fla. R. Crim. P., in which he raised three claims for relief. After receipt and review of the Motion, the Court issued an *Order to Show Cause*, in which the Court instructed the State to respond to the Defendant's claims.

On May 31, 2007, the State complied and filed its *State's Response to the Court's Order to Show Cause*, wherein the State argued that Defendant's claims should be summarily denied without a hearing. After receipt of the State's *Response*, the Court found the State's arguments were well taken and summarily denied the Defendant's claims.

Defendant subsequently appealed the Court's summary denial of his claims, and the Remand herein resulted. In the Remand, the Second District Court of Appeal reversed and remanded for further proceedings. In Court's *Order After Remand*, the Court ordered an evidentiary hearing on Defendant's claims.

In his Motion Defendant asserted three (3) claims for relief:

- 1) Newly discovered evidence, which implicates a third party as a suspect in the murder of the victim.

- 2) The State's loss, destruction or failure to preserve certain physical evidence violated Defendant's due process rights under Arizona v. Youngblood, 488 U.S. 51, 109 S. Ct. 333 (1989).
- 3) The State's loss, destruction or failure to preserve certain physical evidence violated Defendant's due process rights under Art. I, Section 9, of the Florida Constitution.

An evidentiary hearing was held on May 5, 2010, concluding on May 6, 2010. At the evidentiary hearing, Jeremy Scott and John Aguero, Esq. were called as witnesses by the State. Lieutenant Louis Gianpavolo, of the Polk County Sheriff's Office, Robert Weeks, formerly of the Polk County Sheriff's Office, and Jamie Nelams were called as witnesses by the Defendant.

After hearing and considering the testimony of the witnesses, argument of counsel, applicable case law, and otherwise being fully informed in the matter, the Court finds as follows:

**Claim 1**

Claim I asserts a claim of newly discovered evidence in the form of evidence that implicates a third party, Jeremy Scott, as a suspect in the murder of the victim. As recently expressed by the Florida Supreme Court,

To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements: First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. *See Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (Jones II).

Newly discovered evidence satisfies the second prong of the *Jones II* test if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Jones II*, 709 So. 2d at 526 (quoting *Jones v. State*, 678 So. 2d 309, 315 (Fla. 1996)).

In determining whether the evidence compels a new trial, the trial court must "consider all newly discovered evidence which would be admissible," and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Id.* at 916. This determination includes whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence. The trial court should also determine whether this evidence is cumulative to other evidence in the case. The trial court should further consider the materiality and relevance of the evidence and any inconsistencies in the newly discovered evidence.

[See Green v. State, 975 So.2d 1090 (Fla. 2008) and Riechmann v. State, 966 So. 2d 298, (Fla. 2007)]

First, the Court finds that the newly discovered evidence could not have been known by the Defendant or his counsel at the time of trial, and it appears that the neither the Defendant nor his counsel could have known of it by the use of due diligence.

To constitute newly discovered evidence the evidence must have been in existence at the time of trial. See Kearse v. State, 969 So. 2d 976, 987 (Fla. 2007)("[T]his Court articulated a two-part test for establishing newly discovered evidence: (1) The evidence must have existed but have been unknown by the trial court, the party, or counsel at the time of trial, and must not have been discoverable through the use of due diligence, and (2) the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial. Jones, 709 So. 2d at 521.")

Clearly the existence of Mr. Scott's fingerprints on the victim's vehicle existed at the time of the Defendant's trial. Additionally, Mr. Scott's identity as the person to whom the fingerprints belonged existed at the time of trial. The facts and circumstances concerning Mr. Scott's treatment of Ms. Nelams, as indicated in her testimony at the evidentiary hearing, existed, at least in large part, at the time of the Defendant's trial. However, although Mr. Scott may have been arrested on murder charges prior to the Defendant's trial, his conviction for murder did not occur until after the Defendant's trial. A jury returned a verdict of guilty in Mr. Scott's case in August 1989. (See Exhibit 15 of Defendant's Motion) The Defendant's trial occurred in March 1989. Thus, because Mr. Scott's conviction for murder had not yet occurred at the time of the Defendant's trial, the conviction itself does not meet the legal definition of newly discovered evidence. However, as the Court will indicate below, the Court's final determination in this matter remains the same whether the conviction is considered as newly discovered evidence or not.

Second, the Court finds that the newly discovered evidence is not of such nature that it would probably produce an acquittal on retrial. Although the State's case against the Defendant can be described as circumstantial, the evidence presented at trial by the State was substantial and convincing as to the Defendant's guilt. Based on that evidence, a jury of his peers found the Defendant guilty. The evidence adduced at trial can be summarized substantially as follows:

The State produced substantial evidence that the Defendant and the victim had a history of domestic abuse; the Defendant had a violent temper, and such temper would flair up and result in physical abuse to the victim when the victim was late for meetings with the Defendant, such as occurred on the evening of the victim's disappearance. (See transcript of trial, attached, at 796, 964 and 1016) The State also produced the testimony of a witness who had observed the Defendant physically abuse of the victim and heard the Defendant tell the victim during the abusive incident, "I hate you, I'll kill you, you bitch." *Id.* at 1031. Defendant also advised this same witness that he did not want to be married to the victim and "would give her anything if she would just leave." *Id.* at 1032.

Also introduced at trial was the testimony from a witness who testified that she had observed the Defendant and the victim arrive home late on the evening of the victim's reported disappearance in the couple's orange station wagon between 1:00 and 1:30 a.m. *Id.* at 1110-11. According to the witness, the couple then went into the house and, shortly thereafter, were involved in a physical confrontation inside their mobile home, which included sounds like the Defendant was "pushing [the victim] up against the walls." *Id.* at 1112. Approximately 20 minutes later the Defendant was seen leaving the home alone and driving away in the orange station wagon. *Id.* at 1113. Shortly thereafter the Defendant returned to the home, backed the car up to the porch, exited the car, opened the rear hatchback of the car and entered the home. *Id.* at 1113-14. Defendant then exited the home carrying an object and placed the object in the rear of the car. *Id.* at 1114 *See also id.* at 1173-75. The object was described as heavy and covered, as "if you had a child asleep and carrying them like this." *Id.* at 1114, 1145-1146. The Court would also observe that the victim was a smallish woman. The State in its opening argument indicated she was 105 pounds. *Id.* at 587. Although not placed into evidence, the victim's "Autopsy Protocol," filed for identification at trial as Exhibit 64 and part of the Court record, indicates the victim was 5'2" tall and 105 pounds. (See attachments) The next morning the Defendant was observed removing a carpet cleaner from the rear of a "new little truck" and later cleaning the home's carpet with the carpet cleaner. *Id.* at 1119.

The State then introduced the testimony of two witnesses who, late on the evening of the victim's disappearance or very early the next morning, observed a small orange station wagon and a small pickup truck -- which matched the description of the victim's car and the Defendant's father's truck -- stopped on the side of S.R. 33 in the same general area where the victim's body

was later found. *Id.* at 1189-1205. The witnesses also observed two males standing outside of the vehicles and what appeared to be a woman sitting inside the station wagon. *Id.* The State also produced another witness who observed a similar truck in what he described as the "exact same spot" where the victim's body had been discovered and two, well-dressed white males exiting the woods and walking toward the truck. *Id.* at 989-91.

The State also introduced evidence that the victim's car was found abandoned on Interstate 4 in Polk County, with its doors locked but the hatchback unlocked. *Id.* at 996-97, 1003-04. Two days later, after allegedly being told by God or after receiving a premonition, the Defendant's father discovered the victim's body in a pond/canal near S.R. 33 in a heavily wooded rural area and approximately seven miles from where the car was found. *Id.* at 912-18, 945, 1246, 1476-77, 1496. The body was not in plain view and had a board covering it. *Id.* at 1477.

The State also produced the testimony of the Defendant's work supervisor, who testified that the Defendant advised him that he "had a feeling" that the victim was deceased before the victim was discovered. *Id.* at 956. (Defendant was also heard by another witness stating, prior to the victim's discovery, that he hoped the victim was not found in water. *Id.* at 799-800.) The Defendant also advised his supervisor, before the victim was discovered, that the police would blame him if the victim was found dead and asked the witness to secure an attorney for him. *Id.* at 961-62. The witness further testified that he made the funeral arrangements for the victim, without any assistance from the Defendant, and had set up a trust fund for just such a purpose. However, the Defendant later asked for the money from the trust for himself instead of to help pay for the victim's funeral because the victim would want him to have it. *Id.* at 968-969. In the weeks following the victim's funeral the Defendant was observed going out to clubs and dating other women. *Id.* at 966-67.

During its investigation law enforcement discovered the mobile home's bedroom in disarray, with dresser drawers broken and the sheets from the couple's waterbed missing. *Id.* at 1462-63. In addition, the lead detective was of the opinion that, due to the evidence or lack of evidence, the homicide did not occur where the victim's body was located. *Id.* at 1511. During the autopsy of the victim, it was discovered that the victim's wedding ring was still on the victim's finger. *Id.* at 1464. Testimony indicated she had two rings on her fingers when the body was found. *Id.* at 1393. The Defendant testified stereo equipment had been stolen from the



car. *Id.* at 1986. The victim was clothed when found. *Id.* at 1464. The autopsy indicated she had not been sexually abused. *Id.* at 1078. No purse was found in the vicinity of where the victim was found by the Defendant's father. *Id.* At 1459. The Defendant admitted he found her purse and wallet in the couple's trailer. *Id.* At 2095.

The Court must now determine if the newly discovered evidence is of such nature that it would probably produce an acquittal on retrial. The newly discovered evidence must be considered and weighed against the evidence produced at the Defendant's trial in making this determination. As indicated above, the newly discovered evidence is in the form of fingerprints found on the victim's vehicle that are now identified as belonging to Jeremy Scott. Mr. Scott is currently serving a sentence for murder. He has a number of felony convictions. It was clear from Ms. Nelam's testimony at the evidentiary hearing that Mr. Scott could be a violent person. There was a good deal of argument presented at the evidentiary hearing concerning what aspects of Mr. Scott's past might be admissible at trial such as incident's indicating violent behavior and the facts surrounding his prior convictions. For the purposes of the Court's analysis, the Court will consider all of the information concerning Mr. Scott's background, argued by the Defendant as admissible at trial, as admissible at any retrial of this case. As the Court noted above, the fact of Mr. Scott's conviction for murder does not constitute newly discovered evidence. The fact of his conviction could not have come into evidence at the Defendant's original trial. However, for the purpose of the Court's analysis, to be found below, the Court will consider the fact of Mr. Scott's conviction for murder to be admitted in evidence in any retrial of the Defendant's case. The Court's finding that the newly discovered evidence is not of such nature that it would probably produce an acquittal on retrial is not dependant on whether Mr. Scott's conviction in August 1989 is considered as newly discovered evidence and admissible at trial. The Court's final determination remains the same whether the conviction is admissible or not.

At the evidentiary hearing, Mr. Scott testified that, during the time period of the victim's murder, he engaged in the practice of stealing stereos from cars abandoned in the approximate area in which her vehicle was found along Interstate 4. He detailed a *modus operandi* by which he and another individual would steal the stereos. He testified that, after seeing photographs of the inside of the victim's car, he recognized the car as one from which he had stolen a stereo. Although Mr. Scott may not be an entirely credible witness in many respects, the Court found his explanation of why his fingerprints were found in the victim's car to be credible. It is of interest

that Lieutenant Gianpavolo testified at the evidentiary hearing that when he first confronted Mr. Scott with the fact his fingerprints had been found in the victim's car, Mr. Scott inquired as to whether the stereo was missing. Mr. Scott made this inquiry before being told the stereo was, in fact, missing.

Although there was testimony at the evidentiary hearing by Mr. Scott and his former girlfriend, Ms. Nelams, that Mr. Scott was apparently familiar with the general area in which the victim's body was found, there was also testimony that the area was an area occasionally frequented by teenagers. Testimony and exhibits introduced at trial and at the evidentiary hearing indicate the location where the body of the victim was found was near the intersection of Interstate 4 and Highway 33, immediately off of Highway 33. It was a location that was frequently travelled and was easily accessible to anyone who happened to be driving in the area. Although the area was wooded and in an unpopulated area, it was not a particularly secluded area known to few people. It would have provided an easily accessible location for anyone, including the Defendant, to attempt to hide a body.

Lieutenant Gianpavolo testified at the evidentiary hearing that after his visit with Mr. Scott in prison he had phone calls by Mr. Scott to his grandmother recorded. The Defendant suggested at the evidentiary hearing that the substance of these calls indicate a consciousness of guilt on the part of Mr. Scott as to the victim's murder. However, the Court finds that the substance of these calls is consistent with his concern for being incorrectly blamed for the murder of Michelle Schofield as opposed to indicating any consciousness of guilt as to her murder, as suggested by the Defendant. The Court finds that the substance of the phone calls is consistent with his assertions that he may have stolen a stereo from the victim's abandoned car but did not murder the victim.

The Court finds that there was no evidence that the victim had been robbed or sexually assaulted. There was no evidence that Mr. Scott had any connection to the victim as a friend, acquaintance, or in any other capacity. There is no evidence that Mr. Scott had any motive to stab the victim 26 times. Although the Defendant points to robbery as a potential motive and suggests the victim may have had \$13 in tips on her person the night she was killed, the Court finds the theft of \$13 unlikely as a motive for her murder. She was still wearing jewelry, to include her wedding ring, when her body was found. Although Mr. Scott may have had a violent nature as testified to by Ms. Nelams, the robbery of \$13 would not appear to provide a motive to

engage in such a vicious and repeated stabbing of a robbery victim. Given Mr. Scott's past history and *modus operandi*, there is every reason to believe he simply stumbled upon the victim's car after her murder and after her body had been hidden, stole stereo equipment from the car, thereby leaving his fingerprints in the vehicle.

The Court finds that the circumstantial evidence presented at trial against the Defendant was strong and sufficient for a jury to convict the Defendant. The Court finds that the evidence concerning Mr. Scott was not of a sufficient nature, when considered in a light most favorable to the Defendant, to create a reasonable doubt in a juror's mind such that it would probably produce an acquittal on retrial. Although the Court is not unmindful that this newly discovered evidence might give one pause in an evaluation of whether reasonable doubt exists, the Court, in the final analysis, finds the evidence does not weaken the case against the Defendant so as to give rise to a reasonable doubt as to his culpability. The Court notes that the test to be applied in this case is not whether the newly discovered evidence *could possibly* or *might conceivably* produce an acquittal on retrial, but whether it *would probably* produce an acquittal on retrial. The Court finds that the newly discovered evidence is not of such nature that it would probably produce an acquittal on retrial. Accordingly, **claim 1 is DENIED.**

**Claims 2 and 3**

Claim 2 relates to six hairs that were found in the victim's car and on or near her body. The Defendant contends that the State's loss, destruction or failure to preserve certain physical evidence violated Defendant's due process rights under Arizona v. Youngblood, 488 U.S. 51, 109 S. Ct. 333 (1989). The evidence presented at the evidentiary hearing indicates that the hairs were sent to the Florida Department of Law Enforcement (FDLE) laboratory for evaluation but that no evaluation was actually conducted. The hairs were ultimately returned to authorities in Polk County. On April 9, 1996, Mr. Aguero, the prosecutor at the Defendant's trial, authorized the disposal of the hairs pursuant to a request Sheriff's Department evidence custodians.

Mr. Aguero, the prosecutor at the Defendant's trial, testified that the existence of the hairs was disclosed to the Defendant at the time of his trials. He testified that the hairs were ultimately not tested at the time of the Defendant's trial as they would have been of little evidentiary value. Mr. Aguero testified that in the time frame of the Defendant's trial an analysis of the hairs would have revealed little about the identity of the person to whom they belonged.

Only such things as the coarseness and color of the hair or the race of an individual might be determined by an analysis of hair evidence.

Mr. Aguero testified that at the time, in 1996, that he authorized the disposal of the six hairs, the Defendant's appeal and postconviction matters had been concluded and that it was standard procedure to dispose of items collected at crime scenes that had not been used at trial or in postconviction proceedings.

Pursuant to Arizona v. Youngblood, 488 U.S. 51 (1988) "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process." The Court finds that the Defendant has failed to show that the destruction of the six hairs in question was the result of bad faith on the part of the police or Mr. Aguero. Although the Defendant argued otherwise at the evidentiary hearing, the Court failed to find any evidence of a nefarious purpose in the State's disposal of the six hairs. The State had good reason to believe that the hairs were of no evidentiary value at the time of their disposal in 1996. The case had been through the appeal and postconviction processes. The Court notes that the identification of the fingerprints, at issue in claim 1, as belonging to Mr. Scott did not occur until several years after the destruction of the six hairs at issue in this claim. Accordingly, **claim 2 is DENIED.**

Based on the Court's finding in claim 2 and because the Court rejects applying a broader test than set out in Youngblood, one not requiring a finding of bad faith, **claim 3 is DENIED.**

Based on all of the above, it is **ORDERED AND ADJUDGED** that *Defendant's Verified Motion for Post-Conviction Relief* is **DENIED**. Defendant has thirty (30) days from the date of this Order within which to appeal this Order to the Second District Court of Appeal.

**DONE AND ORDERED** in Bartow, Polk County, Florida this \_\_\_\_ day of JUN 11 2010, 2010.

  
\_\_\_\_\_  
KEITH P. SPOTO, Circuit Judge

cc:

- Scott H. Cupp, Esq., 400 Executive Center Drive, Suite 201- Executive Center Plaza, West Palm Beach, FL 33401
- Richard G. Bartmon, Esq., 1515 N. Federal Highway, Suite 300, Boca Raton, FL 33432, Attorney for Defendant
- A.S.A. C.J. Benefield, Esq.

KPS/njp

I hereby certify that copy  
of the foregoing order was  
mailed to defendant this

  
\_\_\_\_\_  
Deputy Clerk

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Filed Polk County Clerk of Court 2010-06-14 15:46



**Schofield v. State**

Court of Appeal of Florida, Second District

July 1, 2011, Opinion Filed

Case No. 2D10-2918

**Reporter**

67 So. 3d 1066 \*; 2011 Fla. App. LEXIS 10355 \*\*; 36 Fla. L. Weekly D 1438

LEO SCHOFIELD, Appellant, v. STATE OF FLORIDA,  
Appellee.

**Subsequent History:** Released for Publication September 20, 2011.

Rehearing denied by Schofield v. State, 2011 Fla. App. LEXIS 14768 (Fla. Dist. Ct. App. 2d Dist., Aug. 30, 2011)

Review denied by Schofield v. State, 2012 Fla. LEXIS 1210 (Fla., June 18, 2012)

**Prior History:** [\*\*1] Appeal from the Circuit Court for Polk County; Keith P. Spoto, Judge.

Schofield v. State, 32 So. 3d 90, 2009 Fla. App. LEXIS 12658 (Fla. Dist. Ct. App. 2d Dist., 2009)

**Core Terms**

postconviction, admissible, newly discovered evidence, fingerprints, credibility, evidentiary hearing, convictions, impeachment, retrial, new trial, murder, girlfriend, reputation, witnesses, bad act, purposes, violence, violent

**Case Summary**

**Procedural Posture**

Appellant inmate sought review of the decision of the Circuit Court for Polk County (Florida), which denied his motion for postconviction relief filed under Fla. R. Crim. P. 3.850.

**Overview**

The inmate appealed the denial of his motion for postconviction relief, but the appellate court affirmed.

Although the inmate sought to introduce evidence of an individual's prior physical fights with his former girlfriend and others and his reputation for violence, purportedly to show that he could have murdered the victim, that evidence was relevant only to show his alleged bad acts and violent propensities, neither of which were admissible for impeachment purposes under § 90.404(2)(a), Fla. Stat. (2010). Further, none of the evidence of the individual's past violence against his former girlfriend was relevant to prove that the individual murdered the victim. Therefore, that evidence would not have been admissible and could not, as a matter of law, have been of such a nature that it would have probably produced an acquittal on retrial. Similarly, the inmate's alleged newly discovered evidence concerning the facts underlying the individual's prior convictions, as well as the facts underlying a crime for that he was tried and acquitted, was not admissible.

**Outcome**

The judgment was affirmed.

**LexisNexis® Headnotes**

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

**[HN1]** In reviewing a postconviction court's order on a newly discovered evidence claim after an evidentiary hearing, an appellate court must accept the postconviction court's findings of fact if they are based upon competent, substantial evidence. The appellate court must also defer to the postconviction court's determinations concerning the credibility of witnesses and the weight to be given to particular evidence. However, as with rulings on other postconviction claims, an appellate court conducts a de novo review of the postconviction court's application of the facts to the law.

Criminal Law & Procedure > Postconviction  
Proceedings > Motions for New Trial

HN2 [↓] To obtain a new trial based on newly discovered evidence, a defendant must demonstrate that: (1) the evidence was not known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence; and (2) the newly discovered evidence is of such nature that it would probably produce an acquittal on retrial.

Criminal Law & Procedure > Postconviction  
Proceedings > Motions for New Trial

HN3 [↓] Newly discovered evidence satisfies the second prong of the Jones II test if it weakens the case against the defendant so as to give rise to a reasonable doubt as to his culpability. In determining whether the evidence compels a new trial, the trial court must consider all newly discovered evidence which would be admissible and must evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial. Thus, even assuming that evidence is newly discovered, a new trial is not warranted if the newly discovered evidence would not be admissible on retrial.

Criminal Law & Procedure > Postconviction  
Proceedings > General Overview

Criminal Law & Procedure > Appeals > Reviewability > General  
Overview

HN4 [↓] An appellate court must defer to the credibility determination made by the postconviction court, which heard and saw the testimony at issue. Regardless of its thoughts on the matter, an appellate court may not substitute its view of the facts or their credibility for that of the postconviction court, which was sitting as the trier of fact.

Criminal Law & Procedure > Trials > Defendant's  
Rights > General Overview

Evidence > ... > Credibility of  
Witnesses > Impeachment > General Overview

HN5 [↓] A defendant has the right to present witnesses in his own defense but must comply with established rules of

procedure and evidence designed to assure both fairness and reliability. Evidence of particular acts of misconduct cannot be introduced to impeach the credibility of a witness. For impeachment purposes the only proper inquiry into a witness' character goes to reputation for truth and veracity.

Evidence > Admissibility > Conduct Evidence > Prior Acts,  
Crimes & Wrongs

Evidence > Relevance > Relevant Evidence

HN6 [↓] Section 90.404(2)(a), Fla. Stat. (2010) prohibits the admission of evidence of prior bad acts when the only relevance is to prove propensity to commit crimes.

Evidence > ... > Impeachment > Convictions & Other Criminal  
Process > Admissibility

Evidence > ... > Impeachment > Convictions & Other Criminal  
Process > Inadmissibility

HN7 [↓] Under § 90.610, Fla. Stat. (2010), the fact of an individual's prior convictions for felonies and crimes of dishonesty and the number of his convictions for those offenses would have been admissible to impeach his credibility. However, the descriptions of the prior crimes and the details of the facts underlying them are not generally admissible. Although the fact a witness or party was convicted of a crime may be relevant and admissible for impeachment purposes, the nature of the crime or any details about the crime are generally inadmissible. Williams rule evidence is admissible only when there are identifiable points of similarity which pervade the compared factual situations and the points of similarity must have some special character or be so unusual as to point to the defendant.

Criminal Law & Procedure > ... > Standards of Review > Abuse  
of Discretion > Evidence

Criminal Law & Procedure > ... > Standards of Review > De  
Novo Review > Conclusions of Law

Criminal Law & Procedure > ... > Standards of  
Review > Deferential Review > General Overview

HN8 [↓] While a postconviction court's rulings on the admissibility of evidence will not generally be disturbed absent an abuse of discretion, its discretion on evidentiary matters is limited by case law and the rules of evidence. A postconviction court's erroneous decision to admit clearly

inadmissible evidence is not entitled to deference. A trial court's erroneous interpretation of the evidence code and case law applying it is subject to de novo review. Further, a postconviction court's application of the facts to the law is reviewed de novo. There is simply no authority for the topsyturvy notion that a postconviction court can bind an appellate court on issues of law.

Criminal Law & Procedure > Postconviction  
Proceedings > General Overview

Criminal Law & Procedure > Appeals > Right to  
Appeal > Government

Evidence > Admissibility > Procedural Matters > General  
Overview

HN9 [↓] No statute or rule permits the State to appeal a postconviction court's general evidentiary rulings, whether conditional or not.

**Counsel:** Richard G. Bartmon of Law Offices of Richard G. Bartmon, Boca Raton; Scott H. Cupp, West Palm Beach; and Michael J. Minerva, Seth E. Miller, and Melissa Montle of the Innocence Project of Florida, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Patricia A. McCarthy, Assistant Attorney General, Tampa, for Appellee.

**Judges:** CASANUEVA and VILLANTI, JJ., and CASE, JAMES R., ASSOCIATE SENIOR JUDGE, Concur.

## Opinion

[\*1068] PER CURIAM.

Leo Schofield appeals the denial of his motion for postconviction relief filed pursuant to *Florida Rule of Criminal Procedure 3.850*, in which he argued that he was entitled to a new trial based on newly discovered evidence.<sup>1</sup> We write to address why we must affirm.

In 1989, Schofield was [\*2] convicted of first-degree murder for the death of his wife, Michelle, in February 1987. At the

<sup>1</sup> Schofield also raised a claim asserting that he was entitled to a new trial based on the State's allegedly bad faith destruction of certain evidence nine years after the crime and seven years after Schofield's trial. Having thoroughly reviewed the arguments raised in Schofield's brief and the law on this subject, we find the issue to be without merit, and we affirm on that claim without further comment.

time of Schofield's trial, he was aware that there were several unidentified fingerprints found in Michelle's abandoned car, and he used those unidentified fingerprints to support his defense that someone else, namely the person who left those fingerprints, was the perpetrator of the crime.

In 2004, through an unusual series of events,<sup>2</sup> the previously unidentified fingerprints were identified as belonging to one Jeremy Scott. Based on that identification, Schofield filed a motion for postconviction relief seeking a new trial based on the "newly discovered evidence" of the identity of the individual who left the fingerprints. The postconviction court initially summarily denied relief on the ground that this evidence was not "newly discovered." This court, however, found that the identity of the individual who left the fingerprints was properly characterized as "newly discovered evidence," and we therefore remanded for the postconviction court to hold an evidentiary hearing on Schofield's claim. See *Schofield v. State*, 32 So. 3d 90, 93-94 (Fla. 2d DCA 2009).

On remand, the postconviction court held an extensive evidentiary hearing. During this hearing, Schofield offered copious evidence concerning Jeremy Scott's prior criminal offenses, the factual details of those offenses, Scott's prior violent interactions with his girlfriends and others, and evidence concerning Scott's alleged reputation for violence. The State objected to the postconviction court's consideration of this evidence, noting that it was inadmissible as improper character evidence. In response, Schofield made a number of arguments as to why [\*4] he believed such evidence should be admissible despite the clear provisions of the evidence code to the contrary.

In a lengthy written order denying Schofield's motion, the postconviction court stated that "for purposes of the court's analysis," it would consider Schofield's [\*1069] proffered evidence concerning Scott's criminal history, reputation, and prior bad acts as if it was admissible. The court then found that, even if it considered that evidence, it could not say that the evidence weakened the case against Schofield to the point that it would probably produce an acquittal on retrial.

<sup>2</sup> The record shows that Schofield's [\*3] girlfriend obtained copies of the fingerprints through a public records request. She then provided them to a friend of hers, who was a captain with the Hendry County Sheriff's Office. Despite this case having absolutely no connection to Hendry County, this captain submitted the fingerprints to her latent prints section, falsely asserting that they were needed as part of an investigation into a pending Hendry County case. After the fingerprints were identified, the Hendry County sheriff's captain contacted the Polk County Sheriff's Office and provided the identification information, and the Polk County Sheriff reopened his investigation.

Schofield then appealed that ruling to this court.

**HN1** [↑] In reviewing a postconviction court's order on a newly discovered evidence claim after an evidentiary hearing, this court must accept the postconviction court's findings of fact if they are based upon competent, substantial evidence. Hitchcock v. State, 991 So. 2d 337, 349 (Fla. 2008); Green v. State, 975 So. 2d 1090, 1100 (Fla. 2008); Blanco v. State, 702 So. 2d 1250, 1252 (Fla. 1997). This court must also defer to the postconviction court's determinations concerning the credibility of witnesses and the weight to be given to particular evidence. Hitchcock, 991 So. 2d at 349; **\*\*5** McLin v. State, 827 So. 2d 948, 954 n.4 (Fla. 2002); Blanco, 702 So. 2d at 1252. However, as with rulings on other postconviction claims, this court conducts a de novo review of the postconviction court's application of the facts to the law. Hitchcock, 991 So. 2d at 349; Green, 975 So. 2d at 1100.

As to claims concerning newly discovered evidence, the supreme court has set forth two requirements that a defendant must satisfy to be entitled to a new trial.

**HN2** [↑] To obtain a new trial based on newly discovered evidence, a defendant must demonstrate that: (1) the evidence was not known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence; and (2) the newly discovered evidence is of such nature that it would probably produce an acquittal on retrial. See Jones v. State, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*).

Hitchcock, 991 So. 2d at 349. In this case, this court determined in Schofield's earlier appeal that the identification of the previously unidentified fingerprints as those of Jeremy Scott constituted newly discovered evidence. See Schofield, 32 So. 3d at 93. Thus, the **\*\*6** evidentiary hearing on remand addressed solely the second prong of the *Jones II* test, i.e., whether the admissible newly discovered evidence was of such nature that it would probably produce an acquittal on retrial.

**HN3** [↑] Newly discovered evidence satisfies the second prong of the *Jones II* test if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." Jones v. State, 709 So. 2d 512, 526 (Fla. 1998) (*Jones II*) (quoting Jones v. State, 678 So. 2d 309, 315 (Fla. 1996)). In determining whether the evidence compels a new trial, the trial court must "consider all newly discovered evidence which would be admissible" and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." Jones v. State, 591 So. 2d 911, 916 (Fla. 1991) (emphasis added). Thus, even

assuming that evidence is newly discovered, a new trial is not warranted if the newly discovered evidence would not be admissible on retrial. Sims v. State, 754 So. 2d 657, 660 (Fla. 2000); Robinson v. State, 707 So. 2d 688, 691-92 (Fla. 1998).

At Schofield's evidentiary hearing, the only admissible newly discovered evidence offered was **\*\*7** the evidence of the fingerprint identification itself and Jeremy Scott's testimony explaining how his fingerprints could have been found in Michelle's car. To that end, Scott testified that he used to drive up and down the stretch of I-4 through Lakeland looking **\*\*1070** for abandoned cars. When he found one, he would break into it and steal stereo equipment. Scott offered this explanation to detectives before he was told that speakers and a power amp were missing from Michelle's car when it was found abandoned on I-4. He also offered this explanation before he knew that his fingerprints were found on the inside of the windshield of Michelle's car. The postconviction court accepted Scott's explanation as credible, and it based its denial of Schofield's motion in part on that credibility assessment.

In this appeal Schofield invites this court to reassess the credibility of the witnesses presented at both the original trial and the evidentiary hearing, and he specifically argues that this court should find Scott's explanation for his fingerprints in Michelle's car not to be credible. He points to other evidence offered at the hearing that tends to discredit Scott's explanation, including Scott's **\*\*8** fingerprint on a piece of paper in the hatchback area of Michelle's car. However, the postconviction court was present at the hearing to observe Scott's demeanor. In addition, the postconviction court had the benefit of hearing the taped phone calls between Scott and his grandmother while the record in this appeal includes only a transcript of these tapes—not the recordings themselves. Therefore, while there is no question that Scott's testimony was impeached to some extent, **HN4** [↑] we must defer to the credibility determination made by the postconviction court, which heard and saw the testimony at issue. See Blanco, 702 So. 2d at 1252; see also Rodriguez v. State, 919 So. 2d 1252, 1268-69 (Fla. 2005); McLin, 827 So. 2d at 954 n.4. Regardless of our thoughts on the matter, as an appellate court, we may not substitute our view of the facts or their credibility for that of the postconviction court, which was sitting as the trier of fact.

At the evidentiary hearing, Schofield also relied heavily on extensive evidence of Scott's prior criminal activities, including the facts underlying his prior convictions and the testimony of his former girlfriend about prior bad acts, to support Schofield's **\*\*9** position that the newly discovered evidence "is of such nature that it would probably produce an acquittal on retrial." However, none of that evidence would be



admissible on retrial.

The supreme court addressed a similar issue in *Hitchcock v. State*, 413 So. 2d 741 (Fla. 1982). There, James Hitchcock was accused of the first-degree murder of his brother Richard's stepdaughter. *Id.* at 743. James sought to call numerous witnesses to testify that Richard had exhibited violent tendencies and that he had a reputation for violence. *Id.* at 744. James asserted that such evidence was relevant to impeach Richard's testimony and to prove James's defense that Richard, rather than James, committed the murder. *Id.* In affirming the trial court's decision to exclude this evidence, the court explained:

HN5 [↑] A defendant has the right to present witnesses in his own defense but must comply with established rules of procedure and evidence designed to assure both fairness and reliability. See *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). Evidence of particular acts of misconduct cannot be introduced to impeach the credibility of a witness. *Fulton v. State*, 335 So. 2d 280 (Fla. 1976). **[\*\*10]** For impeachment purposes the only proper inquiry into a witness' character goes to reputation for truth and veracity. *Pandula v. Fonseca*, 145 Fla. 395, 199 So. 358 (1940). The excluded testimony could have been relevant only to show Richard Hitchcock's alleged bad acts and violent propensities and, thus, was properly excluded for impeachment purposes. Nor **[\*1071]** is there merit to [James]'s claim that the testimony concerning Richard's character would tend to prove that Richard committed the murder.

*Id.* at 744.

In this case, as in *Hitchcock*, Schofield sought to introduce evidence of Scott's prior physical fights with his former girlfriend and others and his reputation for violence, purportedly to show that Scott could have murdered Michelle. However, this evidence was relevant only to show Scott's alleged bad acts and violent propensities, neither of which are admissible for impeachment purposes. See HN6 [↑] § 90.404(2)(a), Fla. Stat. (2010) (prohibiting the admission of evidence of prior bad acts when the only relevance is to prove propensity to commit crimes). Further, none of the evidence of Scott's past violence against his former girlfriend is relevant to prove that Scott murdered Michelle. Therefore, **[\*\*11]** this evidence would not be admissible and thus could not, as a matter of law, have been of such a nature that it would probably produce an acquittal on retrial.

Similarly, Schofield's "newly discovered evidence" concerning the facts underlying Scott's prior convictions, as

well as the facts underlying a crime for which Scott was tried and acquitted, is not admissible. HN7 [↑] Under *section 90.610, Florida Statutes* (2010), the fact of Scott's prior convictions for felonies and crimes of dishonesty and the number of his convictions for those offenses would have been admissible to impeach his credibility. However, the descriptions of the prior crimes and the details of the facts underlying them are not generally admissible. See *Howard v. Risch*, 959 So. 2d 308, 313 (Fla. 2d DCA 2007) ("Although the fact a witness or party was convicted of a crime may be relevant and admissible for impeachment purposes, the nature of the crime or any details about the crime are generally inadmissible."); *Livingston v. State*, 682 So. 2d 591, 592 (Fla. 2d DCA 1996); *Parks v. Zitnik*, 453 So. 2d 434, 437 (Fla. 2d DCA 1984). And as to the limited exception to the general rule for reverse *Williams*<sup>3</sup> rule evidence, none **[\*\*12]** of the facts proffered concerning Scott's prior crimes are sufficiently similar to Michelle's murder to be admissible under that theory. See *Drake v. State*, 400 So. 2d 1217, 1219 (Fla. 1981) (noting that *Williams* rule evidence is admissible only when there are "identifiable points of similarity which pervade the compared factual situations" and that the "points of similarity must have some special character or be so unusual as to point to the defendant"); *Rivera v. State*, 561 So. 2d 536, 540 (Fla. 1990) (excluding reverse *Williams* rule evidence when the only similarities were not so unusual as to point solely to another offender). Moreover, evidence of an arrest that did not result in a conviction is not admissible under any circumstances. *Fulton v. State*, 335 So. 2d 280, 282-83 (Fla. 1976); *Jordan v. State*, 107 Fla. 333, 144 So. 669, 670 (Fla. 1932) ("It is only permitted to interrogate witnesses as to previous convictions, not mere former arrests or accusations, for crime."). Therefore, all of the evidence offered by Schofield concerning Scott's alleged violent acts toward his former girlfriend and others, his alleged reputation for violence, and the details of the crimes underlying his prior **[\*\*13]** felony convictions is simply inadmissible and cannot weaken the case against Schofield so as to give rise to a reasonable doubt as to his guilt.<sup>4</sup>

**[\*1072]** In this appeal, Schofield contends that the postconviction court definitively ruled that all of his proffered evidence was admissible and that this court must defer to that ruling. Initially, we disagree with Schofield's assertion that the postconviction court made any such definitive ruling.

<sup>3</sup> *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

<sup>4</sup> While we recognize that this evidence is intriguingly serendipitous to Schofield, its favorability does not make it admissible outside the rules of evidence any more than if its import made his conviction even more compelling.

However, even if it did, we are not bound by that ruling. HN8 [↑] While a postconviction court's rulings on the admissibility of evidence will not generally be disturbed absent an abuse of discretion, *see, e.g., Fitzpatrick v. State*, 900 So. 2d 495, 514-15 (Fla. 2005), its discretion on evidentiary matters is limited by case law and the rules of evidence. *McDuffie v. State*, 970 So. 2d 312, 326 (Fla. 2007); *Masaka v. State*, 4 So. 3d 1274, 1279 (Fla. 2d DCA 2009); *McCray v. State*, 919 So. 2d 647, 649 (Fla. 1st DCA 2006). [\*\*14] A postconviction court's erroneous decision to admit clearly inadmissible evidence is not entitled to deference. *McCray*, 919 So. 2d at 649 (noting that a trial court's erroneous interpretation of the evidence code and case law applying it "is subject to de novo review"). Further, as noted above, this court reviews the postconviction court's application of the facts to the law de novo. *See, e.g., Hitchcock*, 991 So. 2d at 349. There is simply no authority for the topsy-turvy notion that a postconviction court can bind an appellate court on issues of law.

Finally, Schofield asserts that any errors in the postconviction court's evidentiary rulings have been waived because the State failed to file a cross-appeal. However, the State, as the beneficiary of a favorable ruling, need not file a cross-appeal. Moreover, HN9 [↑] no statute or rule permits the State to appeal a postconviction court's general evidentiary rulings, whether conditional or not. *See Fla. R. App. P. 9.140(c)(1)* (listing the grounds upon which the State may appeal in a criminal case). Thus, the lack of a cross-appeal by the State does not prevent this court from considering whether Schofield's proffered evidence would be admissible [\*\*15] on retrial.

In sum, after a thorough review of the record, the transcript of the evidentiary hearing, and the transcript of the original trial, we find that the postconviction court's factual findings and credibility determinations are supported by competent, substantial evidence and that the postconviction court properly applied the law to the facts. Accordingly, we have no legal basis upon which to reverse the postconviction court's ruling.

Affirmed.

CASANUEVA and VILLANTI, JJ., and CASE, JAMES R.,  
ASSOCIATE SENIOR JUDGE, Concur.



Schofield v. State

Supreme Court of Florida

June 18, 2012, Decided

CASE NO.: SC11-1932

**Reporter**

2012 Fla. LEXIS 1210 \*; 95 So. 3d 214; 2012 WL 2339065

LEO SCHOFIELD, JR., Petitioner(s) vs. STATE OF FLORIDA, Respondent(s)

**Notice:** DECISION WITHOUT PUBLISHED OPINION

**Prior History:** [\*1] Lower Tribunal No(s): 2D10-2918, 531988CF-002346-A1.

Schofield v. State, 67 So. 3d 1066, 2011 Fla. App. LEXIS 10355 (Fla. Dist. Ct. App. 2d Dist., 2011)

**Judges:** CANADY, C.J., and PARIENTE, LEWIS, QUINCE, and PERRY, JJ., concur.

**Opinion**

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This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, and PERRY, JJ., concur.

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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA  
CRIMINAL DIVISION

CASE NO: 88-CF-2346-A1XX

STATE OF FLORIDA,

vs.

LEO SCHOFIELD, JR.,

Defendant.

\_\_\_\_\_ /

VIDEOTAPED DEPOSITION OF JEREMY SCOTT

DATE: February 17, 2010

TIME: 1:30 p.m.

PLACE: State Attorney's Office  
255 North Broadway Avenue  
Bartow, Florida 33830

REPORTER: JODY E. GOETTLICH, RPR, CRR

Reliable Reporting, Inc. (863) 682-8737

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APPEARANCES

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 Attorneys for the Defendant

ALSO PRESENT:

Leslie Renfroe, Video Specialist  
 Joe Hersecy, Bailiff  
 Timothy Wienk, Bailiff

I N D E X

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## 1 VIDEOTAPED DEPOSITION IN DISCOVERY

2 JEREMY SCOTT

3 Pursuant to notice duly given, the deposition of  
4 JEREMY SCOTT, called by the Defendant in the  
5 above-entitled cause, was taken by me, a Notary  
6 Public in and for the State of Florida at Large, at  
7 the time and place and in the presence of counsel  
8 enumerated on page 1 hereof.

9 Thereupon, it was stipulated and agreed, by and  
10 between the attorneys for the respective parties, by  
11 and with the consent of the said deponent, that  
12 signature to the said deposition would not be  
13 reserved.

14 Thereupon, the following proceedings were had  
15 and taken:

16 JEREMY SCOTT, having been first duly sworn, upon  
17 interrogation in discovery, testified as follows:

## 18 DIRECT EXAMINATION

19 BY MR. CUPP:

20 Q Go ahead and state your name for the  
21 record, sir.

22 A My name is Jeremy L. Scott.

23 Q And what is your date of birth?

24 A 4/29/1969.

25 Q Do you -- do you know your social?

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1           A     No, sir. It's not -- nobody seems to know  
2 it for some reason.

3           Q     Okay. And before we went on the record,  
4 Mr. Benefield from the state was kind enough to  
5 inform us that he met with you this morning. Is that  
6 correct?

7           A     Yes, sir.

8           Q     Where did that take place?

9           A     In this prosecution office.

10          Q     Okay. Other than -- you heard what  
11 Mr. Benefield said a few minutes ago, and I'm not  
12 going to go back through that.

13                    Other than what he told you, did he discuss  
14 anything else about this case?

15          A     I was going to be a witness.

16          Q     But anything about what you may or may not  
17 testify to? I mean, did he go over --

18          A     Not particular.

19          Q     -- your testimony at all?

20          A     No, sir.

21          Q     Okay. When you say not particular, did you  
22 talk about anything at all concerning the case?

23          A     Just I was here for Sheffield (phonetic)  
24 and I'm -- I want to get back -- back to prison.  
25 That's all I want.

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1 Q I'm sorry.

2 A That's all -- my discussion was getting  
3 back to prison.

4 Q You told Mr. Benefield you wanted -- you  
5 wanted to get this over with?

6 A Yeah, so I can go back. I've been here too  
7 long.

8 Q Yes, sir. And I'll try to move this along,  
9 okay? The last thing I want to do is agitate you.

10 Did you meet with anybody else at the State  
11 Attorney's Office?

12 A My old prosecution -- cutioner, Aguero,  
13 Guarro (phonetic).

14 Q Mr. Aguero?

15 A Yes, sir.

16 Q And he was the one that prosecuted you --

17 A Yes, sir.

18 Q -- for the case where you're serving all  
19 the time, correct?

20 A Yes, sir.

21 Q And when did you meet with Mr. Aguero?

22 A Probably same time.

23 Q This morning?

24 A Yes, sir.

25 Q Okay.

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1 A About nine, ten, or something like that.

2 Q Who was present when you met with him?

3 A The officer behind you.

4 Q Okay. Was Mr. Benefield?

5 A Yeah.

6 Q Okay. Anybody else?

7 A Another officer. He ain't here though.

8 Q And what did Mr. Aguero speak with you  
9 about?

10 A No. He just introduced me to the new --  
11 the prosecution that --

12 Q To Mr. Benefield?

13 A Yes, sir.

14 Q Okay. Did he talk to you about anything  
15 about the deposition and your testimony?

16 A No. He just explained you going to ask me  
17 some questions about the cases, and if I got any  
18 knowledge, I should answer truthfully.

19 Q Okay. But you didn't -- did you go over  
20 what you were going to say with him?

21 A No, sir.

22 Q Did he ask you what you were going to say?

23 A No, sir.

24 Q Did anybody ask you what --

25 A No, sir.

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1 Q -- you were going to say?

2 How long do you think you met with him?

3 How long do you think you met with Mr. Aguero?

4 A About a half hour, an hour.

5 Q Hour's kind of a long time. You didn't  
6 talk about what you would testify to?

7 A Just gonna be asking me certain questions  
8 about the cases, and that's it.

9 Q Did he ask you any questions?

10 A Who? Aguero?

11 Q Yes, sir.

12 A No. Aguero said he's not handling the  
13 case.

14 Q Okay. My question was, did he ask you any  
15 questions?

16 A No, sir.

17 Q Okay. Was a recording made of it? Was  
18 anybody taking notes?

19 A No, sir.

20 Q Okay. Did you speak to anybody else this  
21 morning besides Mr. Benefield or Mr. Aguero?

22 A No, sir.

23 Q Okay. Now, I believe, according to the  
24 records, you got to Polk County on -- a little over a  
25 week ago, February 8th.

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1 A On a Monday.

2 Q Okay. Last Monday?

3 A (Nodding head.)

4 Q Where did you -- I'm sorry. You have to  
5 answer out loud. That's for the court reporter.  
6 You got to -- on February 8th, correct?

7 A Yes, sir. Yes.

8 Q Thank you. Where did you -- where did you  
9 arrive in Polk County? Where were you?

10 A Where was I?

11 Q Yeah. Which jail?

12 A Way in Frostproof.

13 Q Okay. Is that where you've been the entire  
14 time?

15 A Yes, sir.

16 Q Okay. Has anybody come to see you from the  
17 State Attorney's Office while you've been in  
18 Frostproof --

19 A No, sir.

20 Q -- in jail?

21 Okay. Has anybody spoken to you on the  
22 phone?

23 A No, sir.

24 Q How about anybody from the Sheriff's  
25 Office?

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1 A No, sir.

2 Q Anybody at all?

3 A Today's the first day I seen anybody.

4 Q Okay. That makes it easy. Did you have  
5 any visitors?

6 A No, sir.

7 Q And that's like anybody.

8 A Uh-uh. I ain't even had a visit from my  
9 own family. They don't even know I'm here.

10 Q Would that be your grandmother?

11 A Yes, sir.

12 Q Okay. When's the last time you spoke to  
13 your grandmother?

14 A Been a while since she's been ill --

15 Q I'm sorry.

16 A -- so I don't want to bring it down on her  
17 no more.

18 Q Yes, sir. Have you talked -- did you talk  
19 to anybody on the phone since you've been in Polk  
20 County?

21 A No, sir.

22 Q Okay. Okay. Now, let's back -- we'll just  
23 kind of work backwards. That will probably be the  
24 easiest.

25 Other -- now, back before -- you just come

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1 into Polk County last Monday, you said. Before that,  
2 who was the last person you spoke to from either  
3 the -- from law enforcement or the State Attorney's  
4 Office about this case?

5 A No one. When they come pick me up, all I  
6 ask -- I asked the officer that was driving, I said,  
7 what am I going back for? He said, you didn't get no  
8 -- because I ain't get no subpoena or none of that  
9 through the mail or nothing, right?

10 I had legal mail callout, but I left that  
11 day. And he had -- the officers at the back gate of  
12 our institution, right, he had to sign a paper, and  
13 the officer said something about due to legal, and  
14 that's as far as -- that's as far as I know.

15 Q Okay. Let's try -- let's try it the other  
16 way.

17 When was the first time that anybody ever  
18 came and talked to you about this case?

19 A A few years back.

20 Q Okay. Would that have been the first time  
21 you ever heard about this case and this guy,  
22 Schofield?

23 A (Nodding head.)

24 Q Do you know him?

25 A I don't know him personally. I probably

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1 seen him maybe years ago when we was kids or sumpin'.

2 Q Now, I don't expect you to remember the  
3 exact date, but you said it was years ago when  
4 somebody came to see you. Who came to see you?

5 A No. I said -- talking about --

6 Q From law enforcement, when they first come  
7 to talk to you.

8 A Homicide detectives or sumpin', homicide  
9 detectives taking fingerprints and stuff like --

10 Q How -- the very first time that they came  
11 to see you, how many were there?

12 A Just two.

13 Q And they talked to you about this, right?

14 A Uh-huh.

15 Q In prison?

16 A Uh-huh.

17 Q Okay. You need to say yes or no. I'm  
18 sorry.

19 A Yes, sir.

20 Q Because she can't -- I'm sorry.

21 And what prison were you in then? Was that  
22 Washington?

23 A I'm trying -- that's what I was thinking.  
24 It might have been -- it might have been to that --  
25 yeah, it was Washington.

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1 Q Okay. Now, we're going to stay focused on  
2 the first time they come to see you.

3 Do you remember what they told you?

4 A They asked me questions about Leo. I  
5 answered it the best I could, and they -- they showed  
6 me pictures.

7 Q Do you remember what they showed you  
8 pictures of?

9 A Pictures I don't want to see again.

10 Q Tell me about them.

11 A Some -- some -- of the victim and some  
12 other homicide pictures from some other victims that  
13 had nothing related to nothing, but it was just  
14 ongoing homicides in Polk County or sumpin'.

15 Q What did they -- what'd they tell you?  
16 Like, why were they there? What did they tell you  
17 about why they were there?

18 A They were asking questions, trying to get  
19 my knowledge, my whereabouts and -- and other memory  
20 stuff. I can't remember everything they was asking  
21 me.

22 Q Did you want to talk to them?

23 A I volunteered. I went up there on my own.

24 Q Were they being nice?

25 A Just as any other cops.

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1 Q They yell at you?

2 A No, sir.

3 Q They run at you pretty good?

4 A Just like any hom -- like the same  
5 detectives that arrested me. Same thing. Same  
6 questions. Same everything.

7 Q Can you remember any more about what they  
8 told you?

9 A Not right offhand 'cause I really didn't  
10 even pay it no mind.

11 Q Did it seem like they were interested  
12 because they thought you might have murdered  
13 somebody?

14 A No, sir.

15 Q No?

16 A It basic boiled down to was, they doing  
17 this because of -- sumpin' about it was withheld in  
18 evidence, a hearing or sumpin' years ago during --  
19 during his trial.

20 Q What was withheld?

21 A Fingerprints.

22 Q Whose fingerprints?

23 A Apparently been mine.

24 Q Okay. What did they tell you about that?

25 A That they want to take my prints and all

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1 this stuff and asked me certain questions about it,  
2 so I just said -- I answered to the best of my  
3 knowledge.

4 Q And what did you tell them?

5 A Told 'em -- they asked me did I know  
6 Sheffield. I said nope. They asked me did I know  
7 certain other individuals. I said no. I don't know  
8 a whole lot. You talking about 20 sumpin' years ago.

9 Q Yes, sir. Hard to remember back that far.

10 A I got my own time to worry about.

11 Q Yes, sir. What did you tell them why  
12 your -- where did they tell you that -- where did  
13 they tell you that they found your prints?

14 A The inside of a car. I said --

15 Q What did they tell you about that?

16 A They told me the car was out there on  
17 Interstate I-4, and I told them probably half a dozen  
18 cars probably got my fingerprints in 'em. That's  
19 what I told him, so -- and he just talked to me about  
20 the car and stuff like that.

21 Q They show you pictures?

22 A Yeah, of the outside of the car. I  
23 couldn't recognize the car like that because, like I  
24 say, I seen so many cars.

25 Q So you told them you didn't recognize the

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1 car?

2 A Not right offhand, but then when he was  
3 talking about palm print -- and the only way my palm  
4 print could be inside of any car or truck is if I'm  
5 robbing sumpin' out of it.

6 Q I'm sorry?

7 A If I'm robbing sumpin' out of it.

8 Q Yes.

9 A That was my thing on the streets. I used  
10 to break in trucks, cars on the Interstate 4, you  
11 know, for stereos instead of whatever that might be  
12 valuable inside of a car or truck.

13 Q Okay. What about State Road 33? Were you  
14 ever on State Road 33?

15 A I don't even know where that's at.

16 Q Or Combee Road or North Combee Road?

17 A North Combee. My grandma and them used to  
18 live out there in '85.

19 Q They lived out there in '85?

20 A In a trailer park in '85.

21 Q Okay. From '85 to maybe like '87, '88?

22 A I don't know. I left home -- I left home  
23 after I went to prison in '85.

24 Q When did you come back?

25 A I came back in '86.

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1 Q And then when did you go back again?

2 A Nobody lived out there.

3 Q No. I'm sorry. That wasn't a good  
4 question. When did you go back to prison?

5 A I went back to prison in '87.

6 Q Okay. Do you know when?

7 A Not offhand, I don't. All I know is I was  
8 there -- I was at Brevard '87. I did -- I did -- had  
9 18 months. I took -- copped out a deal, 18 months,  
10 and I got probation. Copped out to a -- I had a  
11 bunch of different counts of charges, and they all  
12 run concurrent, five years probation, so --

13 Q Okay. That first -- they came out again  
14 though, right? They came out again after the first  
15 time?

16 A The two of them just came out.

17 Q You said that they came and saw you a  
18 second time.

19 A Yeah.

20 Q About how much time went by from the first  
21 time to the second time?

22 A A long time, very long time.

23 Q Months?

24 A Years apparently.

25 Q After the first time --

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1           A     These two didn't come and ask me about  
2 nothin'. These two came with homicide, a cold case  
3 homicide, and they took my fingerprints for a  
4 homicide case.

5           Q     How long ago was that?

6           A     Oh, about four -- four weeks ago, five  
7 weeks ago, something like that.

8           Q     Okay. From that time, this four or five  
9 weeks ago when they took your prints, and then the  
10 first time that you talked about, did anybody come  
11 and see you before then, in between then?

12          A     No, sir. Nobody come to see me. I got a  
13 bunch of news -- I got a bunch of newspapers writin'  
14 me. That's about it. But other than that, nobody.

15          Q     You said not about this or about this?

16          A     I said nothin' -- nobody, no cops, --

17          Q     Yes, sir.

18          A     -- nobody came to see me no more until  
19 recently.

20          Q     Just recently. So -- I just want to make  
21 sure I'm clear. So the first time that you talked  
22 about when they first come out, the first time you  
23 ever heard anything about this, and then until the  
24 last time, which you think was about four weeks ago,  
25 you didn't see -- nobody came to see you during that

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1 time about this?

2 A Uh-uh.

3 Q No?

4 A No, sir.

5 Q Okay. Thank you.

6 Did -- were you transported?

7 A Sheriff Department came and got me.

8 Q Not from -- not for this time, but any  
9 other time before this, were you ever transported?

10 A Sheriff's Department.

11 Q Okay. About this case?

12 A Yeah. Sheriff's Department brought me.

13 Q When was that?

14 A First time to John Aguero's office.

15 Q When -- I'll ask you about that in a  
16 minute, but let's try to figure out when that was.

17 When the detectives first came to see you,  
18 it was after that, right?

19 A Right after that.

20 Q About how long after that?

21 A They -- what brought that on was, I told  
22 him, I said, if he wants to talk to me -- I was being  
23 a slick smartmouth, right?

24 Q Yes, sir.

25 A Because this is the guy that took my life

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1 from the streets. I'm in prison for the rest of my  
2 life.

3 Q Yes, sir.

4 A All right. So I grew up in prison, but  
5 have a man to call me and ask me about some murder  
6 case that it's relevant to me and it ain't got -- I  
7 don't care about --

8 Q You said it's irrelevant?

9 A Irrelevant.

10 Q Irrelevant to you, okay.

11 A Right? I don't really care about it. It  
12 got nothin' to do with me, right? Got the nerve to  
13 ask me some questions. I said, if he wants to talk  
14 to me, he can come see me.

15 That's why I was being smart, you know,  
16 towards the officers, 'cause -- and so the next thing  
17 I know, it wasn't too long ago, they woke me up  
18 talking about you're being trans -- transportation to  
19 Polk County Jail.

20 And I got here, and they told me it's  
21 about -- a detective that told you that John Guerro  
22 -- I can't pronounce that last name.

23 Q Agüero?

24 A Yeah.

25 Q But it was the same guy that prosecuted

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1 you?

2 A The same prosecution, yeah, that wants to  
3 explain it to me, why the cops came to ask me all  
4 these questions, which he did.

5 Q And what did he tell you?

6 A He told me about Schofield getting a new  
7 trial, about some evidence that was withheld back in  
8 the early days of his trial or sumpin', you know,  
9 asked me did I know anyone.

10 It's like I told him, I'm going to tell  
11 you, I do not know him. If I seen him, it was  
12 because he came around the old house, you know. And  
13 we had runaways. We had drug addicts coming in and  
14 out of the house, and that was on Kentucky Avenue.

15 Other than that, as far as goin' to school  
16 with him, no, I don't know him. Have I been locked  
17 up with him before? Not that I know of.

18 Q What else did he tell you?

19 A That I might be called as a witness to  
20 justify the palm print or hand print, whatever it was  
21 that they found inside the car, you know, and asked  
22 me a question, showed me the same pictures I already  
23 seen, you know? Same thing.

24 Q Where did that take place, this meeting?

25 A In his office.

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1 Q In his office. Who else was there?

2 A A member of the Sheriff's Department.

3 Q Was it anybody you had ever seen before? I  
4 mean, was it one of the guys that came up to see you  
5 the first time?

6 A Be honest with you, I couldn't remember. I  
7 really wasn't paying no mind to him. Because like I  
8 said, you know, I had a lot of hatred, --

9 Q Sure.

10 A -- you know? But -- over the years, you  
11 know, because I -- because to me, in my mind, this  
12 guy got the -- I don't know how to describe that word  
13 on tape but --

14 Q I understand.

15 A -- got the nerve to call me, same dude try  
16 to take my life from me, you know?

17 Q Did you feel like he wanted you to help  
18 him?

19 A Ain't nothin' I can help him with.

20 Q I understand that. But did you get the  
21 impression that he wanted you to help him? Did he  
22 tell you he wanted you to help him?

23 A One thing I know -- one thing I know about  
24 him, he don't -- he don't need your help.

25 Q Okay.

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1           A     He knows what he's doing.  But thing is, if  
2 I can say -- if I can set a person free from prison,  
3 I would.  Like I say, I've been in prison for 20  
4 years now.

5           Q     Did he indicate to you anything about the  
6 reason why your fingerprints were found in the car?  
7 Did he talk about that to you?

8           A     Apparently some -- some nauction [sic] got  
9 the wind saying that --

10          Q     Some what got -- I'm sorry.

11          A     Nauuction, like -- you know, like word  
12 flying around.

13          Q     Oh, okay.

14          A     Call him Leo and his wife and these  
15 attorneys, that I had something to do with this  
16 murder case.  You know, this -- this is an indication  
17 that -- first I learned the allegations of it is  
18 through the newspapers people.  I listened to 'em,  
19 but I -- you know, I never answered, I never talked  
20 to them because I don't like 'em, and I got tired of  
21 them aggravating me.

22          Q     Did they come to you before or after the  
23 first detectives?

24          A     Who?  The newspaper people?

25          Q     Yeah.

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1 A After.

2 Q After, okay. Let's stick with your meeting  
3 with Mr. Aguero. How long did that take place? How  
4 long were you in his office?

5 A Not long.

6 Q Was anybody taking any notes?

7 A No, sir.

8 Q Was there a recording of it?

9 A No, sir.

10 Q Okay. I'm going to jump back a little bit  
11 for a minute.

12 When these detectives first came to see  
13 you, and I'm sure -- well, was it upsetting? I mean,  
14 were you aggravated with it, like --

15 A Yeah. See, any time a cop comes to see you  
16 in prison, it ain't a good thing.

17 Q It's not a good thing. I understand.

18 A Then it makes you look bad, you know. In  
19 prison -- I was in the panhandle for the last 20  
20 years. This is my first time being this close to the  
21 south, you know? And I've worked for 11 years being  
22 clean of DRs. And having the cops come breathing  
23 down my neck and making things ain't what it is, you  
24 know, I don't like that.

25 Q Okay. After they came to see you, did you

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1 call your grandma, talk to her about it?

2 A I told -- when I came -- I didn't get to  
3 talk to her 'til I came to county jail. When they  
4 brought me here, talked to Aguero, and I had an  
5 inmate -- inmate -- one of the inmates in the county  
6 helped me find the phone number.

7 I was looking for my grandma's phone  
8 number, because they had moved, but I didn't know if  
9 they had kept the old number or not, right?

10 And apparently, he had got it out of the  
11 new book, the phone book for me, and grandma -- I  
12 told grandma that I was here for sumpin' about some  
13 dude, about his murder case and stuff like that.  
14 Other than that, we don't talk about it.

15 Q So you didn't call your grandmother right  
16 after they came to see you the first time? You  
17 didn't call her from prison?

18 A No, sir.

19 Q Okay. So I think we've got nailed down  
20 when they saw you. They saw you the first time; then  
21 you told them -- like you have already talked  
22 about -- you said, I want to go see Aguero.

23 A No. I didn't say I wanted to go see him.  
24 I said, if he wants to see me, come see me. But  
25 they -- they took me to him.

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1 Q They took you to him?

2 A (Nodding head.)

3 Q Okay.

4 A I didn't expect that much of it.

5 Q And then after that, the next time you hear  
6 anything about this was about four weeks ago when  
7 they came and took your prints. Is that right?

8 A Yeah. But they ain't tell me what it  
9 was -- all they said, it was something about a cold  
10 case.

11 Q Okay.

12 A All right? They didn't tell me I was  
13 fixin' to come. They didn't say nothin', right?

14 Q Okay.

15 A Then -- but common sense say any time --  
16 any time detectives come, you know. But again, Polk  
17 County's unchanged. Anybody I know that's been  
18 coming to prison, they said, you know -- they seen  
19 the new prisons, the new jails, you know, so no  
20 telling.

21 Q When they came to see you the first time,  
22 they told you about the evidence and they told you  
23 about your palm print, right?

24 A Yes, sir.

25 Q Okay. And you told them, I don't -- you

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1 don't really remember back that far? You told them,  
2 I don't -- because it was so many years ago, right?

3 A I done a lot of dirty stuff on the streets,  
4 and I don't -- and a lot of it, I regret. But, you  
5 know, I had a hobby and I -- you know, but --

6 Q I understand. I'm just -- I'm not trying  
7 to give you a hard time.

8 Did they -- did they tell you, when they  
9 came to see you -- all these questions are about when  
10 they came to see you. Did they tell you -- did they  
11 say that you'd be charged with the murder?

12 A No, sir.

13 Q Okay. Did they tell you -- they explain to  
14 you about the -- how the body was found and the  
15 location it was found and how it was found and that  
16 there was blood in a trailer and then the body got  
17 dumped? Did they tell you all that?

18 A They told me about the -- about the body,  
19 and they told me about blood, but not about no  
20 trailer.

21 Q Okay. And the body being dumped?

22 A Body was found, not dumped. Was found.

23 Q Where? Where did they tell you it was  
24 found?

25 A Somewhere underneath a plywood box.

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1 Q Okay. Where?

2 A Board, box, wherever it was. The father --  
3 Leo's father apparently is the one who found it.

4 Q Where? Did they tell you where the body  
5 was found?

6 A In the lake.

7 Q In the lake. Did they tell you where the  
8 lake was?

9 A They probably did. I don't know the name  
10 of the lakes. Really, the only names I know is --

11 Q I'm just asking what they told you.

12 A I'm trying to answer your question.

13 Q Oh, okay. I'm sorry. I didn't mean to  
14 interrupt you.

15 A They just told me about how the body got  
16 found. But as far as anything else, basic -- I  
17 answered everything he asked me. Just like you ask  
18 me, I'm going to answer it, you know? I ain't got a  
19 problem with it but --

20 Q Did they -- did they tell you that Aguero  
21 was one that sent them and that he needed your help?  
22 Did he -- did they tell you that Aguero was the one  
23 that sent them to see you?

24 A They said the prosecution office.

25 Q Okay.

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1 A The prosecution office. They -- that was  
2 what was said.

3 Q Okay. And did they tell you that he or  
4 they needed your help?

5 A No. They didn't say they needed my help.

6 Q Okay.

7 A They said they have some questions they  
8 would like to ask.

9 Q Okay.

10 A And if I would, they would -- so I went in  
11 there and I talked to 'em. Then that's when I got  
12 tired of hearing what they got to say. I said, if he  
13 wanted to see me, come see me.

14 Q I gotcha.

15 A Next thing I know, I'm in his office.

16 Q Did they say that -- did either they say or  
17 did they say that Aguerro said that you were going to  
18 be -- that you're going to be charged and put back on  
19 death row and that you wouldn't come off?

20 A No, sir.

21 Q Okay. You were on death row, right?

22 A Yes, sir.

23 Q Okay. And then your case got --

24 A Overturned.

25 Q -- overturned. And then you're doing life,

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1 correct? So you've been on death row?

2 A Yes, sir.

3 Q You know what that's like? I'm not going  
4 to ask you about that.

5 A A person can't threaten -- can't threaten  
6 me with anything. You know what I'm saying?

7 Q I got you.

8 Did they tell you that they know -- that  
9 they knew they didn't -- that you didn't kill this  
10 girl, but they said you know something about it?

11 A That's possible.

12 Q Okay. They showed you pictures of the car  
13 and pictures of the dead girl?

14 A Yes, sir. I recognized -- they showed me a  
15 couple pictures of some other people. I don't know  
16 who they were either.

17 Q Okay. Now, I'm going to -- I'm going to  
18 play something for you, and I just want you to listen  
19 to it, all right? And I'm not going to ask you  
20 questions about what's said on there. I just want to  
21 ask you if you can recognize it and if you can  
22 identify who the people are. Okay?

23 MR. CUPP: I need a plug unfortunately.

24 (Discussion off the record.)

25 BY MR. CUPP:

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1 Q Like I said, I just want you to listen to  
2 it. And I'm not going to ask you a bunch of  
3 questions about it. I'm just going to ask you if you  
4 can identify it, the people that are talking.

5 (The audio CD was played and reported by  
6 the court reporter as follows:)

7 "MR. SCOTT: Grandma.

8 GRANDMA: Huh?

9 MR. SCOTT: Listen -- I want you to listen  
10 carefully, all right?

11 GRANDMA: All right. I'm listening.

12 MR. SCOTT: Has anybody come to talk to  
13 you?

14 GRANDMA: No.

15 MR. SCOTT: Detectives or anybody?

16 GRANDMA: No. Why?

17 MR. SCOTT: I wouldn't be surprised if they  
18 do. They just came and saw me out at Polk  
19 County today.

20 GRANDMA: For what?

21 MR. SCOTT: About some murders.

22 GRANDMA: About what?

23 MR. SCOTT: Murder.

24 GRANDMA: Murder?

25 MR. SCOTT: A murder.

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1 GRANDMA: Who got murdered?  
2 MR. SCOTT: Some girl back in '87.  
3 GRANDMA: '87?  
4 MR. SCOTT: Remember when we lived on  
5 Combee Road?  
6 GRANDMA: Yeah.  
7 MR. SCOTT: Well, this dude I knew,  
8 right -- I ain't know him that good, --  
9 GRANDMA: Yeah.  
10 MR. SCOTT: -- right?  
11 GRANDMA: Uh-huh.  
12 MR. SCOTT: But apparently he's a friend of  
13 Brian's, right?  
14 GRANDMA: Brian?  
15 MR. SCOTT: Yeah.  
16 GRANDMA: Who's Brian?  
17 MR. SCOTT: My co-defendant.  
18 GRANDMA: Oh.  
19 MR. SCOTT: Well, they come up here asking  
20 me about -- he's doing a life sentence, and he  
21 got an appeal in, and they got evidence in Polk  
22 County with my palm print that was in the  
23 windows -- in the windshield of the window.  
24 GRANDMA: Yeah.  
25 MR. SCOTT: They found the car out around

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1 I-4 abandoned, right?

2 GRANDMA: Yeah.

3 MR. SCOTT: And they want to know how my  
4 palm print got in it, right? I said, I don't --  
5 man, it's been so many years, you know?

6 GRANDMA: Yeah.

7 MR. SCOTT: I don't remember really. I  
8 said, only thing -- only way I could think of is  
9 because me and a couple other guys, when we used  
10 to see cars on the side of the road, we used to,  
11 you know, get in them and, you know, steal  
12 stereo systems out of them.

13 GRANDMA: Yeah.

14 MR. SCOTT: Something like that, right?

15 GRANDMA: Yeah.

16 MR. SCOTT: But they claim that, you know,  
17 if this appeal works for this dude, --

18 GRANDMA: Yeah.

19 MR. SCOTT: -- that he'll get his freedom  
20 and I'll be charged.

21 GRANDMA: For somebody else doing --  
22 killin' somebody?

23 MR. SCOTT: He's claiming I did it,  
24 grandma.

25 GRANDMA: Oh, Lord.

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1 MR. SCOTT: They was asking me about people  
2 out on Combee Road, right? I said my grandma  
3 lived out there for a few years, right?

4 GRANDMA: Yeah.

5 MR. SCOTT: And there was no hangouts down  
6 there. There was no, you know, shit like that.  
7 There was places that I lived off and on with my  
8 grandma, right?

9 GRANDMA: Yeah.

10 MR. SCOTT: The only dude I knew out there  
11 in the trailer park was Brian.

12 GRANDMA: Yeah.

13 MR. SCOTT: You know, the big old dude?

14 GRANDMA: Yeah.

15 MR. SCOTT: And he wasn't no troublemaker,  
16 you know?

17 GRANDMA: Huh. Well --

18 MR. SCOTT: But they said they found the  
19 girl's body in the lake.

20 GRANDMA: Lord.

21 MR. SCOTT: Right? Of course, I-4 --

22 GRANDMA: Yeah.

23 MR. SCOTT: Say you leave from our trailer  
24 park, right, going to I-4, right?

25 GRANDMA: Lord.

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1 MR. SCOTT: And it's right off in that  
2 little lake. So you know how they found it?

3 GRANDMA: How?

4 MR. SCOTT: All right. The girl's -- the  
5 girl's 18 years old, right? Same age as I was.

6 GRANDMA: Huh.

7 MR. SCOTT: Now, she was married to another  
8 dude, this dude over in another prison, right?

9 GRANDMA: Yeah.

10 MR. SCOTT: All right. His -- his daddy is  
11 the one went to the lake and found the body,  
12 went straight there and found it.

13 GRANDMA: Yeah.

14 MR. SCOTT: So the police said that -- that  
15 she was calling me to come and get her, right?  
16 From the dead, right?

17 GRANDMA: Yeah.

18 MR. SCOTT: So then they found -- you know,  
19 they found all kinds of blood and all that shit  
20 at their house. That's what got me so fuckin'  
21 confused, right?

22 GRANDMA: Uh-huh.

23 MR. SCOTT: And they said that she was --  
24 she was killed, then -- then dumped, right?

25 GRANDMA: Lord.

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1 MR. SCOTT: But then they asked me -- I  
2 tried to tell these mother fuckers here I was in  
3 prison in '86.

4 GRANDMA: Yeah.

5 MR. SCOTT: But they -- they talking about  
6 some girl named Jane Doe.

7 GRANDMA: Good Lord.

8 MR. SCOTT: I -- grandma --

9 GRANDMA: That was something happened after  
10 you was in jail.

11 MR. SCOTT: Yeah.

12 GRANDMA: Because I remember that.

13 MR. SCOTT: Yeah. They trying to --

14 GRANDMA: Yeah.

15 MR. SCOTT: Talkin' about some girl got  
16 picked up down there by -- the neighborhood I  
17 lived down there --

18 GRANDMA: They better try sumpin' again  
19 because you did not do that. You was in prison.

20 MR. SCOTT: Grandma, they coming to get me  
21 because they -- because the same dude -- same  
22 man that prosecuted me, --

23 GRANDMA: Uh-huh.

24 MR. SCOTT: -- he sent these mother fuckers  
25 to me asking for my help, and I can't help him.

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1 GRANDMA: No.

2 MR. SCOTT: Only thing I can think of,  
3 grandma, is that -- that -- that I broke in that  
4 car or I've been in that car, you know?

5 GRANDMA: Yeah.

6 MR. SCOTT: You know, whatever. I remember  
7 that dude came out -- out of Kentucky one time.  
8 I told them that, right?

9 GRANDMA: Somebody is just framing you and  
10 all that darn junk.

11 MR. SCOTT: Grandma, when I was -- when I  
12 got arrested for this murder here, right?

13 GRANDMA: Yeah.

14 MR. SCOTT: All right. Brian was in the  
15 cell with this same dude that was -- and it was  
16 already in the county jail pending trial for  
17 that murder of his wife, right?

18 GRANDMA: Yeah.

19 MR. SCOTT: They was in the same cell  
20 together. Brian's the one that told me about  
21 it, right, because I didn't recognize the dude  
22 until Brian had to point him out to me, right?

23 GRANDMA: Yeah.

24 MR. SCOTT: I remember him. I just don't  
25 remember the red car.

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1 GRANDMA: Well --

2 MR. SCOTT: I remember a blue car.

3 GRANDMA: Yeah. Well, see, they framed you  
4 for this one. They tried to frame you for that  
5 one's grandma.

6 MR. SCOTT: Yeah.

7 GRANDMA: Then they framed you for this  
8 because you hit the first damn lick, and that's  
9 what put you in prison. You didn't kill the  
10 guy, but the first lick is what landed you  
11 there.

12 MR. SCOTT: Yeah.

13 GRANDMA: That -- I was outside and the  
14 prosecuting attorney was telling --

15 MR. SCOTT: Oh, he's the head prosecutor  
16 now. He's the chief, the boss. He's the one --  
17 he's the one talkin' about more like if I don't  
18 help him, I'm going to be charged, I'm going to  
19 be brought back, charged and put on death row  
20 and I won't come off.

21 GRANDMA: Yeah. He needs to be charged  
22 with something.

23 MR. SCOTT: Well, see, what gets me is,  
24 they said that -- all right, this dude had got  
25 remarried, right, --

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1 GRANDMA: Yeah.

2 MR. SCOTT: -- to some -- some girl, and  
3 she got him some attorneys and shit like that,  
4 right?

5 GRANDMA: Yeah.

6 MR. SCOTT: All right. So now he got an  
7 appeal in, right? And now they -- they found  
8 out that the state has it in the evidence room  
9 of my palm print that was left at -- out the  
10 windshield and a piece of -- receipt of a piece  
11 of paper.

12 GRANDMA: Uh-huh.

13 MR. SCOTT: Right?

14 GRANDMA: That's what they got your  
15 fingerprints on, that woman's glasses, and that  
16 damn man put them on there. He had -- you  
17 picked him up.

18 MR. SCOTT: But, see, I -- but they want --  
19 they said, we know you didn't kill her, right?  
20 That's what they're telling me.

21 GRANDMA: Uh-huh. They know --

22 MR. SCOTT: They're saying, well, you know  
23 something about it.

24 GRANDMA: Oh.

25 MR. SCOTT: If I did know something, I

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1 wouldn't tell them. They said --

2 GRANDMA: That's because if you did, they'd  
3 frame you for it.

4 MR. SCOTT: I know it, especially -- they  
5 can't do nothing to me.

6 GRANDMA: That other guy, you know, he  
7 killed this guy and --

8 MR. SCOTT: This is the --

9 GRANDMA: -- you're sitting in jail for it.

10 MR. SCOTT: Grandma, this is the same dude  
11 that was in the cell with Brian.

12 GRANDMA: Yeah, uh-huh.

13 MR. SCOTT: Brian's head fill up, talking  
14 about tell Brian, how you can turn against  
15 Scott? And that's how -- that's why I'm doing  
16 all this time and Brian's not.

17 GRANDMA: Yeah.

18 MR. SCOTT: They listened to that dude, --

19 GRANDMA: Yeah.

20 MR. SCOTT: -- you know? But I've been  
21 trying -- I've been trying to figure out, you  
22 know, because me and a couple other guys, you  
23 know, we used -- when I had that woman's car,  
24 that brown car, and we used to come down -- you  
25 know, every time we go on I-4, right, --

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1 GRANDMA: Yeah.

2 MR. SCOTT: -- you see -- you know, you see  
3 cars on the -- parked on the side and shit,  
4 right? And we used to -- you know, late at  
5 night, we used to, you know, get in 'em and get  
6 the stereo systems. We used to get paid decent  
7 money for them.

8 GRANDMA: I know.

9 MR. SCOTT: We didn't steal the cars or  
10 nothing, stuff like that.

11 GRANDMA: No.

12 MR. SCOTT: You know? And I ain't steal no  
13 car.

14 GRANDMA: I know it. You're just an easy  
15 target, and you're just a target for them, and  
16 that's it.

17 MR. SCOTT: The only thing I can think of,  
18 you know, is that he was already over at the  
19 green house that night, earlier that day or  
20 something, and I was in the car with him.

21 But, hell, I've been in so many different  
22 cars, grandma.

23 GRANDMA: I know.

24 MR. SCOTT: When I lived out there on  
25 Kentucky in that green house down there, they

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1 got so many cars parked out there. Man, I been  
2 in so many of them. I can't remember all them  
3 damn cars.

4 GRANDMA: I know it.

5 MR. SCOTT: But they showed me a picture of  
6 the car. I don't recognize the car. They  
7 showed me the dead -- the dead body of the girl  
8 where she was stabbed to death. That's what got  
9 me.

10 GRANDMA: Well, see, that happened after  
11 you was in prison. How in the hell could you  
12 have killed her?

13 MR. SCOTT: No. Grandma, that happened  
14 before mine. The John Doe happened way before,  
15 back in '86. The John Doe girl?

16 GRANDMA: Yeah.

17 MR. SCOTT: They said she was picked up --  
18 according to that detective, he said she was  
19 picked up down there on Kentucky Avenue, but I  
20 wasn't living on Kentucky back then. As a  
21 matter of fact, what year was you all living out  
22 there on Combee?

23 GRANDMA: Lord, I don't know, Jeremy.

24 MR. SCOTT: I know it was -- I know you all  
25 was out there in eighty -- what -- '85?

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1 GRANDMA: We was out there before Cassina  
2 (phonetic) was born, wasn't it? '84.

3 MR. SCOTT: '84. I spent most of my time  
4 in Okeechobee days, --

5 GRANDMA: I know it.

6 MR. SCOTT: -- right? Then -- then -- then  
7 I went to prison.

8 GRANDMA: Uh-huh.

9 MR. SCOTT: And I went to prison in '86.  
10 In '85, I had got that murder case in Wahneta.

11 GRANDMA: Yeah, um-hmm.

12 MR. SCOTT: Then I went -- I stayed most my  
13 time then, the rest of '85 and most of '86, in  
14 prison.

15 GRANDMA: Yeah.

16 MR. SCOTT: When I got out of prison, I  
17 had, what -- in '86, when I got out of prison,  
18 you all still living on North Combee. But I  
19 went and lived with my mother in Perry,  
20 remember? I spent Christmas up there with them.

21 GRANDMA: I know it. You wasn't even  
22 around there then.

23 MR. SCOTT: No. That's what I was trying  
24 to tell them. I don't know anything about no  
25 Jane Doe, man.

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1 GRANDMA: Well, see, they're just trying to  
2 put another one on you.

3 MR. SCOTT: Yeah, just 'cause I lived  
4 off -- but I didn't live off of Kentucky  
5 until -- until '88.

6 GRANDMA: That's like I was saying, that's  
7 like they done you the first time. They put you  
8 down as murdering this one guy and you didn't  
9 kill nobody.

10 MR. SCOTT: I told --

11 GRANDMA: But you hit the first lick, and  
12 that was it.

13 MR. SCOTT: Like I told them, right, --

14 GRANDMA: Uh-huh.

15 MR. SCOTT: -- you know --

16 GRANDMA: The other guy's the one that beat  
17 him in the head with a hammer.

18 MR. SCOTT: That's what -- they know  
19 that --

20 GRANDMA: They know it, but they just  
21 doesn't care. They're gonna put you in there  
22 and that other old guy's walking around with --  
23 that killed his grandma.

24 MR. SCOTT: Yeah, I know. They were  
25 talking about that --

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1 GRANDMA: Uh-huh. And he's still walking  
2 around. I think that was pretty damn dirty.  
3 But what can you do about it? Nothing.

4 MR. SCOTT: They had me out there, you  
5 know, interrogating me all afternoon, since 12  
6 o'clock this afternoon. I just got back.

7 GRANDMA: Well, just tell them you don't  
8 know nothing and you ain't seen nothing, heard  
9 nothing, and just leave you alone.

10 MR. SCOTT: Well, they comin' back,  
11 grandma.

12 GRANDMA: Well, just tell them you don't  
13 know nothing.

14 MR. SCOTT: And you know what, though --

15 GRANDMA: Hell, but you was in -- you was  
16 already in --

17 MR. SCOTT: But that's what I'm saying.  
18 They saying -- but I been in and out of prison  
19 during that time, right?

20 GRANDMA: Yeah, but not that much.

21 MR. SCOTT: That's what I'm saying. That's  
22 what I was trying to tell them.

23 GRANDMA: No. You've been in and out.  
24 You've been to Okeechobee and every damn where.

25 MR. SCOTT: They're trying to -- they

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1 going -- this dude here been accusing me --

2 GRANDMA: Just keep telling them you don't  
3 know. You just don't know what they're talking  
4 about because you don't know of anybody.

5 MR. SCOTT: But they're gonna go -- they're  
6 gonna try to -- you know, that dude's appeal  
7 comes in, right?

8 GRANDMA: Yeah. But they can't railroad  
9 you and all that. They ain't going to let you  
10 out no way so -- and --

11 MR. SCOTT: That's what they keep talking  
12 about. You ain't got nothing to lose.

13 GRANDMA: Yeah. You ain't got nothing to  
14 lose.

15 MR. SCOTT: They think I might have been an  
16 accessory to it. How in the hell could I have  
17 been an accessory to it?

18 GRANDMA: Yeah.

19 MR. SCOTT: Like I told them, I said, man,  
20 if I knew anything -- when I went through my  
21 murder charge, you don't think if I knew  
22 anything, that I would use that to my leverage  
23 and I wouldn't be doing all this fucking time  
24 right now in prison, if I knew about any murders  
25 that I knew could help me not get all this time?

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1 I said, man -- I said, I only have one  
2 thing out on the street I talk to. That's my  
3 granny. That's it. That's the only person I  
4 call. Anybody else, I don't know anything.

5 GRANDMA: I know it, so --

6 MR. SCOTT: But they -- they told me  
7 they'll be back.

8 GRANDMA: Well, just --

9 MR. SCOTT: And I believe they gonna come  
10 back for a warrant for my arrest.

11 GRANDMA: They can't arrest you on  
12 something that they ain't got no proof of.

13 MR. SCOTT: They got a palm print.

14 GRANDMA: Uh-huh. That could have been  
15 anybody's, too.

16 MR. SCOTT: Right. Well, see, that's why I  
17 need --

18 GRANDMA: All they do is frame people.

19 MR. SCOTT: Hey, can you get in touch with  
20 Cassina?

21 GRANDMA: I don't know. I'll try.

22 MR. SCOTT: What about Mark's wife? What's  
23 her name?

24 GRANDMA: Teresa. Why?

25 MR. SCOTT: Can you get her over to your

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1 house by lunchtime tomorrow?

2 GRANDMA: Lordy, no, because I got to be at  
3 the doctor's office tomorrow, and she's working.  
4 I can't -- she won't leave her job. Why?

5 MR. SCOTT: Huh? Because they gonna --  
6 these mother fuckers are hot, grandma.

7 GRANDMA: Well --

8 MR. SCOTT: It's going to be a big  
9 embarrassment to Polk County, right? Because if  
10 this dude wins that appeal, --

11 GRANDMA: Yeah.

12 MR. SCOTT: -- they going to try -- they  
13 going to put it on me and they're going to put  
14 me back in -- you know what?

15 GRANDMA: Well, why are they going to do  
16 that when you're in there for life and then they  
17 going to try and stick another damn --

18 MR. SCOTT: To justify.

19 GRANDMA: Uh-huh.

20 MR. SCOTT: Justify.

21 GRANDMA: Let another killer out there on  
22 that road is what they want to do.

23 MR. SCOTT: Grandma, they got somebody  
24 outside --

25 GRANDMA: They want to stick it to you and

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1 let somebody else out there that will kill  
2 people.

3 MR. SCOTT: That's what I told them. I  
4 said, you can let him out. I don't care.

5 GRANDMA: Let their day come. Their day's  
6 a comin'. You just sit back and watch it. Just  
7 like if you'd had killed somebody, it would have  
8 been a different story. But you hadn't killed  
9 nobody. You in there for life.

10 MR. SCOTT: Well, I -- I just talked to  
11 this dude that works in the other library,  
12 right? Explained the situation to him.

13 GRANDMA: Yeah.

14 MR. SCOTT: He said they could charge you.  
15 If they --

16 GRANDMA: Yeah.

17 MR. SCOTT: -- take you to trial, find you  
18 guilty, they going to put you back on death row  
19 and you won't come off.

20 GRANDMA: Lord. They're stupid. I hate  
21 God damn cops. They call here wanting money. I  
22 don't give them nothing, son of a bitches. I  
23 hate them.

24 MR. SCOTT: I need -- I need -- today's  
25 Tuesday.

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1 GRANDMA: Yeah.

2 MR. SCOTT: I need -- because I need to  
3 talk to Teresa. I need to talk to somebody at  
4 lunchtime so I can put this down to them and  
5 they can call that Public Defender's Office in  
6 Bartow and try to find out where Austin's at,  
7 because Austin's no longer with them. He's in  
8 his own private practice.

9 GRANDMA: All right. We better get off of  
10 here then. I'll talk to you later.

11 MR. SCOTT: If they come out to see me  
12 again, grandma, I'll call you again and let you  
13 know.

14 GRANDMA: Okay.

15 MR. SCOTT: All right?

16 GRANDMA: All right. I love you. Bye."

17 (Playing of the CD was concluded.)

18 THE WITNESS: That's my grandma.

19 BY MR. CUPP:

20 Q Okay. The only questions -- I'm not going  
21 to ask any questions about the conversation, but I  
22 just want to know if you recognize that as a  
23 conversation that took place between you and your  
24 grandmother.

25 A As soon as I heard it, yeah.

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1 Q Okay.

2 A That's the very first time we got to talk  
3 in years.

4 Q Okay. And that was after they came to see  
5 you, right?

6 A As a matter of fact, I think I just got saw  
7 by the newspaper person. That's what got me hot.

8 Q Okay. All I'm going to ask you to do is  
9 just put your initials on there and today's date,  
10 just that you listened to it, and all you're saying  
11 is that that's you and your grandma talking and that  
12 that conversation took place and it's accurate.

13 A Where at?

14 Q Anywhere on that disk. It should write on  
15 there.

16 A What you want me to put on there?

17 Q Just your initials, however you -- you  
18 know, you initial stuff.

19 MR. CUPP: And what's today's date? I  
20 don't even know.

21 THE COURT REPORTER: The 17th.

22 MR. CUPP: 2/17/10.

23 THE WITNESS: (Complied with the request.)

24 BY MR. CUPP:

25 Q Okay. And that -- what you just listened

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1 to, that's -- that's accurate? That was the  
2 conversation that took place between you and your  
3 grandma, correct?

4 A (Nodding head.)

5 Q Okay. Is that a yes?

6 A Yes, sir.

7 Q Okay. And then you said on there near the  
8 end, if they come to see you again, that you were --  
9 that you were going to call her again. You called  
10 her again, right? You talked to her again?

11 A I don't -- I don't know because -- because  
12 I ain't talked to her in a few years now. I guess  
13 you know that because, you know, she --

14 Q If I told you there's another one?

15 A There probably is. Like I said, I can't --  
16 if you say there is, there is. But I'm just saying,  
17 she don't have a phone for me to call, so I don't  
18 know. I haven't talked to her in a couple years now.

19 Q I'm saying back then. I know not now. I'm  
20 not asking you about now.

21 A Every time I was in Polk County, I tried to  
22 call her until we got the phone bill.

23 Q But after this one, then they took you out  
24 shortly after, and you saw Aguero, right? Remember,  
25 you told us that they brought you down?

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1 A I seen Aguero first.  
2 Q Huh?  
3 A I seen Aguero first.  
4 Q Aguero before this?  
5 A Before -- before that conversation. How  
6 else would I know about it?  
7 Q You saw Aguero before this? Before this?  
8 A Yeah. It was in county jail.  
9 Q This is -- didn't you hear that from  
10 prison?  
11 A Okay. I wasn't paying no mind.  
12 Q Okay. But you don't -- you don't deny that  
13 you've had -- you had other conversations with your  
14 grandma?  
15 A One thing about -- I won't ever lie to my  
16 grandma. My grandma's my life and soul.  
17 Q Okay.  
18 A She ask me something, I'm going to tell  
19 her. If she asks me to keep her informed on things  
20 and if I hear it, I'm going to keep her informed.  
21 Q So that's -- that phone conversation that  
22 we just listened to, you talking to your grandmother,  
23 you didn't lie to her? You told her the truth?  
24 A I told her.  
25 Q You told her --

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1 A I feel --

2 Q -- this is what these guys said to me?

3 A I feel -- this is what I told her. If I  
4 told her something, that means I feel something's  
5 going to happen to me. And, you know, in my mind, I  
6 always do because I'm superstitious in a lot of ways,  
7 you know. If it don't go your way, then why not?  
8 Blame it on him. Well, take your best shot, you  
9 know?

10 Q Switching gears a little bit, when you came  
11 down to see Mr. Aguero back in 2005, you didn't get  
12 to go back right away, right? They kept you here  
13 quite a while?

14 A Yeah.

15 Q Why was that?

16 A They had me hot. Believe me. I don't like  
17 staying in this jail at all.

18 Q I don't blame you. But why did you -- why  
19 were you -- you spoke to him on that one time, went  
20 to his office. Then you were -- you stayed down here  
21 several months.

22 A Several months.

23 Q Well, according to the booking records, you  
24 came down on January 25th, 2005, and they didn't get  
25 you back to prison until March 14th. So that's

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1 almost two months.

2 A He only saw me that one time.

3 Q I understand. Why did you -- why did they  
4 keep you down here so long, if you know?

5 A I have no idea. Trust me. It's the first  
6 thing I made known this morning. I want to go back  
7 to my camp.

8 Q I understand.

9 A And I want to go back now because this -- I  
10 don't like being -- being out like this, you know.

11 Q Okay. But during that two-month period  
12 after you saw Aguero, you didn't talk to anybody  
13 else? They didn't come to the jail? Detectives  
14 didn't come to see you during that two-month period?  
15 You just sat in jail for two months?

16 A I got visits from my cousin.

17 Q Who's that?

18 A My baby cousin Cassina.

19 Q Cassina? That's a girl?

20 A Yeah.

21 Q Nobody from --

22 A My grandma.

23 Q Your grandmother was able to see you?

24 A Yeah.

25 Q Okay. Good. How's she doing, by the way,

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1 today?

2 A I couldn't tell you. Can't -- I don't know  
3 the number.

4 Q When was the last time you spoke to her?

5 A Been in a while.

6 Q Like weeks?

7 A No.

8 Q Months?

9 A Years.

10 Q Years?

11 A Like I say, it's been years, because she  
12 just had an operation, a hernia -- a liver and a  
13 bladder, and she was in Georgia. She moved back to  
14 Alabama -- Alabama, down in Perry, Florida. Now she  
15 living with Cassina. Now she living with Cassina.

16 Q Where does Cassina stay?

17 A She stayed -- actually, she stays in Offen  
18 Park (phonetic).

19 Q Avon Park?

20 A Avon Park, something like that.

21 Q So your grandmother's here in Florida?

22 A Yeah. They don't even know I'm here. I'm  
23 not going to let them. I don't want them involved in  
24 none of this stuff that's going on.

25 Q I hope she's doing okay. I think we're

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1 almost done. Just give me a minute.

2 I'm going to just ask you about prior  
3 convictions, okay? You were convicted of first  
4 degree murder, correct?

5 A What do you mean prior -- this one here?

6 Q What you're in prison for.

7 A First degree murder and robbery.

8 Q Okay. Robbery with a firearm?

9 A No, sir.

10 Q But robbery?

11 A Robbery. Whatever. Robbery, whatever they  
12 want to say it was. I don't know. They didn't  
13 say -- over a certain amount of money makes it a  
14 robbery or something, armed robbery.

15 Q But you're saying you weren't -- weren't  
16 convicted of robbery with a gun?

17 A No, sir.

18 Q Burglary of a dwelling?

19 A Maybe in the past.

20 Q Grand theft? I'm not saying stuff you were  
21 arrested for. Things you were actually convicted of.

22 A Talking about in my past?

23 Q Yes, sir.

24 A Yes, sir. Yes, sir.

25 Q Battery on a law enforcement officer?

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1 A County jail, yes, sir.

2 Q Arson?

3 A Yes, sir, county jail.

4 Q Set fire to a mattress?

5 A Yes, sir.

6 Q And another burglary of a dwelling?

7 A Yes, sir.

8 Q So I got seven prior felony convictions.

9 That sound correct?

10 A I don't know how you look at it that way  
11 'cause really, I'm not going to debate it, but, you  
12 know, like I said, I copped out to my time in prison  
13 back in them days for them charges, you know?

14 Q You went to trial on the murder though,  
15 correct?

16 A Yeah, and lost.

17 Q Okay. We're going to step outside a  
18 second. I think we're done.

19 (Off the record.)

20 MR. CUPP: No more questions.

21 MR. BENEFIELD: Was that recording done  
22 illegally?

23 MR. CUPP: For the record, we got that from  
24 the state.

25 MR. BENEFIELD: Then it was done legally.

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1 I had not heard that recording.

2 MR. CUPP: Okay. There's -- well, we can  
3 talk about that.

4 MR. BENEFIELD: Okay. I haven't heard that  
5 recording.

6 MR. CUPP: For the record, we got this from  
7 the state. Not from you, obviously, but we got  
8 it from the state.

9 THE WITNESS: State correctional  
10 institution?

11 MR. CUPP: I'm sorry?

12 THE WITNESS: Prison institution?

13 MR. CUPP: We got it from the State of  
14 Florida. We got it from them.

15 THE WITNESS: Washington CI? I need to  
16 know because it goes on my phone record.

17 MR. CUPP: Well, I think if you listen in  
18 the beginning, it does tell you that, but that's  
19 where you were at the time, Washington CI.

20 MR. BENEFIELD: Okay. So we're finished.  
21 Thank you all very much for escorting.

22 And Jeremy, as I told -- we're off.

23 MR. CUPP: Let's stay on for a second. I'm  
24 sorry. We've got to do one last thing.

25 Just for the record, this phone call -- the

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1 phone call that we just listened to and the  
2 witness identified -- which I think I just stuck  
3 back in here -- we're going to make this --  
4 we're going to make this part of the deposition  
5 record to keep it all together.

6 THE COURT REPORTER: An exhibit?

7 MR. CUPP: Yes, as an exhibit, Exhibit 1,  
8 okay? And I guess if we need copies or parties  
9 need copies --

10 MR. BENEFIELD: I want a copy.

11 MR. CUPP: You have it. You just don't  
12 know you have it. If you can't find one, we'll  
13 give you one.

14 MR. BENEFIELD: If I can't find one, I'll  
15 ask you.

16 MR. CUPP: Absolutely. That's all I have.

17 (Defendant's Exhibit No. 1 was marked for  
18 identification.)

19 (Thereupon, at approximately 2:35 p.m., the  
20 deposition was concluded.)

21

22

23

24

25

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CERTIFICATE OF OATH

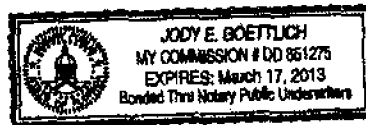
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STATE OF FLORIDA )  
COUNTY OF POLK )

I, the undersigned authority, certify that  
JEREMY SCOTT personally appeared before me and was  
duly sworn.

WITNESS my hand and official seal this 25th  
day of February, 2010.

  
\_\_\_\_\_  
Jody E. Goettlich, RPR, CRR  
Notary Public - State of Florida



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## 1 REPORTER'S CERTIFICATE

2  
3 STATE OF FLORIDA )4 COUNTY OF POLK )  
5

6 I, Jody E. Goettlich, RPR, CRR, certify  
7 that I was authorized to and did stenographically  
8 report the deposition of JEREMY SCOTT, that a review  
9 of the transcript was not requested; and that the  
10 transcript is a true and complete record of my  
11 stenographic notes.  
12

13 I further certify that I am not a relative,  
14 employee, attorney, or counsel of any of the parties,  
15 nor am I a relative or employee of any of the  
16 parties' attorney or counsel connected with the  
17 action, nor am I financially interested in the  
18 action.  
19

20 DATED this 25th day of February,  
21 2010.  
22

23   
24 Jody E. Goettlich, RPR, CRR  
25

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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

-----

STATE OF FLORIDA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. CF88-2346A1-XX
	:	
LEO SCHOFIELD, JR.,	:	
	:	
Defendant.	:	
	:	

-----

**ORIGINAL**

EVIDENTIARY HEARING

May 5, 2010

Attorneys:	C.J. Benefield, Esquire For the State
	Scott Cupp, Esquire Richard Bartmon, Esquire For the Defense

OFFICE OF THE ELECTRONIC COURT REPORTER  
(863) 534-4009

1 (Whereupon an off-the-record sidebar was held).

2 THE COURT: Mr. Cupp, are you intending to rest at  
3 this point, sir, or are you going to call your next  
4 witness?

5 MR. CUPP: We're prepared to rest with the witness  
6 portion and the evidence portion.

7 THE COURT: Alright. And you wish to put on a case;  
8 is that correct, Mr. Benefield?

9 MR. BENEFIELD: Yes, Your Honor. I want to call  
10 Jeremy Scott as a witness.

11 THE COURT: Alright. Mr. Scott, come on and take a  
12 left up here, sir. Step up. To the extent that you can  
13 raise your right hand --

14 JEREMY SCOTT,  
15 the witness herein, being first duly sworn, was examined and  
16 testified as follows:

17 THE COURT: Put your hand down. You can have a  
18 seat.

19 DIRECT EXAMINATION

20 BY MR. BENEFIELD:

21 Q Mr. Scott, for the record, would you give us your  
22 full name, please, sir.

23 BY THE WITNESS:

24 A Jeremy Lynn Scott.

25

1 Q And what is your date of birth?

2 A 4/29/1969.

3 Q Mr. Scott, have you ever been convicted of a felony  
4 in the past?

5 A Yes, sir.

6 Q How many?

7 A Seven.

8 Q I'm going to ask you some questions about a case  
9 that's called Schofield v. Florida. I'm going to ask you did  
10 you ever know a person named Michelle Schofield?

11 A No, sir.

12 Q I'm going to ask you did you kill Michelle  
13 Schofield?

14 A No, sir. I didn't.

15 Q Are you aware that a fingerprint of yours was found  
16 in her vehicle?

17 A Yes, sir. I am.

18 Q Are you aware that, that vehicle was found abandoned  
19 close to I-4?

20 A Yes, sir.

21 Q How is it that your fingerprint came to be in that  
22 car?

23 A First I was told by detectives that my fingerprint  
24 was in the car. Then once I'd seen the car I didn't recognize  
25 it, but once I'd seen the inside of the car that's when I

1 recognized it.

2 Q How did you see the inside of the car?

3 A The detective showed it to me in pictures.

4 Q He showed you some pictures?

5 A Yes, sir.

6 Q Okay. We're going to go into a little bit more  
7 detail but -- in fact, we'll just start right now with it. In  
8 fact, you had a visit with some detectives, right?

9 A Yes, sir.

10 Q Do you recall about what year that was?

11 MR. CUPP: I'm going to object to leading just based  
12 upon the nature of this witness. I don't want to be  
13 jumping up and down. We've been pretty relaxed. But  
14 with this particular witness I would object to that  
15 question.

16 THE COURT: The objection is sustained as to the  
17 question as it was asked.

18 MR. BENEFIELD: I was just trying to get the  
19 foundation.

20 BY MR. BENEFIELD:

21 Q Were you ever questioned by the detectives in this  
22 case?

23 BY THE WITNESS:

24 A Yes, sir.

25 Q Was it about this fingerprint?

1 A Yes, sir.

2 Q Okay. Do you know about when that questioning took  
3 place?

4 A Around -- I would guess around 2006 when I was at  
5 Washington C.I.

6 Q What were you told by the detectives?

7 A I was told I wasn't a suspect. I was told that they  
8 wanted to ask me some questions about leading up to a  
9 fingerprint and something about I-4 and Highway 33. I  
10 answered their questions. I answered it the best I could.

11 Q What did you tell them?

12 A I told them, to my knowledge as far as the stereo, I  
13 had showed it to him inside of the car where it's been ripped  
14 out. That's the only way I could explain my fingerprint -- my  
15 palmprint being on the windshield when I jerked the stereo  
16 out. And other than that, that was the only thing I had to do  
17 with that car.

18 Q Now, did you say you looked at some pictures that  
19 the detective showed you?

20 A Yes, sir.

21 Q Is that what you're talking about when you saw the  
22 inside of the car?

23 A Yes, sir.

24 Q What was reflected in those photographs?

25 A Yes, sir.

1 Q Okay. Did you ever talk to anybody else about this  
2 case?

3 A Well, since it was brought to my attention, yes, my  
4 grandma.

5 Q And how did you talk to her about it?

6 A On the phone. Told her detectives came up harassing  
7 me about a charge, about a case, and about something happening  
8 in '87. Because my grandma used to live out around North  
9 Combee Road.

10 Q Did you ever talk to anybody else about the case?

11 A Not to my knowledge I haven't.

12 Q Let me ask you, were you ever brought to the State  
13 Attorney's Office?

14 A Yes, sir.

15 Q Did you talk to the State Attorney about this case?

16 A Yes, sir. I have.

17 Q And what did he ask you?

18 A He asked me basically the same questions that  
19 everybody else has been asking me. Did I -- about the  
20 fingerprints, did I kill someone, do I know this car, do I  
21 know this person, do I know this person. I answered to the  
22 best of my knowledge I don't know this, you know. Everything  
23 leads up to now. It's been almost 23 years ago.

24 Q Alright. Well, let's talk a little bit about your  
25 activities back when this would have happened in '87. I mean,

1 tell me about your activities back then.

2 A My activities was I wasn't into stealing cars or  
3 tires. My thing was breaking into cars -- stereo systems and  
4 speakers. That was my thing. I had a friend we called Rambo.  
5 His name was Steven Gilbert. And that was our thing going on  
6 I-4. Because we timed it when the Highway Patrol goes down  
7 the road every hour, once he goes by we hit cars that's parked  
8 on the side. If we couldn't get in it we left it alone.

9 Q Do you have an estimate of how many times you did  
10 this back then?

11 A I'd say at least six-seven-eight times at the most.

12 Q Six, seven or eight cars?

13 A Yes, sir.

14 Q What would you do with the equipment that you took  
15 out of there?

16 A Pawn shops. They'd sell for like \$20-\$30.

17 Q Back then did you have any transportation yourself?

18 A Later on -- not personally, no. No, I didn't. My  
19 ex had her car and then later on we had a friend of ours had a  
20 car. But other than that, no, I never owned a vehicle.

21 Q Who are you referring to when you say your ex?

22 A Jamie Allen.

23 Q So that was your means of transportation?

24 A Yes, sir.

25 Q Was her and then you said another friend?



1 A Yes, sir.

2 Q And who was this person you mentioned that you did  
3 your stealing with?

4 A Rambo. That was his nickname, Rambo. His name was  
5 Gilbert Stevenson.

6 Q Would he provide transportation?

7 A No, sir. He couldn't even drive.

8 Q How did you get transportation to do these  
9 activities?

10 A Jamie's car. Jamie was not aware of it. As a  
11 matter of fact we had her car out one night. That's how she  
12 had got her car taken from her because her mamma works at a  
13 hospital and when she got off of her little work she  
14 recognized the car was missing and thought she had lost her  
15 car.

16 Q Do you know about when you met Jamie?

17 A April the 17th, 1987.

18 Q How do you remember that date?

19 A Because my birthday is on the 29th of April.

20 Q Do you know about how long you were with her?

21 A Probably about towards '88 -- end of '88. When I  
22 got -- when I came to prison.

23 Q Up until the time you came to prison you were with  
24 her?

25 A Yes.

1 Q Are you familiar with the area of Highway 33 and  
2 I-4?

3 A I'm not familiar with it but I do know it.

4 Q I'm going to show you a picture.

5 MR. BENEFIELD: If I may, Your Honor.

6 THE COURT: Yes. Do you want to come up and see it?

7 MR. CUPP: Thank you.

8 BY MR. BENEFIELD:

9 Q I'm going to ask you if you recognize this picture  
10 of I-4 and Highway 33.

11 BY THE WITNESS:

12 A That's the underbridge. Polk goes that way.

13 Q Yes. Polk City would be out this way.

14 A Right, because I-4 goes this way. It comes out  
15 towards my grandma's house.

16 Q Yes. And what road would this be?

17 A That would be 33.

18 Q 33. Did you ever take Jamie up to this area in  
19 here?

20 A I might have in the early part of our relationship  
21 but there wasn't no lake here. It was over this side. It was  
22 more bushes over here. Because this was a teenager's hangout  
23 spot until we got ran off.

24 Q So this picture doesn't reflect the way it was then?

25 A No, sir. It doesn't.

1 Q You're saying when you lived there it had more  
2 bushes?

3 A More bushes because it hides your vehicles. A lot  
4 of teenagers go out there. That's just like going out on  
5 Saddle Creek, you know, before they put all the trailers out  
6 there and stuff and the patrol station out there. That's been  
7 mowed down.

8 Q But you took her up in this side then you're saying?

9 A Yes, sir.

10 Q Okay. Do you recall taking her there any time other  
11 than that early time when you all were first dating?

12 A I took her out to Saddle Creek quite a few times.

13 Q And what would you do at this area and at Saddle  
14 Creek?

15 A That was the make-out lanes.

16 Q Okay. I'm going to ask you one more time, did you  
17 kill Michelle Schofield?

18 A No, sir.

19 MR. BENEFIELD: I have no further questions, Your  
20 Honor.

21 THE COURT: You may inquire, Mr. Cupp.

22 MR. CUPP: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. CUPP:

25 Q Just so I'm clear, you're saying that picture that

1 you were showed does not accurately reflect the way that area  
2 was back in '87?

3 BY THE WITNESS:

4 A No, sir. It wasn't. To my knowledge we had bushes  
5 about up to this height right here.

6 Q For the record he's saying about 4 to 5 feet high.

7 A Yes, sir.

8 Q And you're saying you were over here?

9 A Yeah, because not too far from -- when you come from  
10 the underpass and you go that way you go to my grandma's  
11 house.

12 Q Right. Your grandmother lived out here by  
13 Davenport?

14 A Right. Because we always take Davenport and go that  
15 way because if you go to Davenport it goes right down there  
16 and you cut right there is her house.

17 Q So if you were back down here in the Lakeland area  
18 and you were going to your grandmother's you'd go down 33 --

19 A Down 33.

20 Q -- jump on I-4 and shoot up?

21 A Shoot out.

22 Q Now, back to this picture. You don't want to be on  
23 this side, do you? You don't want to put yourself on this  
24 side, do you?

25 A Why?

- 1 Q I don't know. You tell me.
- 2 A I've been to all kinds of lakes in Polk County.
- 3 Q But you've never been on this side of the road;
- 4 you've only been on this side of the road, right?
- 5 A Not to my knowledge. I've been on that side.
- 6 Q This side?
- 7 A But not for no make-out.
- 8 Q You've never been on this side where the lakes are
- 9 with Jamie -- you weren't there with Jamie, right?
- 10 A No, sir.
- 11 Q You were just always over here.
- 12 A I was only on that side with Jamie one time. It was
- 13 early in our relationship. The other times we went down to
- 14 Saddle Creek or we went out towards Kissimmee.
- 15 Q And this picture isn't accurate?
- 16 A Nuh-huh. Not to me it ain't. Because that side had
- 17 more bushes up.
- 18 Q And you don't want to be on this side because you
- 19 know that's where --
- 20 A Yeah, I'm aware of that.
- 21 Q You know a girl's dead body was found over there and
- 22 Michelle Schofield's body was found over there -- you know
- 23 that, right?
- 24 A I only know one.
- 25 Q Who is that?

1 A That was Michelle's.  
2 Q Who told you that?  
3 A The detective.  
4 Q He showed you these pictures?  
5 A That's right.  
6 Q And he showed you a lot of stuff, didn't he?  
7 A Sir?  
8 Q He showed you a lot of pictures, didn't he?  
9 A Yeah, he showed me quite a few of them.  
10 Q And he told you a lot of stuff, didn't he?  
11 A Can you refer to what you're referring to?  
12 Q He gave you a lot of information about this  
13 Schofield thing, didn't he?  
14 A No.  
15 Q He didn't? Okay.  
16 A He just asked me what most detectives ask. Ask a  
17 person and then you go home.  
18 Q He just asked you if you did it and you told him no?  
19 A I told him no. He showed me pictures. I didn't  
20 recognize her. He showed me the picture of Schofield. I  
21 didn't recognize him. He asked me if we ever -- did I know  
22 him from the street. I did not know him. If he did come out  
23 there he came out to the green house on Kentucky.  
24 Q I've gotcha. And he didn't tell you facts about the  
25 case?

1 A Nuh-huh. No, sir.  
2 Q None?  
3 A They just told me the woman was stabbed up.  
4 Q Didn't tell you any details?  
5 A No, sir.  
6 Q Didn't tell you anything about blood?  
7 A Not to my knowledge they didn't.  
8 Q They didn't tell you that they needed your help?  
9 A They asked me if I'm willing to come and testify  
10 about my palmprint. Yes, I am.  
11 Q My question is they didn't tell you that they needed  
12 your help?  
13 A What can I help them with?  
14 Q That's not my question. Did they tell you that they  
15 needed your help?  
16 A Yeah.  
17 Q Help with what?  
18 A To testify about my palmprint.  
19 Q They weren't trying to make you an accessory?  
20 A No, sir.  
21 Q They didn't try that?  
22 A No, sir.  
23 Q They didn't tell you that they know you didn't do it  
24 but they thought you were involved in it; they told you that?  
25 A (No verbal response).

1 Q You don't remember?

2 A No.

3 Q If you don't remember, you don't remember.

4 A I ain't involved in nothin', sir.

5 MR. CUPP: May I use one of the exhibits?

6 THE COURT: Yes, sir.

7 MR. CUPP: This is State's 82.

8 BY MR. CUPP:

9 Q Take a minute and look at that and see if you  
10 recognize this. This is I-4. This is 33, okay? Are you with  
11 me?

12 BY THE WITNESS:

13 A Uh-huh, 33.

14 Q Okay. And your testimony -- you just testified that  
15 you were on this side of 33, correct? And this would be the  
16 side of the lakes, okay? Can you point to some of the areas  
17 on here that you would have stayed at? I don't mean that you  
18 lived there full-time.

19 A Old Combee Road.

20 Q Can you point to that for me?

21 A Well, there's Combee Road here, too.

22 Q Okay. And what are some of the places you would  
23 have -- and I'm talking about back in '87.

24 A '87 now. I didn't live out there in '87.

25 Q I'm not saying lived. You lived in -- let me ask a



1 few questions about that. You lived -- you had a difficult  
2 live back then. You weren't staying in the same place all the  
3 time?

4 A No. I was in and out of trouble.

5 Q Okay. And you would stay sometimes at friend's  
6 houses for a few nights and sometimes you'd end up staying in  
7 abandoned houses, correct?

8 A Uh-huh. Yes, sir.

9 Q Sometimes you'd stay at your grandmother's?

10 A Yes, sir.

11 Q And where did your grandmother live back then?

12 A She lived on Combee Road but in '87 she lived out  
13 there on --

14 Q Davenport?

15 A -- Davenport Road.

16 Q Okay. And back in '87 there would be times -- it  
17 would be common for you to travel in this general area, not  
18 whether you were staying there or not. You knew this area  
19 like the back of your hand, correct?

20 A Basically. Yes, sir.

21 Q Okay. You travelled on foot, correct?

22 A Not on foot. It's too much of a long walk.  
23 Normally I'd get a bicycle or something.

24 Q Okay. You knew the back paths and on that -- this  
25 picture you knew these trails and stuff along the lake?

- 1 A No, sir.
- 2 Q You didn't? Okay. You knew how to get around in a  
3 car? If somebody was driving you, you could direct them?
- 4 A Yes, sir.
- 5 Q Okay. And again, just so I'm clear, your testimony  
6 today is that you now remember that you stole the stereo out  
7 of that car, correct?
- 8 A I've been saying I stole it.
- 9 Q Okay.
- 10 A I ain't never denied what I do.
- 11 Q You stole the stereo?
- 12 A That was my hobby. That's what I do.
- 13 Q Okay. Because you needed money?
- 14 A Yes, sir.
- 15 Q Is it fair to say \$10 or \$12 in loose change would  
16 be -- back then that would be a lot of money for you?
- 17 A No. We don't get -- if we don't get 30 or 40 or  
18 more dollars for a stereo it ain't worth taking.
- 19 Q That was a bad question. Forget about the stereos.  
20 If you come along and you find \$10 or \$12 back then -- I'm  
21 talking '87 -- that would have been a lot of money for you?  
22 You could eat with it, correct?
- 23 A No. You couldn't really buy much with no \$20.
- 24 Q How much was gas back then?
- 25 A I couldn't even tell you.

1 Q Were you working back then?

2 A I worked at a construction site but that was only  
3 temporarily. Then I worked at Krystals, you know.

4 Q But you weren't rolling in dough?

5 A No. I don't roll in dough and I don't do dope. I  
6 don't do nothin', so --

7 Q I didn't ask you that. To survive you always had to  
8 get money, correct -- that's why you stole?

9 A Yes, sir.

10 Q Okay. And you would steal from people?

11 A I wouldn't go that far as saying people. There is a  
12 limitation to stealing.

13 Q And what is that?

14 A First of all, you don't just snatch people's  
15 pocketbook and run or you don't knock a man down and take his  
16 wallet or you just don't knock a guy out of his car just to  
17 rob it.

18 Q Do you bash him in the head with a fruit bottle,  
19 knock him unconscious, then strangle him with a telephone cord  
20 --

21 MR. BENEFIELD: Objection.

22 Q -- and then steal his money? Do you do that?

23 THE COURT: The objection is overruled.

24 BY MR. CUPP:

25 Q And then do you do that? Would you do that?

1 BY THE WITNESS:

2 A No, sir. I don't.

3 Q Isn't that what you did to Mr. Moorehead?

4 A Now, if you want to go into that case, that's a  
5 totally different case. I'm doing a life sentence for that  
6 case. I did not deny what I did. I'm serving my time for  
7 that, sir. I'm living with the guilt of that murder.

8 Q And the purpose for the murder of Mr. Moorehead was  
9 his money --

10 MR. BENEFIELD: Your Honor --

11 Q -- and his vehicle?

12 A No. It had *nothing* to do with it.

13 MR. BENEFIELD: -- objection.

14 THE COURT: Hold on. What is your objection?

15 MR. BENEFIELD: The objection is testimony about  
16 this whole situation is not relevant. We're going to be  
17 arguing that later on. I'm treating this kind of like a  
18 proffer like we did Jamie, I guess, but this is not  
19 relevant admissible testimony going into this other  
20 murder.

21 THE COURT: For the purpose that Mr. Cupp is asking  
22 the question the objection is overruled. Mr. Cupp,  
23 you've asked the question and I think he answered the  
24 question.

25 MR. CUPP: Yes, sir.

1 BY MR. CUPP:

2 Q So you don't --

3 MR. CUPP: I don't want to run afoul of The Court's  
4 ruling. Just so I'm clear I'm going to ask one more and  
5 you can tell me move on if I need to before he answers.

6 BY MR. CUPP:

7 Q So you don't deny that the motive that the reason  
8 why you killed Mr. Moorehead was to take some money from him?

9 BY THE WITNESS:

10 A Yes, I deny it.

11 Q And to take his car?

12 A Yes, I deny it.

13 Q Okay.

14 A Because you're wrong. You don't know that case,  
15 sir.

16 Q You did take some money from him, though, correct?

17 A We took the money out of the car, sir.

18 Q And you took his car?

19 A We'd been -- had his car, sir.

20 Q You took his car after you killed him, correct?

21 A What has this got to do with anything?

22 Q Is that your answer?

23 A My answer is I killed a man with a wine bottle. It  
24 was a fight. There was two of us. Money was not stolen. If  
25 you remember correctly, I'm the one that sent the officers to

1 the money and to the dope where it's in the house. So if I  
2 was going to steal the money I would have stole all that. Now  
3 why didn't I? Why would I go to my grandma -- my mamma's  
4 house? Why would I turn myself in when the police came?

5 Q You turned yourself in?

6 A When they came up I did.

7 Q Isn't it true --

8 A I did not run from them.

9 Q Isn't it true that the way they found you is your  
10 girlfriend who you testified about -- Jamie -- was driving Mr.  
11 Moorehead's car and they stopped her?

12 A Nuh-huh.

13 Q And she told them where you were?

14 A No.

15 Q That's not true?

16 A The truth was in that statement there was it's true  
17 Jamie -- we asked Jamie to get in the car to go down and see  
18 if the cops was going to pull her over. When they did the cop  
19 was standing out there. Ryan was in my aunt's house sleeping.  
20 When the detectives came I came out of the woods. I told them  
21 when they were standing there, I said Jamie had nothing to do  
22 with it. I asked Jamie to get in the car to drive to see if  
23 that cop was going -- if that's what that case was. We knew a  
24 guy that saw the license plate called it in.

25 Q So just so I'm -- you're now -- your testimony is

1 that you and your co-defendant sent Jamie down the road in Mr.  
2 Moorehead's car to see if the cops would stop her; is that  
3 correct?

4 A And they did.

5 Q Okay. I'll move on. Let's talk about Jamie for a  
6 minute. You had a pretty violent relationship with her,  
7 didn't you?

8 A No, sir.

9 Q Never struck her?

10 A When we had arguments.

11 Q So you did strike her?

12 A Nothin' -- just fighting. That's it. One time and  
13 that was --

14 Q You struck her one time?

15 A Yes, sir.

16 Q What did you strike her with?

17 A My hand -- back of my hand.

18 Q Not your fist?

19 A No, sir.

20 Q How did she break her jaw?

21 A You tell me that one. That would be a good one.

22 Q You don't know?

23 A No, sir.

24 Q And you don't deny that you took her on two  
25 occasions out to that area that we showed you pictures about;

1 you were just on the other side of the road, correct?

2 A Yes, sir.

3 Q And that was back in 1987, correct?

4 A '87-'88 'til I got locked up.

5 Q And it was in the middle of the night, correct?

6 A Not always.

7 Q It was dark?

8 A Not always.

9 Q Those times that you took her out there on --

10 A I said not always.

11 Q Those two times was it --

12 A It would be daylight and night.

13 Q So one of them it was daylight and one of them was

14 night?

15 A Yes, sir.

16 Q So you deny that you were threatened by the police

17 to cooperate?

18 A Yes, sir. I wasn't ever threatened by no police.

19 Q You deny that you were told that if you didn't help

20 them you'd be charged, brought back and put on death row and

21 you'd never come off?

22 A I ain't never been threatened, like you can't

23 threaten me.

24 Q But let's assume for a minute that, that did happen.

25 That would mean something to somebody like you, correct?



1 A No.

2 Q Because you've been on death row.

3 A That's right. I have been. And I'm being honest  
4 with you.

5 Q Who put you there?

6 A John Aguero.

7 Q The same guy that was talking to you, correct?

8 A Yes, sir.

9 Q When he was talking to you was there any recording  
10 going on?

11 A I don't know. I didn't ask.

12 Q You didn't have a lawyer?

13 A No. For what? You tell me I'm not being charged, I  
14 don't need a lawyer.

15 Q So he told you, you weren't going to be charged?

16 A That's what I assumed. I wasn't being charged with  
17 nothin'. I wasn't a suspect or nothin'. They wanted to ask  
18 me some questions and I answered it and I was on my way. And  
19 all these years go by later and here I am again being harassed  
20 by you all, by the newspaper people.

21 MR. CUPP: If I could have one moment, please.

22 THE COURT: Yes, sir.

23 BY MR. CUPP:

24 Q Isn't it true that this is the first time that you  
25 haven't denied -- that you've denied that you -- excuse me.

1 This is the first time that you've said that you stole the  
2 stereo?

3 BY THE WITNESS:

4 A Nuh-huh. I did not steal any stereo, sir.

5 Q Isn't it true that before you said you didn't know,  
6 you didn't remember? And now you remember?

7 A It's the only information I got. If I broke into a  
8 car it's for a reason. I don't break into cars to steal cars.  
9 I break into cars to steal stereos and speakers.

10 Q But you've stolen cars -- you've been convicted for  
11 stealing cars, haven't you?

12 A I wouldn't say I stole them. I'd say it was in it  
13 with somebody but I did not --

14 Q And you were convicted for stealing cars?

15 A What year was that?

16 Q I'm just asking you a question.

17 A I'm asking you a question. What year was that? I  
18 believe I was too young to drive.

19 MR. CUPP: I'm going to object as unresponsive and  
20 ask that he be ordered to answer the question.

21 THE COURT: The question is -- what is the question?

22 MR. CUPP: Let me try to rephrase it.

23 BY MR. CUPP:

24 Q Do you deny that you've stolen cars in the past and  
25 been convicted for it?

1 BY THE WITNESS:

2 A I don't deny it.

3 Q So you have stolen cars?

4 A I have been involved in it.

5 Q Okay. But you deny that you had anything to do with  
6 this homicide and the vehicle that was found on I-4, you don't  
7 deny that your print was in there, correct -- or do you?

8 A I deny having something to do with that crime, yes.  
9 But as far as palmprint, that's my only knowledge I could  
10 have.

11 Q What makes you think it was a palmprint?

12 A Because that's what I was told inside a windshield.

13 Q And you testified -- okay. You were told it was on  
14 the inside of the windshield?

15 A Yes, sir.

16 Q Okay. Driver's side or passenger's side?

17 A They did not say. They just said it was --

18 Q Didn't you testify earlier that you said it was the  
19 driver's side?

20 A No, sir. I didn't. Because the windshield is right  
21 there.

22 Q So you're telling us today that they told you it was  
23 a palmprint, not a fingerprint?

24 A There was palmprints all over it, I was told.

25 MR. CUPP: I don't know how we want to do this

1 procedurally. I don't have any more questions at this  
2 point but we do have an agreement, I think, that these  
3 phone calls are going to be played. Mr. Benefield does  
4 not object to that. I would present that as continuing  
5 part of the Cross. I don't know if he wants to Redirect  
6 and then we do the calls or do you want to do the calls  
7 and then Redirect or --

8 MR. BENEFIELD: Let's do the calls and then I'll be  
9 able to do Redirect.

10 MR. CUPP: If that's okay with The Court. I may  
11 need a little help with the -- if I may approach the  
12 Clerk. It's the first phone call that was actually  
13 entered into the record and it's in his deposition also.

14 (Whereupon two telephone calls were played in open court).

15 MR. CUPP: Judge, I think we need to enter this.  
16 The other one is already --

17 THE COURT: It's part of the deposition?

18 MR. CUPP: Correct.

19 THE COURT: Do you have any Redirect, Mr. Benefield?

20 MR. BENEFIELD: Just a couple. Thank you, Your  
21 Honor.

22 REDIRECT EXAMINATION

23 BY MR. BENEFIELD:

24 Q Jeremy, on listening to those tapes on that second  
25 tape you told your grandmother you remember something,

1 something about Judy had a little car, it was purplish?

2 BY THE WITNESS:

3 A Yes, sir.

4 Q "I put speakers in that car." What were you talking  
5 about there?

6 A I don't know the town they lived at. It was around  
7 when I left Perry and went down to live with my aunt and uncle  
8 for awhile when I was working at Howard Johnson. She worked  
9 in the bar and I worked in the restaurant. And every night I  
10 had to stay in her car and wait for her to get off work  
11 because I'm underage to go in the bar then. And she didn't  
12 have no speakers. So when I had the speakers I put the  
13 speakers in the car. The stereo wouldn't work so --

14 Q Okay. Let me stop you. When you said, "I had the  
15 speakers" what speakers are you talking about?

16 A Speakers I stole out of a car off of I-4.

17 Q And you said, "This will prove me innocent."

18 A That's the only thing that can prove me.

19 Q So you're saying -- you were saying, "I need to find  
20 that car. It's got those speakers that I took out of that  
21 car"?

22 A Yes, sir.

23 Q "And it will show that's why my palmprint is in that  
24 car."

25 A That's what I was trying to get grandma to

1 understand.

2 Q Now, there is a couple of references that you made  
3 to speaking to a law clerk in the library.

4 A Yes, sir.

5 Q Is that another inmate?

6 A It's an inmate.

7 Q That's an inmate. I think one time you said he  
8 said, "They're trying to put you back on death row"?

9 A Yes, sir.

10 Q Is that where you got that?

11 A Yes, sir.

12 Q Okay. I mean, did any detective or State Attorney  
13 ever threaten that they were going to put you back on death  
14 row?

15 A No, sir.

16 Q That came from that law clerk?

17 A Came from the inmate himself.

18 Q Okay. And I think you made a statement that, "He  
19 told me if I don't help him I might be charged." What kind of  
20 help was he asking? What was he asking you to do?

21 A Basically to testify about my palmprint.

22 Q To say where that palmprint came from?

23 A Yes, sir.

24 Q And what was the explanation for it. Okay.

25 A I'm going to put it this way. Any time you don't

1 help out a lot of times you're going to get charged with it.  
2 I've seen it too many times.

3 Q There was a couple of times that you made the  
4 statement that dude is trying to put the murder charge on you.  
5 Did you hear that? Were you talking about Leo Schofield as  
6 that dude?

7 A Yes, sir.

8 Q He was trying to put the murder on you.

9 A Yes, sir.

10 MR. BENEFIELD: I don't have any further questions,  
11 Your Honor.

12 THE COURT: Do you need for Mr. Scott to remain in  
13 the Polk County Jail for the duration of this hearing?

14 MR. BENEFIELD: No, sir. He can be transported back  
15 to where he goes.

16 THE COURT: Do you agree with that, Mr. Cupp?

17 MR. CUPP: Yes, sir.

18 THE COURT: You can leave and they'll transport you  
19 back.

20 THE WITNESS: Okay. Thank you, sir.

21 MR. BENEFIELD: Your Honor, the State has one more  
22 witness that we're going to call in the morning.

23 THE COURT: Alright.

24 MR. BENEFIELD: And we may be ready to argue the  
25 admissibility issue that we've been talking about.



**Stacy M. Butterfield, CPA**  
 Clerk of Courts & Comptroller  
 Polk County, Florida

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9.1.6  
 FJ

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**Parties**

**Party Type** Party Name  
 DEFENDANT SCOTT JEREMY LYNN

**Attorney**

PLAINTIFF STATE OF FLORIDA

**Dockets**

Date	Action	Type	Pages	Sequence
12/31/1990	(DEFT IS JUVENILE)	FREE	0	1
5/16/1985	INDICTMENT FILED CAPI ORD & ISS'D	FREE	0	2
5/16/1985	NO BOND (NORRIS)	FREE	0	3
5/17/1985	NOTIFICATION OF EXERCISE OF RIGHTS	FREE	0	4
5/17/1985	FILED	FREE	0	5
5/20/1985	FAH ORD 5-18-85 PC EST NO BOND	FREE	0	6
5/20/1985	ARRG ASAP (PRN)	FREE	0	7
5/20/1985	5-18-85 PD APPOINTED	PDA	0	8
5/20/1985	6/3/85 @ 8:30A ARRAIGNMENT	ARRG	0	9
5/20/1985	7/23/85 @ 8:30A PRET CONFERENCE	PRET	0	10
5/20/1985	7/29 - 8/9/85 JURY TRIAL BLOCK	JBLK	0	11
5/20/1985	NOTIFICATION OF EXERCISE OF RIGHTS	FREE	0	12
5/20/1985	FILED	FREE	0	13



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Date	Action	Type	Pages	Sequence
5/20/1985	WR ORD FILED TO TRANSP DEFT (GRN)	FREE	0	14
5/20/1985	WAIVER FINANCIAL DISCLOSURE FILED	WFD	0	15
5/28/1985	MOTION FOR STMT OF PART FILED	FREE	0	16
5/28/1985	WR PNG FILED	WPNG	0	17
5/28/1985	CONT TO PRET 7/23/85 8:30AM	FREE	0	18
5/29/1985	WR PNG FILED	WPNG	0	19
6/10/1985	MEMO IN SUPPORT OF MOTN TO DISMISS	FREE	0	20
6/10/1985	INDICTMENT OR TO DECLARE THAT DEATH	FREE	0	21
6/10/1985	IS NOT A POSSIBLE PENALTY FILED	FREE	0	22
6/10/1985	MOTN FOR ADDL STMT OF PART - MOTN	FREE	0	23
6/10/1985	TO DISMISS INDICTMENT - DEM DISC RE	FREE	0	24
6/10/1985	PENALTY PHASE - MEMO RE: MOTN FOR	FREE	0	25
6/10/1985	STMT OF AGG CIRCUMSTANCES - MONT TO	FREE	0	26
6/10/1985	DISMISS INDICTMENT RE: PENALTY	FREE	0	27
6/10/1985	CIRCUMSTANCES - MONT TO DISMISS	FREE	0	28
6/10/1985	INDICTMENT OR TO DECLARE THAT DEATH	FREE	0	29
6/10/1985	IS NOT A POSSIBLE PENALTY - MOTN	FREE	0	30
6/10/1985	TO DECLARE FLA'S DEATH PENALTY	FREE	0	31
6/10/1985	STATUTE UNCONSTITUTIONAL OR IN THE	FREE	0	32
6/10/1985	ALT TO STRIKE PORTIONS OF THE	FREE	0	33

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6/10/1985	STATUTE FILED	FREE	0	34
6/19/1985	STATEMENT OF PARTICULARS FILED	FREE	0	35
6/21/1985	AMEND INDICTMENT FILED AS TO DATE	FREE	0	36
6/21/1985	NOTICE OF TAKING DEPO FILED (2)	NTDE	0	37
7/17/1985	7/25/85 9AM NOTICE MOTN FILED	MOTN	0	38
7/17/1985	MOTN TO SET SPECIFIC TRL DATE FILED	FREE	0	39
7/17/1985	WR MOT & ORD GRANT CONT FILED	FREE	0	40
7/17/1985	DATES RESET (RBT)	FREE	0	41
7/17/1985	9/3/85 @ 9AM PRET CONFERENCE	PRET	0	42
7/17/1985	9/9 - 9/20/85 JURY TRIAL BLOCK	JBLK	0	43
7/25/1985	8/16/85 1:30PM NOTICE MOTN FILED	MOTN	0	44
7/25/1985	(ALL PENDING MOTIONS)	FREE	0	45
7/25/1985	PNG TO AMEND INDICTMENT HEAR HELD	FREE	0	46
7/25/1985	ON ST MOTN TO SET TRIAL DATES, MOTN	FREE	0	47
7/25/1985	GRANT JTRL SET 9-9-85 @ 9AM (1WK)	FREE	0	48
7/25/1985	(RBT) (COKER)	FREE	0	49
7/25/1985	MOTN TO DECLARE DEATH NOT A POSSIBL	FREE	0	50
7/25/1985	PENALTY FOR JUVENILE OFFENDER FILED	FREE	0	51
7/25/1985	NOTICE OF TAKING DEPO FILED	NTDE	0	52
7/26/1985	DEM FOR ALIBI FILED	DA	0	53

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Date	Action	Type	Pages	Sequence
7/26/1985	WR ORD SETTING SPECIFIC TRIAL DATES	FREE	0	54
7/26/1985	FOR 9/9 - 9/13/85 FILED (RBT)	FREE	0	55
8/5/1985	8/8/85 8:30AM NOTICE MOTN FILED	MOTN	0	56
8/5/1985	MOTN TO TAKE DEPOS TO PERPETUATE	FREE	0	57
8/5/1985	TESTIMONY FILED	FREE	0	58
8/8/1985	MOTN FOR FUNDS WITH WHOCH TO OBT	FREE	0	59
8/8/1985	A NEUROPSYCHOLOGICAL EXAM OF DEFT -	FREE	0	60
8/8/1985	MOTN FOR FUNDS FOR EXPERT WITN	FREE	0	61
8/8/1985	FILED	FREE	0	62
8/8/1985	HEAR HELD ON ST MOT TO PERPET	FREE	0	63
8/8/1985	TESTIMONY, HEAR TO BE RESET FOR	FREE	0	64
8/8/1985	FURTHER ACTION (RBT) (HARRIS)	FREE	0	65
8/8/1985	8/16/85 1:30PM NOTICE MOTN FILED	MOTN	0	66
8/8/1985	(MOTN FOR FUNDS TO OBTAIN NEURO-	FREE	0	67
8/8/1985	PSYCHO EXAM & EXPERT WITN)	FREE	0	68
8/12/1985	DEMAND FOR DISCOVERY FILED	DDIS	0	69
8/12/1985	REQUEST TO EXAMINE EVIDENCE FILED	FREE	0	70
8/12/1985	DEM DISCL MATERIAL FAVOR DEFT FILED	DDF	0	71
8/15/1985	MOTN TO TAKE DEPO TO PERPETUATE	FREE	0	72
8/15/1985	TESTIMONY FILED	FREE	0	73

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Date	Action	Type	Pages	Sequence
8/15/1985	NOT MOTN 8-16-85 @ 1:30P	FREE	0	74
8/16/1985	NOT OF FILING DEPO OF FRANK RAYMOND	FREE	0	75
8/16/1985	JR, FILED - TRANSC DEPO OF FRANK RAYMOND JOHNSON ,JR FILED	FREE	0	76
8/16/1985	NOT OF FILING DEPO OF NEIL CHARLES THOMAS-TRANSC DEPO OF NEIL CHARLES THOMAS FILED	FREE	0	77
8/16/1985	HEAR HELD ON MOTN'S DENIED AS TO: DEF MOTN TO DECLARE DEATH NOT A POSS PENALTY - DEF MOTN (4) TO DISMISS: GRANT AS TO: DEF MOTN FOR STATE TO PROVIDE LIST OF AGG CIRCUM DEM DISC PENALTY PHASE - ADD'L STMT PART - DISC MATERIAL FAVOR TO DEFT. FOR FUNDS FOR FINGERPRINT EXPERT. TO EXAM FINGERPRING EVID & USE - FUNDS FOR NEUROPSY EXAM - ST MOTN TO PERPETUATE TESTIMONY WR ORD TO BE FILED ON RULINGS (RBT) (KELLEY) MOTN FOR ADDITIONAL CHALLENGES -	FREE	0	78
8/16/1985		FREE	0	79
8/16/1985		FREE	0	80
8/16/1985		FREE	0	81
8/16/1985		FREE	0	82
8/16/1985		FREE	0	83
8/16/1985		FREE	0	84
8/16/1985		FREE	0	85
8/16/1985		FREE	0	86
8/16/1985		FREE	0	87
8/16/1985		FREE	0	88
8/16/1985		FREE	0	89
8/16/1985		FREE	0	90
8/16/1985		FREE	0	91
8/16/1985		FREE	0	92
8/19/1985		FREE	0	93

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8/19/1985	MOTN TO PREVENT JUROR CHALLENGE DUE	FREE	0	94
8/19/1985	TO VIEWS ON PUNISHMENT NOT AFFECT	FREE	0	95
8/19/1985	JDGMT ON ISSUE OF GUILT-MOTN OFFER	FREE	0	96
8/19/1985	OF PROOF "DEATH QUALIFIED" JURIES	FREE	0	97
8/19/1985	& MOTN FOR COSTS OF EXPERT - MOTN	FREE	0	98
8/19/1985	FOR INDIVIDUAL VOIR DIRE & SEQUES-	FREE	0	99
8/19/1985	TRATION OF JURORS DURING VOIR DIRE-	FREE	0	100
8/19/1985	MEMO IN SUPPORT MOTN FOR VOIR DIRE	FREE	0	101
8/19/1985	& SEQUESTRATION JURORS DURING VOIR	FREE	0	102
8/19/1985	DIRE-MOTN FIND FACT BY JURY FILED	FREE	0	103
8/20/1985	RESPONSE DEMAND DISCOVERY FILED	RDFD	0	104
8/20/1985	SUPL RESP DEM FOR DISC FILED	FREE	0	105
8/20/1985	RESP TO DISC REQUEST FILED	FREE	0	106
8/22/1985	NOT MOTN 9-4-85 @ 9AM FILED	FREE	0	107
8/26/1985	AMEND RESP DEM DISC FILED	FREE	0	108
8/26/1985	NOT OF TAKING DEPO TO PERPETUATE	FREE	0	109
8/26/1985	TESTIMONY FILED	FREE	0	110
8/26/1985	9/4/85 9AM NOTICE MOTN FILED	MOTN	0	111
8/26/1985	MOTN IN LIMINE FILED	FREE	0	112
8/26/1985	NOTICE OF TAKING DEPO FILED	NTDE	0	113

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Date	Action	Type	Pages	Sequence
8/28/1985	8/30/85 1:30PM NOTICE MOTN FILED	MOTN	0	114
8/28/1985	(MOTN TO SUPPRESS STMTS & ADMISS)	FREE	0	115
8/28/1985	MOTN TO SUPPRESS STMTS & ADMISSION	FREE	0	116
8/28/1985	FILED	FREE	0	117
8/29/1985	NOTICE OF TAKING DEPO FILED	NTDE	0	118
8/29/1985	DEFTS RESP TO DEM FOR DISC FILED	FREE	0	119
8/30/1985	ON 8-28-85 (3) WR ORD FILED GRANT	FREE	0	120
8/30/1985	MOTNS AS TO: ADDL STMT PART - MOT	FREE	0	121
8/30/1985	FOR FUNDS FOR EXPERT WINT/FINGER-	FREE	0	122
8/30/1985	PRINTS - MOTN FOR FUNDS WHICH TO	FREE	0	123
8/30/1985	OBT NEUROPSYCHOLOGICAL EXAM (5) WR	FREE	0	124
8/30/1985	ORD FILED DENY MOTNS AS TO: DISM	FREE	0	125
8/30/1985	INDICT - MOTN TO DISM INDICT RE:	FREE	0	126
8/30/1985	PENALTY CIRCUMS - MOTN TO DISM	FREE	0	127
8/30/1985	INDICT OR TO DECLARE THAT DEATH IS	FREE	0	128
8/30/1985	NOT A POSSIBLE PENALTY - MOTN TO	FREE	0	129
8/30/1985	DECLARE DEATH NOT POSSIBLE PENALTY	FREE	0	130
8/30/1985	FOR JV OFFEND - MOTN TO DECLARE FLA	FREE	0	131
8/30/1985	DEATH PENALTY STATUTE UNCONSTITUTE	FREE	0	132
8/30/1985	OR IN ALT TO STRIKE PORTIONS OF	FREE	0	133

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8/30/1985	STATUTE (RBT)	FREE	0	134
8/30/1985	ON 8-29-85 WR ORD FILED GRANT DEFT	FREE	0	135
8/30/1985	REQ TO EXAM EVID	FREE	0	136
8/30/1985	HEAR HELD ON DEF MOTN TO SUPPRESS,	FREE	0	137
8/30/1985	TO BE CONT FOR FURTHER HEAR CONT	FREE	0	138
8/30/1985	PRET 9-4-85 @ 9AM (RBT) (KELLEY)	FREE	0	139
8/30/1985	ON 8-29-85 WR ORD FILED DIRECT	FREE	0	140
8/30/1985	SANFORD CRIM LAB TO PREPARE COPIES	FREE	0	141
8/30/1985	OF PHOTOGRAPHS REGARDING ANY	FREE	0	142
8/30/1985	FINGERPRINT IDENTIFICATION (RBT)	FREE	0	143
9/4/1985	NOTICE OF FILING DEPO OF PUTNEL	FREE	0	144
9/4/1985	FILED	FREE	0	145
9/4/1985	TRANSC DEPOS OF PUTNEL, BROWN,	FREE	0	146
9/4/1985	EGAN, NEMETH, AND WOOD FILED	FREE	0	147
9/4/1985	MOTN FOR TRANSCRIPTION FILED	FREE	0	148
9/4/1985	DEF MOTNS DENIED AS TO: MOTN TO	FREE	0	149
9/4/1985	SUPPRESS - MOTN FOR ADDL CHALLENGE	FREE	0	150
9/4/1985	MOTN ON DEATH PENALTIES CHALLENGES	FREE	0	151
9/4/1985	MOTN FOR FUNDS - MOTN FOR INDIV	FREE	0	152
9/4/1985	VOIR DIRE - MOTN FOR FINDING FACTS	FREE	0	153

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9/4/1985	MOTN FOR FUNDS FOR EXPERT TEST -	FREE	0	154
9/4/1985	STATE'S MOTN IN LIMINE TAKEN UNDER	FREE	0	155
9/4/1985	ADVISEMENT - DEF MOTN TO ALLOW	FREE	0	156
9/4/1985	INVEST TO REMAIN IN CRTRM DURING	FREE	0	157
9/4/1985	TRIAL GRANT CONT JTRL 9-9-85 @ 9AM	FREE	0	158
9/4/1985	(RBT) (COKER)	FREE	0	159
9/5/1985	WR ORD FILED GRANT TRANSC	FREE	0	160
9/5/1985	ON 9-6-85 WR ORD FILED GRANT IN	FREE	0	161
9/5/1985	PART & DENY IN PART STATE MOTN IN	FREE	0	162
9/5/1985	LIMINE (RBT)	FREE	0	163
9/6/1985	AMENDED RESP TO DEM FOR DISC FILED	FREE	0	164
9/6/1985	AMENDED DEFT'S RESP DEM DISC FILED	FREE	0	165
9/10/1985	TRANSC DEPO OF JENNIE KUEHN FILED	FREE	0	166
9/12/1985	ON 9-9-85 JTRL STARTS ALL DEF	FREE	0	167
9/12/1985	MOTN'S RENEWED - SAME RULINGS CRT	FREE	0	168
9/12/1985	RECESSES UNTIL 9-10-85 @ 8:30A	FREE	0	169
9/12/1985	(RBT) (COKER)	FREE	0	170
9/12/1985	ON 9-9-85 TRANSC DEPO'S OF PUTNEL,	FREE	0	171
9/12/1985	WORTHINGTON, WILLIAMS, ALDREDGE,	FREE	0	172
9/12/1985	& GREEN FILED	FREE	0	173



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Date	Action	Type	Pages	Sequence
9/12/1985	ON 9-9-85 (2) AMEND DEFT'S RESP DEM	FREE	0	174
9/12/1985	DISC - AMEND RESP DEM DISC - NOTICE OF FILING - TRANSC OF EXCERPT OF HEAR FILED	FREE	0	175
9/12/1985	ON 9-9-85 (8) WR ORD'S FILED DENY	FREE	0	176
9/12/1985	DEFTS MOT FOR ADDL CHALLENGES, DEFTS MOT FOR FINDINGS OF FACT BY JURY, DEFTS MOT FOR INDIV VOIR	FREE	0	177
9/12/1985	DIRE & SEQUESTRATION OF JURORS	FREE	0	178
9/12/1985	DURING VOIR DIRE, DEFTS MOT FOR COST FOR EXPERT, DEFTS MOT FOR FUNDS FOR EXPERT, DEFTS MOT TO SUPPRESS STMTS & ADMISSIONS FILED (RBT)	FREE	0	179
9/12/1985	ON 9-10-85 JTRL RESUMES DEF WR MOTN IN LIMINE IS GRANT CRT RECESS UNTIL 9-11-85 @ 8:30A (RBT) (COKER	FREE	0	180
9/12/1985	ON 9-10-85 (2) STIPULATIONS - MOTN IN LIMINE FILED	FREE	0	181
9/12/1985	ON 9-11-85 JTRL RESUMES & RECESSES	FREE	0	182
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Date	Action	Type	Pages	Sequence
9/12/1985	UNTIL 9-12-85 @ 8:30A (RBT) (COKER	FREE	0	194
9/12/1985	JTRL RESUMES & RECESSESUNTIL	FREE	0	195
9/12/1985	9-13-85 @ 8:30A (RBT) (COKER)	FREE	0	196
9/13/1985	ON 8-16-85 WR ORD FILED TO TAKE	FREE	0	197
9/13/1985	DEPO TO PERPETUATE TESTIMONY (RBT)	FREE	0	198
9/13/1985	INSTRUCTIONS TO JURY FILED	FREE	0	199
9/13/1985	DEFT'S REQ INSTRUCTIONS 1 THRU 4	FREE	0	200
9/13/1985	FILED	FREE	0	201
9/13/1985	JTRL RESUMES JURY VERDICT NOT	FREE	0	202
9/13/1985	GUILTY AS TO BOTH COUNTS ADJ NOT	FREE	0	203
9/13/1985	GUILTY (RBT) (COKER)	FREE	0	204
9/19/1985	WR MOT & ORD FILED FOR PYMT OF	FREE	0	205
9/19/1985	EXPERT IN AMT \$125 TO EVERETTE	FREE	0	206
9/19/1985	BURKE - WR MOT & ORD FILED FOR PYMT	FREE	0	207
9/19/1985	OF EXPERT WITN FEE IN AMT OF \$300	FREE	0	208
9/19/1985	TO DR REAVIS (RBT)	FREE	0	209
9/20/1985	MOTN FOR PYMT OF REPORT EXP FILED	FREE	0	210
9/25/1985	WR MOT & ORD FILED FOR PYMT OF	FREE	0	211
9/25/1985	REPORTING EXPENSE IN AMT OF \$25 TO	FREE	0	212
9/25/1985	SYDNEY NEIL (RBT)	FREE	0	213

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Date	Action	Type	Pages	Sequence
10/3/1985	MOTN TO PAY COSTS FILED	FREE	0	214
10/3/1985	MOTN TO RELEASE EVIDENCE FILED	FREE	0	215
10/4/1985	WR PET & ORD FOR PYMT OF EXPENSES	FREE	0	216
10/4/1985	IN AMT OF \$172.20 FILED (RBT)	FREE	0	217
10/7/1985	10-23-85 9:00A NOTICE MOTN FILED	MOTN	0	218
10/8/1985	AMEND NOT HRG 10/23/85 9AM FILED	FREE	0	219
10/8/1985	(MOTN TO PAY COSTS & MOTN TO	FREE	0	220
10/8/1985	RELEASE EVIDENCE)	FREE	0	221
10/16/1985	WR MOT & ORD FILED FOR PYMT OF	FREE	0	222
10/16/1985	EXPERT IN AMT OF \$1250 TO COMMUNITY	FREE	0	223
10/16/1985	BEHAVIORAL SERV, INC (RBT)	FREE	0	224
10/23/1985	HEAR HELD ON MOTN TO REL EVID IS	FREE	0	225
10/23/1985	GRANT AS TO THE SEPT 1985 ISS &	FREE	0	226
10/23/1985	THE TWO VIDEOS MOTN TO PAY COST	FREE	0	227
10/23/1985	IS GRANT WR ORD TO FOLLOW (RBT)	FREE	0	228
10/23/1985	(NEIL)	FREE	0	229
10/25/1985	WR ORD FILED TO PAY COSTS IN AMT OF	FREE	0	230
10/25/1985	\$45.76 TO DAVIS BROS MOTOR LODGE &	FREE	0	231
10/25/1985	\$3.71 TO STEPHEN GUSTAT OF PD OFF -	FREE	0	232
10/25/1985	WR ORD FILED GRANT MOT TO REL EVID	FREE	0	233

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10/25/1985	(RBT)	FREE	0	234

No Hearing Data Available

No Bond Data Available

Financials

Receivables

Effective Date	Due Date	Fee Description	Fee Amount	Total Amount Due
		TOTAL		

No Payment Data Available

No Payment Plan Data Available

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Dispositions

Disposition

Count 1

Phase	Description	Statute	Level	Degree	Status Converted or Voided Record	Plea	Action	Date
Initial	INDICTMENT: 1ST DEG MURDER - ROBBERY	999.2999						

Prosecution

No Reopen Data Available

1 you know she was stabbed. That's not a whole heck of  
 2 a lot, so we're going to fill in a lot of holes for  
 3 you this morning.

4 Michelle Schofield, back on February the 24th of  
 5 1987, was eighteen years old. Leo was twenty-one.  
 6 They had recently been married. On August 29th of  
 7 1986 they got married. They had dated some six months  
 8 or so before that. A very young couple. They didn't  
 9 have any children.

10 On February the 27th Michelle's body was found in  
 11 a canal off State Road 33 in Lakeland near its  
 12 intersection with I-4. Michelle had been stabbed  
 13 twenty-six times. Most of those stab wounds are in  
 14 her upper neck and her chest; three, including one  
 15 major wound, are in her back. She was clothed, she  
 16 was in the water underneath a board underneath some  
 17 heavy brush. She had no shoes, she had no wallet, she  
 18 had no purse, and she was found by Leo's father.

19 But the story starts a long time before February  
 20 the 24th when Michelle went missing. And the case  
 21 that the State's going to put on is going to proceed  
 22 from where the relationship begins, not the homicide.  
 23 Now, at this point let me just warn you about one  
 24 thing and one good reason to be able to take notes.  
 25 There are about 80 witnesses in this case. We weren't

1 Leo was there.

2 Q. Leo and Michelle didn't live with you, did they?

3 A. Well, they had -- they weren't really living with  
4 us, but there were times when they would stay the night  
5 there.

6 Q. What I was getting at, they had their own  
7 residence, didn't they?

8 A. Yes.

9 Q. Do you recall whether Leo got any phone calls at  
10 your house that night?

11 A. Yes.

12 Q. Tell me about that.

13 A. We got a call between approximately 8:30 and 9:30  
14 and Leo went to answer the phone. And he had talked to  
15 Michelle and she had been late that evening and he told her  
16 to meet him at Vince's house, that they would get something  
17 to eat. She had wanted to get something to eat before she  
18 got there and he said no, just wait and meet me at Vince's  
19 house and we'll go get something to eat then.

20 Q. Could you hear Leo, is that what you're telling,  
21 could you hear Leo talking on the phone?

22 A. Yes.

23 Q. What was his attitude?

24 A. He was -- he seemed upset because she was late.

25 Q. How long did -- strike that. How long did Leo

833

1 Q. Did you ever see Lee touch Michelle in any  
2 fashion in anger?

3 A. Yes.

4 Q. Tell me about that.

5 A. I saw him kick her in the bottom one time.

6 Q. Did you know the reason?

7 A. I think it was because she had wanted to go home  
8 and she started to walk out the door and he didn't want her  
9 to go and he kicked her.

10 Q. He wasn't just playing games?

11 A. (Witness shaking head.)

12 Q. Are you familiar with when Michelle's car was  
13 found?

14 A. I know it was a few days after she had been  
15 missing, but I'm not exactly when.

16 Q. Before the car was found did you have any  
17 conversation with Leo about Michelle?

18 A. Yes.

19 Q. Tell me about that.

20 A. Leo was concerned that something had happened to  
21 her, that the worst had happened, and --

22 Q. What did he say about that? Did he say I'm  
23 concerned something has happened to her? Tell me the best  
24 you can recall what he said about it.

25 A. He felt like that she might be dead and hoped



1 MR. AGUERO: I'm sure Mr. Edmund will be glad to  
2 send somebody for the juror, as would I.

3 MR. EDMUND: If you will let us take credit for  
4 it we'll get it done.

5 THE COURT: Let's bring our jury back.

6 (The jury returned to the courtroom.)

7 JURY IN:

8 THE COURT: Can everyone see now?

9 (The jury responded in the affirmative.)

10 THE COURT: Everyone ready?

11 (Examination of Mr. Scofield, Sr. continued.)

12 Q. Mr. Schofield, directing your attention to the  
13 day that you found Michelle, how did you happen to be -- or  
14 how did you happen to get to the location where you could  
15 see her body on that day?

16 A. I was searching for my daughter-in-law and  
17 walking through the area from --

18 MR. EDMUND: Mr. Schofield, I can't hear you,  
19 sir.

20 Q. Would you speak up a little bit. You're walking  
21 through the area.

22 A. In walking through this area I was looking for  
23 anything pertaining to Michelle, any of her clothing or  
24 whatever that would give me some sign of a clue to where  
25 she may be. I was not feeling good, I had this tremendous

1 headache, and I had this cast on my leg. I was under  
2 doctor's care. And I got -- the further I went up this  
3 road here, this man-made road off the side of the highway  
4 there, which the lake was on the side, the further I went  
5 down there in this heat, the worse my headaches became.  
6 When I got close to this area my -- this whatever was wrong  
7 with me, the virus or whatever and the headaches and being  
8 out there and walking and searching for the past several  
9 days, not getting any sleep morning to night, when I got to  
10 this area my headaches were pretty well strong. I really  
11 didn't want to go any further, but I said I was going to  
12 continue looking until I found some clues to help me find  
13 Michelle.

14           And I looked at this spot here, this particular  
15 spot, and I noticed it wasn't a likely spot to go into  
16 because there was a lot of prickles or thorny bushes, I  
17 don't know what they call them down here, but so I wasn't  
18 going to look in this area, and as I turned my head away  
19 from these bushes I happened to notice something on the  
20 ground which I thought was a pair of pants, a gray pair of  
21 pants. I said to myself I wasn't going to let anything go  
22 by me without continued to look. I didn't care where it  
23 was or what I had to do, I was going to search. So I  
24 pushed aside these prickles and bushes and whatnot and I  
25 just stepped a little bit beyond that man-made path from

1 THE COURT: You're still under oath, ma'am.

2 Q. Mrs. Anderson, I want to direct your attention to  
3 the day that the body was found. I think you already told  
4 us something about that. When you went back from Bartow to  
5 out by 33 did you ever have any discussion with Leo  
6 Schofield, Sr. out there?

7 A. After she was found, yes, I did.

8 Q. Did he tell you how he found that body?

9 A. He told me that he got a tremendous headache,  
10 that he got a calling, that God told him where she was.

11 Q. Did he tell you whether he was driving or walking  
12 when he got the calling?

13 A. At the time I believe he was walking.

14 Q. Did you ever have any discussions with him after  
15 that time about how he found that body?

16 A. Yes.

17 Q. Did he explain any further to you about this  
18 calling?

19 A. He just told me that God called him to where she  
20 was and told him where she was.

21 Q. Right where she was?

22 A. (Witness nodding head.)

23 Q. Did he at any time tell you that he found some  
24 article of her clothing and that's what led him to the  
25 body?

1 and he says, Jim, I got to go back to the house because I  
2 need to find out where my wife is and what's going on  
3 and --

4 Q. Let me stop you right there. Up to that point on  
5 the drive up there had Leo said anything about his wife  
6 missing?

7 A. Well, he said he had some strange feelings about  
8 that, you know, she was dead and that he didn't know what  
9 to do about it or how to handle it. And I told him I said,  
10 Leo, that's not the case. I says she's probably off with a  
11 friend or whatever, don't worry about it, you know, she'll  
12 be there when we get home.

13 Q. At that point -- now, we're talking about  
14 Wednesday morning?

15 A. I'm talking about the morning after she was  
16 missing that night.

17 Q. After the phone call?

18 A. Right.

19 Q. And he's saying at that point she's dead?

20 A. He said he had a feeling that she was.

21 Q. Had a feeling she was dead?

22 A. Yes.

23 Q. Did he just say that one time or more than one  
24 time, Mr. Anderson?

25 A. Leo and I talked quite a bit often because I was

1           A.    Yes sir.  We talked quite a lot about everything,  
2 just like I stated before, and he was talking to me about  
3 any and all possibilities that if she is dead that they're  
4 going to try to pin this on him and he would like for me to  
5 contact and see if I could get him a good attorney.

6           Q.    Now, did that conversation take place before they  
7 even found her car?

8           A.    Yes sir, it took place the day that we found the  
9 car.

10          Q.    That was Thursday?

11          A.    Yes sir.

12          Q.    Tell me exactly what he said about getting a  
13 lawyer, Mr. Anderson.

14          A.    Well, what he said was that if she is found dead  
15 that her being -- he being the husband to her that they  
16 would automatically put the blame on him.  And I told him  
17 that, you know, there's no way that no one's going to put  
18 the blame on you because I know where you was, I know what  
19 you been doing, and I know the whole situation.  But I  
20 didn't know -- the only time that I didn't know of was from  
21 the time that he left my house with my son until he got  
22 there the next morning, but he was with his mom and dad, he  
23 was with my son, he was with Vince, he had nothing to worry  
24 about, why do you want an attorney?  And his reply was that  
25 if anything has happened to her that they would try to pin

1 it on him.

2 Q. Now, did he have this conversation about wanting  
3 a lawyer with you once or more than once?

4 A. We talked about it several times because I mean  
5 it was just part of the configuration of speech as to what  
6 we was talking about because, you know, we had that -- and  
7 especially after the car was found I mean, you know,  
8 everything just looked real bad, but it didn't look bad  
9 enough that I felt like that he would need an attorney.

10 Q. When the car was found how did you first find out  
11 about it?

12 A. I had gotten off of work that afternoon, had went  
13 over to Leo's dad's house and had just sat down to drink a  
14 cup of coffee when the call came in that the car was found  
15 in Orlando.

16 Q. At that point in time how many conversations do  
17 you think you had had with Leo about a lawyer when that  
18 phone call came in?

19 A. I really don't know.

20 Q. One or more than one?

21 A. More than one.

22 Q. What did you do after this call came in about  
23 where the car was?

24 A. I got Leo and Leo, Sr. in my truck and Jeff and  
25 Michelle, the other Michelle got in their truck and we

1 hightailed it down Interstate 4 toward Orlando to try to  
2 find the car.

3 Q. Do you know about what time of day or night it  
4 was?

5 A. Yes sir, I think it was around like 10:00 or  
6 10:30 that night.

7 Q. Were the police out there when you got there?

8 A. No sir.

9 Q. How did the police get involved in being at the  
10 car, Mr. Anderson?

11 A. Well, when we found the car and positively knew  
12 that that was the car and everything I told Leo go up there  
13 and call the sheriff's department which there was a little  
14 club right up on the hill from where the car was found.

15 Q. Was Leo's daddy out there?

16 A. Yes, he was.

17 Q. Whose idea was it to go call the police?

18 A. I don't know whose idea. I think it was mine  
19 because I was sort of trying to help them every way I  
20 possibly could.

21 Q. At any time during the time that you knew Leo and  
22 Michelle before her death, did you ever see any physical  
23 confrontations between Leo and Michelle?

24 A. Yes sir.

25 Q. Tell me about that.

1           A.    Well, Leo was very protective of Michelle and if  
2 she was a few minutes late or whatever he would really get  
3 terribly mad at her.  And several times she come in late  
4 and he would, you know, shove her around or really get mad  
5 at her.  And one particular time he had shoved her out the  
6 door and slammed the door behind him.  And I went out right  
7 behind him and he kicked her real hard right in the pelvic  
8 -- in the rear end.  And I went over and grabbed him and  
9 told him, you know, I didn't ever want to see him do that  
10 again at my house.

11           Q.    What was his attitude at that point?

12           A.    He was irate.  He was mad because she was late  
13 and wasn't where she was supposed to be.  She was supposed  
14 to have been there earlier.

15           Q.    What was his attitude when you snatched him and  
16 told him you didn't want to see that at your house?

17           A.    He sort of calmed down and all.  He never really  
18 showed any violence to me because I'm sort of a  
19 loud-mouthed bully, if you want to call it that.  I mean I  
20 don't put up with no bull.  I fire right back at somebody  
21 real strong when the situation arises and he just kind of  
22 calmed down and everything was okay.

23           Q.    Did you go to Michelle's funeral?

24           A.    Yes, I did.

25           Q.    Are you familiar with what Leo did the night of



1 that funeral?

2 A. Will, I'm not really familiar with what he did at  
3 the funeral. You mean after the funeral?

4 Q. Yes sir.

5 A. I'm not really familiar with what he did, even  
6 though that I know that he left to go with friends.

7 MR. EDMUND: I object to hearsay, if it please  
8 the Court.

9 MR. AGUERO: He didn't say somebody told him  
10 anything.

11 THE COURT: You can answer the question if you  
12 know of your own knowledge. If it's what somebody has  
13 told you then just tell us that you don't know.

14 A. That's what I said, Your Honor.

15 Q. Did you see him leave the funeral?

16 A. Yes, I did.

17 Q. Who did he leave with?

18 A. With Michelle and Jeff.

19 Q. Prior to Michelle disappearing did you ever hear  
20 any conversations concerning the family moving back, Leo  
21 particularly, to Massachusetts?

22 A. Yes, I did.

23 Q. Did you ever talk to Leo about that or hear him  
24 say anything in your presence about his going back to  
25 Massachusetts?

1 A. Yes, I did.

2 Q. Did that conversation involve whether Michelle  
3 was going with him or not?

4 A. Yes, it did.

5 Q. What did he say?

6 A. He said she wasn't going.

7 Q. How long before the homicide was the conversation  
8 that you were involved with there?

9 A. I don't really know. It was probably -- I don't  
10 really know. I really don't. It's probably something like  
11 a couple of weeks because I really didn't get involved with  
12 Leo, Sr. only for like a couple of weeks before this  
13 happened. A couple -- two or possibly three weeks at the  
14 very most.

15 Q. Now, are you familiar with -- did you see Leo  
16 after the funeral and so forth?

17 A. Yes, I did.

18 Q. How often would you see him after that, say, in  
19 the next three or four weeks?

20 A. Every day, every night.

21 Q. What was his behavior like then?

22 A. Very unusual.

23 Q. In what respect?

24 A. Well, just unusual of wanting to go out to clubs,  
25 to, he called it, relaxing, going out with this person,

1 going out with that person, you know.

2 Q. Men persons or women persons?

3 A. Women.

4 Q. Are you familiar, Jim, with when he went back to  
5 Massachusetts?

6 A. Yes, I am.

7 Q. Did you have any conversations with him after he  
8 got up to Massachusetts?

9 A. Yes sir, almost every day.

10 Q. Who called who?

11 A. He call me.

12 Q. What did he want?

13 A. Wanted to know if I would help him to bring his  
14 cousin back to Florida.

15 Q. Boy cousin or girl cousin?

16 A. Girl cousin.

17 Q. Why was that?

18 A. He just -- he said that she understood him and he  
19 understood her and she needed help and he could help her  
20 and wanted to know if I would, you know, let them live with  
21 me when they come back until they could get on their feet.

22 Q. Was this a boy/girl romantic relationship or just  
23 a cousin helping a cousin relationship that he was relating  
24 to you?

25 A. Boy/girl relationship.

1 Q. How long after Michelle's murder was that?

2 A. Approximately three to four weeks.

3 Q. Are you familiar with who took care of Michelle's  
4 funeral arrangements, Mr. Anderson?

5 A. Yes, I am.

6 Q. Who did?

7 A. I did.

8 Q. Tell me a little bit about that.

9 A. We just -- Leo -- I was a friend of Leo's and  
10 came to know his dad and was a friend of Michelle's and  
11 they didn't have any money or anything and wanted me to  
12 help them and I helped them.

13 Q. Did you collect money from any sources other than  
14 yourself?

15 A. Yes, I did.

16 Q. What happened to that money? I mean what did you  
17 do with it?

18 A. Started a trust fund for Michelle.

19 Q. How was that trust fund set up, Mr. Anderson?

20 A. It was set up between -- it was a memorial fund  
21 for myself and Leo Sr. to sign.

22 Q. And is a memorial fund something particular at  
23 the bank?

24 A. Yes sir, two-signature check. So that one person  
25 or it could be -- it had to be used right so both people

1 had to know where it went.

2 Q. And how much money got put into that account for  
3 her funeral expenses?

4 A. I only collected like about four hundred and some  
5 odd dollars.

6 Q. Did you ever have any conversation with Leo Jr.  
7 about that money?

8 A. Yes sir, I did.

9 Q. Tell me about that.

10 A. When he come back from Massachusetts the first  
11 time he come back down and he was broke and didn't have any  
12 money and he asked me could he have that money.

13 Q. Could he have the funeral money?

14 A. Yes sir.

15 Q. What did you tell him?

16 A. I told him he could not.

17 Q. Why not?

18 A. Because it was Michelle's funeral money.

19 Q. What was Leo's response to that?

20 A. He said Michelle would want me to have it.

21 Q. When did Leo -- or when did Michelle's funeral  
22 expenses get paid out of that fund or whatever money was in  
23 that fund get paid toward them?

24 A. Well, I went down to the bank to talk to them. I  
25 talked to Bob Weeks several weeks prior to the -- the

1 back here again?

2 A. I'm not sure about the days. I really -- the  
3 days have really gotten away from me as far as remembering  
4 what day was what. I mean I just don't remember what days.

5 Q. So it is possible that some of the things you've  
6 said are not correct?

7 A. As far as the days. I haven't said anything  
8 about Monday, Tuesday, Wednesday or Thursday because I  
9 don't remember what day she went missing. I know it was in  
10 February. That's basically all I remember.

11 Q. Now, when he called you about his cousin in  
12 Massachusetts and you told the State Attorney it was a  
13 boy/girlfriend relationship, what did he do, tell you I'm  
14 shacking up with this broad, I want to bring her down  
15 there?

16 A. Yes.

17 Q. That's what he told you?

18 A. Yes. I talked to her as well.

19 Q. Those are the words he used, I'm shacking up with  
20 this broad and I want to bring her down there?

21 A. No, that's not what he said. He said he was  
22 living with her, that he had found someone that he loved  
23 and that loved him and understood him and he understood  
24 her, and that she also confirmed the same thing to me.

25 Q. She -- and when did all this take place?

1 A. It was after he went to Massachusetts.

2 Q. How soon after the funeral was it that he went to  
3 Massachusetts?

4 A. Something like about two weeks after the funeral.

5 Q. How long after that was it that he called you?

6 A. He called me that night that they left.

7 Q. I'm talking about coming back down here.

8 A. I'm trying to tell you, sir.

9 Q. All right.

10 A. He called me that night in somewheres in South  
11 Carolina where they stopped for the night. He called me  
12 the next night, he called me the next night, he called me  
13 just about every night up until he came back.

14 Q. And he came on back to Florida to stay?

15 A. He came back -- I thought he came back to stay.

16 Q. Do you know how long he stayed when he came back?

17 A. Only a few days. Maybe a week.

18 Q. Did he bring this girl with him when he came?

19 A. Pardon me?

20 Q. Did he bring this girl with him when he came?

21 A. No, he did not.

22 Q. Do you know her name?

23 A. No, I don't.

24 Q. You don't recall how long he stayed when he came  
25 back?

1           A.    We was over at Daytona to the one over there, and  
2 we went to Deland to one there and --

3           Q.    Now, on this particular time was it day or  
4 night --

5           A.    It was.

6           Q.    -- when you came off I-4?

7           A.    About 8:30, 9:00 o'clock.

8           Q.    At night?

9           A.    Yeah.

10          Q.    What did you see?

11          A.    Well, after I pulled back onto the highway and I  
12 headed in toward town, I can't tell you right now, but it's  
13 on the police record, that's the truth what I said on  
14 there, like a mile or something like that here sat this  
15 little truck, light in color, and I can't tell you now  
16 whether it was like a little Love truck or a courier or a  
17 Ford Ranger, you know what I'm talking about, sitting along  
18 the road, and your natural curiosity, you know, if you're  
19 going down an interstate or whatever you see somebody  
20 sitting along the road you give them a second look, you  
21 know. And here come these two guys up out of the  
22 wilderness, or whatever you would call that area right  
23 there, and they were dressed too nice to be there. You  
24 know, they weren't fishing. They were dressed like any of  
25 these male jurors here, you know, okay? And I told my



1 late February on your way to work?

2 A. Yes, I did.

3 Q. Tell us what happened.

4 A. I was on my way to work one morning, I saw the  
5 car on the side of the road halfway between my house and  
6 where I work.

7 Q. Up on I-4?

8 A. On I-4. And I worked all day, came home like I  
9 usually do, and it was still sitting in the same spot.

10 Q. You saw it when you came home?

11 A. Uh-hum.

12 Q. Was it still light outside when you came home?

13 A. Yes, it was.

14 Q. At the time that you saw the car either in the  
15 morning or the afternoon, Chris, did you know anything  
16 about Michelle Schofield missing or anything?

17 A. No, I didn't.

18 Q. How long had it been since you had seen Leo?

19 A. I really don't recall how long. It was -- I  
20 really couldn't give you a --

21 Q. Y'all weren't best buddies and saw each other  
22 every day?

23 A. No.

24 Q. On your way home after you saw the car -- well,  
25 how did you have to go to go home?

1           A.    33 exit off of the interstate and down Combee  
2 Road.

3           Q.    Now, did you make any stops after you came on  
4 back?

5           A.    Yeah, I stopped at a convenience store. I don't  
6 remember what I was getting there or whatever.

7           Q.    Do you remember what the convenience store was?

8           A.    Which one it was?

9           Q.    Yeah.

10          A.    Sparky's on Combee Road.

11          Q.    What happened when you went in Sparky's that day?

12          A.    Well, I was about to leave and I noticed there  
13 was a flyer on the door and I just took a second to look at  
14 it and I noticed who it was and I recognized her, the  
15 picture, and I took the number down and went home.

16          Q.    How long did it take you to get home?

17          A.    Ten minutes, at the most.

18          Q.    What did you do when you got there?

19          A.    I called the number.

20          Q.    Who did you talk to?

21          A.    I think -- I really -- let's see. When they  
22 first -- they first answered the phone it was somebody and  
23 they hung up or something, thought it was -- I don't know,  
24 and then I called the number back and I said look, and, you  
25 know, it was -- I guess it was -- they said it was a

1 detective or something like that on the phone. That's all  
2 I remember.

3 Q. Did you tell that person that you had seen the  
4 car?

5 A. Yes, I did.

6 Q. Did you tell them where?

7 A. Uh-hum.

8 Q. Did you call them because you saw the flyer or  
9 did you and Leo -- did you know anything about it before  
10 that?

11 A. No, I didn't.

12 Q. Just happenstance?

13 A. Didn't know anything about it.

14 Q. Did you ever have anything more to do with it?  
15 Did you ever go out there back to the car, or did you just  
16 call and go on about your business?

17 A. That's it exactly, just didn't do anything.

18 MR. AGUERO: I don't have any other questions.

19 MR. EDMUND: Please, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. EDMUND:

22 Q. Mr. Peck, I'm Jack Edmund. How are you?

23 A. I'm fine.

24 Q. Mr. Peck, what time would you -- were you going  
25 to work that morning?

1 Q. Back in February of 1987 did you have David  
2 Allen's Wrecker Service back then?

3 A. Sure did.

4 Q. Do you remember being asked by the police to go  
5 out and pick up a little orange Mazda out there?

6 A. Sure.

7 Q. Was that at nighttime?

8 A. Sure.

9 Q. How did you get into that car, Mr. Allen?

10 A. Being that both side doors was locked, I went to  
11 the rear, put my fingers under the deck lid, some people  
12 call it, bumped it real hard and it popped open.

13 Q. Was the hatchback locked, too?

14 A. That was the hatchback.

15 Q. What I'm saying is you said you whopped it one  
16 time, was that because it was locked, too?

17 A. Well, I couldn't get it open with the little  
18 button, so I got brutal with it.

19 Q. What did you do after you popped it open?

20 A. Crawled through the rear and released the brakes  
21 to get it out of gear. I never got it out of gear, but  
22 released the brakes.

23 Q. The hand brake was up?

24 A. Right.

25 Q. And you towed it off?

1 Q. Did you ever have occasion to observe how they  
2 acted with each other --

3 A. Yes sir.

4 Q. -- when they lived across the street? What did  
5 you observe?

6 A. Well, they argued a lot. There was a lot of  
7 arguing. They were a young couple, just married. And I've  
8 seen them do a lot of arguing back and forth between both  
9 of them, a lot of partying going on, people in and out of  
10 there at all times.

11 Q. Did you ever see Leo touch Michelle in any way in  
12 anger?

13 A. Yes sir. I seen him drag her out of the car one  
14 day by the hair of the head, then take her up the steps up  
15 into the trailer.

16 Q. Do you recall when it became known in the  
17 neighborhood that Michelle was missing or her body was  
18 found, whichever you heard first?

19 A. It was a couple days after that when we realized  
20 what was going on.

21 Q. Just prior to your finding that out, Mr. Scott,  
22 had you had occasion to be awakened by your wife in the  
23 middle of the night?

24 A. Yes sir. That night it went on she woke me up,  
25 she said something's wrong over there. She said she

1 heard --

2 Q. What did you tell her?

3 A. I told her to shut up and go to sleep, that's  
4 what I told her.

5 Q. Did you get up?

6 A. No sir.

7 MR. AGUERO: I don't have any other questions of  
8 Mr. Scott.

9 MR. EDMUND: Please, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. EDMUND:

12 Q. Now, Mr. Scott, you say that you heard a lot of  
13 arguing going on over there?

14 A. Yes sir.

15 Q. And you saw a lot of partying going on over  
16 there?

17 A. Well, I didn't say -- I just knew there was a lot  
18 of party going on. There was a lot of automobiles in and  
19 out of there all the time. I had to go one time to get  
20 them to remove some of the vehicles in front of my house,  
21 they was parked all up and down the streets out there.

22 Q. You've seen Leo drag Michelle by the hair of her  
23 head?

24 A. Yes sir.

25 Q. When did you have this sudden recall, Mr. Scott?

1 A. Sudden recall?

2 Q. Yeah.

3 A. I don't understand that.

4 Q. Well, do you recall talking to Investigator Weeks  
5 back on the 2nd of March at your place of business?

6 A. Yes sir.

7 Q. You recall telling him that you had no  
8 information about this case and you were just concerned  
9 about your wife's involvement?

10 A. No sir, I don't recall that.

11 Q. Did you or did you not say that?

12 A. I don't remember saying that, sir.

13 Q. Did you tell that to --

14 A. Yes sir, I'm sure I did, because that's the only  
15 thing I ever knew. That's the only thing I've ever seen.

16 Q. Did you tell that to Detective Weeks when he  
17 interviewed you on the 2nd of March of 1988 out at  
18 Badcock's, Mr. Scott?

19 THE COURT: Mr. Edmund, approach the bench.

20 (The following took place out of the hearing of  
21 the jury):

22 THE COURT: It's a different date, I believe,  
23 when he asked him about the first time.

24 MR. EDMUND: No sir, it's the same date.

25 THE COURT: That's what I thought. He answered

1 your question he didn't recall making that statement.  
2 Now, for you to come forward and ask him the same  
3 thing again is not only repetitious, it's harassing  
4 this witness.

5 MR. EDMUND: All right, sir.

6 (Bench conference concluded.)

7 Q. You don't recall having made that statement,  
8 Mr. Scott, or you didn't make that statement?

9 A. I believe I did, sir. I do believe I did.  
10 That's -- that's the truth. This is the only thing I know  
11 what I'm telling you now.

12 Q. I'm asking you, sir. You said you don't recall  
13 having told Detective Weeks that you have no information on  
14 the case and you're simply concerned about your wife's  
15 involvement. Did you -- do you not recall making that  
16 statement or do you deny making that statement?

17 A. I'm not denying saying I didn't make that  
18 statement. It's been two years ago. This has been two  
19 years ago.

20 Q. Well, would there be some reason if you have all  
21 of this information and you're concerned about your wife's  
22 involvement that -- would there have been some reason that  
23 you would have lied to the officers?

24 A. No, I'm not going to lie. I ain't gotta lie. I  
25 don't lie.

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1 Q. Well, then --

2 A. If I didn't tell him at the time -- if I did not  
3 tell him at that time or whatever I had on that paper, I  
4 didn't recall it. At the time there was so much going on  
5 nobody knew nothing. I knew the night that that had  
6 happened I knew something was wrong around there.

7 Q. Well, what was going on at your place of business  
8 at 3:44 in the afternoon that confused you so that you told  
9 the officers that you didn't -- that you had no  
10 information?

11 A. Well, it's like this. I'm a collector and I talk  
12 to probably an average around fifty people per day on the  
13 telephone.

14 Q. Yes sir.

15 A. And it's very confusing. When they come -- I  
16 didn't even expect them to come in there.

17 Q. Well, when is the -- how many times a day do you  
18 talk to a law enforcement officer who's involved in the  
19 investigation of a murder case?

20 A. I don't.

21 Q. Would it be a fair statement to say this is the  
22 only time in your life you've ever talked to a law  
23 enforcement officer involved in a murder case?

24 A. Yes sir.

25 Q. Well, don't you think when you're talking to a

1 Q. And where was that?

2 A. The body was located in a canal just off State  
3 Road 33 just south of Interstate 4.

4 Q. And when you got there was the body still in the  
5 water?

6 A. Yes, it was.

7 Q. And did you stay there, sir, until the body was  
8 removed from the water?

9 A. Yes.

10 Q. Did you perform the autopsy on this young lady?

11 A. Yes, I did.

12 Q. When did you do that?

13 A. The next morning, February 28th.

14 Q. What is the reason, Dr. Holliman, for performing  
15 an autopsy?

16 A. The reason for performing an autopsy is to  
17 determine the cause of death.

18 Q. Did you determine the cause of death of Michelle  
19 Schofield?

20 A. Yes, I did.

21 Q. What did this young lady die from, sir?

22 A. Multiple stab wounds.

23 Q. How many stab wounds were in Michelle?

24 A. She had a total of twenty-six stab wounds.

25 Q. Dr. Holliman, what I'm going to ask you to do is

1 abdominal cavity.

2 Q. Is this a closer picture of that wound in the  
3 back?

4 A. Yes sir.

5 Q. Dr. Holliman, you can see in the last photograph  
6 a wound near the bottom of the back. I show you State's  
7 Exhibit 48. Is that a close photograph of that wound, the  
8 one that you just described that goes not quite to the  
9 abdominal cavity?

10 A. Correct.

11 Q. Now, this wound -- could you tell the jury what  
12 is just above this ruler in State's Exhibit 49, sir?

13 A. There are bruises right here, here and here.

14 Q. Dr. Holliman, do you know if these bruises, sir,  
15 were inflicted on Michelle Schofield before she died or  
16 after she died?

17 A. They were inflicted acutely, which means could be  
18 at the time she died or within a period up to twenty-four  
19 hours prior to her death.

20 Q. And how do you know that, sir?

21 A. By examination of the color of these bruises  
22 they're still blue. As bruises age the coloring in them  
23 will change from yellow to green.

24 Q. And about how long does it take for bruises to go  
25 through that aging process normally?

1           A.     Somewhere in excess of twenty-four hours and on  
2 out to a week to two weeks.

3           Q.     What are the markings that are visible in State's  
4 Exhibit 50, Dr. Holliman, in this photograph right here?

5           A.     This is Mrs. Schofield's back and there are  
6 multiple abrasions of the skin which are superficial, they  
7 scrape the skin. They are from dragging the body  
8 post-mortum. After death the body was dragged over  
9 something which scraped her back.

10          Q.     How can you tell, Dr. Holliman, that these scrape  
11 marks are post-mortum, sir?

12          A.     By having seen a number of scrape marks prior to  
13 this, the pattern of hemorrhage or lack of hemorrhage about  
14 many of these wounds.

15          Q.     In other words, if the person is alive there's a  
16 hemorrhage underneath of this when you look at them at  
17 autopsy?

18          A.     Yes.

19          Q.     And that's not present on these marks?

20          A.     Correct.

21          Q.     State's Exhibit 51, I believe, just also shows  
22 the bruises and the drag marks. Are there any other  
23 significant injuries on this photograph?

24          A.     Just posteriorly the drag marks.

25          Q.     Now, State's Exhibit 52 I want you to use, if you

1 THE COURT: Cross.

2 MR. EDMUND: May I inquire from here?

3 THE COURT: Sure.

4 CROSS-EXAMINATION

5 BY MR. EDMUND:

6 Q. Did you also find that the vehicle was very low  
7 on water?

8 A. Yes, I did.

9 Q. To the point of a pint and-a-half?

10 A. Approximately. I don't exactly remember, but  
11 yes.

12 Q. One more, sir. What would that radiator normally  
13 hold, sir?

14 A. Close to two gallons.

15 Q. One more, sir. Would that be likely to cause  
16 overheating?

17 A. Definitely.

18 MR. EDMUND: Thank you, sir.

19 MR. AGUERO: I don't have anything else. Ask  
20 that he be excused from further attendance.

21 THE COURT: Ladies and gentlemen, we'll go ahead  
22 and take a recess at this time. If you desire to  
23 smoke this will be an opportunity to do so.

24 Mr. Aguero, would y'all come up here just a  
25 minute.

1 (Bench conference was held off the record.)

2 THE COURT: If you'll be back in the jury room at  
3 11:00 o'clock we'll start at that time. Please  
4 remember about the warning about if you're in the  
5 public areas that no one discusses the case in your  
6 presence.

7 (The jury was excused from the courtroom.)

8 JURY OUT:

9 (Recess.)

10 THE COURT: Ready to bring them back in?

11 MR. EDMUND: Yes sir.

12 THE COURT: Let's please bring them back.

13 (The jury returned to the courtroom.)

14 JURY IN:

15 THE COURT: Your next witness, please.

16 MR. AGUERO: Alice Scott, please.

17 ALICE SCOTT, the deponent herein,

18 being first duly sworn, testified upon

19 his oath as follows:

20 EXAMINATION

21 BY MR. AGUERO:

22 Q. Would you tell me your name, please, ma'am.

23 A. Alice Faye Scott.

24 Q. Where do you live, Mrs. Scott?

25 A. 1518 Bowman's Trail, Lakeland, Florida 33809.

1 Q. Where did you live back in February and March of  
2 1987, Mrs. Scott?

3 A. 3535 Island Oaks, I think it's North.

4 Q. I want to show you a photograph that's been  
5 introduced as State's Exhibit 79. Can you see your  
6 residence in this photograph, Mrs. Scott?

7 A. Yes sir.

8 Q. Can you point it out to me, please.

9 A. (Witness pointed.)

10 Q. That's your residence?

11 A. I can't tell from the photograph.

12 Q. Okay.

13 A. I'm sorry.

14 Q. Do you know Leo Schofield?

15 A. Yes sir, as a neighbor.

16 Q. Where did he live in relation to where you lived?

17 A. He lived across the street.

18 Q. How long did you live out there?

19 A. Lived out there for three -- I think it was three  
20 and-a-half years.

21 Q. How long did Leo live out there?

22 A. Anywhere from I think it was six months. I'm not  
23 for sure.

24 Q. About six months?

25 A. About. I'm not for sure on that.

1 Q. Do you see Leo here in the courtroom, Mrs. Scott?

2 A. Yes sir, I do.

3 Q. Would you point him out for me, please, ma'am.

4 A. He's sitting right there.

5 MR. EDMUND: Stipulate, Your Honor.

6 THE COURT: Thank you.

7 Q. Did you ever know his wife, Michelle Schofield?

8 A. Not personally, only as a neighbor.

9 Q. Did you ever socialize with those folks or did  
10 you just see them coming and going as neighbors?

11 A. I only saw them coming and going as neighbors and  
12 I only talked to Leo after this had happened.

13 Q. Mrs. Scott, were you able to observe what their  
14 relationship was like?

15 A. Yes sir, I was.

16 Q. What did you observe about their relationship?

17 A. It was terrible.

18 Q. Tell me why you say that. What did you see or  
19 observe or hear that makes you say it was terrible?

20 A. It was all the time arguing going on over there  
21 and it was nothing for him to drive up in his car with  
22 Michelle and drag her out by the hair of the head and pull  
23 her up the steps.

24 Q. Did you see that on one occasion or more than one  
25 occasion?



1 A. More than once.

2 Q. Did you see or hear anything else besides the  
3 pulling by the hair and -- besides the pulling by the hair  
4 that would lead you to believe that this was not a good  
5 relationship?

6 A. Arguing, screaming and hollering. You can hear  
7 things being thrown.

8 Q. Where would you be, Mrs. Scott, when you would  
9 hear that?

10 A. We had a glass room which we used for a Florida  
11 room on our trailer, which is on the -- our trailer sits  
12 this way and our glass room was on the right. And we had  
13 -- it was glass. And we'd always have the windows up and  
14 we had real thin shears on the thing.

15 Q. Do you know Mrs. McClelland?

16 A. Yes sir, I do.

17 Q. Where does she live in relation to where you used  
18 to live out there?

19 A. She lives right to my right on the corner there.

20 Q. And that's on the same side of the street?

21 A. Yes sir, right nextdoor to me.

22 Q. Where did Leo live, the same side of the street  
23 or opposite side of the street?

24 A. No sir, he lived on the opposite side.

25 Q. If I told you, Mrs. Scott, that Mrs. McClelland

1 them?

2 A. About from me to you. It could have been closer.  
3 I'm not good on my judgment as distance.

4 Q. What time of day or night was it?

5 A. It was around 1:00, 1:30.

6 Q. In the afternoon?

7 A. No sir, in the morning.

8 Q. How could you see them if it was dark outside and  
9 it was 1:00 or 1:30 in the morning?

10 A. There's a street light out there.

11 Q. How many times do you think you had seen Leo  
12 before that day?

13 A. I don't understand the question.

14 Q. Before that night when you're looking out your  
15 window or how many different occasions do you think you've  
16 seen Leo Schofield during the time you lived there? Did  
17 you see him every day?

18 A. I seen him every day.

19 Q. How about Michelle?

20 A. Every day.

21 Q. Is there any doubt at all in your mind,  
22 Mrs. Scott, as to who you saw when you looked out the  
23 window?

24 A. No sir, there's not.

25 Q. Could it have been some person that looked like

1 Leo?

2 A. No sir, it was not.

3 Q. Could it have been some person that looked like  
4 Michelle?

5 A. No sir.

6 Q. Could it have been a car that looked like their  
7 orange stationwagon?

8 A. No sir.

9 Q. When they came up and you looked out the window,  
10 tell me what happened.

11 A. They went into the trailer.

12 Q. Go ahead. Tell me what happened then.

13 A. They went into the trailer and they closed the  
14 door. It was approximately -- I could be wrong, but it was  
15 approximately around twenty minutes Leo came back out.

16 Q. Did anything happen in the meantime?

17 A. There was arguing and screaming and it sounded  
18 like he was pushing her up against the walls.

19 Q. Was that something you had ever heard before?

20 A. Yes sir, I had.

21 Q. What happened -- or where were you -- twenty  
22 minutes later you said he came out. Where were you then?

23 A. I was sitting the bathroom window when I saw him  
24 -- I had a thing like this, the counter in my bathroom, and  
25 I was sitting up in my bathroom window because when they

1 went in and I heard the arguing and screaming it upset me  
2 and I couldn't figure out what was going on over there and  
3 so I was sitting up in the window watching.

4 Q. What did you see next?

5 A. I saw him come out by himself and he left.

6 Q. How did he leave? Did he walk?

7 A. He just walked out and got in his car and drove  
8 off.

9 Q. What did you do at that point?

10 A. At that point I went in and I woke up my husband  
11 and I said something's going on across the street.

12 Q. What did he tell you?

13 A. He told me to go back to bed and shut my mouth  
14 and quit being nosey.

15 Q. Did you do that?

16 A. No sir, I didn't.

17 Q. Did you see anything else that night, Mrs. Scott?

18 A. Yes sir. Later on I heard a car, so I got back  
19 up and looked back out the window and it was him coming  
20 back in. And he pulled his car in around the curve, like  
21 on the next lot there's a round circle, so he came in  
22 through that way, backed his car up to the porch. And he  
23 pulled the back lid, hatchback thing or whatever you want  
24 to call it, up, and he went into the house.

25 Q. Now, where were you when you saw him do that?

1 A. In the bathroom window.

2 Q. What happened next?

3 A. Well, my sister -- well, before that he came out  
4 and he was holding something, he had his hands like this.

5 Q. Could you see what he had in his hands?

6 A. No sir, it was covered.

7 Q. Could you tell whether it was as light as this  
8 piece of paper, Mrs. Scott?

9 A. No sir, it wasn't as light as that piece of  
10 paper.

11 Q. Did it appear to be a heavy object or a light  
12 object?

13 A. It appeared to be heavy.

14 Q. Could you tell what this object was covered in?

15 A. No sir, I could not.

16 Q. And you don't know what it was?

17 A. No sir, I don't.

18 Q. Is there any question in your mind, Mrs. Scott,  
19 that it was Leo Schofield, that guy sitting right there,  
20 that you saw doing this?

21 A. No sir, there's no question in my mind that it  
22 was him because I know it was him.

23 Q. What did he do with that?

24 A. He put it in the back of the car.

25 Q. What did you do at that point?

1           A.    At that point -- when he was carrying it down the  
2 stairs my sister-in-law came around the curve from coming  
3 to work -- coming home from work because she worked at  
4 night.

5           Q.    Is that the same sister-in-law you told us about  
6 a minute ago?

7           A.    Yes sir, that lives nextdoor to me. She drove up  
8 so I walked out on my back porch and she says, Alice, come  
9 here a minute. And I said all right. And I said something  
10 weird's going on --

11           MR. EDMUND: I object to the hearsay, Your Honor.

12           Q.    Just tell me what you observed and we won't talk  
13 about what Linda said.

14           A.    Okay, I went off the porch, I went out to the  
15 fence, which our yards were connected together, and I --

16           Q.    Well, again, on this picture did you see that  
17 area? You're talking about between these two residences  
18 right here?

19           A.    Yes sir. And you can still see the trailer  
20 because I was in the corner of my fence.

21           Q.    Where's your back porch on here that you're  
22 talking about being -- when you went out on your back  
23 porch?

24           A.    The back porch is there. I was standing right up  
25 in here a little ways from the tree where I could see.

1 Q. Did you have a conversation with Linda?

2 A. Yes sir, I did.

3 Q. Did you ever figure out that night what Leo was  
4 carrying out of that trailer?

5 A. No sir, I didn't.

6 Q. Did you go in and call the police?

7 A. No sir, I didn't.

8 Q. Why didn't you?

9 A. Because, like I said, my husband, when I woke him  
10 up and told him about it, he told me I was being nosey and  
11 to shut my mouth. There was so many things going on over  
12 there all the time that you could call the law, they  
13 wouldn't come out there anyway.

14 Q. You didn't know that he might be carrying a body  
15 out?

16 A. No sir, I did not.

17 MR. EDMUND: I object; move it be stricken, ask  
18 the jury be instructed to disregard it, if it please  
19 Your Honor.

20 THE COURT: It was leading. I'll sustain the  
21 objection.

22 Q. Did you know what it was he was carrying?

23 A. No sir, I did not.

24 Q. Did you see any reason to call the police because  
25 Leo Schofield was carrying something out of his house that

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1 night?

2 A. No sir, I did not.

3 Q. Up until the time that they came walking around  
4 the neighborhood talking to people had you ever called  
5 anybody to tell them about that?

6 A. No sir, I had not.

7 Q. Now, when the police came out and talked to you,  
8 Mrs. Scott, on Saturday what kind of things did they ask  
9 you about?

10 A. They asked me did I know that Michelle had come  
11 up missing, and I told them no sir, that I had not heard  
12 nothing. But I knew that there was something strange going  
13 on over there.

14 Q. Did you just tell the police about -- well,  
15 strike that. Did you tell the police about what you just  
16 told us?

17 MR. EDMUND: I object to the leading question, if  
18 it please the Court.

19 THE COURT: The rephrased question was not  
20 leading. I'll allow him to ask the rephrased question.

21 Q. Did you tell the police about what you just told  
22 us?

23 A. About Leo?

24 Q. Yes sir. Did you tell them any other thing about  
25 what went on over there?



1           A.    I just told them there was a lot of partyi  
2 going on over there and that there was a lot of argu.....  
3 over there and fights all the time.

4           Q.    Had you seen anybody else around that trailer in  
5 the last couple of days?

6           A.    Yes sir.

7           Q.    Did you tell the police about that?

8           A.    Yes sir.

9           Q.    Did you have any reason at that point,  
10 Mrs. Scott, to tell the police anything in particular about  
11 Leo as opposed to all the other stuff you told them?

12          A.    No sir.  I didn't -- are you asking me -- I don't  
13 understand.

14          Q.    On that Saturday did you attach any particular  
15 significance to this event with Leo that you were telling  
16 them about as opposed to anything else?

17          A.    No sir, I had no idea that she was dead.

18          Q.    Now, did you ever see Michelle again?

19          A.    No sir.

20          Q.    Did you ever see Leo again?

21          A.    Yes sir.

22          Q.    When's the next time that you saw Leo?

23          A.    The next morning.

24          Q.    And where was he at that time?

25          A.    He was standing in his front door, he had his

1 legs spread, his hands up like this in the door. He had a  
2 black leather jacket on, no shirt, and a pair of jeans and  
3 tennis shoes.

4 Q. Do you know about what time that was?

5 A. Around 10:00 o'clock.

6 Q. How do you know that?

7 A. Because my neighbors were coming to get me to  
8 take me to my doctor's appointment and they were sitting in  
9 the road waiting on me and I walked out to the road.

10 Q. When did you get back from the doctor?

11 A. I really don't know. I can't remember.

12 Q. Did you see Leo at the trailer again that day?

13 A. Yes sir, I did.

14 Q. Tell me what else you saw later in the day after  
15 the doctor's appointment.

16 A. He had kind of a new little truck. I had never  
17 seen this truck before over there, or I don't remember  
18 recalling, remembering that I had saw it, and he was taking  
19 a carpet cleaner out of it, and he took it in the house and  
20 he had the door open and he was cleaning the carpet.

21 Q. This was the next --

22 A. The very next day.

23 Q. The very next day?

24 A. Yes sir.

25 Q. Just to be clear, it's the same actual day as the

1 Q. And who did you talk to?

2 A. Leo Sr.

3 Q. What was the reason for that contact?

4 A. I called to give condolences on behalf of the  
5 Lakeland Police Department. I saw a news broadcast on TV  
6 about that they had located Michelle and just called to  
7 give condolences on behalf of the department.

8 Q. Now, during that conversation did you discuss  
9 with Mr. Schofield how that body had been discovered?

10 A. Yes. He talked to me for a brief while over the  
11 telephone.

12 Q. What did he tell you?

13 A. He said to me that -- he told me about how he had  
14 assembled his own search party looking for the body and  
15 that he was able to locate her through what I believe he  
16 referred to as a premonition, received a -- some type of  
17 word.

18 Q. When did he have the premonition?

19 A. The night before they found her.

20 Q. What did he tell you about that?

21 A. Told me where the body was, how the body was  
22 situated and almost exactly how to get to it.

23 Q. Is that what his premonition was about?

24 A. Yes.

25 Q. And then did he tell you those things about where

1           A. This is going to be Michelle Schofield's house  
2 right here.

3           Q. Can you -- did you later determine in your  
4 investigation where Alice Scott lived?

5           A. Correct. This residence right here diagonally  
6 across from it.

7           Q. Let me show you now Exhibit 80. Can you show me  
8 on this photograph, Detective, where Michelle lived and  
9 where Mrs. Scott lived?

10          A. This is Michelle Schofield's house and right  
11 across diagonally is Alice Scott's house.

12          Q. And lastly, on Exhibit 81 can you show me on this  
13 photograph the area in which Michelle's trailer is located  
14 and Mrs. Scott's trailer?

15          A. Again, this is Michelle's mobile home here, and  
16 right straight across diagonally is Alice Scott's.

17           MR. AGUERO: At this time the State would move to  
18 publish these three photographs to the jury.

19           (The photographs were published to the jury.)

20          Q. Detective, how long was it between the time that  
21 you called to set up this meeting over at Leo Jr.'s trailer  
22 and the time that you got over there?

23          A. Probably only about fifteen or twenty minutes.  
24 It wasn't a great length of time.

25          Q. Did you expect at the time that you arrived over

1 there -- I think you said you met down near Tom's -- for  
2 Leo Jr. to come?

3 A. Yeah, we expected Leo Jr. to come. We asked him  
4 to come.

5 Q. Were you given any explanation, sir, as to why  
6 Leo Jr. did not arrive with his father?

7 A. We were told by his father that Leo Jr. was upset  
8 and could not make it.

9 Q. Did you go on over to the trailer?

10 A. Right. We were told that we had permission to go  
11 there.

12 Q. Tell me what happened when you went in.

13 A. We went into the mobile home. As you first come  
14 in on the right is a bedroom which was used mainly for  
15 storage, it was empty. They've got a living room. The  
16 kitchen was apparently blocked off, they had a puppy in  
17 there, there was paper laying around, and from there we  
18 went into the master bedroom in the back.

19 Q. What, if anything, did you observe in the master  
20 bedroom?

21 A. The master bedroom was somewhat in disarray. It  
22 was -- the drawers were all open. A couple -- one or two,  
23 at least, were broken. There was no sheets or anything on  
24 the bed, and photographs laying all over the bed.

25 Q. There was no sheets at all on the bed?

1 A. No sir. It was a water bed.

2 Q. How long were you out there that evening, sir?

3 A. We were only there approximately fifteen or  
4 twenty minutes.

5 Q. What was the reason that you left?

6 A. There was a letter or a note laying right on top  
7 of the dresser and Detective Putnel picked it up and looked  
8 at it and when he did Leo Sr. got extremely upset with us  
9 and didn't want us to go through the -- his son's stuff.  
10 And we advised him this is why we wanted Leo Jr. here so  
11 he'd be here when we went through everything. And so he  
12 calmed down and said go ahead, but we stopped. We wouldn't  
13 go any further and we left, making arrangements to come  
14 back the next day.

15 Q. Now, how late at night was it by the time all  
16 this took place?

17 A. It was approximately 11:00 o'clock, quarter after  
18 11:00.

19 Q. And did you in fact make arrangements to go back  
20 the next day?

21 A. Yes sir, we did.

22 Q. Did you go?

23 A. Yes sir.

24 Q. Starting in the morning of the next day, what's  
25 the next thing that you did with regard to this case on

1 Saturday, the 28th?

2 A. I attended the autopsy.

3 Q. Where did that take place, sir?

4 A. The morgue at Lakeland Regional Medical Center.

5 Q. Was Michelle still dressed in her clothes at that  
6 time?

7 A. Yes sir.

8 Q. Did you observe any stab -- or apparent stab  
9 wounds through any of her clothing at the time that you  
10 attended the autopsy?

11 A. Yes sir, I believe there was some in her bra  
12 area, if I can recall correctly.

13 Q. Did she have her shirt on?

14 A. Her shirt on, too, that's right.

15 Q. Did Mrs. Schofield have any jewelry on when her  
16 body was found, Detective?

17 A. She had a wedding ring on her left finger.

18 Q. After you attended the autopsy what's the next  
19 thing that you did the next day?

20 A. Well, we had agreed to meet Leo -- through Leo  
21 Sr., Leo Jr. at the trailer on Island Oaks at 1:00 o'clock.

22 Q. Did you go over there then?

23 A. Yes sir, we arrived approximately 12:50.

24 Q. And again who is we?

25 A. Myself and Detective Putnel.

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1 Q. Now, when you got there did you search the  
2 trailer that day?

3 A. No sir.

4 Q. Why not?

5 A. Leo Sr. was extremely angry and upset. He  
6 accused us of lying to him, that everybody in the sheriff's  
7 office was lying to him and we were not allowed to enter  
8 the residence.

9 Q. Was Leo Jr. there?

10 A. Yes sir, he was.

11 Q. What did Leo Sr. say you were lying to him about?

12 A. About everything. He didn't have any specifics.  
13 He just said we were lying about everything and that if we  
14 had moved faster Michelle would have been alive.

15 Q. Did you ever lie to him, Detective?

16 A. No. I really hadn't had a long conversation with  
17 him.

18 Q. Did you talk to Leo Jr. at all that day over at  
19 the trailer?

20 A. No sir.

21 Q. Why not?

22 A. Well, he was inside and wouldn't come out and  
23 wouldn't allow us in.

24 Q. Was the conversation with his father of  
25 sufficient voice level so that it could be heard inside the



1 trailer?

2 MR. EDMUND: I object on the grounds that would  
3 call for speculation.

4 THE COURT: I'll sustain the objection.

5 Q. How loud how was he talking?

6 A. He was yelling at us at one point.

7 Q. Was the door to the trailer open or closed?

8 A. Open. We could see Leo in the living room  
9 walking back and forth.

10 Q. Did Leo at any time attempt to come out and tell  
11 you to come in and look at whatever you wanted to look at?

12 A. No sir.

13 Q. Didn't talk to you at all?

14 A. No sir.

15 Q. Did you ever find out in the course of your  
16 investigation that Leo Sr. ever lived at that trailer?

17 A. No, he didn't.

18 Q. What did you do at that point, Detective, now,  
19 not being able to search through the trailer?

20 A. Detective Putnel stayed with Leo Sr. talking to  
21 him. I departed and I went out and started doing some  
22 neighborhood canvas, talking to some of the neighbors.

23 Q. Who all did you talk to that day?

24 A. I talked to -- let's see, I think it was David  
25 Hawkins nextdoor. Lillian Costanza, Ronald McClelland is

1 who I talked, and we eventually talked to Robert and Linda  
2 Sells.

3 Q. Now, at the time that you began this neighborhood  
4 canvas did you have any suspects in this homicide?

5 A. No sir.

6 Q. Did you have any particular neighbor that you  
7 thought was going to be more important than any other  
8 neighbor to talk to?

9 A. No sir, I just started down the street hitting  
10 one at a time.

11 Q. What were you attempting to do when you undertook  
12 that part of your investigation, Detective?

13 A. Getting any kind of background we could on  
14 Michelle, and of course if they had seen or heard anything  
15 relevant to the case.

16 Q. Did you ever talk to Alice Scott that day?

17 A. Yes sir, I did.

18 Q. Did you talk to her first or second or do you  
19 recall?

20 A. She was about the third or fourth we talked to.

21 Q. Prior to the time that you approached her in the  
22 neighborhood canvas, Detective, did you have any reason to  
23 believe that Alice Scott had any more information or any  
24 less information than any other person out there?

25 A. No sir.

1 Q. Did you ever advise Mrs. Scott that you suspected  
2 Leo Schofield of committing this murder and that's why you  
3 were talking to her?

4 A. No, we didn't.

5 Q. Did you advise any of these neighbors that you  
6 had any suspects in this homicide?

7 A. No sir.

8 Q. What did Mrs. Scott tell you, sir?

9 A. She told us initially about just some background  
10 as far as the violence she had seen.

11 MR. EDMUND: I think I'll object now on the  
12 grounds, if it please Your Honor, it's not  
13 impeachment; no predicate laid for that. It would be  
14 hearsay. I object.

15 MR. AGUERO: May we approach the bench.

16 (The following took place out of the hearing of  
17 the jury):

18 MR. AGUERO: Judge, I'm not going to go through  
19 every witness's testimony, but clearly Mr. Edmund has  
20 attempted to impeach my witnesses by showing that they  
21 gave prior inconsistent statements. For that reason  
22 the prior consistent statement is not now hearsay. It  
23 is offered to prove the credibility of the witness. 1512

1 These witnesses, each of whom he asked specifically  
2 even, didn't you tell Detective Weeks, didn't you tell  
3 Detective Weeks this? Well, here's Detective Weeks,  
4 Judge.

5 MR. EDMUND: That's for me to impeach with, Your  
6 Honor.

7 MR. AGUERO: Well, then the State is permitted to  
8 to bolster the credibility of the witness from prior  
9 consistent statements.

10 MR. EDMUND: Prior consistent statements, true,  
11 but not if there are areas and items of impeachment.

12 THE COURT: What rule number are you referring  
13 to?

14 MR. AGUERO: 90.801 near the end. 801, 802.

15 THE COURT: Okay. I'll overrule the objection.

16 MR. AGUERO: Thank you.

17 (Bench conference concluded.)

18 Q. Detective, what did Mrs. Scott tell you when you  
19 interviewed her on that -- this is going to be on Saturday  
20 afternoon now; is that right?

21 A. Yes sir, approximately 1:50 p.m. She initially  
22 gave us some background on what she had seen in the past  
23 such as the violence between the two, such as Leo beating  
24 up Michelle where she would drive up and he'd pull her by  
25 the hair of the head and drag her into the trailer while he

1 was beating her.

2 Q. When did Mrs. Scott tell you was the last time  
3 she had seen Leo Schofield, Jr. prior to the time that  
4 Michelle came up missing, according to what you knew at  
5 that point? In other words, what you knew at that point  
6 was that shortly after 8:15 on Tuesday when she got off  
7 work she was not seen as far as you knew; is that correct?

8 A. Correct.

9 Q. Did you question Mrs. Scott as to when in that  
10 time vicinity she last saw Leo and/or Michelle?

11 A. If I understand your question, it would be that  
12 night when she saw him drive up approximately 1:30, 2:00  
13 o'clock in the morning, which would be Wednesday morning,  
14 the 25th, she said she heard a noise, looked out her  
15 bathroom window, and saw the little orange stationwagon,  
16 Leo in the car driving and Michelle getting out, Michelle  
17 went into the trailer.

18 Q. Now, at that time, Detective, did you know when  
19 exactly Michelle Schofield was killed?

20 A. No, we never had an exact time.

21 Q. As you sit there right now, Detective, do you  
22 know what time exactly Michelle Schofield was killed?

23 A. No sir, I sure don't.

24 Q. Could Michelle Schofield have been killed on  
25 Thursday before her body was found?

1 MR. EDMUND: Your Honor, I object on the grounds  
2 that would be pure speculation, if it please the  
3 Court. Move it be stricken; ask the jury be  
4 instructed to disregard.

5 THE COURT: I sustain the objection. Allow you  
6 to rephrase your question.

7 Q. In the course of your investigation, Detective,  
8 did you ever develop any information which would lead you  
9 to a specific point in time where Michelle Schofield was  
10 killed?

11 A. Not a specific point in time, no sir.

12 Q. Would your investigation be inconsistent with the  
13 proposition that she could have been killed as late as  
14 Thursday?

15 MR. EDMUND: Same objection, if it please the  
16 Court.

17 THE COURT: Overruled.

18 Q. Would your investigation be inconsistent with the  
19 possibility she could have been killed on Thursday?

20 A. It wouldn't be inconsistent.

21 Q. Now, at the time you're asking Mrs. Scott these  
22 questions, did you give Mrs. Scott any information  
23 information about where Leo or Michelle might have been  
24 during the time she's telling you she saw them outside?

25 A. No sir.

1 Q. Had you had any information that would lead you  
2 to believe they had been there up until the time you talked  
3 to Mrs. Scott?

4 A. None whatsoever.

5 Q. Had you had any further discussions with Leo  
6 Schofield, Jr. prior to your interview of Mrs. Scott as to  
7 his whereabouts on that evening?

8 A. No sir.

9 Q. How about Leo Schofield, Sr., had you had any  
10 conversations with him at the time you talked to Mrs. Scott  
11 concerning the whereabouts of he and/or his son during that  
12 time period?

13 A. No sir.

14 Q. So you're asking Mrs. Scott these questions just  
15 because you're interviewing people?

16 A. Correct.

17 Q. Now, she told you she saw them about what time?

18 A. She said it was approximately 1:30 to 2:00  
19 o'clock.

20 Q. Now, during the course of your investigation did  
21 you ever go into Mrs. Scott's trailer and look through her  
22 bathroom window, Detective?

23 A. Yes sir.

24 Q. Could you see Mr. Schofield's trailer from her  
25 bathroom window?

1 A. Yes sir, very clear.

2 Q. How long did you talk to Mrs. Scott on that day?

3 A. We talked to her a good thirty-five or forty  
4 minutes.

5 Q. After you interviewed Mrs. Scott did you have any  
6 suspects in this case?

7 A. At that particular time Leo Jr. had become a  
8 suspect.

9 Q. Why was that?

10 A. Based on Mrs. Scott's statement.

11 Q. And what, if anything -- you told us that she  
12 said she saw them drive up. What else did she tell you  
13 about her observations of Leo and/or Michelle on that  
14 particular evening?

15 A. She said after Michelle walked into the trailer  
16 Leo drove off and was gone approximately twenty to thirty  
17 minutes. He came back, he went inside the trailer, and  
18 then she could hear Michelle screaming and said that -- and  
19 she said, quoting her, I knew that Leo was beating her.  
20 She said at approximately 2:30 to 3:00 o'clock she saw Leo  
21 come outside carrying a large object, and she was holding  
22 her hands up, in both arms, place it in the back of the  
23 stationwagon, and then he got in the car and drove off.

24 Q. Did Mrs. Scott indicate whether she ever saw  
25 Michelle Schofield again after that?



1 Q. Now, prior to that time had you had any  
2 conversations with Mr. Schofield, Sr.?

3 A. Not any detailed interview, no sir.

4 Q. You had talked to him out at the trailer?

5 A. Correct.

6 Q. Where and when did you interview Mr. Schofield,  
7 Sr., on the 2nd?

8 A. We interviewed him at his residence. It was on  
9 the 2nd of March, approximately 9:25 in the evening.

10 Q. Did you ask Mr. Schofield -- strike that. Did  
11 you know at that time that Mr. Schofield, Sr. was the  
12 person who had found this girl's body?

13 A. Yes sir.

14 Q. Did you question Mr. Schofield, Sr. concerning  
15 how he managed to find this girl's body?

16 A. Yes, I did.

17 Q. And what did he tell you, Detective?

18 A. Mr. Schofield told me that he was -- had been  
19 looking along the area, searching along the area, the pit  
20 area, and that after the morning of Friday morning, he had  
21 -- he was driven -- this his terminology. He said he was  
22 driven by an inner force to go back to the pit area and  
23 that he went back to the pit area and was driving along and  
24 as the vehicle approached the pit, the truck veered toward

1 out of the truck, began to walk. As he got closer to where  
2 he eventually found Michelle his head was continuing to  
3 ache and ache and he got to the opening in the bushes and  
4 his head still hurting, walked to the edge of the water and  
5 found Michelle.

6 Q. Did he ever tell you, sir, that he had planned  
7 all along that morning to go to that area and simply went  
8 out and parked his truck and started searching?

9 A. No sir, he didn't. He said he had been searching  
10 all that area up in there.

11 Q. Did he ever tell you, Detective, that he found  
12 this jacket first?

13 A. No sir, he didn't.

14 Q. Did he ever tell you, Detective, that he saw a  
15 blood spot on the ground and therefore began to search the  
16 area more carefully in order to see if Michelle was near  
17 there?

18 A. No sir, he never mentioned the blood spot.

19 Q. Did he give you any further description as to  
20 what he found other than you said he stepped up in the  
21 opening and he saw an arm? Did he tell you anything else  
22 about what he observed about this body at that time?

23 A. Nothing other than the fact that it was -- the  
24 body was face down and there was a board over it.

25 Q. Did Mr. Schofield, Sr. ever tell you in that

1 A. Yes sir.

2 Q. What time did she get off work?

3 A. It reflects that she got off at 5:03.

4 MR. AGUERO: State would offer into evidence the  
5 exhibit that I've asked to be marked as State's  
6 Exhibit Number 97.

7 MR. EDMUND: No objection, sir.

8 THE COURT: It will be received and marked.

9 Q. In the course of your investigation, sir, did you  
10 determine the type of motor vehicle that was driven in this  
11 particular time in 1987 by Leo Schofield, Sr.?

12 A. Yes sir, it was a Love truck. I think it's a  
13 Chevy Love.

14 Q. Do you know what color it was, sir?

15 A. It's a baby blue with a white camper top on the  
16 back.

17 Q. It was baby blue and had a white camper top on  
18 it?

19 A. Yes sir.

20 Q. Did you form any opinion, Detective, in the  
21 course of your investigation, concerning whether this  
22 homicide occurred at the site on 33 where you found this  
23 girl's body?

24 A. I'm of the opinion that the murder site is not  
25 where we found the body, no, not on 33.

1 A. I believe it was.

2 Q. Do you know whether it was locked or unlocked at  
3 the time you left?

4 A. I think I may have locked it when I shut the  
5 door. I noticed that they had stole -- whoever had the car  
6 stole the speakers and the power booster out of the dash.

7 Q. I didn't hear you.

8 A. Whoever had the car stole the speakers and the  
9 power booster out of the dash of the car.

10 Q. The speakers were missing from your car?

11 A. Right. And the power booster.

12 Q. And how many keys did you and Michelle have for  
13 the car?

14 A. One.

15 Q. Have you ever located the key to the car?

16 A. No, I did not.

17 Q. Do you know Michelle McClusky?

18 A. Yes, I do.

19 Q. How long have you known Michelle McClusky?

20 A. I met Michelle briefly shortly after I started  
21 dating Michelle.

22 Q. And describe your relationship with Michelle  
23 McClusky.

24 A. Well, I thought she was one of my wife's better  
25 friends, you know. She was -- she seemed pretty