

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

JUDGE: GOERNER

v.

CASE NO.: 16-3668CFB

MANDI JACKSON,
Defendant. /

MOTION TO VACATE, SET-ASIDE OR CORRECT SENTENCE

COMES NOW, the Defendant, MANDI JACKSON, by and through undersigned counsel, pursuant to Rule 3.850, *Fla. R. Crim. P.*, and respectfully moves this Honorable Court to vacate and set aside the judgment and sentence in the above-styled cause. In support, Defendant would show:

PROCEDURAL HISTORY

1. On January 12, 2017, Jackson was charged by indictment with Count One – first-degree felony murder; Count Two – burglary of a dwelling with assault or battery; and Count Three – robbery. The victim was James Mulrenin (“Mulrenin”).

2. Jackson was represented by Carrie Rentz, P.O. Box 1113, Winter Park, FL 32790-1113, crentz@myrentzlaw.com, and Matthews R. Bark, 999 Douglas Ave., Suite 3317, Altamonte Springs, FL 32714-2063, Matthews.Bark@gmail.com.

3. On October 28, 2019, the case proceeded to jury before the Honorable Jessica Recksiedler. The jury rendered a verdict of guilty as charged on all counts.

This Court sentenced Jackson to life in prison on Counts One and Two, and fifteen-years prison on Count Three. All sentences were to be served concurrently.

4. Jackson timely appealed to the Fifth District Court of Appeal in Case No. 5D19-3411. Appellate counsel raised the following issues:

Issue One: The court erred in granting the State's motion to compel the cell phone passcode as the foregone conclusion exception does not apply.

Issue Two: Judgment of acquittal should have been granted.

5. The Fifth District per curiam affirmed with a concurring opinion on February 19, 2021. *Jackson v. State*, 311 So. 3d 1041 (Fla. 5th DCA 2021). The mandate issued on March 18, 2021.

6. On July 14, 2022, Jackson filed a petition for writ of habeas corpus in the Fifth District Court of Appeal alleging ineffective assistance of appellate counsel. The petition was assigned Case Number 5D22-1700 and has not yet been decided as of the filing of this motion.

7. Defendant has not filed any other postconviction motions. No other motions, petitions or appeals are currently pending before this Court or any other court with respect to the judgment entered in this case. The judgment and sentence resulted from a trial in this Court.

8. This motion is timely filed in accordance with the limitations period set forth in Rule 3.850(b) *Fla. R. Crim. P.*

STANDARD OF REVIEW

In this motion, Jackson raises one (1) ground alleging ineffective assistance of trial counsel, one (1) claim of newly discovered evidence with an alternative claim of ineffective assistance of counsel, and one (1) claim of cumulative error. Claims of ineffective assistance of counsel are governed by the standard announced in *Strickland v. Washington*, 466 U.S. 668 (1984). To prove ineffective assistance of counsel, a movant must show both deficient performance and prejudice. *Id.* at 687-88. Deficient performance is present where counsel's conduct falls below an objective standard of reasonableness. *Id.* Prejudice is present if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

FACTS OF CASE

The State's first witness at trial was Jerome Ashcroft-Thew, a resident in apartment 415 at the Lofts apartments in December 2016. (T.100-01). Around 6:30 a.m. on December 14, 2016, Ashcroft heard noise, angry yelling, and furniture moving in apartment 515 directly above him. (T.101-02). Ashcroft tried to ignore it, but was woken up by the sound of running from one end of the apartment to the other and hitting the cast-iron railing of the balcony. (T.103). Everything went quiet thereafter. (T.105). Five minutes later, Ashcroft heard emergency vehicles arriving. (T.107).

On cross-examination, Ashcroft believed the glass door had been opened because he heard voices on the balcony and furniture being moved. (T.111-12). Ashcroft had stated the noise occurred between 6:00-6:30 a.m. in deposition. (T.116). He heard no gunshots. (T.118).

Jorge Forero was living in apartment 519 the Lofts apartments on December 14, 2016. (T.130-32). Just before 6:30 a.m., Forero heard loud male and female voices that seemed to be fighting coming in from the balcony. (T.133-34). A voice then started yelling for help. (T.134). Forero got up, ran to the balcony and saw the person yelling for help was at the floor level prone on the ground. (T.134-35).

On cross examination, Forero said the voices were male and female. (T.136). Forero never heard the words Mandi or Scott and never saw anyone running or speeding away from the building. (T.140-41).

Russell Songer was walking with his sister around the Crane's Roost Lake behind the Lofts apartments a little after 6:00-6:15 a.m. on December 14, 2016. (T.148-49). During the walk, Songer heard a loud argument coming from one of the balconies in the Lofts. (T.151). The voices sounded like two men. (T.151). Songer heard a loud pop sound followed by someone saying "Oh, no." (T.152-53). Songer then saw a man walk out onto the balcony, reach his arm over the balcony, and then went over headfirst. (T.153-54). Songer hollered "No" because he thought the man was going to jump. (T.154). The man fell headfirst and Songer ran over to him.

(T.154-55). Songer held the man's hand and talked to him while his sister called 911 and then began performing CPR. (T.156). On cross examination, Songer said the man was not running when he reached the railing. (T.159). No duct tape or zip ties were on the man's hands. (T.160). Songer heard no screeching tires and saw no one running away. (T.160).

Denise Smith, Songer's sister, was walking around the lake around 6:15-6:20 a.m. on December 14, 2016, with Songer when she heard what sounded like a domestic dispute coming from the Lofts apartments. (T.164-65). They continued walking and then heard a loud pop which Smith thought might be gunfire based on her military experience. (T.166-67). Smith then saw a figure come onto the balcony, get on the railing, and fall. (T.168). The person hit his head on a metal railing on the first floor. (T.168). Smith called 911, ran over, checked the man's vitals, and started performing CPR. (T.169-70). On cross examination, Smith could not tell whether the initial loud voices were male or female. (T.171-72). Smith saw no duct tape or zip ties on the person and saw no person or cars fleeing the area. (T.172).

Anthony Uzzi, retired Altamonte Springs police officer, responded to a call of a man jumping or falling from the Lofts apartments. (T.191-93). Uzzi arrived at 6:41 a.m. (T.193). The man was dressed in a suit minus the jacket and was not responding to CPR. (T.194). He had fallen from the fifth floor and dented a metal railing. (T.198-99). The man's apartment door was unlocked. (T.200). Upon entry, Uzzi noticed the

throw rug in the center of the apartment was rolled up in the center. (T.200-01). Uzzi noticed a red cup with a straw on the counter, a broken cell phone next to the cup, duct tape, zip ties, a knife, and stains on the carpet. (T.202-03).

Alison Smolarek, crime analyst, arrived at the Loft apartments on December 14, 2016, in response to a man falling from a balcony. (T.210-14). Smolarek went to apartment 515 and saw some items in disarray including a balled-up throw rug. (T.214). Bloodstains were observed on the couch. (T.226). A knife was found on a couch cushion. (T.227). Red stains on the throw rug were indicative of blood. (T.228). Three plastic zip ties were observed and one had red discoloration consistent with blood. (T.229). A piece of duct tape with red stains was next to the sliding glass door. (T.229). The balcony door had red stains. (T.230). A red Solo cup with a straw was found on the balcony and taken into evidence. (T.230). \$13,662.00 cash was found in a storage closet. (T.231-32). A broken cell phone was found on the kitchen counter. (T.235). A cigarette butt was collected from an ashtray in the kitchen. (T.235). A roll of duct tape was found partially underneath the couch. (T.239). A projectile was found on the floor. (T.257-58). The couch had a bullet hole. (T.258).

On cross examination, Smolarek said nothing was moved prior to her arrival. (T.263). Smolarek found a twenty-dollar bill with a white powdery substance on it which field-tested positive for cocaine. (T.276-77). Smolarek acknowledged

condensation on the bottom of the red Solo cup, which indicated recent use. (T.279). The liquid in the Solo cup was neither kept nor tested. (T.279).

With the jury out, Smolarek proffered that she recognized pictures of blue Viagra pills from Mulrenin's apartment. (T.280). The pills were not taken into evidence. (T.281). A cardboard box with marijuana was found in the freezer. (T.281).

Thee Dollhouse is a strip club located on Orange Blossom Trail in Orlando. Mulrenin was the manager. Jackson danced at Thee Dollhouse on the night of Mulrenin's fall. Michael Garcia, operations manager at Thee Dollhouse, had access to the surveillance system at Thee Dollhouse. (T.296-97). Scott Love was not seen on the surveillance footage and Mandi Jackson was on the footage. (T.302).

Barbara Mellinger, a bartender, was a close friend to Mulrenin and previously worked at Thee Dollhouse. (T.306-08). On the evening of December 13, 2016 going into December 14th, Jackson came to Thee Dollhouse and applied to dance. (T.309-12). Videos from Thee Dollhouse were introduced. (T.315-24). Mulrenin and Jackson were observed together around 4:11-4:12 a.m. (T.324-25). Jackson left and Mulrenin walked back inside. (T.325). Mellinger said Mulrenin left his apartment door unlocked sometimes when he was expecting someone. (T.326).

On cross examination, Mellinger said she was now familiar with Scott Love, did not see Love at Thee Dollhouse on December 13-14, 2016, and did not see him in the videos. (T.326-28). Mellinger did not know if Mulrenin used cocaine. (T.328).

Neisha Cintron, a dancer at Thee Dollhouse, knew Mulrenin as the manager. (T.331). Cintron arrived at Thee Dollhouse around 9:00 p.m. on December 13, 2016. (T.332). Cintron met Jackson sometime over the course of the night when she overheard Jackson saying she had no dance attire. (T.333). Cintron offered to sell her some attire and arranged for Jackson to pay her later. (T.333). Cintron saw Jackson and Mulrenin interact on December 14, 2016. (T.336-37). Mulrenin put his arm around Jackson around 4:00 a.m. by the doorway. (T.337). Cintron did not see Mulrenin kiss Jackson. (T.337). She did not see Scott Love at Thee Dollhouse. (T.339).

Detective Jackson Athaide investigated Mulrenin's death. (T.394). Athaide responded to the Lofts apartments and investigated what surveillance was available. (T.395). After seeing the apartment in disarray, Athaide believed something else may have happened. (T.396). Athaide traced Mulrenin's steps and found he was in the company of a female prior to arriving home. (T.397-98). A compiled video of clips from the Lofts apartments was played. (T.400-01). Mulrenin first arrived at the complex at 4:29 a.m. (T.402). He was seen walking from Uptown Boulevard into the car garage, then walking into one of the lobbies from the parking garage at 4:36

a.m. (T.403-04). A female arrived in a BMW and entered the parking garage with a key fob similar to Mulrenin's fob around 4:54 a.m. (T.407). At 4:59 a.m., Mulrenin was observed entering the fifth floor from the parking garage with a female. (T.409). An unknown male had entered the complex, gotten to the fifth floor, and remained in the elevator for a few minutes without prompting it to move at 5:01 a.m. (T.408-09). The male entered the parking garage from the fifth floor at 5:03 a.m., and then reentered at 5:05 a.m. (T.410). Mulrenin and the female walked off camera in the parking garage, and then reentered the lobby by 5:27 a.m. with the female now wearing a coat. (T.411). The next video showed the female leaving at a fast pace at 6:43 a.m. (T.411). The BMW left the parking garage at 6:45 a.m. (T.412).

On cross examination, Athaide said the female was wearing a tight black dress and was not carrying anything when she walked in or when she left. (T.413-15). The unknown male who arrived was Scott Love and the female was Jackson. (T.414). Jackson and Love were not seen together at any point on the videos. (T.417).

In response to juror questions, Athaide said the BMW left at 6:45 a.m. and law enforcement was called at approximately 6:30 a.m. (T.427).

Michelle Ervin, property manager for the Lofts apartments, said access to the building is governed by an access card or fob. (T.432). Ervin knew Mulrenin as one of the residents. (T.434). Mulrenin had a dark Chrysler 300M vehicle. (T.441).

Jessica Jones was living at 10389 Arbor Ridge Trail, Orlando, with her then-fiancé, Scott Jones, and two roommates: Mandi Jackson and Scott Love. (T.456-57). Jackson and Love had been staying with them for around one month. (T.458). On December 19, 2016, police executed a search warrant at the residence and arrested both Jackson and Love. (T.460). Jessica recognized Love and Jackson from the videos. (T.466-69). Love disapproved of Jackson stripping. (T.470).

Scott Jones, now married to Jessica Jones, said Love and Jackson were staying with him in December 2016. (T.472). Love had been living with them for 6-7 months prior to his arrest, while Jackson only lived with them for 2 months prior to her arrest. (T.472-73). On December 19, 2016, police raided the house and both Jackson and Love were arrested. (T.474-75). Scott recognized Jackson and Love in the videos provided by police. (T.476-78).

In response to juror questions, Scott said he did not raise the rent when Jackson moved in and never saw either one of them with a gun. (T.484). Scott recalled they were having difficulty paying rent around December. (T.485).

Christine Snyder, crime scene supervisor, received latent prints taken by the Altamonte Springs Police Department. (T.504). Snyder could not develop sufficient detail from a latent print taken from black duct tape. (T.505-08).

Kaylee Simmons was currently serving a prison sentence.¹ (T.518). Simmons met Jackson in the county jail and they became friends. (T.523-24). Jackson told Simmons her friend, Chris, suggested robbing the manager of Thee Dollhouse and that was how she set things up. (T.527-28). According to Simmons, Jackson and Scott Love drove to Thee Dollhouse and Jackson started working. (T.528). The manager liked Jackson and invited her to his apartment to continue the party. (T.528). Simmons said Jackson drove to the manager's apartment and Love hid in the backseat. (T.528). Jackson went in the apartment with the manager and left the door unlocked for Love. (T.529). While Jackson was on the balcony with the manager, Love came in and went to the manager's room. (T.528-29). Jackson and the manager were doing GHB and cocaine together. (T.529). Love had Jackson's gun. (T.529-32).

Eventually, Love came out of the manager's bedroom and the manager asked if it was a robbery. (T.532). Jackson acted like she did not know who Love was, but the manager knew it was a set up. (T.532). The manager was roughed up a little bit, had his hands tied behind his back, and Love shot him in the leg. (T.532-33). The manager was left unattended while they searched the apartment and, somehow, the manager got free. (T.533). The manager went over the balcony apparently trying to

¹ The Florida Department of Corrections website shows Kaylee Simmons, DC# H60321, was sentenced to 6.5 years prison on February 26, 2019, in Seminole County Case Number 16-CF-2747. Simmons was charged with burglary with assault, kidnapping, carjacking, and robbery. She entered a plea agreement on February 26, 2019, which required her to testify in multiple cases, including Defendant's case. Simmons was released on September 2, 2022.

get to another balcony below. (T.533). Love pulled the gun and ordered him to come back. (T.533). At that point, the manager slipped and fell. (T.533). Love and Jackson could not find any money, so they took the manager's credit cards and bought items at Walmart in a self-checkout line. (T.533). Simmons admitted she was currently serving 6.5 years prison. Her original maximum penalty was life and her lowest permissible sentence under the scoresheet was 10.6 years. (T.543). Simmons talked to her mother about Jackson on the jail phone. (T.546). Another girl in the jail told her about testifying on other people in exchange for a reduced sentence. (T.547). Simmons thus gave proffers in Jackson's case and three others. (T.547-48).

On cross examination, Simmons said Jackson had a tough façade and was stubborn. (T.551-52). Simmons and Jackson talked about Jackson being sex trafficked. (T.553). Julie Madara was in Simmons' jail pod with her and would get the newspaper. (T.554-55). Simmons wanted to get the paper first so she could read about other inmates' cases. (T.555). Simmons got as far as sixth grade in school. (T.579). Jackson also told Simmons about dating Scott Love. (T.581). Simmons said her narrative about what happened in Mulrenin's apartment was pieced together from multiple conversations over a long period of time. (T.582).

On redirect, Simmons said she and Jackson were separated because they were caught kissing on camera. (T.584).

In response to the jurors' questions, Simmons did not know how Chris Dahl knew the victim and knew he would be a good person to rob. (T.591).

Annabelle Arciniega, crime scene technician, went to two Walmart stores and collected surveillance video. (T.599). Arciniega also went to 10389 Arbor Ridge Trail in Orlando to search Jackson's residence. (T.604-05).

Alison Smolarek was recalled. (T.614). Smolarek responded to 10389 Arbor Ridge Trail for a search warrant. (T.615). Numerous photos were introduced from the search. (T.617). A "Don't Tread on Me" flag was found the west bedroom. (T.626). Scott Love's identification card was found near Mulrenin's credit cards. (T.627). Smolarek learned Jackson and Love occupied this bedroom. (T.628). A revolver with four live cartridges were found in a drawer. (T.629-30). Receipts were also located in the room. (T.634).

Smolarek's testimony continued. (T.673). Smolarek collected numerous items from the Arbor Ridge house including a cell phone with a cracked screen, gray hooded sweatshirt bearing the words "Don't Tread on Me," a Smith & Wesson .38 special revolver, and four R-P .38 special cartridges. (T.674-83). A piece of paper with Mulrenin's name and address was also found along with Mulrenin's two credit cards. (T.684). Identification and cards belonging to Jackson and Love were also found. (T.684-91). Jackson's BMW was searched and Mulrenin's Costco card was found in the driver's compartment. (T.716-17). Mulrenin's wallet was found in the

front passenger seat and contained his driver's license and credit cards. (T.718-20). A second wallet was found that contained cards bearing Scott Love's name. (T.721). Two Walmart receipts were found. (T.720-21). One was for \$31.89 at the Orange Blossom Trail Walmart on December 14, 2016 at 9:11:51 a.m. (T.735-36). The second was for \$653.55. (T.737-38). Two Dollhouse applications were found in the backseat. (T.722). Items such as loose gloves, booties (shoe covers), two zip ties, and a piece of duct tape were found in the car. (T.723-39). Red stains were visible on some of the gloves. (T.724). Two paycheck stubs belonging to Love were in the BMW. (T.732).

On cross examination, Smolarek said she did not find a Glock firearm or Glock ammunition. (T.746-47). The handwritten note was not submitted to a handwriting specialist. (T.749). Mulrenin's bedroom had a large bed with several cubby containers on the side of the bed. (T.751). Inside the cubby was a dollar bill, a cord, and blue pills in blister packaging. (T. 751). Both Walmart purchases were made in Orange County. (T.753). The blue gloves were swabbed and submitted for DNA analysis.

On redirect, Smolarek said a Christmas-handled knife was found in Mulrenin's apartment, but was determined to be irrelevant to the events and part of Mulrenin's Christmas décor. (T.757-58). The blue pills were generic male-enhancement drugs (Viagra). (T.759).

In response to the jurors' questions, Smolarek said the Walmart receipts had a.m. times on December 14, 2016. (T.766). Smolarek did not know if Jackson actually submitted the applications to Thee Dollhouse. (T.766-67). The Christmas knife was found on the end cushion of the sectional sofa. (T.767).

William Egipciaco, Walmart asset protection manager, was working at store 890 on East Colonial in Orlando during December 2016. (T.769). Surveillance footage from December 14, 2016, was introduced in evidence. (T.773).

Yesenia Cooper, Walmart loss prevention, was working at store 5734 on Orange Blossom Trail during December 2016. (T.781). She provided police with the surveillance footage. (T.783).

Naycha Guevara, store manager for Value Pawn and Jewelry, reviewed records that a Microsoft Xbox One was pawned on December 15, 2016, at 11:53 a.m. by Mandi May Jackson. (T.804-09). On cross examination, Guevara did not know whether Scott Love was present. (T.810-11). The person who pawned the item also purchased an engagement ring. (T.811).

Michelle Rosa-Unger, former latent print analyst, received numerous prints from Mulrenin's apartment and found none of the prints matched Jackson or Scott Love. (T.825-26). Jackson's print did match her pawn ticket. (T.828).

Amanda Stephens, FDLE intelligence analyst, received T-Mobile records for 407-879-4968 and prepared a cell site mapping presentation for December 13-15,

2016. (T.866). On December 13, 2016, from 9:09-9:34 p.m., the phone was in the area of Orange Blossom Trail south of downtown Orlando. (T.881). The phone moved towards the area of Oak Ridge and 441 by 11:19 p.m. (T.881-82). The phone remained in that area through 3:10 a.m. on December 14, 2016. (T.882-83). From 4:42-6:43 a.m., the phone was in Seminole County in the area of the Lofts apartments. (T.887-88). There was no calling from 6:43 a.m. to 9:20 a.m. (T.890). By 9:20 a.m., the phone is at Orange Blossom Trail. (T.889-90). From 10:21-10:52 a.m., the phone is in the area of a Walmart at South Semoran Blvd. (T.891-92). On December 15, 2016, from 12:05-12:24 p.m., the phone was in the area of Value Pawn Shop. (T.893-94). The phone was in the area of a different Value Pawn Shop from 2:38-2:42 p.m. the same day. (T.894). The phone received twenty-seven interactions from the number 407-760-7200 between 3:21-4:45 a.m. on December 14, 2016. (T.895). All were text messages except the very last one at 4:45 a.m. (T.895). 407-760-7200 was associated with Mulrenin. (T.898).

In response to juror questions, Stephens said the text messages could not be read because T-Mobile does not keep them. (T.903-04).

Jennifer Nara, medical examiner, conducted the autopsy of Mulrenin. (T.933). Mulrenin was 6' 1", 234 pounds at the time of his death. (T.938). Mulrenin had a gunshot wound that entered the back of his left thigh and exited the outside left thigh. (T.939). His sixth vertebra was fractured. (T.947). The injuries to Mulrenin's head

were consistent with striking a metal railing from a five-story fall. (T.950). A toxicology screen revealed Mulrenin had a blood alcohol level of .197 and had recently ingested cocaine. (T.953-57). Mulrenin's manner of death was undetermined and the cause of death was blunt-force injury to his head and neck. (T.958-59).

On cross examination, Nara said Mulrenin's blood alcohol level was extremely high for when it was tested 48 hours later. (T.960). Viagra and caffeine were also located in his system. (T.962).

Julie Madara was serving concurrent seven-year prison sentences at the time of the trial.² (T.973-74). Madara had twelve felony convictions and two misdemeanor convictions for dishonesty. (T.975). Jackson's case was the only one where she was cooperating with the State. (T.975). In exchange for her cooperation, the State would make a motion for reduction of sentence. (T.976). Madara knew Kaylee Simmons in the jail. (T.977-78). Madara knew Jackson in jail. (T.979). Jackson discussed her case with Madara between seven and ten times. (T.981).

Madara found out Jackson had been renting a room from Chris Dahl, a kid from her neighborhood. (T.982-83). Madara initially had no intention of testifying against Jackson, but as more information came out, she realized she could help

² The Florida Department of Corrections website shows Julie Madara, DC# X69919, served multiple prison sentences related to Seminole County Case Numbers 13-CF-12278, 14-CF-10551, 14-CF-13059, 14-CF-3293, 14-CF-3316, and 14-CF-3700. She is currently serving a term of probation which is set to expired in 2028.

herself. (T.985). Jackson told Madara she was renting the room from Dahl, who was obsessed with topless bars and had a pole in his living room. (T.987). On one occasion, Dahl, Scott Love, and Jackson were there and Dahl said the manager of Thee Dollhouse always had a lot of money and suggested stealing it. (T.987-88). Based on this, Jackson thereafter got a job at Thee Dollhouse. (T.988). Jackson worked several hours that night and the manager then invited her back to his apartment. (T.988-89). Jackson told her she wanted to go pick up Love. (T.989-90). Love did not want to go, but Jackson talked him into it. (T.990). Jackson dropped Love off around the corner from the apartment and then went up to the apartment. (T.990).

Inside the apartment, Madara said Jackson and the manager were drinking and doing lines of cocaine. (T.991). Without the manager knowing, Jackson unlocked the door so Love could come in. (T.991). Jackson told Madara she put GHB in the manager's drink without him knowing. (T.992). At some point, Love entered the apartment and the struggle began. (T.993). The manager would not allow Jackson and Love to tie him up. (T.993). This made Love angry, so Love shot the manager in the leg. (T.994). After being shot, the manager got up and started saying "I can't believe you shot me." (T.994). Love was standing between the manager and the door, so the manager ran onto the balcony and jumped. (T.994-95). After the manager fell, Love and Jackson panicked, grabbed his wallet, and ran out the door, got in the car,

and drove away. (T.996-97). Armed with this information, Madara told her lawyer and asked to talk to the prosecutors. (T.999). Madara read a letter she wrote to the state attorney aloud in court. (T.1002). The prosecutor thereafter spoke with Madara in prison. (T.1003). Madara denied reading any articles on this case in the Orlando Sentinel. (T.1004).

On cross examination, Madara confirmed she was hoping for a reduction in both her sentences. (T.1007). Madara had been separated from her five children for over two years. (T.1009). She actually referred trial counsel Carrie Rentz to Jackson. (T.1014). Rentz previously represented Madara. (T.1040). Madara did not have a high opinion on how Rentz treated her case. (T.1041). Rentz had withdrawn from Madara's case prior to August 31, 2016, and Madara did not meet Jackson until December 2016. (T.1041). Madara believed Rentz was having an extramarital affair with Cheney Mason, a lawyer she partnered with. (T.1042-43). Madara recalled Jackson saying she knew Mulrenin had \$13,000.00 on him. (T.1060). Madara was not surprised that was the exact amount listed in the arrest report. (T.1060). Madara admitted having people look up things on the clerk of court website for her. (T.1063). She acknowledged police reports for other cases are on the website. (T.1063).

With the jury out, Madara proffered she accepted a plea offer to burglary, later filed a Rule 3.850 motion, an amended 3.850, and appealed the denial of her 3.850 to the Fifth District Court of Appeal. (T.1079-80). Madara was diagnosed with

depression and anxiety, but was not on her medication that day. (T.1083). She denied having a mental health disorder but admitted her sworn Rule 3.850 pleading alleged as much. (T.1084). After her appeal was denied in the Seminole County case but while her Orange County case was still to be appealed, Madara decided to testify against Jackson. (T.1086).

Jeffrey Morales, crime analyst, presented a list of housing movements for Jackson, Kaylee Simmons, and Julie Madara which showed when they were together in a jail pod. (T.1100-09).

Officer Ben Sprague showed a still image from surveillance footage to Neisha Cintron, a dancer at Thee Dollhouse, to identify the female who entered Mulrenin's apartment. (T.1111-13). Cintron provided police with a phone number and said her name was Mandi. (T.1114). Jackson's Facebook profile showed a picture of her and Scott Love together and listed them as in a relationship. (T.1116). On December 19, 2016, police executed a search warrant at the house of Jackson and Scott Love. (T.1117). They were arrested and transported separately to the police department. (T.1117-18). No injuries were observed on either Jackson. (T.1119). Jackson's interview was played up to just before where she invoked her right to counsel. (T.1124-27). Jackson denied knowing Mulrenin. (T.1126). Sprague said the FDLE tried to get into Jackson's phone but were unable to do so because Jackson refused to give the passcode. (T.1132). Sprague said he was unable to get into Jackson's

phone because it was password-protected and the FDLE could not access it. (T.1139).

On cross examination, Sprague said he was the lead detective and had a good understanding of the evidence. (T.1139-40). He was unaware the knife from Mulrenin's apartment was never submitted for latent processing or that DNA swabs from the knife were not submitted to the FDLE. (T.1140). Sprague had not seen the video from Thee Dollhouse where Mulrenin kissed Jackson. (T.1141). Sprague conceded he did not investigate a person who saw Love enter Mulrenin's apartment complex. (T.1144-45). Sprague did not recall Jackson carrying a bag into Mulrenin's apartment building. (T.1145). Sprague was aware Viagra was found in Mulrenin's system. (T.1146). Mulrenin and Jackson (now wearing Mulrenin's jacket) walked back into the parking garage and Mulrenin did not appear in distress. (T.1146). From the time Jackson entered Thee Dollhouse to the time she was observed at Walmart with Scott Love, Sprague had no evidence Love and Jackson communicated by phone, email, text, Facebook, or Twitter. (T.1148-49). Sprague was familiar with a black Glock weapon and showed his own to the jury. (T.1149). Regarding the piece of paper found at the Arbor Ridge address, Sprague never had the paper sent to a fingerprint expert. (T.1150-51). Sprague did not know when the paper was written. (T.1152). Though Jackson did not look under duress, Sprague could not say for sure whether Jackson acted under duress at Walmart. (T.1152).

Sprague did not recall seeing Jackson in a pawn shop video with an Xbox or Playstation. (T.1172). Sprague's investigation showed Jackson lived with Jessica and Scott Jones, and he did not recall Chris Dahl being involved with the case. (T.1173-74). Sprague did not do anything to verify the information of the jailhouse snitch. (T.1175-76). He agreed a Glock pistol was different than the .38 special Smith & Wesson found in this case. (T.1177). Sprague did not know whether Love had Jackson's phone password or was controlling her Facebook. (T.1178). Love was not investigated for sex trafficking Jackson. (T.1180). Love was 29-years-old, Mulrenin was 52-years-old, and Jackson was 21-years-old. (T.1181-83). Jackson was very thin around the time of her arrest. (T.1182). Love was 5' 9", 160-170 lbs. (T.1182).

On redirect, Sprague found no information suggesting Scott Love sex trafficked Jackson. (T.1187).

Matthew Conway, firearm examiner, examined a .38 special Smith & Wesson revolver and test-fired it. (T.1199-1200). Conway found the projectile in evidence was fired from the .38 special. (T.1203-04).

Yvette McNab, retired FDLE biology section, found a mixed DNA profile on the zip ties and Mulrenin was included as a possible contributor at a statistic of 700 billion. (T.1229-30). Scott Love and Jackson were linked to the gray hooded sweatshirt and Mulrenin was excluded. (T.1232-33). Gloves from the BMW tested

positive for the possible presence of blood. (T.1239). A major profile from the gloves matched Mulrenin and the minor profile was insufficient for analysis. (T.1239-40). The wearer profile of the gloves was linked to Scott Love. (T.1241). The cigarette butt from the ashtray matched Mulrenin. (T.1242). Swabs from a drinking straw matched Mulrenin and Jackson. (T.1243-44). Swabs from the revolver grip were inconclusive. (T.1245-46).

The State rested. (T.1249). Trial counsel opted to reserve ruling on a motion for judgment of acquittal (“JOA”) until the defense rested. (T.1253). Jackson agreed her attorneys had made no argument against her will and had not refused to ask any questions at her suggestion. (T.1261-62). Jackson opted not to testify. (T.1352-53). Jackson agreed with the decision for the defense to rest without putting on witnesses. (T.1354). With the intent to rest satisfied, trial counsel moved for JOA. (T.1383). Absent the jailhouse snitches, Jackson’s intent was based on circumstantial evidence. (T.1384). The reasonable hypothesis of innocence was Scott Love committed the crimes and Jackson was an innocent bystander. (T.1384). JOA was denied. (T.1385). The defense thereafter rested. (T.1387).

Following closing arguments, Jackson was found guilty on all counts and sentenced to life in prison.

GROUND ONE

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION BY FAILING TO ADVISE JACKSON TO TESTIFY ON HER OWN BEHALF AND FAILING TO PREPARE JACKSON TO TESTIFY

FACTUAL ALLEGATIONS

Prior to trial, Jackson's attorneys asked her if she wanted to testify. Jackson responded she felt uncomfortable about testifying. Jackson was willing to testify if needed, but did not want to subject herself to testimony if it was not necessary. Her attorneys told her the State could ask questions in certain ways and a wrong answer could hurt her. Jackson had no legal training and was entirely dependent on her lawyers to make decisions in her case.

Had Jackson testified, she would have stated as follows:

On the evening of December 13, 2016, going into December 14, 2016, Jackson traveled to Thee Dollhouse strip club, applied for a job, and danced. Over the course of the evening, Mulrenin invited Jackson to come back to his apartment later that night to get to know each other. Jackson agreed and drove to his apartment alone. Jackson had heard from the other girls at the strip club that Mulrenin was generous in lending money to the strippers and planned to ask him for a loan to pay her rent.

After arriving at Mulrenin's apartment, Jackson and Mulrenin talked for a while. Mulrenin had given her something to drink. Mulrenin had two different bottles of vodka. The bottles appeared to be the same brand but different flavors. He poured from one bottle into Jackson's cup and then poured another bottle into his own cup. The drinks were mixed with orange juice. Jackson drank approximately one inch down in the Solo cup. She suspected something may have been in the drink because she was accustomed to alcohol at that point and knew the small amount she consumed was not enough to make her feel intoxicated. Jackson told Mulrenin she did not feel well and did not want anymore. Mulrenin said he would drink it. Jackson wanted to leave, but Mulrenin insisted she stay and sleep on the couch. Jackson relented to Mulrenin's insistence and decided to stay a little longer.

Mulrenin and Jackson moved to the balcony of his apartment. Mulrenin asked Jackson if she wanted to snort a line of cocaine. Jackson declined. Mulrenin asked her to accompany him inside while he snorted a line. They both moved inside the apartment from the balcony. At that moment, Scott Love came through the door of the apartment with a gun out and pointed at Mulrenin.

Love moved towards Mulrenin and pushed him into Jackson. Jackson moved to the corner when Love and Mulrenin were fighting. Love was hitting Mulrenin in the back of the head with the gun and ultimately got the better of

Mulrenin. Love got Mulrenin into the middle of the living room and tied his hands with zip ties and duct tape. While Mulrenin and Love were fighting, Jackson was curled up on the floor in a corner of the apartment out of fear. Love grabbed Jackson from the corner, pushed her underneath the bar, and started hitting her and yelling.

Mulrenin managed to free himself from the zip ties and duct tape. Love approached Mulrenin with the gun and Mulrenin jumped up and then sat down on the couch. Love asked Mulrenin where the drugs and money were at. Mulrenin responded he did not know what Love was talking about. Love responded by shooting Mulrenin in the leg. Mulrenin said “Oh my god, you shot me” and went toward the balcony. At that moment, Jackson fled toward the door. Meanwhile, Mulrenin ran toward the balcony followed by Love. Mulrenin went over the balcony.

Jackson ran to her car. At some point, she saw Love fleeing the apartment. Jackson did not pick up Love in her car. She drove away to the apartment of Chris Dahl, where Love and Jackson had lived prior to moving in with Scott and Jessica Jones. Love was already at Dahl’s apartment. Love commanded Jackson to get in the car and go with him to Walmart. Love and taken Mulrenin’s wallet from the apartment. Jackson complied because she had previously been in multiple situations where disobedience to her male counterpart resulted in rape or beating.

Accordingly, Jackson did as Love told her to do. Everything purchased at Walmart and the pawn shops was done under duress and in fear of Love.

To this day, Jackson does not know how Love found her at Mulrenin's apartment. Love had previously followed her through an unexplained means. Love had been using methamphetamine and alcohol in the days leading up to the incident.

After her arrest, Jackson was held in jail. Julie Madara and Kaylee Simmons were in Jackson's jail pod at certain times. Jackson denies being friends with Madara. Both Madara and Simmons read articles about Jackson's case and later talked to Jackson about what they had read. Jackson denies kissing Simmons and being separated from her for that reason. Rather, Jackson was moved to the Orange County Jail at some point without explanation.

Jackson denied knowing Mulrenin to the police because she both had a lingering fear of Scott Love and did not want to get in trouble.

ARGUMENT

Trial counsel rendered ineffective assistance of counsel by failing to advise Jackson to testify in trial and failing to prepare her for testimony in the event she decided to testify.

Claims of ineffective assistance of counsel based on counsel's advice to remain silent are determined under the two-part inquiry announced in *Lott v.*

State, 931 So. 2d 807 (Fla. 2006). The first question is whether the defendant voluntarily agreed with counsel not to take the stand. *Id.* at 819. The second inquiry is whether counsel's advice, even if voluntarily followed, was deficient because no reasonable attorney would have advised against testifying under the circumstances. *Id.*

An attorney's failure to advise the defendant to testify may constitute ineffective assistance of counsel and implicate the second inquiry of *Lott* where the defendant's testimony was the only means to substantiate the theory of defense. In *Visger v. State*, 953 So. 2d 741 (Fla. 4th DCA 2007), the defendant was charged with burglary with a battery and simple battery and presented a defense of invitation at trial. *Id.* at 742-43. However, trial counsel put forth no evidence or witnesses to support the theory of invitation. *Id.* at 743. After conviction, Visger alleged counsel rendered ineffective assistance by failing to advise him of the need to testify to establish the invitation defense. *Id.* At an evidentiary hearing, trial counsel testified he believed he could present the invitation defense during closing argument without evidence in support and found the danger of putting Visger's prior convictions before the jury outweighed the benefit. *Id.* The Fourth District found ineffective assistance of counsel was present because it was unreasonable and speculative to argue invitation without supporting evidence and all the evidence clearly to the contrary. *Id.* at 745.

In *Tafolla v. State*, 162 So. 3d 1073 (Fla. 4th DCA 2015), the defendant was accused of DUI with bodily injury and raised a defense of not being the driver at trial. *Id.* at 1074. Police were unable to determine who was driving and none of the witnesses saw who was driving the truck at the time of the crash. *Id.* at 1073-74. Following conviction, Tafolla sought postconviction relief and alleged counsel rendered ineffective assistance by failing to advise him to testify. *Id.* at 1074. Tafolla noted counsel argued in opening and closing that someone else drove the truck, yet there was no evidentiary support for this contention. *Id.* Tafolla further noted the State pointed to the absence of evidence supporting this defense in rebuttal. *Id.* The Fourth District agreed Tafolla stated a prima facie case for relief and reversed the summary denial of his claim. *Id.*

In *Williams v. State*, 268 So. 3d 992 (Fla. 5th DCA 2019), the defendant was convicted of first-degree murder after his co-defendant shot and killed a person Williams intended to confront and fight if necessary. *Id.* at 993. Williams alleged counsel rendered ineffective assistance by misadvising him on his right to testify and failing to advise him to testify to substantiate an independent act defense. *Id.* Following summary denial, the Fifth District reversed. *Id.* at 994-95. Specifically, the Fifth District noted trial counsel had requested an independent act instruction, but the trial court found no evidence to support the instruction and denied the request. *Id.* As Williams' testimony would have explained why he lied

to police and supported the independent act defense (which was argued at trial notwithstanding the court's refusal to give the instruction), Williams' claim set forth a prima facie case for relief that required a hearing. *Id.*

Deficient Performance

Here, the theory of defense at trial was Jackson had no intent or plan to rob or burglarize Mulrenin and everything that happened was a direct result of Scott Love's actions. In opening arguments, trial counsel noted the only evidence of a plan between Love and Jackson would come from the incarcerated snitch witnesses seeking a benefit. (T.95-96). Counsel then noted Mulrenin's plan for Jackson, which included Viagra, and could make any boyfriend, such as Love, jealous. (T.98). In closing arguments, trial counsel argued Love did not want Jackson to strip, followed her to Thee Dollhouse, waited, and thereafter followed her to Mulrenin's apartment. (T.1454-55). Counsel posited Mulrenin was trying to save Jackson from Love after Love barged in the apartment door. (T.1458).

TRIAL COUNSEL: Scott comes in and sees Mandi with [Mulrenin]. Scott pulls Mandi from him, puts a gun to her head. [Mulrenin] goes to get Mandi from Scott. He gets her – he gets her, turns, gets shot in the leg. Tries to get down to the balcony.

(T.1458).

The State thereafter objected as unsupported by the evidence and this Court sustained. (T.1459-62). Trial counsel thereafter said Love shot Mulrenin to ensure he would not be chased and to make sure Jackson did not get away. (T.1462).

Counsel argued Jackson was under Love's control, she was making efforts to get out from under his control, and her actions purchasing items with Mulrenin's credit cards were done at Love's command. (T.1463-66).

Unfortunately, there was no evidence presented at trial that Jackson was under Love's control. Any argument that Love controlled Jackson and acted independently was based upon inference. In fact, all the evidence presented at trial supported the State's contention that there was a plan.

As in *Visger*, *Tafolla*, and *Williams*, Jackson's testimony was the only way to substantiate the defense theory that Love followed Jackson, acted alone, and made her purchase items with Mulrenin's credit cards. Three people were in the room: Mulrenin, Love, and the Jackson. The question of Jackson's intent to commit robbery and burglary was known only between Jackson and Love. Therefore, Jackson had to take the stand and testify for her lack of intent to reach the jury. Further, as in *Visger*, 953 So. 2d at 744-45, it was unreasonable for trial counsel to argue a theory of Love being in control and Mulrenin attempting to save Jackson without any factual support and all evidence pointing to the contrary.

Jackson's testimony would have further attacked the credibility of Madara and Simmons. Notably, Simmons and Madara were the only witnesses who testified to Jackson's intent. Jackson's testimony would have contradicted

Simmons and Madara both on the issue of intent and the factual circumstances surrounding their alleged communication.

Accordingly, Jackson has made a prima facie showing of deficient performance per the second inquiry of *Lott* based on counsel's failure to advise Jackson of the necessity of her testimony and accordingly prepare her to testify.

Prejudice

Jackson suffered prejudice as a result of trial counsel's ineffective assistance because Jackson's testimony was the only way to substantiate the defense theory. Had trial counsel rendered effective assistance, recognized the need for Jackson's testimony, and both advised and prepared Jackson to testify, Jackson would have testified as set forth in this ground and there is a reasonable probability the jury would have believed Jackson and rendered a verdict of not guilty.

GROUND TWO

NEWLY DISCOVERED EVIDENCE

ALTERNATIVELY, TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION BY FAILING TO INVESTIGATE AND PRESENT SCOTT LOVE AS A WITNESS AT TRIAL

FACTUAL ALLEGATIONS

Jackson presents the sworn affidavit of Scott Love as newly discovered evidence. Love was Jackson's boyfriend at the time of the robbery. He was tried separately on January 14, 2019, convicted, and sentenced to life prison. The Fifth District affirmed his direct appeal with opinion on March 27, 2020. *Love v. State*, 293 So. 3d 1065 (Fla. 5th DCA 2020). The mandate issued on May 27, 2020. Love is over 2-years past the mandate and has not filed a motion for postconviction relief.

On the evening of December 13, 2016, going into December 14, 2016, Jackson left Love to go apply for stripper work at Thee Dollhouse. Love was not happy about Jackson going back to stripping, but did not voice his concern and instead told her to be safe. Jackson in no way implied or requested Love to follow her. There was no preexisting plan to rob the manager. Love was under the influence of alcohol and methamphetamine that night and had been awake for 2-3 days.

Love made his own independent decision to find Jackson using a "Find My Phone" application. This feature led Love to the manager's apartment complex. He rode his motorcycle and parked it out front. Love brought a gun. Love was not motivated by the prospect of robbery or burglary; rather, he loved Jackson and did not want Jackson to be with anyone else. Love found his way inside. Love

waited in the elevator considering his next actions. Love then went to the apartment and found the door was open.

Love entered Mulrenin's apartment. Love saw Jackson and Mulrenin coming inside from the balcony. Jackson looked very intoxicated despite her being a regular drinker. Mulrenin was helping Jackson walk into the interior of the apartment. He was overcome by anger and rage and admittedly "lost it." Love and Mulrenin started fighting. The fight progressed around the apartment. Mulrenin was bigger than Love and getting the better of him, so Love drew his gun and hit Mulrenin with the gun. During the struggle, Love shot Mulrenin in the leg. Mulrenin became submissive after being shot in the leg. Love tied Mulrenin with duct tape and zip ties found in the apartment.

Jackson had some difficulty getting her things together due to her intoxicated state. Once Jackson was ready to go, Love cut Mulrenin loose with a pocketknife. Love and Jackson then left. Love states both he and Jackson were outside the apartment when Mulrenin went over the railing.

When Jackson left the apartment, she was wearing Mulrenin's jacket. Mulrenin's wallet was found in the jacket. From Love's perspective, Mulrenin had attempted to drug Jackson when she was in her apartment; therefore, he had no problem buying things with his credit card. Love later found out Mulrenin had gone over the railing and died.

Love was tried and convicted approximately nine months prior to Jackson's trial. At his own trial, Love testified he went with Jackson to Mulrenin's apartment as security for a private dance. Love further testified the gun belonged to Mulrenin. These assertions were not true. Love testified to being security at Jackson's private dance and to the gun belonging to Mulrenin because he believed it gave him the possibility of a full defense. Love now recants these portions of his trial testimony.

No attorney ever reached out to him about being a witness in Jackson's trial. Love was available and willing to testify at Jackson's trial.

ARGUMENT

A defendant must demonstrate the following to obtain a new trial based on newly discovered evidence:

First, in order to be considered newly discovered, the evidence "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that Jackson or his 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. ... To reach this conclusion the trial court is required to "consider all newly discovered evidence which would be admissible" at trial and then evaluate the "weight of both the newly discovered evidence and the evidence which was introduced at the trial."

Jones v. State, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*) (citations omitted). A court reviewing a claim of newly discovered evidence must consider the effect of the

newly discovered evidence, all of the admissible evidence for a new trial, and conduct a cumulative analysis of the total picture and circumstances of the case. *Hildwin v. State*, 141 So. 3d 1178, 1187-88 (Fla. 2014) (citations omitted).

In *Nordelo v. State*, 93 So. 3d 178 (Fla. 2012), Nordelo's co-defendant, Angel Lopez, provided him with an affidavit claiming the armed robbery was committed with a different accomplice and Nordelo was only present with him two days later at the moment of arrest. *Id.* at 181. Lopez notably provided this affidavit after completing his own 25-year sentence based on the same robbery and explained he did not come forward sooner out of fear the State would take his plea agreement away. *Id.* at 180-81. Nordelo's newly discovered evidence 3.850 motion was summarily denied on the basis that Lopez's information could have been obtained earlier through due diligence. *Id.* at 186. The Third District affirmed. *Id.* at 186-87. The Florida Supreme Court reversed the summary denial and found the facts set forth in Lopez's affidavit satisfied both the diligence and probability prongs and required an evidentiary hearing. *Id.* at 186-88.

Claims of ineffective assistance of counsel based on counsel's failure to investigate a favorable witness are distinguished from a claim based on the failure to present the witness. *Mendoza v. State*, 81 So. 3d 579, 581 (Fla. 3d DCA 2012). "Unlike the strategic decision to call a witness to testify at trial, the failure to reasonably investigate and locate witnesses can often serve as a colorable claim of

ineffective assistance of counsel.” *Id.* (citing *Wiggins v. Smith*, 539 U.S. 510, 521 (2003)). *See also Warren v. State*, 504 So. 2d 1371, 1372 (Fla. 1st DCA 1987) (“An attorney's failure to at least interview an identified available witness whose testimony might exonerate [his or] her client can constitute ineffective assistance of counsel.”)

To make a facially sufficient claim based on the failure to investigate and interview a potential witness, a movant must allege (1) the identity of the prospective witness; (2) the substance of the witness’ testimony; and (3) an explanation of how the omission of the proposed witness’s testimony prejudiced the outcome of the trial. *Livingston v. State*, 279 So. 3d 228, 230 (Fla. 1st DCA 2019) (citations omitted). By contrast, a facially sufficient claim of ineffective assistance of counsel based on counsel’s failure to present a witness at trial requires an additional showing that the witness was available to testify at trial. *See Nelson v. State*, 875 So. 2d 579, 583 (Fla. 2004) (holding a postconviction movant must alleged (1) the identity of the witness; (2) allege the witness was available to testify; (3) the substance of the witness’s proposed testimony; and (4) an explanation of how the omission of the testimony prejudiced the outcome of the trial).

The Effect of Scott Love’s Testimony on the Elements of the Crimes

Here, Jackson was charged as a principal with first-degree felony murder, burglary, and robbery. Applied to this case, felony murder requires proof that (1)

Mulrenin is dead; (2) while engaged in the commission of a felony, Jackson or Love either caused J.M's death or Mulrenin's death occurred while escaping from the immediate scene of the underlying felony; and (3) Mulrenin was killed by a person other than Jackson, but Jackson and the person who killed Mulrenin were principals in the commission of the underlying felonies. *Fla. Std. Jury Inst. (Crim.) 7.3.* Burglary requires proof that (1) Jackson entered a dwelling owned or in the possession of Mulrenin; (2) at the time of entering the dwelling, Jackson had the intent to commit robbery in the dwelling. *Fla. Std. Jury Inst. (Crim.) 13.1.* Robbery requires proof that (1) Jackson took money or property from Mulrenin; (2) force, violence, assault, or putting in fear was used in the course of the taking; (3) the property taken was of some value; and (4) the taking was with the intent to permanently or temporarily deprive Mulrenin of the property. *Fla. Std. Jury Inst. (Crim.) 15.1.* It is well-settled first-degree felony murder is legally interlocking with the underlying felony. *Cuevas v. State*, 741 So. 2d 1234, 1238 (Fla. 5th DCA 1999).

Scott Love's testimony would have cast doubt on the State's accusations of burglary by showing Jackson had no intent to commit robbery or any crime in Mulrenin's dwelling. Love's testimony would have also cast doubt on the State's accusations of robbery because the taking of Mulrenin's wallet was unintentional and based on Jackson wearing Mulrenin's jacket. Further, the taking was not done with the intent to permanently deprive Mulrenin of his wallet because neither Love

nor Jackson intended to take the wallet. No force, violence, assault, or putting in fear was used in the course of the taking; rather, the only force, violence, assault, or putting in fear was committed by Love in pursuit of getting Jackson out of Mulrenin's apartment.

The principal doctrine applies where (1) a Jackson had a conscious intent that the criminal act be done, and (2) the Jackson did some act or said some word which was intended to and which did incite, cause, encourage, assist, or advise the other person or persons to actually commit or attempt to commit the crime. *Fla. Std. Jury Inst. (Crim.)* 3.5(a). Here, it is undisputed that Scott Love intended to commit a burglary with an assault or battery. However, Love's testimony shows Jackson had no intent that either Love should burglarize Mulrenin's apartment or that Jackson did some act to incite, cause, encourage, assist, or advise Love to commit burglary. Instead, Love's testimony would have established that his entering Mulrenin's apartment was his own exclusive idea.

Newly Discovered Evidence

Considering this claim through the lens of newly discovered evidence, Love's affidavit satisfies the first prong of the *Jones* test because it is partial recantation evidence. *See Burns v. State*, 858 So. 2d 1229, 1230 (Fla. 1st DCA 2003) ("Recantation evidence is a type of newly discovered evidence."). Love's affidavit differs from his trial testimony to the extent that Love now admits he was not going

to Mulrenin's apartment as the bodyguard for Jackson's private dance, but instead going to Mulrenin's apartment with the intent to burglarize and remove Jackson from the apartment.

Love's affidavit further satisfies the second prong of the *Jones* test because it is of such a nature that it would probably produce an acquittal on retrial. Love's affidavit significantly undermines the elements of both burglary and robbery. The only evidence going against Love's affidavit came from jailhouse snitches testifying against Jackson to benefit their own cases. By contrast, Love has nothing to gain from providing this newly discovered evidence. Considering the weight of Love's testimony in conjunction with the evidence at trial, there is a reasonable likelihood that the presentation of Love's testimony would probably result in a verdict of not guilty on all charges.

Ineffective Assistance of Counsel

Deficient Performance

Considering this claim through the alternative lens of ineffective assistance of counsel, trial counsel's failure to speak to Love and inquire whether he would be willing to testify satisfies deficient performance because Love's testimony could have exonerated Jackson. *Warren*, 504 So. 2d at 1372. "[T]he failure to investigate or call an exculpatory witness 'presents a prima facie showing of entitlement to relief, subject to rebuttal by evidence from the record or testimony at an evidentiary

hearing.’” *LeClaire v. State*, 247 So. 3d 678, 679 (Fla. 2d DCA 2018) (citations omitted). The same tests for failure to investigate or present a witness apply when the potential witness is a codefendant. *Livingston v. State*, 279 So. 3d 228, 230 (Fla. 1st DCA 2019). “If a defendant makes a facially sufficient claim, the postconviction court may not summarily deny the claim based on the assumption that the codefendant would invoke the Fifth Amendment.” *Id.* Trial counsel’s failure to present Love’s testimony further satisfies deficient performance because, without Love’s testimony, trial counsel’s theory of defense lacked evidentiary support.

Prejudice

Jackson suffered prejudice as a result of trial counsel’s ineffective assistance. Had trial counsel investigated and presented Love as a witness as set forth in this ground, there is a reasonable probability the results of the proceeding would have been different in that the theory of defense would have had evidentiary support, the jury would have believed Love, and would have rendered a verdict of not guilty. Prejudice is satisfied because no evidence was presented which directly contradicted the State’s allegations of a preexisting plan to rob Mulrenin. There is a reasonable likelihood the jury would have believed Love over the State’s snitch witnesses because the snitch witnesses were testifying in hopes of helping themselves while Love would have been testifying to his own detriment Accordingly, Defendant has made a prima facie showing of prejudice.

GROUND THREE

CUMULATIVE ERROR

Where multiple claims of ineffective assistance of counsel are alleged, even if deemed harmless individually, the cumulative effect of counsel's many errors may violate due process and warrant relief. *Duty v. State*, 322 So. 3d 770, 775 (Fla. 1st DCA 2021). Though the narratives of Scott Love and the Jackson do not perfectly agree on all factual assertions, their narratives wholly agree that Jackson had no intention to rob, burglarize, or harm Mulrenin in any way. Considering the cumulative effect of the ineffective assistance allegations in Ground One and the newly discovered evidence with alternative ineffective assistance of counsel alleged in Ground Two, deficient performance and prejudice are satisfied and/or deficient performance, prejudice, and the test for newly discovered evidence are satisfied.

RELIEF SOUGHT

WHEREFORE, based upon the foregoing, the Defendant requests that this Court vacate and set aside the judgment and sentence, and hold an evidentiary hearing on the issues presented herein.

Respectfully submitted,

The Law Office of
ROBERT DAVID MALOVE, P.A.
The Malove Law Building
200 SE 9th Street
Fort Lauderdale, Florida 33316
Telephone: (954) 861-0384
e-filing@robertmalovelaw.com

By: /s/ Robert David Malove
Robert David Malove, Esq.
FL. Bar No.: 407283

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of October 2022, this motion for postconviction relief was filed via the Florida e-Portal filing system, and that all parties were effectively served thereby.

/s/ Robert David Malove
Robert David Malove, Esq.

DECLARATION UNDER PENALTY OF PERJURY

I, MANDI M. JACKSON, the Defendant in the above styled case, declare under penalty of perjury that I read and understand English and have read the instant motion, or that it has been read to the me, and that I understand its content; the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court; and, the facts contained in the motion are true and correct.

Date: 7/6/2022



MANDI M. JACKSON

UNOFFICIAL

UNNOTARIZED AFFIDAVIT OF SCOTT LOVE

I, SCOTT LOVE, under the penalties provided for perjury, swear the following to be true and correct:

1. On or about December 13, 2016, I was Mandi Jackson's boyfriend.
2. On the evening of December 13, 2016, going into December 14, 2016, Jackson left to apply for work as a dancer at Thee Dollhouse strip club in Orlando. I was not happy about her going to work as a stripper, but I did not voice my concern and told her to be safe. We were behind on our bills at the time.
3. That night, I was under the influence of alcohol and had been awake for 2-3 days using methamphetamine.
4. I made my own independent decision to track Jackson down using a "Find My Phone" application. The application led me to the Lofts apartments. I rode a motorcycle there and parked out front. I brought a gun. I was not motivated by the prospect of robbery or burglary; rather, I loved Jackson and did not want her to be with anyone else.
5. I made my way into the apartment complex. I waited in the elevator considering my next move. I thereafter went to the apartment and found the door was unlocked.
6. I entered the apartment of a man later known to me as James Mulrenin. I saw Jackson and Mulrenin reentering the room of the apartment from the balcony. Jackson appeared very intoxicated. Mulrenin was helping her into the interior of the apartment. I was overwhelmed with anger and lost it.
7. Mulrenin and I started fighting. Mulrenin was bigger than me and was winning the fight. Accordingly, I drew my gun and started hitting Mulrenin with the gun. I shot Mulrenin in the leg during the struggle. Mulrenin became submissive after being shot. I thereafter bound Mulrenin with duct tape and zip ties.
8. I told Jackson to get her things together. She had difficulty getting her belongings together due to her intoxication. Once Jackson was ready to leave, I cut Mulrenin loose with a pocketknife. Jackson and I then left Mulrenin's apartment. Jackson was wearing Mulrenin's jacket when she left. Mulrenin's wallet was found in the jacket.
9. Both Jackson and I were outside the apartment when Mulrenin went over the balcony. I did not see Mulrenin go over the balcony when I was inside the apartment.
10. From my perspective at the time, Mulrenin tried to drug Jackson. Therefore, I had no problem buying items on his credit card.
11. I later learned Mulrenin had gone over his balcony railing and died.

12. I was tried and convicted approximately nine months prior to Jackson's trial. At my own trial, I testified I went to Mulrenin's apartment as security for a private dance by Jackson. This assertion was not true. I asserted this defense at trial because I thought it provided me the possibility of a complete defense.


13. Mandi Jackson had no plan to rob or burglarize Mulrenin with me. Everything I did was my own idea.

14. I would have been willing to testify at Jackson's trial. No attorney ever reached out to me about testifying prior to Jackson's trial.

15. I am willing to testify to the foregoing at an evidentiary hearing.

FURTHER SAYETH NAUGHT

Date: 4/30/82

s/ 
SCOTT M. LOVE
DC# X45937
Graceville Correctional Facility
5168 Ezell Road
Graceville, FL 32440