

IN THE

SUPREME COURT OF FLORIDA

---

JAMES MILTON DAILEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

Case No. SC18-557

***AMICUS CURIAE* BRIEF OF THE  
INNOCENCE NETWORK  
IN SUPPORT OF THE APPELLANT**

CRAIG TROCINO  
Director, Miami Law Innocence Clinic  
University of Miami School of Law  
1311 Miller Drive; A 312  
Coral Gables, Florida 33146  
(305) 284-8201  
FL Bar No. 996270

*For Amicus Curiae*

MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 222-2340  
FL Bar No. 114227

Local Counsel for *Amicus Curiae*

RECEIVED, 06/21/2018 04:23:29 PM, Clerk, Supreme Court

## A. TABLE OF CONTENTS

	Page
A. TABLE OF CONTENTS. ....	ii
B. TABLE OF CITATIONS. ....	iii
1. Cases. ....	iii
2. Other Authority. ....	iii
C. PRELIMINARY STATEMENT. ....	1
D. SUMMARY OF ARGUMENT. ....	4
E. ARGUMENT AND CITATIONS OF AUTHORITY. ....	5
Statements by informants are inherently unreliable. ....	5
1. Statements by informants lead to wrongful convictions. ....	5
2. The Florida Innocence Commission’s findings regarding informant testimony supports the conclusion that such evidence is inherently unreliable. ....	10
3. Because a sentence of death requires heightened reliability, the death penalty should not be imposed in a case based solely on informant testimony. ....	12
F. CONCLUSION. ....	16
G. CERTIFICATE OF SERVICE. ....	17
H. CERTIFICATE OF COMPLIANCE. ....	19

## B. TABLE OF CITATIONS

	Page
<b>1. Cases</b>	
<i>Beck v. Alabama</i> , 447 U.S. 625 (1980) . . . . .	14-15
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972) . . . . .	12-14
<i>Gardner v. Florida</i> , 430 U.S. 349 (1977) . . . . .	13-15
<i>Graves v. Dretke</i> , 442 F.3d 334 (5th Cir. 2006) . . . . .	8-9
<i>Gregg v. Georgia</i> , 428 U.S. 153 (1976) . . . . .	13
<i>In re Amend. to Rule of Crim. Proc. 3.220</i> , 140 So. 3d 538 (Fla. 2014). . . . .	11-12
<i>In re Standard Jury Instructions in Criminal Cases</i> , 122 So. 3d 302 (Fla. 2013) . . . . .	11
<i>Lockett v. Ohio</i> , 438 U.S. 586 (1978). . . . .	14
<i>Rummel v. Estelle</i> , 445 U.S. 263 (1980). . . . .	14-15
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995).. . . . .	6
<i>Solem v. Helm</i> , 463 U.S. 277 (1983).. . . . .	14-15
<i>United States v. Bernal- Obeso</i> , 989 F.2d 331 (9th Cir. 1993).. . . . .	5
<i>United States v. Cervantes-Pacheco</i> , 826 F.2d 310 (5th Cir. 1987).. . . . .	6
<i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976). . . . .	12-13
<b>2. Other Authority</b>	
“Administrative Order No. AOSC10-39” (The Supreme Court of Florida).. . . . .	10

Alexandra Natapoff, <i>Snitching: Criminal Informants and the Erosion of American Justice</i> 69 (2009). . . . .	6-7
Brian Rogers & Cindy George, <i>Prisoner Ordered Free From Texas' Death Row</i> , Houston & Tex. News (Oct. 28, 2010), available at <a href="http://www.chron.com/disp/story.mpl/metropolitan/7266470.html">http://www.chron.com/disp/story.mpl/metropolitan/7266470.html</a> . . . . .	9
Fla. R. App. P. 9.210(a)(2). . . . .	19
Fla. R. Crim. P. 3.220. . . . .	11-12
Fla. R. Crim. P. 3.851. . . . .	4
Florida Innocence Commission, <i>Final Report to the Supreme Court of Florida</i> (June 25, 2012), <a href="https://www.flcourts.org/core/fileparse.php/248/urlt/Innocence-Report-2012.pdf">https://www.flcourts.org/core/fileparse.php/248/urlt/Innocence-Report-2012.pdf</a> . . . . .	10-11
Innocence Project, <i>Wilton Dedge</i> , <a href="https://www.innocenceproject.org/cases/wilton-dedge">https://www.innocenceproject.org/cases/wilton-dedge</a> (last visited June 21, 2018). . . . .	9-10
Pamela Colloff, <i>Innocence Lost</i> , Tex. Monthly (Oct. 2010), available at <a href="http://www.texasmonthly.com/2010-10-01/feature2.php">http://www.texasmonthly.com/2010-10-01/feature2.php</a> . . . . .	7-9
Rob Warden, <i>The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row</i> 3 (2004-05), <a href="http://www.law.northwestern.edu/wrongfulconvictions/issues/causesandremedies/snitches/SnitchSystemBooklet.pdf">http://www.law.northwestern.edu/wrongfulconvictions/issues/causesandremedies/snitches/SnitchSystemBooklet.pdf</a> . . . . .	6-7
Samuel R. Gross, et al., <i>Exonerations in the United States 1989 Through 2003</i> , 95 J. Crim. L. & Criminology 523 (2005). . . . .	7
The Honorable Stephen S. Trott (U.S. Court of Appeals for the Ninth Circuit), <i>Words of Warning for Prosecutors Using Criminals as Witnesses</i> , 47 Hastings L.J. 1381 (1996). . . . .	6

### C. PRELIMINARY STATEMENT

This brief is being filed by the Innocence Network in support of the Appellant, James Milton Dailey. The Innocence Network (the “Network”) is an association of independent organizations dedicated to providing pro bono legal and/or investigative services to prisoners for whom evidence discovered postconviction can provide conclusive proof of innocence. The 68 current members of the Network represent hundreds of prisoners with innocence claims in all 50 states, the District of Columbia, and Puerto Rico, as well as Australia, Argentina, Canada, Ireland, Italy, the Netherlands, New Zealand, the United Kingdom, and Taiwan.<sup>1</sup> The Network and its

---

<sup>1</sup> The member organizations include the Actual Innocence Clinic at the University of Texas School of Law, After Innocence, Alaska Innocence Project, Arizona Justice Project, Boston College Innocence Program, California Innocence Project, Center on Wrongful Convictions, Committee for Public Counsel Services Innocence Program, Duke Center for Criminal Justice and Professional Responsibility, Exoneration Initiative, Exoneration Project, George C. Cochran Innocence Project at the University of Mississippi School of Law, Georgia Innocence Project, Hawai`i Innocence Project, Idaho Innocence Project, Illinois Innocence Project, Innocence Project, Innocence Project Argentina, Innocence Project at University of Virginia School of Law, Innocence Project London, Innocence Project New Orleans, Innocence Project New Zealand, Innocence Project Northwest, Innocence Project of Florida, Innocence Project of Iowa, Israel Public Defender, Italy Innocence Project, Indiana University McKinney School of Law Wrongful Conviction Clinic, Justicia Reinvidicada (Puerto Rico Innocence Project), Korey Wise Innocence Project at the University of Colorado Law School, Loyola Law School Project for the Innocent, Michigan Innocence Clinic, Mid-Atlantic Innocence Project, Midwest Innocence Project, Montana Innocence Project, Nebraska Innocence Project, New England Innocence Project, New Mexico Innocence and Justice Project at the University of New Mexico School of Law, New York Law School Post

members are also dedicated to improving the accuracy and reliability of the criminal justice system in future cases. Drawing on the lessons from cases in which the system convicted innocent persons, the Network advocates study and reform designed to enhance the truth-seeking functions of the criminal justice system to ensure that future wrongful convictions are prevented.

Its affiliate, the Innocence Project, is an organization dedicated primarily to providing pro bono legal and related investigative services to indigent prisoners whose actual innocence may be established through post-conviction evidence. It has a specific focus on exonerating long-incarcerated individuals through use of DNA evidence, including newly-developed DNA testing methods. It also seeks to prevent future wrongful convictions by researching their causes and pursuing legislative and administrative reform initiatives designed to enhance the truth-seeking functions of the criminal justice system— including identifying those who actually committed crimes for which others were wrongfully convicted. Because wrongful convictions destroy lives and allow the actual perpetrators to remain free, the Innocence Project’s

---

Conviction Innocence Clinic, Northern California Innocence Project, Office of the Ohio Public Defender- Wrongful Conviction Project, Oregon Innocence Project, Rocky Mountain Innocence Center, Taiwan Innocence Project, Thurgood Marshall School of Law Innocence Project, University of Miami Law Innocence Clinic, Wake Forest University Law School Innocence and Justice Clinic, West Virginia Innocence Project, Wisconsin Innocence Project, and Witness to Innocence.

objectives both serve as an important check on the awesome power of the state over criminal defendants and help ensure a safer and more just society. As perhaps the Nation's leading authority on wrongful convictions, the Innocence Project and its founders, Barry Scheck and Peter Neufeld are regularly consulted by officials at the state, local, and federal levels.

In this case, the Innocence Network and the Innocence Project seek to present a broad perspective on the issues presented in the hope that the risk of future wrongful convictions will be minimized.

#### **D. SUMMARY OF ARGUMENT**

This case concerns the denial of Mr. Dailey's Florida Rule of Criminal Procedure 3.851 motion based on newly discovered evidence. Mr. Dailey's conviction was based on the testimony of three jailhouse informants. In Mr. Dailey's rule 3.851 motion, he presented evidence establishing that the testimony of the informants was *not* reliable (i.e., their credibility has now been thoroughly discredited). As explained in this brief, statements by informants are inherently unreliable, and courts should be skeptical of convictions based entirely or even primarily on such evidence. Indeed, where the potential for a wrongly convicted individual has been sentenced to the "ultimate penalty" of death, that skepticism should carry even greater weight.

## E. ARGUMENT AND CITATIONS OF AUTHORITY

### Statements by informants are inherently unreliable.

#### 1. Statements by informants lead to wrongful convictions.

In the words of a former law enforcement officer:

In the 25 years I have been in this business, I have worked with hundreds of informants. I believe that exactly one of them was completely truthful, and there is no way to be 100% sure about him.

Alexandra Natapoff, *Snitching: Criminal Informants and the Erosion of American Justice* 69 (2009) (quoting John Madinger, senior special IRS agent and former narcotics agent). The dangers of using statements by informants and cooperating witnesses to prosecute crimes are well-recognized. *See, e.g., United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993) (“The use of informants to investigate and prosecute persons engaged in clandestine criminal activity is fraught with peril.”). Yet rewarding criminals in exchange for information or testimony has become an important feature of the American criminal justice system. *See Natapoff 2009, supra*, at 645-46 (“The use of criminal informants in the U.S. justice system has become a flourishing socio-legal institution unto itself.”).

An informant’s existence in any given case comes about by a negotiated deal between the state and the informant. It is that very deal which, is the “central defining characteristic” of informing. Natapoff 2009, *supra*, at 15. The most

common reward for informants is leniency for crimes, which can include reduced charges or sentences for the informant (or for friends or family). *See id.* at 27. It is this promise of leniency (or other rewards) that provides informants with a powerful incentive to lie, thereby making testimony of these informants *inherently* unreliable and suspect. *See, e.g., United States v. Cervantes-Pacheco*, 826 F.2d 310 (5th Cir. 1987) (“It is difficult to imagine a greater motivation to lie than the inducement of a reduced sentence.”). *See also* The Honorable Stephen S. Trott (U.S. Court of Appeals for the Ninth Circuit), *Words of Warning for Prosecutors Using Criminals as Witnesses*, 47 Hastings L.J. 1381, 1383 (1996) (“[Informants’] willingness to do anything includes not only truthfully spilling the beans on friends and relatives, but also lying, committing perjury, manufacturing evidence, [and] soliciting others to corroborate their lies with more lies . . . . A drug addict can sell out his mother to get a deal, and burglars, robbers, murderers and thieves are not far behind.”).

The United States Supreme Court has stated that

concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system.

*Schlup v. Delo*, 513 U.S. 298, 325 (1995). Informants play a prominent role in the wrongful conviction phenomenon. A comprehensive study in 2005 by the Center on Wrongful Convictions found that testimony provided by informants who have

incentives to lie accounted for 45.9 percent of wrongful convictions in the cases studied, and was the leading cause for sentencing innocent people to death. Rob Warden, *The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row 3* (2004-05), <http://www.law.northwestern.edu/wrongfulconvictions/issues/causesandremedies/snitches/SnitchSystemBooklet.pdf>. Additionally, the Illinois Commission on Capital Punishment reported in 2002 that the testimony of many in-custody informants was not credible and led to wrongful convictions. See Natapoff 2009, *supra*, at 70. University of Michigan Law School Professor Samuel Gross's study on exonerations likewise reports that nearly 50 percent of wrongful murder convictions involved perjury by someone such as a "jailhouse snitch or another witness who stood to gain from the false testimony." Samuel R. Gross, *et al.*, *Exonerations in the United States 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, 543-44 (2005).

The case involving Anthony Graves is just one example of a wrongful conviction that was obtained pursuant to unreliable informant testimony. Mr. Graves spent eighteen years on death row in Texas before being exonerated in 2010. See generally Pamela Colloff, *Innocence Lost*, Tex. Monthly (Oct. 2010), at 109, available at <http://www.texasmonthly.com/2010-10-01/feature2.php>. Mr. Graves, then aged twenty-six, was convicted in 1992 of capital murder for the gruesome

slaying of six members of a family in Texas. *See id.* The prosecution’s case against Mr. Graves was based primarily on the trial testimony of Robert Carter, the prosecution’s “star witness.” *See Graves v. Dretke*, 442 F.3d 334, 340 (5th Cir. 2006). Mr. Carter was another suspect who ultimately confessed to the murders and negotiated a plea arrangement with the district attorney’s office in exchange for his testimony. *See id.* at 337-38 (noting that in exchange for Mr. Carter testifying against Mr. Graves, the district attorney agreed to forego questioning Mr. Carter’s wife about the crimes). Apart from Mr. Carter’s trial testimony, there was “no physical evidence that tied Graves to the crime and no discernible motive – only the word of the crime’s prime suspect.” Colloff, *supra*, at 113. *See also Graves*, 422 F.3d at 344-345 (“Graves’ conviction rests almost entirely on Carter’s testimony and there is no direct evidence linking him with Carter or with the murder scene other than Carter’s testimony.”). Yet it was not until years later that Mr. Carter was found to have lied at trial. Following Mr. Graves’s conviction, it came to light that the district attorney who prosecuted the case (and also negotiated Mr. Carter’s plea deal) had suppressed two additional statements by Mr. Carter that exculpated Mr. Graves: (1) a statement that he (Mr. Carter) had committed the crimes alone, and (2) a statement that Mr. Carter’s wife had actively participated in the murders. *See Colloff, supra*, at 310. *See also Graves*, 442 F.3d at 340, 344.

Mr. Graves spent the next fourteen years of his life protesting his innocence and appealing his conviction. Finally, in 2006, the Fifth Circuit Court of Appeals granted his request for a writ of habeas corpus. *See Graves*, 442 F.3d at 345 (finding prosecutorial misconduct in suppressing statements and remanding case with instructions to grant writ of habeas corpus unless retried within a reasonable time). Four years later, in 2010, and following a five-month investigation into the evidence to be presented at a new trial, the district attorney's office dropped all charges against Mr. Graves. *See* Brian Rogers & Cindy George, *Prisoner Ordered Free From Texas' Death Row*, Houston & Tex. News, Oct. 28, 2010, available at <http://www.chron.com/disp/story.mpl/metropolitan/7266470.html> (reporting on the district attorney's filing of a motion to dismiss charges against Graves because he was "an innocent man" and "there [was] nothing that connect[ed] [him] to this crime."). Mr. Graves went home a free man in October 2010.<sup>2</sup> *See id.*

Florida has also been impacted by unreliable informant testimony. In 1982, Wilton Dedge was convicted in Brevard County of sexual battery, aggravated battery, and burglary. *See* Innocence Project, *Wilton Dedge*, <https://www.innocenceproject.org/cases/wilton-dedge> (last visited June 21, 2018). Mr. Dedge was sentenced to two

---

<sup>2</sup> Mr. Carter was executed in 2000. He reportedly stated in his last words, "It was me and me alone. Anthony Graves had nothing to do with it. I lied on him in court." *See* Colloff, *supra*, at 207.

concurrent life sentences. *See id.* During the trial, the prosecution relied on the testimony of Clarence Zacke, a jailhouse informant. *See id.* Mr. Zacke claimed that Mr. Dedge confessed to the crime while they were being transported together in a prison van. Mr. Zacke received a drastic reduction in his sentence as a result of his testimony. *See id.* In 2004, Mr. Dedge was exonerated and released from prison after DNA testing proved his innocence. *See id.*

**2. The Florida Innocence Commission’s findings regarding informant testimony supports the conclusion that such evidence is inherently unreliable.**

On July 2, 2010, then-Chief Justice Charles T. Canady established, by Administrative Order AOSC10-39, the Florida Innocence Commission. The Innocence Commission was comprised of several distinguished Florida judges and criminal attorneys. In 2012, the Commission submitted its “Final Report” to this Court.<sup>3</sup> The Final Report devoted an entire section to the topic of “Informants and Jailhouse Snitches.” The opening paragraph of this section states the following:

According to the Innocence Project, an in-custody informant (“jailhouse informant”) testified in over 15% of wrongful conviction cases later overturned through DNA testing. Of the exonerees released from death row, 45.9% were convicted, in part, due to false informant testimony. This makes fabricated testimony a leading cause of wrongful convictions in capital cases. Further studies have shown that informant

---

<sup>3</sup> Florida Innocence Commission, *Final Report to the Supreme Court of Florida* (June 25, 2012), <https://www.flcourts.org/core/fileparse.php/248/urlt/Innocence-Report-2012.pdf>.

perjury was a factor in nearly 50% of wrongful murder convictions.

*(Final Report to the Supreme Court of Florida at 49).*

As a result of the Commission's findings and proposals, this Court adopted two significant changes to Florida law to address the problems associated with unreliable informant testimony. First, this Court added the following jury instruction to the Florida Standard Jury Instructions (Criminal):

You must consider the testimony of some witnesses with more caution than others. For example, a witness who [claims to have helped the defendant commit a crime] [has been promised immunity from prosecution] [hopes to gain more favorable treatment in his or her own case] may have a reason to make a false statement in order to strike a good bargain with the State. This is particularly true when there is no other evidence tending to agree with what the witness says about the defendant. So, while a witness of that kind may be entirely truthful when testifying, you should consider [his][her] testimony with more caution than the testimony of other witnesses. However, if the testimony of such a witness convinces you beyond a reasonable doubt of the defendant's guilt, or the other evidence in the case does so, then you should find the defendant guilty.

*In re Standard Jury Instructions in Criminal Cases*, 122 So. 3d 302 (Fla. 2013).

Notably, this instruction was not given in the Appellant's case.

Second, this Court amended Florida Rule of Criminal Procedure 3.220 to require the prosecution to disclose the names and addresses of any informant witnesses who will "offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried," along with "(i) the substance of any

statement allegedly made by the defendant about which the informant witness may testify; (ii) a summary of the criminal history record of the informant witness; (iii) the time and place under which the defendant’s alleged statement was made; (iv) whether the informant witness has received, or expects to receive, anything in exchange for his or her testimony; (v) the informant witness’ prior history of cooperation, in return for any benefit, as known to the prosecutor.” *In re Amend. to Rule of Crim. Proc. 3.220*, 140 So. 3d 538, 540-541 (Fla. 2014). In this Court’s opinion adopting the amendment to rule 3.220, the Court acknowledged that “informant witnesses . . . constitute the basis for many wrongful convictions.” *Id.* at 539. The Court added:

Given the incidence of wrongful convictions involving “jailhouse informants” as stated by the Innocence Commission in its Final Report, the amendments to rule 3.220 will provide for the disclosure of information specifically relating to informant witnesses.

*Id.* at 540.<sup>4</sup>

**3. Because a sentence of death requires heightened reliability, the death penalty should not be imposed in a case based solely on informant testimony.**

The principle that “death is different” is well established. “[D]eath is a punishment different from all other sanctions in kind rather than degree.” *Woodson v. North Carolina*, 428 U.S. 280, 303-304 (1976) (citing opinions by Justices Brennan

---

<sup>4</sup> In a footnote, the Court recognized that the “Final Report” from the Innocence Commission concluded that approximately half of all wrongful convictions are the result of false informant testimony. *See id.* at 540 n.3.

and Stewart concurring in *Furman v. Georgia*, 408 U.S. 238 (1972)).

[T]he penalty of death, in its finality, is qualitatively different from a sentence of imprisonment, however long. . . . Because of that qualitative difference, there is a corresponding difference in the *need for reliability* in the determination that death is the appropriate punishment in a specific case.

*Woodson*, 428 U.S. at 305 (emphasis added). Justice Rehnquist dissented on other grounds but agreed that death is different:

One of the principal reasons why death is different is because it is *irreversible*. . . . This aspect of the difference between death and other penalties would undoubtedly support statutory provisions for specially careful review of the fairness of the trial, the accuracy of the factfinding process, and the fairness of the sentencing procedure where the death penalty is imposed. But none of those aspects of the death sentence is at issue here. . . .

The second aspect of the death penalty which makes it “different” from other penalties is the fact that it is indeed an *ultimate penalty*, which *ends a human life* rather than simply requiring that a living human being be confined for a given period of time in a penal institution. . . .

*Woodson*, 428 U.S. at 323 (emphasis added).

In *Gardner v. Florida*, 430 U.S. 349, 357 (1977), Justice Stevens, writing for a plurality, named five members of the Court who in *Furman* or in *Gregg v. Georgia*, 428 U.S. 153 (1976), “expressly recognized that death is a different kind of punishment from any other which may be imposed in this country.” “[I]t is different in both its *severity* and its *finality*.” *Id.* (emphasis added). “It is of vital importance

to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.” *Id.* at 358. Where confidential information that had been withheld from the defendant and his counsel was the basis for a death sentence, “the *interest in reliability* plainly outweighs the State’s interest . . . .” *Id.* at 359 (emphasis added). In a concurring opinion, Justice White wrote: “A procedure for selecting people for the death penalty that permits consideration of secret information relevant to the character and record of the individual offender . . . fails to meet the *need for reliability* in the determination that death is the appropriate punishment.” 430 U.S. at 364 (emphasis added).

In *Beck v. Alabama*, 447 U.S. 625 (1980), Justice Stevens, writing for a majority, quoted his opinion in *Gardner v. Florida*, 430 U.S. 349, 357-58, and added:

To insure that the death penalty is indeed imposed on the basis of “reason rather than caprice or emotion,” we have invalidated procedural rules that tended to diminish the reliability of the sentencing determination. [Footnote, omitted, quotes *Lockett v. Ohio*, 438 U.S. 586 [1978].] The same reasoning must apply to rules that diminish the *reliability of the guilt determination*. . . .

447 U.S. at 637-38 (emphasis added).

In *Solem v. Helm*, 463 U.S. 277, 294 (1983), Justice Powell quoted Justice Stewart concurring in *Furman*, 408 U.S. 238, 306: “the penalty of death differs from all other forms of criminal punishment, not in degree but in kind.” 463 U.S. at 289, 294. In a dissenting opinion, referring to *Rummel v. Estelle*, 445 U.S. 263 (1980),

Chief Justice Burger wrote:

The *Rummel* Court emphasized, as has every opinion in capital cases in the past decade, that it was possible to draw a “bright line” between “the punishment of death and the various other permutations and commutations of punishment short of that ultimate sanction”. . . .

463 U.S. at 308.

While the facts and issues considered by the United States Supreme Court may differ from one case to another, the principle is not in dispute that death is different, and that in capital cases reliability is “of vital importance to the defendant and to the community.” *Gardner v. Florida*, 430 U.S. at 357-58; *Beck v. Alabama*, 447 U.S. at 637. Accordingly, because a sentence of death requires heightened reliability, *amicus curiae* submits that the death penalty should not be imposed in a case based solely on informant testimony.

## F. CONCLUSION

Based on the foregoing, the Innocence Network requests the Court vacate Mr. Dailey's conviction and sentence of death and grant him a new trial.

Respectfully submitted,

CRAIG TROCINO  
Director, Miami Law Innocence Clinic  
University of Miami School of Law  
1311 Miller Drive; A 312  
Coral Gables, Florida 33146  
(305) 284-8201  
FL Bar No. 996270

For *Amicus Curiae*

/s/ Michael Ufferman

MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 222-2340  
FL Bar No. 114227

Local Counsel for *Amicus Curiae*

## G. CERTIFICATE OF SERVICE

Undersigned counsel certify that a true and correct copy of the foregoing instrument has been furnished to:

Assistant Attorney General Christina Pacheco  
Concourse Center 4  
3507 East Frontage Road, Suite 200  
Tampa, Florida 33607-7013  
Email: capapp@myfloridalegal.com  
christina.pacheco@myfloridalegal.com

Chelsea R. Shirley  
Maria E. DeLiberato  
Julissa R. Fontan  
Office of the Capital Collateral Regional  
Counsel for the Middle District  
12973 North Telecom Parkway  
Temple Terrace, Florida 33637  
Email: Shirley@ccmr.state.fl.us  
Deliberato@ccmr.state.fl.us  
Fontan@ccmr..state.fl.us

Seth E. Miller  
Innocence Project of Florida, Inc.  
1100 East Park Avenue  
Tallahassee, Florida 32301  
Email: smiller@floridainnocence.org

Laura Fernandez  
127 Wall Street  
New Haven, Connecticut 06511  
Email: laura.fernandez@yale.edu

Cyd Oppenheimer  
155 West Rock Avenue  
New Haven, Connecticut 06515  
Email: cydfremmer@yahoo.com

by email delivery this 21st day of June, 2018.

CRAIG TROCINO  
Director, Miami Law Innocence Clinic  
University of Miami School of Law  
1311 Miller Drive; A 312  
Coral Gables, Florida 33146  
(305) 284-8201  
FL Bar No. 996270

For *Amicus Curiae*

/s/ Michael Ufferman

MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 222-2340  
FL Bar No. 114227

Local Counsel for *Amicus Curiae*

## H. CERTIFICATE OF COMPLIANCE

Undersigned counsel certify pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that this brief complies with the type-font limitation.

CRAIG TROCINO  
Director, Miami Law Innocence Clinic  
University of Miami School of Law  
1311 Miller Drive; A 312  
Coral Gables, Florida 33146  
(305) 284-8201  
FL Bar No. 996270

For *Amicus Curiae*

/s/ Michael Ufferman  
MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 222-2340  
FL Bar No. 114227

Local Counsel for *Amicus Curiae*