IN THE SUPREME COURT OF FLORIDA

CASE NO. SC01-1415

STATE OF FLORIDA,

Appellant/Cross-Appellee,

v.

ASKARI ABDULLAH MUHAMMAD, f/k/a THOMAS KNIGHT,

Appellee/Cross-Appellant.

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR BRADFORD COUNTY, STATE OF FLORIDA

REPLY BRIEF OF CROSS-APPELLANT

MICHAEL P. REITER
Florida Bar No. 0320234
Capital Collateral Counsel -
Northern Region

HEIDI E. BREWER
Florida Bar No. 0046965
Assistant CCC-NR
1533 S. Monroe Street
Tallahassee, FL 32301
(850) 488-7200

COUNSEL FOR
APPELLEE/CROSS-APPELLANT

PRELIMINARY STATEMENT

References in this *Reply Brief* will be consistent with those made in Mr. Muhammad's *Answer/Initial Brief*. Mr. Muhammad will not reply to every issue and argument. However, he expressly does not abandon the issues and claims not specifically replied to herein. For arguments not addressed herein, Mr. Muhammad stands on the arguments presented in his *Answer/Initial Brief*.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

SUMMARY OF ARGUMENT IN REPLY

The circuit court failed to consider the effects that undisclosed and exculpatory material had on the pretrial and guilt phase proceedings of Mr. Muhammad's trial. This Court should evaluate the evidence and its effect on the reliability of Mr. Muhammad's guilt phase and order a new trial. In the alternative, Mr. Muhammad requests this Court remand the case to the circuit court in order to assess the impact of the Brady[1] material as it relates to the guilt phase and pretrial issues of Mr. Muhammad's capital trial.

REPLY TO ARGUMENT II

When this Court remanded the instant case for an evidentiary hearing to be held on Mr. Muhammad's Brady claims, the Court did not limit the remand to the penalty phase:

> Muhammad contends that these statements contained exculpatory information regarding his mental state at the time of the offense, and that he was denied his right to effectively cross-examine witnesses against him based on the statements. Because the trial court believed this point was inappropriate to a rule 3.850 proceeding, **it did not address the merits of whether the alleged Brady violation would require a new trial**. Accordingly, we reverse the trial court's ruling on the alleged Brady violation and remand to the trial court for an evidentiary hearing on this issue.

---

[1] Brady v. Maryland, 373 U.S. 83 (1963).

Muhammad v. State, 603 So. 2d 488, 489-490 (Fla. 1992) (emphasis added). Contrary to the State's assertion that the "trial court properly denied relief regarding the guilt phase" (*Reply/Answer Brief*, at 2) and despite this Court's instructions, the circuit court neglected to consider whether the State's Brady violation warranted a new trial.

Instead of considering the effect that the Brady material had on the entire trial, the circuit court focused solely on the effect that the Brady material had on the penalty phase. In fact, the lower court stated that "the issue becomes what impact, if any, this information would have had on the sentencing court's decisionmaking [sic] process." (PCR V. 1 at 909). However, the court misunderstood its duties, as it should have considered the Brady material in terms of the pretrial and guilt phase proceedings, as well as penalty phase proceedings. Had the court assessed Mr. Muhammad's conviction in light of the statements and the evidence from the hearing, the court would have found that confidence in Mr. Muhammad's conviction was undermined.

From the evidence presented at the evidentiary hearing, it is clear that, at trial, Mr. Muhammad was deprived of key information about his mental state at the time of the offense. Accounts of Mr. Muhammad's behavior, demeanor, and appearance

indicate he was suffering from a mental disturbance or mental illness at the time of the offense, which rendered him incapable of forming the requisite intent to commit first-degree premeditated murder. This evidence is specifically the type of information that is crucial in formulating a defense strategy and preparing a defense case.

In addition to the evidence from the hearing, the circuit court's own order illustrates that the Brady material was relevant to the validity of the entire trial. Although the court did not specifically address the exculpatory information in terms of the pretrial and guilt phase proceedings, the court's characterization of the material shows that the statements pertain to these proceedings as well. For instance, the court describes the Brady material as "center[ing] around observations by inmates and guards of Defendant's demeanor **at or near the time of the crime** as evidence of his mental state." (PCR V. 1 at 906)(emphasis added). The court also explained that "at the evidentiary hearing, Defendant put on a number of witnesses who testified that Defendant appeared **not to be in his right mind just before and after the murder**." (PCR V. 1 at 906) (emphasis added).

Such evidence goes to Mr. Muhammad's mental state at the

time of the crime, which is relevant in assessing whether he was capable of forming the intent required to be convicted of first-degree premeditated murder. Section 782.04(1)(a)(1), Florida Statutes, defines first-degree premeditated murder as "[t]he unlawful killing of a human being . . . when perpetrated from a premeditated design to effect the death of the person killed . . . ."

> To convict an individual of premeditated murder, the state must prove, among other things, "a fully-formed conscious purpose to kill, which exists in the mind of the perpetrator for a sufficient length of time to permit reflection, and in pursuance of which an act of killing ensues." Obviously, this element includes the requirement that the accused have the specific intent to kill at the time of the offense.

Gurganus v. State, 451 So. 2d 817, 822 (1984) (citations omitted) (granting a new trial on the grounds that the trial court improperly excluded evidence of the defendant's intoxication at the time of the offense – even though there was sufficient evidence in the record for the jury to infer that the defendant was intoxicated). The evidence from the hearing shows that Mr. Muhammad did not have the capacity to form the requisite intent to be convicted of first-degree premeditated murder. At the very least, this is information to which Mr. Muhammad and his prior counsel were entitled and

information that was necessary for them to fully assess the State's case and potential defenses.

The Brady material showing, e.g., that Mr. Muhammad "was not in his right mind", was essential for the defense in order to properly consider several avenues of challenging the State's case. This is especially true given the circumstances and events surrounding the denial of Mr. Muhammad's visit with his mother on the day Officer Burke was killed (*Answer/Initial Brief*, at 26). For example, Mr. Muhammad could have argued to the jury that this evidence shows he could not have formed the intent necessary for first-degree premeditated murder and that, at most, a second-degree murder charge may have been more appropriate. Second-degree murder does not require premeditation: "[t]he unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, **although without any premeditated design** to effect the death of any particular individual, is murder in the second degree . . . ." § 782.02, Fla. Stat. (emphasis added). Such a conviction would have made Mr. Muhammad ineligible for the death penalty. Without the Brady material, Mr. Muhammad and prior counsel were deprived from fully considering all of the potential defenses and strategies.

Moreover, the Brady material would have been crucial for the trial court to consider in determining whether Mr. Muhammad knowingly and intelligently waived his right to the assistance of counsel. Mr. Muhammad waived his right to counsel, in large part, because his counsel wanted to proceed with an insanity defense. However, Mr. Muhammad opposed such a defense. Had Mr. Muhammad had the benefit of the officers' and inmates' descriptions of his behavior, demeanor, and appearance at the time of the offense, he would have been able to consider that evidence in determining whether to pursue the insanity defense. It certainly supported his counsel's desire to rely upon insanity. Because Mr. Muhammad did not have all of the evidence, his waiver of counsel was uninformed thus invalid.

"Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts with sufficient awareness of the relevant circumstances and likely consequences." Robert Brady v. United States, 90 S. Ct. 1463, 1469 (1970).

> Almost a half a century ago in Johnson v. Zerbst, . . . a case involving an alleged waiver of a defendant's Sixth Amendment right to counsel, the [United States Supreme] Court explained that we should "indulge every reasonable presumption against waiver of fundamental constitutional rights." For that reason,

> it is the State that has the burden of establishing a valid waiver. Doubts must be resolved in favor of protecting the constitutional claim.

Michigan v. Jackson, 106 S. Ct. 1404, 1409 (1986) (citations omitted); see also Johnson v. Zerbst, 58 S. Ct. 1019, 1023 (1938) ("The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case . . .").

In addition, while a defendant's waiver of constitutional rights may be deemed valid at trial, the validity of the waiver must be reevaluated in light of any Brady material. For example, in Miller v. Angliker, 848 F. 2d 1312 (2d Cir. 1988), a defendant pled not guilty by reason of insanity – a plea which is largely analogous to a plea of guilty. Id. at 1320. Based on subsequent determinations that the State had violated its Brady obligations, the Miller court found that the Brady evidence undermined confidence in the defendant's plea. Id. at 1323.

> Since a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case and of information that may be available to cast doubt on the fact or degree of his culpability, we conclude that **even a guilty plea that was "knowing" and "intelligent" may be vulnerable to challenge if it was entered without knowledge of material**

evidence withheld by the prosecution.

Id. at 1320 (emphasis added). Similarly, Mr. Muhammad's waiver of his right to counsel must be evaluated in light of the exculpatory material that was suppressed at trial. However, the circuit court never evaluated the validity and constitutionality of Mr. Muhammad's waiver of counsel in terms of this evidence.

In its answer, the State avoids addressing the fact that Brady material can affect a defendant's preparation of his case. In determining whether confidence has been undermined in the outcome of a trial, "courts should consider not only how the State's suppression of favorable information deprived the defendant of direct relevant evidence but also how it handicapped the defendant's ability to investigate or present other aspects of this case." Rogers v. State, 782 So. 2d 373, 385 (Fla. 2001). Again, had the State fulfilled its duties under Brady, Mr. Muhammad would have been able to further investigate and discover other evidence which negated the intent necessary for first-degree premeditated murder.

The State relies on United States v. Avellino, 136 F. 3d 249 (2d Cir. 1998), for the proposition that "to prove that an alleged Brady violation resulted in an invalid waiver, a defendant must prove that but for the failure to disclose the

material, there is a probability that the defendant would not have entered the waiver." (*Reply/Answer Brief*, at 20). However, the State omits the Avellino court's explanation of this standard. The court explains that "[a]ssessment of that question involves an objective inquiry that asks not what a particular defendant would do but rather what is 'the likely persuasiveness of the withheld information.'" Avellino, 136 F.3d at 256 (quoting Miller v. Angliker, 848 F. 2d 1312, 1322 (2d Cir. 1988)). Thus, the State's contention that this claim should be rejected, since Mr. Muhammad "presented no evidence that . . . he would not have waived any insanity defense" (*Reply/Answer Brief*, at 20), is inconsistent with Avellino, the very case which the State cites for support. As the lower court noted in its order, the Brady evidence was so persuasive and powerful that it compromised "the interests of justice" and required a new penalty phase. (PCR V. 1 at 911). Similarly, the interests of justice also require a new trial.

The State suggests that this Court should "sustain a lower court's decision if there is any basis in the record to do so." *(Reply/Answer Brief*, at 17). However, in this case, the lower court did not make any findings on this issue. The circuit court did not mention anything in its order about the effect the statements had on the reliability of the pretrial

and guilt phase proceedings, but the court also did not make any findings that the material did ***not*** effect the pretrial and guilt phases. The only conclusion this Court can reasonably reach is that the lower court never considered the effect of the evidence on Mr. Muhammad's conviction and that the court limited its assessment of the evidence to the effect it had on the penalty phase. (PCR V. 1 at 909).

For the same reasons the lower court found that penalty phase relief is warranted, guilt phase relief is also warranted. Confidence in the outcome has been undermined. This Court should now either remand the case for the lower court to consider the Brady evidence in terms of the pretrial and guilt phase proceedings or rule that, based on the record, the Brady violations warrant a new trial.

CONCLUSION AND RELIEF SOUGHT

For all the reasons discussed herein, Mr. Muhammad respectfully urges this Court to vacate his conviction and order a new trial be held. In the alternative, this Court should remand the case to the lower court to determine the impact of the Brady material upon the guilt phase of Mr. Muhammad's trial, in accordance with this Court's prior directions. See Muhammad v. State, 603 So. 2d 488, 488-490

(Fla. 1992).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing ***Reply Brief*** has been furnished by United States Mail, first-class postage prepaid, to Sandra Jaggard, Assistant Attorney General, Rivergate Plaza, Suite M950, 444 Brickell Avenue, Miami, Florida 33313, counsel of record on this 21st day of October, 2002.

MICHAEL P. REITER
Capital Collateral Counsel -
Northern Region
Florida Bar No. 0320234

_____
HEIDI E. BREWER
Florida Bar No. 0046965
Assistant CCC-NR
1533 South Monroe Street
Tallahassee, Florida 32301
(850) 488-7200
Attorney for Mr. Muhammad

CERTIFICATE OF TYPE SIZE AND STYLE

This is to certify that this *Reply Brief* has been reproduced in 12 point Courier type, a font that is not proportionately spaced.

_____
Heidi E. Brewer