IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-860

JAMES GUZMAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

ERIC C. PINKARD
ASSISTANT CCRC-MIDDLE
FLORIDA BAR NO: 651443
OFFICE OF THE CAPITAL COLLATERAL REGIONAL COUNSEL
3801 CORPOREX PARK DRIVE
SUITE 210
TAMPA, FL 33609-1004
(813) 740-3544
COUNSEL FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

THE GIGLIO CLAIM

Appellee's answer Brief does not dispute that the state knowingly presented false testimony to the trier of fact by failing to reveal that witness Martha Cronin, an admitted prostitute and crack cocaine addict, was paid $500.00 by the Volusia County Sheriff's Office. The Appellee further does not dispute that the discussions with Martha Cronin concerning the $500.00 payment were made between the time of her initial statement to the police on August 12, 1991, where she did not implicate Mr. Guzman in any way, and November 23, 1991, where she came forward with her statements implicating Mr. Guzman. Appellee further does not dispute that the defense filed discovery demands prior to trial specifically requesting whether Martha Cronin had been given any "consideration" defined "absolutely anything of value or use including but not limited to witness fees, special witness fees" and the state responded she had not been given any consideration.

The only argument set forth by the Appellee concerning the *Giglio* claim is that the lower court applied the correct legal standard in finding the withholding of the $500.00 payment was not "material". (Appellees Answer Brief p. 25-32). A review of the lower court's order disputes this conclusion. In the portion of the order denying relief on the *Giglio* claim the court states "this court finds there is

not a reasonable probability that had the information regarding the reward money paid to Cronin been disclosed, the result of the proceeding would have been different" (PC-R 932). This is the wrong standard, as a defendant does not have to establish the outcome of the trial would have been different. The correct legal standard emanating from the United States Supreme Court, and as stated in the Appellant's Initial Brief, is "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury". *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); *Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 164 (1972); *Napue v. Illinois*, 360 U.S. 254, 271, 79 S.Ct. 1173, 1178, 2 L.Ed.2d 1217 (1959). This standard of materiality is equivalent to the *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed2d 705(1967), "harmless error beyond a reasonable doubt" standard. *Bagel*, 473 U.S. at 679. This Court's task is to conduct a de-novo review of whether there is any reasonable likelihood that the knowing presentation of false testimony by the state concerning the payment of $500.00 to Martha Crinion could have affected the judgment of the trier of fact. Or, put another way, can it be concluded that he state's knowing presentation of false testimony of the $500.00 payment is harmless error beyond a reasonable doubt.

CERTIFICATE OF FONT SIZE AND SERVICE

I HEREBY CERTIFY that a true copy of the foregoing REPLY BRIEF OF APPELLANT which has been typed in Font Times New Roman , size 14, has been furnished by U.S. Mail to all counsel of record on this 10th day of March 2003.

ERIC PINKARD
ASSISTANT CCRC-MIDDLE
FLORIDA BAR NO: 651443
OFFICE OF THE CAPITAL
COLLATERAL REGIONAL

COUNSEL

3801 CORPOREX PARK DRIVE
SUITE 210
TAMPA, FL 33609-1004
(813) 740-3544

Copies furnished to:

Rosemary L. Calhoun
Assistant State Attorney
Office of the State Attorney
The Justice Center
251 North Ridgewood Avenue
Daytona Beach, Florida 32114-7505

James Guzman
DOC# 395352; P2104S
Union Correctional Institution
7819 NW 228th Street
Raiford, Florida 32026

Kenneth S. Nunnelly
Assistant Attorney General
Office of the Attorney General
444 Seabreeze Boulevard
5th Floor
Daytona Beach, Florida 32118

CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing REPLY BRIEF OF APPELLANT, was generated in a Times New Roman, 14 point font, pursuant to Fla. R. App. P. 9.210.

ERIC PINKARD
ASSISTANT CCRC-MIDDLE
FLORIDA BAR NO: 651443
OFFICE OF THE CAPITAL
COLLATERAL REGIONAL

COUNSEL

3801 CORPOREX PARK DRIVE
SUITE 210
TAMPA, FL 33609-1004
(813) 740-3544