IN THE SUPREME COURT OF FLORIDA

JAMES GUZMAN,

Appellant,

v. **CASE NO. SC04-2016**

STATE OF FLORIDA,

Appellee.
_____/

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

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

ANSWER BRIEF

This appeal follows the proceedings on remand to the Circuit Court for consideration of Guzman's *Giglio v. United States* claim. Following due consideration, Circuit Judge William Johnson entered an order finding, *inter alia*, that there was "no reasonable likelihood that the false testimony could have affected the judgment of the Court," and that the State had proven that the "presentation of false testimony was harmless beyond a reasonable doubt." (R193). The trial court's ruling is supported by competent, substantial evidence, and should not be disturbed.[1]

STATEMENT OF THE CASE AND FACTS[2]

The State relies on the following facts, as found by this Court during the proceedings leading up to the remand[3]:

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[1] The Thesaurus included with Microsoft WORD lists "probability" as the first preferred synonym for "likelihood," and vice versa. The Corel WordPerfect Thesaurus does the same.

[2] This case was prosecuted by Assistant State Attorneys from Hillsborough County following a Governor's Assignment. (TR 487). There is absolutely **no** evidence in the record that the Tampa prosecutors had any knowledge of the reward offered by the Daytona Beach police years before those prosecutors had any involvement in this case. While the State recognizes that knowledge of the reward is imputed, any implication that the prosecutors had actual knowledge of the reward finds no support in the record, and amounts to nothing more than *ad hominem* abuse which has no basis in fact.

On August 12, 1991, David Colvin's body was found lying face down on the bed in the motel room where he lived. Colvin had been stabbed nineteen times. A samurai sword that belonged to Colvin was propped up in a light fixture above his bed; however, no blood or fingerprints were found on the samurai sword. The medical examiner determined that Colvin died between 3 p.m. and midnight on August 10.

After Colvin's body was found, police officers interviewed other residents of the motel where Colvin had lived. About a week before the murder, Guzman and Martha Cronin, a prostitute and a crack cocaine addict, had begun living together at the motel. The police interviewed both Guzman and Cronin. Each denied having any information about Colvin's murder. On August 16, 1991, the State published in two local newspapers a reward offer of $500 for information about the case.

The police investigation failed to lead to an arrest until November 23, 1991, when Cronin was arrested on prostitution charges. Cronin volunteered to testify about Colvin's murder in exchange for a deal in her own case. Cronin then told the police that Guzman had confessed to her that he killed Colvin. The police took Cronin to a motel and paid for her room. Cronin used the room for prostitution and used crack cocaine; then she left the motel. The police later rearrested Cronin. On January 3, 1992, the police paid Cronin $500 by money order delivered to the Volusia County jail. The police detective who arranged the payment could not recall when she first discussed the reward money with Cronin.

Guzman was arrested on December 13, 1991. In January 1992, a grand jury indicted Guzman for the armed robbery and murder of David Colvin. Following a jury trial in September 1992, Guzman was convicted as charged and sentenced to death. On direct appeal, this Court reversed and

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[3] The State does not accept the statement of the facts contained in Guzman's brief. That part of Guzman's brief is wrongly focused on issues that are tangential to the ***Giglio*** claim, which is the **only** issue in this appeal.

remanded for a new trial, holding that Guzman's right to a fair trial was violated because his public defender had a conflict of interest in representing both Guzman and a witness against Guzman. *Guzman v. State,* 644 So. 2d 996, 1000 (Fla. 1994).

On retrial in December 1996, Guzman waived his right to a jury in both the guilt and penalty phases. The waiver was at the instance of Guzman and was contrary to the advice of his counsel. Guzman signed a written waiver. Both the trial court and Guzman's counsel questioned Guzman to ensure that Guzman's waiver was knowing, voluntary, and intelligent.

At trial, the medical examiner testified that the weapon used to kill Colvin was a single-edged knife or knife-like object with a slightly curved, heavy blade. The medical examiner could not identify the murder weapon used, but he said that Colvin's samurai sword could have inflicted some of Colvin's wounds and that a survival knife like one owned by Guzman [FN2] could have inflicted other wounds.

> FN2. At the time of Guzman's arrest for Colvin's murder on December 13, 1991, Guzman had a survival knife in his possession.

Guzman's fingerprints were on the telephone in Colvin's room. There were blood stains on other parts of the phone, but Guzman's fingerprints on the phone were not bloody. Blood and saliva samples were taken from Guzman, but nothing was matched to anything found in Colvin's room. No other physical evidence connected Guzman to the murder.

Guzman testified at trial that on the day before the murder, Guzman helped Colvin move from one room to another in the motel. Guzman said that he used the phone in Colvin's room at that time and again on the morning of August 10. Cronin confirmed that Guzman telephoned her from Colvin's room.

On the morning of August 10, Guzman and Colvin left the motel in Colvin's car. They drank beer at a bar, then went to the International House of Pancakes to eat breakfast. Guzman testified that he and Colvin returned to the motel at about noon. Guzman said that he gave Colvin's car and room keys back to Colvin and returned to his own room, where Cronin was getting ready to go to work as a prostitute. Cronin left the room at around noon.

Guzman testified that at about 3 p.m., Cronin returned to the room accompanied by Curtis Wallace. Guzman said that Wallace gave him a diamond ring, asking Guzman to trade the ring for crack cocaine. It is undisputed that on August 10, at around 4 p.m. or 5 p.m., Guzman took the ring, which had belonged to Colvin, to a drug dealer named Leroy Gadson. Guzman sold the ring to Gadson for drugs and cash. Guzman testified that he then returned to the room and gave Wallace some of the drugs.

Cronin's testimony at trial contradicted Guzman's. Cronin said that on the morning of August 10 Guzman told her that he was going to drive Colvin to the bank. Cronin stated that Guzman returned to their room at about 11 a.m. and showed her Colvin's car keys and room keys, saying he was going to help Colvin move to another room in the motel. Cronin said she left the room at about 11 a.m. to work as a prostitute, and returned at about 2:30 p.m. She said that at about 3 p.m. Guzman came back to their room, looking upset and carrying a garbage bag that contained white rags. Cronin said that Guzman told her he killed Colvin. She said Guzman told her that Colvin woke up while Guzman was in the process of robbing him, so Guzman hit Colvin in the head and then stabbed him with the samurai sword. Cronin said that Guzman showed her a ring and some cash he had taken from Colvin. Cronin identified the ring at trial. Cronin said that Guzman told her before the murder that Colvin would be easy to rob because he was always drunk and usually had money. Cronin testified that Guzman had said in a separate conversation that

if he ever robbed anyone he would kill them, and that Guzman was holding his survival knife when he said this.

Cronin said that when she was arrested for prostitution in November 1991, she offered to tell the arresting officers who killed Colvin. However, Cronin denied that she received any deal for her testimony against Guzman. She said she was taken to a motel room for protection, but that she used the room for prostitution and continued to use crack cocaine, so she got no deal from the State. The detective who paid the $500 to Cronin also testified at trial, stating that Cronin received no deal for her testimony against Guzman.

Guzman's counsel attempted to impeach Cronin by bringing out that she was a prostitute and a drug addict, that she testified against Guzman while she faced charges of prostitution, and that she was angry at Guzman because he was involved with other women. Guzman's counsel also presented the testimony of Carmelo Garcia, who said Cronin told him in February of 1992 that Guzman had not killed anyone and that Cronin admitted she had lied to the police because she had been arrested.

Paul Rogers, a jailhouse informant, corroborated Cronin's testimony against Guzman. Rogers and Guzman shared a jail cell during the spring of 1992. At trial, Rogers testified that Guzman said that he robbed and killed Colvin. Rogers testified that Guzman told him that he used Colvin's key to enter Colvin's room, and that Colvin woke up while Guzman was robbing him. Rogers said that Guzman told him that he hit Colvin in the head with a samurai sword and stabbed him ten or eleven times. Rogers said Guzman confessed that he took Colvin's ring and some cash, cleaned up the sword, and put everything in the dumpster.

Guzman's counsel attempted to impeach Rogers by asking if Rogers had read Guzman's trial papers, which Guzman kept in the cell they shared, but Rogers denied reading Guzman's papers. Rogers also denied learning of the case by reading the

newspaper. Rogers admitted that after he initially told police that Guzman confessed to him, Rogers had signed an affidavit saying he knew nothing about Colvin's murder and indicating that he would not testify against Guzman.

Following the presentation of this evidence at a bench trial, the trial court convicted Guzman of armed robbery and first-degree murder, and imposed the death penalty. In its sentencing order, the court found five aggravating factors, including that the murder was committed in a cold, calculated, and premeditated manner (CCP). [FN3] The court found no statutory mitigating factors. As nonstatutory mitigation, the court found that Guzman's alcohol and drug dependency was entitled to little weight.

> FN3. The five aggravating factors found by the trial court were: (1) Guzman was previously convicted of a violent felony; (2) the murder was committed in the course of a robbery; (3) the murder was committed for the purpose of avoiding arrest; (4) the murder was committed in a cold, calculated, and premeditated manner (CCP); and (5) the murder was especially heinous, atrocious, or cruel (HAC).

On direct appeal from his second trial, Guzman raised eight issues. [FN4] This Court held that the evidence did not support the CCP aggravator, but affirmed Guzman's convictions and death sentence. *Guzman v. State,* 721 So. 2d 1155 (Fla. 1998). The United States Supreme Court denied certiorari. *Guzman v. Florida,* 526 U.S. 1102, 119 S.Ct. 1583, 143 L.Ed.2d 677 (1999).

> FN4. Guzman contended that the trial judge erred by (1) improperly denying his motion for mistrial; (2) convicting him in the absence of substantial and competent evidence of guilt; (3) failing to dismiss the case due to double jeopardy; (4) improperly ruling on "various issues"; (5) imposing a disproportionate death sentence; (6) improperly finding the HAC aggravator; (7) improperly finding the "avoiding

arrest" aggravator; and (8) improperly finding the CCP aggravator.

Guzman filed a rule 3.850 motion for postconviction relief on March 27, 2000, and an amended motion on November 30, 2000, raising eleven claims. [FN5] During the pendency of his 3.850 motion, Guzman filed a motion for DNA testing of a clump of hair recovered from the back of Colvin's thigh at the murder scene. [FN6] The State filed a response stating that the hair evidence had been destroyed in November 1992. Guzman amended his 3.850 motion to add three claims related to the destruction of the hair evidence. [FN7]

The postconviction court, which was the same court that convicted and sentenced Guzman, held an evidentiary hearing on Guzman's 3.850 motion and denied relief. Guzman appeals the postconviction court's denial of his rule 3.850 motion, and contemporaneously petitions this Court for a writ of habeas corpus.

FN5. The eleven claims Guzman presented to the trial court in his 3.850 motion were: (1) his conviction and sentence on retrial violate double jeopardy as well as protections against prosecutorial misconduct and ineffective assistance of counsel; (2) ineffective assistance of counsel in the guilt phase in failing to present evidence, cross-examine witnesses, and use experts; (3) ineffective assistance of counsel in the penalty phase in failing to adequately investigate and present mitigating evidence, and in failing to adequately challenge the State's case; (4) failure of the mental health expert to conduct a competent evaluation; (5) violation of due process rights in the State's withholding material exculpatory evidence or failing to correct material false testimony; (6) prosecutorial misconduct in presenting misleading evidence and improper argument; (7) Florida's capital sentencing statute is

> unconstitutional; (8) execution by electrocution is cruel and unusual punishment; (9) execution by lethal injection is cruel and unusual punishment; (10) defendant may be incompetent at the time of execution; and (11) the cumulative effect of the errors deprived defendant of a fundamentally fair trial.
>
> FN6. Florida's DNA statute, section 925.11, *Florida Statutes* (2002), was enacted effective October 1, 2001, giving Guzman the right to this testing.
>
> FN7. The three claims Guzman added were: (12) the State's bad faith destruction of exculpatory evidence violated Guzman's due process rights; (13) the State committed a violation of *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), by failing to disclose the destruction of the hair evidence; and (14) ineffective assistance of trial counsel in failing to ascertain that the hair evidence had been destroyed.

Guzman v. State, 868 So. 2d 498, 501-504 (Fla. 2003).

This Court affirmed the denial of post-conviction relief in all respects except for the *Giglio* claim, which was remanded for further proceedings. This Court held:

> In his first claim, Guzman asserts that Martha Cronin and the lead detective on Colvin's murder case both testified falsely at trial, violating *Giglio v. United States,* 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). To establish a *Giglio* violation, it must be shown that: (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material. *Ventura v. State,* 794 So. 2d 553, 562 (Fla. 2001); *see also Rose v. State,* 774 So. 2d 629, 635 (Fla. 2000).

The first two prongs of the *Giglio* test are satisfied in this case. Both Cronin and the lead detective on the case testified falsely at trial that Cronin received no benefit for her testimony against Guzman other than being taken to a motel rather than jail when she was arrested. In fact, the State paid Cronin $500, a significant sum to an admitted crack cocaine addict and prostitute. The knowledge prong is satisfied because the knowledge of the detective who paid the reward money to Cronin is imputed to the prosecutor who tried the case. *See Gorham v. State,* 597 So. 2d 782, 784 (Fla. 1992) (holding that the prosecutor is charged with constructive knowledge of evidence withheld by other state agents, such as law enforcement officers).

The only disputed issue with respect to Guzman's *Giglio* claim is the third prong, which requires a finding that the false testimony presented at trial was material. *See Ventura,* 794 So. 2d at 562. Guzman asserts that the postconviction court applied the wrong standard in deciding the materiality prong of his *Giglio* claim. In its order denying Guzman's rule 3.850 motion, the postconviction court articulated the *Giglio* standard of materiality as:

> Under *Giglio,* a statement is material if "there is a reasonable probability that the false evidence may have affected the judgment of the jury." [*Ventura v. State*, 794 So. 2d 553, 563 (Fla. 2001)] (quoting *Routly [v. State],* 590 So. 2d [397, 400 (Fla. 1991).]) "In analyzing this issue ... courts must focus on whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.* (quoting *White v. State,* 729 So. 2d 909, 913 (Fla. 1999)).

Order Denying Claims IIC(1), IIE(1), IIE(4), etc. at 12. After evaluating the State's $500 payment to Cronin in light of the other evidence presented at trial, the postconviction court concluded that "there is not a reasonable probability that the false evidence would put the

whole case in such a different light as to undermine confidence in the verdict." *Id.* at 13. The postconviction court stated and applied the *Giglio* standard of materiality from our decisions in *Ventura v. State,* 794 So. 2d 553 (Fla. 2001), *White v. State,* 729 So. 2d 909, 913 (Fla. 1999), and *Routly v. State,* 590 So. 2d 397 (Fla. 1991). Having reviewed these decisions, as well as our other *Giglio* and *Brady* decisions, we conclude that our precedent in this area has lacked clarity, resulting in some confusion and improper merging of the *Giglio* and *Brady* materiality standards. [FN8] For example, in *Rose v. State,* 774 So. 2d 629, 635 (Fla. 2000), we said: "The standard for determining whether false testimony is 'material' under *Giglio* is the same as the standard for determining whether the State withheld 'material' in violation of *Brady.*" In reliance on *Rose,* the trial court's order that we approved in *Trepal* erroneously stated that in addressing a *Giglio* claim "[t]he materiality prong is the same as that used in *Brady.*" *Trepal v. State,* 846 So. 2d 405, 425 (Fla. 2003). We recede from *Rose* and *Trepal* to the extent they stand for the incorrect legal principle that the "materiality" prongs of *Brady* and *Giglio* are the same. We now clarify the two standards and the important distinction between them.

> FN8. In her specially concurring opinion in *Trepal v. State,* 846 So. 2d 405, 437 (Fla.)(Pariente, J., specially concurring), *cert. denied,* 540 U.S. 958, 124 S.Ct. 412, 157 L.Ed.2d 295 (2003), Justice Pariente noted the confusion and succinctly stated the difference between the standards.

The *Brady* standard of materiality applies where the prosecutor fails to disclose favorable evidence to the defense. *See Brady v. Maryland,* 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Under *Brady,* the undisclosed evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in

the outcome." *United States v. Bagley,* 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). [FN9] A criminal defendant alleging a *Brady* violation bears the burden to show prejudice, i.e., to show a reasonable probability that the undisclosed evidence would have produced a different verdict. *Strickler v. Greene,* 527 U.S. 263, 281 n. 20, 289, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999).

> FN9. This is the same standard that is used to evaluate the prejudice prong of an ineffective assistance of counsel claim. *See Strickland v. Washington,* 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (stating that "the appropriate test for prejudice [in ineffective assistance of counsel claims] finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution," that in an ineffective assistance of counsel claim "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" and that "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome").

By contrast to an allegation of suppression of evidence under *Brady,* a *Giglio* claim is based on the prosecutor's knowing presentation at trial of false testimony against the defendant. *See Giglio,* 405 U.S. at 154-55, 92 S.Ct. 763. Under *Giglio,* where the prosecutor knowingly uses perjured testimony, or fails to correct what the prosecutor later learns is false testimony, the false evidence is material "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). Justice Blackmun observed in *Bagley* that the test "may as easily be stated as a materiality standard under which the fact that testimony is perjured is considered material unless failure to disclose it

would be harmless beyond a reasonable doubt." 473 U.S. at 679-80, 105 S.Ct. 3375. The State, as the beneficiary of the *Giglio* violation, bears the burden to prove that the presentation of false testimony at trial was harmless beyond a reasonable doubt. *Id.* at 680 n. 9, 105 S.Ct. 3375 (stating that "this Court's precedents indicate that the standard of review applicable to the knowing use of perjured testimony is equivalent to the *Chapman [v. California,* 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)] harmless-error standard"). [FN10]

> FN10. In *United States v. Alzate,* 47 F.3d 1103 (11th Cir. 1995) the court, after articulating the standard of materiality applicable to *Brady* claims, stated:
>
> A different and more defense-friendly standard of materiality applies where the prosecutor knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony. Where either of those events has happened, the falsehood is deemed to be material "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) (emphasis added). As the Supreme Court has held, this standard of materiality is equivalent to the *Chapman v. California,* 386 U.S. 18, 24[, 87 S.Ct. 824, 17 L.Ed.2d 705] (1967), "harmless beyond a reasonable doubt" standard. *Bagley,* 473 U.S. at 679 n. 9[, 105 S.Ct. 3375].
>
> *Id.* at 1110 (citations and footnote omitted), *quoted in Trepal,* 846 So. 2d at 439 (Pariente, J., specially concurring).

Thus, while materiality is a component of both a *Giglio* and a *Brady* claim, the *Giglio* standard of materiality is more defense friendly. [FN11] The *Giglio* standard reflects a heightened judicial concern, and correspondingly heightened judicial

scrutiny, where perjured testimony is used to convict a defendant. *See Bagley,* 473 U.S. at 682, 105 S.Ct. 3375 (explaining that the defense-friendly standard of materiality is justified because the knowing use of perjured testimony involves prosecutorial misconduct and "a corruption of the truth-seeking function of the trial process") (citing *Agurs,* 427 U.S. at 104, 96 S.Ct. 2392). Under *Giglio,* once a defendant has established that the prosecutor knowingly presented false testimony at trial, the State bears the burden to show that the false evidence was not material.

> FN11. The *Alzate* court stated that the *Brady* standard of materiality "is substantially more difficult for a defendant to meet than the 'could have affected' standard we apply [to *Giglio* claims]." *Alzate,* 47 F.3d at 1110 n. 7.

In Guzman's case, the postconviction court's resolution of the *Giglio* claim does not sufficiently reflect the standard appropriate to a *Giglio* claim. In its order, the court did not state that there was no reasonable likelihood that the false evidence regarding the $500 payment to Cronin could have affected the court's judgment as factfinder. Nor did the court find that the State had demonstrated that the false evidence was harmless beyond a reasonable doubt. Because of this lack of findings critical to a *Giglio* analysis, we cannot determine that the court adequately distinguished the *Giglio* standard from the *Brady* standard when considering and ultimately deciding the *Giglio* claim. [FN12] We therefore remand this claim to the trial court for reconsideration and for clarification of its ruling on the materiality prong of Guzman's *Giglio* claim. To reiterate, the proper question under *Giglio* is whether there is any reasonable likelihood that the false testimony could have affected the court's judgment as the factfinder in this case. If there is any reasonable likelihood that the false testimony could have affected the judgment, a new trial is required. The State bears the burden of proving that the

> presentation of the false testimony was harmless beyond a reasonable doubt.
>
> > FN12. In its articulation of the *Giglio* standard, the lower court correctly stated that the false testimony is material if "there is a reasonable probability that the false evidence may have affected the judgment of the jury." The confusion, however, is attributable to the second sentence in the court's articulation, stating that, "[i]n analyzing this issue ... courts must focus on whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." This second sentence is correctly used to analyze *Brady* claims, but is inappropriate to analyzing claims under the more defense-friendly standard of *Giglio.*

Guzman v. State, 868 So. 2d 498, 505-508 (Fla. 2004).

THE POST-REMAND PROCEEDINGS

On remand, the circuit court reconsidered the *Giglio* claim in light of the instructions of this Court, and made the following findings:

> After evaluating the State's $500 payment to [Martha] Cronin in light of the other evidence presented at trial, the Court finds that the evidence of the $500 payment to Cronin was immaterial under *Giglio*. The State has met its burden of demonstrating that the false evidence was harmless beyond a reasonable doubt. The State has demonstrated that no *Giglio* violation occurred due to the ample impeachment and corroboration of Cronin's testimony, and the independent evidence of the Defendant's guilt.
>
> The Court determines that in light of the significant impeachment evidence presented at trial and the other evidence of Guzman's guilt,

the evidence of the State's $500 reward to Martha Cronin would have been merely cumulative and immaterial. The record herein contains other evidence of Guzman's guilt apart from Cronin's testimony.

Dr. Terrance Steiner, then interim medical examiner for Volusia County, testified at trial that Colvin's sword recovered from the room could have inflicted some of the wounds to Colvin's body, and that Guzman's survival knife could have inflicted other wounds to Colvin's body. [footnote omitted].

Paul Rogers, the jailhouse witness who shared a jail cell with Guzman, corroborated Cronin's testimony. Paul Rogers testified that Guzman confessed to him that he robbed and killed Colvin. [footnote omitted]. The record reflects that it is undisputed that Guzman possessed Colvin's ring and traded it for drugs and cash. [footnote omitted].

Guzman's trial counsel presented significant impeachment evidence against Cronin during cross-examination. Specifically, Cronin was impeached on: her initial claim to know nothing about Colvin's murder upon questioning by the police after the discovery of Colvin's body; her attempt to make a deal with the State after her arrest, in exchange for her damaging testimony against Guzman; her discontentment with Guzman's association with other female acquaintances; her numerous arrests for prostitution; her addiction to crack cocaine. [footnote omitted].

Guzman also presented the testimony at trial of Carmelo Garcia. Garcia testified that Cronin told him she had lied to the police about Guzman murdering Colvin. [footnote omitted].

After evaluating the State's $500 payment to Cronin in light of the other evidence presented at trial, the Court concludes that the evidence of the $500 payment to Cronin was immaterial under *Giglio*. The Court concludes that there was no reasonable likelihood that the false testimony

> regarding the $500 payment to Cronin could have affected the court's judgment as factfinder. Thus, having applied the *Giglio* standard to the facts, the Court finds that Guzman is not entitled to relief on his *Giglio* claim.
>
> Applying the *Giglio* standard to the facts of this case, the Court reaches the following findings and rulings on the issues on remand and the Guzman *Giglio* claim:
>
> (A) That the Court having fully reconsidered does now clarify its ruling on the materiality prong of Guzman's *Giglio* claim by applying the *Giglio* standard to the facts of this case.
>
> (B) That the court determines that there is no reasonable likelihood that the false testimony could have affected the judgment of the Court.
>
> (C) That the Court determines that the State has carried its burden and has proven that the presentation of false testimony was harmless beyond a reasonable doubt.
>
> (D) That the Court states in answer to the proper question under *Giglio*, as presented by the Supreme Court of Florida, as to whether or not there is any reasonable likelihood that the false testimony could have affected the Court's judgment as to the fact finder in this case, that this Court's answer to that question is no, there is not any reasonable likelihood that the false testimony could have affected [] this Court's judgment as the fact finder in this case.

(R190-93). The Circuit Court denied all relief. (R194).

SUMMARY OF THE ARGUMENT

In its order after remand, the Circuit Court found that there was no reasonable likelihood that the false testimony could have affected the Court's judgment as the factfinder in this case, and that the presentation of the

false testimony was harmless beyond a reasonable doubt. The Circuit Court followed this Court's instructions explicitly, applied the standard enunciated by this Court, and found, as fact, that the evidence at issue was not material under *Giglio*. That finding is supported by competent substantial evidence, and should not be disturbed.

ARGUMENT

THE TRIAL COURT PROPERLY FOUND THAT THE REWARD PAID TO WITNESS CRONIN WAS IMMATERIAL, FOR *GIGLIO* PURPOSES, IN THE CONTEXT OF THIS CASE.

Guzman's argument, when stripped of its pretensions, is based upon his dissatisfaction with the result reached by the trial court. Despite his protestations, the true facts are that the Circuit Court's decision is squarely based on credibility choices made by that court after hearing all of the evidence. There is no basis upon which the Circuit Court's decision should be disturbed.[4]

On page 25 of his brief, Guzman argues that the claim contained in his brief is subject to *de novo* review. In support of this claim, Guzman claims that this Court

[4] The Eleventh Circuit upheld the denial of relief on a *Giglio* claim in *Ventura v. Attorney General*, No. 04-14564 (11th Cir., Aug. 9, 2005), and, in so doing, found that this Court had properly applied the *Giglio* standard in that case.

applied a *de novo* review standard to a *Giglio* claim in *Mordenti v. State*, 894 So. 2d 161, 173 (Fla. 2005). *Mordenti* dealt with a *Brady v. Maryland* claim, not a *Giglio* claim. And, while *Mordenti* held that "[w]hether evidence is 'material' for *Brady* purposes is a mixed question of law and fact subject to independent review," *Mordenti v. State*, 894 So. 2d at 170, that case did not hold that this Court will substitute its judgment for that of the trial court with respect to factual findings. Florida law is well settled that:

> As long as the trial court's findings are supported by competent substantial evidence, "this Court will not 'substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court.'"

Blanco v. State, 702 So. 2d 1250, 1252 (Fla. 1997), *quoting Demps v. State,* 462 So. 2d 1074, 1075 (Fla. 1984), *quoting Goldfarb v. Robertson*, 82 So. 2d 504, 506 (Fla. 1955); *Melendez v. State*, 718 So. 2d 746 (Fla. 1998). In other words, while the legal conclusion as to "materiality" is subject to *de novo* review, the **factual** conclusions of the trial court are not.

> THE TRIAL COURT PROPERLY FOLLOWED THIS COURT'S DIRECTIONS, AND REACHED THE CORRECT RESULT.

In its decision remanding this case for additional factfindings by the trial court, this Court stated:

> In its order the [trial] court did not state that there was no reasonable likelihood that the false evidence regarding the $500 payment to Cronin **could have affected the court's judgment as factfinder.** Nor did the court find that the State had demonstrated that the false evidence was harmless beyond a reasonable doubt. . . . To reiterate, **the proper question under *Giglio* is whether there is any reasonable likelihood that the false testimony could have affected the court's judgment as the factfinder in this case.**

Guzman v. State, *supra,* at 507-508. (emphasis added). The trial court followed those instructions explicitly, and found that there was (1) no reasonable likelihood that the false testimony could have affected the Court's judgment as the factfinder, and (2) that the State carried its burden of proving that the presentation of false testimony was harmless beyond a reasonable doubt. (R170).

The primary focus of Guzman's brief is that the trial court should have ignored this Court's directive to determine whether there was a reasonable likelihood that the false testimony could have affected the court's judgment as the factfinder in exchange for an "objective" standard which ignores the "subjective opinion of the non-jury trial judge." *Initial Brief*, at 35. That argument attempts to place the trial court in error for following

the instructions of this Court, and, moreover, flies in the face of common sense.

The United States Supreme Court has not, contrary to Guzman's suggestion, held that findings on the *Giglio* issue made by a judge situated as Judge Johnson was are entitled to no deference. *Bagley* did not resolve that issue, and should not be read as deciding the matter by implication.[5] Florida law has long been that "it is the province of the trier of fact to determine the credibility of witnesses and resolve factual conflicts." *Guzman v. State*, 721 So. 2d 1155, 1159 (Fla. 1998) ("Sitting as the trier of fact in this case, the trial judge had the superior vantage point to see and hear the witnesses and judge their credibility."). That is the law in the context of a sufficiency of the evidence claim, and it makes no sense to deviate from it in the *Giglio* context. The credibility of the witnesses is inextricably intertwined with the *Giglio* claim, and the trial court's finding that the reward evidence would not have affected his judgment as the factinder is entitled to deference.

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[5] The Supreme Court's *Bagley* decision rejected the Ninth Circuit's *per se* rule of reversal which it had applied to the *Giglio* violation -- it did not answer the issue of the deference due the findings made in the context of a non-jury trial. *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

The trial court also found that the State had proven that the *Giglio* error was harmless beyond a reasonable doubt. (R170). That conclusion, which is well-supported by the evidence, is dispositive of the *Giglio* claim. In its decision in this case, this Court pointed out that the United States Supreme Court had held that the standard of review applicable to a *Giglio* claim is the equivalent of the *Chapman* harmless beyond a reasonable doubt standard. *Guzman, supra*, at 506-507 (quoting *Bagley*). The trial court's finding that the error was harmless beyond a reasonable doubt is supported by the evidence, and should not be disturbed.

THE CORROBORATING AND IMPEACHING EVIDENCE IS UNCONTESTED.[6]

In his brief, Guzman challenges much of the evidence used to impeach Cronin as well as the evidence which was consistent with, and corroborative of, her trial testimony. Obviously, this evidence is relevant to and dispositive of the "reasonable likelihood" component of the *Giglio* inquiry. However, while Guzman challenges a substantial part of this evidence, the true facts are that this Court

[6] The corroborating and impeaching evidence is an integral part of the G*iglio* analysis -- even if the $500 reward had bene disclosed, there is no reasonable likelihood that it could have affected the Court's verdict, as Judge Johnson found in his order denying relief. *See, Ventura, supra.*

found the following facts in the context of the *Brady* claim that was raised in Guzman's prior appeal:

> Having reviewed the record, we conclude that there is no reasonable probability that, had the reward evidence been disclosed, the outcome of the trial would have been different. During cross-examination at trial, Guzman's counsel presented significant impeachment evidence against Cronin: her addiction to crack cocaine; her multiple arrests for prostitution; her attempt to make a deal with the State when she was arrested, in exchange for her testimony against Guzman; her initial claim to know nothing about Colvin's murder; and her jealousy of Guzman's relationships with other women. Guzman also presented the testimony of Carmelo Garcia, who said that Cronin told him she had lied to the police about Guzman committing the murder. In light of the significant impeachment evidence presented at trial, evidence of the State's reward to Cronin would have been merely cumulative. Further, the record contains other evidence of Guzman's guilt apart from Cronin's testimony. Paul Rogers, the jailhouse informant who shared a cell with Guzman, corroborated Cronin's testimony. It is undisputed that Guzman possessed Colvin's ring and traded it for drugs and cash. Finally, the medical examiner testified at trial that Colvin's sword and Guzman's survival knife were consistent with the murder weapon. In light of this evidence of Guzman's guilt, and in light of the significant impeachment of Cronin apart from her receipt of the $500 reward, we conclude that there was not a reasonable probability that had the information regarding the reward been disclosed to Guzman, the result of the proceeding would have been different. The reward evidence fails to put the whole case in such a different light as to undermine confidence in the verdict. Guzman is not entitled to relief on his *Brady* claim.

Guzman v. State, 868 So. 2d at 508-509. As this Court found in the *Brady* context, Cronin was significantly impeached,

and there was substantial evidence of Guzman's guilt, both independently of Cronin's testimony and in corroboration of it. The facts relied upon by the trial court in deciding the remanded *Giglio* issue are the facts set out in this Court's opinion, which are not subject to challenge at this juncture. While the *Brady* claim is evaluated under a different standard than the *Giglio* claim, the relevant facts are the same -- those facts were set by this Court's opinion, and are no longer subject to dispute. The only issue is whether the *Giglio* error is a basis for relief, and the Circuit Court properly concluded that it was not based upon the instructions given by this Court. In light of the significant impeachment of Cronin, and the evidence of guilt independent of Cronin's testimony, the trial court quite properly found that there was no reasonable likelihood that evidence of the $500 reward would have affected his judgment as the trier of fact, and that the error was harmless beyond a reasonable doubt. Those findings are correct, and should be affirmed in all respects.

THE "OBJECTIVE-SUBJECTIVE" DICHOTOMY IS MEANINGLESS IN THE CONTEXT OF THIS CASE.

Much of Guzman's brief is focused on arguing that Circuit Judge Johnson improperly engaged in a "subjective"

analysis of the *Giglio* issue, and that the fact that Judge Johnson was the trier of fact in this case is meaningless. While it is true that the Ninth Circuit's post-remand decision in *Bagley* indicates that the judge in a bench trial is entitled to no particular deference in the context of a *Giglio* claim, that is not what the Supreme Court held, and is not binding precedent that this Court must follow. In the factual situation presented by Guzman's case, the "subjective-objective" dichotomy is a *non sequitor* because in considering the *Giglio* violation Judge Johnson was **not** called on to evaluate the possible effect of the error on a jury -- he was directed to determine what the effect would have been on **his** verdict. That evaluation is neither objective nor subjective -- it results in a **factual determination** which, in this case, is that the result would not have changed. The attempt to graft the "objective evaluation" onto the facts of this case is an attempt to force a square peg into a round hole.

In its decision remanding this case to the Circuit Court, this Court directed the lower court to answer two questions: whether there is any reasonable likelihood that the *Giglio* violation could have affected the court's judgment as factfinder, and whether the *Giglio* error was harmless beyond a reasonable doubt. *Guzman, supra*, at 507-

508. This Court held that the *Giglio* standard is the equivalent of the *Chapman* harmless beyond a reasonable doubt standard, *Id.,* and the Circuit Court found that the error was harmless beyond a reasonable doubt. Under any possible articulation of the *Giglio* standard, that is, and should be, the end of the inquiry.[7] The two questions are complementary to each other because the first lets this Court know exactly what the trier of fact would have done in this case. The second reinforces and expands upon the first, and provides a clear basis for the affirmance of the lower court's denial of relief.

CONCLUSION

WHEREFORE, based upon the foregoing, the State respectfully submits that the trial court's ruling should be affirmed in all respects.

Respectfully submitted,

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[7] In *Ventura*, the Eleventh Circuit questioned whether the *Chapman* standard is in fact the same as the *Giglio* standard. *Ventura, supra*, at n. 9. In denying relief, Judge Johnson applied a standard that meets or exceeds any possible Constitutional requirement.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to **Eric C. Pinkard, Assistant CCRC**, Capital Collateral Regional Counsel-Middle, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619-1136, this _____ day of August, 2005.

_____
Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

_____
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