IN THE SUPREME COURT OF FLORIDA

CASE NO. SC04-2016

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

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This is an appeal of the circuit court's denial of Mr. Guzman=s post-conviction motion.

References to the record from the post conviction hearing include a page number and are of the form, e.g., (PC-R. 123). References to the record of Mr. Guzman=s retrial include a page number and are of the form, e.g., (R. 123). All other references are self explanatory or explained herein.

REQUEST FOR ORAL ARGUMENT

Mr. Guzman has been sentenced to death. The resolution of the issues involved in this action will therefore determine whether he lives or dies. This Court has not hesitated to allow oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument is appropriate in this case, given the seriousness of the claims involved and the gravity of the penalty. Mr. Guzman, through counsel, accordingly urges that the Court permit oral argument.

PROCEDURAL HISTORY

The judgment and sentence considered by this appeal were entered by the Circuit Court of the Seventh Judicial Circuit, in and for, Volusia County.

On January 7, 1992, the Volusia County Grand Jury indicted Mr. Guzman for first degree murder and robbery. R. 1992 277). The jury convicted Mr. Guzman of first-degree murder and robbery with a deadly weapon on September 24, 1992. R. 1992 577). On September 29, 1992, the advisory panel recommended a sentence of death by a vote of 10-2 R. 1992 600).

On Mr. Guzman=s direct appeal, this Court reversed Mr. Guzman=s convictions and sentence. *Guzman v. State*, 644 So. 2d 996, 1000 (Fla. 1994). This Court found that the trial court=s failure to allow Mr. Guzman=s trial counsel to withdraw despite a conflict of interest denied Mr. Guzman the Aright to conflict-free counsel as required by the Sixth Amendment of the United States Constitution.@ *Id.* at 999.

In 1996, Mr. Guzman proceeded to a non-jury trial. R. 1996 1246-47). The trial judge sentenced Mr. Guzman to death for the first-degree murder conviction without a recommendation from an advisory panel. R. 1996 2368). On direct appeal, this Court affirmed both the convictions and sentence. *Guzman v. State*, 721 So. 2d 1155 (Fla. 1998). The United States Supreme Court denied certiorari on May 3, 1999. *Guzman v. Florida*, 119 S. Ct 1583 (1999).

Following the United States Supreme Court=s denial of certiorari, Mr. Guzman

sought post-conviction relief in the circuit court. Mr. Guzman filed a motion for post-conviction relief under Rule 3.850.

The circuit court held an evidentiary hearing on this motion in October of 2001 and denied Mr. Guzman all relief. On Appeal, this Court remanded the case back to the Lower Court for a determination of the materiality prong of *Giglio v. United States*, 405 U.S. 150 (1972). *Guzman v. State*, 868 So.2d 498 (Fla. 2004). On September 5, 2004, the lower court denied the *Giglio* claim. This appeal follows.

STATEMENT OF THE FACTS

On August 12, 1991, officers of the Daytona Beach Police Department responded to the Imperial Hotel in Daytona Beach. (R. 1330). They discovered a body later identified as David Colvin lying face down on a bed within one of the hotel rooms. (R. 1330). He had received multiple stab wounds. (R. 1330). From August 12, 1991, until November 23, 1991, the police investigation uncovered no evidence which implicated Mr. Guzman in the death of David Colvin. (R. 1502, 1503). On August 12, 1991, police interviewed Martha Cronin at the Imperial Hotel and she provided a statement which did not implicate Mr. Guzman. R. 1526).

After Martha Cronin=s November 23, 1991 arrest for violation of probation on prostitution charges, Martha Cronin changed her story and gave a statement to the police claiming that Mr. Guzman had confessed to her that he had killed David Colvin. R. 1531). As will be demonstrated below, the testimony of Martha Cronin was essential to the state=s case against Mr. Guzman, and the facts and circumstances of her changed testimony were the subject of several claims in Mr. Guzman=s motion for post-conviction relief.

(a) MARTHA CRONIN:

The state obtained a first degree murder conviction against Mr. Guzman primarily through the testimony of state witness Martha Cronin, an admitted prostitute and crack cocaine addict. Martha Cronin did not implicate Mr. Guzman in any way in

her initial statements to the police.

Ms. Cronin testified at Mr. Guzman=s trial that in August of 1991 she lived at the Imperial Hotel in Daytona Beach, where she worked as a prostitute. (R. 1653). She developed a relationship with Mr. Guzman. (R. 1653). Both she and Mr. Guzman used crack cocaine extensively during this period of time. (R. 1836). She fell in love with Mr. Guzman and had intimate sexual relations with him. (R. 1637). At trial, Ms. Cronin testified that Mr. Guzman related to her prior to David Colvin=s murder that Colvin would be easy to rob because he drank a lot and usually had a lot of money. R. 1639). She testified Mr. Guzman also told her that if he ever robbed anyone, he would have to kill them and that Mr. Guzman had owned a knife. R. 1640-41).

Martha Cronin testified that on August 10, 1991 she returned to her hotel room around 7:00 AM after working the previous evening as prostitute. R. 1642,43). She then took a shower and laid down. R. 1643). Mr. Guzman called and said he was going to drive David Colvin to the bank. R. 1644). Mr. Guzman returned to the room after 11:00 AM and said he had gone to breakfast and had some drinks at the Office Bar. R. 1645). He said he was going to help David Colvin move and had his car keys with him. R. 1646). Ms. Cronin then went out and worked as a prostitute during the lunch period. R. 1649). At about 2:30 or 3:00 Mr. Guzman came back to the room. R. 1649). He appeared upset and had a garbage bag with white rags inside. R. 1650).

She assumed he went to throw the garbage bag away in the dumpster, although she did not see him do it. R. 1651).

She testified that Mr. Guzman sat down next to her and said AI did it@. R. 1652). She asked him what he meant and he said AI killed David@. R. 1654). She said Mr. Guzman gave her two different versions of what happened. R. 1654). The first one was that David Colvin was passed out and he was trying to take his money and when Colvin woke up he hit him, knocked him out, and stabbed him with a samurai sword. R. 1655). Mr. Guzman then showed her a ring and some cash he had taken from David Colvin. (R. 1655). Ms. Cronin identified the ring at trial. (R. 1655).

According to Ms. Cronin, Mr. Guzman then asked her what he should do with the ring, and she said get rid of it. (R. 1656). He told her that he killed David Colvin for her. (R. 1658). Mr. Guzman then left and returned with $150.00 cash and two or three hundred dollars worth of crack cocaine. (R. 1659). She said she and Mr. Guzman smoked the crack over the next several days. (R. 1660). They then discussed what to say when the police came around, and Mr. Guzman told her to say she was not there. R. 1661). She and Mr. Guzman left the Imperial Hotel and moved to Ridgewood Avenue. R. 1663). Later, Mr. Guzman said he had fought with David Colvin and he killed him with a sword. R. 1664).

In November of 1991 Ms. Cronin was arrested for violation of probation for soliciting for prostitution. R. 1666). She asked the arresting officers if they wanted

to know who killed David Colvin. R. 1666). She mentioned the ring and the sword and then Detective Allison Sylvester came to speak with her. R. 1661). She asked the Detective for a deal and testified to the events surrounding her arrest and changed testimony as follows:

> Q. And what did they do with you?
> A. They took me back to the police station and called Allison Sylvester.
>
> Q. The case detective in this case.
> A. Yes Sir.
>
> Q. Did you tell Allison Sylvester that you wanted a deal and you were going to talk about the murder?
> A. Of course.
>
> Q. And was the deal reference to your own case?
> A. Yes.
>
> Q. Did you in fact, Ma:am, ever get a deal?
> A. No.
>
> Q. What happened after you talked to Allison Sylvester?
> A. Well, they put me in a motel for protection, I guess.
>
> Q. All right. And ma:am, while you were in that motel, did you continue to engage in prostitution and use of crack cocaine?
> A. Yes, I did.
>
> Q. Is it fair to say that was not part of your agreement with Detective Sylvester?
> A. No sir, it was not.
>
> Q. Okay. Ma:am, why did you chose to talk to the police only when you were arrested in late November of 1991?
> A. I don:t understand the question.

> Q. Why did you pick that time to tell the police about the murder of David Colvin?
> A. I was tired of going to jail and watching him walk away, knowing what he had done.

R. 1668).

On cross examination, Ms. Cronin admitted to using crack cocaine on a daily basis from 1989 through July 19, 1993. R. 1683). The police questioned her on August 12, 1991 and she said nothing about Mr. Guzman=s alleged confession. R. 1688). She admitted to writing a letter to Mr. Guzman in December of 1991 stating that she Awent off the deep end@ when she found out Mr. Guzman was seeing another woman and if she could not have him, no other woman would. R. 1696). She further stated in the letter that she Acalled Allison and told her what she wanted to hear and where you were.@ R. 1696). She further testified that in August of 1991 Mr. Guzman helped David Colvin move from one room to another at the Imperial Motor Lodge. R. 1727). In September of 1991 she ran into Allison Sylvester a couple of times on the street and never told her that Mr. Guzman had confessed to her or had anything to do with Mr. Colvin=s death. (R. 1732)

(b) ALLISON SYLVESTER:

Allison Sylvester of the Daytona Beach Police Department was the lead Detective on the case. She was called to the Imperial Hotel on August 12, 1991. (R. 1328). She saw the body of a white male laying face down on a bed inside a hotel

room with pillows on top of him. R. 1330). A sword was propped up in light fixture above the bed. R. 1330). A black limousine belonging to David Colvin was parked in front of the hotel. R. 1493). She interviewed Mr. Guzman and Martha Cronin on August 12, 1991. R. 1495). Mr. Guzman related that he knew the victim and had previously helped him move from one room to another within the hotel. R. 1496). He further related that sometime prior to the body being found he had accompanied the victim to a bar and to a restaurant. R. 1496). He had driven the victim=s car at that time. R. 1497). Mr. Guzman then gave a written statement to Detective Sylvester where he stated:

> I helped Dave move from 205 to 216 either on Wed or Thursday. And next I took him to eat at IHOP because he called me and wanted me to drive. And so I did. And then we went to a bar. I tried to get in touch with him after those days and have not been able to get in touch with him. Yes. I know Dave.

R. 1499).

Allison Sylvester also interviewed Martha Cronin on August 12, 1991 and she did Anot offer anything of substance at that time@. R. 1501). Detective Sylvester then commented on the ensuing investigation, and Martha Cronin=s prominent role, from August 12, 1991 until Mr. Guzman was arrested on December 13, 1991:

> Q. During that time, ma=am, please describe the general tone of your investigation throughout the months in trying to determine who the perpetrator was ? What exactly were you and your agents doing?
> A. We continued to follow up on any information that came in. And we

continued to do that until the time that we received substantial information which would have been the end of November.

Q. And where did that information come from?
A. Martha Cronin.

Q. Ma=am, let me ask you this. During the period of time from August until the end of November, when you said substantial information came from Martha Cronin, had you focused on James Guzman as the sole suspect to the exclusion of all others?
A. No

R. 1502-03) (emphasis added).

Detective Sylvester further testified that in late November 1991, Martha Cronin was located by police due to an outstanding warrant on prostitution charges, and she told the arresting officers that Ashe had information that she wanted to provide@ R. 1503). When Detective Sylvester first interviewed Martha Cronin on August 12, 1991, she never told her that Mr. Guzman had confessed to her. R. 1526). On September 24, 1991 Detective Sylvester met with Martha Cronin and she related she had no information about the homicide. R. 1530). On November 23, 1991 Martha Cronin was arrested for violation of probation and for the first time changed her story claiming Mr. Guzman had confessed to her. R. 1531). Martha Cronin stated she wanted a deal, and Detective Sylvester called the State Attorney=s Office, who informed her that she should arrest Martha Cronin. R. 1571).

Instead of jail, Detective Sylvester took Martha Cronin to a hotel. R. 1532). The police Alost contact@ with Ms. Cronin while she was staying at the hotel and

engaged in prostitution and using crack cocaine. R. 1533). Detective Sylvester testified that she had an Aagreement@ with Martha Cronin for free room and lodging at the hotel. R. 1551). Following her arrest for violating the deal she had made with Detective Sylvester, Martha Cronin was then released on her own recognizance on December 5, 1991, after Thomas Lane appeared in court on her behalf, falsely claiming to be her brother. R. 1552). Detective Sylvester then testified on redirect examination by the state about the parameters of her arrangement with witness Martha Cronin. As will be demonstrated later in this brief, this testimony was a lie. The prosecutor elicited the following false testimony from Detective Sylvester:

> Q. Detective Sylvester, did you, in fact, personally offer Martha Cronin any deals whatsoever in exchange for her testimony against James Guzman?
> A. No, I did not.
>
> Q. Are you aware of any member of law enforcement or the State Attorney=s Office offering any deals to Martha Cronin for her testimony against Mr. Guzman?
> A. No.

R. 1559).

(c) THE RING:

The state produced testimony at Mr. Guzman=s trial that he sold a ring belonging to David Colvin to Leroy Gadson on August 10, 1991. Mr. Gadson testified he was contacted by Mr. Guzman around 4:00 or 5:00 on the afternoon of August 10, 1991. R. 1820). Mr. Guzman told him he Ahad something@ he wanted to show him.

R. 1822). Mr. Guzman came to his house about 20 minutes later and showed him a Anice gold ring with lots of diamonds in it@. R. 1824). He gave him $250.00 and cocaine for the ring. R. 1826). Either later that night or the next day Guzman came back and got more money and drugs. R. 1830). In November of 1991 Mr. Gadson was arrested for drug charges and gave the ring to Detective Sylvester. R. 1836). At that time he had given the ring to John Cerca. R. 1832).

Two different factual versions of how Mr. Guzman came into possession of David Colvin=s ring on August 10, 1991 were presented at Mr. Guzman=s trial; one from Mr. Guzman and one from Martha Cronin. Martha Cronin=s version, as she testified to at trial, was that Mr. Guzman showed her the ring when he came back to the hotel room and confessed to killing David Colvin. R. 1655).

In contradiction, Mr. Guzman testified that on August 10, 1991, after going to the Shell gas station, the Office Bar and the International House of Pancakes with David Colvin, he returned to the hotel room where he stayed with Martha Cronin. R. 2110). In the afternoon Martha Cronin gave him $50.00 after turning a trick in the hotel room and she left to go buy drugs from Curtis Wallace. R. 2111).

According to Mr. Guzman=s trial testimony, Martha Cronin returned with Curtis Wallace around 2:30 or 3:00 that afternoon. R. 2112). Martha Cronin had a ring and said Curtis Wallace wanted to trade it for crack cocaine. R. 2112). Mr. Guzman did not recognize it as David Colvin=s ring. R. 2113). Curtis Wallace said he wanted an

Aeight ball he could juggle@(referring to an amount of crack cocaine) in exchange for the ring. R. 2114). Acting for Mr. Wallace, Mr. Guzman then called Leroy Gadson and met him at his house. R. 2115). Mr. Gadson looked at the ring and paid him $250.00 and an eight-ball. R. 2116). Mr. Guzman returned to the hotel and gave Curtis Wallace half the eight-ball and told him he would give him the rest later. R. 2117). Curtis Wallace then broke a piece of the drugs off for Martha Cronin and left the room. R. 2117).

Mr. Guzman and Martha Cronin then smoked the cocaine, and she left to go get more from Curtis Wallace. R. 2118). Mr. Guzman went to his apartment and called Leroy Gadson again. R. 2120). Mr. Guzman went and got the rest of the drugs from Leroy Gadson and returned to the Imperial Hotel where he gave Mr. Wallace the rest of the drugs. R. 2122).

Mr. Guzman admitted he had David Colvin=s ring on August 10, 1991, and that he sold the ring to Leroy Gadson. The incriminating character of the ring evidence was established solely through the testimony of admitted cocaine addict and prostitute Martha Cronin. Without her testimony, the ring evidence was not incriminating, as Mr. Guzman testified he got the ring from Curtis Wallace, whom the record reveals was a viable suspect based upon other evidence introduced at the trial.

(d) THE FINGERPRINT

Florida Department of Law Enforcement lab analyst Michael Rafferty testified at Mr. Guzman=s trial. R. 1338). He reviewed the crime scene in order to collect evidence. R. 1339). He noted what appeared to be blood stains on the telephone in the room and placed the phone into evidence. R. 1339). Fingerprints lifted from the handset of the phone were later identified as Mr. Guzman=s at the crime lab. R. 1625). Contrary to the lower court=s order denying 3.850 relief, there were NO BLOODY FINGERPRINTS ON THE PHONE. R. 1663). The state produced no evidence at the trial of a bloody fingerprint lifted from the phone. The fingerprint was merely lifted from the phone which had blood on it on other parts.

Furthermore, the evidence of Mr. Guzman=s fingerprint on the phone in David Colvin=s hotel room was not at all incriminating. Mr. Guzman testified he helped David Colvin move from room 114 to room 205. R. 2096). He used the phone in Mr. Colvin=s room at that time. (R. 2096). Other witness=s called at the trial corroborate Mr. Guzman=s testimony. Thomas Conway, who worked at the Imperial Hotel and was the person who called the police after finding Mr. Colvin=s body in his room, testified that Guzman had helped Mr. Colvin move into his room. (R. 1324). Even Martha Cronin testified that Mr. Guzman had called her from David Colvin=s room. (R. 1644). Therefore, the existence of Mr. Guzman=s fingerprints on the handset of the telephone was not evidence that he had anything to do with the murder of David Colvin.

(e) THE SNITCH:

The state presented testimony of jail house snitch Paul Rogers at Mr. Guzman=s trial. Mr. Rogers testified that he met Mr. Guzman at the Volusia County Jail. (R. 1897). They shared the same cell for a couple of weeks and became friends. (R. 1897). He testified that Mr. Guzman said he drove a limousine for David Colvin. (R. 1905). He said that his girlfriend Terri (Martha Cronin=s alias) was wanting to go out and hook and he said he had the key to David Colvin=s room and he was going to rob him and get money. (R. 1905). He told Terri he was going to rob him so she would not have to hook. (1906). He went to David Colvin=s room, opened the door, went through the drawers and David woke up. R. 1906). There was a samurai sword hanging over the dresser on the wall. R. 1907). He said he hit him with the sword 10 or 11 times. R. 1908). He cleaned up the sword and put everything in the dumpster. R. 1909).

On cross examination, Mr. Roger=s admitted he had been convicted of felony seven times. R. 1929). He also admitted to signing an affidavit on August 29, 1992 where he stated A**I told the Assistant DA that I am not going to say shit and they brought me back - and they brought me back over from the Volusia County Correctional Facility. Guzman never confessed to me. I=m not going to testify against him.**@ R. 1930, *emphasis added*). He also admitted on cross that Mr. Guzman kept court papers in his room and his cell was open. R. 1935). Mr.

Guzman verified this when he testified that he kept his court papers in his foot locker, and Mr. Rogers had access to them. R. 2163).

This jail house snitch testimony was notoriously unreliable in light of the witness= criminal history and his motivation to fabricate testimony to help his own cause. In this case, the credibility of snitch Rogers was further damaged by the signing of an affidavit where he specifically stated Mr. Guzman had not confessed to him. Mr. Rogers also had access to Mr. Guzman=s court papers where he could have learned of the factual allegations of Mr. Guzman=s case. Viewing this witnesses= testimony as corroboration of the testimony of admitted crack cocaine addict and prostitute Martha Cronin was dubious at best.

(f) OTHER SUSPECTS IN THE MURDER OF DAVID COLVIN:

At Mr. Guzman=s trial both state and defense witnesses testified to facts which implicated persons other than Mr. Guzman in the murder of David Colvin.

State witness James Yarborough, an employee of the Imperial Hotel, testified that he witnessed David Colvin having an argument with someone in his room at the hotel. R. 1483). The person was named James (not Mr. Guzman who was also named James) and was living in room 107 of the hotel. R. 1485). James entered Mr. Colvin=s room with an open knife and Mr. Colvin drew his sword to defend himself. (R. 1483). Mr. Yarborough entered the room and broke up the altercation. (R. 1485). Detective Allison Sylvester testified that she obtained information in her

investigation that persons named Holt or Moore had an altercation with David Colvin in his hotel room during which either Holt or Moore were armed with a knife. (R. 1542).

Detective Sylvester also testified that on August 12, 1991 she interviewed Curtis Wallace at the Imperial Hotel. (R. 1518). Curtis Wallace stated Aif a ring was missing I probably know who did it@. (R. 1519). This was before the police had mentioned to anyone, including Mr. Wallace, that David Colvin=s ring was missing. R. 1519).

Antonio Lee told Detective Sylvester that he had seen David Colvin alive at the Coke machine at the hotel on Saturday night. R. 1521). He also told Detective Sylvester that Curtis Wallace had confessed to him that he killed David Colvin. R. 1529). Lee related that Curtis Wallace had beaten Colvin and taken his ring and money. R. 1530). Lee further stated that he saw Curtis Wallace leaving Mr. Colvin=s room with a pipe with black tape wrapped around it, and Curtis Wallace later had bruised knuckles. (R. 1565, 1839). Wallace also threatened to kill Lee if he testified against him. (R. 1568).

Detective Jimmy Flynt of the Daytona Beach Police Department testified that on August 13, 1991 he spoke to Curtis Wallace who told him he had seen David Colvin alive at the Coke machine on Saturday night. (R. 2010). Antonio Lee also told Detective Flynt that he saw David Colvin alive by the Coke machine on Saturday

night. (R. 2112)

(g) THE LACK OF PHYSICAL EVIDENCE:

The state produced no physical evidence at Mr. Guzman=s trial which linked him to the murder of David Colvin. In fact, the physical evidence introduced at the trial pointed at no particular suspect and in some respects contradicted the state=s theory that Mr. Guzman killed David Colvin. The lack of physical evidence is as follows:

(1) The dumpster: Martha Cronin testified that when Mr. Guzman came back to his room he had a garbage bag full of rags. R. 1650). She said he went to throw the rags away, but did not see him do it. R. 1651). State snitch Paul Rogers testified James Guzman told him he cleaned up the room and took everything to the dumpster. R. 1909). However, Thomas Conway, who worked at the Imperial Hotel, testified that the police searched the dumpster on August 12, 1991 and found nothing. R. 1323). Most importantly, he stated the dumpster was full at the time, and was emptied only twice a week. R. 1323). If Martha Cronin and Paul Rogers offered truthful testimony, the police should have found this garbage bag full of bloody rags in the dumpster. The police found nothing.

(2) No blood or fingerprints were discovered on the sword found in David Colvin=s room. FDLE agent Michael Rafferty testified he tested the sword for prints and blood and none were found. (R. 1357).

(3) The state could not prove that either the knife taken from Mr. Guzman or the sword was the murder weapon in this case. The state expert stated that the wounds inflicted on David Colvin were consistent with **any** knife at least 3 or 4 inches in length. (R. 1437). The state expert could not identify the exact murder weapon used. (R. 1453).

(4) Blood hair and saliva samples were taken from Mr. Guzman and nothing was matched to anything found in David Colvin=s room. R. 1559).

EVIDENTIARY HEARING FACTS

(a) THE LIES AND DECEIT BY THE STATE:

The lies and deceit by the state regarding the payment of $500.00 to Martha Cronin began in the discovery process of the case and continued through the presentation of blatantly false testimony and argument at Mr. Guzman=s trial. On June 25, 1996 the defense made a very specific discovery demand upon the state. This demand was entitled AMotion for Disclosure of Impeaching Information@ and requested the following from the state:

> 1. The substance of any and all statements, agreements, offers or discussions had with any of the state=s witnesses or a suggestion of leniency, compensation, assurance not to prosecute, assurance to proceed only on certain causes, or any other offer or benefit accruing to said individual whatsoever in exchange for their cooperation, assistance of testimony in the trial herein;
> 2. Any and all consideration given to or made on

> behalf of government witnesses. By Aconsideration@ Defendant refers to absolutely anything of value or use including but not limited to immunity grants, witness fees, special witness fees, transportation assistance, assistance or favorable treatment with respect to any civil, tax court, or administrative dispute with plaintiff, and anything else which could arguably create an interest or bias in favor of the State or against the defense or act as an inducement to testify or color testimony.

(PC-R Defense Exhibit # 6)

In direct response to the specific discovery demand , the state filed a written response on December 2, 1996 which stated:

> Martha Cronin has been subpoenaed as a witness for trial in this cause, and as such has use immunity for her testimony. There are no further agreements, assurances of non prosecution or leniency, offers, benefits or understandings between the State of Florida and Martha Cronin.

(PC-R Defense Exhibit 7).

Trial counsel for Mr. Guzman, Gerard Keating, testified at the evidentiary hearing that he felt Martha Cronin was the state=s Akey witness@. (PC-R 234). He felt that impeaching the credibility of Martha Cronin was important in demonstrating reasonable doubt in Mr. Guzman=s case. (PC-R 235). In order to gather impeachment evidence against the state=s key witness, counsel Keating filed the above specific discovery demand on the state for any benefit given to Martha Cronin including, but not limited to, immunity grants, witness fees, special witness fees, and transportation assistance. (PC-R 237). Mr. Keating relied upon the representation by

the state that key state witness Martha Cronin had not been paid any benefit. (PC-R 238). He testified that had the state provided any information about payment of compensation to key witness Martha Cronin, it would have been valuable impeachment evidence and he would have used it in his cross examination and arguments. (PC-R 242-43).

(b) The undisclosed $500.00 pay-off.

Post-conviction investigation in Mr. Guzman=s case revealed that the state=s written representation that no compensation had been provided to key witness Martha Cronin, as well as the trial testimony of Martha Cronin and Allison Sylvester, and the arguments of the prosecutor at trial, were false or misleading.

The truth of this matter finally came out at the evidentiary hearing wherein Detective Allison Sylvester testified that on January 3, 1992, she visited Martha Cronin at the Volusia County jail and paid her the sum of $500.00 by money order. (PC-R Defense Exhibit 9). The state had caused to be offered a reward for information about a man who had been stabbed to death in his hotel room. (PC-R 185). Two separate newspaper articles in Volusia County advertised the reward offer from the state on August 16, 1991. (PC-R 185). Detective Sylvester testified at the evidentiary hearing that she could not recall when she discussed the reward money with Ms. Cronin, but it was sometime after her initial statement on August 12, 1991, and January 3, 1992, when the $500.00 was paid to Ms. Cronin. (PC-R 187). No

police report filed by Detective Sylvester ever mentioned any discussion with Martha Cronin about the reward money or the actual payment to her of the $500.00. (PC-R 187).

The uncontroverted facts presented at the evidentiary hearing establish : (1) State witness and admitted prostitute and cocaine addict Martha Cronin=s initial statement to Detective Allison Sylvester regarding the murder of David Colvin did not implicate Mr. Guzman in any way. (2) On August 16, 1991 the state published a $500.00 reward for information on the case in two major newspapers within Volusia County. (3) After the reward money was offered within the public domain, Martha Cronin changed her statement to Detective Allison Sylvester on November 23, 1991, and for the first time implicated Mr. Guzman. (4) After Martha Cronin changed her statement to the police, Detective Allison Sylvester paid her the sum of $500.00 by delivery of a money order to the Volusia County Jail on January 3, 1991. (5) Despite specific discovery demands by the defense requesting information on any benefit or compensation of any kind given to state witness Martha Cronin, the fact of the $500.00 payment to her by Detective Sylvester was never disclosed by the state and was affirmatively denied. (6) The state presented false testimony and argument at Mr. Guzman=s trial by failing to reveal that Detective Sylvester had paid witness Martha Cronin $500.00.

SUMMARY OF THE ARGUMENT

Mr. Guzman appeals to this Court for the justice that was denied him by the lower court=s order denying his motion for post-conviction. Mr. Guzman=s conviction and death sentence violated the constitution of this State and of this Nation. Accordingly, Mr. Guzman=s conviction and death sentence must not stand and this Court should grant Mr. Guzman all relief requested throughout this appeal.

Mr. Guzman raises the gross denial his rights under United States Constitution that occurred when members of the Aprosecution team@ lied, deceived and misled, not just Mr. Guzman, but Mr. Guzman=s attorney and the Judge who heard this case. The Aprosecution team@ paid money to key state witness Martha Cronin creating a reasonable likelihood that the state witnesses= false testimony **could have** affected the fairness of the trial.

At the close of this brief, the injustice that led to the wrongful conviction and death sentence will be known and relief necessary. Accordingly, Mr. Guzman asks for all relief he prays for or that this Court may deem appropriate.

ARGUMENT

THE LOWER COURT ERRED IN FINDING THAT

THE FALSE TESTIMONY PRESENTED BY THE STATE AT MR GUZMAN=S TRIAL CONCERNING THE UNDISCLOSED PAYMENT OF $500 TO KNOWN CRACK COCAINE ADDICT, PROSTITUTE, AND ESSENTIAL STATE WITNESS MARTHA CRONIN WAS NOT MATERIAL UNDER

STANDARD OF REVIEW

Under the principles set forth by this Court in *Stephens v. State*, 748 So.2d 1028 (Fla. 1999), this claim is a mixed question of law and fact requiring de-novo review. This Court recently applied a de-novo review in the context of a *Giglio* claim raised in post-conviction in *Mordenti v. State*, 894 So.2d 161, 173 (Fla. 2005) (*citing Allen v. State*, 854 So.2d 1255, 1260 (Fla. 2003).

DISCUSSION

In the opinion remanding this case to the lower court for consideration of the materiality element of *Giglio*, this Court recited the following facts:

> 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.
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> 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.

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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.[1]

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

[1] This is incorrect. As discussed *infra*, Mr. Guzman had voluntarily surrendered the knife to police well before his arrest.

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.
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> 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.
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> 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.
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> 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.

Guzman v. State, 868 So.2d 498, 501-03 (Fla. 2003).

This Court then specifically addressed more pertinent facts surrounding the *Giglio* violation and instructed the lower court as to the appropriate standard to

apply for a determination of the materiality prong:

> 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 post-conviction 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 post-conviction court articulated the *Giglio* standard of materiality as:
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> > Under *Giglio,* a statement is material if Athere 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).]) AIn 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)).
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> 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 post-conviction court concluded that Athere 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.
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> The post-conviction 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 ***506** lacked clarity, resulting in some confusion and improper merging of the *Giglio* and *Brady* materiality standards. For example, in *Rose v. State*, 774 So.2d 629, 635 (Fla.2000), we said: AThe 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 A[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 Amateriality@ prongs of *Brady* and *Giglio* are the same. We now clarify the two standards and the important distinction between them.

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 Aif 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). 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).

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 Aif 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 Amay 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 Athis Court's precedents indicate that the standard of ***507** 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@).

Thus, while materiality is a component of both a *Giglio* and a *Brady* claim, the *Giglio* standard of materiality is more defense friendly.

> 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 Aa 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.
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> In Guzman's case, the post-conviction 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. 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.

Guzman, 868 So.2d at 505-08 (footnotes deleted).

Following the remand from this Court, the lower court again denied Mr. Guzman=s *Giglio* claim and stated as follows:

> E. Conclusions
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> After evaluating the State's $500 payment to 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 $500.00 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.

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. The record reflects that it is undisputed that Guzman possessed Colvin's ring and traded it for drugs and cash.

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.

Guzman also presented the testimony at trial from Carmelo Garcia. Garcia testified that Cronin told him she had lied to the police about Guzman murdering Colvin.

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.

PC-R.

This Court has expressly stated that the first two prongs of *Giglio* have been satisfied in this case. The state knowingly presented false testimony from the lead detective and essential state witness Martha Cronin that Cronin received no benefit for her testimony against Guzman other than being taken to a motel rather than jail when arrested. The testimony from both of those witnesses was false, as the state had paid $500.00 to Martha Cronin (an amount this Court referred to as a Asignificant sum@ of money) to an admitted crack cocaine addict and prostitute who had changed her initial story to the police which did not implicate Mr. Guzman in any way to her later incriminating statement only after the period when the reward money had been offered by the police.

This Court correctly noted that the *Giglio* standard reflects a heightened judicial scrutiny and concern where, as in this case, perjured testimony is used to convict a defendant. In this circumstance materiality is presumed unless the state can meet its burden of proving beyond a reasonable doubt the false testimony was not material. As the materiality prong of *Giglio* is the only remaining element for this Court=s de-novo review, this brief addresses this single issue.

Mr. Guzman asserts the materiality prong of *Giglio* has been satisfied as the state is unable to establish beyond a reasonable doubt that the presentation of the

false testimony was not material. In support of a new trial on the *Giglio* claim, Mr. Guzman states as follows:

> THE STANDARD FOR DETERMINING THE MATERIALITY PRONG OF *GIGLIO* IS OBJECTIVE AND NOT A SUBJECTIVE DETERMINATION BY THE LOWER COURT JUDGE WHO HEARD THE NON-JURY TRIAL

At the Oral Argument in this case prior to the opinion which remanded the case for the proper materiality analysis under *Giglio*, several Justices of this Court asked questions concerning giving special deference to the materiality finding of the lower court judge since he was the actual fact-finder at the non-jury trial. At that time the undersigned counsel was unable to cite any case law that dealt with *Giglio* and specifically with a materiality analysis by a trial judge who had presided over a non-jury trial. Since that time, the undersigned has located additional case law on the subject from the Ninth Circuit Court of Appeals and the United States Supreme Court which affirmatively establishes that a materiality analysis is objective. The subjective opinion of the non-jury trial judge is neither dispositive of the issue nor appropriate for consideration. The appropriate procedure for review requires this Court to conduct an objective de-novo analysis of materiality free of any special reliance on the findings of the trial court judge.

In other words, this Court=s de-novo review of the materiality prong, as done in *Mordenti* for example, should be the same whether the criminal defendant had a

jury or non-jury trial. This principle is demonstrated by the following case law.

In *Bagley v. Lumpkin*, 798 F.2d 1297 (9th Cir. 1986), the defendant Bagley requested that the government disclose, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), any impeachment evidence in its possession concerning any deals, promises, or inducements made to state witnesses. The government responded with affidavits from two witnesses stating they had not been promised any rewards for there statements. 798 F.2d at 1298. After conviction, defendant Bagley learned that the two state witnesses had lied when they stated they had not been promised any reward for their cooperation, as they had been paid expense money for their cooperation and had a contract to be paid for further information. An agent for the Bureau of Alcohol, Tobacco and Firearms recommended that the two state witnesses receive $500.00 each, and they were actually paid $300.00 each, which was not disclosed to the defense. As in Mr. Guzman=s case, the lower court judge had presided over a non-jury trial. The lower court judge denied Bagley=s *Brady* claim on the issue of materiality:

> After an evidentiary hearing, a United States magistrate recommended to the district court that it deny Bagley's motion. The district court judge was the same judge who conducted the bench trial and imposed sentence. In its order denying relief, the district court stated that it was "in a unique position of being able to know what effect the disclosure ... would have had upon the decisions made by this Court in the criminal prosecution." He concluded that "disclosure would have had no effect at all upon its finding that the government had proved beyond a reasonable doubt that defendant

was guilty."

Id. at 1297.

Following this subjective finding as to materiality by the lower court judge who presided over Bagley=s non-jury trial, the Ninth Circuit addressed the issue concerning the validity of the lower court=s proclamation of a Aunique position of being able to know what effect the disclosure would have had upon the decisions made by this Court in the criminal prosecution@ by stating:

> To determine whether the impeachment evidence withheld here was sufficiently material to require reversal of Bagley's conviction, we must evaluate whether, "if disclosed and used effectively, [the impeachment evidence] may make the difference between conviction and acquittal." *Bagley,* 105 S.Ct. at 3380 (citing *Napue v. Illinois,* 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959)). Our task is to "consider directly any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case," and to assess that effect "in light of the totality of the circumstances." *Id.* 105 S.Ct. at 3384.
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> **The proper inquiry is an objective one: whether "the Government's failure to assist the defense by disclosing information that might have been helpful in conducting cross-examination" undermines confidence in the outcome of the trial. *Id.* at 3381. Therefore, the district judge erred when, in ruling on the section 2255 motion, he stated that the disclosure of the contracts would not have affected his decision. The inquiry is not how this or any other judge, as the trier of fact, would subjectively evaluate the evidence. It is, rather, how the absence of the evidence objectively might have affected the outcome of the trial.**
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> The district court further erred by failing to recognize that the ATF contracts revealed that the witnesses lied under oath. The district court's findings of fact in this action take into account only the extent to which the contracts demonstrate possible bias or prejudice. It is

> inconceivable that evidence of perjury would not, as an objective matter, affect a factfinder's assessment of a witness' credibility. When the evidence shows that the government's only witnesses lied under oath, it is contrary to reason that confidence in the outcome of the case would not objectively be undermined. *See Shaffer,* 789 F.2d at 689 (new trial required because government withheld material evidence that contradicted key witness' testimony as well as evidence tending to show it paid same witness for his cooperation). This is particularly true here because the lies came from the only witnesses who testified against Bagley and the lies related to the reasons why they testified. Evidence of bias and prejudice is certainly material for impeachment, but lies under oath to conceal bias and prejudice raise the impeachment evidence to such a level that it is difficult to imagine anything of greater magnitude that would undermine confidence in the outcome of any trial.

Id. at 1299-1300 (emphasis added).

The *Bagley* case from the Ninth Circuit was decided following a remand from the United States Supreme Court in *United States v. Bagley*, 473 U.S. 667 (1985). The Supreme Court had reversed an earlier Ninth Circuit decision recognizing a per-se rule of reversal for a *Brady* violation based upon a restriction of the right of cross examination. The United States Supreme Court addressed the interplay between the materiality finding vis-a-vis the lower court and the Ninth Circuit Court of Appeals as follows:

> The District Court, nonetheless, found beyond a reasonable doubt that, had the information that the Government held out the possibility of reward to its witnesses been disclosed, the result of the criminal prosecution would not have been different. If this finding were sustained by the Court of Appeals, the information would be immaterial even under the standard of materiality applicable to the prosecutor's knowing use of perjured testimony. Although the

> express holding of the Court of Appeals was that the nondisclosure in this case required automatic reversal, the Court of Appeals also stated that it "disagreed" with the District Court's finding of harmless error. In particular, the Court of Appeals appears to have disagreed with the factual premise on which this finding expressly was based. The District Court reasoned that O'Connor's and Mitchell's testimony was exculpatory on the narcotics charges. The Court of Appeals, however, concluded, after reviewing the record, that O'Connor's and Mitchell's testimony was in fact inculpatory on those charges. 719 F.2d, at 1464, n. 1. Accordingly, **we reverse the judgment of the Court of Appeals and remand the case to that court for a determination whether there is a reasonable probability that, had the inducement offered by the Government to O'Connor and Mitchell been disclosed to the defense, the result of the trial would have been different.**

Bagley, 473 U.S. at 684 (emphasis added).

Although the *Bagley* Ninth Circuit and United States Supreme Court decisions involve *Brady*, not *Giglio*, claims, the objective nature of the determination of materiality should be the same. The Ninth Circuit on remand specifically stated the materiality finding was an objective one **B** the subjective findings of the judge who heard the non-jury trial were not dispositive.

Most importantly, the United States Supreme Court, with full knowledge of the subjective materiality findings of the District Court Judge who heard the non-jury trial, remanded the case to the Ninth Circuit with instructions for the Ninth Circuit to make the materiality determination. Obviously, the United States Supreme Court sent the case to the Ninth Circuit for an objective/de-novo review of the materiality prong. Therefore, based on the precedent of the *Bagley* cases, Mr.

Guzman requests that this Court conduct an objective/de-novo review of the materiality prong of *Giglio*, with no special deference to the lower court judge on the question of materiality simply because this case was tried non-jury. [*See also People v. Vasquez*, 313 Ill.App.3d 82, 728 N.E.2d 1213, 245 Ill.Dec 856 (2000), Appellate Court of Illinois, following a bench trial on a First Degree Murder case, applied the materiality prong of *Giglio* objectively, citing to *Bagley* and ultimately awarding a new trial based on a *Giglio* violation. *Id.* Ill.App.3d 82,98,99.]

THE REASONS STATED BY THE LOWER COURT IN IT=S ORDER DENYING RELIEF DO NOT SUPPORT A FINDING THAT THE FALSE TESTIMONY WAS NOT MATERIAL BEYOND A REASONABLE DOUBT

In it=s order denying relief on the materiality prong of *Giglio* the lower court relied upon two factors: (1) That there was ample impeachment of Martha Cronin regarding her initial claim to know nothing about Calvin=s murder upon questioning by the police after discovery of Colvin=s body, her attempt to make a deal with the State after her arrest, in exchange for damaging testimony against Guzman, her discontentment with Guzman=s association with other female acquaintances, her numerous arrests for prostitution, her addiction to crack cocaine, and Carmelo Garcia=s testimony that Cronin told him she had lied to the police about Guzman murdering Colvin; and (2) There was independent corroboration of Martha Cronin=s testimony and independent evidence of Mr. Guzman=s guilt.

The fact that Martha Cronin was impeached in other areas does not render immaterial the false testimony of the lead detective and Martha Cronin. In *United States v. Sanfilippo*, 564 F.2d 176, (5th Cir. 1977), the state presented the testimony of a previously indicted co-defendant. Before trial, the state informed the defense that the witness would not be prosecuted in the case and that the Government would make his cooperation known to the judge. *Id*. at 176. The state presented the witness at trial but failed to divulge that the witness had been granted immunity on another case, and that the witness himself had negotiated his deal with the prosecution. *Id*. The state argued no materiality to the presentation of the false testimony since the existence of the deal had been revealed to the defense. *Id*. The court rejected that argument by stating:

> Due process is violated when the prosecutor, although not soliciting false evidence from a Government witness, allows it to stand uncorrected when it appears. That the false testimony goes only to the credibility of the witness does not weaken this rule *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972). In these cases the prosecutor had failed to disclose prior to trial information which would have revealed to the defense that the Governments witness was testifying falsely. Here, weeks before trial, the prosecutor satisfied his obligation under Giglio to fully disclose the terms of the plea bargain. The purpose of disclosing the terms of the plea bargain is to furnish the defense counsel with information which will allow him to attack the credibility of the witness. The defendant gains nothing, however, by knowing that the Governments witness has a personal interest in testifying unless he is able to impart that knowledge to the jury. The Government argues that Morris prior conviction would add nothing. The fact that a witness shows that he

> might be dishonest does not render cumulative evidence that the prosecution promised immunity for testimony. A jury may very well give great weight to a precise reason to doubt credibility when the witness has been shown to be the kind of person who might perjure himself.

Id. at 176.

In *Napue v. People of the State of Illinois*, 360 U.S. 264 (1959), the Court held that a conviction obtained through use of false testimony, known to be such by representatives of the state, is a denial of due process. At Mr. Napue=s trial, the principle state witness, then serving a 99 year sentence for the same murder, testified in response to a question by the Assistant State Attorney, that he had received no promise of consideration in return for his testimony. The Assistant State Attorney had in fact promised him consideration, but did nothing to correct the witness= false testimony. The Court held:

> The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. As stated by the New York Court of Appeals in a case very similar to this one, People v. Savvides, 1 N.Y.2d 554, 557, 154 N.Y.S.2d 885, 887, 136 N.E.2d 853, 854--855:
> 'It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what

he knows to be false and elicit the truth. * * * That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair.'

Second, we do not believe that the fact that the jury was apprised of other grounds for believing that the witness Hamer may have had an interest in testifying against petitioner turned what was otherwise a tainted trial into a fair one. As Mr. Justice Schaefer, joined by Chief Justice Davis, rightly put it in his dissenting opinion below, 13 Ill.2d 566, 571, 150 N.E.2d 613, 616:

'What is overlooked here is that Hamer clearly testified that no one had offered to help him except an unidentified lawyer from the public defender's office.'

Had the jury been apprised of the true facts, however, it might well have concluded that Hamer had fabricated testimony in order to curry the favor of the very representative of the State who was prosecuting the case in which Hamer was testifying, for Hamer might have believed that such a representative was in a position to implement (as he ultimately attempted to do) any promise of consideration. That the Assistant State's Attorney himself thought it important to establish before the jury that no official source had promised Hamer consideration is made clear by his redirect examination, which was the last testimony of Hamer's heard by the jury:

'Q. Mr. Hamer, has Judge Prystalski (the trial judge) promised you any reduction of sentence?

A. No, sir.

'Q. Have I promised you that I would recommend any reduction of sentence to anybody? A. You did not. (That answer was false and known to be so by the prosecutor.)

'Q. Has any Judge of the criminal court promised that they (sic) would reduce your sentence? A. No, sir.

'Q. Has any representative of the Parole Board been to see you and promised you a reduction of sentence? A. No, sir.

'Q. Has any representative of the Governor of the State of Illinois promised you a reduction of sentence? A. No, sir.'

. . . .

. . . . [O]ur own evaluation of the record here compels us to hold that the false testimony used by the State in securing the

> conviction of petitioner may have had an effect on the outcome of the trial.

360 U.S. at 269-72.

As in the *Napue* and *Sanfilippo* cases, the fact that Martha Cronin was impeached in other areas does not excuse or render immaterial the State=s presentation of false testimony of the lead detective and Martha Cronin concerning the payment of the reward money. Furthermore, the lower court=s order does not adequately address the impact of the false testimony or the true impeachment value of the $500.00 payment.

An examination of the record in Mr. Guzman=s case reveals that Detective Sylvester=s payment of $500.00 to Martha Cronin while she was incarcerated at the Volusia County Jail had tremendous impeachment value. In order to appreciate the impact of the $500.00 payment on Martha Cronin=s credibility it is necessary to review the timing of the payment relative to Martha Cronin=s changed testimony.

Detective Sylvester first interviewed Martha Cronin concerning the death of David Colvin on August 12, 1991. R. 1526). At that time Martha Cronin did not tell Detective Sylvester that Mr. Guzman had confessed to her or that she had any information concerning the death of David Colvin. R. 1526). On September 24, 1991 Detective Sylvester again met with Martha Cronin. R. 1530). Ms. Cronin again related to Detective Sylvester that she had no information regarding the death

of David Colvin. R. 1530). It was not until November 23, 1991, after her arrest on prostitution charges, that Martha Cronin told Detective Sylvester that Mr. Guzman had confessed to her. R. 1531). Why did Martha Cronin change her story? According to her, she was Atired of going to jail and watching him walk away, knowing what he had done.@ R. 1668).

The facts presented at the evidentiary hearing support a different motivation for Martha Cronin to change her story - the $500.00 reward. On August 16, 1991, four days after Martha Cronin was interviewed by Detective Sylvester and did not provide any information which implicated Mr. Guzman, the state placed an advertisement in the two major newspapers in Volusia County offering a $500.00 reward for information about a man who had been stabbed in his hotel room. (PC-R 185, Defense Exhibit # 10). It was not until after this reward money was offered that Martha Cronin came forward and changed her testimony and claim that Mr. Guzman had confessed to her.

Furthermore, during the period of time in which Martha Cronin changed her story and claimed Mr. Guzman confessed to her, she was desperate for money to support her crack cocaine addiction. She repeatedly testified at Mr. Guzman=s trial that in this time frame she was addicted to crack cocaine.:

> Q. Would it be fair to say that from 1989 through July 19, 1993 you used crack cocaine on a daily basis?
> A. Yes.

R. 1683, 1684).

She further testified she was willing to engage in prostitution while in police custody in order to obtain money to buy crack:

> Q. When you=re back at the beachside motel, you couldn=t honor your agreement with Allison Sylvester because you had to go back to work. Right?
> A. Yes.
>
> Q. And, you wanted to get high?
> A. That=s why you worked.
>
> Q. So you were willing to breach your agreement with Detective Sylvester to get high?
> A. Yes, I did not know they were watching.

R. 1251).

Martha Cronin admitted at trial that she was a crack cocaine addict and prostitute. She was desperate for money to support her crack cocaine habit. She sold her body to obtain money so she could smoke crack cocaine. When the police set her up in a hotel room, she continued to engage in prostitution to get money to buy crack. She would surely sell out Mr. Guzman to obtain $500.00 to buy crack.

It would be a mistake to conclude that the $500.00 payment to Martha Cronin would have been just another avenue of impeachment against an already discredited witness. To the contrary, the $500.00 payment would have provided substantial and specific evidence of motivation for her to lie against Mr. Guzman.

Based on the timing of the reward offer and the ultimate payment to Ms. Cronin by Detective Sylvester, it would have had devastating impeachment value against the state=s key witness.

The lower court also erred in finding that there was ample corroboration of Cronin=s testimony from the medical examiner, Snitch Paul Rogers, and Guzman=s possession of Colvin=s ring which he sold for drugs and cash. A fair review of the totality of the record reveals none of these supposed Afacts@ cited by the lower court provide any meaningful corroboration of Martha Cronin=s testimony.

THE MEDICAL EXAMINER

The lower court=s order relies upon the testimony of Dr. Steiner regarding the knife and the sword to provide Acorroboration@ of Martha Cronin=s testimony. It should be noted that Mr. Guzman did not have a survivor knife in his possession when he was arrested, as falsely reported by the lower court and this Court in it=s factual history. In fact, Mr. Guzman voluntarily turned over a survivor knife tot eh lead detective days before his arrest on November 24, 1991. (R. 1505, 1506) Furthermore, a review of Dr. Steiner=s actual trial testimony refutes the lower court=s finding of any connection drawn by the Medical examiner and the sword. Dr. Steiner testified as follows:

> Q. Doctor, is it your testimony that the sword - it was your testimony that the sword could have been the possible weapon of death?

A. Yes, it could have been.

Q. And that the wounds were three to four inches?
A. I said the deepest wounds were three or four inches. So. It's consistent with any knife three to four inches at least in length or knife like object.
R. 1447

Q. Doctor, would you agree that you don't know, specifically, what kind of knife was used?
A. Yes. As long as it's like I said, over three to four inches. Again, assuming one knife was used for the entire assault. I can't guarantee that, either.

Q. Doctor, would you agree that any knife with a renforced blade three to four inches long or longer and one inch wide could have been one of the instruments causing those wounds.
A. Yes

R. 1453-54.

Dr. Steiner's testimony did not provide any meaningful linkage between the sword, the hunting knife, and the wounds sustained by David Colvin. He could not specifically attribute the wounds to either the sword or the hunting knife. As the above testimony establishes, ANY knife at least three inches long could have inflicted the wounds. There must be thousands and thousands of such knives in Volusia County alone. Apparently, the lower court only reviewed part of the testimony of the Medical Examiner. In this Court's objective de-novo review, the testimony of the medical Examiner should be dismissed as inconsequential, nonspecific, and irrelevant. It is certainly not corroboration of any portion of Martha

Cronin=s testimony or independent evidence of Mr. Guzman=s guilt, as alleged by the lower court.

PAUL ROGERS:

The state presented testimony from jail house snitch Paul Rogers. Mr. Rogers testified that he met Mr. Guzman at the Volusia County jail. R. 1897). They shared the same cell for a couple of weeks and became friends. R. 1897). He testified that Mr. Guzman said he drove a limousine for David Colvin. R. 1905). He said Mr. Guzman told him that his girlfriend Terri (Martha Cronin=s alias) was wanting to go out and hook and he said he had the key to David Colvin=s room and he was going to rob him and get money. R. 1905). According to Mr. Rogers, Mr. Guzman told him that he went to Colvin=s room, opened the door, went through the drawers and David woke up. R. 1906). There was a samurai sword hanging over the dresser drawer on the wall. R. 1907). He said he hit him with the sword 10 or 11 times. R. 1908). He cleaned everything up and put it in the dumpster. R. 1909).

Mr. Roger=s credibility was severely damaged on cross examination. He admitted to seven prior felony convictions. Most importantly, he also admitted that on August 29, 1992, prior to his trial testimony against Mr. Guzman, he signed and affidavit where he stated AI told the Assistant DA that I am not going to say shit and they brought me back - and they brought me back from the Volusia County Correctional Facility. Guzman never confessed to me. I am not going to testify

against him.@ R. 1930, *emphasis added*). He also admitted on cross examination that Mr. Guzman kept his court papers in his foot locker in his cell, and Mr. Rogers had access to them. R. 2163).

The testimony of seven time convicted felon Paul Rogers, who previously signed an affidavit stating that Mr. Guzman never confessed to him, and who had access to Mr. Guzman=s court papers and opportunity to familiarize himself with the facts of the case, cannot fairly be characterized as corroboration of Martha Cronin=s testimony or independent evidence of guilt. Mr. Roger=s trial testimony provides no legal basis to deny Mr. Guzman=s *Giglio* claim.

THE RING

The state produced testimony at Mr. Guzman=s trial that he sold a ring belonging to David Colvin to Leroy Gadson on August 10, 1991. R. 1820, 1822. 1824, 1826).

Two different factual versions explaining how Mr. Guzman came into possession of the ring were presented at Mr. Guzman=s trial; one from Mr. Guzman and one from Martha Cronin. Martha Cronin=s version, as she testified to at trial, was that Mr. Guzman showed her the ring when he came back to the hotel room and confessed to killing David Colvin. R. 1655).

In contradiction, Mr. Guzman testified that on August 10, 1991, after going to the Shell gas station, the Office Bar and the International House of Pancakes

with David Colvin, he returned to the hotel room where he stayed with Martha Cronin. R. 2110). In the afternoon Martha Cronin gave him $50.00 after turning a trick in the hotel room, and she left to go buy drugs from Curtis Wallace. R. 2111).

According to Mr. Guzman=s trial testimony, Martha Cronin returned with Curtis Wallace around 2:30 or 3:00 that afternoon. R. 2112). Mr. Guzman did not recognize it as David Colvin=s ring. R. 2113). Curtis Wallace said he wanted an Aeight ball he could juggle@ (referring to an amount of crack cocaine) in exchange for the ring. (2114). Acting for Mr. Wallace, Mr. Guzman then called Leroy Gadson and met him at his house. R. 2115). Mr. Gadson looked at the ring and paid him $250.00 and an Aeight ball.@ R. 2116). Mr. Guzman returned to the hotel and gave Curtis Wallace half the Aeight ball@ and told him he would get the rest later. R. 2117). Curtis Wallace then broke a piece off for Martha Cronin and left the room. R. 2117).

Mr. Guzman and Martha Cronin then smoked the cocaine, and she left to go get more from Curtis Wallace. R. 2118). Mr. Guzman then went to his apartment and called Leroy Gadson again. R. 2120). Mr. Guzman then went and got the rest of the drugs from Leroy Gadson and returned to the Imperial Hotel where he gave the drugs to Curtis Wallace. R. 2122).

Mr. Guzman admitted he had David Colvin=s ring on August 10, 1991 and that he sold the ring to Leroy Gadson for drugs and money. The incriminating

character of the ring was established solely through the testimony of admitted cocaine addict and prostitute Martha Cronin. Without her testimony, the ring was not incriminating, as Mr. Guzman testified he got the ring from Curtis Wallace, whom the record reveals was a viable suspect to David Colvin=s murder. Since the possession and sale of the ring was also consistent with Mr. Guzman=s innocence, it establishes neither corroboration of Martha Cronin=s testimony or independent evidence of guilt. Therefore, the ring evidence provides no legal basis to deny Mr. Guzman=s *Giglio* claim.

In addition to looking to only potions of trial testimony and drawing incomplete Acorroborative evidence@ inferences, the lower court also ignored evidence in the record which is INCONSISTENT with Martha Cronin=s testimony and independent evidence that Mr. Guzman is not guilty.

ALTERNATIVE SUSPECTS:

At Mr. Guzman=s trial both state and defense witnesses testified to facts which implicated persons other than Mr. Guzman in the murder of David Colvin. State witness James Yarborough, an employee of the Imperial Hotel, testified that he witnessed David Colvin having an argument with someone in his room at the hotel. R. 1483). The person was named James (not Mr. Guzman who was also named James) and was living in room 107 of the hotel. R. 1485). James entered Mr. Colvin=s room with an open knife and Mr. Colvin drew his sword to defend

himself. R. 1483). Mr. Yarborough entered the room and broke up the altercation. R. 1485). Detective Allison Sylvester testified that she obtained information in her investigation that persons named Holt or Moore had an altercation with David Colvin in his hotel room during which either Holt or Moore were armed with a knife. R. 1542).

Detective Sylvester also testified that on August 12, 1991 she interviewed Curtis Wallace at the Imperial Hotel. R. 1518). Curtis Wallace stated Aif a ring was missing I probably know who did it@. R. 1519). This was before the police had mentioned to anyone, including Mr. Wallace, that David Colvin=s ring was missing. R. 1519).

Antonio Lee told Detective Sylvester that he had seen David Colvin alive at the Coke machine at the hotel on Saturday night. R. 1521). He also told Detective Sylvester that Curtis Wallace had confessed to him that he killed David Colvin. R. 1529). Lee related that Curtis Wallace had beaten Colvin and taken his ring and money. R. 1530). Lee further stated that he saw Curtis Wallace leaving Mr. Colvin=s room with a pipe with black tape wrapped around it, and Curtis Wallace later had bruised knuckles. R. 1565, 1839). Wallace also threatened to kill Lee if he testified against him. R. 1568).

Detective Jimmy Flynt of the Daytona Beach Police Department testified that on August 13, 1991 he spoke to Curtis Wallace who told him he had seen David

Colvin alive at the Coke machine on Saturday night. R. 2010). Antonio Lee also told Detective Flynt that he saw David Colvin alive by the Coke machine on Saturday night. R. 2112)

The dumpster: Martha Cronin testified that when Mr. Guzman came back to his room he had a garbage bag full of rags. R. 1650). She said he went to throw the rags away, but did not see him do it. R. 1651). State snitch Paul Rogers testified James Guzman told him he cleaned up the room and took everything to the dumpster. R. 1909). However, Thomas Conway, who worked at the Imperial Hotel, testified that the police searched the dumpster on August 12, 1991 and found nothing. R. 1323). Most importantly, he stated the dumpster was full at the time, and was emptied only twice a week. R. 1323). If Martha Cronin and Paul Rogers offered truthful testimony, the police should have found this garbage bag full of bloody rags in the dumpster. The police found nothing.

LACK OF CORROBORATING PHYSICAL EVIDENCE

No blood or fingerprints were discovered on the sword found in David Colvin=s room. FDLE agent Michael Rafferty testified he tested the sword for prints and blood and none were found. R. 1357). Blood hair and saliva samples were taken from Mr. Guzman and nothing was matched to anything found in David Colvin=s room. R. 1559).

CLOSING

Florida is not alone in having overreaching prosecutors and investigators who deliberately conceal critical impeaching testimony and allow the lying denials of paid witnesses to go uncorrected at trial. Nor is Florida alone in having state agents who will fight and resist disclosing their misdeeds until deniability is no longer possible. For instance, recently in Georgia, one Willie Palmer was convicted of murder based in part on the testimony of a paid police informer who corroborated the story of a codefendant.[2] In Georgia, the testimony of a codefendant is inadmissible without corroboration. The informer=s testimony was, therefore, essential to allow the introduction of the codefendant=s testimony, the only eyewitness to the murders and the only person capable of implicating Willie Palmer.

Unknown to the defense, Georgia Bureau of Investigation agents on the case had been paying Randy Waltower as an informant. Waltower testified he saw Willie Palmer=s car parked at the murder scene at the time of the murders, corroborating the codefendant. He was paid $500. The habeas court found a dual motive to testify to get the fee, and to keep his handlers happy for future business. The defense had made a pretrial Areveal the deal@ demand of the state, and the state asserted at pretrial hearing that it would and had complied. The defense was unable at trial to argue how Waltower might have a motive to lie, allowing the state to

[2] *Palmer v. Head*, No. 2000-V-474 (Superior Court, Butts Cty. GA, Mar. 25, 2005). A copy is attached as an appendix for the convenience of the Court.

present him as a concerned and uninterested good citizen. The defense never asked Waltower if he was paid, a tactic the habeas court found

reasonable because, with the state=s discovery showing no such payment, asking the question would only allow Waltower to bolster his credibility by asserting he had no financial motive to testify. This contrasts with the more egregious due process violation in this case, where the state not only concealed the payment but left Cronin=s lie uncorrected, bolstering her testimony because she purportedly had no financial motive to testify.

The state did not disclose Waltower=s status as an informant, or the $500 fee, until, after concealing the evidence through trial and direct appeal, and resisting numerous post-conviction discovery demands for more than three additional years, the state was forced to produce the evidence in an in-camera hearing.

In discussing the materiality aspect of the habeas claim under a *Brady* analysis (and drawing on some state law that don=t alter the *Brady* materiality discussion here), the Georgia court found the suppression of the payoff to easily rise to the level of a *Brady* violation. The court in part equated simple suppression of a payment to the use of perjured testimony.

> It may be regrettably true that some criminal cases could not be prosecuted without the State paying fact witnesses for their testimony, but in any such case the jury should be allowed to weigh this evidence in reaching their verdict of guilt or innocence, especially when this information has been specifically requested by the defense. And, in the sentencing phase of a death penalty case with its remarkably wide latitude on what the jury can consider mitigating, they should even more so be allowed to weigh this requested evidence during their determination of the appropriate punishment.[54] **Without the jury**

being informed that the State has provided an important witness a pecuniary motivation to testify, the trial transforms into a basically corrupt process in which the jury is deprived of a major key to seeking and deciding the truth B and determining a man's fate.[55]

[54] As previously pointed out, *Brady,* supra, at 87, focused on evidence ***"material*** either to ***guilt or punishment"*** (Emphasis added.)

[55] Once the State suppresses its payment of this kind of fee to a prosecution witness, it has jumped the gap to become, as the knowing use of perjured testimony does, "a corruption of the truth-seeking function of the trial process," *United States v. Agurs*, 427 U.S. 97,104, 96 S.Ct 2392, 2397, 49 L.Ed.2d 342 (1976). Also see *United States v. Bagley*, supra at 680 . . . .

The normal legal test for materiality is whether the evidence is considered important enough to have a required effect on the trial.[56] But, in this case, it also seems instructive to see that the State, through its conduct, has provided a clear picture of how much it values this evidence. First, for this testimony the State paid $500. Second, the State, in defiance of its legal and ethical duties otherwise, then actively and aggressively hid this payment for the testimony from the Court through these most important (and considerably expensive) death penalty related legal proceedings for six (6) years.[57] There is no doubt that the State clearly understood that the Petitioner's counsel wanted this specific kind of evidence, that at pretrial the State unequivocally had committed to providing this kind of evidence to the criminal defense, and that the State had, contrary to its commitment and its overall legal and ethical duties concerning such evidence, intentionally held to a long-term, aggressive course of conduct preventing Petitioner's counsel from having access to this evidence. It appears logically inescapable that the State knew, only too well, how extremely material this evidence was in the case. That is, the State's suppression of this evidence can only be logically explained from the viewpoint that the State fully knew how potentially harmful to its case the disclosure of this evidence would be. Thus, on the positive side, the State valued this fact testimony enough to procure it by paying $500 to Waltower, and, on the negative side, the State feared the deleterious effect of the disclosure of this deal enough to long-term suppress it illegally and

unethically. The State has clearly demonstrated its determination of the materiality of the evidence it suppressed.

[56] And the Habeas Court does find that it has the required effect in its analysis in this order.

[57] The Court gives the State the benefit of the doubt by computing the time from October 28, 1997, the first day of the trial which resulted in the Petitioner's conviction, to October 27, 2003, the first day of the habeas evidentiary hearing at which the Court was informed of this evidence during the in camera inspection of the GBI files.

Of course, as alluded to above, **materiality** is just a test to see if the evidence involved is **important** enough to justify the sanction for violating the *Brady* due process rule. [Emphasis in original.] Assuming arguendo that the State made, at least, an economically wise decision in paying $500 for Waltower's corroboration of Fredrico so that it got Aimportant" testimony in return,[58] then B on whether the suppressed evidence creates a probability sufficient to undermine confidence in its outcome B this presumption begs the question: **Does it really take formal legal training to discern that this criterion has been satisfied if the State paid $500 for such a witness's testimony in a death penalty case and then hid it from the judge and jury?** Just ask any average Georgia citizen what he or she thinks about this situation. In the cynical joke, a potential client asks an attorney what his fee will be for representing the client in litigation, and the attorney answers: "It depends on whether you supply the witnesses or I do." Usually when made, this joke reflects an undeserved (although usually good natured) slap at attorneys and the legal system; here, it has a different ring.

[58] For the sake of this presumption, the Habeas Court will leave out other well known bureaucratic possibilities.

Because the net effect of the State-suppressed evidence favoring Petitioner Willie Palmer raises a reasonable probability that its disclosure would have produced a different result at trial, the Habeas Court finds that **the test for materiality is satisfied. This is particularly so in the dynamics of a death penalty murder trial as the net effect of the State-suppressed evidence on the guilt and**

sentencing phases creates, as *Bagley* states, "a probability sufficient to undermine confidence in the outcome," or, as put by *Kyles v, Whitley*, **"[it shows] that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."**[61]

[61] *Kyles v. Whitley*, supra at 419.

Looking at the overall determination of whether a violation of the *Brady* rule has occurred, the United States Supreme Court recently provided guidance in the capital murder case *Banks v. Dretke*.[62] The prosecution in that case did not disclose that a witness was a paid informant. This informant was a key prosecution witness both at trial and during the penalty phase, the *Brady* omission did not come to light until the matter was being litigated in a federal habeas corpus case, and the primary issue was whether the claim had been properly exhausted in the state courts. Before turning to the exhaustion analysis however, the Court first inquired whether a *Brady* violation had occurred. The Court reiterated that a *Brady* due process violation occurs "where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The Court held that it is "**beyond genuine debate, the suppressed evidence here, Fair's paid informant status, qualifies as evidence advantageous to Banks.**" In addressing the materiality test of *Brady*, the Court held, "*Kyles* instructed that the materiality standard for *Brady* claims is met when 'the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.=@

[62] Banks v. Dretke, 540 U.S. 668 (124 S.Ct 1256) (2004).

. . . .

. . . . Unfortunately, in the instant case, there is inescapable guile on the part of some agents of the GBI.

. . . . [T]his suppression claim is a blatant *Brady* due process violation that clearly justifies the granting of habeas relief in this case.

Palmer, slip op. at 24-29 (some emphasis added).

As in *Palmer*, and the cases cited therein and herein, AWithout the jury being informed that the State has provided an important witness a pecuniary motivation to

testify, **the trial transforms into a basically corrupt process** in which the jury is deprived of a major key to seeking and deciding the truth **B** and determining a man's fate.@ Nothing more need be shown to establish materiality **B A materiality** is just a test to see if the evidence involved is **important** enough to justify the sanction for violating the *Brady* due process rule@ **B** and the state=s nefarious acts speak for themselves **B** two witnesses were allowed to lie at trial about the financial motivation for the key witness to fabricate her story, the state paid $500 for the testimony, it suppressed the evidence for years until being compelled to produce it on the eve of the evidentiary hearing, and the evidence was central to this Court=s initial affirmance on direct appeal.

Taking into account the full record in Mr. Guzman=s case, the state did not present evidence which established either corroboration of Martha Cronin=s testimony or AIndependent evidence of guilt.@ Instead, the state of the evidence against Mr. Guzman was weak with little or no corroborating evidence of Martha Cronin=s testimony. Therefore, contrary to the ruling of the lower court, the state failed to establish beyond a reasonable doubt that the false testimony presented at Mr. Guzman=s trial concerning the undisclosed payment of $500.00 to admitted crack cocaine addict and prostitute Martha Cronin was harmless error under the *Chapman* standard. Mr. Guzman has established all the requisite elements for a *Giglio* claim. He is entitled to relief and moves this Court to vacate his Judgment

and Sentence and order a new trial.

CONCLUSION

For the reasons stated throughout this brief this Court should grant all relief for which Mr. Guzman prays.

CERTIFICATE OF FONT SIZE AND SERVICE

I HEREBY CERTIFY that a true copy of the foregoing INITIAL 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 18th day of May, 2005.

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CERTIFICATE OF COMPLIANCE

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

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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC04-2016

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

APPENDIX

1. *Palmer v. Head*, No. 2000-V-474 (Superior Court, Butts Cty. GA, Mar. 25, 2005)