

**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**

REPLY BRIEF OF APPELLANT

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APPELLANT IS ENTITLED TO *DE NOVO* REVIEW

Contrary to the argument of the Appellee, it is well settled law that the materiality prong of a *Giglio* is subject to *de novo* review by this Court as stated in *Mordenti v. State* , 894 So.2d 1028 (Fla. 2005), and *Ventura v. State* , 794 So.2d 553 (Fla. 2001). In *Ventura* this Court conducted a full *de novo* review of the materiality prong of *Giglio* after finding that the lower court had applied the *Brady* materiality prong rather than the more defense friendly *Giglio* materiality standard. *Id.* at 663. Rather than returning the matter to the lower court for its findings on materiality, this Court decided the case, applying the *Giglio* standard *de novo*. Thus, there is no basis for this Court to conduct anything other than a *de novo* review of Mr. Guzman's *Giglio* claim and the materiality prong.

MATERIALITY IS AN OBJECTIVE STANDARD

The appellee's brief calls for this Court to give deference to the lower court's finding that the fact of the \$500.00 reward money paid to Martha Cronin would not have had any affect on the judgment of the trial court. The appellee is clearly asking this Court not to conduct a *de novo* review of the materiality prong of *Giglio* in contradiction to extensive precedent. There can be no difference in applying a *de novo* review of a *Giglio* issue as between a defendant who had a bench trial and one who had a jury trial.

It is the impact of the false testimony on the proceedings which is the critical inquiry, which is why the Ninth Circuit in *Bagley v. Lumpkin*, 798 F.2d 1297 (9th Cir. 1986), clearly applied an objective, not subjective, analysis of materiality. It must be noted, as already stated in Appellant's Initial Brief, that the United States Supreme Court remanded the *Bagley* case back to the Ninth Circuit for the materiality review, knowing that the federal District Court judge who had conducted the bench trial had made a subjective finding against materiality.

The State simply does not accept the binding legal principle of *Bagley*, that materiality analysis must be objective **B** no special deference can be given to a bench trial judge in a *de novo* review of the materiality prong. Instead, this Court, as in *Bagley*, and *Ventura*, and *Mordenti*, must determine whether the State met its burden. In this case, the burden on the state is to prove beyond a reasonable doubt that the presentation of false testimony from two critical state witnesses, Martha Cronin and Allison Sylvester, can be viewed as harmless error beyond a reasonable doubt.

Appellant has produced ample case law stating the analysis is an objective one. The State **B** while disagreeing the analysis is objective **B** has not produced a single case which holds that a judge hearing a non-jury trial is entitled to special deference from an appellate court in the determination of materiality under *Giglio*. No such case exists, and this Court must conduct its own *de novo* review of the materiality component of *Giglio*. And, contrary to the State's repeated assertions, this Court must look fairly at all the facts of the case to determine whether the state can establish,

beyond a reasonable doubt, that the false testimony of two state witnesses, Martha Cronin and Allison Sylvester, could not have had any effect on the judgment of the court and is harmless error beyond a reasonable doubt.

**THE FACTS CONTAINED IN APPELLANT-S
BRIEF CONCERNING THE GIGLIO CLAIM ARE
TRUE AND CORRECT**

In the Answer Brief, the State does not address the matters raised in the Appellant-s Initial Brief concerning the trial, the importance of the testimony of Martha Cronin and Allison Sylvester, and the lack of corroboration of their testimony. This is because the facts as stated by the Appellant are true and correct and not subject to rebuke by the State.

Martha Cronin was the most important witness in the trial **B** she is the witness this Court primarily relied upon in affirming Appellant-s conviction and sentence on the direct appeal. That fact is irrefutable. It is also a fact of the case, as outlined in the Initial Brief, that she was an admitted crack cocaine addict and prostitute. As such she would be in desperate need for money, which is a reason why the information about the hidden payment of \$500.00 to her is so important and so clearly material to a fair trial **B** bench or jury **B** to Mr. Guzman.

Additionally, it is critical for this Court t to understand that Martha Cronin changed her story. Her first statement, made the day after the body was discovered, did not implicate Mr. Guzman in any way. Her new story, implicating Mr. Guzman

and the one presented at trial was told **only after the reward money had been offered by the police.**

Only after the reward money was offered, did Martha Cronin change her testimony. In such circumstances, the State's presentation of false testimony that she had been given no compensation whatsoever cannot be viewed as harmless error beyond a reasonable doubt.

Appellant cannot receive a fair trial without this critical impeaching evidence. Furthermore, the State filed written motions prior to trial in which defense counsel was specifically told Martha Cronin had received no compensation. Such prosecutorial deceit, intentional or not, clearly impacted the fairness of the proceedings.

Also, it is important for this Court to consider what the State and the lower court ignore, that **two** State witnesses testified falsely, Martha Cronin and Allison Sylvester. Allison Sylvester, the lead Detective in the case, falsely testified that Martha Cronin received no compensation whatsoever, except a hotel room. This false testimony clearly has a bearing on her credibility as the lead detective in the case, demonstrating a bias against Mr. Guzman for failing to reveal such impeaching information and establishing the state's win-at-all-cost attitude. This would have been fertile for cross examination had the evidence of the payment to Cronin not been hidden.

In the Initial Brief, Appellant painstakingly went through the trial testimony to reveal no meaningful corroboration of Martha Cronin's testimony. Instead, the evidence showed:

- (1) the existence of alternative suspects in the murder of David Colvin;
- (2) the fact that the Medical examiner could not state that either the sword or the survival knife¹ was the murder weapon **B** he could only state that ANY single edged knife over three inches in length could have caused the injuries;
- (3) Guzman's possession of the ring does not corroborate Cronin because it is Cronin who provides the only inculpatory explanation for the ring. Mr. Guzman testified he got the ring from Curtis Wallace, another suspect in the murder. Appellant's possession of the ring can't corroborate Martha Cronin's testimony since it is solely Cronin's testimony which inculpates.

¹ The Appellant continues to be concerned about the erroneous factual assumption which has crept into these proceedings that Mr. Guzman had the survival knife in his possession when he was arrested. To the contrary, Mr. Guzman had voluntarily provided the knife to police well before his arrest. The distinction between openness and concealment suggests innocence rather than guilt.

- (4) Snitch Paul Rogers had previously signed a statement which said that Guzman had never confessed to him. This impeaches the credibility of Mr. Rogers testimony which, in any event, provided no meaningful corroboration of Martha Cronin's testimony.

The State, rather than addressing these important factual issues and pointing out to this Court any possible record support for corroboration of Martha Cronin's and Allison Sylvester's testimony, instead categorically dismisses the true record facts and relies on the "factual findings" of the lower court. Any factual findings by the lower court must be supported by the record, and there is no record support in this case. Reliance on unsupported "factual findings" is simply not enough for the State to meet its burden of proving beyond a reasonable doubt that the *Giglio* claim was harmless..

There is a good reason why the State does not address the facts outlined in Appellant's Brief . They are irrefutable and supported in the record. And the inescapable conclusion is that the state cannot meet its burden to prove beyond a reasonable doubt that the false testimony of Martha Cronin and Allison Sylvester was immaterial.

CONCLUSION

The state has completely failed to meet its constitutional burden to prove, beyond a reasonable doubt, that the false testimony in this case was not material. Mr. Guzman must have the new, fair, trial the Constitutions of Florida and the United States guarantee.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing REPLY BRIEF OF APPELLANT has been furnished by U.S. Mail to all counsel of record on this October 11, 2005.

CERTIFICATE OF COMPLIANCE

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

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