IN THE SUPREME COURT OF FLORIDA

CASE NO. 05-1847

RICKEY BERNARD ROBERTS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

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INTRODUCTION

The State=s Answer Brief misrepresents the facts, includes irrelevant factual allegations apparently as smoke, refuses to address the arguments raised by Mr. Roberts, and instead presents this Court with argument on a claim that Mr. Roberts did not raise in this appeal, while arguing that the claim that Mr. Roberts raised in his Initial Brief is procedurally barred even though the circuit court did not find a procedural bar. In this Reply Brief Mr. Roberts endeavors to clear away the smoke and show that the State has not contested the error

in the circuit court=s order denying relief on Mr. Roberts= *Brady* claim in any meaningful way.

REPLY TO STATEMENT OF THE CASE AND FACTS

A. Shannon Harvey booking card.

In its Answer Brief, the State repeatedly references Mr. Robert=s failure to assert in 1996 Athat the State failed to disclose [Rhonda] Haines= arrest history under any name, including the name of Shannon Harvey.@ (Answer Brief at 16). The State makes this comment concerning the motion for post conviction relief filed on February 20, 1996. It makes a similar comment when discussing the *Huff* hearing held on the motion (Answer Brief at 18). It makes a similar comment when discussing Mr. Roberts= appeal to this Court in 1996 from the circuit court=s denial of his post conviction motion (Answer Brief at 19).

Ignored by the State is the fact that it was not until July of 1997 that it disclosed its possession of documents showing that Haines had been arrested in 1984 for prostitution under the name Shannon Harvey. At the evidentiary hearing held in July of 1997, in Ms. Haines= absence because the circuit court refused to issue a certificate of materiality, the State chose to present evidence on Mr. Roberts= *Brady* claim. As State=s Exhibit #1, the State introduced a three-

page document.[1] At the 1997 hearing, the State presented no testimony regarding the third page of the exhibit or the reason it was introduced into evidence. However, testimony was presented at the 2004 hearing explaining the content of the exhibit and in particular the third page. AThe first two pages are the FBI rap sheet@ for Rhonda Haines (PC-R4. 202-03, 923). AThe third page is a booking - - is a booking record from Metro-Dade County so it is a separate document from a separate source@ (PC-R4. 204, 923). It was a Abooking card for prostitution and resisting arrest charge of Shannon Harvey on - - date of birth 1/22/65, from August 17th, 1984" (PC-R4. 204, 730). As for the FBI rap sheet, Athere is a run date up at the top of 8/22/1984 which is August 22, 1984, yet there is a stamp down here that Mercy Guasp got it on December 13, 1984 or, yes, it was furnished to her on, I guess, 12/13/1984. And there is a date stamp of December 14th so there are three different dates on this thing@ (PC-R4. 953). The third page of the exhibit also contained a December 14, 1984, date stamp (PC-R4. 204, 923).

[1]In its Answer Brief, the State chooses to ignore the fact that it, the State, introduced the Shannon Harvey booking card into evidence in July of 1997 at a hearing on Mr. Roberts= *Brady* claim regarding Rhonda Haines. Presumably, the State introduced the document into evidence because it believed the document was relevant to Mr. Roberts= pending claim.

Throughout its Answer Brief, the State ignores the fact that the Shannon Harvey booking card was introduced into evidence by the State at an evidentiary hearing held on Mr. Roberts= pending motion to vacate. Clearly, the State in July of 1997 believed that the Shannon Harvey booking card was relevant and material to Mr. Roberts= pending *Brady* claim. Moreover, the State did not dispute the testimony Mr. Roberts presented in 2004 that prior to the July of 1997 hearing, the Shannon Harvey booking card had not been provided to him.

So, the fact that Mr. Roberts did not make an allegation in 1996 regarding the State=s failure to disclose arrests of Ms. Haines under the name Shannon Harvey was because the State had not at that time disclosed its possession of documentation of those arrests. Instead, Mr. Roberts pled what he had been told by Ms. Haines that Ms. Haines had been told that the prostitution charges would been taken care of if she testified against Mr. Roberts.

In its Answer Brief, the State observes that during the July, 1997 hearing, Mr. Roberts Amade no mention of a claim that the State had failed to disclose any arrest of Haines under any name.@ (Answer Brief at 25). This observation seems kind of beside the point since the State introduced the Shannon Harvey booking card into evidence during that

hearing.[2] Clearly, the State believed that the Shannon Harvey booking card was relevant to Mr. Roberts= *Brady* claim premised upon Ms. Haines= statement that she had been told that her prostitution charges would be taken care of if she testified against Mr. Roberts.

In its Answer Brief, the State observes that in his appeal to this Court following the July, 1997 hearing, Mr. Roberts Adid not make any argument that the State had withheld any arrest of Haines under any name.@ (Answer Brief at 28). Ignored by the State is the fact that Mr. Roberts= appeal concerned whether he received a full and fair hearing when the presiding judge refused to issue a certificate of materiality so that Rhonda Haines could be subpoenaed to testify. Because a certificate of materiality did not issue, Ms. Haines was not present to testify and did not confirm as she did later that she had been arrested for prostitution while using the name of Shannon Harvey.

B. The State=s 1996 offer of a limited hearing.

In its Answer Brief, the State sets forth inaccurate

[2]Moreover, Mr. Roberts was unable to present Ms. Haines= testimony because the circuit court erroneously refused to issue a certificate of materiality. Following this Court=s reversal and remand, Mr. Roberts was able to present Ms. Haines= testimony and she confirmed that she had been arrested in Dade County while she was using the name Shannon Harvey (PC-R4. 466).

factual representations regarding the 1996 under-warrant phone call a prosecutor placed to undersigned counsel making a conditional offer of a limited evidentiary hearing (Answer Brief at 17-18).[3] Why the State believes it is necessary to discuss this conditional offer is unclear. This Court reversed the subsequent denial of an evidentiary hearing by the circuit court, notwithstanding this conditional offer. This forecloses revisiting the significance of the State=s conditional of a limited evidentiary hearing all these years later.

C. The Circuit Court=s denial of a certificate of materiality in 1997.

In its Answer Brief, the State includes its slanted version of the events in 1997 when Mr. Roberts unsuccessfully sought a certificate of materiality (Answer Brief at 21-24).[4]

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[3]No testimony was taken nor factual resolution made as to what was said during the phone call. Undersigned counsel who was the recipient of the phone call does not agree with the State=s characterization of what occurred. However, the whole matter is irrelevant given that this Court subsequently ruled that a full evidentiary hearing was required on Mr. Roberts= motion to vacate. *Roberts v. State*, 678 So. 2d 1232 (Fla. 1996).

[4]Mr. Roberts does not agree with the accuracy of the State=s recitation of the events that led to the circuit court=s denial of a certificate of materiality in 1997. However, since this Court has already decided that the circuit court erred in 1997, disputing the State=s assertions as to how the circuit court=s denial of a certificate of materiality came to be seems pointless. Mr. Roberts will instead simply rely

In Mr. Roberts' previous appeal, the parties briefed this matter, and this Court concluded that the circuit court erred in refusing to issue a certificate of materiality. *Roberts v. State*, 840 So. 2d 962 (Fla. 2002). This forecloses revisiting the matter at this point in time. It is just not relevant to Mr. Roberts' arguments as to the error that occurred following this Court's remand.

D. Proceedings in Los Angeles regarding the issuance of an out-of-state subpoena.

In its Answer Brief, the State recites from a transcript of the proceedings that occurred in Los Angeles when Mr. Roberts sought the issuance of a subpoena compelling Ms. Haines to appear in Florida to testify in Mr. Roberts' case (Answer Brief at 30). In this recitation, the State neglects to first acknowledge what this Court found when finding error in the circuit court's denial of a certificate of materiality.

In its opinion reversing and remanding, this Court stated:

> The State argued that Roberts was responsible for Haines' nonappearance because Roberts' counsel had warned Haines that the State intended to prosecute her for perjury. The State did acknowledge that it intended to charge Haines with perjury if she testified in conformity with her affidavit recanting her trial testimony.

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upon the briefs he filed in *Roberts v. State*, Case No. SC92496, as stating his position as to the events in 1997 leading to the denial of the certificate of materiality.

Roberts v. State, 840 So. 2d at 970.

When the circuit court issued a certificate of materiality in 2003, undersigned counsel traveled to Los Angeles in order to obtain an out-of-state subpoena compelling Ms. Haines to appear at Mr. Roberts= evidentiary hearing. At the hearing in Los Angeles, Ms. Haines appeared and advised the court that travel to Florida would be a hardship (PC-R4. 990-92). After hearing Ms. Haines explain the hardship that travel to Florida would entail, the California judge stated:

> THE COURT: All right. So I=ll ask counsel what do you expect her to do with her twin girls that are ten and her son that is five while she goes to Florida to testify?
>
> I would normally grant this order. I mean I would order her to Florida. And if it was inconvenient for work or something else, it would be an inconvenience, that=s too bad. But she has three small children, so give me a solution.

(PC-R4. 992).

After the California judge=s inquiry, undersigned counsel stated:

> MR. MCCLAIN: Well, your honor, again, we=re in the awkward position of we=re willing to do the deposition here - -
>
> THE COURT: Florida doesn=t want you to do it.
>
> MR. MCCLAIN: It was the State of Florida=s position that they want to have her appear in person.
>
> And in the Florida Supreme Court [opinion], there is a passage there where the State of Florida takes the position they [will] charge her with

perjury if she comes and testifies in accordance with the affidavit she=s already given. The prosecution out there has been threatening her which is also sort of adding to her concern about leaving three kids and running the risk that something could happen to her because they=ve indicated even though she=s entitled to immunity, they=re saying she=s not entitled to immunity from perjury if she takes the stand and testifies [in conformity with] the affidavit that she=s already signed [illegible line cut off]

THE COURT: You are. You are in an awkward position.

And I=m not going to sign this order. The request to order to go to Florida is denied.

MR. MCCLAIN: Okay, Your Honor, and so - -

THE COURT: And so you can seek other remedies from that court.

The order will show that the court finds that Miss Haines has an irreconcilable hardship that the court does not have any solution for at this time due to the care of her three young children.

And the court would recommend what we would call a conditional examination of a deposition that can be videotaped in lieu of, where she=s subject to cross-examination. And we would make a court available here in Los Angeles for purposes of doing that.

(PC-R4. 992-93).[5]

[5]In the quoted passages, undersigned counsel bracketed corrections to the transcript. Undersigned counsel, as the transcript shows, had this Court=s 2002 opinion with him and gave the California judge the case citation (PC-R4. 989). Undersigned counsel read from this Court=s opinion when he advised the California court about what this Court stated was the State=s position. Undersigned counsel believes that the court reporter in California misheard or misreported his recitation of the passage in this Court=s opinion, inverting the meaning, *i.e.* that she would not be charged with perjury if she testified in conformity with her affidavit when he in fact said that she would be charged with perjury if she

Even though the State spends time and energy writing about the proceedings in California on the motion for an out-of-state subpoena (Answer Brief at 29-31, 76-77), the State never explains the relevancy to this appeal. The circuit court in Florida when advised of the California judge=s position ordered arrangements to be made for Ms. Haines to testify via video satellite. The arrangements were made, and in fact, Ms. Haines testified via video satellite. No objection to this procedure was registered by the State. No appeal was filed by the State. No where in the brief is an argument made that the circuit court erred in permitting Ms. Haines to testify via video satellite.

E. Rhonda Haines= testimony in 2004.

In its brief, the State misrepresents Ms. Haines= testimony in a number of ways. Of particular import is the State=s inclusion of the following quotation that is taken out of context:

> He told me I didn=t have to worry about it. That=s all he told me. He didn=t say, you know what Rhonda, I=m going to go down and get them dropped. He never said anything like that to me. But he told me not to worry about anything. He said you are going to be okay, don=t worry about it.

(Answer Brief at 42, quoting PC-R4. 528). Left out of the

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testified in conformity with her affidavit.

State=s selected quote is the question that prompted this comment. The question was ANow, before you went to Miami in January of 1985, did Mr. Rabin make assurances to you regarding whether you would get in any trouble on your prostitution charges?@ (PC-R4. 525).[6]

Additionally following the comment quoted by the State, the transcript reflects Ms. Haines= testimony continued:

> Q In fact, were you okay?
>
> A No, because I was still worried about it. I didn=t know if he was going to take care of it or not.
>
> Q But while you were there, did you have any problems?
>
> A No, I did not have any problems at all.
>
> Q Were you sent to Broward County to face the charges?
>
> A Nothing, no.
>
> Q How did that - - how did you interpret that?
>
> A The way that I interpreted it, if somebody would say that to me, I was assuming - - the way that I took it was he was going to take care of my prostitution charges. He was going to get them dismissed, dropped, whatever, I didn=t know. That=s what I took the way he said it to me.

(PC-R4. 528).

[6]Ms. Haines testified that when Mr. Rabin brought her and her mother to Florida in January of 1985, he had them stay for three days and put them up in a hotel (PC-R4. 526-27).

Ms Haines further testified that following the January 1985 trip arranged by Mr. Rabin, she was again brought back to Florida for a deposition in October of 1985 (PC-R4. 529-30). Another trip was arranged in December of 1985 when she testified at Mr. Roberts= trial. Ms. Haines explained that her fear of the prostitution charges were brought up repeatedly after the January of 1985 discussion with Mr. Rabin:

> Yes, he knew. Yes, I discussed it on more than one occasion cause I kept asking him because every time I flew down there I was scared to go down there. I even asked him before, you know, I told him what about the prostitution, oh, don=t worry about it, it=s going to be okay.

(PC-R4. 534).[7]

F. Mr. Howell=s testimony.

In discussing the testimony from Mr. Howell, the trial prosecutor, the State only references in his testimony in 2004 that A[h]e did not even recall if he verified that the warrants existed (PCR4. 725).@ (Answer Brief at 43). Completely ignored by the State was Mr. Howell=s 1997 testimony that was in complete conflict with the 2004 testimony. Mr. Howell testified in 1997 that there were eleven outstanding charges against Ms. Haines at the time of her testimony:

> Q. Do you recall when the first time that you

[7]After this statement by Ms. Haines, the judge interrupted and told counsel to not Arehash this@ and to Amove on@ with his questioning (PC-R4. 534).

learned about her allegation of outstanding charges in Broward County?

A. Very vividly. I probably recall that as much as anything else about this case.

Q. And when was that?

A. That was in her deposition and I think it was October. I may not be correct on this, but October of 1985, immediately prior to the trial is when I first learned of the allegations of eleven outstanding prostitution warrants or charges or something like that in Broward.

Q. And, did you discuss that with anybody in the State Attorney=s Office?

A. That I=m having a little

witness trouble with - - I=m sure

I did. I don=t have a specific

recollection of the discussion,

but I would have discussed that

with Mr. Glick.

(PC-R3. 705-06). Mr. Howell was adamant that the eleven charges Awere still pending at the time of trial. They were still pending when we put her on the airplane to go home@ (PC-R3. 707).[8]

[8]The starkness of the change in Mr. Howell=s testimony is more readily evident when looking at his actual testimony in 2004 instead of the State=s waterdowned summary. In 2004, Mr. Howell testified that he did not believe that Ms. Haines had eleven outstanding warrants when she testified contrary to her

When he testified in 2004 that never were there eleven outstanding warrants, he did not recall correcting Ms. Haines= trial testimony (PC-R4. 727). Mr. Howell acknowledged that defense counsel made a big deal about Ms. Haines having eleven outstanding warrants for her arrest and the motive that would give her to curry favor with the State. But, Mr. Howell had no explanation for not stepping forward and pointing out that there were not anywhere near eleven outstanding warrants. He explained:

> I remember Mr. Lange making a big deal out of the outstanding warrants. Again, I don=t remember how many he said, and as I think I began my testimony in this issue by saying how regretful I was by not doing something about that and that was a mistake on my part.
>
> (PC-R4. 727).

G. Mr. Rabin=s testimony.

In the Answer Brief, the State says rather tepidly that AMr. Rabin did not recall ever knowing of a connection between

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trial testimony:

> I don=t think they were. I think she was mistaken. Maybe she had other arrests at some time. She had other arrests maybe in Orlando. Maybe there was something else. But there were not - - at least on the NCIC - - there were four arrests.
>
> I=m not sure how many charges were totaled in those four arrests. You know, maybe six or seven charges, but I don=t think she had eleven cases in Broward, ever.

(PC-R4.

Harvey and Haines@ (Answer Brief at 55). The State fails to acknowledged that when Mr. Rabin was asked to review the Shannon Harvey booking card and the related court files that were located and introduced into the record, he concluded that the documentation showed that Rhonda Haines while using the name Shannon Harvey was arrested and charged with prostition:

> Well, what appears what happened was when she was arrested February 22nd for prostitution, Rhonda Haines, that she comes up with a bench warrant for her on another case under the name of Shannon Harvey. That is what appears to have happened here.
>
> * * *
>
> But all I can tell you is that on this one, this arrest here which is dated 8/17/1984 there is a link up. On 8/17/84 they link up Shannon Haines - - Rhonda Haines and Shannon Harvey somehow. That is all I can tell you according to this document.

(PC-R4. 947, 949).

H. Mr. Roberts= reply closing argument.

In its Answer Brief, the State falsely asserts:

> Defendant filed a reply, in which he asserted that he had not previously raised any *Brady* claim regarding Haines= alleged arrest under the name Shannon Harvey but insisted that he should have the claim considered because he had raised a different *Brady* claim and should not be required to pled [sic] his claims in writing if he was granted an evidentiary hearing on the other claim.

(Answer Brief at 58).

In fact, Mr. Roberts in his reply was responding to the State=s argument he was procedurally barred from discussing the State=s

failure to disclose that Rhonda Haines had been arrested in August of 1984 for prostitution under the name of Shannon Harvey. Mr. Roberts argued that he asserted that he had not made mention of the name Shannon Harvey in his 1996 motion because the State did not disclose the existence of the booking card for Shannon Harvey until 1997 when it, the State, introduced it into evidence as an exhibit relevant to Mr. Roberts= *Brady* claim:

> Here, Mr. Roberts is not adding a Brady claim as occurred in Jones. He merely has introduced evidence regarding the Shannon Harvey AJail Booking Record@ that the State first introduced into evidence at the 1997 evidentiary hearing. Clearly, the State thought the Shannon Harvey AJail Booking Record@ was relevant to Mr. Roberts= Brady claim in 1997. Now, Mr. Roberts has introduced that document in order to demonstrate that Rhonda Haines was arrested on August 16, 1984, under the name Shannon Harvey. The AJail Booking Record@ introduced as Def. Ex. N concerns Ms. Haines and supports the statement in her affidavit that she had been arrested in Dade County, that the State was aware of the arrest, and took care of it for her. This evidence supports the Brady claim pled in 1996 that Ms. Haines was induced by the State into testifying through the use of undisclosed promises, benefits, and threats. To the extent that this Court accepts the State=s argument that the introduction of the evidence in support of the previously pled Brady claim is improper absent a motion to amend the motion to conform to the evidence presented at the hearing, Mr. Roberts under Jones so moves this Court. However, he nonetheless primarily argues that such a motion is unnecessary, that the evidence was and is admissible to prove the claim already pled.

(PC-R4. 653).

I. The circuit court=s ruling.

Nowhere in its Answer Brief does the State acknowledge that the circuit court did not accept the State=s argument that Mr. Roberts= *Brady* claim, or even any part of his *Brady* claim was procedurally barred. In the circuit court=s order, there is a five page discussion of the merits of Mr. Roberts= *Brady* claim, including the State=s failure to disclose Ms. Haines use of the name Shannon Harvey as an alias (PC-R4. 376-80). It is that portion of the circuit court order discussing the *Brady* claim that Mr. Roberts has appealed.

ARGUMENT IN REPLY

The State=s argument can be divided into two components. As to Mr. Roberts= *Brady* claim, the only portion of the circuit court=s order denying relief that Mr. Roberts= challenged in his Initial Brief, the State argues that the claim is procedurally barred. After making its procedural bar argument, the State then makes a rambling argument as to *Brady* violations that completely ignores the manner in which the circuit court addressed and disposed of Mr. Roberts= *Brady* claim.

A. Procedural Bar.

The State presents a most unusual, albeit totally nonsensical, argument that Mr. Roberts= *Brady* claim is

procedurally barred.[9] According to the State, a 3.851 movant is procedurally barred from relying on and using evidence that the State introduces at an evidentiary hearing on the 3.851 motion unless he formally amends his motion to allege that the evidence introduced by the State actually supports and/or proves his claim for relief.[10] This would be like telling a

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[9]At one point, the State asserts in its brief Athe lower court properly rejected this claim because it was not properly before it@ (Answer Brief at 62). No record citation is included.

Undersigned counsel has reviewed the circuit court order and cannot find that the circuit court at any time says that Mr. Roberts= claim is not properly before it. In fact, the circuit court spends five pages of its order addressing Mr. Roberts= *Brady* claim.

[10]The State cites *Vining v. State*, 827 so. 2d 201 (Fla. 2002), as supporting its argument. When the State cited *Vining* in the post hearing memorandum it filed in circuit court, Mr. Roberts distinguished *Vining* in his reply closing argument:

> Here unlike in *Vining*, the specific claim was not ineffective assistance of counsel; it was *Brady/ Giglio*. Here unlike in *Vining*, the specific evidence at issue had not been disclosed by the State, i.e. that Ms. Haines= Dade County arrest had been under the name Shannon Harvey. Nevertheless, Mr. Roberts did plead that the State had withheld evidence concerning the consideration that it had provided Ms. Haines, including her allegation that arrests in Dade County had been taken care of by the State. Unlike the situation in *Vining*, Mr. Roberts was granted an evidentiary hearing on the claim. Unlike the situation in *Vining*, Mr. Roberts did not suddenly seek to amend to include a new previously unpled expert witness. Instead, he merely called Ms. Haines who when shown the AJail Booking Record@ had remembered that she had used the name Shannon

trial prosecutor that he can not argue that the testimony of a witness called by the defense actually incriminated the defendant and proved the State=s case unless the State has formally listed the witness as a State=s witness. It is absurd.

Here, Mr. Roberts filed his *Brady* claim in 1996 based upon what Ms. Haines told him at that time. At an evidentiary hearing ordered on the *Brady* claim that was conducted in 1997, the State introduced evidence. State=s Exhibit No. 1 was three pages in length. AThe first two pages are the FBI rap sheet@ for Rhonda Haines (PC-R4. 202-03, 923). AThe third page is a booking - - is a booking record from Metro-Dade County so it is a separate document from a separate source@ (PC-R4. 204, 923). It was a Abooking card for prostitution and resisting arrest charge of Shannon Harvey on - - date of birth 1/22/65, from August 17th, 1984" (PC-R4. 204, 730). Both the FBI rap

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> Harvey on occasion when arrested. The AJail Booking Record@ was a document that the State had introduced into evidence in 1997 when Ms. Haines was not available to testify. The hearing in 1997 had been on Mr. Roberts= Claim I of his motion to vacate, and clearly the State believed that the document was relevant to the claim.

(PC-R4. 650-51). After receiving Mr. Roberts= reply closing, the circuit court did not adopt the State=s *Vining* argument, but instead addressed the merits of Mr. Roberts= claim.

sheet and the booking card have been stamped with an identical stamp that bears the date of December 14, 1984.

The fact that the State originally introduced the document at the 1997 evidentiary hearing should collaterally estop the State from asserting that the document is not relevant to Claim I of the motion to vacate. In any event, the State registered no objection when Mr. Roberts introduced evidence concerning Rhonda Haines' use of the name Shannon Harvey. Under Florida law, the failure to contemporaneously object is a waiver of the objection. *Jones v. Butterworth*, 701 So. 2d 76, 78 (Fla. 1997) (objection waived if not made at first opportunity). Florida's contemporaneous objection rule applies to the State as well as the defense. *Cannady v. State*, 620 So. 2d 165, 170 (Fla. 1993)(the contemporaneous objection rule applies not just to criminal defendants, but to the State as well). The State should be procedurally barred from arguing that evidence that it did not object to when it was admitted is procedurally barred.

Certainly, the circuit court did not err under the circumstances when it did not find Mr. Roberts' *Brady* claim procedurally barred.

B. The circuit court's erroneous *Brady* analysis.

The State in its argument simply ignores the portion of

the circuit court's order that addressed Mr. Roberts' *Brady* claim. The circuit court found the *Brady* claim meritless, stating:

> Applying these principles, the court finds no *Brady* violation. Thus, the Court does not find that there is a reasonable probability that had the foregoing evidence been disclosed the result of the proceeding would have been different. [Citations omitted]. Even assuming that the State had in its possession information as to Haines' prostitution arrest under the name of Shannon Harvey as well as the disposition of a February 22, 1984 prostitution arrest, the trial record shows that Roberts vigorously assailed Haines' character and arrest record as illustrated by the following: [Quotation from R. 2434-39 omitted].
>
> Moreover, the Court finds that trial counsel should and could have obtained Haines' alleged alias, Shannon Harvey, by merely asking during her deposition whether she ever used an alias or by moving to compel the State to produce all aliases of its witnesses since it is commonly known by law enforcement officers, prosecutors and defense attorneys that prostitutes generally use aliases. Based on the foregoing, the Court does not find that this evidence would have impeached the testimony of Haines nor would it have resulted in a markedly weaker case for the prosecution and a markedly stronger one for Roberts.
>
> Similarly, as to Roberts' claim that the State failed to disclose Michelle Rimondi's request for money and its supposed threat to take action against her if she did not stay in contact with the State or her father, the Court finds that Roberts has not shown that Rimondi received any money or other benefit in exchange for her testimony. Sam Rabin testified that Rimondi received no money or other benefit for her testimony since she was an eyewitness and victim. He further explained that the State Attorney's office had a policy that directly prohibited prosecutors from engaging in doling out money or other benefits that would compromise either Rimondi's testimony or that of any potential witness in the prosecution of criminal cases. Thus, the evidence - a message note from Rimondi requesting money and a letter

> addressed to Rimondi=s father advising him that his daughter must stay in contact with him or the State - is totally speculative at best and does not support the existence of a *Brady* violation.

(PC-R4. 379-80).

In his Initial Brief, Mr. Roberts outlined in detail the defects in the circuit court=s reasoning. The State in its Answer Brief ignores that fact that the circuit court addressed the claim on the merits and ignores Mr. Roberts= arguments of error as to the circuit court=s analysis.[11] Because the State does not address the arguments that Mr. Roberts made in his Initial Brief and because the State does

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[11]The State=s Answer Brief reads like most of the argument is cut from a brief in another case that has been pasted into the brief filed in this case without regard to whether the argument is relevant. For example, the State at one point argues, Athis Court has consistently found that a *Brady* claim is meritless when the defense was aware of the information before trial.@ (Answer Brief at 70). Here, Mr. Roberts= trial counsel testified that he was unaware of the consideration that Ms. Haines actually received and unaware of her arrests under the Shannon Harvey alias. The State did not dispute this. In fact even though the booking card was introduced into evidence by the State, all of the prosecutors testified that they were unaware of the name Shannon Harvey or that it was Ms. Haines= alias. If the trial prosecutors are claiming ignorance, how can a defense attorney be held to a higher standard?

Another example, at one point the State asserts, Athe lower court=s finding that Defendant lacked diligence in presenting this claim is amply supported by the record.@ (Answer Brief at 71). However, the circuit court in denying Mr. Roberts= *Brady* claim did not make any kind of finding of a lack of diligence. Again, it is like the State is lifting arguments from other pleadings without regard to whether they fit the facts present in Mr. Roberts= case.

not address the legal errors in the circuit court=s denial of the merits of Mr. Roberts= *Brady* claim, Mr. Roberts will rely upon the arguments set forth in the Initial Brief.

CONCLUSION

In light of the foregoing arguments and the arguments in his initial brief, Mr. Robert requests that this reverse the circuit court=s order denying relief and grant Mr. Roberts a new trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States Mail, first-class postage prepaid, to Sandra S. Jaggard, Assistant Attorney General, Office of Attorney General, Rivergate Plaza, Suite 650, 444 Brickell Avenue, Miami, Florida 33131, on October 1, 2007.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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