IN THE SUPREME COURT OF FLORIDA
CASE NO. SC05-383

NOEL DOORBAL
Appellant,

v.

STATE OF FLORIDA
Appellee.

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

REPLY BRIEF OF APPELLANT

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INTRODUCTION TO THE REPLY BRIEF

This Reply brief respectfully addresses only a significant few of the many distorted assertions and arguments presented from what appears to be an inverted parallel universe of ideas that the State has created and adopted to benefit its adversarial position in this case. The Defendant respectfully challenges the State's misrepresentation of facts and law in its effort to manipulate and deceive this Court.

REPLY STATEMENT OF THE CASE, FACTS AND ARGUMENT

ISSUE I

Awkwardly, the State attempts to assert that the lower court has no familiarity with the judge who presides over post-conviction proceedings. Clearly, the State knows, however, that the Honorable Alex Ferrer is the Judge who presided over both the Defendant's trial and his post-conviction proceedings.

Interestingly, the State asserts that it knows why Judge Ferrer denied the Defendant's Motion to disqualify himself from post-conviction proceedings even though Judge Ferrer never stated his reasons on the record. There is no reason to believe that the State unethically and illegally communicated ex-parte with Judge Ferrer to assert that the State somehow knew that the Judge denied the Defendant's

motion because it was untimely or insufficiently pled. Furthermore, this assertion is neither sound nor accurate.

In 2003, CCR filed the Motion to Disqualify within ten days of the discovery of an article written in the year 2000 revealing Judge Ferrer's conduct as a witness at Mr. Schiller's federal sentencing hearing. The Motion set forth facts sufficient to demonstrate that Judge Ferrer, at some point in the process – before, during or after the Defendant's trial, formed a strong bias in support of Mr. Schiller and acted in a manner that contradicts how a fair and neutral judge would conduct himself. Judge Ferrer, for example, failed to inform the Defendant about his work and support in Mr. Schiller's case, failed to inform Mr. Schiller's Federal sentencing court that Mr. Schiller perjured himself during the Defendant's trial in order to assist the State in its quest to secure death sentences and then failed to disqualify himself when the Defendant expressed doubt that the Judge could render a fair or just opinion during the post-conviction process. The State's apparent ambivalence toward a Judge that testifies in one of their key witness's sentencing proceeding is not confusing to the Defendant, particularly when the State uncharacteristically made an unprompted remark in a footnote of a brief that it did not agree to assist Mr. Schiller – despite the fact that Mr. Schiller placed himself in harm's way for the State. The Defendant urges this Court to remand this case to the Circuit Court where this case can now be heard by a fair and neutral judge.

ISSUE II

The State wants this Court to believe that during the Defendant's trial, it proved that the sole motive for crimes perpetrated against Mr. Schiller was that Mr. Schiller could identify the Defendant. Contrary to this assertion, at no time during the Defendant's trial did Mr. Schiller ever identify the Defendant as one of the persons who kidnapped, tortured or attempted to kill him. Further, when Mr. Schiller was attempting to strike a bargain with the persons he believed were responsible for hurting him and for taking his money and property, Mr. Schiller did not include or refer to the Defendant in any manner. The reason that the State apparently needs to invent the facts it stated in its response brief is to try to convince this Court that the motive is not related to the material fact that Schiller was involved with Medicare fraud – a key component required to prove the *Giglio* claim in the Defendant's appeal. A clever ruse, nevertheless, a ruse much like it admitted to perpetrating on Mr. Schiller himself when the State lured Mr. Schiller back to Miami for the purpose of assisting the Federal government with Schiller's arrest.

The facts remain that Mr. Schiller testified falsely at the Defendant's trial, and the State, whether it believed Mr. Schiller would ever be found guilty or not, knew that Mr. Schiller was lying when he stated that he had no involvement in Medicare fraud. *Giglio* does not require the Defendant to prove that the State

knew Mr. Schiller was guilty or innocent – legal conclusions of a criminal proceeding. It is essentially irrelevant that the Defendant also knew that Mr. Schiller was lying, particularly when the Defendant was denied discovery that could have been entered into evidence as proof at the successful urging of the State during pre-trial proceedings.[1] Mr. Schiller was the State's witness, and the State clearly and purposely intended to perpetrate fraud upon the Court by failing to acknowledge - during the trial and in post-conviction proceedings – and shockingly even unto this Court - that it knew Mr. Schiller was lying. Based on a totality of circumstances and concrete evidence, and because the *Giglio* claim was never raised or preserved during Defendant's trial or appeal, the Defendant respectfully requests a full adversarial testing of this claim or in the alternative as a matter supporting judicial economy, a new trial. The Defendant further requests that this Court enter an Order granting the Defendant the right to depose Assistant State Attorneys who have refused thus far from stating under oath that they did not know Mr. Schiller was lying on the witness stand during the Defendant's trial.[2]

[1] The State seems to revel in the fact that the Defendant was denied discovery relevant to impeaching Mr. Schiller when Mr. Schiller testified falsely as a State witness. During post-conviction hearings, the State provided the Court with different names of the "flip in NJ" while continuing to deny that it had no information about Mr. Schiller's illegal conduct.

[2] The Assistant State Attorneys associated with Defendant's post-conviction proceedings chose to act, on the contrary, unprofessionally by smirking, joking, and laughing at Defendant's claims to mock and provoke anger. The Defendant is struck by the fact that the more accurate the claims, the more vicious the State reacted, as was once again evidenced in the State's Response Brief falsely accusing the Defendant (via undersigned counsel) of being dilatory and unethical.

ISSUE III

The Defendant's interpretation of the Rule 3.851 is that an evidentiary hearing shall be provided for fact-based claims. The Defendant's position is that all claims in his Rule 3 Petition were either fact-based or hybrid fact/legal claims which require an evidentiary hearing. In an ideal world of law, the State argues that the size of the Defendant's case is irrelevant to the amount of time, energy and work that is required to read, investigate and plead Defendant's case – despite the fact that the State provided its 61+ boxes of public records to the Defendant more than nine months after the due date. But the ultimate reality in the American criminal justice system is that the Defendant is entitled to due process. The State's few and never-changing arguments that the Defendant's claims, whatever they are, are untimely, procedurally barred, insufficiently plead or, in the alternative, without merit cannot be successfully challenged without an evidentiary hearing in this case – a hearing that the Defendant was denied by a biased Judge during post-conviction proceedings. Furthermore, the Defendant is entitled to raise claims that have previously been met with adversarial outcomes, preserving issues for further review or reconsideration when the political climate changes or when emerging standards of decency prevail. The lower court's summary denial should not stand. The Defendant is entitled to an evidentiary hearing for every claim raised in his Rule 3 Petition.

ISSUE IV

When one of the Assistant State Attorneys announced she had scheduled vacation time at the end of year in 2004, the Judge did meet her request and adjust his rigid time frame for conducting an evidentiary hearing on the one claim the Judge did not summarily deny. The Honorable Alex Ferrer stated clearly that he wanted to clear his docket for his successor, and he therefore would not grant the Defendant any continuances or allow the Defendant to amend his Petition, despite provisions in the Rule. The lower court merely announced its ruling on the Motion to Amend and did not provide the Defendant with an opportunity to state reasons per each claim as the State now insists should have been done. Lacking superhuman qualities, the Defendant nevertheless exercised due diligence in an attempt to meet deadlines established for typical death penalty cases – whatever typical might mean. Perhaps if the State had not been 9 months late in providing public records to the Defendant, or if CCRC had not been allowed to withdraw forcing the Defendant to accept new counsel just 3 months prior to the deadline for filing the Rule 3 Petition, or if in the process of reviewing the transcript or public records the Defendant did not discover evidence of a *Giglio* violation, of ineffective assistance of trial and appellate counsel, of trial court error and of prosecutorial misconduct, perhaps, then a Motion to Amend would not have been absolutely necessary to include additional facts and arguments requiring review.

The court's ruling to deny the Defendant's Motion to Amend thwarted an opportunity for the Defendant to redress state and federal constitutional rights, and this Court should remand this cause for an evidentiary hearing on the Amended Motion.

ISSUE V

Good cause for a continuance was shown clearly, but the lower court, being biased and concerned more about clearing the docket than providing the Defendant with the time required to prepare for even one claim filed in the Rule 3 could not see with reason and impartiality. The State is not capable of conceiving how much time and work was needed to prepare for the Huff hearing, let along an evidentiary hearing, thus their objections and complaints about a slow or lazy Defendant are not well founded. In the present case, the State's rendition of time lapses reality for reviewing records, investigating issues that the State has attempted to obscure, locating witnesses, including potential experts, and preparing for hearings - all done by a sole practitioner with the assistance of law clerks and investigators. The lower court ordered that the Defendant would not be compensated financially or be reimbursed for costs for any further work for investigation or for preparing for an evidentiary hearing following the court's summary denial of the Defendant's claims. The lower court abused its discretion in denying the Defendant's Motion

for a continuance and the Defendant respectfully requests that this Court remand this cause to the lower court with an Order permitting the Defendant the necessary time to complete a preparation for presenting claims at an evidentiary hearing.

ISSUE VI

In the Defendant's case, the lower court, from the outset, refused to provide the Defendant with an evidentiary hearing on twenty out of twenty-one of his claims. The final order that the lower court sent this Court was revised only after the State essentially told the lower court what to say and how to say it. The lower court provided no reasons for denying the claims during or at the conclusion of the Huff hearing. The lower court's summary denial should not stand. The Defendant is entitled to an evidentiary hearing for every claim raised in his Rule 3 Petition.

CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons and those set forth in the accompanying Initial Brief, a new trial and/or sentencing hearing is warranted, but at minimum this case should be remanded to the Circuit Court for an evidentiary hearing on Doorbal's twenty-one factually-disputed claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to (1) Sandra Jaggard, Assistant Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131; (2) Gail Levine, Assistant State Attorney, 1350 NW 12th Ave., Miami, Florida 33136, (3) the Honorable David H. Young, Richard E. Gerstein Justice Building, 1351 NW 12th Ave., Miami, Florida 33136, Miami Florida 33316, and (4) Defendant, Noel Doorbal, #M16320, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026-4410, by United States Mail, this 2nd day of January, 2007.

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Melodee A. Smith
Fla. Bar No. 33121

CERTIFICATE OF FONT AND TYPE SIZE

This appeal is word-processed utilizing 14-point Times New Roman type.

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Melodee A. Smith
Fla. Bar No. 33121