IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-406

LOWER COURT CASE NO. 1991-373-D

ANTONIO LEBARON MELTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

LINDA McDERMOTT
Florida Bar No. 0102857
McClain & McDermott, P.A.
20301 Grande Oak Blvd
Suite 118-61
Estero, FL 33928
(850) 322-2172
lindammcdermott@msn.com

COUNSEL FOR APPELLANT

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INTRODUCTION

Appellee, the State, attempts to transform Mr. Melton's claim into one that he simply has not made, and completely ignores this Court's caselaw and the facts that were presented to the circuit court throughout Mr. Melton's capital proceedings to support its argument requesting that the circuit court's order be affirmed.

Specifically, the State repeatedly argues that Mr. Melton's claim is really two claims: the first being a recanted testimony claim which requires burdens beyond a newly discovered evidence claim and the second being a United States v. Giglio claim that concerns only Mr. Melton's co-defendant's, Bendleon Lewis, deal with the State. See Answer Brief, p. 5, 16, 17 (hereinafter "AB at ___". However, these are not Mr. Melton's claims.

Mr. Melton presented evidence to the circuit court that Lewis made statements to Daniel Ashton and David Mack that were inconsistent with his trial testimony. Indeed, some of the statements Lewis made in June, 2013, and again in January, 2014, made clear that he was well aware that he would obtain benefits for his testimony against Mr. Melton. Lewis himself made several statements at the evidentiary hearing that corroborate what he told Ashton and Mack, including that at the time of Mr. Melton's trial he "was trying to do anything, you know, to help [himself]

here" (PCR3. 153).

Lewis' recently disclosed statements to Ashton and Mack were inconsistent with his trial testimony and provide critical information concerning his negotiations with the State and his motivation for testifying as he did. Thus, Lewis' recently discovered statements constitute newly discovered evidence of due process violations and inconsistencies that undermine confidence in Mr. Melotn's conviction and sentence of death.

ARGUMENT I

THE LOWER COURT ERRED IN DENYING MR. MELTON'S CLAIM THAT RECENTLY DISCOVERED EVIDENCE DEMONSTRATES THAT MR. MELTON'S CAPITAL CONVICTION AND DEATH SENTENCE ARE CONSTITUTIONALLY UNRELIABLE IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. THE EVIDENCE ESTABLISHES THAT MR. MELTON'S RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND HIS RIGHTS UNDER THE FIFTH, SIXTH AND EIGHTH AMENDMENTS WERE VIOLATED, BECAUSE THE STATE WITHHELD EVIDENCE WHICH WAS MATERIAL AND EXCULPATORY IN NATURE AND/OR PRESENTED FALSE EVIDENCE.

DUE PROCESS VIOLATIONS ENTITLE MR. MELTON TO RELIEF

As to Mr. Melton's claim that his right to due process was violated by the State's dealings with Lewis, the State argues that this Court should confine its analysis to the determination of whether a violation of United States v. Giglio, 405. U.S. 150 (1972), occurred (AB at 26, n.5). And the State also faults Mr. Melton for failing to present testimony from the trial prosecutors and Jim Jenkins, Lewis' attorney, at the evidentiary hearing (AB at 29, 31).

First, Mr. Jenkins and the trial prosecutors testified in 2002. Contrary to the State's suggestion, and pursuant to this Court's caselaw, this Court is required to review the record in its entirety to determine whether a due process violation occurred. See State v. Riechmann, 777 So. 2d 342, 362 (Fla. 2000)("In applying these elements [concerning due process violation], the evidence must be considered in the context of the entire record."); see also Tompkins v. State, 994 So. 2d 1072, 1088 (Fla. 2008)(considering newly discovered evidence introduced at a prior postconviction proceeding to determine whether the Court's "prior conclusions" did not entitled defendant to relief). Thus, as this Court has made clear the record in Mr. Melton's case is not confined the record before the Court in the current appeal. Rather, the entire record including the trial record, the record related to the initial postconviction evidentiary hearing in 2002, the record related to the summary denial of the successive 3.851 motion concerning statements made by Tony Houston concerning the Saylor homicide and the record on appeal related to the current postconviction proceedings, must be considered in reviewing Mr. Melton's claim.[1]

Second, Mr. Melton asserts both a claim pursuant to United States v. Giglio, 405 U.S. 150 (1972), and Brady v. Maryland, 373

[1]Likewise, it is irrelevant that the prosecutors are now deceased. See AB at 31. The trial prosecutors testified in 2002 about their dealings with Lewis and Mr. Jenkins.

U.S. 83 (1963). Here, while the prosecutor knew of his dealings with Lewis, it is also clear from the 2002 testimony of Mr. Jenkins and a review of Mr. Jenkins' time records that he had communications with several individuals on behalf of Lewis, including multiple assistant state attorneys and law enforcement officers. See PCR. 283-90; D-Ex. 10. Thus, it is appropriate for Mr. Melton to raise his claim that a due process violation occurred in both the Giglio and Brady context.

Furthermore, as to the State's argument concerning the Giglio analysis, the State fails to point out that pursuant to Giglio it is the State's burden to demonstrate that the error is harmless beyond a reasonable doubt (AB at 29-30). See Kyles v. Whitley, 514 U.S. 437, 433 n.7 (1995).

However, as to either the Giglio or Brady analysis, the State argues that Mr. Melton cannot prevail because there was no deal and Lewis' trial testimony on this point was not false (AB at 30). Mr. Melton submits that Lewis' recent statements to Ashton and Mack, as well as at the evidentiary hearing conclusively demonstrate that Lewis' trial testimony was false. Lewis told Ashton and Mack that there was a deal in place prior to his testimony (PCR3. 114, 194). Lewis knew what sentence he would receive, i.e. that he would plead nolo contendere to second degree murder and robbery in exchange for a twenty year sentence and not being charged with any crime related to Ricky Saylor's homicide (PCR3. 129-31). Lewis stated that he would not have

testified if he did not know what assistance he was receiving (PCR3. 130).

Furthermore, the State's argument fails to recognize the United States Supreme Court's pronouncement in United States v. Bagley, 473 U.S. 667, 683 (1985), in which the Supreme Court held:

> the possibility of a reward had been held out to [the State witnesses] . . . This possibility of a reward gave [the State witnesses] a direct, personal stake in respondent's conviction. **The fact that the stake was not guaranteed through a promise or binding contract, . . . served only to strengthen any incentive to testify falsely in order to secure a conviction.**

Id. (emphasis added). Furthermore, the United States Supreme Court has held: "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**". Napue v. Illinois, 360 U.S. 264 (1959)(emphasis added).

In Mr. Melton's case the evidence supports Lewis statements to Ashton and Mack that he knew what the State intended to offer him. Lewis specifically described what he expected from the State, which was what he ultimately received.

Furthermore, Lewis made clear that, at the time of trial, "[he] was trying to do anything, you know, to help [himself] here" (PCR3. 153). In fact, Lewis admitted that he had made up a

story and perjured himself at the time of trial in order to help himself (PCR3. 153).

At the 2014 evidentiary hearing, Lewis also admitted that he had been threatened when he was arrested and in the custody of the Sheriff's Office (PCR3. 170). Lewis was "scared, nervous." (PCR3. 171). When asked if he had told the truth in Mr. Melton's case Lewis responded: "I don't know, maybe, maybe not. Hell, I don't know." (PCR3. 173).

Moreover, there is a plethora of evidence corroborating Lewis' recent statements, including Jenkins' testimony and billing records. Jenkins testified that he thought the evidence against Lewis was overwhelming and he suggested Lewis cooperate with the State (PC-T. 283).

Jenkins also testified that he approached the State about Lewis' cooperation and any benefit he might receive (PC-T. 285). Jenkins proceeded to tell Lewis that his cooperation in this case alone would probably not be sufficient, but that if he had any information on any other crimes, he might want to come forward (PC-T. 285-86). Jenkins testified that these events occurred early in his representation of Lewis (PC-T. 286).

The next time Jenkins saw Lewis at the jail, probably a week or two later, Lewis had information about Mr. Melton regarding the Saylor homicide (PC-T. 286-87). Jenkins told Lewis that if the information rose to a sufficient level, it might work out for something less than a life sentence (PC-T. 290). Jenkins

believes he gave this information to either one of the prosecutors (PC-T. 289). **The State told Jenkins that his client's cooperation would be considered in resolving his case** but there was no agreement (PCT. 291, 303)(emphasis added).[2]

Likewise, Lewis told both Paul Sinkfield and Alphonso McCary that he expected to receive consideration in his case for testifying against Mr. Melton (PC-T. 458, 507). He also indicated to various individuals that he was afraid and needed advice on how to reduce his sentence (PC-T. 386, 457, 636).

Mr. Melton has demonstrated that Lewis expected a benefit for his testimony and that he hoped to plead guilty to second degree murder and robbery and and receive a sentence of twenty years, which is exactly what occurred. As Lewis told Ashton and Mack, he would not have testified if he did not know what assistance he was receiving (PCR3. 130). Relief is warranted.

NEWLY DISCOVERED EVIDENCE ENTITLES MR. MELTON TO RELIEF

The State does not address Mr. Melton's claim concerning the recently disclosed inconsistent statements of Lewis. Rather, as stated previously, the State clings to the argument that because Lewis did not recant, the circuit court correctly determined that Mr. Melton's claim lacked merit (AB at 17, 23). The State's argument in relation to "recantation" is irrelevant to the argument before the Court.

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[2]Jenkins was hoping for a reduction to second degree murder (PC-T. 291).

Indeed, the State has mischaracterized Mr. Melton's claim. Over the course of the postconviction proceedings in Mr. Melton's capital case, he has presented consistent and credible evidence that Lewis was not truthful at Mr. Melton's trial. Lewis' inconsistencies concerned the circumstances under which Mr. Carter was shot and what Lewis' motivations for testifying against Mr. Melton were.

At the evidentiary hearing, Ashton and Mack testified to additional inconsistent statements by Lewis that were made in June, 2013, and affirmed in January, 2014. In his statements to Ashton and Mack, Lewis "acknowledged and stated that there was, indeed, a struggle [at the pawn shop] and during the struggle is when the weapon discharged." (PCR3. 114, 193). Lewis affirmed the previous testimony of individuals whom he had told that a struggle occurred when the weapon discharged (PCR3. 194). These statements conflict with the testimony he provided at trial and constitute newly discovered evidence.

Lewis also acknowledged that there was a deal in place prior to his testimony (PCR3. 114, 194). Lewis knew what sentence he would receive, i.e. that he would plead nolo contendere to second degree murder and robbery in exchange for a twenty year sentence and not being charged with any crime related to Ricky Saylor's homicide (PCR3. 129-31). Lewis stated that he would not have testified if he did not know what assistance he was receiving (PCR3. 130).

Lewis himself added further inconsistencies to his trial testimony when he testified at the evidentiary hearing. In October, 2014, Lewis testified that he could not say whether a struggle occurred or not because he was trying to get out the door when the shot was fired (PCR3. 165).

Lewis also admitted that he was nervous because he was facing the death penalty and he wanted to avoid a death sentence (PCR3. 140, 158). His attorney had told him that he could either get life in prison or the death penalty (PCR3. 141). Lewis' attorney also encouraged him to assist the State so he "wouldn't get the death penalty." (PCR3. 142).[3] Lewis stated: "I was trying to do anything, you know, to help myself here" (PCR3. 153). In fact, Lewis admitted that he had made up a story and perjured himself in order to help himself (PCR3. 153).

Lewis also admitted that he had been threatened when he was arrested and in the custody of the Sheriff's Office (PCR3. 170). Lewis was "scared, nervous." (PCR3. 171). When asked if he had told the truth in Mr. Melton's case Lewis responded: "I don't know, maybe, maybe not. Hell, I don't know." (PCR3. 173). Therefore, contrary to the State's representations, Lewis had no idea if he told the truth at Mr. Melton's trial.

Furthermore, the State's argument that Lewis was credible

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[3]Contrary to Jim Jenkins' previous testimony, Lewis denied that his attorney had told him that he needed to provide additional information if he wanted the State to provide any benefit (PCR3. 143, 149-50).

(AB at 22), is clearly rebutted by a review of the evidence presented throughout Mr. Melton's capital proceedings. First, Lewis has indicated under oath that he is not certain that he told the truth at trial (PCR3. 173). As Lewis testified: he "was trying to do anything, you know, to help [himself] here" (PCR3. 153). Additionally, at the time of Mr. Melton's trial, Lewis committed perjury when he concocted a story with Adrian Brooks in which Lewis used Brooks as an alibi for him as to the Saylor case. See PCR3. 235-8. Indeed, initially, Lewis denied any knowledge about the Saylor case (PCR3. 233). However, not long after Lewis swore to tell the truth and then lied, law enforcement determined that his story concerning the events on the night Mr. Saylor was killed could not be true because Brooks was in jail. Lewis admitted to committing perjury:

> Q: Have you in fact, lied under oath before in this case?
>
> A: Under oath?
>
> Q: Yes. Have you given a statement just like this before over in the Santa Rosa County Jail?
>
> A: Yes, sir.
>
> Q: You were sworn to tell the truth then?
>
> A: Yes, sir.
>
> Q: And you were given use immunity for your testimony then?
>
> A: Uh-huh (INDICATING AFFIRMATIVELY).
>
> Q: And you testified at that time? You gave a description of what you claimed happened and what

your knowledge was?

A: Yes, I did.

Q: Did you lie during that statement?

A: Yes, sir.

Q: Do you understand that you could be prosecuted because of that, which means lying under oath, a felony offense? Do you understand that?

A: Yes, sir.

(PCR3. 273-4).[4]

Lewis explained that he made up the story about Brooks' after he was arrested for the Carter homicide. He lied because he "ain't gonna be charged with murder no more." (PCR3. 276).

In addition, to Lewis being an admitted perjurer, he has repeatedly and consistently made statements to others indicating that he had lied about the circumstances surrounding the Carter case. At the time of Mr. Melton's prosecution, Lewis told Paul Sinkfield and Alphonso McCary that he expected to receive consideration in his case for testifying against Mr. Melton (PC-T. 458, 507). He also indicated to various individuals that he was afraid and needed advice on how to reduce his sentence (PC-T. 386, 457, 636).

Lewis specifically told Sinkfield about the pawn shop murder (PC-T. 455). He said that he got into a struggle with the owner, that Mr. Melton ran over to help and that's when the gun went off

[4]In fact, Lewis was never charged with perjury.

and killed the victim (PC-T. 456). During the time of this conversation, Lewis was very worried; he was facing life in prison for murder (PC-T. 457).

On a subsequent occasion, Sinkfield saw Lewis in the holding cell (PC-T. 458). Lewis said he was relieved, that he had spoken to his attorney, and that he was going to get a deal (PC-T. 458).

Lewis' statement to Sinkfield acknowledging a struggle with Mr. Carter was corroborated by Lewis' statement to the officer l who authored his pre-sentence investigation report. As to the "circumstances" of the offense Lewis' told the officer that there was a struggle in the pawn shop. See Def. Ex. 7 ("After Mr. Carter opened the safe he apparently began struggling with Melton. Melton and Lewis then struck the victim knocking him to the floor.").

Lewis also told Fred Harris that in the pawn shop case, he, Mr. Melton and the victim were wrestling, the gun went off, and the owner was shot (PC-T. 635). Lewis was scared and needed some advice from Harris (PC-T. 636). In response, Harris told him that he needed to do what he had to in order to save himself (PC-T. 636). Lewis responded that he was going to state that Mr. Melton was the triggerman in the pawn shop case (PC-T. 636).[5]

In addition, Lewis told Ashton and Mack "that there was, indeed, a struggle [at the pawn shop] and during the struggle is

[5]Lewis stated that the pawn shop owner was holding the gun when it went off (PC-T. 647).

when the weapon discharged." (PCR3. 114, 193). Lewis affirmed the previous testimony of individuals whom he had told that a struggle occurred when the weapon discharged (PCR3. 194).

Lewis also acknowledged that there was a deal in place prior to his testimony (PCR3. 114, 194). Lewis knew what sentence he would receive, i.e. that he would plead nolo contendere to second degree murder and robbery in exchange for a twenty year sentence and not being charged with any crime related to Ricky Saylor's homicide (PCR3. 129-31). Lewis stated that he would not have testified if he did not know what assistance he was receiving (PCR3. 130).

Thus, Lewis, who "was trying to do anything, you know, to help [himself]" (PCR3. 153), including committing perjury is not credible. Indeed, Lewis' trial testimony was inconsistent with his pre-trial statements and depositions. And, unbeknownst to Mr. Melton, Lewis told an officer conducting a pre-sentence investigation report that a struggle occurred and the gun discharged. See Def. Ex. 7. Lewis also admitted his deceit and lies to fellow jailhouse inmates and Ashton and Mack. The evidence clearly and overwhelmingly demonstrates that Lewis' trial testimony was false.[6]

Contrary to the State's doubt (AB at 24), all of the

[6]The State's argument that the standard to be employed in reviewing the circuit court's order is to determine if the fact findings were clearly erroneous (AB at 22), is not supported by this Court's caselaw.

evidence concerning Lewis' inconsistent statements was admissible as impeachment of Lewis and in support of Mr. Melton's defense. Thus, the jury would be left with compelling, corroborated evidence from several witnesses that the gun was fired during a struggle. Further, the jury would weigh that compelling evidence against Lewis' testimony, which was clearly fabricated so that he could obtain the benefit that his attorney, Mr. Jenkins, discussed with him and the State. Indeed, Jenkins testified he first saw Lewis at the jail after he was appointed (PC-T. 283).[7] He thought the evidence was overwhelming and believed that the next time he saw Lewis, he suggested he cooperate (PC-T. 283).

Jenkins testified that he approached the State about Lewis' cooperation and any benefit he might receive (PC-T. 285). His bill reflects a February 14, 1991, phone conference with the State Attorney's Office (PCR. 1713). Jenkins proceeded to tell Lewis that his cooperation in this case alone would probably not be sufficient, but that if he had any information on any other crimes, he might want to come forward (PC-T. 285-86). Jenkins testified that these events occurred early in his representation of Lewis (PC-T. 286).

The next time Jenkins saw Lewis at the jail, probably a week or two later, Lewis had information about Mr. Melton regarding the Saylor homicide (PC-T. 286-87). Jenkins told Lewis that if

[7]Lewis was arrested on January 23, 1991 (T. 292).

the information rose to a sufficient level, it might work out for something less than a life sentence (PC-T. 290). Jenkins believes he gave this information to one of the prosecutors (PC-T. 289). The State told Jenkins that his client's cooperation would be considered in resolving his case (PC-T. 291, 303).[8] Therefore, contrary to the State's argument, Lewis had everything to gain by fabricating evidence. Lewis' life was at stake; his attorney had told him that he could either get life in prison or the death penalty (PCR3. 141). Lewis' attorney also encouraged him to assist the State so he "wouldn't get the death penalty." (PCR3. 142). Thus, the notion that Lewis had little motive to lie (AB at 25), is ridiculous.

Mr. Melton submits that considering all of the admissible evidence, confidence is undermined in the outcome of both the conviction and sentence of death. Relief is warranted.

A Cumulative Review of the Evidence is Required

The State argues that cumulative review is not necessary in Mr. Melton's case because evidence has previously been determined to lack credibility and no error has been previously found (AB at 32-34).

First, the State confuses the issue of cumulative error with cumulative review. This Court has made abundantly clear that a cumulative review is required when presented with newly

[8]Jenkins was hoping for a reduction to second degree murder (PC-T. 291).

discovered evidence claims in a successive Rule 3.850 motion. Hildwin v. State, 141 So. 3d 1178 (Fla. 2014)[9]; Swafford v. State, 125 So. 3d 760, 775-6 (Fla. 2013); Smith v. State, 75 So. 3d 2005 (Fla. 2011); Johnson v. State, 44 So. 3d 51 (Fla. 2010); Rivera v. State, 995 So. 2d 191 (Fla. 2008); Lightbourne v. State, 742 So. 2d 238 (Fla. 1999). In each of these cases, this Court found that the proper standard required not just the cumulative consideration of all of the favorable evidence presented in the collateral proceedings, but also the use of the constitutional mandated yardstick as to the constitutional claims that had been presented in collateral proceedings to determine whether Rule 3.850 relief was warranted.

Furthermore, as to the issue of review of evidence that was originally not found to be credible or sufficient, in Johnson v. State, 44 So. 3d at 53, newly discovered evidence was presented in support of a previously rejected Rule 3.851 claim that had been presented under United States v. Giglio, 405 U.S. 150 (1972). This newly discovered evidence contradicted testimony presented at trial, corroborated testimony of a Giglio violation presented in a prior Rule 3.851 motion, and conflicted with

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[9]In Hildwin, 141 So. 3d at 1184, this Court stated:

> In determining the impact of the newly discovered evidence, the court must conduct a cumulative analysis of all the evidence so that there is a "total picture" of the case and "all the circumstances of the case." *Id* at 776 (quoting *Lightbourne v. State*, 742 So.2d 238, 247 (Fla. 1999).

testimony presented by the State in the prior collateral proceeding. This Court found that the previously rejected evidence when considered with the newly discovered evidence entitled Johnson to relief. And, the newly discovered evidence required revisiting the previous decision to reject the Giglio claim.

Likewise, in in State v. Mills, 788 So. 2d 249 (Fla. 2001), this Court affirmed the circuit court's grant of relief based on newly discovered evidence.[10] The newly discovered evidence consisted of the testimony of an inmate (Anderson), who had been incarcerated with Mills' co-defendant (Ashley), in 1980 and obtained a confession from Ashley. Id. at 250. However, just months before, this Court had affirmed the denial of relief when Ashley provided an affidavit that indicated that his trial testimony had been false. Mills v. State, 786 So. 2d 547, 550 (Fla. 2001). Thus, interpreting the cases, it is apparent that there was a tipping point at which the evidence, some of which had previously been insufficient to grant relief rose to the level where relief was warranted.[11] The evidence in Mr. Melton's

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[10]At issue in Mills was who was the shooter or more culpable defendant.

[11]Likewise, in Melendez v. State, 718 So. 2d 746, 748 (Fla. 1998), this Court affirmed the circuit court's order denying relief and finding numerous witnesses who testified not credible, including a member of the Florida Bar. The circuit court had found: "[T]he newly discovered evidence claim rests on the testimony of three convicted felons who say Vernon James made incriminating statements about the murder, the partial recanting

case about the true circumstances of Mr. Carter's death have reached the tipping point.

Furthermore, contrary to the State's argument, see AB at 34-5, it is appropriate to consider the previously presented evidence related to the prior violent felony aggravator in connection with Mr. Melton's claim that the recently disclosed statements by Lewis would probably produce a life sentence for Mr. Melton and/or undermines confidence in Mr. Melton's sentence of death.[12] As was stated by the United States Supreme Court in Wiggins v. Smith, 539 U.S. 510 (2003), "[I]nvestigations into mitigating evidence 'should comprise efforts to discover *all*

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of a co-defendant's testimony, and a lawyer's vague memories of Vernon James' several confessions." However, just three years later based largely the same evidence, with a few additional witnesses, and the introduction of a transcript of Vernon James confessing to the murder of the victim for whom Mr. Melendez had been convicted and sentenced to death, Circuit Judge Barbara Fleischer determined that the once not credible evidence was indeed credible and entitled Mr. Melendez to relief. See Melendez v. State, Polk County Case No. CF84-1016A2-XX. Thus, again, evidence that has been considered not credible in a prior proceeding must be reconsidered in light of the newly disclosed evidence; there is a tipping point when a fact, whether it is from a jailhouse inmate or an officer preparing a pre-sentence investigation report, or from a member of the Bar, or a licensed investigator, can no longer be rejected as not credible.

[12]Additionally, the State repeatedly relies on Mr. Melton's conviction in the Saylor case to argue that the conviction rebuts the evidence presented by Mr. Melton as to the Carter case. See AB at 20, 25. Thus, the evidence relating to the Saylor case must also be considered in order to demonstrate that the State's reliance on Mr. Melton's conviction in the Saylor case is misplaced. In fact, Mr. Melton has always maintained that he was not present and had nothing to do with the homicide of Mr. Saylor.

reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.'" (emphasis on original)(citations omitted).[13]

In Rompilla v. Beard, 545 U.S. 374, 386, n5 (2005), the Supreme Court found trial counsel ineffective for failing to review the circumstances of a prior violent felony conviction which the State was going to utilize as an aggravating circumstance. As the Court explained:

> Nor is there any merit to the United States's contention that further enquiry into the prior conviction file would have been fruitless because the sole reason the transcript was being introduced was to establish the aggravator that Rompilla had committed prior violent felonies. Brief for United States as *Amicus Curiae* 30. The Government maintains that because the transcript would incontrovertibly establish the fact that Rompilla had committed a violent felony, the defense could not have expected to rebut that aggravator through further investigation of the file. **That analysis ignores the fact that the sentencing jury was required to weigh aggravating factors against mitigating factors. We may reasonably assume that the jury could give more relative weight to a prior violent felony aggravator where defense counsel missed an opportunity to argue that circumstances of the prior conviction were less damning than the prosecution's characterization of the conviction would suggest.**

(Emphasis added). Clearly, whether the prior violent felony conviction would have been neutralized or rebutted by the evidence that has surfaced throughout Mr. Melton's postconviction

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[13]In a sentencing proceeding, "[t]he basic concerns of counsel during a capital sentencing proceeding are to **neutralize the aggravating factors advanced by the state**, and to present mitigating evidence." Starr v. Lockhart, 23 F.3d 1280, 1285 (8th Cir. 1994) (emphasis added).

proceedings must be considered in the cumulative analysis of Mr. Melton's claim.

When the recently disclosed statements by Lewis are reviewed with the prior proceedings in Mr. Melton's case, including the pre-trial and trial, the 2002 evidentiary hearing and the allegations concerning Tony Houston's statements to his brothers about the Saylor homicide, there is no doubt that the reliability of Mr. Melton's conviction and sentence of death has been undermined.

CONCLUSION

Based upon the foregoing argument, reasoning, citation to legal authority and the record, appellant, **ANTONIO LEBARON MELTON**, urges this Court to reverse the circuit court's order and grant relief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief has been furnished by electronic mail to Charmaine Millsaps, Assistant Attorney General, on this 10th day of September, 2015.

/s/. Linda McDermott
LINDA McDERMOTT
Florida Bar No. 0102857

McClain & McDermott, P.A.
20301 Grande Oak Blvd
Suite 118-61
Estero, FL 33928
(850) 322-2172
lindammcdermott@msn.com

Counsel for Mr. Melton

CERTIFICATION OF TYPE SIZE AND STYLE

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/s/. Linda McDermott
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