

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-411

SCOTT MANSFIELD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, STATE OF FLORIDA**

INITIAL BRIEF OF THE APPELLANT

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REQUEST FOR ORAL ARGUMENT

The resolution of the issues involved in this action will determine whether Mr. Mansfield lives or dies. This Court has not hesitated to allow 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 because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Mansfield.

PRELIMINARY STATEMENT REGARDING REFERENCES

References to the record of the direct appeal of the trial, judgment and sentence in this case are from the transcript and of the form (Dir. Vol. # T. 123) or (Dir. Vol. # PPT. 123). References to the supplemental record of the direct appeal are of the form (SR page#). References to the original postconviction record on appeal are in the form, e.g. (Vol. I PCR. 123). References to the successive record on appeal are in the form (Vol. I SPCR 123). Generally, Scott Mansfield is referred to as Mr. Mansfield throughout this brief. The Office of the Capital Collateral Regional Counsel- Middle Region, representing the Appellant, is shortened to "CCRC."

STATEMENT OF THE CASE AND FACTS

1. Procedural History

In 1997, Mr. Mansfield was tried and convicted of first-degree murder in the Circuit Court for the Ninth Circuit, Osceola County. Before opening statements, the State offered Mr. Mansfield a plea to second-degree murder and 20 years, which Mr. Mansfield rejected. (Dir. Vol. II T. 247). Following the guilt phase trial, the State offered Mr. Mansfield a life sentence if he would waive his right to appeal. (Dir. Vol. PPT. 103-109). Ultimately, the State's plea offer was not accepted and the jury returned a death recommendation. The circuit court ("trial court") imposed a death sentence.

Mr. Mansfield appealed. This Court affirmed the conviction and death sentence. *Mansfield v. State*, 758 So.2d 636 (Fla. 2000). This Court found that Mr. Mansfield "was in custody for purposes of *Miranda*,¹ and accordingly the tape of his interrogation should have been suppressed." *Id.* at 644. This Court then found that the error was "harmless." *Id.* at 645. Mr. Mansfield petitioned the United States Supreme Court for a Writ of Certiorari, which denied the writ. *Mansfield v. Florida*, 532 U.S. 998, 121 S.Ct. 1663 (2001).

Mr. Mansfield filed a Motion to Vacate Judgment of Conviction

¹ *Miranda v. Ariz.*, 384 U.S. 436, 86 S.Ct. 1602 (1966)

and Sentence in the State circuit court in 2002. Prior to the hearing in 2003, he amended the Motion. The trial court held an evidentiary hearing. Following written closing argument from the parties, the trial court denied relief.

Mr. Mansfield appealed the trial court's decision to this Court and filed a State Petition for Writ of Habeas Corpus. Following briefing and oral argument, this Court affirmed the denial of postconviction relief and denied the habeas petition. *Mansfield v. State*, 911 So.2d 1160(Fla. 2005). Justice Anstead dissented on the issue of whether Mr. Mansfield was denied a fair tribunal. *See Id.* 1180.

Mr. Mansfield proceeded to federal court and filed a Petition under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody. The United States District Court granted relief on Ground I and denied relief on the remaining claims. *Mansfield v. Sec'y*, 601 F.Supp. 2d 1267, 1288-90 (USDC MD Fla. 2009). Ground I sought review of this Court's decision finding that the admission of the video interrogation obtained in violation of *Miranda* was harmless error.

The State filed a Notice of Appeal. Mr. Mansfield filed a Notice of Cross-Appeal, and an Application for a Certificate of Appealability. The district court and the Eleventh Circuit Court of Appeals denied Mr. Mansfield's Application for a Certificate of Appealability on the remaining issues.

The United States Court of Appeal for the Eleventh Circuit reversed. *Sec., DOC v. Mansfield*, 679 F.3d 1301 (11th Cir. 2012). Mr. Mansfield sought a Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit. The United States Supreme Court denied the writ. *Mansfield v. Tucker*, 133 S.Ct. 861 (2013).

The Letter

In November of 2013, the State forwarded a copy of a letter sent by Michael Dereck Johns AKA Christopher Randall,² a multiple convicted felon and notorious bank robber. (Vol. III SR 229-30). Mr. Johns testified at Mr. Mansfield's trial that Mr. Mansfield supposedly confessed to the murder in rather graphic detail while in the holding cell at the courthouse.

In a letter dated October 7, 2013, from Michael Derek Johns to then Assistant State Attorney and lead prosecutor of Mr. Mansfield, Dorothy Sedgwick, in reference to Mr. Mansfield's and Wilfredo Collado's criminal cases, Mr. Johns related the following:

I am contacting you in reference to the above caption, and my previous letter regarding the matter, sent to you

² Michael Derrick Johns will be referred to as such, or Mr. Johns, although in the pleadings and record from State court he is often referred to as Christopher Randall. Counsel has used Michael Derrick Johns because, after completing his federal sentences, Mr. Johns was convicted of two robberies in Florida with 2009 offense dates and is now serving 20 years in the Florida Department of Corrections under the name of Michael D. Johns.

approximately 2 months ago in which I requested a copy of a letter you provided for me in 1998 detailing my assistance and testimony in the above cases.

There has been no response forthcoming from you, or your office to date. That said, this is to inform you of my intention to contact the parties captioned above, in order to provide them with sworn and notarized affidavits detailing a full and complete recantation of all testimony elicited from me in those cases. In addition to this, I also intend to detail certain schemes that both the Osceola County S.O., and State Attorney's Office employed in those cases - particularly "Mansfield's" - where my involvement was concerned, that would constitute egregious and invidious due process violations, that if proven at an evidentiary hearing based upon newly discovered evidence would more than likely require a reversal on the convictions.

The lack of a response from you, or your office in this matter has led me to conclude that no response will likely be forthcoming in the near future, given the time that has elapsed since my previous letter.

In concluding, I would like to thank you in advance for your time and consideration in the above, and inform you that I will forward you a copy of the affidavits I intend to provide to the captioned parties, as a courtesy to you, until then.

Take care.

Very Truly Yours
S/Michael Derek Johns
Michael Derek Johns
Blackwater Corr. Fac.
5914 Jeff Ates Rd.
Milton, Fla, 32583

Mr. Johns was a critical witness presented by the State during Mr. Mansfield's 1997 trial. Based on the contents of the letter, Mr. Mansfield filed a First Successive Motion to Vacate Judgment of Conviction and Sentence. (Vol. I SPCR 53-87, 88-122). Mr. Mansfield

also filed a demand for additional public records from the State Attorney and the Attorney General's Office. (Vol. I SPCR 136-52).

The trial court held a Case Management Conference on October 28, 2014. (Vol. IV SPCR. 231-259). At the Case Management Conference, the trial court granted the public record requests in part. (Vol. IV SPCR. 171). The court set an evidentiary hearing for December 16, 2014. Before the hearing, the State filed a motion for the court to advise Mr. Johns of his "possible exposure to perjury charges." (Vol. II SPCR. 178-79).

Successive Evidentiary Hearing

At the evidentiary hearing, Mr. Mansfield called two witnesses: Michael Johns and William Dale Cordova. Unlike when Mr. Mansfield was questioned by law enforcement, the court informed Mr. Johns of his rights and provided him with counsel before any questioning by Mr. Mansfield's counsel or the State. (Vol. V SPCR. 267). Before Mr. Johns was given an opportunity to tell the truth in this death penalty case, the judge "advised" Mr. Johns that he had "certain rights." (Vol. V SPCR. 266). The court advised,

my understanding is that you gave testimony under oath in the trial of this case and that you may or may not have testimony that contradicts that testimony.

[]

[I]f you are exposed to criminal liability under the amendments of the United States Constitution or Article I, Section 9, of the Florida Constitution, you may have certain rights, including the right to remain silent.

[]

And I want to advise you of that right without telling you whether or not to invoke it or not. That's your call, not my call. If you have any questions pertaining to this and you want to speak to to counsel, then I would consider appointing counsel to represent you. If you can't afford to hire that attorney, then one would be appointed at no cost to represent you.

(Vol. V SPCR. 266-67).

Mr. Mansfield waived any potential conflict with the Public Defender's Office representing Mr. Johns during the hearing. (Vol. II SPCR. 273). Mr. Johns, after having written the letter in question, accepted the court's offer for counsel and selectively invoked his "Fifth Amendment protection under the Federal Constitution of the United States and Article 1, section of the Florida Constitution . . ." (Vol. V SPCR. 279, et. seq.).

Without extra time for the perjury, Mr. Johns had a 15 year sentence and a 5 year sentence running consecutively of which he has served approximately 6 years. (Vol. V SPCR. 284-85). Mr. Johns admitted that an investigator from CCRC came to the prison where Mr. Johns was housed. (Vol. V SPCR. 286-287). As far as the letter was concerned, the trial court summed up that Mr. Johns invoked his Fifth Amendment privilege as to what was in the letter, the subject matter of the letter, and whether he wrote the letter. (Vol. V SPCR.at 287-88).

Mr. Mansfield next called William Dale Cordova. Mr. Cordova is an investigator employed by CCRC-Middle. (Vol. V SPCR. 289). Mr. Cordova went to Blackwater Correctional Facility to interview

Mr. Johns. (Vol. V SPCR. 290). Mr. Cordova recognized Mr. Johns in court before the rule was invoked. (Vol. V SPCR.290).

When Mr. Cordova went to the prison to meet with Mr. Johns he showed him a copy of the letter that had been previously marked as Defense Exhibit A for identification. (Vol. V SPCR. 290-91). A long exchange between opposing counsel and the court took place. (Vol. V SPCR. 291-313). The court assumed that Mr. Johns authored the letter and found that Mr. Mansfield was not required to prove authenticity. (Vol. V SPCR. 313).

The trial court denied the motion on January 7, 2015. The court found that "it was disingenuous to suggest that Mr. Johns is now an eminently credible witness, particularly where he has never filed a formal affidavit actually recanting his trial testimony." (Vol. II SPCR. 192). The court referred to the letter as no more than Mr. Johns "*intention to recant.*" (Vol. II SPCR. 192)(italics in the original). The court found that it "had no basis to conclude that an actual recantation even exists, let alone whether it is credible or whether it is likely to produce an acquittal on retrial. The unsworn letter is neither admissible nor sufficient, standing alone, to warrant collateral relief." (Vol. II SPCR. 193).

The court found "[i]n the alternative, assuming without finding that Mr. Johns' unsworn letter would be admissible for consideration as newly discovered evidence, [the letter] lacks any indicia of credibility due to his apparent unwillingness to submit

an actual recantation under oath and to subject himself to cross-examination in the courtroom. (Vol. II SPCR. 193)(emphasis in the original; citations omitted). Without any depth of discussion, the court found that "[t]his circumstantial evidence carries considerable weight." (Vol. II SPCR. 194).

The court concluded by misstating the relief that Mr. Mansfield received from the United States District Court as "a new sentencing hearing" and stated:

Therefore, this Court finds that Mr. Johns' testimony regarding Defendant's purported confession was certainly a useful piece of evidence, which the trial and appellate courts reasonably considered, but it was by no means the only evidence of guilt or as essential to Defendant's conviction as his counsel asserts. In conclusion, there is no reasonable probability that Mr. Johns' recantation, or the absence of his testimony regarding Defendant's purported jailhouse confession, would probably produce an acquittal on retrial or that it would result in a less severe sentence.

(Vol. II SPCR. 194).³

Mr. Mansfield filed a motion for rehearing, which the trial court denied on January 26, 2015. This appeal follows.

³ The alleged confession was alleged to occur at the courthouse holding cell, not the "jailhouse." See (Dir. Vol. VII T. 911).

SUMMARY OF ARGUMENT

The State obtained Mr. Mansfield's conviction and death sentence based on speculative circumstantial evidence, a video obtained in violation of *Miranda*, and the testimony of a convicted felon facing numerous charges in federal and state court. The convicted felon, Michael Johns AKA Christopher Randall wrote a letter threatening to recant his testimony from Mr. Mansfield's trial. Threatening to recant is the same as recanting.

The existence of the letter would prevent the State from calling Mr. Johns as a credible witness against Mr. Mansfield at retrial. While Mr. Johns was impeached at the original trial based on his extensive convictions, the jury was not informed that he faced 10 bank robbery charges at the time he testified against Mr. Mansfield. Once the video interrogation of Mr. Mansfield is removed from consideration, in conjunction with Mr. Johns' most recent letter, there is no reasonable jury or court acting in a fact-finding capacity that could find that Mr. Mansfield was guilty beyond a reasonable doubt.

This Court, and other courts, have denied Mr. Mansfield a remedy for constitutional violations based on the testimony of Mr. Johns that Mr. Mansfield admitted to the offense. The letter showed that Mr. Johns tainted every legal decision made by the courts. The letter affected every legal decision to the extent that Mr. Johns was a factor.

Mr. Mansfield has maintained his innocence despite plea offers that would have allowed him to be released from prison and would have allowed him to live. This Court should grant Mr. Mansfield a new trial at which the jury knows the true Michael Johns and which is free from the taint of Mr. Mansfield's illegal interrogation. Justice demands at least that.

STANDARD OF REVIEW

Under the principles set forth by this Court in *Stephens v. State*, 748 So.2d 1028 (Fla. 1999), these claims are mixed questions of law and fact requiring *de novo* review.

ARGUMENT

A. THE STATE HAD A WEAK CASE FOR CONVICTION WHEN ALL OF THE EVIDENCE IS CONSIDERED.

At Mr. Mansfield's trial, the State presented no definitive physical evidence that Mr. Mansfield committed this crime. Moreover, the State's testimonial evidence was of little probative value or was dubious in nature.

In the instant case, the victim had on a watch that was stopped at 3:00 o'clock. (Dir. VOL. II T. 317). In furtherance of this alleged time of death, law enforcement testified to the time found on the register receipts found on or near the victim's body. (Dir. Vol. II T. 326-39). These receipts showed a checkout time

from the Winn Dixie at approximately 2:55 a.m. (Dir. Vol. T. II 326-39, 460).⁴ The Medical Examiner testified that: "Yes. I believe she died at approximately 3:00 a.m. on the morning of October 15, 1997 - - 1995, I'm sorry, 1995." (Dir. Vol. III T. 460). This simply was not a medical opinion but rather based on the victim's stopped watch.

The food stamps were not incriminating. The State did not prove that the food stamps found at the scene were part of the same sequence of food stamps as those found at Mr. Mansfield's brother's apartment, or that those food stamps were issued to the victim. (Dir. Vol. T. 595-600). The State also never proved that Mr. Mansfield did not lawfully come into possession of the food stamps.

The imprint on the victim's neck was not incriminating. Medical Examiner Julie Martin testified only that Mr. Mansfield's ring *could* have caused the markings on the victim's neck, not that the ring *did* cause the injuries on the victim's neck. (Dir. Vol. IV T. 505). She also stated that another object with similar characteristics could have caused the marks as well. (Dir. Vol. IV T. 505-06). The medical examiner's office initially believed that

⁴The register tape found near the victim showed checkout times of 1:35 and 1:36 am. This Court added 1 hour and listed the times as approximately 2:35am and 2:36 am. See *Mansfield I* at 640, fn 2. The register tapes were actually 1 hour and 25 minutes behind when law enforcement checked the morning of the discovery. (Dir. Vol. V 739).

the neck injuries could have been caused by a belt buckle. (Dir. Vol. IV T. 504).

Dr. Martin never testified that a knife seized from Mr. Mansfield's brother's apartment definitely was the murder weapon. There were no bodily fluids found on the knife. (Dir. Vol. IV T. 514). Mr. Mansfield's brother Charles Mansfield clarified at trial that the knife belonged to his son and that he had never seen Scott Mansfield in possession of the knife. (Dir. Vol. V. T. 646).

The medical examiner took clippings and scrapings from the victim's fingernails and gave them to law enforcement. (Dir. Vol. IV T. 515). There was no evidence at trial that the biological evidence collected at the crime scene and from the victim's person matched the bodily samples that Mr. Mansfield gave for DNA comparison. In fact, DNA analyst David Baer testified that all the items compared were inconsistent with Mr. Mansfield's DNA type. (Dir. Vol. VI T. 810-20). He did not testify that the DNA was inconsistent with William Finneran.

At trial, Detective Sheppard identified a photograph of Mr. Mansfield's pager as Exhibit 3 as "a close-up of a clear pager that was found within eight feet of the body immediately adjacent to the structure of the Winn-Dixie building." (Dir. Vol. T. 324). The State did not present a photograph of Mr. Mansfield's pager located in close proximity to where the victim's body was discovered. The photograph that the jury saw simply showed a pager that could have

easily have fallen off when Mr. Mansfield was seen urinating on the side of the supermarket or which could have been moved. There was no forensic evidence on the pager such as the victim's fingerprints or the victim's DNA that incriminated Mr. Mansfield. In fact, law enforcement removed the pager from the crime scene without dusting for fingerprints, thus denying Mr. Mansfield any evidence that the pager was handled and moved by law enforcement in manner that was falsely inculpatory. See (Vol. VI PCR. 698-99). During postconviction, law enforcement's testimony about the location of the pager differed greatly.

The State presented the testimony of William Finneran. Mr. Finneran called Charles Sturdevant collect from a payphone at the Farm Store near the crime scene. (Dir. Vol. VII T. 900). Mr. Sturdevant refused the charges. The call took place at approximately 3:15 a.m. on the morning in question. (Dir. Vol. VII T. 902). The collect call made in such close proximity to the crime scene and the purported time of death showed that Mr. Finneran had the opportunity to commit the murder. At trial, Mr. Finneran suspiciously put before the jury unobjected hearsay that law enforcement believed that he did not commit the murder and that law enforcement corroborated his story. (Dir. Vol. VI T. 876).

Mr. Finneran, whether truthful or not, testified that he left the store at approximately 2:45 a.m. (Dir. Vol. VI T. 871). That was irrelevant, because within 15 minutes of Mr. Mansfield last

being seen with the victim at 3:00 a.m.; at 3:15 a.m., Mr. Finneran was in the area making a phone call to Mr. Sturdevant. That was testified to by Detective Schroeder, although suspiciously Mr. Finneran tried to move the time back. See (Dir. Vol. VI T. 886).

Mr. Finneran was defensively interjecting statements to support his purported innocence. If DNA was found on the victim, Mr. Finneran was ready with the explanation that the victim had scratched him. See (Dir. Vol. VI T. 863). Moreover, it is well known that a polygraph is not admissible at trial. Law enforcement never tested Mr. Finneran's DNA and never took him up on his offer for an inadmissible polygraph.

Juanita Roberson was the Winn Dixie cashier who rang up the victim's purchases during the early morning hours. Ms. Roberson saw Mr. Mansfield at the front of the Winn Dixie when she went to lunch at approximately 3:00 a.m. and returned a half an hour later. (Dir. Vol. IV T. 537). Ms. Roberson, however, observed that Mr. Mansfield had scratches or pimples on his face which showed that the scratches and pimples preexisted the victim's death. (Dir. Vol. IV T. 534, 544).

Ms. Roberson never testified that there was any discord between Mr. Mansfield and the victim. Moreover, Ms. Roberson never placed Mr. Mansfield in the area where the victim was found. The area where Ms. Roberson testified she saw Mr. Mansfield was the area in the front of the store. See (Dir. Vol. IV T. 537). As Ms.

Roberson stated regarding where she saw Mr. Mansfield and the victim: "If you're facing the front of the Winn Dixie, you have to go around and go into the Winn Dixie like towards the side of the door, but it's the front of it. But then the front of it has like a little side wall that you can lean on and that's what they were leaning on, the side wall." (Dir. Vol. IV T. 537). Mr. Finneran could have waited for Mr. Mansfield and the victim to separate, committed the murder, and then made the phone call.

Timothy Franco worked at Winn Dixie on the night in question and was interviewed by law enforcement after the victim was discovered. At trial, law enforcement testified to what Mr. Franco reported. See (Dir. Vol. VI T. 840). According to Timothy Franco, he saw an individual who matched the description of Mr. Mansfield urinating at the back of the Winn Dixie. (Dir. Vol. VI 840). The back of the Winn Dixie, under any definition of the word, was not where the body of the victim was found. Rather, the victim's body was found on the side of the Winn Dixie almost exactly half way between the front of the store where the patrons enter and the back where trucks would be unloaded. Since Mr. Mansfield was seen in the "back" of the Winn Dixie urinating, it was highly likely that Mr. Mansfield's pager fell off in the back of the Winn Dixie. This explained the presence of Mr. Mansfield's beeper on the property of Winn Dixie.

The State called multiple-convicted-felon Michael Johns a/k/a

Christopher Randall. Mr. Johns claimed that Mr. Mansfield made certain vulgar admissions. Mr. Mansfield claimed in state postconviction that counsel was ineffective for failing to adequately impeach Mr. Johns. He also argued that the jury did not know about the 10 bank robbery charges he faced, and that the State failed to correct his misrepresentations to the jury about the consideration that the State would and did provide. *See Mansfield v. State*, 911 So.2d 1160, 1174, 1175-78 (Fla. 2005).

Even without the jury knowing the full extent of the charges that Mr. Johns faced, and the full extent of the consideration he would receive for his testimony against Mr. Mansfield, Mr. Johns was highly suspect and impeached. This Court affirmed the postconviction court's finding that counsel was not ineffective because:

The postconviction court also found that Randall's extensive criminal record was presented to the jury and that trial counsel also elicited the fact that he had testified against numerous prisoners in the past. In view of this thorough examination of Randall's criminal record, we do not find error in the determination that the lack of more information about Randall's federal record did not prejudice Mansfield, and our confidence in the outcome is not undermined in view of this thorough examination of Randall's criminal record.

Id. at 1175. This Court described the cross-examination of Mr. Johns:

On cross-examination, Randall admitted that prior to Mansfield's trial, he had been an informant in other federal and state cases. Defense counsel also elicited that Randall had used other names and had lied to

officers about his birth date during prior arrests. Randall testified that he had been convicted of five felony counts in the federal system and that he received a lighter sentence after he testified against another federal prisoner. Randall also stated that he left the halfway house where he lived following his federal sentence. He told the jury that he was still awaiting sentencing on the state charges to which he had pled guilty but that he was testifying at Mansfield's trial because he wanted to "give a little something back" and not to gain any benefit for himself. During this cross-examination, defense counsel also exposed many instances where Randall's testimony conflicted with responses he gave during his deposition.

Id. at 1176. This Court found that in addition to not meeting the first two prongs of *Giglio*, which Mr. Mansfield disputed, Mr. Mansfield failed to show materiality because:

The jury was made aware of Randall's past federal convictions, his current state charges, the fact that he had escaped from a federal halfway house, and the numerous times Randall had informed on other fellow inmates. We find no error in the trial court's determination that extra charges pending against Randall would not have made Randall sufficiently less credible in the jury's eyes than he already was, and thus there is no reasonable likelihood that the jury would have found Mansfield not guilty had the jury known about these federal charges.

Id. at 1177-78.

In sum, there was not a great deal of evidence against Mr. Mansfield, or at least any convincing evidence, other than the videotaped interrogation. This, however, did not prevent this Court from ruling that the admission of the videotape was harmless beyond a reasonable doubt. Respectfully, to reach this result this Court incorrectly interpreted the facts of Mr. Mansfield's trial

and extended the evidence against him. On direct appeal, this Court found:

In the instant case, the State, in addition to the significant circumstantial evidence placing the defendant at the crime scene with the victim near the time the murder is presumed to have occurred, presented the testimony of Michael Johns, who recounted a jailhouse confession by Mansfield. Additionally, the testimony tended to show that the food stamps found in Mansfield's room the day after the murder belonged to Robles. Further, the State's medical examiner testified as to the existence of a pattern injury on Robles' neck matching the distinctive pattern found on the ring recovered from Mansfield during his arrest.

Mansfield 758 So.2d at 645.

The "significant circumstantial evidence placing the defendant at the crime scene with the victim near the time the murder is presumed to have occurred" was not significant at all. It was equally consistent with Mr. Finneran's guilt.

That Mr. Mansfield was seen with victim was of no importance. Within a short period of the 3:00 o'clock presumed time of offense, Mr. Mansfield was indeed in the Winn-Dixie with the victim, as was Mr. Finneran initially. Mr. Finneran was the odd-man-out and claimed to have left the area but, at approximately 3:15 a.m., he was still close by at the Farm Store making a collect call to Mr. Sturdevant. This was equally or more significant than Mr. Mansfield being in the area because if Mr. Finneran had a sexual interest in the victim, he was the one rejected.

Since the victim, Mr. Mansfield, and Mr. Finneran, were all

in the area during the presumed time, this was hardly significant. It was not disputed at trial and, counsel did not argue to the contrary, that Mr. Mansfield (along with Mr. Finneran) was with the victim at the Winn Dixie and near the Winn Dixie. The only witness who said Mr. Mansfield was not at the Winn Dixie was one who was compelled contrary to the Constitution to be a witness - - Scott Mansfield himself on the videotape. (SR T. 3 R. 7). Law enforcement claimed that Mr. Finneran had an alibi on the videotape of Mr. Mansfield's interrogation, but that was hardly the case when Mr. Finneran was at the Farm Store in close proximity to the murder scene at 3:15 a.m. calling Mr. Sturdevant.

The jury was left with question of why would Mr. Mansfield tell law enforcement on the videotape that he was not at the Winn Dixie when it was undisputed at trial that it was not the case. This was something an innocent person would not appear to do. Moreover, even though Mr. Mansfield may have innocently wanted to distance himself from a crime he did not commit, the jury never was informed that this was the case.

The record does not support that "the testimony tended to show that the food stamps found in Mansfield's room the day after the murder belonged to Robles." See *Id.* The actual evidence at trial showed that there was no way to tell if the food stamps found in the computer room were issued to the victim. Mr. Mansfield regularly worked construction and from time to time would come

into possession of food stamps. The victim had no money and had a reported blood alcohol level of .14. (Dir. Vol. IV T. 512). Certainly, the victim could have given Mr. Mansfield food stamps in exchange for the purchase of alcohol, Mr. Mansfield could have gotten food stamps from someone on the job site, or, he even could have found them in the street. Without any testimony to show that these food stamps were issued to the victim, any conclusion that the food stamps were evidence of a crime was speculation. Moreover, Charles Mansfield testified at trial that he knew Mr. Mansfield to use food stamps and that there were visitors to the residence who received food stamps. (Vol. IV PCR 620; Vol. V PCR. 647-648).

The testimony of Mr. Johns was highly suspect even before he wrote the letter. In postconviction, the same judge who presided over Mr. Mansfield's trial found that further impeachment of Mr. Johns would not have affected the jury's verdict, implicitly finding that at trial Mr. Johns was so thoroughly impeached at trial that he could not be impeached any further. This Court affirmed the postconviction court's decision based on this "finding." Moreover, even the prosecutor in this case did not believe that the jury would have necessarily believed Mr. Johns and stated at the postconviction hearing:

Q: And can you comment on the relative importance of Mr. Randall's testimony in the Mansfield case?

A: To the jury, maybe not at all important. I don't know how important he was to the jury. He was a person that on my evaluation was being truthful, and had very

incriminating evidence to give against the Defendant, but in my evaluation before the fact, I had to analyze that the jury might just totally discount him, and simply consider all of the other evidence as sufficient.

Q: But in your mind he was an important witness in the Scott Mansfield case?

A: In my mind, he was a witness who I believed was being truthful who had very incriminating evidence. But as I said previously, actually in my analysis before putting him on the stand, making that decision, I actually considered the fact that the jury might totally discount him and rely solely upon the other evidence.

Q: And you don't have any idea whether the jury, in fact did that or not?

A: I have no idea what the jury did.

Q: And you must have thought that when you put Mr. Randall on the stand that jury might believe what he had to say, that Mr. Mansfield had made incriminating statements to him in the holding cell at the Osceola Court house, is that correct?

A: Yes.

Q: And, in fact, Mr. Randall was the only witness in the case that testified as to any incriminating statements of Mr. Mansfield in his case, isn't that true?

A: No. I think the Detectives who interviewed him testified as to incriminating statements by Mansfield.

(Vol. VI PCR. 720-722).

The State, having the burden of proof at Mr. Mansfield's trial, did not show that Mr. Johns informed law enforcement of information that was not generally known in the community. The State had an ample right to refute any implied or express allegation of recent fabrication to show that Mr. Johns had information that was not generally known. At trial, Mr. Johns himself was impeached. The letter at issue differs from this sort of impeachment because it actually shows not just what Mr. Johns was, a convicted felon, but it also refutes his testimony against Mr. Mansfield.

The so-called ring evidence was not convincing, and probably should have been excluded as an initial matter. The State has continually urged that great weight be afforded to this Court's finding of fact that the ring seized from Mr. Mansfield "matched" the imprint on the victim's neck. The trained medical examiner, Dr. Martin, did not say that the ring caused the victim's neck injury, only that it could have. Medical Examiner Julie Martin testified only that the Mr. Mansfield's ring could have caused the markings on the victim's neck, not that the ring did cause the injuries on the victim's neck. (Dir. Vol. IV T. 505). She also stated that another object with those type of characteristics could have caused the marks as well. (Dir. Vol. IV T. 505-06). The medical examiner's office initially believed that the neck injuries could have been caused by a belt buckle. (Dir. Vol. IV T. 504).

Certainly, this whole neck-print certainty would have been challenged if it were actually the opinion of a witness. There was little incentive to challenge the actual opinion of the medical examiner when the medical examiner stated that a number of items could have caused the pattern injury and in no way stated that Mr. Mansfield's ring was the probable cause of the injury.

Had the medical examiner's opinion been more definite, Mr. Mansfield would have had the right to hire an expert and obtain an accurate opinion that the ring only *could have* caused the injury,

if in fact that was even the case.⁵ Mr. Mansfield had no way of knowing that the actual testimony of the medical examiner would be transformed into a certainty that the State would later rely upon to deny Mr. Mansfield the relief he was entitled to under the Constitution. There was no incentive to do so because the trial testimony was consistent with the mere fact that like the knife, or any other knife with similar features, the ring could have been used in the crime, just like the food stamps, could have been taken from the victim. "Could have" was a long way from "actually was," and insufficient to show beyond a reasonable doubt that Mr. Mansfield was guilty.

This Court did not have a superior vantage point to the medical examiner and had none of her training and experience. Second, even if this Court engaged in unfronted scientific analysis, this Court never stated that it was correcting the scientific error that the accepted expert medical examiner made in this case in only finding that the ring could have caused the injury. This Court never stated that it compared the ring to the photographs of the victim's neck and found a match.

Absent the videotaped interrogation, and Mr. Johns' testimony, the evidence against Mr. Mansfield was circumstantial

⁵ It is possible that the defense did hire such an expert when it appeared that the State was going to call an additional "expert" to say that the ring and the imprint on the victim's neck was consistent. See (Dir. Vol. II T.239).

and of little probative value. Mr. Mansfield was seen with the victim as was Mr. Finneran. The last person that was confirmed in the area was Mr. Finneran who was making a phone call at 3:15 a.m. Even if Mr. Mansfield's pager was allegedly found somewhere near the crime scene, there was no evidentiary weight, even if law enforcement did not move the pager. Pagers fall off people all of the time, not because the person wearing the pager is involved in a crime, but because of gravity. Food stamps are fungible, and unfortunately, readily traded by the people who receive them. The medical examiner testified that the ring, like a belt buckle, a purse strap or any other similar item, could have caused the imprint.

The State's case was held together by the glue of Mr. Mansfield's illegal interrogation and the string of Michael Johns' testimony. Without both, the State's case falls apart.

B. THE VIDEOTAPED INTERROGATION OF MR. MANSFIELD HAD A DEVASTATING EFFECT ON HIS DEFENSE AND PREJUDICED HIM.

With all due respect to this Court's finding that the admission of Mr. Mansfield's videotaped interrogation was harmless, the actual effect was devastating to Mr. Mansfield's defense. The videotape impacted Mr. Mansfield's presumption of innocence, the jury's perception of Mr. Mansfield and, ultimately, the jury's verdict and death sentence. This was especially true when the prejudice was combined with the testimony of Mr. Johns. This Court

should consider that at a retrial, the jury would not be influenced by the fruit of law enforcement's illegal interrogation.

In stark contrast to the successive postconviction court's warnings to Mr. Johns, Mr. Mansfield was not informed he had the right to remain silent. Until he was arrested, he also was never informed of his right to an attorney and to have an attorney present during law enforcement's interrogation of him. There was no recess taken, no counsel appointed, and Mr. Mansfield was not free to answer only the questions he wanted.

As an initial matter, all of the evidence that State sought to admit was harmful to Mr. Mansfield because it was adverse to his presumed innocence. If the evidence was truly harmless, the State never would have bothered to admit the videotape and force a jury to sit through an approximately 2 hour video presentation. Contrary to the State's argument that Mr. Mansfield's videotaped interrogation was harmless, the lead prosecutor testified at the postconviction hearing as follows:

Q: And did you put Mr. Mansfield's statement before the jury because you felt that that statement he made to law enforcement officers was incriminating?

A: The Defendant, Mr. Mansfield's Statement?

Q: Yes.

A: Yes.

(Vol. VI PCR. 722). The prosecutor was at Mr. Mansfield's trial and knew exactly what effect the videotape had on the jury - - it was incriminating.

The videotaped interrogation showed law enforcement repeatedly accusing Mr. Mansfield of murder and repeatedly confronting Mr. Mansfield with otherwise inadmissible evidence and false facts. Law enforcement went so far as to discuss the victim's children who were now motherless because of the homicide, thus allowing victim impact evidence to be heard during the guilt phase of Mr. Mansfield's trial. See (SR T. 27, R. 31). Law enforcement even went so far as to ask Mr. Mansfield if he was a "sicko." (SR T. 18, R. 22).

Law enforcement never told Mr. Mansfield he was being videotaped. Without *Miranda* warnings, law enforcement never instructed Mr. Mansfield that what he said would be used against him in a court of law. Not wanting to be in law enforcement's interrogation room, on the videotape played to the jury, Mr. Mansfield appears evasive and belligerent. He repeatedly stated that he was drunk and that he did not remember events from the night in question. Mr. Mansfield's attempt to avoid discussing the subject matter by claiming a lack of memory led law enforcement to confronting Mr. Mansfield with the proposition that if he could not remember certain events of significance to law enforcement that occurred the night before, he therefore could not remember if he committed a murder. (SR T. 46, R. 50).

Mr. Mansfield's initial denial that he was with the victim, was clearly rebutted by the witnesses at trial who placed Mr.

Mansfield at the scene with the victim, albeit with Mr. Finneran as well. Mr. Mansfield, who later admitted that he went to Winn Dixie with the victim, also rebutted it. See (SR T. 43 R. 47). The videotape and the witnesses showed Mr. Mansfield was lying about facts that, to the jury, a seemingly innocent person would not have hesitated to inform law enforcement. There was never any argument made to the jury that Mr. Mansfield was simply trying to avoid incriminating himself, falsely or not. Mr. Mansfield had an absolute right to remain silent and not incriminate himself, but because law enforcement never told him of this right, he mistakenly sought, in his own belligerent way, to avoid admitting any fact that would aid law enforcement in implicating him in a murder that he knew occurred, and that it was obvious he was a suspect.

Compared to the average juror, Mr. Mansfield's interaction with law enforcement was beyond the experience of the average citizen who made up the jury. If any of the jurors had information about a crime it was highly unlikely that law enforcement escorted them into a room, blocked the exit and repeatedly hurled accusations at them. It is doubtful that law enforcement ever treated any of the jurors the way that law enforcement treated Mr. Mansfield in this case. To the jurors who viewed the videotape, it appeared that law enforcement treated Mr. Mansfield differently than the average citizen because law enforcement believed that Mr. Mansfield was guilty.

The jury saw Mr. Mansfield presented and challenged in a way that none of the State's witnesses were challenged at Mr. Mansfield's trial. Counsel may have taken pretrial depositions of Mr. Johns and Mr. Finneran, but even if there were accusations made at deposition, it was highly likely that trial counsel and the State were not as aggressive as the law enforcement officers who interrogated Mr. Mansfield. Although the depositions of Mr. Johns and Mr. Finneran were not admitted as substantive evidence, there was never any hearing before the trial judge that would have been occasioned had either side employed the confrontational tactics that law enforcement employed against Mr. Mansfield.

When Mr. Finneran and Mr. Johns testified at trial they both had the benefit of having had similar questions asked of them at deposition and by law enforcement. The jury did not see the videotape of either individual being questioned. The State had the opportunity to prepare each witness before the trial if necessary. Mr. Johns had a lawyer on his State charges during the time he became a witness against Mr. Mansfield and admitted to consulting his lawyer before trial. See (Dir. Vol. VII T. 917).

Mr. Finneran had pending charges at the time he testified against Mr. Mansfield and could have spoken to an attorney prior to questioning if he chose to exercise a right that law enforcement should have explicitly advised Mr. Mansfield he had. See (DIR. VOL VI T. 888); See also (Dir. Vol. VI T. 888-92)(detailing Mr.

Finneran's pending State charges). In contrast, Mr. Mansfield did not have any opportunity to present himself to the jury in the way that Mr. Finneran and Mr. Johns did.

Either Mr. Mansfield specifically asked for an attorney and law enforcement told him that he did not need one, or he was not informed that he had the right to speak to an attorney before and during any questioning as required by *Miranda*. As a result, Mr. Mansfield was not prepared for the questions law enforcement would ask him. Mr. Mansfield was also not informed that not only what he said, but also, how he said it would be used by the State, in violation of *Miranda*, to portray Mr. Mansfield as guilty. Unlike Mr. Finneran and Mr. Johns, Mr. Mansfield had no knowledge that what he said would be used against him and viewed by the very jury that would be evaluating his credibility, his culpability and ultimately deciding his guilt.

While both Mr. Johns and Mr. Finneran were impeached, trial counsel was prohibited by the rules of evidence, trial practice and professional responsibility from simply calling the State's witnesses liars or just accusing them of lying. Florida law allowed impeachment of a witness by prior inconsistent statement and prior conviction; it did not allow trial counsel to call either Mr. Johns or Mr. Finneran a "sicko" as law enforcement called Mr. Mansfield during the videotaped interrogation. The difference was striking and was manifested in how the jury viewed the testimony of these

witnesses in comparison to Mr. Mansfield's compelled testimony on videotape.

The jury had to confront the critical question of whom to believe; Mr. Mansfield on video or likely-suspect William Finneran; Mr. Mansfield on video or prior-convicted-felon Michael Johns. There was simply no way a jury could believe both, but even these dubious witnesses compared favorably to Mr Mansfield's performance on the videotape.

Mr. Finneran came with the false suggestion that he had an alibi. He was able to present his "alibi" to the jury under far more favorable circumstances than Mr. Mansfield encountered in the interrogation room. Mr. Johns testified that Mr. Mansfield confessed to the crime in some rather vulgar terms. Either Mr. Mansfield did or he did not do so. Despite the dubious nature of Mr. Johns' testimony, the jury certainly would have found that these vulgar statements falsely attributed to Mr. Mansfield were consistent with Mr. Mansfield's unscripted performance on the videotape. Thus, the admission of the videotape was devastating when combined with Mr. Johns' testimony.

C. THERE WAS INSUFFICIENT EVIDENCE THAT MR. MANSFIELD COMMITTED THE OFFENSE; THE ONLY DIRECT EVIDENCE OF GUILT AGAINST MR. MANSFIELD WAS THE TESTIMONY OF MR. JOHNS.

"[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

In re Winship, 397 U.S. 358, 364 (1970). There was not proof beyond a reasonable doubt that Mr. Mansfield committed the offense with consideration of Mr. Mansfield's illegal interrogation and Mr. Johns' testimony. Without such consideration, the lack of proof becomes even more pronounced.

On retrial, the State would have to decide whether to call Mr. Johns and have him impeached with his own letter. While he was impeached at the original trial, there was greater impeachment available at the time of trial and more today following Mr. Johns' letter. There comes a point at which no reasonable juror or fact-finder can believe a word he says. While that point should have been reached earlier, Mr. Johns' letter rendered him unfit for testimony. If the State decided not to call Mr. Johns, the State's case becomes a pure circumstantial evidence case without the prejudice caused by the use of Mr. Mansfield's illegal interrogation. Recently, in *Hodgkins v. State*, __So.3d__;40 Fla. L. Weekly 346 (2015), this Court vacated a conviction in a case involving more incriminating circumstantial evidence than that present in Mr. Mansfield's case. Unlike in *Hodgkins*, there was no DNA evidence linking Mr. Mansfield to the victim. This Court vacated the judgment and sentence because of insufficient evidence based on this legal standard:

There is sufficient evidence to sustain a conviction "if, after viewing the evidence in the light most favorable to the State, a rational trier of fact could

find the existence of the elements of the crime beyond a reasonable doubt." *Johnston v. State*, 863 So. 2d 271, 283 (Fla. 2003) (citing *Banks v. State*, 732 So. 2d 1065 (Fla. 1999)).

However, purely circumstantial cases, such as this one, are reviewed differently:

A special standard of review of the sufficiency of the evidence applies where a conviction is wholly based on circumstantial evidence. *Jaramillo v. State*, 417 So. 2d 257 (Fla. 1982). Where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence. *McArthur v. State*, 351 So. 2d 972 (Fla. 1977); *Mayo v. State*, 71 So. 2d 899 (Fla. 1954). The question of whether the evidence fails to exclude all reasonable hypotheses of innocence is for the jury to determine, and where there is substantial, competent evidence to support the jury verdict, we will not reverse. *Heiney v. State*, 447 So. 2d 210 (Fla.), cert. denied, 469 U.S. 920 (1984); *Rose v. State*, 425 So. 2d 521 (Fla. 1982), cert. denied, 461 U.S. 909 (1983), disapproved on other grounds, *Williams v. State*, 488 So. 2d 62 (Fla. 1986).

Thorp v. State, 777 So. 2d 385, 389 (Fla. 2000) (quoting *State v. Law*, 559 So. 2d 187 (Fla. 1989)).

Further,

[i]n meeting its burden, the State is not required to "rebut conclusively, every possible variation of events" which could be inferred from the evidence, but must introduce competent evidence which is inconsistent with the defendant's theory of events. *Darling[v. State*, 808 So. 2d 145, 156 (Fla.)] (quoting *Law*, 599 So. 2d at 189). Once the State meets this threshold burden, it becomes the jury's duty to determine whether the evidence is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt. *Id.*

Johnston, 863 So. 2d at 283.

We reiterate, however, that "[a]lthough the jury is the trier of fact, a conviction of guilt must be reversed on

appeal if it is not supported by competent, substantial evidence." *Lindsey v. State*, 14 So. 3d 211, 215 (Fla. 2009) (quoting *Ballard v. State*, 923 So. 2d 475, 482 (Fla. 2006)) (internal quotation marks omitted).

Finally, this Court has instructed that "[s]uspicious alone cannot satisfy the State's burden of proving guilt beyond a reasonable doubt[.]" *Ballard*, 923 So. 2d at 482. In fact, we have held that "even a 'deep suspicion the appellant committed the crime charged is not sufficient to sustain [a] conviction.'" *Lindsey*, 14 So. 3d at 216 (quoting *Williams v. State*, 143 So. 2d 484, 488 (Fla. 1962)).

Evidence which furnishes nothing stronger than a suspicion, even though it would tend to justify the suspicion that the defendant committed the crime, [] is not sufficient to sustain [a] conviction. It is the actual exclusion of the hypothesis of innocence which clothes circumstantial evidence with the force of proof sufficient to convict. Circumstantial evidence which leaves uncertain several hypotheses, any one of which may be sound and some of which may be entirely consistent with innocence, is not adequate to sustain a verdict of guilt. Even though the circumstantial evidence is sufficient to suggest a probability of guilt, it is not thereby adequate to support a conviction if it is likewise consistent with a reasonable hypothesis of innocence.

Dausch, 141 So.3d at 518 (quoting *Ballard*, 923 So. 2d at 482) (alterations in original).

Hodgkins v. State, __So.3d__;40 Fla. L. Weekly 346 (2015).

There was far less evidence against Mr. Mansfield than there was against Mr. Hodgkins. In Mr. Mansfield's case the State's evidence that was not the result of Mr. Johns' was purely circumstantial. As discussed above, what the State offered as incriminating actually had innocent explanations. Without Mr. Johns and the illegal interrogation of Mr. Mansfield, the State's

case was a collection of forced suspicions. It was also a case in which suspicions concerning the acts of Mr. Finneran refuted the State's theory of the case and reinforced Mr. Mansfield's hypothesis of innocence.

D. MR. JOHNS IMPACT ON EVERY COURT DECISION

Mr. Johns impacted every decision that was harmful to Mr. Mansfield from the jury's finding of guilt through each and every court decision. Mr. Johns has been critically intertwined with the court decisions denying Mr. Mansfield relief from the constitutional violations he has suffered. The most recent letter requires that those issues be decided in light of the letter. Only then would Mr. Mansfield have fair judicial review in conformance of with the Constitution. Courts have used Mr. Johns' testimony as follows:

1. Michael Johns References from this Court's opinion on direct appeal.

The State also introduced the testimony of convicted felon Michael Derrick Johns who recounted a jailhouse conversation with Mansfield in which Mansfield confessed to Robles' murder.

Mansfield v. State, 758 So. 2d 636, 641-642 (Fla. 2000).

In the instant case the State, in addition to the significant circumstantial evidence placing the defendant at the crime scene with the victim near the time the murder is presumed to have occurred, presented the testimony of Michael Johns, who recounted a jailhouse confession by Mansfield.

Id. at 645.

Mansfield also alleges error in the trial court's decision to accord the voluntary intoxication mitigator little weight. The weight to be assigned to a mitigating factor lies within the discretion of the trial court. See *Campbell*, 571 So. 2d at 420. "[T]o be sustained, the trial court's final decision in the weighing process must be supported by 'sufficient competent evidence in the record.'" *Id.*

The evidence did establish that Mansfield consumed alcohol on the night of the murder. However, in its sentencing order, the trial court found that there was no evidence indicating that Mansfield's use of alcohol rendered him unable to realize the import of his actions. Instead the court found that the evidence established that he was keenly aware of his actions:

Based upon the testimony, it is quite clear that the defendant has had a long history of alcohol abuse dating back many years. It is also clear that the defendant was drinking the night of this crime. But there is no evidence to show that at the time of the commission of this horrible crime that he did not know what he was doing or that alcohol has affected him in any way. The statements by the defendant to Michael Johns about what he did to the victim shows that he was keenly aware of what he was doing.

The trial court's decision in this regard is consistent with this Court's decision in *Raleigh v. State*, 705 So. 2d 1324, 1330 (Fla. 1997), *cert. denied*, 525 U.S. 841, 142 L. Ed. 2d 84, 119 S. Ct. 105 (1998), where we found no abuse of discretion in the trial court's decision to assign little weight to the proposed voluntary intoxication mitigator based largely on evidence of the defendant's competence and purposefulness in carrying out the charged crime. Accordingly, we find that the trial court did not abuse its discretion in deciding to accord the voluntary intoxication mitigator little weight.

Id. at 646-47.

Turning to proportionality, Mansfield argues the present case is not the most aggravated and is far from unmitigated. This Court's proportionality review focuses on the totality of the circumstances in a case and

compares it with other capital cases to ensure uniformity in application. See *Terry v. State*, 668 So. 2d 954, 965 (Fla. 1996). After reviewing the circumstances in the instant case we find the death penalty proportionate when compared to other cases in which we have found death the appropriate penalty. See *Davis v. State*, 703 So. 2d 1055, 1061-62, (Fla. 1997), *cert. denied*, 524 U.S. 930, 118 S. Ct. 2327, 141 L. Ed. 2d 701 (1998) (affirming the imposition of death where the trial court found, as in this case, the two aggravating factors of heinous, atrocious, or cruel and committed during the course of a sexual battery outweighed slight nonstatutory mitigation); *Hauser v. State*, 701 So. 2d 329 (Fla. 1997) (death sentence proportionate where the victim was strangled and the trial court found the three aggravators of heinous, atrocious, or cruel, cold, calculated, and premeditated, and pecuniary gain balanced against one statutory mitigator and four nonstatutory mitigators).

Id. at 647.

Finally, although not challenged by Mansfield, we have independently reviewed the evidence and find it sufficient to support the first-degree murder conviction. See *Jennings v. State*, 718 So. 2d 144, 154 (Fla. 1998), *cert. denied*, 527 U.S. 1042, 144 L. Ed. 2d 805, 119 S. Ct. 2407 (1999).

Accordingly, for the reasons expressed, we affirm the conviction and sentence of death.

Id. at 649.

2. Michael Johns References from this Court's opinion on postconviction appeal.

The State also introduced the testimony of convicted felon Michael Derrick Johns who recounted a jailhouse conversation with Mansfield in which Mansfield confessed to Robles' murder. The defense did not present any evidence.

Mansfield v. State, 911 So. 2d 1160, 1166 (Fla. 2005) citing *Mansfield v. State*, 758 So. 2d 636, 640-642 (Fla. 2000) (footnotes

omitted). The opinion continues:

Issue 3: *Giglio* Claim

Mansfield asserts that the testimony given at trial by Michael Derrick Johns, also known as Christopher Scott Randall (Randall), was false testimony in violation of *Giglio v. United States*, 405 U.S. 150, 31 L.Ed. 2d 104, 92 S. Ct. 763 (1972). A *Giglio* violation is established when it is shown that (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material. *Guzman v. State*, 868 So. 2d 498, 505 (Fla. 2003). A statement is material if there is any reasonable likelihood that the false testimony could have affected the jury's decision. *Id.* at 507.

At trial, Randall testified that while he was sharing a holding cell with Mansfield at the Osceola County Courthouse, Mansfield confessed to killing Robles. According to Randall, Mansfield described the details of the murder and then told him that he went swimming after the murder so that the chlorine would eliminate any evidence on him. Randall testified that no deals or promises had been made in exchange for his testimony, although he was awaiting sentencing and believed that the trial judge knew that he was testifying on behalf of the State in Mansfield's case. Randall stated that he was awaiting sentencing after pleading guilty in Osceola County, and when asked whether he had charges for which he was being prosecuted outside of Osceola County, he stated that he did not know what was happening with other charges he had in Pinellas County. He also later stated that he had no pending trials.

On cross-examination, Randall admitted that prior to Mansfield's trial, he had been an informant in other federal and state cases. Defense counsel also elicited that Randall had used other names and had lied to officers about his birthdate during prior arrests. Randall testified that he had been convicted of five felony counts in the federal system and that he received a lighter sentence after he testified against another federal prisoner. Randall also stated that he left the halfway house where he lived following his federal sentence. He told the jury that he was still awaiting sentencing on the state charges to which he had pled guilty but that he was testifying at Mansfield's trial

because he wanted to give a little something back and not to gain any benefit for himself. During this cross-examination, defense counsel also exposed many instances where Randall's testimony conflicted with responses he gave during his deposition.

Mansfield's claim is that Randall gave false testimony because, when asked whether he had any other pending charges, he failed to tell the jury that he had been indicted for an additional eleven federal charges on March 1, 1996. The record reflects that Randall was not arrested pursuant to this indictment until after Mansfield's trial.

Randall was in jail at the time that Mansfield allegedly made the incriminating statements to him because he had pled guilty to state charges of robbery, attempted robbery, escape, and battery in Osceola County. While awaiting sentencing for these convictions, on March 26, 1997, Randall requested information from the Osceola County Sheriff's Office about any pending holds on potential federal charges, and the response he received stated: "At this time I have: USMO, Middle District ch: Escape, FDLE - Tampa Ch. Robbery x2, FDLE - Tampa Ch. G/T x2, USMO - Middle District Ch: Bank Robbery & Escape, Pinellas Co. Ch: G/T. That is what I have listed, there may be more?" Randall was arrested on the federal indictment on November 19, 1997, after he testified at Mansfield's trial on November 7. Mansfield asserts that the information on the pending holds that Randall received on March 26, 1997, proved that both he and the State knew about his additional pending federal charges and that Randall and the State failed to reveal this information to the jury.

Dorothy Sedgwick, an assistant state attorney for Osceola County, prosecuted Mansfield. At the postconviction hearing, she testified that she considered Randall's testimony as to Mansfield's confession truthful, but she thought the jury might discount it given his extensive criminal record. She also stated that she did not have a good understanding of what the federal charges against Randall were at the time of Mansfield's trial, although she and Mansfield's attorney had done extensive research in an effort to determine what charges Randall was facing. She stated that she gave Mansfield's defense counsel any

information she had about charges pending against Randall. Sedgwick also stated that she had never negotiated a lower sentence on Randall's behalf. She did, however, speak to the prosecutor for the State in Randall's case six days after the Mansfield trial. This prosecutor subsequently agreed to sentence Randall at the lower end of the sentencing guidelines for his charges of robbery, attempted robbery, escape, and battery.

Kathleen Flammia, trial counsel for Mansfield, stated at the evidentiary hearing that if she had had any knowledge of Randall's federal charges at trial, she would have used that information to impeach him. She stated that she and the defense investigator performed research to determine whether Randall had federal charges, but they were unable to find any information. She also stated that she knew there was a federal hold on Randall's charges because he told her this at his deposition before trial, but she did not use that information to impeach him. She stated that knowing he had a federal hold placed on him was different than knowing about charges against him and that she was not sure how she would use the fact of his federal hold to impeach him. She stated that she had reviewed his Osceola County Jail file.

The only evidence Mansfield presented was that Randall and the State knew about his federal hold, but defense counsel Flammia testified that she also knew about a federal hold." Flammia noted in her testimony that she was not sure if the federal hold that she was testifying to knowing about was the same federal hold to which postconviction counsel was referring. Whether or not trial counsel knew about the particular holds referenced in the note Randall received from the Osceola County Sheriff's Office on March 26, 1997, however, does not change our analysis because Mansfield has failed to demonstrate that Randall's testimony at trial was false.] When asked if he had any other charges or was awaiting any other trials, there was no evidence presented that Randall was lying when he responded in the negative. Furthermore, there is no evidence that the State knew of the federal charges. We find that Mansfield has failed to meet the first two prongs of *Giglio*.

We also hold that Mansfield has not demonstrated a *Giglio* violation because he has failed to prove the third prong

of materiality. While, as Mansfield points out, the materiality test under *Giglio* is more "defense friendly" than the materiality test in *Brady*, these facts still fail to meet this standard. *Guzman*, 868 So. 2d at 507. The jury was made aware of Randall's past federal convictions, his current state charges, the fact that he had escaped from a federal halfway house, and the numerous times Randall had informed on other fellow inmates. We find no error in the trial court's determination that extra charges pending against Randall would not have made Randall sufficiently less credible in the jury's eyes than he already was, and thus there is no reasonable likelihood that the jury would have found Mansfield not guilty had the jury known about these federal charges.

Mansfield also claims that Randall lied at the trial when he stated that he did not expect to receive any benefits for his testimony against Mansfield. Assistant State Attorney Sedgwick stated in her opening statement that Randall would tell the jury that no agreement existed, although Randall was hoping that his cooperation would affect his upcoming sentencing. Mansfield asserts that this statement and the fact that Sedgwick spoke to a prosecutor on Randall's behalf within a month of Mansfield's trial conflicted with Randall's testimony that he did not expect any benefit as the result of his testimony. The postconviction court found there was no evidence that Randall was promised any benefit in exchange for his testimony. We do not find that the trial court's finding was error. We agree and affirm the postconviction court's denial of this claim.

We have considered each of the claims presented by Mansfield in respect to the denial of his rule 3.851 motion. We affirm the trial court's denial of the motion.

Mansfield v. State, 911 So. 2d 1160, 1175-78 (Fla. 2005)(footnotes omitted).

3. Michael Johns References from the United States District Court's Order.

In denying Mr. Mansfield's *Giglio* claim he raised in his

federal habeas petition, the court stated:

Claim Nine - *Giglio* Violation

Petitioner next asserts that the State presented false or misleading testimony from Michael Derek Johns, also known as Christopher Randall ("Randall"), a jailhouse inmate who testified at Petitioner's trial that Petitioner made a number of incriminating statements to him while the two were sharing a holding cell at the Osceola County Courthouse. Specifically, Petitioner characterizes Randall's trial testimony concerning, inter alia, the status of certain pending federal charges against him as false and misleading and asserts that the State knew of its falsity and failed to correct it in violation of *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972).

Petitioner raised this claim for the first time in his motion for post-conviction relief. The trial court denied the claim, and Petitioner appealed. On appeal, the Florida Supreme Court considered Petitioner's *Giglio* claim and found it to be without merit. *Mansfield II*, 911 So. 2d at 1176-78. Nevertheless, Petitioner attacks the findings made by the Florida Supreme Court and contends that the prosecution "failed in its obligation to present Mr. Randall's testimony in an accurate and truthful manner" and "Mr. Randall's falsehoods and omissions deprived the jury of critical information which bore directly on his credibility and motivation to fabricate testimony." (Doc. No. 1 at 48, 52.)

Under *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959), and *Giglio v. United States*, 405 U.S. 150, 153-54, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972), a defendant's due process rights are violated when the prosecution knowingly fails to correct a material falsehood in the testimony of any witness. This rule covers not only inculpatory false testimony, but also falsehoods tending to enhance the credibility of a witness. *Napue*, 360 U.S. at 269. "[T]he falsehood is deemed to be material 'if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.'" *United States v. Alzate*, 47 F.3d 1103, 1110 (11th Cir. 1995) (quoting *United States v. Agurs*, 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976)). The thrust of *Giglio* and its progeny has

been to ensure that the jury knows the facts that might motivate or bias a witness, and to ensure that the prosecutor does not fraudulently conceal such facts from the jury. *Ventura v. Att'y Gen., Fla.*, 419 F.3d 1269, 1282 (11th Cir. 2005).

To establish a *Giglio* violation, a defendant must demonstrate that testimony was false, that the State knew the testimony was false, and that the false testimony was material (i.e., there was a reasonable likelihood that the false testimony could have affected the judgment of the jury). *DeMarco v. United States*, 928 F.2d 1074 (11th Cir. 1991). In other words, to prevail on his *Giglio* claim, Petitioner "must establish that the prosecutor knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony, and that the falsehood was material." *Maharaj v. Sec'y for the Dep't of Corr.*, 432 F.3d 1292, 1312 (11th Cir. 2005)(citation omitted). The false testimony is material when it could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. *United States v. Dickerson*, 248 F.3d 1036, 1042 (11th Cir. 2001).

It is clear that Randall is a professional crook with an amazing ability to coax fellow inmates into confessing their crimes. He is also an habitual snitch, having testified or provided incriminating information against at least twenty (20) of his fellow inmates. In this case, he received Petitioner's confession (and that of another cell mate) while in a courthouse holding cell. Ostensibly, Petitioner, while fighting first degree murder charges, decided to confess to Randall, even though they barely knew each other, and Petitioner had no reason to trust him. In exchange for his testimony against Petitioner, the State made his assistance known to both State and federal prosecutors in connection with pending sentencings. While no direct promises were made by the prosecutor in this case, Randall knew well how the system works. Providing assistance to the State in someone else's trial results in favorable consideration by the sentencing court and the likelihood of a reduced sentence.

With this scenario in mind, one must take Randall's testimony with a grain of salt. Indeed, there is good

reason to reject his testimony as incredible. However, the jury heard his testimony as well as the impeaching evidence against him. The weight, if any, given by the jury to this testimony is, of course, unknown. In any case, there was evidence from which a jury could convict Petitioner, even if Randall's testimony were substantially discounted. Moreover, there is no support for the argument that Randall's testimony was constitutionally infirm.

In assessing Petitioner's claim, the Florida Supreme Court correctly cited the standard for evaluating *Giglio* claims and determined that Petitioner failed to demonstrate that such a violation occurred in his case. Similarly, this Court finds no *Giglio* violation in connection with Randall's testimony. First, Randall's testimony concerning his pending federal charges was not ostensibly false. Second, defense counsel was aware of, and had access to, the same information as the State's attorney concerning the federal charges pending against Randall. Moreover, even if Randall's testimony concerning his pending federal charges was false, it was immaterial.

Although Randall was no doubt an important witness to the State, Petitioner's trial counsel thoroughly impeached his credibility on cross-examination. The jury was made aware of Randall's extensive criminal history and reputation for informing on fellow inmates. Further, trial counsel attacked Randall's motivation for testifying, focusing on the fact that he was awaiting sentencing on State charges to which he pled guilty in the hopes that his cooperation with law enforcement would aid in a favorable sentence. If the things the members of the jury *already* knew about Randall did not convince them to reject his testimony, it seems unlikely that the knowledge that he was facing additional federal charges would have led them to do so. Accordingly, Petitioner's *Giglio* claim is denied.

Mansfield v. Sec'y, 601 F.Supp. 2d 1267, 1288-90 (USDC MD FLA 2009).

4. Michael Johns References in the Eleventh Circuit Court of Appeals Opinion Reversing the District Court's Grant of Relief.

In *Mansfield v. Sec'y, Dep't of Corr.*, 679 F.3d 1301 (11th Cir. 2012), the Eleventh Circuit recounted this Court's finding: "In the instant case the State, in addition to the significant circumstantial evidence placing the defendant at the crime scene with the victim near the time the murder is presumed to have occurred, presented the testimony of [Christopher Randall a/k/a] Michael Johns, who recounted a jailhouse confession by Mansfield." *Id.* at 1305. The court went on to find:

On appeal, the State contends that the district court erred in granting Mansfield habeas relief, having wrongfully substituted its own independent factfinding about the nature and strength of the State's evidence against Mansfield for the judgment of the Florida Supreme Court. In particular, the State says that the district court rejected the state court's factfinding determination by failing to assign sufficient (if any) probative value to: the jailhouse confession testimony of Christopher Randall a/k/a Michael Johns ("Randall"); the incriminating evidence, especially food stamps, found in Mansfield's room at his brother's apartment; the medical examiner's testimony regarding a distinctive pattern injury on Robles' neck that was consistent with Mansfield's "grim reaper" ring; and the significant circumstantial evidence, including Mansfield's pager, placing Mansfield with Robles at the scene of the crime at almost the exact time of Robles' death.

In response, Mansfield primarily challenges the probative value of the State's evidence against him, asserting that the State only had a weak case for conviction without the videotaped interrogation. Mansfield claims that: the testimony of Randall, who was heavily impeached at trial, was not credible in the least; the food stamps found in Mansfield's room were "not incriminating" because the State never proved that

they were issued to Robles; the pattern injury on Robles' neck was "not incriminating" because the medical examiner only testified that the grim reaper ring could have caused the injury, not that it definitively caused the injury; Mansfield's pager found near Robles' body had "no evidentiary weight" because "[p]agers fall off of people all of the time"; and the identity of the murderer is uncertain because Finneran had a weak alibi and was also observed near the crime scene around the time of the murder. In short, Mansfield's position is that, absent the videotaped interrogation, the evidence against him had precious little probative value.

Viewing the evidence through the lens of AEDPA, as we must, the State has the better of the argument. Here, in connection with its harmless error determination, the Florida Supreme Court plainly made factual findings crediting four important pieces of evidence in support of Mansfield's conviction: (1) the testimony of Randall, who recounted a very detailed jailhouse confession by Mansfield; (2) the testimony of the medical examiner that a pattern injury found on the victim's neck "match[ed]" the distinctive pattern found on the ring recovered from Mansfield during his arrest; (3) the evidence tending to show that the food stamps found in Mansfield's room the day after the murder belonged to the victim; and (4) the "significant circumstantial evidence placing the defendant at the crime scene with the victim near the time the murder is presumed to have occurred." *Mansfield I*, 758 So. 2d at 645. In concluding that the error -- admission of the videotaped interrogation -- was not harmless under either AEDPA/Chapman or Brecht, the district court improperly afforded virtually no deference to the Florida Supreme Court's reliance on the considerable body of evidence mounted against Mansfield.

Id. 1308-09.

To begin with, the district court erred in completely rejecting the Florida Supreme Court's credibility determination about Randall, who testified at trial that Mansfield had confessed to the murder during a time in which Mansfield and Randall shared a holding cell. Randall testified that Mansfield told him that "he cut the fucking bitch's tits off," and that he cut Robles' vaginal area, but that he wasn't concerned with getting

caught because he went swimming in a nearby pool after the murder "so that the chlorine would eat the blood and get the shit out from underneath his fingernails." The district court considered Randall's testimony highly suspect. The district court pointed out Randall's extensive criminal history and "fantastic record of extracting confessions from his cell mates." 601 F. Supp. 2d at 1290, 1305. The district court also noted that "there was no information in Mansfield's alleged confession that was unknown to the general public by that time." *Id.* at 1306. However, the Florida Supreme Court's finding that Randall's testimony was credible was not rebutted by clear and convincing evidence, and the district court was plainly required to presume the correctness of that factual finding under AEDPA. 28 U.S.C. § 2254(e)(1). Both Randall's state felony convictions and his prolific history of extracting confessions were presented to the jury at great length during the defense's cross-examination of Randall. Nonetheless, the jury convicted Mansfield, and the Florida Supreme Court credited Randall's testimony as evidence contributing to Mansfield's conviction. In addition, we can find no record support for the district court's determination that the contents of Randall's testimony were known to the general public at the time of Mansfield's jailhouse confession.

Id. at 1310.

In short, viewing the evidence in light of the record as a whole and accepting as correct the unrebutted factual findings of the Florida Supreme Court, we are compelled to conclude that the erroneous admission at trial of a videotape of Mansfield's interrogation by law enforcement officers was harmless error under Brecht. Accordingly, we reverse the district court's order and judgment granting habeas relief on this claim.

Id. at 1314.

E. THE ADMISSIBILITY OF MR. JOHNS' LETTER

Mr. Mansfield surmounted the initial hurdle of having the letter admitted at the successive evidentiary hearing. See (Vol. V SPCR. 313). The court assumed that Mr. Johns authored the letter

and found that Mr. Mansfield was not required to prove authenticity. The letter did not have to be admissible as substantive evidence in the defense case-in-chief to have an effect on the outcome of a retrial.

If Mr. Johns was called at a retrial to provide the same false testimony he provided at the original trial, the State would do so at its own peril. However Mr. Johns' letter is characterized, it unmistakably expands the level of untrustworthiness he presented beyond even his multiple felony convictions. The State would lose all credibility if it presented a witness that wrote a letter that Mr. Johns did. In addition to his multiple felonies and crimes involving dishonesty, Mr. Johns lied at least one more time, and for a reasonable jury that would be one time to many.

The lower court's order missed the significance of the letter and the affect that it would have at retrial. Without revelation as to the law enforcement and the prosecution's misconduct, Mr. Mansfield would not call Mr. Johns as a witness based on the letter at a retrial. Mr. Johns led to Mr. Mansfield's false conviction and death sentence at the first trial. Seeking the fair and just trial that he was originally denied, Mr. Mansfield does not need him to present the truth.

F. THIS COURT SHOULD REVERSE BECAUSE THE LETTER WRITTEN BY MR. JOHNS CONSTITUTES NEWLY DISCOVERED EVIDENCE OF MR. MANSFIELD'S INNOCENCE THAT WOULD PROBABLY RESULT IN AN ACQUITAL AT RETRIAL. MR. MANSFIELD'S CONVICTION AND DEATH SENTENCE OBTAINED WITHOUT THE BENEFIT OF THE NEWLY

DISCOVERED EVIDENCE VIOLATES MR. MANSFIELD'S RIGHT UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

This Court has set forth a two-prong test that a defendant must satisfy in order to obtain relief in cases involving newly discovered evidence:

To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements. First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. See *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*). Newly discovered evidence satisfies the second prong of the *Jones II* test if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Jones II*, 709 So. 2d at 526 (quoting *Jones v. State*, 678 So. 2d 309, 315 (Fla. 1996)). If the defendant is seeking to vacate a sentence, the second prong requires that the newly discovered evidence would probably yield a less severe sentence. See *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (*Jones I*).

Marek v. State, 14 So. 3d 985, 990 (Fla. 2009).

Based on the standard set forth in *Jones II*, the postconviction court must consider the effect of the newly discovered evidence, in addition to all of the admissible evidence that could be introduced at a new trial. *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). 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)). This determination includes whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence. The trial court should also determine whether the evidence is cumulative to

other evidence in the case. The trial court should further consider the materiality and relevance of the evidence and any inconsistencies in the newly discovered evidence.

Jones II, 709 So. 2d at 521 (citations omitted). As this Court held in *Lightbourne*, and more recently in *Swafford*, a postconviction court must even consider testimony that was previously excluded as procedurally barred or presented in another postconviction proceeding in determining if there is a probability of an acquittal. *Swafford*, 125 So. 3d at 775-76; *Lightbourne*, 742 So. 2d at 247; see also *Roberts v. State*, 840 So. 2d 962, 972 (Fla. 2002) (holding that upon remand, if the trial court determined that the testimony in a newly discovered evidence claim was reliable, the trial court was required to review that new evidence, as well as claims under *Brady v. Maryland*, 373 U.S. 83 (1963), that were previously rejected in a prior postconviction motion, because the evidence was equally accessible to the defense and there was no reasonable probability that the result of the trial would have been different had the evidence been disclosed).

The dissent asserts that this Court misapplies the Jones II standard, referencing the first portion of the test that newly discovered evidence must be of such a nature that it would probably produce an acquittal without reference to the second portion, defining this standard as whether the new evidence weakens the case to such an extent that it "give[s] rise to a reasonable doubt as to [the defendant's] culpability." Jones II, 709 So. 2d at 521. However, our application of the test, which has long been used by this Court, is fully consistent with our precedent. See, e.g., *id.*; *Marek*, 14 So. 3d at 990. If reasonable doubt exists as to the defendant's culpability, a jury must resolve this factual matter—not this Court.

Hildwin v. State, 141 So. 3d 1178, 1184-85 (Fla. 2014).

The State's ultimate witness, whom has been critical to Mr. Mansfield's conviction and death sentence and the maintaining of the same, wrote a letter to the State Attorney's Office threatening

to formally recant his trial testimony against Mr. Mansfield. Mr. Johns' letter was unavailable at the time of trial because he had not written the letter, and he was purporting to tell the truth when he testified for the State against Mr. Mansfield.

Following this Court's command that a court look at the total effect of the evidence that was developed in postconviction, this Court should consider the evidence presented at Mr. Mansfield's postconviction hearing including the evidence of William Finneran's phone call, the questionable testimony concerning Mr. Mansfield's pager, and the utter lack of direct evidence scientific and otherwise against Mr. Mansfield. This Court may not look at the illegal interrogation of Mr. Mansfield because that would be excluded at a retrial.

Mr. Mansfield's case was solely a circumstantial evidence case until Mr. Johns emerged purporting to offer a truthful account of Mr. Mansfield's confession. Mr. Johns' recantation of his prior testimony shows his trial testimony was false and unworthy of belief. Moreover, his reference to "egregious and invidious due process violations" further calls into question the legitimacy of the prosecution and the actions of a number of state actors that led to Mr. Mansfield's conviction and death sentence. Once Mr. Johns is removed from the analysis of the evidence in Mr. Mansfield's case, there is reasonable doubt giving rise to factual questions that a jury, not a court, should resolve. *Id.* at 1185.

This Court should reverse.

G. THE LETTER WRITTEN BY MR. JOHNS INVALIDATES ALL PREVIOUS RELIANCE BY THE COURTS ON HIS TESTIMONY TO DENY MR. MANSFIELD RELIEF FROM THE CONSTITUTIONAL VIOLATIONS THAT HAVE INFECTED MR. MANSFIELD'S LEGAL PROCEEDINGS.

Part of Mr. Mansfield's argument in the motion went beyond the usual recanting witness argument because of the state and federal courts' use of Mr. Johns' testimony to deny Mr. Mansfield relief from constitutional violations of great magnitude. If the people of Florida and this Nation are to have confidence in the death penalty, there must be confidence that legal decisions upholding the death penalty are based on reliable information. Mr. Johns' letter shows with a new level of finality that reliance on Mr. Johns' testimony as a key part of the case against Mr. Mansfield does not justify denying relief for the denial of Mr. Mansfield's constitutional rights.

Starting with the jury and continuing through to the United States Supreme Court, important decision-makers have relied upon and have been influenced by the testimony of Michael Johns; and indeed, this has come at the vigorous urging of the State. The State presented Mr. Johns to obtain a conviction and death sentence and has relied upon him ever since. Without Mr. Johns, the State most likely would not have obtained a conviction and death sentence. Without Mr. Johns' false testimony about Mr. Mansfield's alleged confession the jury would not have convicted and indeed

the trial court would have granted a judgment of acquittal based on the weakness of the alleged circumstantial evidence. The trial court also unfairly used Mr. Johns' testimony to discount and discredit Mr. Mansfield's mitigation.

Repeatedly, the state and federal courts, as seen above, have relied upon Mr. Johns to deny Mr. Mansfield the remedies that the United States Constitution requires. When Mr. Mansfield first appealed to this Court, the Court found that law enforcement's interrogation of Mr. Mansfield violated the United States Constitution because of law enforcement's failure to inform Mr. Mansfield of his *Miranda* rights. *Mansfield v. State*, 758 So. 2d 636, 640-642 (Fla. 2000). The Court then applied the so called "harmless error test" and found that Mr. Mansfield was not entitled to a new trial. In part, and to a great extent, this Court based its harmless error finding on Mr. Johns' testimony. *Id.* at 644-45.

This Court also conducted proportionality review. In doing so the Court considered that the lower court failed to find the non-statutory mitigating factor of "involuntary intoxication" and accepted the lower court's Michael Johns' centered analysis that:

Based upon the testimony, it is quite clear that the defendant has had a long history of alcohol abuse dating back many years. It is also clear that the defendant was drinking the night of this crime. But there is no evidence to show that at the time of the commission of this horrible crime that he did not know what he was doing or that alcohol has affected him in any way. The

statements by the defendant to Michael Johns about what he did to the victim shows that he was keenly aware of what he was doing.

Id. at 646-47. What should have been a very mitigating factor was afforded little weight because of the false testimony of Mr. Johns. Certainly, if the trial court used Mr. Johns' account to discount a significant mitigating factor, the jury would have likewise been lured into doing the same. Mr. Johns' testimony had a deep impact on the fact-finding and decision-making which occurred during trial, including affecting the relevance of evidence and thus the admissibility of evidence and ultimately the jury's decision to convict and recommend death and the courts' willingness to accept the jury's verdict and recommendation.

Postconviction offered Mr. Mansfield no reprieve from the devastating impact of Mr. Johns' false testimony. This Court continued to rely on Mr. Johns and indeed, by not accepting his testimony as false it continued to have a nefarious effect on the analysis of prejudice. This Court affirmed the postconviction court's finding that counsel was not ineffective because:

The postconviction court also found that Randall's extensive criminal record was presented to the jury and that trial counsel also elicited the fact that he had testified against numerous prisoners in the past. In view of this thorough examination of Randall's criminal record, we do not find error in the determination that the lack of more information about Randall's federal record did not prejudice Mansfield, and our confidence in the outcome is not undermined in view of this thorough examination of Randall's criminal record.

Mansfield, 911 So.2d at 1175. Mr. Johns was in fact impeached by his prior record and some of his pending charges, but his actual testimony was not impeached. Moreover, to the extent that there were allegations of prosecutorial misconduct litigated during postconviction pales in comparison to the level of misconduct Mr. Johns' references in the letter in question.

When Mr. Mansfield entered federal court, Mr. Johns' testimony continued to operate as means of denying a remedy for the constitutional violations that Mr. Mansfield suffered. Even though the district court granted relief on the *Miranda* claim, the court saw itself bound to defer to this Court which had relied upon Mr. Johns. *Mansfield v. Sec'y*, 601 F.Supp. 2d 1267, 1288-90. (USDC MD Fla. 2009). After the court granted relief on the *Miranda* claim, the State appealed and overwhelmingly relied upon Mr. Johns and his influence on this Court to overcome the district court's decision. The State was successful in convincing the Eleventh Circuit Court of Appeals to reverse the district court, and did so by continually offering Mr. Johns' testimony as legitimate evidence that justified the Florida Supreme Court's decision.

None of the courts that have considered Mr. Mansfield's case have done so with knowledge of Mr. Johns' most recent letters. Mr. Mansfield has raised claims and argued that no decision-maker should believe Mr. Johns' testimony. Mr. Johns' recent letter goes beyond that because it shows that no decision-maker can believe

him. Accordingly, each of the claims that were defeated by reliance on Mr. Johns' trial testimony must be reconsidered in light of Mr. Johns' letters. This Court should reverse.

CONCLUSION AND RELIEF SOUGHT

For all the reasons discussed herein, Mr. Mansfield respectfully urges this Honorable Court to reverse the trial court's order denying a new trial.

CERTIFICATE OF SERVICE

We certify that a copy hereof has been furnished to opposing counsel by filing with the e-portal, which will serve a copy of this Initial Brief on Stephen Ake, Assistant Attorney General on this 30th day of July.

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I hereby certify that a true copy of the foregoing Initial Brief of the Appellant, was generated in a Courier New, 12 point font, pursuant to Fla. R. App. P. 9.210.

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