

**IN THE SUPREME COURT OF FLORIDA**  
**CASE NO. SC17-1146**

**LEONARD PATRICK GONZALEZ,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee.**

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

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**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. Gonzalez's convictions for capital offenses will survive the issues put forth in the postconviction process. This Court has not hesitated to allow oral argument on other capital cases in 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. Gonzalez.

### **PRELIMINARY STATEMENT REGARDING REFERENCES**

References to the record of the direct appeal of the trial, judgment and sentence in this case are in the form (R. 123). References to the trial transcript are in the form (T. 123) References to the postconviction record on appeal are in the form (PCR. 123). Generally, Leonard Gonzalez is referred to as Mr. Gonzalez throughout this brief.

### **STATEMENT OF THE CASE AND THE FACTS**

#### **Trial proceedings**

Mr. Gonzalez was charged by indictment with one count of first degree premeditated murder of Byrd Billings by shooting him with a firearm, in violation of 782.04(1) and 775.087, Florida Statutes and one count of first degree premeditated murder of Melanie Billings by shooting her with a firearm in violation of Section 782.04(1) and 775.087, Florida Statutes and one count of home invasion

robbery by entering a dwelling with the intent to commit robbery of Byrd Billings, and in the course of committing the offense did carry and possess a firearm, in violation of Sections 812.135(1) and 775.087, Florida Statutes. (R. 1-3) The State filed a notice of intent to seek the death penalty. (R. 50)

At trial, the State called Ashley Markham, who testified that on July 9, 2009, she worked at her mother's retail business and finance company. Mrs. Markham stated that her parents lived off Nine Mile Road. (T. 274-275). She identified a photograph of the residence. (T. 278; R. 894). Markham's parents, Melanie Ann Billings and Byrd Starling Billings, were raising nine children at the house. The age range of the children was 4 to 11 years old. The children had disabilities. (T. 279-280). Markham testified that April Spencer, a family friend who was a nurse, moved to the property to help take care of the children. Markham's parents had set up a video monitoring system at the house in order to monitor the children. (T. 281-282; R 930). Markham was aware of safes kept at her parent's home. She knew one safe was located in the master bedroom containing birth certificates, passports, some jewelry, and prescription medication. (T. 283; R 958). Another safe was located upstairs in the utility closet. This safe contained money. (T. 284). Markham testified that she met Mr. Gonzalez in early 2008, when she was at their business. Mr. Gonzalez was requesting funding for a karate program (T. 285). On July 9, 2009, Markham received a miscall from her mother's house. She called the house and Jake

answered. He was screaming in the phone. Later, Adriana came to the phone and told her what was happening. Markham told her to run to April's residence and get April. (T. 286-287).

Tabitha Gonzalez, Defendant's wife, testified that in June/July, 2009, she and her husband worked for Pamela Long, who ran an antique business. Mr. Gonzalez was called out to work for Ms. Long on various occasions at that time. He worked odd hours. At the time, Mr. Gonzalez had access to a maroon minivan. (T. 291-294). Ms. Gonzalez testified that she and Mr. Gonzalez ran a karate business. However, in 2009 the business failed. She and Mr. Gonzalez were having financial difficulties. They had six children. In the June/July 2009 time frame, Mr. Gonzalez's mother bought a van. She testified that prior to July, 2009, Mr. Gonzalez met with Mr. Billings when he attempted to raise funds for his karate business. Billings provided Mr. Gonzalez with a \$5,000.00 donation for Project Fight Back, but refused to invest in the karate business because it was a bad investment. (T. 294-296; T. 305-306). She testified that on July 9, 2009, she initially met with Mr. Gonzalez at the Walmart. Later, she saw him in the evening. (T. 296-298). She testified that she and her husband had previously helped Pamela Long move from one residence to another. They transported various firearms, along with furnishings and other items, (T. 300-302). She stated that on the night of July 4, 2009, Defendant was with her, the

children and the neighbors shooting off fireworks. (T. 308). She said that Mr. Gonzalez was left handed. (T. 309).

Terri Michele Poff, Mr. Gonzalez's mother, testified that in June/July of 2009 she became aware that Mr. Gonzalez was having financial difficulties. She was helping him make car payments, utilities, rent, and groceries, and gave him cash. (T. 311-313). At one point she bought him a van for \$300.00. (T. 313-315; R. 943-944). She stated that Mr. Gonzalez ran a karate business. (T. 316-318).

Lonnie Smith testified that he knew Mr. Gonzalez for about 8-10 years. Prior to July 9, 2009, Smith had a conversation with Mr. Gonzalez about a security job he had. Mr. Gonzalez mentioned it involved millions. The conversation took place in a condo on the beach. Hugh Wiggins and Gary Sumner were present. (T 321-324). On July 9<sup>th</sup>, Smith received numerous phone calls from Mr. Gonzalez, but he did not answer any of them. (T. 324; T. 326).

Anthony Joseph Elisa testified that in June/July, 2009 he had a conversation with Mr. Gonzalez at Elisa's house. Mr. Gonzalez was sweating and appeared to be doing drugs or out of his mind. Mr. Gonzalez wanted Elisa to be a getaway driver for him in a robbery. Mr. Gonzalez said there was a safe containing 130 million in a house. He mentioned that there could be some kids involved. Elisa escorted Mr. Gonzalez out of his house. He did not think he was serious. Subsequently, Elisa went to a paint and body shop with Mr. Gonzalez and met Gary Sumner. Elisa stayed

outside the shop smoking. He saw a duffel bag taken into the shop. Later, Mr. Gonzalez dropped him off at his house. (T. 326-331). On July 9<sup>th</sup>, Elisa received several calls from Mr. Gonzalez but never answered them. On that day, Elisa had been doing yard work and became very ill. He ended up in the hospital. (T. 331)

Carol Brandt, Mr. Gonzalez's stepmother, testified that she lived with Leonard Patrick Gonzalez Sr. in the months leading up to July 9<sup>th</sup>. And Mr. Gonzalez Jr. and Sr. met several times and she overheard Mr. Gonzalez mention a robbery and talk about a person who was dealing drugs. Mr. Gonzalez's reason for committing the robbery was money. (T. 334-338). Brant stated that on July 9<sup>th</sup> she left her house and she knew Mr. Gonzalez was coming over. (T. 339). Brant stated that there were two broken CB radios at her house, and Gonzalez Jr. and Sr. were trying to fix them. She supplied the radios to law enforcement. (T. 340).

Sue Ann Mathews, Leonard Gonzalez Sr.'s sister testified that she lived near her brother's house and could see the front of his house from her home. On or about July 9<sup>th</sup> she saw her brother, Mr. Gonzalez, and three or four black men pull up in three vehicles. Her brother was in a Honda. Mr. Gonzalez was in a red minivan, and the black males were in a SUV Expedition or similar car. She saw her brother open the gate and all the men entered the house. (T. 341-344).

April Spencer testified that in July, 2009 she was living in the Billing's property. She knew Mr. and Mrs. Billings for about ten years. She began living at



the property the previous October. There were nine children living in the Billing's house. She was aware of the surveillance system at the house. It was installed to monitor the children who had special needs. (T. 345-347). On July 9<sup>th</sup>, 2009, she arrived at the property between 4:30 and 5:00 in the afternoon. Later that evening, Adrianna Billings, an 11 year-old girl, knocked on her door. She was crying and very upset. Based upon what she told her, Spencer went to the house. She entered the house and noticed the door had been knocked open. She saw drops of blood in the hallway. She found Mrs. Billings face down, in the bedroom. Mr. Billings was in front of the closet. She called for emergency services. (T. 348-351).

Deputy Sheriff Walter Thomas testified that on July 9<sup>th</sup>, 2009, he was assigned to an area encompassing the Billing's household. He responded to the residence relating to a shooting. He arrived around 7:55 P.M. He met with Ms. Spencer who was running across the front yard. The deputy and other deputies entered the house. He noticed a large amount of pooled blood, as well as two bullet casings and two bullet holes in the floor. He entered the master bedroom where he saw a white male, facedown, with his arms tucked up under him. A white female was on her back, facing toward the west. She was partially in the hallway. Deputy Thomas noticed bullet casings around both victims. There were children in the home and other deputies were clearing the house. A room to room sweep was conducted and the scene was roped off. (T. 352-357)

Zachery Ward, an Escambia County Sheriff's Office computer crimes investigator, testified he was called to the Billing's residence on July 9<sup>th</sup>. He located a DVR system in a small room upstairs. The system was hooked up to a monitor. There were 16 cameras throughout the house. Ward was supposed to download the video evidence from the DVR system. According to Ward, all the real-time photographic surveillance was recorded on a hard drive. Images from several cameras were recorded. The recordings were copied to DVD's. Ward identified an exhibit containing the clips of the video from the night in question and identified photographs of images from the video recorder. (T. 365-372).

Allen Fuller, FBI forensic video examiner, testified that he received a DVR and was asked to examine certain video images. He was able to make video prints and movies of different cameras with the intent of making it viewable in a courtroom. He explained that the original was not altered and identified the disk exhibit. (T. 376-383; R. 1412-1434)

Lacey Oden, crime scene technician for the Escambia County Sheriff's Office, testified that she responded to the Billing's residence on July 9<sup>th</sup>, 2009 and processed the crime scene along with her partner Wayne Wright. She took photographs of the tracks outside the residence and prepared a crime scene sketch. (T. 393-398).

Wayne Wright, crime scene technician for the Escambia County Sheriff's Department testified that he responded to the Billing's residence on July 9<sup>th</sup>. Wright testified that upon his arrival he noticed that deputies were still clearing the residence. Photographs of the scene were taken. (T. 399-407; R. 908-916). Several projectiles and casings were recovered. Wright described the location of the victim's bodies and the relation of the casings to them. He stated that all of the casings were from a 9 mm firearm. A total of ten casings were recovered. Additionally, he explained the tire track photographs in relation to the house. He processed numerous locations at the scene for latent fingerprints. (T. 437-438). The tire tracks did not have any discernible pattern. (T. 440-441). The hardwood floors were processed for show prints. (T. 441)

Frederick Lee Thornton testified that he was currently incarcerated in the Santa Rosa County jail. He stated that in July, 2009 he was 19 years old. He entered a plea to second degree murder in the case pursuant to a plea agreement. He was hoping that his cooperation would be taken into account at his sentencing. (T. 445). He testified that after the deaths of the Billings his aunt told him to turn himself in to the police. He conceded that he never told his aunt and mother the truth about what had happened. Rather, he told them that he and his friend Raheem had gone to buy some weed. (T. 448-449). When he surrendered himself he went with his aunt, his mother, and grandmother. Rakeem's father, aunt, and cousin also went with

Rakeem. Thornton and Rakeem discussed what they were going to say. In particular, they told the police that they went to get some weed and did not know what happened. They maintained they did not enter the house. After the police confronted them with evidence from the surveillance video, they changed their story. (T. 449-450; T. 534-535). He stated that he lived near a body shop named the Fifth Dimensions, owned by Gary Sumner. He stated that at one point Sumner informed him that there was a plan to rob people involved in the Mafia. Eventually, Thornton met Sumner and others at Fifth Dimension. At that meeting, Thornton met Mr. Gonzalez, Rakeem Florence, Tony Ducks, Donnie Stallworth and Gary Sumner. Mr. Gonzalez talked about robbing some people. He mentioned he had some firearms. Sumner would get in contact with everyone else when needed. (T. 450-455). About a week or two later, Thornton saw Mr. Gonzalez again at the Fifth Dimensions. Sumner had contacted Thornton and asked that he come to the shop. Thornton showed up with Rakeem, who was 16 years old at the time. At this meeting, Thornton and Rakeem met with Mr. Gonzalez, Sumner, Stallworth, and Tony Ducks. Defendant retrieved two firearms, a 9 mm. and a shotgun, from his car and brought them into the shop in a black duffle bag. Mr. Gonzalez talked about dressing in black shirts, pants, and boots. He also talked about wearing gloves and head stockings with goggles. (T. 456-460). On a subsequent meeting, Thornton met with Rakeem, Sumner, Stallworth, and Mr. Gonzalez at Sumner's shop. At this meeting Mr.

Gonzalez explained that targets had over 13 million obtained from money laundering with the Mexican Mafia. They were apparently selling heroin out of some trailers by the house. He also mentioned there was a vault in the bedroom. (T. 460-463). Subsequently, Thornton and Rakeem were picked up by Stallworth and Sumner in an Explorer. They met Mr. Gonzalez at an antique shop. From that location, they traveled to Pensacola and met with Patrick Gonzalez Sr. at a trailer. Mr. Gonzalez was driving a red minivan. At the trailer, Mr. Gonzalez explained that they were going to meet on the 4<sup>th</sup> of July and look around the target house. He stated he had the clothing and the guns. He was holding Thornton's .357 firearm. He displayed the .9 mm and the shotgun. There was a discussion about splitting the money down the middle. Mr. Gonzalez stated there were children present at the house. These children were adopted. He stated that there were two labs on the property for cooking dope. (T. 464-470).

Thornton testified that toward the end of June, Sumner called him again. Sumner, Florence, and Stallings picked him up and they drove to Pensacola. They eventually met with Mr. Gonzalez and discussed a plan to visit the house. At this meeting, Thornton met a female, PL. Thornton, Stallworth, Mr. Gonzalez, Sumner, Florence and PL drove by the residence to look around. Everyone changed into black clothing. They put on gloves and masks with goggles. Everyone was armed, except Sumner and Frank. Thornton armed himself with a .357, Florence had an AK 47,

Stallworth had a shotgun and M. Gonzalez had a 9mm. Mr. Gonzalez and Sumner had walkie-talkies. PL was in a red minivan. Thornton, Florence, Frank, and Stallworth were in a big van and Sumner was in an Explorer. They drove to the Billings residence. They tried to enter the property. They had previously discussed entering the residence through the front door. They had zip ties to tie the hands of the victims. As they approached the driveway of the residence the lights turned on. The car were put in reverse and they backed out. Mr. Gonzalez got on the phone and said, "The lights came on. We didn't do it. Somebody ain't cut off the alarm system." They left the area and put away the clothing and guns, Thornton was told that he would be contacted again at a later time. (T. 470-488).

Thornton testified that on July 9<sup>th</sup>, Stallworth picked up Thornton and Florence in the tan Explorer. They picked up Sumner and met Mr. Gonzalez at a Walmart. Stallworth and Sumner got into the red minivan with Mr. Gonzalez. The group traveled to Frank's house. At the house, Thornton met a person by the name of Coldiron for the first time. The group was short two weapons. Mr. Gonzalez and Sumner left for a few minutes. Upon their return, they provided the group with additional firearms. Mr. Gonzalez showed the group some pictures of the house and the doors they were supposed to go into. Thornton and Florence were supposed to enter the house through the door on the far left side. Stallworth was supposed to go through the front door. Mr. Gonzalez and Coldiron were supposed to go through the

master bedroom side door. Mr. Gonzalez showed the group how to use zip ties. Everyone except Sumner and Gonzalez Sr. changed into different clothing and weapons were handed out. Thornton and Stallworth had shotguns, Florence had an AK47, Coldiron had a .357 and Mr. Gonzalez had a 9mm. (T. 489-497; R. 965-967). Thornton testified that everyone wore gloves and stockings on their heads with goggles on. (T 498).

Thornton testified that the group drove to the house. They proceeded to the Billings' residence in the red minivan, Sumner remained behind in the tan explorer. He was on a walkie talkie. Mr. Gonzalez had the other walkie talkie. Stallworth drove the van through the driveway and cut through the grass. He pulled up by the front door. Stallworth, Thornton, and Florence got out of the van and Frank stayed behind. Thornton and Florence entered the house through the far left door by kicking down the door while Stallworth entered through the front door. Thornton saw Mr. Gonzalez and Coldiron entering the residence as he entered the house. Thornton saw Mr. and Mrs. Billings and several children. Mr. Billings approached Mr. Gonzalez and fell to the ground. Mr. Gonzalez went to Mr. Billings and asked him "where is the money at?" Billings answered "I don't have none." At that point Mr. Gonzalez shot in the ground. Mr. Gonzalez repeated the question and Billings answered the same. Mr. Gonzalez shot Billings in the other leg and grabbed him by the neck and shoved the gun in his face. Mr. Gonzalez asked Mrs. Billings where the bedroom

was and she pointed toward the bedroom. At that point, Mr. Gonzalez and Mrs. Billings entered the bedroom. Mr. Billings followed them. Stallworth entered the bedroom. Thornton ran back outside to get the duffle bags. Prior to leaving, Thornton overheard Mr. Gonzalez say “Where is the money at?” When he was outside, Thornton heard three gunshots coming from inside the house. Thornton entered the house again and entered the master bedroom. He saw Mr. Billings on the floor. There was a lot of blood. Thornton handed over the duffle bags. He saw Mrs. Billings try and open the safe in the closet. She was unable to do so. Thornton saw Mr. Gonzalez pointing his gun in the direction of the closet area. He heard say something and saw him shoot his gun about three times. He overheard Mr. Gonzalez tell Stallworth to grab the safe. The safe was placed inside the van. Everyone entered the van and they drove off. (T. 499-513).

Thornton identified several photographs from the surveillance video. He picked out the red minivan. He identified the various persons from the photographic images from inside the Billing’s residence. (T. 513-519; R. 1412-1434).

Thornton testified that after they left the residence, they met with Sumner who was waiting in the Expedition. Thornton, Mr. Gonzalez, Stallworth, and Florence entered the Expedition. They started to change clothing and put away the guns. Meanwhile, Frank and Coldiron left in the van. They eventually met together again at the Walmart in Pensacola and from there they proceeded to the antique shop,



where they met PL. The safe was placed inside the antique shop and the guns were kept in the red minivan. Thornton, Florence, Sumner and Stallworth left the Explorer and Sumner was dropped off. Mr. Gonzalez and PL got in the red minivan. Thornton testified that Mr. Gonzalez told him to burn his clothing. Thornton and Florence did so. Thereafter, when news coverage of the incident began, Thornton eventually surrendered to the police. (T. 519-526).

Brad Thornton, a businessman who owned Big Country's Convenience store in Elberta, Alabama, testified that in July, 2009, when Mr. and Mrs. Billings were killed, he recalled a vehicle in his parking lot. Later the same day, an older man came by to pick up the vehicle. He was able to identify the photograph of the individual as Leonard Patrick Gonzalez Sr. (T. 550-554)

Gene Johnson, asset protection coordinator at Walmart at Gulf Breeze, testified that he was in charge of the security at the store. A DVR system was set up at the store, which captures images from a number of locations through the store. Johnson testified that law enforcement came to the store and asked to review the video recording. Johnson identified the video recording taken on July 9, 2009 from 3:26 P.M. to 3:34 P.M. (T. 555-559).

Rakeem Chavez Florence testified that he was 16 years old in July, 2009. Florence entered a plea in the case. He turned himself in to authorities in July, 2009, along with Thornton. Florence and Thornton had come to an agreement on the story

they would provide the police. Florence and Thornton agreed to tell the police they went to the house to buy wed. Florence did not tell his family the truth concerning his involvement. He did not tell the police the truth. After his mother spoke with him, Florence decided to tell the police the truth. (T. 560-564; T. 611).

Florence testified that prior to July 4, 2009, he met Gary Sumner and Thornton at the Fifth Dimension. Tony Ducks, Stalworth, and Mr. Gonzalez were also at the meeting. According to Florence, Mr. Gonzalez was doing all the talking. He mentioned 13 million was in a vault. At some point, either at this meeting or at a subsequent meeting, Mr. Gonzalez displayed firearms, including a shotgun. (T. 564-567). On July 4, 2009, Thornton contacted Florence and they went to the Fifth Dimensions. They were picked up by Sumner or Stallworth in a silver Explorer, and they proceeded to Mr. Gonzalez's father's house. At the house, Mr. Gonzalez provided Florence and some of the others with black clothing, gloves, and masks. Mr. Gonzalez said that Florence and Thornton were to go through one door, while Stallworth would go through another door and Mr. Gonzalez would enter the house through a third door. They were going to take 13 million from the vault. There was no discussion about any children. The money was supposedly laundered for the Mexican Mafia. Weapons were passed out. Florence was given an AK47 and Thornton received a shotgun. Mr. Gonzalez had a black automatic firearm. Mr. Gonzalez and Sumner had walkie talkies. The group drove to the residence in three

vehicles. As they drove into the driveway, the lights came on and they decided to leave. Mr. Gonzalez was talking on the phone and yelled out that he was going to kill somebody. They parked the van at a store and switched vehicles. Florence, Thornton, and Stallworth got into an Explorer. While Pamela Wiggins, Mr. Gonzalez, Mr. Gonzalez Sr., and Sumner got into a purple minivan. The guns and clothing were placed inside a bag. (T. 567-576).

On the day of the incident, Thornton contacted him again. Florence and Thornton traveled to Fifth Dimensions where they met Mr. Gonzalez, Stallworth, and Sumner. The group proceeded to a Walmart in an explorer and a purple minivan. Florence identified several surveillance photographs from the Walmart. (T. 577-581). After the meeting at the Walmart, everyone traveled to Gonzalez Sr.'s house. Mr. Gonzalez discussed the plan and showed them pictures of the house. Florence and Thornton were supposed to enter the house by kicking down the left door. Mr. Gonzalez also told the others to tie the victims with the zip ties and mentioned the money again. Stallworth was directed to enter the house through the middle door. Mr. Gonzalez provided clothing and guns. Florence got an AK47, Thornton got a shotgun, Stallworth got a shotgun Coldiron got a .357 revolver, and Mr. Gonzalez had a black Glock. Everyone loaded their guns. The group drove to the residence in the purple minivan, the silver explorer and the big red van. Mr. Gonzalez parked the minivan in the woods. Sumner drove the explorer. Mr. Gonzalez and Sumner had

walkie-talkies. Florence, Gonzalez Sr., Thornton, Mr. Gonzalez, Stallworth, and Coldiron were in the big red van. (T. 581-586).

Florence testified that they entered the driveway to the residence and drove on the grass. Florence and Thornton got out of the van and proceeded to the left side door, while Stallworth approached the middle door. Once inside, Florence and Thornton began looking around. Florence saw a kid sitting on a sofa and saw Mr. Billings on the floor while Mrs. Billings was between the couches. Florence saw Mr. Gonzalez approach Mr. Billings and demanding to know where the money was. Mr. Billings said he did not have any money. Mr. Gonzalez told Mr. Billings to get up and took him to a room. Florence heard a shot but did not see it. He heard one or two shots. Mr. Gonzalez kept asking for the location of the money. When Mr. Billings walked into the room Florence could not see if he was bleeding. Mr. Gonzalez went into the room with Mr. and Mrs. Billings. Florence could not hear what was going on in the room. Florence heard three initial shots and then heard three additional shots. Mr. Gonzalez told Florence to get the safe. When Florence entered the room he saw Mr. Billings on the ground. Florence picked up the safe. Florence did not see Mrs. Billings. He only saw Mr. Gonzalez in the room. Stallworth was in the living room. Thornton had left to get a bag. The safe was taken into the red van. Gonzalez Sr. was sitting in the driver's seat of the red van and everyone entered the van which drove off. They met with Sumner, who was in the explorer. Everyone took their

clothes off and put away the guns. Gonzalez Sr. and Coldiron left in the red van, while Florence, Sumner, Thornton, Mr. Gonzalez, and Stallworth left in the explorer. They met at Walmart and then proceeded to the antique shop. Pamela Long met them there. The guns were turned over to Mr. Gonzalez and Long. Florence and Thornton were told to burn their clothes and they did so. There was never any discussion about anyone being killed. He did not know that anyone was going to get killed. (T. 587-597).

Sergeant Donald Buddy Nesmeth, Escambia County Sheriff's office, testified that he became involved in the Billing's case and during the course of his investigation visited the residence of Carol Brant and Gonzalez Sr. He seized a boot box from inside the trailer. He understood that the boots were connected to a purchase of boots at Walmart. Nesmeth also made contact with Gonzalez Sr. (T. 624-628). Sergeant Rusty Howard testified that he received walkie-talkies from Carol Brandt, which were never fingerprinted. (T. 630-632).

Dan Blocker, a businessman and owner of Auto Works Tire and Automotive in Gulf Breeze, testified that he knew Mr. Gonzalez for years. He stated that the day after the murders Mr. Gonzalez came to his shop and was driving a small maroon minivan, owned by Pamela Long Wiggins. There were two rims and two used tires in the back of the vehicle. Blocker was told to change the tires. Blocker thought it was strange because the tires taken off were in better shape than the ones he was

putting on. Mr. Gonzalez placed a \$20.00 on the counter and told him is anyone asks “you haven’t seen me”. Mr. Gonzalez was in the company of Wayne Coldiron and his father. The following Monday he contacted law enforcement after he saw television reports. (T. 646-651).

Eddie Denson testified that on July 9, 2009, he met Hugh Wiggins and Pamela Long on Highway 63 in Mississippi. Wiggins and Long were in a maroon minivan. Wiggins gave Denson two shotguns and a long gun. The Federal ATF eventually took possession of the guns. Denson made arrangements for the Wiggins to stay at a Hotel in Mississippi. Denson identified the receipt from the hotel, it was dated July 11-15, 2009. Denson noticed that Wiggins had a small hand-held radio. Wiggins tossed it out the window. Later, investigators located the radio with Denson’s assistance. In the hotel room, Denson noticed that Long was watching news accounts of the Billings case. Several days later, federal agents arrived at Denson’s residence and met with him. He agents took possession of the firearms. Additionally, Denson was interviewed and he made a photographic identification of Pamela Long. (T. 667-677). Special Agent Shane Lynes, Bureau of Alcohol, Tobacco, Firearms, and Explosives, testified that she visited the Denson’s residence in Mississippi. The federal agent took photographs of the firearms and took possession of the firearms. (T. 680-685). Leonard Tyree, a homicide investigator, testified that he became involved in the Billing’s investigation. Tyree met with federal agents in Mobile and

collected certain firearms in their possession. Tyree also interviewed Eddie Denson and he identified Pamela Wiggins. (T. 685-690). Stephen Hartley testified that he owned an air conditioning repair business in Pensacola, Florida. In July after the Billings homicides, Pamela Wiggins dropped off a 1971 Buick convertible for some work. Sometime later, law enforcement officers contacted Hartley to inspect the vehicle. (T. 692-696). Larry Meadows, an investigator for the Escambia County Sheriff's Office, testified that he responded to Hartley's Business on July 15<sup>th</sup> in order to look at the red Buick convertible. Meadows found a package under the rear seat. A firearm was in the package. (T. 698-700).

Corey Aittama, a State Attorney's Office investigator, testified that she responded to an automobile detail shop known as the Fifth Dimension. She obtained information from Gary Sumner's cell phone after Sumner was arrested. She located a walkie-talkie in the roadway in Mississippi after Eddie Denson provided directions to its location. She also located a safe at Pamela Long's residence in Gulf Breeze. The safe was in the backyard of the residence buried beneath a pile of bricks and a black garbage bag. (T. 713-720).

Deputy Bill Chavers, Escambia County Sheriff's office, testified that on July 12<sup>th</sup>, 2009, he interviewed Mr. Gonzalez. He did not have a recording device with him. He went over the Miranda rights form. (T. 825). Mr. Gonzalez asked if he was there to talk about the red van and the Billings situation. When Chavers said he was

there for that reason, Mr. Gonzalez told him to ask him anything because he was not in the van, had not driven it lately, and was not guilty of anything. (T. 829). Chavers testified that Mr. Gonzalez seemed a little nervous and excited. Mr. Gonzalez said that the van had been given to him by his mother. He picked up the van and brought it to his father's house because it needed some mechanical work. He said he had gone to Alabama and the clutch had overheated. He returned the van back to Pensacola. He said he was watching TV when he saw a report of a red van and a video. He was concerned that it looked like his van and he tried to call his father. Later, he got a frantic call from his father who said that they had to move the vehicle. He went to his father's house, who was trying to clean the van. He said there were a number of people who knew about the van and knew where the keys to the van were and that anyone could have driven the van at any point. Mr. Gonzalez mentioned a person by the name of Tice and said he knew of a group of people that he had met, and were not happy with Mr. Billings. At one point, Mr. Gonzalez made clear that if the investigation was about the killings he could assure Chavers that he did not do it. He said he knew people that may have done it. He said he was willing to go to jail and even die because his family was in danger. He stated he had gone to Walmart with two black friends. He would not identify them. He also said he had gone to the home of Pam Long because he wanted to look at a Bentley she had. Mr. Gonzalez repeated his fear that his family was in danger. He suggested that he may want to



speak to the feds about it. Later, he mentioned that Cab Tice had come to him and said the group wanted to have Billing's wacked, but that he refused. Mr. Gonzalez mentioned "Tice," "Mantis," (Jerry Wood), Phillips and a few others. He also mentioned a group called MS13 and suggested investigators look into that group. (T. 830-838). He adamantly maintained he did not do anything and was not guilty. (T. 847).

Mr. Gonzalez was found Guilty on all three counts as charged in the indictment (T. 974-976) This Court affirmed his convictions in *Gonzalez v. State*, 136 So.3d 1125 (Fla. 2014).

It is unnecessary to recite any facts from the penalty phase as the lower postconviction court granted Mr. Gonzalez a new penalty phase on both death sentences due to that fact the jury recommendations of death were non-unanimous and, therefore, violated the requirements of *Hurst v. Florida* 136 S.Ct. 616 (2016) and *Hurst v. State*, 202 So.3d 40 (Fla. 2916).

#### Postconviction proceedings

On May 30, 2014, the lower court appointed the Office of Capital Collateral Regional Counsel to represent Mr. Gonzalez in postconviction proceedings. (PCR. 108). On October 2<sup>nd</sup>, 2015 collateral counsel filed a Motion for Postconviction Relief pursuant to Florida rule of Criminal Procedure 3.851. (PCR. 158-546).

The claims raised in the postconviction motion were that (1) counsel for Mr. Gonzalez was ineffective for failing to properly argue for a change of venue due to the saturation of Escambia County with prejudicial and inflammatory pretrial publicity concerning the case rendering an impartial jury impossible. (PCR. 159-171); (2) counsel for Mr. Gonzalez was ineffective for failing to challenge the grand jury indictment on the grounds that Escambia County Sheriff David Morgan engaged in outrageous governmental misconduct by improperly influencing members of the Grand Jury who issued the indictment against Mr. Gonzalez. (PCR. 171-175); and (3) counsel for Mr. Gonzalez was ineffective in the penalty phase by failing to conduct a complete investigation of available mitigating circumstances and failing to present the mitigation to the jury and sentencing judge. (PCR. 176-225). On November 25, 2015, the state filed its response to Mr. Gonzalez's Motion for Postconviction Relief. (PCR. 563-583).

On February 10, 2016, Mr. Gonzalez filed a Motion for Leave to Amend his 3.851 motion in order to include a claim based on *Hurst v. Florida*. (PCR. 584-595). On February 27, 2016, the lower court conducted a case management conference, whereupon Mr. Gonzalez requested an evidentiary hearing on all three of his claims. (PCR. 600-620). On March 16, 2016, the lower court entered an order scheduling an evidentiary hearing on Claim three of the postconviction motion. (PCR. 621-623).

No explanation was provided in that order concerning why no evidentiary hearing was scheduled for claims one and two of the postconviction motion.

After a series of continuances in order to obtain guidance from this Court on the applicability of *Hurst* to Mr. Gonzalez's case, the lower court set a briefing schedule on that issue and also set an Oral Argument for April 26, 2017. (PCR. 752). On March 27, 2017 Mr. Gonzalez submitted a written closing argument on the *Hurst* issue. (PCR. 759-763). On April 26, 2017, the state filed a written response and conceded that under precedent from this Court Mr. Gonzalez was entitled to *Hurst* relief and a new penalty phase on both of his death sentences. (PCR. 761). On April 26, 2017, the lower court held argument on the *Hurst* claim, and the state reiterated its concession that Mr. Gonzalez was entitled to new penalty phase proceedings as the recommendations by the jury for both death sentences were by a non-unanimous vote of 10-2. (PCR. 773-781). At argument counsel for Mr. Gonzalez reiterated a demand for an evidentiary hearing on Claims one and two of the postconviction motion. (PCR. 776-777).

On May 23, 2017, the lower court entered an order Denying in Part and Granting in Part Motions for Postconviction Relief and Vacating Defendant's Sentence of Death and Ordering a New Penalty Phase. (PCR. 783-803)

Regarding claim one, which alleged that counsel for Mr. Gonzalez was ineffective for failing to properly argue for a change of venue the lower court denied

the claim stating that Mr. Gonzalez could not establish any prejudice because counsel had presented a motion to change venue with supporting affidavits and the jurors were asked some questions by the state attorney during *voir dire* about whether they could set aside what they heard and be able to judge the case from the evidence presented at trial alone. Since the panel agreed that they could, the lower court found that Mr. Gonzalez had not established prejudice. The lower court stated it “had no basis to conclude that had the additional information presented by defense counsel been presented the trial court would have or should have granted a motion for change of venue.” (PCR. 795-796). No explanation was provided within the order as to why no evidentiary hearing was conducted as to claim one.

The lower court denied claim two of the motion for postconviction relief, which alleged that counsel for Mr. Gonzalez was ineffective for failing to challenge the grand jury indictment on the grounds that Escambia County Sheriff David Morgan engaged in outrageous governmental misconduct by improperly influencing members of the grand jury who issued the indictment against Mr. Gonzalez. (PCR. 797-799). The lower court’s reasoning in denying the claim was that it was based on “speculation” that Sheriff Morgan actually greeted the members of the grand jury, and even if he did Mr. Gonzalez suffered no prejudice as the evidence was so overwhelming another grand jury would have also indicted Mr. Gonzalez. (PCR.

797-799). No explanation was given by the lower court as to why no evidentiary hearing was granted as to claim two.

The lower court found that claim three of the motion for postconviction relief was moot, as the court vacated Mr. Gonzalez's death sentences in light of *Hurst v. Florida*, 136 S.Ct. 616 (2016) and *Hurst v. State*, 202 So.3d 40 (Fla. 2916). This appeal follows the denial of claims one and two of the motion for postconviction relief. The state filed no cross appeal as to the lower court's granting of *Hurst* relief.

### **SUMMARY OF THE ARGUMENT**

The lower court erred in denying claim one of Mr. Gonzalez's motion for postconviction relief without the benefit of conducting an evidentiary hearing. That claim alleged that counsel was ineffective for failing to properly argue a motion for change of venue due to the extensive, inflammatory and prejudicial media coverage of the case in Escambia County. The lower court incorrectly held that any level of pretrial publicity in the case was cured by the state attorney's cursory questioning of the jury as to whether they heard about the case and could set aside whatever they did hear and decide the case on the evidence only.

The lower court further erred in not granting an evidentiary hearing on claim one, strongly favored by this Court and the Rules of Criminal Procedure, so that Mr. Gonzalez could present the true depth and breadth of the media coverage in this case

and establish that no fair and impartial jury could have been empaneled within Escambia County, Florida.

The lower court also erred in denying claim two of Mr. Gonzalez's motion for postconviction relief, which alleged outrageous governmental misconduct on the part of Escambia County Sheriff David Morgan in improperly greeting and imparting improper influence on the grand jury in this case. The lower court's ruling that such a claim could never be prejudicial because the evidence was overwhelming and another grand jury would have also indicted Mr. Gonzalez was error and belies proper respect for the grand jury process, fundamental due process of law, and the need for governmental officials to refrain from interfering with the grand jury process of a capital case. Additionally, the lower court erred in failing to grant an evidentiary hearing on this claim, strongly favored by this Court and the Rules of Criminal Procedure, so a full record could be created as to the level of Sheriff Morgan's attempted influences on the Grand Jury.

### **STANDARD OF REVIEW**

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

### **ARGUMENT**

**ISSUE I: THE LOWER COURT ERRED IN DENYING MR. GONZALEZ'S CLAIM THAT HIS COUNSEL WAS INEFFECTIVE FOR FAILING TO**

**PROPERLY ARGUE FOR A CHANGE OF VENUE DUE TO SATURATION OF ESCAMBIA COUNTY WITH PREJUDICIAL AND INFLAMATORY PRETRIAL PUBLICITY CONCERNING THE CASE RENDERING A FAIR TRIAL BY AN IMPARTIAL JURY IMPOSSIBLE**

The 3.851 motion filed by Mr. Gonzalez included a claim that his counsel was ineffective in failing to properly argue for a change in venue. (PCR. 159-171). In claim one of the motion Mr. Gonzalez cited several cases from the United States Supreme Court and other federal cases concerning the Sixth Amendment right to a fair and impartial jury and that where prejudicial pretrial publicity so inflames a community, it requires a trial court to grant a motion for change of venue. Those cases included *Irwin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639 (1961); *Rideau v. Louisiana*, 373 U.S. 723, 726 S.Ct. 1417 (1963); *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507 (1966); *Murphy v. Florida*, 421 U.S. 794, 95 S.Ct. 2031 (1975); *Mayola v. Alabama*, 623 F.2d 992 (5<sup>th</sup> Cir. 1980); *Estes v. Texas*, 381 U.S. 532, 85 S.Ct. 1628 (1965). (PCR. 160)

In the 3.851 motion Mr. Gonzalez asserted that the pretrial publicity in this case so pervaded and saturated the community of Escambia County as to render virtually impossible a fair trial by an impartial jury drawn from that community. Mr. Gonzalez also alleged that the 75 page limit on 3.851 motions would not allow him to incorporate all of the relevant pretrial publicity which surrounded the case but stood ready to present all of it at an evidentiary hearing. (PCR. 160). Mr. Gonzalez did reference some excerpts of the reporting to demonstrate a prima facia case for

purposes of the 3.851 motion. To that end he referenced articles that stated the following inflammatory information

The killings were “execution style”  
One of the men stated “you’re gonna die”  
Gonzalez told police his involvement was “deep”  
Sheriff Morgan said it was a “contract killing”  
DEA Agent stated “there has to be a drug connection somewhere”  
Mr. Gonzalez “always wanted to be a mafia guy”  
Sheriff Morgan referred to Mr. Gonzalez as “an inveterate liar” and a “psychopath”  
Sheriff Morgan referred to Mr. Gonzalez as a “Lying con man”  
Sheriff Morgan stated new documents suggest the Billings murders were a “hit” and Gonzalez was hired to commit the murders by resentful business rivals”  
Sheriff Morgan stated the co-defendants were in fear of being “wacked” by the figures that contracted with Mr. Gonzalez to do the murders.  
Involvement of the “Mexican Mafia” in the case  
Sheriff Morgan responded to Mr. Gonzalez’s request for a bond with “and people in hell want ice water” (PCR. 161-163)

Attached to Mr. Gonzalez’s 3.851 motion were 180 pages of newspaper, television, and media reports on the case published and/or broadcast in the geographic area encompassing Escambia County. These reports cover the time from July of 2009 until and including the trial of Mr. Gonzalez. They contain significantly inflammatory information including negative statements about Mr. Gonzalez, including that he was “diabolical,” “evil,” “manipulative,” and the like. (PCR. 163). There are also reports attached to the motion with rampant speculation about Mr. Gonzalez’s prior criminal history and participation in previous “wacks” and “hits” and that he pulled a gun on a neighbor over a dispute about debris in his yard, stabbed



an inmate with a pencil in the Escambia County Jail, and “cyberstalked” his ex-wife. (PCR. 163). Videos of Leonard Patrick Gonzalez’s statements to the police were broadcast and made available online in Escambia County. Videos of several witnesses who were not called at the trial were also broadcast, including Leonard Patrick Gonzalez Sr., Hugh Wiggins, Cab Tice, and Pamela Long. (PCR. 163).

In addition to the highly inflammatory information which saturated Escambia County concerning Mr. Gonzalez, there were numerous reports about the Billings which would understandably cause the community of Escambia County to be outraged toward the person or persons who did this crime. There were numerous front page stories with pictures of the Billings posing with their special needs adopted children. Local activities were conducted to raise money for a trust fund for the children. Surviving family members appeared numerous times on local and national television to outline the tragic impact the killings had on the family, especially the special needs children. (PCR. 164)

In his 3.851 motion, Mr. Gonzalez alleged the existence of this massive pretrial publicity, and cited examples of it within his motion and attached documentary evidence of it to the motion. As stated within the motion, this effort at example and the exhibits were not meant to be considered all-inclusive and complete concerning all the inflammatory media coverage within Escambia County concerning the case, but rather enough to make out a sufficient case so an evidentiary

hearing could be conducted so that the lower court, and this Court, could have a full and complete understanding of the breadth, depth, and highly prejudicial nature of the coverage. The first instance of ineffective assistance of counsel concerning this claim is when counsel for Mr. Gonzalez failed to present to the trial court a true measure of the massive, inflammatory, and prejudicial media coverage of this case, and properly move for a change of venue. “An ineffective assistance of counsel claim has two components; a petitioner must show that counsel’s performance was deficient and that the deficiency prejudiced the defense. To establish deficient performance, a petitioner must demonstrate that counsel’s representation “fell below an objective standard of reasonableness.” *Strickland v. Washington*, 466 U.S. 668 (1984). Prejudice is defined as “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* At 694. Mr. Gonzalez’s counsel should have collected information concerning the coverage of the case from all the various media sources and presented it in a motion for change of venue. However, counsel for Mr. Gonzalez failed to do so. On October 7, 2010, counsel did file a motion for a change of venue alleging:

1. From the date of the homicide there continues to be a tremendous amount of media attention interest and coverage regarding this case.
2. The Pensacola News Journal and the Northwest Florida Daily News in printed and internet versions have had numerous front page and

- front page local coverage of the homicides. Along with hundreds of citizen comment sections regarding Defendants guilt or innocence.
3. The internet site, YOU TUBE has the video-taped statements of most of the defendants or main state witnesses, for public view.
  4. The Sheriff for Escambia County, Florida has given several press conferences and television appearances highlighting the importance of the case and arrests of the defendants being made with Mexican Mafia connections.
  5. The national media coverage has consisted of all local and national media affiliates including ABC, FOX, CNN, CBS, and NBC. All local radio stations have so provided extensive coverage.
  6. Because of the media coverage available to the citizens of Escambia County and citizens of the First Judicial Circuit of Florida, it is apparent that a fair and impartial jury and consequently a fair and impartial trial cannot be had in Escambia County or in the First Judicial Circuit, which consists of Escambia County, Santa Rosa, Okaloosa, and Walton Counties.
  7. Therefore, in the interest of justice, to obtain a fair and impartial trial, the trial of this case should be moved to a county outside of the First Judicial Circuit. (PCR. 165).

The motion for change of venue filed by Mr. Gonzalez's counsel was wholly inadequate. It contains only passing reference to a lot of media coverage without including any details which would have informed the court of the inflammatory and prejudicial nature of the media coverage in Escambia County, as outlined in the 3.851 Motion. The motion filed by Mr. Gonzalez's trial counsel contained only a bare smidgen of the highly prejudicial media coverage that was actually present.

Worse yet, counsel for Mr. Gonzalez effectively abandoned any realistic hope of obtaining a change of venue, which was necessary for Mr. Gonzalez to have a fair trial, when he argued the motion before the trial court. After the court stated that it

would have to attempt to impanel a jury before ruling on the motion, the following exchange took place between the court and counsel for Mr. Gonzalez:

“COUNSEL FOR MR. GONZALEZ: We have filed the necessary affidavits from various citizens, and we would try, of course, to pick a jury but we would ask that the court take judicial notice that there has been – we have not added any supporting documents like pictures, newspaper articles, or internet, you know. **I would ask the court to take judicial notice, I don’t think the state has any objection, that there has been a tremendous amount of publicity as stated in my motions, so we don’t have to go through the effort of trying to bring in a bunch of newspaper articles for the Court.**

THE COURT: Okay, I have no problem with that, Mr. Molchan?

MR. MOLCHAN: No, Your honor.” (PCR. 166).

Mr. Gonzalez asserts that his counsel was ineffective for failing to provide the court with the available media coverage of the Gonzalez case so that the court would have been made aware of its inflammatory and prejudicial nature as to Mr. Gonzalez. Furthermore, the lower postconviction court erred in not conducting an evidentiary hearing on this claim.

Under Florida Rule of Criminal Procedure 3.851, an evidentiary hearing must be held on an initial motion for post-conviction relief whenever the movant makes a facially sufficient claim that requires a factual determination. *Hurst v. State*, 18 So.3d 975 (Fla. 2009), *citing Gonzalez v. State*, 990 So.2d 1017 (Fla. 2008). On such a motion, to the extent the movant has made a facially sufficient claim requiring a factual determination, the court must presume that an evidentiary hearing is required. *Id.*, *citing Booker v. State*, 969 So.2d 186 (Fla. 2007) (*See also Seibert v. State*, 64

So.3d 67 (Fla. 2003). The reason for granting and evidentiary hearing is detailed in *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000). “In addition to the unnecessary delay and litigation concerning the disclosure of public records, we have identified another major cause of delay in post-conviction cases as the failure of circuit courts to grant evidentiary hearings when they are required. The failure can result in years of delay. This Court has been compelled to reverse a significant number of cases due to this failure. When a case gets reversed for this reason, the entire system is put on hold, as the hearing on remand takes many months to be scheduled and completed, and the appeal therefrom takes many additional months in order for the record on appeal to be prepared and the briefs filed with this Court. In order to alleviate the problem, our proposed rules require that an evidentiary hearing be held in respect to the initial motion in every case. This single change will eliminate a substantial amount of delay that is the current system.” *Id.*

Here the movant did make a facially sufficient claim requiring a factual determination. An evidentiary hearing should have been conducted, which is the only way to determine whether the prejudicial pretrial publicity so inflamed the community of Escambia County that Mr. Gonzalez’s counsel was ineffective for failing to file a complete motion for change of venue. The lower court erred in not setting an evidentiary hearing on this claim.

Additionally, the lower court erred in concluding that the jury selection questioning cured any ineffectiveness of counsel because jurors were asked if they had heard anything about the case and if they did whether they could be fair and impartial. The lower courts stated in its order denying this claim that “The State Attorney questioned each panel member on whether they heard anything about the case and whether they could put aside what they heard and judge the case fairly. The jurors agreed they could put aside what they heard on the news and they would be able to judge the case from the evidence presented at trial alone. Those that indicated they could not do so were removed. Defense counsel further inquired of the panel if they could put aside what they heard on the news and the Sheriff’s comments and judge the case fairly. The panel said they could do so. Under these circumstances, the Court finds no basis to conclude that, had the additional information suggested by postconviction counsel been presented, the trial court would have or should have granted a motion for change in venue, Defendant is not entitled to relief on this claim”. (PCR. 796).

The lower court erred in finding the cursory questions by the state and defense counsel rebut the prejudice associated with the extensive and prejudicial media coverage of Mr. Gonzalez’s case. In *Coleman v Kemp*, 778 F.2d 1487 (11<sup>th</sup> Cir. 1985) the court found prejudice where the petitioner presented the court with over 150 newspaper articles written about the case before his trial, one of which included a

statement by the county's chief law enforcement officer that he would like to "precook" the petitioner before he was electrocuted, and media broadcast transcripts and witness statements indicating the case was a main topic of conversation for an extensive period of time. The Eleventh Circuit addressed the issue of whether general *voir dire* questions can rebut prejudice in cases of extensive and media coverage as follows:

Another problem with the *voir dire* in petitioner Coleman's case is that the prospective jurors were not asked questions which were calculated to elicit the disclosure of the existence of actual prejudice, the degree to which the jurors had been exposed to prejudicial publicity, and how such exposure had affected the jurors' attitude towards the trial. *See Calley v. Callaway*, 519 F.2d 184, 208-09 (5th Cir. 1975), cert. denied, 425 U.S. 911, 96 S. Ct. 1505, 47 L. Ed. 2d 760 (1976); cf. *Patton v. Yount*, 467 U.S. at \_\_n.10. Instead, leading questions and conclusory answers were typical of the manner in which Coleman's *voir dire* was conducted. For example, special prosecutor Geer began the individual questioning of prospective jurors and typically asked whether the juror understood "that this defendant, Wayne Carl Coleman, is presumed innocent until proven guilty to a moral certainty and beyond all reasonable doubt by the state of Georgia." Trial Record, Vol. 1 at 85. Geer also typically asked the juror whether he understood that the defendant "is innocent at this moment under the law." *Id.* Geer often asked, "Would the fact that you might have read something about this case from any source influence your mind one way or the other?" *Id.* Other typical questions included, "Would you go by the evidence in the case and the charge of court given you by the court?" "Do you understand that the defendant doesn't have to prove anything?" and "The burden is on the state to prove him guilty beyond a reasonable doubt?" *Id. at 86*

Similarly, although the questions posed by defense attorneys were somewhat more effective, they too tended to be conclusory. For example, the defense attorney would typically elicit the fact that the

potential juror had read or heard about the crimes, i.e., some exposure. However, that would too often be followed up by a merely conclusory question: “Now, from having read about the homicides and also having read of the persons accused and having also seen this on television, is your mind now perfectly impartial between the state and the accused?”

Despite these problems with the *voir dire* in petitioner Coleman’s case, almost one-half of the jurors who were questioned as to whether they had formed an opinion, were stricken for cause for having a fixed opinion.

For the foregoing reasons, and in light of the overwhelming evidence that the community had prejudged both guilt and sentence, we are satisfied that the conclusory protestations of impartiality in the *voir dire* are not sufficient to rebut the presumption of prejudice. *Cf. Irvin v. Dowd*, 366 U.S. at 728, 81 S. Ct. at 1645 (“No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but the psychological impact requiring such a declaration before one’s fellows is often its father”).

*Id.* At 1535.

Applying the legal principle outlined in *Kemp*, the cursory *voir dire* conducted by the state and defense concerning the media coverage does not serve to establish a lack of prejudice, as incorrectly found by the lower postconviction court. All the reasons given by the lower postconviction court in denying claim one of the 3.851 motion are unavailing.

**ISSUE II: DID THE LOWER COURT ERR IN SUMMARILY DENYING MR. GONZALEZ’S CLAIM THAT HIS TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE GRAND JURY INDICTMENT ON THE GROUNDS THAT ESCAMBIA COUNTY SHERIFF DAVID MORGAN ENGAGED IN OUTRAGEOUS GOVERNMENTAL MISCONDUCT BY IMPROPERLY INFLUENCING MEMBERS OF THE GRAND JURY WHO ISSUED THE INDICTMENT AGAINST MR. GONZALEZ**



In his 3.851 motion, Mr. Gonzalez alleged that his counsel was ineffective for failing to file a motion challenging the grand jury indictment due to the fact that Escambia County Sheriff David Morgan had made a practice of greeting jurors gathering for jury selection. (PCR. 171). The basis for the factual allegation was a letter dated on March 17, 2011 from United States District Judges M. Casey Rodgers, Roger Vinson, and Lacey Collier to Sheriff Morgan outlining that he had a practice of regularly greeting jurors near the courthouse where the jurors are summoned to appear. The letter noted that jurors would show up for duty with a business card from Sheriff Morgan. The Judges further stated in their letter that “your interaction with these prospective jurors raise legitimate concerns about the court’s ability to seat fair and impartial jurors, especially when considering that the majority of those selected will serve on criminal juries. They stated that the potential for bias created by a senior elected public law enforcement official greeting prospective jurors and handing out business cards to them just prior to jury selection is undeniable. They requested that Sheriff Morgan refrain from his jury greeting activities. (PCR. 171).

Sheriff Morgan did not acquiesce. Instead he fired back a letter to the Federal District Court Judges stating he would continue his practice of greeting jurors with the intent of putting a complimentary face on law enforcement. (PCR. 171). Sheriff Morgan thereafter signed an affidavit stating that it was his normal practice on

Monday or Tuesday to go to the juror parking area where the potential jurors are directed to park and greet them by giving them his business card and thanking them for appearing. (PCR. 15). In a letter to State Attorney Bill Eddings, Sheriff Morgan stated he had suspended his jury greeting for any “Billings” case as he was the “public face” of those cases. (PCR. 173)

The 3.851 motion alleged that the Grand Jury in Mr. Gonzalez’s case issues its indictment on August 11, 2009. The motion states that it was the undersigned counsel’s understanding and belief that the potential Grand Jurors arrive in the same general assembly parking lot where Sheriff Morgan engaged in his jury greeting and influence activities. (PCR. 174). Based upon the time frame Sheriff Morgan says he greeted potential jurors and when the Grand Jury was convened to issue the indictment, counsel had a god faith belief that Sheriff Morgan greeted some or all of the members of the Grand Jury who indicted Mr. Gonzalez. (PCR. 174). The Motion further alleged that counsel for Mr. Gonzalez knew or should have known that Sheriff Morgan had greeted the members of the Grand Jury in Mr. Gonzalez’s case, as there was extensive news coverage of the Sheriff’s activities. (PCR.174). Thus, the motion alleged that Counsel for Mr. Gonzalez was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984).

The Motion further alleged that under *Rudd v. Christian*, 310 So.2d 295 (Fla. 1975), if a state attorney, and his assistants should in any way attempt to influence

the findings of a Grand Jury, other than presenting evidence and rendering legal advice, any indictment returned may be set aside for improper influence. (PCR. 18)

The lower postconviction court denied this claim without conducting an evidentiary hearing. (PCR. 797) The lower court stated reasons were that the claim was based upon speculation that Sheriff Morgan actually greeted the members of the Grand Jury and that there is no prejudice established because the state would have simply gotten another indictment from another Grand Jury. (PCR. 797, 798).

Both of the reasons cited by the lower court for denying claim two are erroneous. The claim was not speculation, but rather based upon letters written by three Federal District Court Judges, who were obviously aghast that Sheriff Morgan would attempt to influence jurors. (PCR, 171). And it was Sheriff Morgan's own words which stated his habits of greeting jurors on Mondays and Tuesdays. As the Motion states, it was made under the good faith belief that Sheriff Morgan greeted the jurors based upon the letters to and from Sheriff Morgan. The proper remedy was not to summarily deny the claim, but rather set an evidentiary hearing in order to obtain the testimony from Sheriff Morgan and others who could verify that he was doing his "greetings" when the grand jury in this case was selected.

As to the other reason for denying the claim, that the state could have just gotten another indictment due to "overwhelming evidence", the lower court cannot say what evidence was even presented to the Grand Jury in this case. Far from

overwhelming this case was based almost entirely on the testimony of two co-defendants, Frederick Thornton and Rakeem Florence, both of whom admitted they initially lied to the police and their families about going over to the Billings house to buy some weed. No physical evidence ever placed Mr. Gonzalez at the scene, in possession of the murder weapon, in possession of the safe or anything else from the Billings residence. The safe was found at Pamela Long's house, not Mr. Gonzalez's house. The gun was found in Pamela Long's car, not Mr. Gonzalez's. The other weapons allegedly used in the invasion were located in possession of Hugh Wiggins and Pamela Long, not Mr. Gonzalez.

Furthermore, it is within the power of this court to impose a stronger remedy than dismissal of the indictment for this outrageous Governmental misconduct, keeping in mind that Sheriff Morgan was also the person who poisoned the community against Mr. Gonzalez, as stated in Claim one of this appeal. If his interference with the Grand Jury is established at an evidentiary hearing, along with a design to infect the community with untruths against Mr. Gonzalez, those two constitutional violations cumulatively could deprive the state of a right to a retrial of Mr. Gonzalez at all. In any event, this court should remand this claim back to the lower court for an evidentiary hearing.

## **CONCLUSION**

Mr. Gonzalez requests that this Court reverse the summary denials of Claims One and Two of his 3.851 motion and remand the case for evidentiary hearing.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy in PDF format of the foregoing INITIAL BRIEF OF APPELLANT has been transmitted to the Clerk of the Supreme Court of Florida, through the Florida Courts E-Filing Portal, which will serve a Notice of Electronic Filing to: Lisa Hopkins, Assistant Attorney General, Office of the Attorney General at [Lisa.hopkins@myfloridalegal.com](mailto:Lisa.hopkins@myfloridalegal.com) and [capapp@myfloridalegal.com](mailto:capapp@myfloridalegal.com). A hard copy will be sent by first class U.S. Mail to Leonard Gonzalez, DOC # 768915, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083 on this 23<sup>rd</sup> day of October, 2017.

/s/ Eric C. Pinkard

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that a true copy of the foregoing INITIAL BRIEF OF APPELLANT was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210 (a)(2).

/s/ Eric C. Pinkard

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