

**CAPITAL CASE**

**DOCKET NO. \_\_\_\_\_**

**IN THE SUPREME COURT OF THE UNITED STATES**

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**JOHNATHAN I. ALCEGAIRE,**

*Petitioner,*

**vs.**

**STATE OF FLORIDA,**

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE FLORIDA SUPREME COURT**

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**PETITION FOR A WRIT OF CERTIORARI**

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## CAPITAL CASE

### QUESTIONS PRESENTED

In this Florida capital case, the Florida Supreme Court, while acknowledging that the prosecution's argument to the jury was not true, denied Petitioner Jonathan Alcegaire's *Giglio*<sup>1</sup> claim on direct appeal. Alcegaire contends that the Florida Supreme Court denied relief only by misconstruing the facts in the record and disregarding firmly-established precedents of this Court regarding presentation of false or misleading evidence.

The question presented to this Court is whether the Florida Supreme Court ignored fundamental principles of due process in rejecting Alcegaire's *Giglio* claim and whether there is a reasonable likelihood that the false statements made by the prosecutor could have affected the judgment of the jury.

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<sup>1</sup> *Giglio v. United States*, 405 U.S. 150 (1972).

## STATEMENT OF RELATED PROCEEDINGS

*Alcegaire v. State*, No. SC19-428 (Fla. opinion and judgment rendered on September 9, 2021; order denying rehearing on October 27, 2021 and mandate issued on November 12, 2021).

*State v. Alcegaire*, 2016 CF 284 (Fla. 10th Cir. Ct. judgment entered on March 8, 2019).

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## **PETITION FOR WRIT OF CERTIORARI**

### **OPINION BELOW**

The opinion below is reported at *Alcegaire v. State*, 326 So. 3d 656 (Fla. 2021) and a copy is attached to this Petition as Appendix A. The order denying Petitioner's motion for rehearing is attached as Appendix B.

### **JURISDICTION**

The Florida Supreme Court issued its judgment affirming Petitioner's death sentence on September 9, 2021, and denied Petitioner's motion for rehearing on October 27, 2021. This Court extended the time for filing this petition for certiorari to February 24, 2022. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1257(a).

### **CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourteenth Amendment to the United States Constitution provides in relevant part: “[N]or shall any state deprive any person of life, liberty, or property without due process of law.”

## STATEMENT OF THE CASE

Following a 2018 trial, Petitioner was convicted of nine crimes stemming from one incident on January 6, 2016, at 2314 East Magnolia Street in Lakeland, Florida. The convictions included three counts of first-degree murder, one count of attempted murder, and one count of conspiracy to commit murder. After waiving presentation of any mitigation evidence, the jury unanimously recommended that Petitioner be sentenced to death.

All four victims of the incident suffered gunshot wounds. In arguing for a judgment of acquittal on the murder charges, the trial court denied the motion, but found that the State had not proven that Petitioner possessed a firearm. In its verdict form for the penalty phase, the jury concluded the State did not prove that Petitioner killed any of the victims.

Petitioner was initially indicted with three other defendants. The defendants' trials were not joined and, following a demand for speedy trial by Petitioner, his case was the first to go to trial. As the State told Petitioner's jury, the case was based solely on circumstantial evidence and the eyewitness testimony of the surviving victim. At trial, the surviving victim told the jury that he saw Petitioner in his home at the time of the shooting. After trial, however, he gave new statements to the prosecution and told them that he did not see Petitioner at the home that morning. Based on his change of testimony, the charges against one of the defendants were dropped. In his

post-trial statements to the prosecutors, the surviving victim said he only saw the one individual who shot him.<sup>2</sup>

The State's theory was that Petitioner's brother, Andrew Joseph, and the deceased male victim in this case were involved in drug dealing together and the victim must have done something to make Joseph angry. One prosecutor told the jury she believed the Petitioner was a soldier for his brother and his brother directed him to kill the victim. No direct evidence was adduced that Petitioner worked for his brother or had any discussions conspiring to kill the victims.<sup>3</sup>

In the course of its investigation into the killings that occurred at 2314 East Magnolia, law enforcement had seized Petitioner's phone, and the State produced evidence of the contents of the phone at trial. The contents included a search, just days before these killings occurred, for another Lakeland residence at 2301 West Magnolia Street. Petitioner and his three co-defendants all lived in Miami, while the victims lived in Lakeland. Petitioner proposed to the jury that this was the address he traveled to Lakeland to go to and not the crime scene. This argument was developed in the course of its cross-examination of the officer who testified to the contents of Petitioner's phone.

In its rebuttal closing argument, the State produced a demonstrative aid of a map of Lakeland, Florida, claiming it conclusively refuted Petitioner's assertion that

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<sup>2</sup> This defendant, Jamaal Smith, went to trial on the charges while Petitioner's appeal was pending and was convicted. He was sentenced to life.

<sup>3</sup> While Petitioner's direct appeal was pending, all of the murder and conspiracy charges against Mr. Joseph were dismissed and he entered a negotiated plea to accessory after the fact. He received a sentence of seven years.



he was at the West Magnolia address the morning of the shootings. The prosecutors claimed the map showed that West Magnolia was on the complete opposite side of Lakeland and, thus, Petitioner was obviously and clearly not going to West Magnolia.

While Petitioner's appeal was pending, he ensured that the demonstrative aid was mailed and placed on deposit with the Florida Supreme Court so that it could be viewed. In viewing the aid and comparing it to the testimony at trial, it became clear to Petitioner that the State's argument to the jury was false. Contrary to the State's argument to the jury, the evidence the State presented at trial showed the van Petitioner had driven from Miami traveling toward West Magnolia and in close proximity to the West Magnolia address.

In light of the foregoing, Petitioner argued on direct appeal that the State's false argument regarding the map was a *Giglio* violation and the due process violation necessitated a new trial. The Florida Supreme Court denied Petitioner's claim without conducting any type of *Giglio* analysis. The Court characterized the prosecutor's argument as merely stating it was unlikely the van traveled near the West Magnolia address. *Alcegaire*, 326 So. 3d at 670. That characterization is not consistent with the record before the Court, wherein there was no ambiguity in the State's argument that the van was nowhere near the West Magnolia address on the morning of the shootings.

The Court acknowledged the falsity of the State's argument by stating that the State's evidence did, in fact, place the van in the area of the West Magnolia address. But instead of addressing whether the false statements were material and could have

affected the judgment of the jury, it denied Petitioner relief because "[t]he trial court did not abuse its discretion in this instance." *Alcegaire*, 326 So. 3d at 670. The *Giglio* issue was never raised in the trial court and, thus, the trial court never exercised any discretion related to that claim.

Petitioner filed a motion for rehearing noting that the Court had acknowledged the State's argument was false and, therefore, it must review the issue under the heightened judicial concern and scrutiny that *Giglio* claims demand, with the State bearing the burden of proving that the false statement was harmless beyond a reasonable doubt. Petitioner's motion for rehearing was denied and no further analysis was conducted. This writ follows.

## REASONS FOR GRANTING THE PETITION

### **I. The Florida Supreme Court's denial of Petitioner's *Giglio* claim is inconsistent with this Court's long-settled constitutional principles. There is a reasonable likelihood that the false statements offered by the prosecution affected the judgment of the jury.**

For nearly 100 years now, this Court has condemned the prosecution's presentation of evidence that is false or known to create a false impression with the jury. *See Mooney v. Holohan*, 294 U.S. 103 (1935). The Court in *Mooney* explained that securing a conviction "through a deliberate deception of court and jury by the presentation of testimony known to be perjured" is "inconsistent with the rudimentary demands of justice". *Id.* at 112. In the same year as *Mooney* issued, this Court also advanced the theory behind why implementing special standards designed to protect the due process rights of criminal defendants was necessary:

"The [prosecution] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not a liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed. Consequently, improper suggestions,

insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none."

*Berger v. United States*, 295 U.S. 78, 88 (1935).

Over the course of the decades that followed the *Mooney* and *Berger* decisions this Court has established a long line of precedents that unequivocally define a prosecutor's role in protecting a criminal defendant's due process right to a fundamentally fair trial. See, e.g. *Pyle v. Kansas*, 317 U.S. 213 (1942); *Alcorta v. Texas*, 355 U.S. 28 (1957); *Napue v. Illinois*, 360 U.S. 264 (1959); *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Agurs*, 427 U.S. 97 (1976); *United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419 (1995).

These cases illustrate the special role played by the government in the search for truth in criminal trials and have developed a special class of due process rights now commonly known as the *Giglio* and *Brady* rules. And in ensuring that a criminal defendant's due process rights are protected, this Court has implemented special standards to review whether those rights have been violated in a given case. Perhaps the best articulation of how these standards should be applied is set forth in this Court's opinion in *United States v. Bagley*. In *Bagley*, the Court noted that it was clear, as even the Government conceded, that the proper "standard of review applicable to the knowing use of perjured testimony is equivalent to the *Chapman*<sup>4</sup> harmless-error standard." *Bagley*, 473 U.S. at n9. Under the *Chapman* standard, the

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<sup>4</sup> *Chapman v. California*, 386 U.S. 18 (1967).

rule required "the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Id.*

The *Bagley* court noted that the well-established rule that "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury" was justified...on the ground that the knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves 'a corruption of the truth-seeking function of the trial process.'" *Id.* at 678-80 (quoting *United States v. Agurs*, 427 U.S. at 103-04)).

Nothing in this Court's precedents since *Giglio* and *Bagley* issued has served to alter or diminish the standard that must be applied when the government offers false evidence it in its prosecution or withholds evidence favorable to the accused. And as this Court recognized in *Wearry v. Cain*, 577 U.S. 385 (2016), this Court "has not shied away from" even "summarily deciding fact-intensive cases where...lower courts have egregiously misapplied settled law." *Id.* at 395 (citations omitted)(the prosecution's failure to disclose material evidence favorable to the defendant violated his due process rights and warranted a new trial)).

In the instant case, the prosecution undisputedly offered a false presentation of the evidence to the jury. The Florida Supreme Court's majority opinion clearly identifies that the State's argument was not consistent with the evidence. The State conceded in its Answer Brief to the Florida Supreme Court below that the argument was not supported by the record and, in fact, was actually favorable to Petitioner's

defense theory. Of course, because the State withheld its demonstrative aid argument until rebuttal closing argument, Petitioner never had the opportunity to tell the jury that what the State told it was untrue. And because the demonstrative aid was not introduced into evidence, the jury did not have the benefit to independently verify if what the prosecutor told them was true.

The Florida Supreme Court acknowledged that the prosecutor's statement did not align with the evidence it adduced at trial. There is no other way to parse that language than a recognition that the Florida Supreme court found the statement was false. Contrary to the Florida Supreme Court's characterization of the prosecutor's argument as telling the jury it was "unlikely" that Petitioner was by the address that he proposed to the jury, the prosecutor told the jury it was clear and obvious that Petitioner was not anywhere close to the address he proposed.

Given that the Florida Supreme Court recognized the statement as false and, because it was the prosecution that gave the jury the false statement, it was incumbent on the Florida Supreme Court to take the next step in the *Giglio* analysis and determine whether there was a reasonable likelihood that the false statement could have affected the judgment of the jury. This it did not do. Instead, it merely stated that the trial court did not abuse its discretion. Of course, because the issue of the falsity of the statement was not realized and raised until direct appeal, the trial court never exercised any discretion as it related to the *Giglio* claim.

The materiality of the false statement cannot be overstated; it struck at the very heart of the defense. There was no physical evidence that tied Petitioner to the

scene of the crime. As the State told the jury, its case was a circumstantial evidence case with eyewitness testimony of the sole survivor of the incident. That eyewitness was, as the trial court noted in its sentencing order, a reluctant witness who gave contradicting answers. After he testified in Petitioner's trial, he gave additional statements to the prosecution that materially differed from his trial testimony, to include the fact that he never saw Petitioner in the home on the morning of the shooting.

Petitioner's *Giglio* claim was raised at the first opportunity he had upon discovering it. The false statements are apparent on the face of the record and warrant a new trial because there is a reasonable likelihood that it affected the judgment of Petitioner's jury. The State, as the beneficiary of the error, cannot demonstrate that the error was harmless beyond a reasonable doubt. To decline review at this stage would only serve to force Petitioner "to endure yet more time on [Florida's] death row in service of a conviction that is constitutionally flawed." *Wearry*, 577 U.S. at 396.

At a minimum, should this Court determine that the record before it is not sufficient to determine whether the false statements by the prosecution rose to the level of a due process violation, this Court should remand this case to the Florida Supreme Court to analyze the claim under the proper *Giglio* standard of review to determine whether the State can demonstrate beyond a reasonable doubt that the false statements could not have affected the judgment of the jury. To allow the Florida Supreme Court's opinion to stand as it is would authorize prosecutors to routinely

make false statements to the jury without any consequence. This Court's precedents make clear that the Constitution permits no such practice.

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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