

CASE NO. 21-7224

IN THE SUPREME COURT OF THE UNITED STATES

JOHNATHON I. ALCEGAIRE,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

**ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA**

**CAROLYN M. SNURKOWSKI
Associate Deputy Attorney General
*Counsel of Record***

**TIMOTHY A. FREELAND
Senior Assistant Attorney General
Office of the Attorney General
Capital Litigation
PL-01, The Capitol
Tallahassee, Florida 32399
Telephone: 850-414-3300**

**capapp@myfloridalegal.com
carolyn.snurkowski@myfloridalegal.com
timothy.freeland@myfloridalegal.com**

COUNSEL FOR RESPONDENT

CAPITAL CASE

QUESTION PRESENTED FOR REVIEW

[Capital Case]

Whether a violation of Giglio v. United States., 405 U.S. 150 (1972) is shown where there is no dispute regarding the accuracy of the evidence and opposing counsel merely disagrees with the prosecutor's closing argument?

Alcegaire, who lived in Miami, was linked by eyewitness and other evidence to an apparently drug-related triple homicide that occurred in *east* Lakeland, Florida. Alcegaire was found guilty and sentenced to death. An eyewitness, the sole survivor of the attack, testified that Alcegaire was at the murder scene and actively involved in the events there. Alcegaire did not testify, but counsel established through cross examination of Detective McPherson that several days before the murders, Alcegaire used his cell phone to look for an address in *west* Lakeland that was several miles from the murder site. Despite the complete absence of evidence supporting it, defense counsel argued to the jury that Alcegaire was at the *west* Lakeland address when the three victims were killed.

On rebuttal, the prosecutor showed the jury an enlarged street map of Lakeland and, over defense objection, used it as a demonstrative aid to challenge Alcegaire's claimed alibi. The Florida Supreme Court rejected Petitioner's claim that argument based on the map was deliberately false or misleading. These facts lead to the aforementioned question.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF CITATIONS iii

CITATION TO OPINION BELOW..... 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... 1

STATEMENT OF CASE 1

REASONS FOR DENYING THE WRIT..... 6

CERTIORARI REVIEW SHOULD BE DENIED BECAUSE
PETITIONER HAS NOT ESTABLISHED CONFLICT AMONG
COURTS OR PRESENTED AN UNSETTLED QUESTION OF
FEDERAL LAW. 6

CONCLUSION 12

TABLE OF CITATIONS

Cases

<u>Alcegaire v. State,</u> 326 So. 3d 656 (Fla. 2021)	1, 6
<u>Alcorta v. Texas,</u> 355 U.S. 28 (1957).....	7
<u>Brady v. Maryland,</u> 373 U.S. 83 (1983).....	8
<u>Giglio v. United States,</u> 405 U.S. 150 (1972).....	5, 6, 7, 10
<u>Kyles v. Whitley,</u> 514 U.S. 419, 135 (1995).....	10
<u>Napue v. Illinois,</u> 360 U.S. 264 (1959).....	7
<u>Pyle v. Kansas,</u> 317 U.S. 213 (1942).....	7
<u>Ramsaran v. State,</u> 664 So. 2d 1106 (Fla. 4th DCA 1995).....	11
<u>Rockford Life Insurance Co. v. Illinois Dept. of Revenue,</u> 482 U.S. 182 (1987).....	6
<u>Tolan v. Cotton,</u> 134 S. Ct. 1861 (2014).....	6
<u>United States v. Agurs,</u> 427 U.S. 97 (1976).....	7
<u>United States v. Bagley,</u> 473 U.S. 667 (1985).....	7
<u>Wearry v. Cain,</u> 577 U.S. 385 (2016).....	7

Other Authorities

28 U.S.C. § 1257(a).....	1
Fla. R. Crim. P. 3.200.....	11

CITATION TO OPINION BELOW

The opinion of the Florida Supreme Court is reported at Alcegaire v. State, 326 So. 3d 656 (Fla. 2021).

JURISDICTION

The judgment of the Florida Supreme Court was entered on September 9, 2021. A motion for rehearing was denied on October 27, 2021. (Pet. App. B). Petitioner invokes the jurisdiction of this Court based upon 28 U.S.C. § 1257(a). Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction, but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the applicable constitutional and statutory provisions involved.

STATEMENT OF CASE

Petitioner was indicted for the murders of David W., Eneida B., and Angelica C., and the attempted murder of Felix C. At the time of the murders, all four lived at 2314 *East* Magnolia Street in Lakeland. Evidence adduced at trial established that they were engaged in the sale of narcotics and made regular short trips to Miami. Text messages found in cell phones belonging to the three homicide victims showed regular communications and commercial transactions with Miami resident Andrew Joseph. It was later established that Alcegaire was living with Joseph.

Felix testified that David, Eneida, and Angelica returned from a brief visit to

Miami around 4 am on January 6, 2016. Everyone was in bed when approximately two hours later, a U-Haul van pulled up in front of the residence. Felix heard a knock at the door and then observed Alcegaire and another man, later identified as Jamaal Smith, inside the house talking with David. Alcegaire entered Felix's bedroom briefly; Smith then entered Felix's room and shot him in the face before returning to David, whom he began beating with a metal barstool. Felix heard near simultaneous shots from the bedrooms where Eneida and Angelica were sleeping, and finally observed Smith shoot David twice in the head. The men began ransacking the residence, took what they could, and left in the van. Felix, who was bleeding profusely, quickly determined that his friends were dead and called 911.¹

Subsequent investigation by law enforcement secured surveillance video from local businesses showing a U-Haul van driving towards the site of the murders and then, approximately 30 minutes later, coming back. U-Haul records from Miami confirmed that Andrew Joseph had rented the van on January 5, returning it the following day. It had been driven over 500 miles, approximately the distance of a round trip from Miami to Lakeland. Law enforcement found a latex glove containing 9 mm bullets in the van's cupholder, similar to bullets used at the crime scene. Photographs from toll stations along the Florida Turnpike showed Alcegaire wearing a distinctive straw hat and Jamaal Smith wearing a ball cap in the front

¹ After the trial Felix, who was an understandably reluctant witness, stated that while he *heard* Alcegaire's voice in the house, he was no longer certain that he *saw* him. Petitioner's suggestion that Felix fully recanted his testimony placing Alcegaire at the crime scene is, unfortunately, incomplete and misleading.

seats as the van drove towards Lakeland and then returned to Miami. Felix testified that some men, including Alcegaire and Smith, had been at the house on December 27. Information from David's cell phone corroborated this testimony because David sent his home address to Alcegaire on that date.

After Alcegaire's arrest, law enforcement searched his phone and found the call log and all text messages to David deleted. But on January 3, 2016, a few days before the murders, Alcegaire had searched the internet for information inquiring about 2031 *West* Magnolia Street in Lakeland. At trial, defense counsel used this information, despite the absence of any other evidence to support it, to argue that Alcegaire was delivering narcotics to the *West* Magnolia Street address and was not involved in the events that took place at 2314 *East* Magnolia Street.

In rebuttal, the prosecutor showed the jury an enlarged street map of Lakeland as a demonstrative aid, and argued as follows:

"[O]ne thing I would ask you to think about is: What drug dealer is going to come from Miami to Polk County to deliver drugs at 6:19 in the morning? I don't think there's many drug dealers that are going to be very pleased to be woke up at 6:19 in the morning. So common sense is going to tell you that.

I also want you to look at those phone records from Johnathan Alcegaire, and you are going to notice that between January 5th and January 6th, there are no phone calls to any 863 numbers here in Polk County.

As a matter of fact, you're not going to find any phone calls to really anybody, other than his brother, Tavaris Mack, Jamaal Smith, regarding the time frame that fits this crime that he could possibly be delivering drugs to.

So it doesn't really fit the bill that Mr. Carmichael is trying to sell. So I want you to use your common sense

as you try to think about whether or not he's coming to Polk County to deliver drugs.

I also want you to think about that whole 'we're going to West Magnolia,' because I did decide to figure out, where is that 2301 (sic) West Magnolia? And it's on the complete opposite side of Lakeland. So if you're trying to get to 2314, which is way over here, which is where our crime scene is here, 2301 is way over here. And if you know Lakeland, we're kind of divided down the middle here by Massachusetts [Avenue]. So 2301 is way over there by I-4.

So when they're leaving our crime scene, which we know they traveled [U.S. Highway] 92, because we've got them on the red light camera video, now, they might stop by their friend's house at 2301 then, but I don't think they are turning on Fairway [Street] to go around the lake to go to 2301.

[objection by defense and argument omitted here]

As I was saying, you can see by the demonstrative aids that I prepared for you that West Magnolia is on the complete and opposite side of Lakeland. So obviously, the defendant is not going to West Magnolia, as you saw -- or as was indicated in the extractions that were in his phone or noted in his phone. I don't know if that was a mistake when he was looking something up.

I don't know if that was an address that he was intending to visit on another time. I don't know what that was. I don't have to prove to you what that was, but that clearly isn't something that he was going to do on January the 5th, January the 6th, or December 27th.

So clearly, ladies and gentlemen, your common sense needs to come into play when you think about those things.

And again, look at the cell phone records. He's not here to deliver drugs on January the 6th. He's here to go to 2314 East Magnolia Street.

(DAR 2851-2858).

On appeal, Petitioner claimed, *inter alia*, that the prosecutor's "false" argument (that Alcegaire was "obviously" not going to *West* Magnolia on January

6th) violated Giglio v. United States, 405 U.S. 150 (1972). It is noteworthy that Petitioner relied on the State's Lakeland map in his argument before the Florida Supreme Court and has never claimed it was inaccurate or false.

Florida's high court rejected Petitioner's claim that the prosecutor deliberately offered false or misleading argument, noting that the red light camera footage indicated that the van was "in the vicinity" of the *West* Magnolia Street address shortly after the murders. Moreover, the State's use of the map was proper; witness testimony relating to the various addresses had been received by the jury, and, the Court concluded, the map provided a visual demonstration of their relative locations. (Petitioner's App. A p. 10-11).

Petitioner now seeks certiorari review of the Florida Supreme Court's decision.

REASONS FOR DENYING THE WRIT

CERTIORARI REVIEW SHOULD BE DENIED BECAUSE PETITIONER HAS NOT ESTABLISHED CONFLICT AMONG COURTS OR PRESENTED AN UNSETTLED QUESTION OF FEDERAL LAW.

Petitioner requests that this Court review the Florida Supreme Court's opinion rejecting his claim that he is entitled to relief pursuant to Giglio v. United States, 405 U.S. 150 (1972). Petitioner contends that the prosecutor's "false" argument should have been resolved using a Giglio analysis rather than the abuse of discretion standard employed by Florida's high court.

Petitioner does not provide any compelling reason for this Court to review his case. Indeed, Petitioner cannot cite to any decision from this or any appellate court that conflicts with the Florida Supreme Court's decision in Alcegaire v. State, 326 So. 3d 656 (Fla. 2021) that the prosecutor's argument was not deliberately false or misleading. Cases that do not divide the federal or state courts or that do not present important, unsettled questions of federal law usually do not merit certiorari review. Rockford Life Insurance Co. v. Illinois Dept. of Revenue, 482 U.S. 182, 184, n.3 (1987). No conflict or unsettled question of federal law is presented in the instant petition. Moreover, mere correction of perceived state court error is typically not an adequate basis for certiorari review. Tolan v. Cotton, 134 S. Ct. 1861, 1868 (2014) (Alito, J., concurring) (citations omitted) ("error correction . . . is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari.")

Alcegaire incorrectly asserts that the legal analysis conducted by the Florida Supreme Court below was a flawed application of this Court's precedent in Giglio. Petitioner's argument merely reflects his disagreement with the Florida high court's opinion. To support his quest for certiorari review, Alcegaire references numerous opinions of this Court which, in his view, mandate a conclusion that he is entitled to relief. All are easily distinguished, however.

For example, Pyle v. Kansas, 317 U.S. 213 (1942) involves a claim that the prosecution knowingly used perjured testimony. Similarly, in Alcorta v. Texas, 355 U.S. 28 (1957) the State knowingly permitted a witness to testify falsely. In Napue v. Illinois, 360 U.S. 264 (1959) the prosecution knowingly elicited false testimony from its principal witness that he had been given no promise of consideration in exchange for his testimony. In United States v. Bagley, 473 U.S. 667 (1985) the prosecutor failed to disclose material evidence that could have been used to impeach the government's witnesses. Finally, in Wearry v. Cain, 577 U.S. 385 (2016) the prosecution withheld material evidence that might have been used to impeach the State's witnesses. The common thread among all of these cases is use of false testimony, known to be false by the prosecution, which was in some way material in that it unfairly damaged the defense case. Materiality is defined in United States v. Agurs, 427 U.S. 97 (1976) as undisclosed evidence that, had it been used, creates a reasonable doubt of guilt that did not otherwise exist.

Alcegaire makes no claim here that any evidence was either false or

withheld; rather, his challenge has to do with the State's argument which, in his view, was false. This is clearly not the type of claim that either Brady² or Giglio was intended to address, however, as examination of the facts of Alcegaire's case demonstrates.

Petitioner asserted in his closing argument that he was not at the murder scene on *East* Magnolia Street, but was instead conducting a narcotics sale some distance away at 2031 *West* Magnolia. Alcegaire did not testify and there was no evidence supporting this claim. During cross examination of Detective McPherson, defense counsel showed him a map (R. 2399, 2562, 2577) depicting 2431 *East* Magnolia and other nearby streets. Detective McPherson agreed that the *West* Magnolia Street address (which was not depicted on the map McPherson was referencing at the time) was west of the crime scene, although he did not know the exact distance. This witness also testified that Alcegaire's Internet search regarding the *West* Magnolia address was made January 3, three days prior to the murders. There was no other evidence to support Alcegaire's alibi. Defense counsel argued for the first time in closing, without notice to the State, that Alcegaire was conducting a narcotics sale on *West* Magnolia at the time of the murders. As both parties had already rested their cases, the State's only opportunity to respond would be in its closing rebuttal.

Accordingly, the State produced a larger street map and, over defense objection, showed the jury the relative locations of East and West Magnolia Streets,

² Brady v. Maryland, 373 U.S. 83 (1983)

arguing that it was "obvious" that Alcegaire was not dealing drugs elsewhere in Lakeland at the time of the murders. It was obvious, the State argued, not only because of the distance between the two locations, but also because Alcegaire's cell phone showed that the only calls he made in the days prior to leaving Miami were to Jamaal Smith or Andrew Joseph. If Alcegaire had arranged to do other business while in Lakeland, the prosecutor argued, how did he accomplish that without making any calls?

Of equal significance here is the fact that Alcegaire has never challenged the accuracy of the map used by the prosecution. Rather, his complaint has consistently been with the prosecution's argument, which he contends was "false" - not because the map itself was inaccurate, but because (in Alcegaire's view) the argument is not strongly supported by the evidence.³

It is important to keep in mind, however, that the map was in full view of the jury while the State's argument was being made; this is not a case where the prosecution withheld evidence and then deliberately misled the jury. To the contrary, the jury was fully capable of gauging the strength of the State's argument because they could see that the road taking the killers to and from the murder scene was at least arguably in the vicinity of West Magnolia Street. Giglio was intended

³ Alcegaire confuses the evidence adduced at trial with the map used by the prosecution as a demonstrative aid. The map was never entered into evidence, but was adopted as a court exhibit for purposes of the record. Accordingly, to the extent that Alcegaire's argument relies upon the map as "evidence," it should be rejected. The jury was repeatedly told that what the attorneys say is not evidence, and the

to address circumstances where the State knowingly allows material, false evidence to stand uncorrected, not grant relief where a prosecutor makes an argument defense counsel disagrees with.

Even if we were to assume that Giglio applies here, examination of the materiality component demonstrates the flaw in Alcegaire's position. Under Kyles v. Whitley, 514 U.S. 419, 135 (1995), materiality is established by assessing whether the false evidence in question undermines confidence in the jury's verdict. Of course, there is no false evidence here, but only what Alcegaire contends was false argument. If we were to stretch Giglio to the point where it arguably applies to closing argument, presumably the proper analysis would be to assess the validity of the verdict without the map or any argument relating to the location of the two addresses.

What remains is an eyewitness who identified Alcegaire as being present during the shootings, plus the fact that Alcegaire called no one in Lakeland in the days prior to the murders, which presumably would be a prerequisite if one were hoping to arrange a drug transaction in a place 250 miles away. Other than the fact that three days before the murders Alcegaire happened to look for the West Magnolia address on his cell phone, there is literally no evidence to contradict Felix's testimony that Alcegaire was present when the three victims were killed. Notably, Alcegaire did not respond when the State, pursuant to Florida Rule of

map, because it was used as a demonstrative aid rather than introduced as evidence, is the functional equivalent.

Criminal Procedure 3.200, demanded to know whether he intended to claim an alibi defense. Nor did Alcegaire bother to request an alibi instruction.⁴ Compliance with either of these would have required him to disclose, or at least point to, some evidence supporting an alibi. Alcegaire's claimed alibi is so weak that it rests entirely on the fact that he happened to look up a different Lakeland address a few days before the victims were killed. The State's argument that Alcegaire was obviously not dealing drugs on West Magnolia is a reasonable inference that is supported by record evidence.

Because the Florida Supreme Court's decision does not conflict with any decision of this Court or involve an important, unsettled question of federal law, this Court should decline to exercise its certiorari jurisdiction in this case.

⁴ Florida law permits a defendant to request an alibi instruction but requires at least some evidence to support it. Ramsaran v. State, 664 So. 2d 1106 (Fla. 4th DCA 1995).

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court DENY the petition for writ of certiorari.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

Charmaine Milligan 507

CAROLYN M. SNURKOWSKI
Associate Deputy Attorney General
Florida Bar No. 158541
Counsel of Record

TIMOTHY A. FREELAND
Senior Assistant Attorney General
Florida Bar No. 0539181

Office of the Attorney General
Capital Litigation
PL-01, The Capitol
Tallahassee, Florida 32399
Telephone: 850-414-3300
carolyn.snurkowski@myfloridalegal.com
timothy.freeland@myfloridalegal.com
capapp@myfloridalegal.com

COUNSEL FOR RESPONDENT