**CAPITAL CASE**

**DOCKET NO. 21-7224**

**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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# PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORI

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## REPLY OF PETITIONER

### 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.

In an attempt to avoid the strictures of the *Giglio*[1] doctrine, the crux of the State's argument is that because the prosecution did not elicit any false testimony from a witness, there can be no constitutional violation. The State notes that Petitioner does not dispute the accuracy of the evidence adduced at trial, but merely disagrees with the State's closing argument. This argument ignores that Petitioner's disagreement is predicated on the fact that the rebuttal argument was objectively false.

Throughout its response, the State overlooks the stated purpose for utilizing the map at trial. In arguing for being able to utilize the demonstrative aid, the prosecution told the trial court that "[trial counsel] has been commenting about [the West Magnolia address] for two days. He talked about this through the entire testimony of Detective McPherson…" (DAR 2854-54). "So I certainly think I have a right to bring it out in front of this jury and the distance from the crime scene and where it was at." (DAR 2854).

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[1] *Giglio v. United States*, 405 U.S. 150 (1972).

As the foregoing shows, and the State conceded in its response, Petitioner placed the issue of the West Magnolia address before the jury during trial. Thus, the State had every opportunity to question Detective McPherson about the distance between the West and East Magnolia addresses. It did not do so. Instead, it chose to wait until its rebuttal argument to tell the jury "I did decide to figure out, where is that 2301 (sic) West Magnolia? And it's on the complete opposite side of Lakeland." With those relative distances, "obviously, the defendant is not going to West Magnolia…" (DAR 2852-53; 2858).

Had the prosecution questioned McPherson and he testified truthfully, the prosecution would never have been able to advance its argument to the jury. Or, if it chose to make such an argument, the jury would have been keenly aware that the prosecution was not telling it the truth.

As the State concedes in its response, and as the Florida Supreme Court acknowledged in its opinion below, the evidence adduced at trial was directly contrary to the State's argument to the jury. A close review of the evidence indisputably showed the van Petitioner had been traveling in to be in close proximity to the West Magnolia address. Consequently, the State could not have produced a witness to support its argument without either intentionally eliciting false testimony, or showing the jury that Petitioner's hypothesis was, in fact, possible.

This Court should not discount the constitutional violation that occurs when a jury is deliberately deceived simply because it was done in closing argument and not through a witness. As Petitioner set forth in his Petition, a prosecutor has a special role in our system of justice. That role has the potential for jurors to attach particular significance to what the prosecution tells it. *See, e.g., United States v. Smith*, 814 F. 3d 268, 274 (5th Cir. 2016)("Our concern is with the 'great potential for jury persuasion which arises because the prosecutor's personal status and his role as a spokesman for the government tend to give to what he says the ring of authenticity.'")(*quoting Hall v. United States,* 419 F. 2d 582, 583 (5th Cir. 1969).

Such a rule would also serve to incentivize the government to withhold questioning that would elicit either false testimony or testimony favorable to the defense and, instead, simply wait for rebuttal closing argument to tell the jury that - had the testimony come out in trial - it would have been detrimental to Petitioner's theory of defense.

Had testimony about the relative distances between the East and West Magnolia addresses come out at trial in the instant case, the record is clear that it would have been favorable to Petitioner's defense theory. As the prosecution told the jury, its case was a circumstantial evidence case with eyewitness testimony of the sole survivor. That survivor gave additional testimony to the prosecution after Petitioner's trial 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. While Petitioner's jury was free to reject his theory of defense, it was wholly improper and unconstitutional for the jury to deliberate upon it with a rebuttal argument that deliberately obfuscated and fabricated relevant facts. A new trial is warranted.

## CONCLUSION

The Florida Supreme court denied relief on direct appeal only by misconstruing the facts in the record and disregarding firmly-established precedents of this Court regarding presentation of false or misleading evidence. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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