

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

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

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HAROLD BLAKE,

Petitioner,

vs.

MARK S. INCH, Secretary,  
Florida Department of  
Corrections, et al.,

Respondents.

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PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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## **QUESTION PRESENTED**

1. Whether the petitioner has demonstrated that jurists of reason could disagree with the federal courts' resolution of his constitutional claims or that such jurists could conclude that the issues presented are adequate to deserve encouragement to proceed further, thereby entitling petitioner to the issuance of a COA?

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Petitioner, **HAROLD BLAKE**, is a prisoner in Florida. He urges this Honorable Court issue its writ of certiorari to review the decision of the Eleventh Circuit Court of Appeals.

**CITATION TO OPINION BELOW**

The Eleventh Circuit's July 30, 2019, order denying Blake's Application for COA is Attachment A to this petition; the district court's order denying Blake's petition and application for COA is Attachment B to this petition. The Florida Supreme Court's opinion affirming the state circuit court's denial of postconviction relief is Attachment C to this petition.

## **STATEMENT OF JURISDICTION**

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals on the basis of 28 U.S.C. Section 1254(1). The Eleventh Circuit entered its order denying Blake's Application for COA on July 30, 2019.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the Constitution of the United States provides in relevant part:

No persons . . . shall . . . be deprived of life, liberty or property, without due process of law.

The Sixth Amendment to the Constitution of the United States provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him.

The Fourteenth Amendment to the Constitution of the United States provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

## **PROCEDURAL HISTORY**

On August 29, 2002, Blake was indicted with first degree murder, attempted armed robbery and grand theft (auto) (R. 102-5). On February 25, 2005, the jury returned guilty verdicts on all counts (R. 316-8).

The Florida Supreme Court affirmed. *Blake v. State*, 972 So. 2d 839 (Fla. 2007). This Court denied certiorari on May 12, 2008. *Blake v. Florida*, 128 S.Ct. 2442 (2008).

On April 16, 2009, Blake filed a postconviction motion for relief (PC-R. 332-409), and on August 31, 2012, the state circuit court granted in part, and denied in part, the motion (PC-R. 7600-99).

On December 14, 2014, the Florida Supreme Court affirmed. *Blake v. State*, 180 So. 3d 89 (Fla. 2014), cert. denied *Blake v. Florida*, 136 S.Ct. 2020 (2016).

On May 1, 2017, Blake filed a petition for writ of habeas corpus. On December 28, 2018, the district court denied the petition and judgment was entered (Doc. 44 & 45). The court also denied a certificate of appealability (Doc. 44).

On February 22, 2019, Blake filed an application for COA with the Eleventh Circuit Court of Appeals. On July 30, 2019, the Eleventh Circuit denied Blake's application.

#### **FACTS RELEVANT TO QUESTIONS PRESENTED**

##### **A. THE TRIAL**

On August 12, 2002, Donovan Steverson saw a black male with braids walking to a car parked in the lot of his building (T. 580-1). The building was located near Del's Go Shop ("Del's") (T. 580). The car left the parking lot (T. 582).

Just after 6:00 a.m., Steverson heard a gunshot and saw a black male with braids run away from the entrance of Del's to the car he had seen minutes before (T. 584, 588).

Trisha Alderman heard the gunshot and saw a black male, with short hair (not bald), running to a parked car away from Del's (T. 435, 444-5). The man was waving a gun (T. 444-5).



Just prior to hearing the gunshot, Denard Keaton had seen one young, short, black male walking toward Del's (T. 453, 461). After the "pop", he watched the person enter a champagne-goldish colored car (T. 454).

Maheshkumar "Mike" Patel, the owner of Del's had been shot. A bullet had entered Patel's arm, exited and re-entered his body where it went through his heart (T. 904).

Det. Glenda Eichholtz responded to the crime scene and attempted to locate the suspects' car (T. 480-1). Eichholtz located an abandoned car shortly thereafter (T. 481). Dep. Scott Billo and his K-9 tracked from the car to apartment 2633 Avenue C in the Lake Deer Apartment complex (T. 499).

Teresa Jones lived next door with Richard Green and her children (T. 593). According to Jones' trial testimony, on August 12, 2002, at approximately 7:30 a.m., Green came to her apartment with Blake and another boy. Jones left with all three in her car. She dropped "Red Man" off at a store and dropped Blake off at a motel (T. 598). However, before dropping them off, they stopped at a car on the side of the road and someone got out (T. 599). Jones could not remember if it was Blake or "Red Man", but agreed that she told the grand jury that it was Blake (T. 599-602). She also agreed that in her initial statements she said that Blake had retrieved two guns from the car (T. 603-4). Jones testified:

Q: Does that refresh your memory as to whether Mr. Blake has said he had shot anybody?

A: Yes.

Q: Did he tell you he had shot someone that day?

A: Yes.

(T. 607).

At trial, Jones confessed that she initially told the police what she believed they wanted to hear (T. 864), and that she previously testified that she did not see Blake take any guns from the car (T. 866). Jones admitted that she had lied to the grand jury (T. 890).

On August 14, 2002, Blake was taken into custody (T. 752). Det. Louis Giampavolo testified that he read Blake his Miranda warnings.

Det. Kenneth Raczynski, Giampavolo and Blake arrived at the police station at approximately 5:00 p.m. (T. 756). According to Giampavolo, Blake admitted to stealing the car and he went on to state that he had gone to Green's house in Winter Haven in the stolen vehicle (T. 758, 759-60). However, Blake maintained that he was not involved with the shooting of Patel (T. 760). Blake later began crying and told the detectives that he was present when Patel was shot. He stated that all three of them got out of the car (T. 763). Blake said that when he got to the door of Del's he accidentally fired the gun (T. 764-5).

Raczynski and Giampavolo requested that Blake allow them to tape his statement. Blake refused, but the police secretly videotaped the next part of the interview (T. 766).<sup>1</sup> During the secretly videotaped statement a shirtless and shivering Blake told the detectives that they were parked behind a fence when a

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<sup>1</sup>In his taped statement, Blake contradicted the statement that he allegedly gave to the detectives before the videotape was turned on.

dog barked at them, so they left the area. Later, they came back to the store (T. 776). All three of them (Blake, Green and another individual) went to the door and Blake shot the victim because the victim scared him (T. 777-8). At this point on the video, Blake re-enacted his walking to the door of the store with his arm and the gun down at his side (T. 778). Blake could not remember which door he shot through (T. 781).

A 9mm gun was recovered from Lake Conine (T. 693-4). The State's expert testified that the copper jacket recovered from the victim's arm was fired from the 9mm found in the lake "with the exclusion of all other firearms in the world" (T. 730-1).

Some of the glass fragments found on Blake's sneakers matched the glass from the window of the stolen car, but none of them matched the glass from the shattered door (T. 705-6).

A videotape was recovered from Del's that captured the incident on video (T. 831).

Finally, Green's right palm print and Blake's right middle finger print were located in the stolen car. And, an unidentified latent print from the car was submitted to AFIS (T. 821). The print was identified to Demetrius Jones (T. 821).

Jones testified that in the early morning hours August 12, 2002, he was outside with Green, Blake, Kevin Key, and Kevie (T. 631-2). Key's street name was "Red Man" (T. 632). Green, Blake and Key had arrived at about 3:00 or 4:00 a.m., in a car driven by Blake (T. 634). Jones saw two guns - a .38 revolver and a 9mm (T. 637). Green had the revolver and the 9mm was in the front seat (T. 637). Jones was asked to accompany the trio to Lakeland

to "rob people who sell drugs" (T. 638).<sup>2</sup> Jones spoke to Kevie and Kevie told him not to go (T. 639).

Later that day, Jones saw Blake and he was "acting like he was nervous, like something happened" and that "somebody got shot" (T. 645, 646-7). At this time, Blake asked Jones to help get rid of a gun, though he never saw a gun (T. 647).

At about 6:30 p.m., Jones ran into Green and Teresa Jones (T. 645). Green had a 9mm and he and Jones tried to sell it (T. 651). Later, Jones saw Green and they went to Lake Conine where Green threw the 9mm into the lake (T. 653-4).

At his trial, Blake testified. He told the jury that Green and Key had come to the motel at 3:00 a.m. (T. 932). Blake left with them and stole a car (T. 935-6). They took some stolen items to Jones' house and dropped them off (T. 938). Green, Key and Jones discussed committing a robbery of a drug dealer and Blake told them that he did not want any involvement and wanted to go back to the motel (T. 940, 942). The three got in the car. Key made two stops - one in a parking lot where Green got out of the car for a few minutes and then at Del's (T. 945-6). Blake thought that they stopped at the store to get cigarettes but then heard gunshots (T. 946). Blake maintained that he did not know that Green intended to commit a robbery (T. 951).

Green reentered the car and the three drove off, abandoning the car moments later. Green led them to Teresa Jones' apartment

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<sup>2</sup>Jones later clarified that Blake was not present when the group discussed robbing people (T. 671-2). In fact, when Blake arrived, he stated that he did not want to do that (T. 673-4).

where Blake insisted that Jones give him a ride to the motel (T. 949-51). They all got into Jones' car and Green told her to go back to the stolen car where he got out and wiped down the car (T. 956). Jones then dropped Blake off (T. 956).

Blake also testified that he was never read his rights (T. 968). Giampavolo told Blake that he was facing the death penalty (T. 971). The detectives also told Blake about Green and Teresa Jones' statements and played Green's taped statement (T. 977, 979). Navarro came into the room and told Blake that he should say it was an accident (T. 975).

Blake was placed in a cell where he was withdrawing from drugs (T. 980). He made a deal with Giampavolo: Blake would tell him what he wanted to hear and Giampavolo would let Blake call his girlfriend to come pick him up (T. 982). Blake thought he was going to go home if he told them that he did it; Blake reasoned that both Green and Teresa Jones were permitted to go home after making statements (T. 983).

## **B. THE POSTCONVICTION PROCEEDINGS**

### **1. Richard Green Attempted to Rob and Shot Mr. Patel Without Blake's Knowledge.**

#### **a. Green's admission**

On March 28, 2011, Green testified that he and Key had planned to watch Del's in the early morning of August 12, 2002 (PC-R. 1531-2). But, when they arrived, Mr. Patel was already there (PC-R. 1533). Green exited the vehicle and approached the store with a 9mm gun (PC-R. 1531-3). Green had not told Blake or Key that he planned to commit a robbery (PC-R. 1534). When Green

exited the vehicle he adjusted his hoodie and pushed his dreads back under it (PC-R. 1534). Mr. Patel came to the door and Green said he panicked and fired a shot (PC-R. 1533).

Green testified that Blake did not shoot anyone and did not even have a firearm (PC-R. 1536).

Green told Teresa Jones that he was surprised that the victim was killed because he did not think that the victim had been hit (PC-R. 1537-8). Angela Parker may have overheard him say this (PC-R. 1538).

Green admitted lying to law enforcement when he said that Blake was the shooter (PC-R. 1539).

b. the videotape & the red shorts

At trial, the jury viewed the crime scene video. Though the identity of the individual on the tape was not clear, the individual appeared to be wearing a pair of red shorts and a grey hooded sweatshirt. See State's Ex. 72 (Trial); Def. Ex. 65. The shorts were a solid red; there was no pattern on the shorts (State's Ex. 72 (Trial); Def. Ex. 65) ("A subject is seen with his face covered up to his eye, wearing a grey hooded sweatshirt, red shorts and white sneakers" (Def. Ex. 65)).

Green's clothes were collected from him on the night of the crimes. The items were described as "cotton shorts from Richard Green" See Def. Exs. 20, 21 and 25.

When Blake was arrested, clothes were collected from a closet and described as "misc. clothes to include a pair of red shorts that Blake was believed to have been wearing at the time of the homicide." (Def. Ex. 26).

The clothes of Green and those collected when Blake was arrested were submitted for analysis. The item from Green was described as: "cotton shorts from Richard Green" while the items submitted from Blake's arrest were described as: "clothes-multiple (specifically Blake's pair of red shorts)". See Def. Ex. 21.

The State failed to reveal that the color of Green's shorts was red. See Def. Exs. 63 and 64. And, the items collected when Blake was arrested do not include a pair of solid red shorts like those in the video. Rather, the clothes collected at the time of Blake's arrest included four items: blue pants, women's pink pants (size 16), plaid boxer shorts (red, white and blue) and plaid shorts (red, white and blue) (PC-R. 6965-7).

Furthermore, before the video tape had been enhanced, Teresa Jones had provided a description of Blake: "5'10" tall, between 160-170 lbs., last seen wearing a blue sweater, dark pants and a bald head." Def. Ex. 22.

c. the eyewitness descriptions of the shooter

At Blake's trial, when Steverson testified, he told the jury that he had seen a black male with braids get into the backseat of a car (R. 581-2). After he heard a shot, he saw the same man run to the car and get in the back seat (R. 584-5).

Likewise, Alderman saw a man who definitely did not have a bald head (R. 444-5). And, Keaton said the person he saw going back to the car after the shot "wasn't at all tall and thin" but was "5'6" or 5'7"" (R. 461). By his own admission in his August 14<sup>th</sup> statement to law enforcement, Green was riding in the back

seat. And, Green was about 5'6" or 5'7" and wore his hair in a style that could be called braids, plaits or dreads. Blake was almost 5'9" and bald.

d. Green's statements overheard by Angela Parker

Angela Parker was present on August 12, 2002, when Green spoke to Teresa Jones about the crimes. Parker heard Green state: "It didn't look to me like he was shot nowhere that could kill him, he was shot in the arm, I remember him being shot in the arm not the chest or anywhere that could kill him, so he shouldn't be dead." See Def. Ex. 23. Parker was a witness during Green's trial, which occurred before Blake's trial.

e. other evidence implicating Green.

Also, several witnesses provided information about Green's involvement in the crimes. Melburn Thomas and Terrell Smith told law enforcement that Green was in possession of the 9mm gun after the crimes.

Also, during law enforcement's investigation, Kelly Govia was interviewed and told Det. Harkins that the morning of the murder, her niece, Kara Poole, talked to Demetrius Jones and came back crying. Poole then told Govia that Jones had told her that Poole's boyfriend, Kevin Key, was with "[Green] when he shot someone that morning." Govia later eavesdropped on a conversation between Key and another individual in which Key stated that he had been in the car with three people. Key explained that he participated in the attempted robbery because he was trying to get \$100.00 for a down payment for Poole's car.



Key stated that things didn't go as planned and "Plump" pulled the trigger. See Def. Exs. 14 and 26; PC-R. 2144-6.

**2. Law Enforcement's Investigation - What the Jury Did Not Hear.**

Blake became a suspect in the crimes because of Teresa Jones' statement. Navarro was dispatched to locate Blake with the description of: "A black male approximately 5'10" tall, between 160-170 lbs., last seen wearing a blue sweater, dark pants, and a bald head." See Def. Ex. 22.

And, while law enforcement was searching for Blake, witnesses stepped forward with information about Green. Individuals told law enforcement that they had heard that Green was involved in the murder (Def. Ex. 24; PC-R. 6946-8). Even Green's mother came to the scene because she "heard through a third party that her son had killed someone." Def. Ex. 20

Green was interviewed in the afternoon, but denied involvement in the crimes. Later, after his fingerprint was identified on the stolen vehicle, he was re-interviewed. See Def. Ex. 25. However, he was not arrested.

The following day, Parker met with law enforcement and told them about a statement Green had made the previous morning. Parker told them that when Green learned that the victim was killed: "Green looked over at Jones and Parker and said 'it didn't look like to me he was shot nowhere that could kill him. He was shot in the arm. I remember him being shot in the arm, not in the chest or anywhere that could kill him, so the man shouldn't be dead.'" Def. Ex. 23.

On August 14, 2002, Green provided a taped statement to law enforcement admitting that he was at the crime scene. However, he maintained that he did not know that the vehicle was stolen, did not participate in planning the robbery, stayed in the vehicle and only saw a gun when Blake raised it, after exiting the vehicle. See Def. Ex. 20. Green was not arrested.

Blake was arrested on August 14<sup>th</sup>, and was interrogated for many hours. Ultimately, Blake provided a statement, which unbeknownst to him was videotaped, admitting that he shot the victim because he scared him. See Def. Ex. 20. Blake demonstrated how he committed the crime. However, after making a statement, Blake immediately told Det. Brad Grice that he did not shoot the victim and only said he did so that the detectives would leave him alone. See Def. Ex. 30.

On August 16, 2002, Terrell Smith directed law enforcement to Lake Conine because he said that on August 13<sup>th</sup>, he accompanied Green and another male to the lake where he observed Green throw the gun in the water. See Def. Ex. 20; PC-R. 6986-9. According to his testimony on June 19, 2012, Demetrius Jones was not the other individual present (PC-R. 6988).

On August 16, 2002, Kelly Govia was interviewed. Govia explained that she was concerned because on August 12, 2012, at approximately 8:00 - 8:30 a.m., she observed Demetrius Jones and her niece Kara Poole speaking. Later, Poole told Govia that Jones said her boyfriend, Kevin Key was with Green when he shot someone that morning. See Def. Exs. 14, 26; PC-R. 2140-4.

Later that day, Govia listened to a conversation that Key had with a friend. Key said he was not worried because the police did not have his fingerprints. Key also stated that Green pulled the trigger. See Def. Exs. 14, 26; PC-R. 2144.

Demetrius Jones' name had been provided to law enforcement as early as August 14<sup>th</sup> as having been with Green the morning of the crimes. However, it was not until August 19<sup>th</sup> that law enforcement decided to speak to him because a latent fingerprint from the stolen vehicle had matched to Jones. See Def. Ex. 20.

Jones told law enforcement that Key was the third person involved in the crimes. Jones stated that he met with Green after the crimes and Green was attempting to locate Key so he could tell Key to say Key was driving. He also stated that, a few hours before the crimes, Green and Key were trying to get in touch with Blake by paging him. Green and Key ultimately left and returned at 4:00 a.m. in a stolen vehicle talking about robbing people. See Def. Ex. 20.

Jones also told law enforcement that when Key and Green were plotting the robbery Blake was not even present. Jones also stated that Green and Key "went and woke [Blake] up out of his sleep." And, that, even when they brought Blake back, Blake still did not want to be involved in any robbery, i.e., "Blake was like, 'No' - he don't feel like going ... so they just squashed that." In addition, Jones admitted that he had seen Green with a chrome 9mm "like all that week." See Def. Ex. 15.

Jones also stated that it was his opinion that Green was trying to shift all of the blame to Blake and Key. Green was

even trying to obtain money so that he could convince Blake to leave town, "so he wouldn't have to worry about Blake saying anything". Jones also stated that Blake: "ain't you know really care about ... robbin' people." See Def. Ex. 15.

Jones also told law enforcement that he saw Blake the next day and Blake had mentioned getting rid of the gun. See Def. Ex. 15. Jones said he had been with Green when he threw the gun into the lake. And, the following day, he accompanied law enforcement to Lake Conine. See Def. Ex. 15.

Because Demetrius Jones mentioned Kevie Hall as being present on the morning of August 12<sup>th</sup>, law enforcement interviewed him. Hall corroborated Jones' statement that Green and Key were planning to go rob someone. Hall made no mention of Blake being present. See Def. Ex. 20.

### **3. Teresa Jones.**

Teresa Jones lied at Blake's trial. Her motives were simple: she was Green's girlfriend; she had been threatened by law enforcement; and she expected benefits.

Jones told individuals that law enforcement threatened to take her kids away unless she said what they told her to say. Indeed, in December of 2002, Jones was being investigated for child abuse, but shortly after the investigation commenced, it was closed. See Def. Ex. 6. Priscilla Hatcher testified that Jones had confided in her that the statements she made were not true. See PC-R. 2571-4, 2579-81, 2587. And, Hatcher had observed law enforcement threaten Jones. See PC-R. 2571-4, 2579-81, 2587.

Indeed, in 2002, Jones had already confided to Travell Jones<sup>3</sup> that Green was the shooter at Del's (PC-R. 1747). Teresa told Travell that she was worried about her kids (PC-R. 1748).

In addition, Jones was also concerned with criminal charges that were pending against her. On September 11, 2004, Jones was charged and admitted to armed robbery; she was driving the vehicle that pursued an unsuspecting victim and when the victim parked his car, other passengers in Jones' car "ran up to him and pointed a gun in his face.". Jones was present when the armed robbery was planned and followed the victim, then drove the getaway vehicle. See Def. Ex. 6. She was facing life in prison. However, the day before she testified in Blake's trial, her charge was reduced to petty theft, a misdemeanor, and she was allowed to plead to six months probation. Def. Ex. 6.

Jones' motives to lie led to her making several inconsistent statements. At trial, the State relied on Jones to establish three facts: 1) Blake was with Green on the morning of August 12, 2002; 2) Blake took two guns from the abandoned vehicle; and 3) Blake told her that he shot the victim. However, specifically, as to whether Jones observed Blake obtain guns from an abandoned vehicle on the morning of August 12, 2002, Jones has repeatedly, under oath, maintained that she did not.

Jones provided sworn testimony on June 14, 2004, wherein she was asked if she saw Blake take a gun out of an abandoned vehicle on August 12, 2002. She testified that she was not sure

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<sup>3</sup>Travell Jones' name was listed in police reports. See Def. Ex. 20.

about that. She also indicated that what she told the police in August, 2002, was based on what they were telling her and what she heard on the street. She stated that she had lied about some of the things she told law enforcement. Jones testified that it was not her fear of Blake that caused her to lie, but the fact that others had threatened her. She also stated that it was a "crazy morning" and that may have caused her to lie about the fact that she saw Blake take guns from the vehicle. During her testimony, Jones was asked: "Where did you see him with the guns at?" and she responded: "Earlier, before. Not on that day. I guess before that, like in our neighborhood people walk around with protection." When confronted with her inconsistent statement, Jones stated that the testimony about seeing guns was not true - that she "really didn't see no guns." Def. Ex. 34.

Furthermore, at her June, 2004, deposition Jones was also asked: "Did Mr. Blake tell you, that morning, that he had shot someone?" To which she answered: "No." She went on to state: "No. I didn't say nothing about no shooting. I never said nothing about no shooting. He told me he was fighting." Jones explained that she had heard a lot of stories and just repeated the ones that sounded best to her. She said law enforcement had promised to protect her boyfriend, Green. See Def. Ex. 34.

Also, in June, 2004, Blake was tried for the murder of Kelvin Young. At the trial, Jones reiterated that she "gave them what they wanted to hear" before the Grand Jury because "they kept messing with her." She was again asked:

Q: So, you never saw Mr. Blake take any guns out of any car?

A: No.

Q: You never did?

A: No.

Q: Never?

A: No.

See Def. Ex. 51. Jones later reiterated that she did not see Blake remove any guns from the abandoned car and her testimony before the Grand Jury on this point was not true. *Id.*

When Jones testified in Green's trial for the murder of Patel, she told the jury that she had received benefits for her testimony, i.e., she and Green would not be charged with any crimes; they expected benefits. See Def. Ex. 51.

On January 6, 2012, Jones testified:

Q: So he didn't tell you he had shot somebody?

A: No. He just said that he beat somebody with a bat or something like that.

See Def. Ex. 74. Also, specifically, when questioned about whether she had told Blake's investigator whether Blake shot someone, Jones testified:

Q: Okay. Do you recall whether in your conversation with [Blake's investigator], did you tell her that you - that Blake had never told you he had shot someone?

A: I can't remember him telling me he shot somebody.

Q: Okay.

A: I said something about a bat.

Q: Okay.

A: I don't remember him saying -

Q: Okay. And I'm just - in terms of what you said to [the investigator], you would have been saying that all that you remember is you saw him?

A: Yes.

Q: Or he said something about a bat?

A: Yes.

Q: Okay. So it wasn't that he had said he shot someone?

A: No, I don't think so.

See Def. Ex. 74.

Thus, on January 6, 2012, Jones testified unequivocally that Blake did not tell her he fired a shot on August 12, 2002. See Def Ex. 74 (**"No, he didn't tell me that he shot anybody."**) (emphasis added).

#### **4. Demetrius Jones.**

Jones was listed as a suspect in the homicide. And, according to Govia, Jones knew information as early as 8:30 a.m. about the crimes. See Def. Ex. 14. However, according to Jones he did not see Blake or Green until mid-day on August 12<sup>th</sup>.

Furthermore, at the time that law enforcement sought out Jones due to learning that his fingerprint was found on the stolen vehicle, Jones had violated his probation for possession of cocaine. Jones was inexplicably not arrested at the time law enforcement questioned him.

Indeed, it was not until December 16, 2003, that law enforcement arrested Jones on the probation violation. See Def. Ex. 66. In the probable cause affidavit, law enforcement notes that Jones has four active arrest warrants, including a warrant to be held as a material witness. The warrants relating to Jones being a material witness were related to the cases against Blake. See Def. Ex. 5. And, as of December, 2003, the State also filed an information for a battery that occurred in June, 2003. Jones was not arrested for that offense until December 16, 2003. And, when law enforcement located Jones on December 16, 2003, he was charged with 1) possession of cocaine with the intent to sell or deliver; 2) possession of drug paraphenalia; and 3)



resisting arrest without violence. See Def. Ex. 66. Jones was released a few days later despite his pending substantive charges and probation violations, being told to keep in contact with State Attorney Investigator Zeller. See Def. Ex. 5.

Within days of testifying in Blake's capital case, Jones' charges and probation violations were resolved: Jones, who was facing more than twenty-five years for the outstanding crimes and probation violations, was offered a below guidelines sentence of 18 months of probation. And, just two days after entering his plea, Jones was charged with committing felony battery and domestic violence assault. Those charges were not billed on March 28, 2005.

In addition, the prosecutor in Blake's case, Cass Castillo, was actively assisting Jones during the prosecution of Blake. See Def. Exs. 5 and 9; PC-R. 1383.

On June 19, 2012, Jones testified that not everything he told law enforcement and testified about at Blake's trials was true. For example, Jones admitted that he saw Blake once following the crimes, but Blake did not ask him to assist him in getting rid of the gun. Rather, Blake "didn't really say nothing but like, what's up" (PC-R. 7113). However, the first person Jones saw after the crimes was Green (PC-R. 7115). Green approached Jones and told him that someone got shot and he was scared and asked for advice (PC-R. 7110-1, 7115).

Jones also testified that Green told him where he took the gun to dispose of it (PC-R. 7108), but Jones was not with Green when Green threw the gun into the lake (PC-R. 7109).

Jones also testified that Kevin Key told him that Green shot and killed Patel, not Blake (PC-R. 7107-8).

#### **5. Blake Falsely Confessed.**

Dr. Richard Ofshe testified that he examined the circumstances surrounding Blake's "confession." (PC-R. 2083-4). According to Ofshe, the account of his interrogation given by Blake and that described by the detectives involved are irreconcilable. The officers' failure to tape the entire interrogation created a situation in which much of what Blake recounted is essentially worthless, because it's impossible to know if Blake's statements are truly a product of what he witnessed and experienced or the result of contamination that occurred prior to taping (PC-R. 2096-7).

However, according to Ofshe, there are a number of significant elements that are red flags for false confession, i.e., there is no "fit" (PC-R. 2095-2106). More important than the facts that Blake stated accurately are those that he misstated (PC-R. 2095-2106). In Giampavolo's report concerning the aspects of the interrogation that were not taped, Blake allegedly said he picked up Green at his grandmother's house. But, later, Blake said he picked up Green at the Lake Deer apartments, after being specifically asked if he'd picked up Green there or at his grandma's house (R. 1179). This may seem like an insignificant detail, but it has larger ramifications when considered in context. That is, Green claimed in his taped statement, given just a few hours earlier, that Blake had picked him up at his grandmother's. But based on the testimony of

Demetrius Jones, this was not true. Green's claim to have been picked up by Blake at his grandmother's house, or to have been picked up by Blake anywhere that night, was simply a lie designed to minimize his own involvement. That Blake would adopt this lie into his own statement clearly shows that the sources for the version of events he recited were not limited to what he personally witnessed and experienced. This evidence bolsters Blake's claim that the detectives played the taped statement they had received from Green, which Giampavolo denied.

In addition, Blake could not describe what the door of the store looked like (R. 1185; PC-R. 2104). And, though he claimed to have burned the clothes he'd been wearing, Blake could not describe the clothing (R. 1188). Likewise, Blake could not say which door had been shot through. Had Blake been the shooter, it seems unlikely that he would not recall such significant details correctly. When Blake was pressed to explain where the guns ended up, he constructed a story about meeting someone on I-75 and giving the guns to him (R. 1190-1). The detectives, who suspected that the gun or guns had been thrown in a lake suggested to Blake: "The guns didn't end up in a lake?" To which Blake responded: "Ya'll go check every lake" (R. 1192).

Essentially, Blake was unable to tell law enforcement anything they did not already know. It is also important to distinguish that when Blake stood up in the interrogation room to demonstrate how he approached the store he walks slowly with his hands held down; the video from the store shows a rapidly-moving person with a gun held at shoulder-level. See PC-R. 2104-

6. There was no "fit" between the video and Blake's statement (PC-R. 2109). However, Green's statements to Parker demonstrated "fit" (PC-R. 2109). Green knew exactly where the victim was shot. This was a significant statement to Ofshe (PC-R. 2107-8).

In addition, Dr. Barry Crown diagnosed Blake as having organic brain damage (PC-R. 1975). The damage was primarily located in Blake's left temporal lobe (PC-R. 1975). This caused problems with Blake's concentration and attention (PC-R. 1984). Blake's prior IQ testing demonstrates that he suffers from low IQ. Dr. Bhushan Agharkar agreed with Crown's diagnosis and also diagnosed Blake as suffering from PTSD, depression and a panic disorder. Blake's mental health could have effected his statement (PC-R. 2191).

#### **THE FEDERAL COURTS' RULINGS**

In its order denying Blake's ineffective assistance of counsel claims, the district court determined that Blake had not demonstrated that the state court's decision resulted in an unreasonable application of *Strickland* or that the decision involved an unreasonable determination of the facts (Doc. 44). Specifically, as to Demetrious Jones', the district court determined that Blake had not established that Jones had obtained any benefit from the State prior to testifying that was not known to the jury and that his statement about Green's trying to place the blame on Blake was inadmissible (Doc. 44). And, as to Teresa Jones, the district court determined that trial counsel was not required to investigate every conceivable issue related to Jones (Doc. 44).

As to the other exculpatory witnesses, like Govia, Smith, and Hall, the district court determined that the state court had not unreasonably applied the law as to prejudice (Doc. 44).

Finally, as to the issue about trial counsel's failure to obtain expert assistance to challenge the State's case, the district court determined that Blake's trial counsel's performance did not fall outside of the wide range of professional competence (Doc. 44).

As to Blake's *Brady* claims, the district court found that the State court's determinations were not objectively unreasonable (Doc. 44).

As to Blake's argument concerning the denial of his motion to suppress the videotaped statement, the district court determined that there was nothing in the record establishing that Blake ever invoked his right to remain silent (Doc. 44).

Finally, as to Blake's actual innocence claim, the district court determined that Blake did not raise a cognizable claim for relief (Doc. 44).

In its order denying Blake a COA, the district court simply stated:

Petitioner is not entitled to a certificate of appealability (COA). ... Petitioner has not made the requisite showing.

(Doc. 44).

In its order denying Blake's application for COA, the Eleventh Circuit Court of Appeals simply stated that Blake did not make the requisite showing for a COA.

#### **REASONS FOR GRANTING THE WRIT**

**I. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW WHETHER  
BLAKE WAS ENTITLED TO A CERTIFICATE OF APPEALABILITY ON  
THE ISSUES HE RAISED.**

**A. Denial of a constitutional right**

As this Court has explained, a state prisoner whose habeas petition has been denied by a federal district court meets the standard for a COA if he shows that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented [are] 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). That is, a COA must issue where the petitioner "demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* Given that the Eleventh Circuit failed to conduct an appropriate overview of the claims and a general assessment of their merits, *Miller-El v. Dretke*, 537 U.S. 322, 336 (2005), Blake submits that this Court should grant certiorari to address whether on the record in this case, he has established his entitlement to a COA.

Blake submits that jurists of reason could find that his petition states a valid claim of the denial of a constitutional right. Blake asserted in his petition that his constitutional rights to effective assistance of counsel and due process were violated and that he is actually innocent of the crimes for which he was convicted. Blake focused on the fact that each piece of the prosecution's case against him could have been severely undermined had trial counsel conducted an adequate investigation,

impeached the prosecution witnesses and presented favorable evidence and witnesses on Blake's behalf.

Specifically, as to Demetrius Jones, trial counsel could have impeached Jones with his prior sworn statements and pending criminal charges. Trial counsel also could have presented the testimony of Hall, Govia, Smith and others to show that Jones was untruthful in his testimony and that Blake was not even present when Green and Key planned to commit a robbery.

And, as to Teresa Jones, trial counsel could have impeached her with her numerous inconsistent statements as well as showing the jury the complete and accurate picture of her criminal history and motive for implicating Blake in the case.

Likewise, trial counsel failed to obtain the necessary experts to demonstrate that Blake's statement to law enforcement was unreliable.

Furthermore, Blake established that he was denied due process when the prosecution failed to disclose critical exculpatory evidence about key witnesses Demetrius Jones and Teresa Jones as well as the information about Green's shorts which matched the shorts the perpetrator is wearing in the surveillance video.

Blake also raised a claim that he was actually innocent of the crime. Based upon *Herrera v. Collins*, 506 U.S. 390 (1993), *Schlup v. Delo*, 513 U.S. 298 (1995), and *House v. Bell*, 126 S.Ct. 2064 (2006), he is entitled to relief.

**B. Ruling is debatable**

Blake submits that jurists of reason would find it debatable as to whether the district court was correct in its rulings denying his petition. Initially, the district court commented that: "In addition to finding the record refuted Blake's assertions, the state court also determined the witnesses, who testified on behalf of Blake at the evidentiary hearing, were not credible." (Doc. 44). However, this is simply not true. Much of the evidence that supports Blake's claims was introduced in the form of documents. Certainly the documents was not found to lack credibility, either in authenticity or accuracy. Further, numerous witnesses were found to be credible.<sup>4</sup> For example as to Govia, Parker and Clay, the state circuit court held: "The Court agrees that the testimony of Kelly Govia, Angela Parker, and Marion Clay would arguably have been of some help to the defense in arguing that somebody other than Mr. Blake was the shooter." (Ex. 9g; 7655). Certainly, the state circuit court determined that much of Blake's evidence, both the witnesses and documents, were credible and exculpatory.

Further, the district court quoted much of the state circuit court's order as it related to the evidence concerning trial counsel's failure to impeach Demetrius Jones and Teresa Jones (Doc. 44, 6-9, 10-13). However, Blake has shown that the state

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<sup>4</sup>The circuit court commented on a few of the State's trial witnesses: Richard Green, Teresa Jones and Demetrius Jones. However, it is important to note that all of these witnesses had much to lose when they testified at Blake's trial. However, they had no such incentives when they testified at the postconviction evidentiary hearing. And, of course the state circuit courts comments begs the question of how it is that the State of Florida can rest a conviction on those same witnesses.



courts' denials are contrary to and an unreasonable application of *Strickland*.

First, the state courts did not address much of Blake's claim. And, the courts considered each statement or witness individually, rather than consider the total picture of trial counsel's investigation and how the various statements and witnesses would have undermined the State's theory of prosecution and thus, Blake's conviction.

For example, the state circuit court dismissed the statement provided by Kevie Hall simply because Blake did not present Hall to testify at the evidentiary hearing and affirm his statements (PCR. 7646).<sup>5</sup> However, a postconviction defendant is not required to present a live witness rather than a statement for a court to assess the importance or credibility of the testimony. See *Kyles v. Whitley*, 514 U.S. 419 (1995) (assessing prejudice of police memorandum and interview notes with witness); *Floyd v. State*, 902 So. 2d 775, 781-5 (Fla. 2005) (assessing prejudice of statements contained in police report made by a witness to law enforcement); *Young v. State*, 739 So. 2d 553 (Fla. 1999) (same).

Hall made his statement to law enforcement when he was interviewed. Hall's statement contradicted Jones' testimony while corroborating Blake's testimony because Hall indicated that it was only Green and Key that were present and discussing a robbery, not Blake. See Def. Ex. 20. Had trial counsel interviewed Hall and/or deposed him, or even presented him as a

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<sup>5</sup>The state circuit court also made a similar erroneous finding as to what Marion Clay reported (PCR. 7655).

witness at Blake's trial and he attempted to deviate from his statement to law enforcement, trial counsel could have impeached him and shown him his original statement.

Furthermore, as to the additional impeachment evidence of Demetrius Jones, the state circuit court stated:

Although, it could be argued that trial counsel may have been able to more strongly present an argument that Mr. Jones was receiving more benefit for his testimony than he indicated in his trial testimony had counsel more thoroughly looked into Mr. Jones' charges and criminal history, a review of the trial transcript shows that Mr. Jones admitted at trial that he had pending criminal charges and was not going to be sentenced until after he testified.

(PCR. 7646). The court's analysis is in error. Here, Jones was a critical state witness who established Blake's participation in the planning of the robbery. Therefore, it was critical for trial counsel to show the extent of Jones' motives. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("the jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend"); see also *Banks v. Drehtke*, 540 U.S. 668, 1278 (2004); *Davis v. Alaska*, 415 U.S. 308, 315 (1974).

Jones was initially listed as a suspect in the homicide, and according to Govia, knew details about the crime earlier than would have made sense if he had only run into Green in the afternoon of August 12<sup>th</sup>. Jones' circumstances, criminal history and outstanding charges made clear that he had an incentive to curry favor with the State. It was deficient for trial counsel to

fail to adequately investigate and present evidence relating to the powerful motivating forces behind Jones' testimony.

Moreover, under the same reasoning, the state circuit court also erred in finding that trial counsel's questioning of Jones about his August 20<sup>th</sup> statement to law enforcement adequately revealed Jones' credibility problem and inconsistencies (PCR. 7648-9). Though trial counsel used a portion of Jones' statement to demonstrate a few inconsistencies, trial counsel failed to use both Jones' statement to Raczynski and his taped statement to show all of the inconsistencies in Jones' story.

Trial counsel failed to adequately challenge Jones' testimony with his previous statements, his criminal history and witnesses who would have undermined Jones, like Hall, Govia and Smith. Had trial counsel adequately impeached Jones he would have undermined the State's theory and evidence while also corroborating Blake's testimony that he did not participate in the planning of the robbery, had no idea that a robbery would be attempted at Del's and did not shoot anyone.

Likewise, the state circuit court agrees that Teresa "Jones' statements over the years have been inconsistent." (PCR. 7653). Yet, the court did not find that trial counsel's performance in failing to challenge Jones' credibility and testimony was deficient (PCR. 7653).

But, the state courts did not address trial counsel's failure to challenge Jones about her criminal history, motives to curry favor with the State or fear of losing custody of her children. This is so despite the fact that Travell Jones,

Priscilla Hatcher and numerous documents establish that Jones had numerous reasons to make false statements and lie at Blake's trial. And, as the state circuit court did find, her prior statements and testimony were inconsistent on key points.

Had trial counsel adequately impeached Jones he would have undermined the State's theory and evidence that Blake participated in the attempted robbery and did not shoot anyone.

As to trial counsel's failure to demonstrate that Green was the shooter based upon the eyewitness descriptions, the circuit court summarily stated that trial counsel was not deficient (PCR. 7654). The record clearly refutes the state circuit court's statement as there were no less than three eyewitnesses who testified that the shooter was not bald but had hair. According to Teresa Jones' description of Blake and the line-up photos, Blake was bald and therefore could not have been the individual who approached Del's and fired the shot that killed the victim. Obviously, the eyewitness descriptions completely undercut Blake's statement to law enforcement and support his testimony at trial.

Finally, in denying Mr. Blake's claim, the state circuit court conceded that Kelly Govia, Angela Parker and Marion Clay "would arguably have been of some help to the defense" (PCR. 7655). However, without any reasoning the court held that counsel's performance was not deficient. As stated previously, trial counsel could have indisputably shown that the State's theory and evidence was unreliable. Indeed, trial counsel could have demonstrated that Green and Key planned the robbery without

Blake and that Green approached Del's alone and fired the fatal shot. The evidence would have supported Blake's claim that his statement to law enforcement was false and coerced and that he was unaware that a robbery would be attempted on the morning of August 12<sup>th</sup>. The evidence presented at Blake's state court evidentiary hearing placed the case in a whole new light and undermines confidence in Blake's conviction.

Furthermore, the district court defers to the Florida Supreme Court's reasoning that Govia's statement did not contradict Demetrius Jones' testimony and that it was inadmissible hearsay. See *Blake v. State*, 180 So. 3d 89, 107 (Fla. 2014). However, Govia's statements could have been used to question Demetrius Jones about his knowledge of the crime and what Green and Key had told him had occurred. They did not need to be inconsistent with Demetrius Jones' testimony in order to be beneficial to Blake. Here, Govia showed that Jones was being less than forthcoming and that the investigation was not thorough.

Govia's testimony was admissible because she overheard Key discuss his role in the robbery and what had occurred. Clearly, Key's statements were against his interest in that he placed himself in the stolen vehicle and admitted that he had been involved in the plan to commit a robbery. Govia's testimony was exculpatory and admissible. See also *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront

and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process.").

Likewise, the Florida Supreme Court excused trial counsel's failure to investigate Jones' testimony about disposing of the 9mm handgun by holding that "reasonable trial counsel should [not] have known to further investigate." See *Blake* 180 So. 3d at 107. However, trial counsel was on notice that Terrell Smith's statement was inconsistent with Jones' statement. Jones only indicated that he was present when the gun was thrown in the lake. Therefore, reasonable trial counsel would have deposed Jones and spoken to Smith in order to uncover the true circumstances of the disposal of the gun. This is particularly true in the circumstances that are present in Blake's case where a critical prosecution witness' - Jones - was an original suspect and based on his outstanding charges had every reason to curry favor with the prosecution.

Finally, the district court's reliance on *Chandler v. Sec'y*, 218 F.3d 1305, 1315 (11<sup>th</sup> Cir. 2000) (en banc), is misplaced. In the circumstances presented in Blake's case, it is clear that trial counsel's tactical decision, or lack thereof must be assessed in reviewing an ineffective assistance of counsel claim. *Strickland v. Washington*, 466 U.S. 668, 681 (1984); *Wiggins v. Smith*, 539 U.S. 510, 528 (2003).

As to trial counsel's failure to consult with experts, again the district court reiterates the state circuit court's order as well as the Florida Supreme Court's opinion without ever addressing Blake's arguments (Doc. 44, 15-17).

The state circuit court dismissed Blake's claim holding that trial counsel did not need an expert to challenge Blake's statement (PCR. 7658). The court does not support this conclusion with any reason other than that trial counsel testified he did not think he needed an expert (PCR. 7658). However, the court's order is not supported by the record. There is no doubt that trial counsel wanted the jury to believe that Blake's statement was a "false confession. And it flies in the face of what really happened out there when you listen to three witnesses that were at the scene of the crime..." (T. 1120). Trial counsel urged the jury to disregard the statement because it was "not freely and voluntarily made" and "it was a false confession" (PCR. 1121). However, beyond making the assertion, counsel did not elaborate as to why the statement should be disregarded.

Trial counsel failed to consult Dr. Richard Ofshe, or another expert in false and coerced confessions, to contextualize Blake's statement and explain why it bore the indicia of a false confession. Had trial counsel consulted with an expert he could have presented the information supporting Blake's testimony that he was not the shooter and falsely confessed to the crimes due to the circumstances of the interrogation.

Trial counsel undertook no investigation into Blake's mental health and never considered how Blake's mental health may have impacted his interrogation. There is no doubt that had trial counsel investigated Blake's mental health and, at a minimum, consulted with an expert in false confessions, he could have shown that Blake's statement to law enforcement was unbelievable.

Moreover, as to the Florida Supreme Court's ruling that though the experts related to the reliability of Blake's statement to law enforcement "may have cast doubt on the reliability of Mr. Blake's videotaped statement, ... they do not undermine confidence in his first-degree murder conviction." *Blake*, 180 So. 3d at 113, the Florida Supreme Court primarily relied on the fact that Blake was present in the stolen vehicle at the time of the crime and thus, could be found guilty of felony murder. *Id.* However, the Court's analysis discounts Blake's trial testimony that is supported by what Demetrius Jones told law enforcement in his August 20<sup>th</sup> statement. See Def. Ex. 15 ("Blake was like, 'No' - he don't feel like going ... so they just squashed that.").

Furthermore, Blake's print on the stolen vehicle was no more incriminating in the murder than Demetrius Jones' print. As Blake explained to the jury, he stole a car; he did not intend to be involved in a robbery. Trial counsel's deficient performance in challenging Blake's statement singularly undermines confidence in the outcome of his conviction.

Blake submits that the state court's rulings are contrary to and an unreasonable application of established federal law.

As to the State's failure to disclose exculpatory evidence concerning Teresa Jones, the district court cites the state circuit court's order and mentions that the Florida Supreme Court affirmed the circuit court's ruling without ever addressing Blake's arguments (Doc. 44, 20-23).



In denying Blake's claim, the state circuit court summarily stated that Blake had not established that information about Jones' criminal prosecution was suppressed (PCR. 7663). However, the circuit court's finding is not supported by the record. Trial counsel testified that he was not aware of the facts surrounding the armed robbery with a firearm or Jones' statements that she made to law enforcement about her participation in the crime (PCR. 305-6, 308-9)<sup>6</sup> or that Jones being told that she would receive assistance from law enforcement in return for her cooperation or that they were just interested in the person who shot the victim (PCR. 300-1) or that a child abuse investigation had been opened against Jones (PCR. 311-12) or that the State was contemplating holding Jones as a material witness (PCR. 309-10) but that this type of information was significant.

Likewise, though the Florida Supreme Court found that Blake had not proven that he was misled about Teresa Jones' criminal history, *Blake*, 180 So. 3d at 108-9, the Court relied on the single brief conversation between trial counsel and Jones' trial prosecutor (Pickard). However, a review of the pleadings and records relating to Jones' charges makes clear that the prosecutor failed to provide critical information relating to the charges, including the facts of the crime and the date of the

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<sup>6</sup>Trial counsel agreed that the information about the attempted armed robbery with a firearm and Jones' participation in the crime was "a criminal defense attorney's dream to have that information to use to examine a witness like Teresa Jones." (PCR. 306-7). In fact, Jones was facing a life sentence and had already confessed her active role in the attempted armed robbery when she was offered a plea to sixty days of probation.

plea offer. Indeed, the State led the Court and trial counsel to believe that the plea had been negotiated "just two days ago", in actuality, the plea was negotiated on November 4, 2004, less than two months after the charge. The felony plea form, drafted by Pickard, was executed well before her testimony, yet it was not filed until the day she testified on behalf of the prosecution. Thus, Castillo and Pickard's representations were categorically false and misleading. Likewise, Jones' testimony as to the timing of the plea was false. See Def. Ex. 6.

Additionally, on September 11, 2004, Jones actually committed two armed robberies. Jones was only ever charged with one. And, despite her trial testimony to the contrary, she admitted at the time of her arrest her "knowledge of the armed robbery prior to it being committed... . The defendant knew that a firearm was going to be used during the crime ...". Though Jones was facing two life felonies, she was not even charged with one and received six months probation for her role in the other. This evidence was never disclosed to the defense. See Def. Ex. 6.

And, despite Jones' testimony to the contrary, it appears that she received favorable treatment in that she violated her felony probation in December, 2002, shortly after she became a witness for the prosecution against Blake. Her probation was violated in June, 2003, but the affidavit was suddenly withdrawn in April, 2004. Other violations of probation were ignored.

Therefore, Blake was misled about Jones' criminal history and that fact that she repeatedly benefitted from her assistance in Blake's case.

As to the child abuse charges, the Florida Supreme Court determined that the report was "not necessarily impeaching" and would have been insignificant. *Blake*, 180 So. 3d at 108-9. However, Priscilla Hatcher testified about Jones' admission to her and her observation of Jones being threatened by law enforcement. Law enforcement used Jones' children to pressure her to cooperate and provide inculpatory evidence against Blake. Blake was entitled to learn of the true motives behind Jones' testimony. See *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (recognizing "that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.").

Similarly, as to the State's withholding of exculpatory evidence concerning Demetrius Jones, the district court cites the state circuit court's order and mentions that the Florida Supreme Court affirmed the circuit court's order (Doc. 44, 20-23).

In denying Blake's claim, the state circuit court summarily stated that Blake had not established that information about Jones' criminal prosecution was suppressed (PCR. 7664). However, the state circuit court's finding is not supported by the record. Trial counsel testified that if he did not cross examine Jones about his criminal history, then he was not aware of it (PCR. 314-15).

Also, contrary to the state circuit court's determination that confidence in the outcome of Blake's proceedings is not undermined due to the information about Jones (PCR. 7664), Demetrius Jones was a critical State witness that assisted the

State in establishing that Blake was aware of the robbery plot. Trial counsel was entitled to learn of the true motives behind Jones' testimony. See *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (recognizing "that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.").

The district court cites the Florida Supreme Court's opinion without any discussion of the suppression of Green's red shorts (Doc. 44, 22-23). However, this fails to address the fact that law enforcement described Blake's shorts that were collected from the apartment where he was arrested as "red". They were not. This falsity in addition to the fact that none of the disclosed reports contained the color of Green's shorts establishes that the State suppressed critical exculpatory evidence. There is no doubt that the individual who approached the store wore solid red shorts. See State's Ex. 72 (Trial); Def. Ex. 65. Therefore, it was imperative that law enforcement correctly describe the clothes taken from Blake and Green. That was not done and Blake's right to due process was violated.

As to Blake's claim that he is actually innocent of the crimes with which he was convicted, in *McQuiggen v. Perkins*, 569 U.S. 383, 392 (2013), this Court stated: "We have not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence. *Herrera v. Collins*, 506 U.S. 390, 404-405, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993)."

The district court points out that the state circuit court found that Green, Teresa Jones and Demetrius Jones were not

credible (Doc. 44, 31). However, Blake's claim rests on much more than the recent testimony of those witnesses. Blake's claim is supported by a plethora of the evidence that was introduced in the form of documents and other testimony. Certainly the documents were not found to lack credibility, either in authenticity or accuracy. And, numerous witnesses were found to be credible.

Considering the evidence presented at the postconviction evidentiary hearing, it is clear that Blake can make a compelling case of actual innocence.

#### **CONCLUSION**

Petitioner submits that certiorari review is warranted to review the decision of the Eleventh Circuit in this cause.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail, first class postage prepaid to Tonja Vickers Rook, Assistant Attorney General, Office of the Attorney General, 3507 Frontage Rd, Concourse Center #4, Suite 200, Tampa, FL 33607, on this 26<sup>th</sup> day of October, 2019.

Respectfully submitted,

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