NO. 19-7340

IN THE

SUPREME COURT OF THE UNITED STATES

JUNIOR VAZQUEZ-SUAREZ,

Petitioner,

VS.

STATE OF FLORIDA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
DISTRICT COURT OF APPEAL, FIFTH DISTRICT, FLORIDA

PETITION FOR WRIT OF CERTIORARI

JUNIOR VAZQUEZ-SUAREZ DC#M82087
SOUTH BAY CORRECTIONAL& REHABILITATION FACILITY
P.O. BOX 7171
SOUTH BAY, FLORIDA 33493

OVERVIEW

Junior Vazquez-Suarez was interrogated in Spanish by police detective Tonya Rightsell. After the interrogation, Vazquez-Suarez was arrested for trafficking marijuana, among other charges. At trial, Detective Rightsell testified that Vazquez-Suarez admitted to having knowledge of the marijuana plants found in the home he was renting to Victor Rodriguez and that he only came up to Ocala, Florida to get the marijuana plants out of his home.

After trial, at the postconviction evidentiary hearing, Detective Rightsell turned over the DVD of the audio recording of her interrogation of Vazquez-Suarez. For the first time, the defense was provided with impeaching evidence that would have discredited Detective Rightsell's trial testimony by showing that Vazquez-Suarez never admitted to having knowledge of the marijuana plants inside the home he was renting to Rodriguez. This discovery showed that Detective Rightsell's Spanish dialect was distinct from Vazquez-Suarez's dialect, ultimately, demonstrating that her interpretation of his speech was inaccurate.

Vazquez-Suarez asks this court to address these two constitutional questions:

QUESTION PRESENTED:

QUESTION ONE

Whether police officer's failure to disclose impeachment evidence to the defense prior to trial violated the Fourteenth Amendment Due Process Clause under *Brady v. Maryland*, 373 US 83, 83 S Ct 1194 (1963).

QUESTION TWO

Whether trial counsel can be deemed ineffective for failing to advise the court that the criminal defendant was heavily sedated with psychotropic medications impairing his judgment, which affected his ability to make a rational decision regarding a favorable plea offer by the State?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix ____ to the petition and is

[ ] reported at _____; or

[ ] has been designated for publication but is not yet reported; or

[ ] is unpublished.

[✓] For cases from state court:

The opinion of the highest state court to review the merits appears at Appendix __A__ to the petition and is

[ ] reported at _____; or

[✓] has been designated for publication but is not yet reported; or

[ ] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeal on the following date:_____ and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____ (date) in Application No. _____.

[✓] For cases from state court:

The date on which the highest state court decided my case was October 8, 2019. A copy of that decision appears at Appendix A

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was thereafter denied on the following date November 5, 2019 and a copy of the order denying rehearing appears at Appendix D

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____ (date) in Application No. _____

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

The Fourteenth Amendment provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. Amend. VI.

STATEMENT OF THE CASE

This case reveals the significance of *Brady* violations in jury trials. Criminal defendants are deprived of their constitutional right to a fair trial when government officials withhold important evidence from the defendant. This case shows how police and prosecutors will stop at nothing to achieve victory. They hold back crucial evidence hoping to have the edge in the courtroom. This unscrupulous method helps the State maintain an almost perfect conviction rate.

A.

Junior Vazquez-Suarez was tried by a jury before the Honorable Robert W. Hodges, Circuit Court Judge, on April 11, 2014 in Marion County, Florida. The charges stemmed from an incident that occurred on January 31, 2013, where law enforcement officers intended to serve a search warrant on a residence in Dunnellon, Marion County, Florida (TT 202-203; 255-256). The property records listed Mr. Felix Alberto Martinez Romero, as the owner of the residence. (TT 242-244; 248-250). Vazquez-Suarez was linked to the name of Mr. Felix Alberto Martinez Romero, since both names were issued a Florida Driver's License containing the picture of Vazquez-Suarez. (TT 242-244; 248-250; 306-307).

Prior to the service of the warrant, law enforcement observed a red Ford F150 pickup truck with its door open and parked behind the residence. (TT 203-204; 222). The red pickup truck had previously been tracked by a concealed GPS device and traditional police surveillance. (TT 229-242; 251-253; 318-319). Vazquez-Suarez drove the red truck away from the residence prior to the warrant team's arrival. (TT

205; 256; 323)

Subsequently, officers conducted a stop on the red pickup truck. (TT 205; 223; 256-258). Vazquez-Suarez was requested to follow the officers back to the residence in question. (TT 205; 223; 257-258; 319-320).

The officers, who were engaged in the traffic stop, were subsequently advised, over an open radio, to place Vazquez-Suarez in handcuffs and transport him back to the subject residence. (TT 210; 328)

As one of the officers ordered Vazquez-Suarez to step out of the car, (TT 210-211; 260), he placed the car in drive and sped away at high speed. (TT 210-211; 260) This led to the officers' pursuit. (TT 261)

After approximately one mile and a half of travel distance, Vazquez-Suarez veered off the roadway and into the front yard of a residence, entering into a wooded area and eventually striking a pine tree. (TT 212). This brought the vehicle to a stop. Vazquez-Suarez then exited the truck, quickly turned around and re-entered his truck to retrieve an item. The item was later learned to be a cell phone. *Id.*

Law enforcement officers, arriving on the scene, ordered him to the ground, at gun point. At this time, Vazquez-Suarez ran. (TT 213-214). After a foot pursuit, Vazquez-Suarez was apprehended. (TT 214-215).

At this juncture, one of the pursuing officer's police vehicles caught on fire, completely being destroyed, along with its contents. (TT 215-218; 261-262; 322)

Meanwhile, at the target residence, the warrant was served and law enforcement searched the house. (TT 263) There were two people inside the house,

one of which was Vazquez-Suarez's cousin. (TT 264-266)

The condition of the house, at the time of the execution of the search warrant, was documented by video and photography. (TT 267-295) Two hundred and nineteen (219) marijuana plants, weighing one hundred and twenty (120) pounds, were found inside the house, being cultivated in a hydroponic indoor growing system. (TT 267-295; 321; 324) Also found inside the residence were a scale, a vacuum sealer, a catalog for hydroponic equipment, a magazine called "Maximum Yield," and over 100 grams of individually packaged marijuana. (TT. 287-295; 321)

Subsequent to a search of Vazquez-Suarez's wallet the following items were found; items connected to the ownership of the truck, as well as to the alias, Felix Alberto Martinez Romero. (TT 298-301) The search revealed seven deposit slips for $1,000 each in Vazquez-Suarez's bank. (TT 301-302) Also revealed was a receipt from SECO electric company connected to the searched address. (TT 302-303)

Vazquez-Suarez advised that he spoke some English (TT 265) and was interviewed by law enforcement. Post Miranda, Vazquez-Suarez, at first identified himself as Felix Romero Martinez, providing a Florida Driver's License with that name to the questioning officer. (TT 306-308) He then corrected himself and stated that his name was Junior Vazquez-Suarez. (TT 306-308) At one point, he stated that he had come up from Miami to instruct his cousin, who was renting from him, to remove the marijuana plants from the residence. (TT 308-309; 320; 330-331).

Vazquez-Suarez was convicted following a jury trial of (1) Trafficking in Cannabis, (2) Grand Theft, (3) Possession of a Place for the Purpose of Trafficking

or Manufacturing or Manufacturing of a Controlled Substance, (4) Fleeing or Attempting to Elude, (5) Possession of an Unauthorized Driver's License, (6) Driving while License Suspended or Revoked, and (7) Providing a False Name or Identification to a Law Enforcement Officer.

On June 10, 2014, the trial court sentenced Vazquez-Suarez to twenty (20) years in prison with a three (3) year minimum mandatory, and a $50,000 fine on the trafficking offense; five (5) years concurrent for the grand theft charge; fifteen (15) years concurrent for the charge of possession of a place for manufacturing controlled substances; five (5) years concurrent for the fleeing to elude charge; five (5) years concurrent for unauthorized Driver's License; one (1) year concurrent for providing a false name to a law enforcement officer; and sixty (60) days in jail concurrent for Driving while License Suspended; all with 496 days credit for time served on each count (VI 562-563). A $365,000 cost of incarceration was also imposed. (TT 564)

A notice of appeal was filed on June 26, 2014, which resulted in a *per curiam affirmed* decision by the state appellate court on March 17, 2015. *See Vazquez-Suarez v. State*, 160 So. 3d 457 (Fla. 5th DCA 2015).

Following the denial of his direct appeal, Vazquez-Suarez timely filed a motion for postconviction relief on February 11, 2016, predicated upon eight initial-collateral ineffective-assistance-of-trial-counsel claims. (R 1-26) Grounds one through three and five were denied without hearing on September 20, 2016 and an evidentiary hearing that was originally scheduled for November 1, 2016 on the remaining grounds. (R 86-130) Vazquez-Suarez's postconviction counsel requested a

continuance, which was granted by the trial court. (R 131-135) The matter was brought forth to an evidentiary hearing on January 19, 2017, where Vazquez-Suarez's trial counsel testified.

Vazquez-Suarez requested a continuance to review additional evidence brought forth prior to said hearing which the trial court granted. Just prior to the evidentiary hearing on January 19, 2017, the post-*Miranda* interview of Vazquez-Suarez surfaced. Vazquez-Suarez's post-conviction counsel turned over the newly discovered tape to Holly Reed, the designated Official Court interpreter.

Vazquez-Suarez filed a Motion to Incorporate Audio Recording into the 3.850 post-conviction hearing and Request for Translation and Transcription on February 23, 2017. He filed a Motion, directed to the Trial Court, Supplementing Rule 3.850 Post-Conviction Motion with Additional Constitutional Claims for Relief on March 13, 2017. (R 141-154) The postconviction court continued the evidentiary hearing for May 7, 2018. The trial court entered an Order to Transcribe the Evidentiary hearings on May 10, 2018. (R 317-318).

The remaining counts of Vazquez-Suarez's 3.850 post-conviction relief petition were denied by the Court's Order dated June 27, 2018. (R 545-850) A Notice of Appeal was timely filed on July 26, 2018. (R 851)

Statement of Facts

a. The Evidentiary Hearings
Police Officer Tonya Rightsell

Officer Rightsell was the lead agent who conducted a post-*Miranda* recorded interview with Vazquez-Suarez that only surfaced during the post-conviction proceedings. Concerning the undisclosed recorded interview, Officer Rightsell testified as follows:

Q Okay. Do you remember if that recording had – was turned over to anyone, at least the state attorney or anybody from the State Attorney's Office?

A. No. I hadn't realized that that was not in evidence until recently. (R 465)

In reference to her language background, she testified as follows:

Q Is – I guess you do speak English, but was Spanish native to you?

A. Spanish was not my primary language, but my – we spoke Spanish growing up. My parents spoke Spanish. My grandmother doesn't speak any English, so that's – we learned how to speak Spanish.

Q. Is it true that there are dialects that are different for different-speaking Spanish people?

A. Some. Uh-huh. (R 468)

Holly Reed. Ms. Reed is an interpreter for the Fifth Judicial Circuit in Ocala, Florida. (R 485). Ms. Reed reviewed the recorded interview. She discovered that Officer Rightsell's Spanish was not learned from Cuba. She indicated that Officer Rightsell's did not comprehend the Cuban dialect and, therefore, could not attest to her interpretation of what Vazquez-Suarez said. She testified the following regarding Spanish dialects:

Q During your years of interpretation of the Spanish language, have you come to learn that there are different variations of the same language?

A Oh, yes. (R 486)

Regarding the actual recorded interview, she testified as follows:

Q All right. Is there anywhere when you were listening to the tape of Mr. Vazquez-Suarez -- did -- anywhere that he specifically admitted to law enforcement that he knew that there was a presence of a grow house being conducted on the property in question?

A No.

Q All right. Did he indicate anywhere during his testimony to law enforcement that he had come up in reference to a foreclosure notice that he had?

A Yes.

Q Is there anywhere in that interpretation that he had indicated to law enforcement that, if there was a grow house there, he had come up to tell them to take it down?

A Yes.

Q All right. Was – was he addressed by the Detective Rightsell on more than one occasion telling him that he knew there was a grow house there?

A Yes.

Q And did he deny or admit it?

A He had denied it every time.

Q Each time? So is there anything in that tape that you listened to that you could indicate to the Court that he knew that there was a grow house up and running there?

A No.

Q. Anything in that tape – your interpretation of the language of that tape that indicated that he was responsible for the grow house there?

A No.

Q All right. Any admissions that he knew the existence of the grow house?

A No. (R 491-492)

Yvens Pierre-Antoine. Vazquez-Suarez's trial attorney testified as follows regarding the missing recorded interview of his client:

Q All right. Could that have affected your trial strategy if you knew what was on the tape?

A Possibly.

Q All right. Well, my understanding of the trial strategy was that there was nothing tying him to this grow house?

A Yes.

Q Except some statements that he may have made to law enforcement?

A Exactly.

Q All right. And you did not have a copy of the tape that actually memorialized those statements, correct?

A That's correct.

Q Now, did you not have a copy of the tape because you didn't ask for it or because you were told it was nonexistent?

A I was told that the State didn't have any tape of that sort.

Q How about the witness that you took her deposition?

A I don't remember -- I don't remember that.

Q Okay. If you knew that there was a tape, would you have requested it?

A Yes.

Q Why?

A I would want to know -- it could either – I would want to know exactly if there was a tape so that if it made his statement stronger, I thought that would be important. Or if -- if he elected to testify, if there were some statements to the contrary, I would want to know as well.

Q All right. Now, did he tell you that this recording that he believed existed was in a foreign language? In Spanish or English?

A I don't remember – I don't remember that.

Q Okay. If you knew that there was a tape, would you have requested it?

A Yes.

Q Why?

A I would want to know -- it could either – I would want to know exactly if there was a tape so that if it made his statement stronger, I thought that would be important. Or if -- he elected to testify, if there were some statements to the contrary, I would want to know as well.

Q All right. Now, did he tell you this recording that he believed existed was in a foreign language? In Spanish or English?

A I don't remember. I just remember him saying that there was -- there was -- there was -- there was some sort of conversation that he had that may have been recorded. (R 503-504)

Junior Vazquez-Suarez. Regarding the medications he was taking and the effect that had on him, Vazquez-Suarez testified as foolows:

Q. Now, you were still taking your medications at this time, right?

A. Yes, sir.

Q. And your attorney knew you were on the medications?

A. Yes, sir. (R 359)

Q. Did the medication, now that you look back on it -- I understand hindsight is a wonderful thing -- but you don't have medication. Now that you look back on it, do you believe that the medication you were on clouded your judgment or affected that judgment?

A. Yeah, the medication played a lot of (indiscernible) on my mind because if I wasn't on the medication, I would think clearly what to do in that time. (R 361-362)

a. The Trial Court's Order

The Undisclosed Recorded Interview

The Trial Court found that "when comparing Deputy Rightsell's trial testimony with the translated transcript of the recorded statement, the Court finds them to be consistent. As Deputy Rightsell's trial testimony and the Defendant's statement are consistent, the Court finds the recorded statement is not impeachment evidence." (R 552)

The trial court attached trial transcript of the actual recorded interview (R 817-849) which consisted of the following in pertinent part:

Q Okay – so tell me what you were doing here at the house

A I came to tell them to get rid of all that

Q Okay.

A Because I bought the house and I didn't know this was a grow house I didn't know that was a grow house

Q When did you buy this house?

A This house, last year

about January – February, March, April --- about in April.

Q Okay. And you didn't have anything to do with this grow?

A No I didn't know that house was still there. I thought it had been lost until I I received a house for foreclosure

Q What are they doing here

A I don't know. I came to tell them to get rid of all that....That my house was in

foreclosure

Q Okay. So who planted in the house?

A I don't know. That's the problem. I didn't know this existed.

Q Okay. You are telling me that you came from Miami because you received a foreclosure letter and you came to talk to Victor and this gentleman to tell him-

A To get rid of this.

Q To get rid of this because the house was-

A For foreclosure

Q So you didn't have any knowledge that this was a growhouse?

A No

Q No? Did you – you had knowledge, because you came here to tell them –

A Well I imagined it. I imagined it; You understand? I didn't know it was a grow house. I came to see if it was that way or not. You understand me? I wanted to make sure for myself. Understand?

The trial court attached the trial transcript of Detective Rightsell's testimony regarding the interview Vazquez-Suarez (R 785-793) which consisted of the following:

Q Did he indicate why he was there?

A He indicated to me while I was interviewing, we were in front of the residence, as my team was dismantling the grow and exiting the residence with the marijuana plants, and he said I came here to tell them to get all that out. He said it in Spanish to get all out, as he pointed to the marijuana plants. He said it in

Spanish to get it all out as he pointed to the marijuana plants. (R 308 19-25)

After introductions at the original evidentiary hearing on January 19, 2017, Mr. Vazquez-Suarez testified that he had an interpreter at trial. (T. 7) Mr. Vazquez-Suarez proffered that when communicating with his trial counsel he had a tough time understanding his English. (T. 8). He sent his attorney a bunch of letters in English with the help of a bilingual inmate. *Id.* He discussed his mental health history with his attorney. *Id.* Appellant had a history of taking medication for depression, anxiety and bipolar disorder. *Id.* He informed his trial counsel that he was taking medications while awaiting trial in the Marion County Jail. (T. 9)

Mr. Vazquez-Suarez stated that nobody told him that if he rejected the plea offer, he could receive up to 30 years. (T. 11). He told his trial counsel about the medication, but counsel didn't take it into consideration. (T. 12). Since he and his lawyer had a difficult time communicating in English, counsel never discussed competency with his client. (T. 13). Mr. Vazquez-Suarez acknowledges that his medical records at the Marion County Jail reflect the type of medication he was receiving. *Id.*

a. Brady Violation

Vazquez-Suarez alleged in his post-conviction motion that the State withheld the audio recording of the post-*Miranda* interview between Detective Rightsell which did not allow trial counsel to specifically clarify what Vazquez-Suarez said or did not say at the time of trial. The inability to have the material, which was germane to Vazquez-Suarez's alleged "knowledge," prejudiced Vazquez-Suarez.

This material evidence should have been disclosed prior to the trial since it would have impeached Detective Tanya Rightsell's testimony.

Vazquez-Suarez asserted that the State violated *Brady* by failing to provide him with exculpatory or impeaching evidence in the possession of the police in respect to post-*Miranda* interview tape withheld by Detective Rightsell of the Marion County Police Department.

B.

At the postconviction evidentiary hearing, the postconviction court agreed that the tape was undisclosed under *Brady*, but was concerned that the tape was not "exonerating." (T2. 80-81) The Court held that the undisclosed evidence cannot be both exonerating and incriminating. (T2. 81) The Court determined that "if you have evidence you think is favorable to you, it doesn't put you in a frame of mind that you're more likely to take a plea." (T2. 82)

Ultimately, the trial court ruled that the evidence withheld from the defense did not constitute a *Brady* violation.

Vazquez-Suarez asks this court to reaffirm and clarify the Supreme Court precedent of *Brady* and its progeny that affects many criminal defendants across the country.

REASONS FOR GRANTING THE PETITION

This case asks the Court to validate long-standing Supreme Court precedent under *Brady v. Maryland* and its progeny. The Florida courts are not protecting the rights of criminal defendants when police withhold critical impeachment evidence. The failure to follow *Brady* and its progeny signals that courts are giving police and prosecutors leeway on withholding evidence from criminal defendants.

The State's willingness to withhold evidence from the criminal defendant, gives the State the upper hand at trial. The criminal defendant is unable to impeach key witnesses. This puts the criminal defendant at a disadvantage and gives the State an easy victory. This is just one example of how the State maintains such an exemplary conviction rate. It is not that all criminal defendants are guilty; it is that prosecutors will obtain a victory at whatever the cost, even if that means holding back vital evidence.

Under the rule of *Brady v Maryland,* 373 US 83, 10 L Ed 2d 215, 83 S. Ct. 1194 (1963), that the suppression by prosecutors of evidence favorable to an accused, upon request, violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution, (1) the duty to disclose such evidence is applicable even where there has been no request by the accused; (2) the duty to disclose encompasses impeachment evidence as well as exculpatory evidence; (3) such evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different; and (4) the rule encompasses

evidence known only to police investigators and not to the prosecutor and, therefore, the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf, including the police. *See Strickler v. Greene*, 527 US 263, 144 L Ed 2d 286, 119 S Ct 1936 (1999).

Under *Brady*, the State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment. *See* 373 U.S., at 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215. The State did not dispute that Vazquez-Suarez's statements in Detective Rightsell's recorded interview were favorable to Vazquez-Suarez and that those statements were not disclosed to him. This audio recording would have impeached Detective Rightsell at trial. The sole question before this Court is whether Vazquez-Suarez's statements in Detective Rightsell's recorded interview were material to the determination of Vazquez-Suarez's guilt. This Court has explained that "evidence is 'material' within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Cone v. Bell*, 556 U.S. 449, 469-470, 129 S. Ct. 1769, 173 L. Ed. 2d 701 (2009). A reasonable probability does not mean that the defendant "would more likely than not have received a different verdict with the evidence," only that the likelihood of a different result is great enough to "undermine[ ] confidence in the outcome of the trial." *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

The Supreme Court observed that evidence impeaching a witness may not be material if the State's other evidence is strong enough to sustain confidence in the

verdict. *See United States v. Agurs*, 427 U.S. 97, 112-113, and n. 21, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976). That is not the case here. Detective Rightsell's testimony was the only evidence linking Vazquez-Suarez to the crime. And the undisclosed recorded interview directly contradicted his testimony: Detective Rightsell told the jury that Vazquez-Suarez admitted to having knowledge of the marijuana grow house, but Detective Rightsell's audio recording reveals that Vazquez-Suarez did not actual know about the marijuana grow house.

a. Brady Violation

Vazquez-Suarez alleged in his post-conviction motion that the State withheld the audio recording of the post-*Miranda* interview between Detective Rightsell which did not allow trial counsel to specifically clarify what Vazquez-Suarez said or did not say at the time of trial. The inability to have the material, which was germane to Vazquez-Suarez's alleged "knowledge," prejudiced Vazquez-Suarez.

This material evidence should have been disclosed prior to the trial since it would have impeached Detective Tanya Rightsell's testimony.

In *Rogers v. State*, 782 So. 2d 373 (Fla. 2001), the Florida Supreme Court explained the State's constitutional obligation to disclose exculpatory evidence under the U.S. Supreme Court's decision in *Brady*.

Vazquez-Suarez asserted that the State violated *Brady* by failing to provide him with exculpatory or impeaching evidence in the possession of the police in respect to post-*Miranda* interview tape withheld by Detective Rightsell of the Marion County Police Department, all of which handicapped Vazquez-Suarez's

ability to investigate or present other aspects of the case.

Under *Brady*, the government's suppression of favorable evidence violates a criminal defendant's due process rights under the Fourteenth Amendment. *See Brady*, 373 U.S. 83 (1963) (holding that suppression of confession is violation of Due Process Clause of Fourteenth Amendment). Therefore, errors involving the suppression of evidence in violation of *Brady* are issues of constitutional magnitude. *See Kyles v. Whitley*, 514 U.S. 419, 433-34, 131 L. Ed. 2d 490, 115 S. Ct. 1555 (1995) (holding that "constitutional error" results from the suppression of favorable evidence by government).

In *Brady*, the United States Supreme Court held that the "suppression by the prosecution of evidence favorable to an accused...violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87. In *Kyles*, the court noted that regardless of request by the defense, favorable evidence is material, and constitutional error results from its suppression by the government, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Citing United States v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375 (1985). Prosecution held to violate due process right of accused-who was convicted on basis of one eyewitness' testimony-by withholding eyewitness' statements contradicting testimony, as withheld statements were material. *Smith v. Cain*, 565 US 73, 132 S Ct 627 (2012).

Criminal defendants have the right to pre-trial discovery under the Rules of

Criminal Procedure and thus, there is an obligation upon the defendant and/or his attorney to exercise "due diligence" related to pre-trial information and the obtaining of the same. *Brady-Bagley* analysis ultimately the nature and weight of undisclosed information. The ultimate test in backward-looking post-conviction analysis is whether information which the State possessed and did not reveal to the defense and which information was thereby unavailable to the criminal defendant for trial, is of such a nature and weight that confidence in the outcome of the trial is undermined to the extent that there is a reasonable probability that had the information been disclosed to the defendant, the result of the proceeding would have been different. *Young v. State*, 739 So. 2d 553 (Fla. 1999). One week after the Florida Supreme Court's decision in *Young*, the United States Supreme Court decided *Strickler v. Greene*, 527 U.S. 263, 144 L. Ed. 2d 286, 119 S. Ct. 1936 (1999), confirming its analysis in *Kyles*.

In *Strickler*, the court stated again the rules which must be applied in this case. In *Brady*, this court held "that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. The Supreme Court held that the duty to disclose such evidence is applicable even though there has been no request by the accused, *United States v. Agurs*, 427 U.S. 97, 49 L. Ed. 2d 342, 96 S. Ct. 2392 (1976), and that the duty encompasses impeachment evidence as well as exculpatory evidence, *United States v. Bagley*, 473 U.S. 667, 676, 87 L. Ed. 2d 481, 105 S. Ct.

3375 (1985). Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* at 682; *see also Kyles v. Whitley*, 514 U.S. 419, 433-34, 131 L. Ed. 2d 490, 115 S. Ct. 1555 (1995). Moreover, the rule encompasses evidence "known only to police investigators and not to the prosecutor." *Id.* at 438. In order to comply with *Brady*, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." *Kyles*, 514 U.S. at 437.

These cases illustrate the special role played by the American prosecutor in the search for truth in criminal trials. Within the federal system, for example, courts have said that the United States Attorney 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. *Berger v. United States*, 295 U.S. 78, 55 S. Ct. 629 (1935).

This special status explains both the basis for the prosecution's broad duty of disclosure and our conclusion that not every violation of that duty necessarily establishes that the outcome was unjust. Thus, the term "*Brady* violation" is sometimes used to refer to any breach of the broad obligation to disclose exculpatory – that is, to any suppression of so-called "*Brady* material"—although, strictly speaking, there is never a real "*Brady* violation" unless the non-disclosure was so serious that there is a reasonable probability that the suppressed evidence could

have produced a different verdict. There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. *Strickler*, 527 U.S. at 280-282 [emphasis added] [footnotes omitted].

Here, there was a "real *Brady* violation" because there was non-disclosure of material information, which the Court would conclude was so serious that there is a reasonable probability that the suppressed evidence would have produced a different result. The cumulative effect of the suppressed material undermines confidence in the outcome of Vazquez-Suarez's trial, ultimately, depriving him of his constitutional right to a fair trial.

It should be noted that Detective Tonya Rightsell was the primary witness against Vazquez-Suarez at his trial and did, in fact, provide "harmful" testimony, wherein, she attributed specific *inculpatory* admissions to Vazquez-Suarez relating to his "*knowledge*" of the "*up and running grow house*" and his "*intentions.*"

As a comparative analysis, normally, seeking a new trial predicated upon newly discovered evidence requires (1) such evidence was discovered after the formal trial, (2) it was previously discoverable in the exercise of due diligence, (3) it is material to the issue in question [in this particular instance, knowledge of Vazquez-Suarez in setting up and/or running the marijuana grow house], (4) it goes to the merits of the case, (5) Vazquez-Suarez was specifically charged with, *inter alia*: Count I: Trafficking in Cannabis 25 to 1999 lbs.; Count II: Possession of a

Place for Manufacturing Controlled Substance, (6) it is not cumulative, (7) it was of such a nature that it would have produced a different result. *See, McCallum v. State*, 559 So.2d 233 (Fla. 5th DCA 1990).

The evidence withheld by police Detective Rightsell was vital to his case that would have impeached her at trial. Thus, had Detective Rightsell turned over the audio recording to the defense, there is a reasonable probability that the jury would have disbelieved her. The postconviction judge should not make an arbitrary determination that the evidence either would or would not have changed the minds of six different jurors. Vazquez-Suarez asks this Court to interpret *Brady* and its progeny under the facts and circumstances of his case.

Question Two: Whether trial counsel can be deemed ineffective for failing to advise the court that the criminal defendant was heavily sedated with psychotropic medications impairing his judgment, which affected his ability to make a rational decision regarding a favorable plea offer by the State?

The United States Supreme Court has recognized that the plea bargaining stage is a critical one, at which defendants are constitutionally entitled to effective counsel: "[t]he reality is that plea bargains have become so central to the administration of the criminal justice that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." *Missouri v. Frye*, 132 S. Ct. 1399, 1407, 182 L. Ed. 2d 379 (2012).

Defense counsel failed to determine that the Defendant was on psycho tropic medications and did in fact suffer from a mental disability. No effort was made to

determine the "substantial nature of same" in evaluating his competence to understand the proposed plea agreement, the consequences of accepting or not accepting it, nor was any effort utilized by counsel to mitigate the Defendant's sentence by advising the Court as to the nature of his mental infirmities at the time of sentencing. The Defendant did, in fact, ask his attorney to review his medical records from the Marion County Jail.

Petitioner was taking medications and he told his lawyer that the medications impaired his judgment. (R 327-331). Even if counsel told him about the maximum of the sentence, Mr. Vazquez-Suarez could not comprehend the ramifications, due to the medication, of going forward to trial. Trial counsel had no memory or recollection of a discussion regarding medications and the Trial Court's Order fails to address this issue. (R 401, 418). Despite the trial court's finding that trial counsel told the Petitioner about the maximum of the sentence, there is no finding that the Petitioner could comprehend the ramifications of going forward to trial due to the medications he was taking. Petitioner's comprehension of and decision regarding the plea offer tendered by the State is further tainted by the Detective Rightsell's failure to disclose the most important piece of evidence to the defense or the prosecutor.

B.

The Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment, provides that the accused shall have the assistance of counsel in all criminal prosecutions. The right to counsel is the right to effective

assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The Sixth Amendment guarantees a defendant the effective assistance of counsel at "critical stages of a criminal proceeding," including when he enters a guilty plea. *Lafler v. Cooper*, 566 U.S. 156, 165, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012). To demonstrate that counsel was constitutionally ineffective, a defendant must show that counsel's representation "fell below an objective standard of reasonableness" and that he was prejudiced as a result. *Ibid.*

This case arises in the context of claimed ineffective assistance that led to the lapse of a prosecution offer of 7-years in prison, a more lenient proposal than the 20 years he received after trial. The initial question is whether the constitutional right to counsel outlined in *Frye* and *Lafler* obligates criminal defense lawyers to a higher standard when their client is under medication. Counsel should have been aware that his client did not have the ability to comprehend and adequately communicate plea offers to him and the potential consequences of going to trial.

In *Frye* and *Lafler*, the United States Supreme Court held that not only must defendants demonstrate a reasonable probability they would have accepted the plea offer had they been afforded effective assistance of counsel, they "must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law."*Frye*, 132 S. Ct. at 1409.

The benchmark for judging claims of ineffective assistance of counsel on

violation of the Sixth Amendment is that a criminal defendant must allege deficient performance and prejudice. *See Strickland v. Washington*, 466 U.S. 668 (1984).

Under *Strickland*, a criminal defendant is prejudiced by his counsel's deficient performance if "there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceedings would have been different." *Porter v. McCollum*, 558 U.S. 30, 40 (2009) (quoting *Strickland v. Washington*, 466 U.S. 668 (1984)).

The Petitioner respectfully requests this Court to interpret *Strickland* under the facts and circumstances of his case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Petitioner respectfully asks this Court to interpret *Brady* law under the facts and circumstances of his case.

Dated this 10th day of January 2020.

Respectfully Submitted,

Junior Vazquez

Junior Vazquez-Suarez DC#M82087
South Bay Corr. Facility
P.O. Box 7171
South Bay, Florida 33493