No. 20-6676

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

HERNANDEZ DANIELS — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIRST DISTRICT COURT OF APPEAL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HERNANDEZ DANIELS
(Your Name)
FEDERAL CORRECTIONAL COMPLEX
COLEMAN USP-1
P.O. BOX 1033
(Address)

COLEMAN, FL. 33521
(City, State, Zip Code)

NA
(Phone Number)

OUESTION PRESENTED

I

Whether suppression of (some) evidence is sufficient according to the procedures mandated by **Brady v. Maryland**,373 U.S. 83 S. Ct. 1194, 10 L. Ed. 2d(1963).

II

Whether effective assistance extend to presenting alibi and pursuing **Brady** violation, pursuant to the holdings in **Strickland** v. **Washington**,466 U.S. 668 L. Ed. 2d 674, 104 S. Ct. 2052(1984).

LIST OF PARTIES

[x] 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:

TABLE OF CONTENT

INDEX OF APPENDICES

TABLE OF CITATIONS

CASES

PETITION FOR WRIT OF CERTIORARI

Hernandez Daniels petition for a writ of certiorari to the First District Court of Appeal, in **State v. Daniels**, No. 2005-844CFA; No. 1D20-0260.

OPINIONS BELOW

The opinion of the First District Court of Appeal is at No. 1D20-0260. The order of the Florida Supreme Court dismissed discretionary review of the decision is at No. SC20-1632. The trial court's sentencing orders are published at No. 2005-844CFA.

STATEMENT OF JURISDICTION

The Florida Supreme Court issued its order denying Petitioner's petition for review on November9, 2020 Case No. SC20-1632 The First District Court of Appeal issued its decision Affirming appeal from the Circuit Court for Gadsden County on August 28, 2020 and denying Panel Rehearing on October 27, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a prestment or indictment of a Grand Jury...|N|or shall any person be subject for the same offense to be twice put in jeopardy of life or limb...|N|or be deprived of life, liberty, or property, without due process of law".

The Sixth Amendment to the United States Constitution provides in relevant part: "Any person shall have guaranteed right to effective assistance of counsel. "|N|or be deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment to the United States Constitution provides in relevant part: "|N|or shall any State deprive any person of life, liberty, or property, without due process of law"..

STATEMENT OF CASE

On December 30, 2005, Petitioner was charged with first-degree murder. Petitioner trial commenced on February 11, 2009 in Gadsden County before the Honorable Kathleen Dekker. Petitioner trial concluded on February 17, 2009, with the jury returning a verdict of guilty. On February 20, 2009, Petitioner received life imprisonment. On May 19, 2009, Petitioner filed a timely Notice of Appeal. On September 28, 2010, First District Court of Appeal denied Petitioner appeal. On January 7, 2013, Petitioner filed a Memorandum of Points and Authorities pursuant to Florida Rule of Criminal Procedure 3.850.

The premise of Petitioner Daniels' claim were asses by the Honorable Johnathan Sjostrom, on May 23, 2013, who reviewed Petitioner Daniels' reply and reviewed the Court file, including reading the entire transcripts and therefore adequately advised Petitioner Daniels is entitled to an Evidentiary Hearing on:[1]

Claim 1. Failure to call alibi witness Renardo Daniels

Claim 2. Failure to call Tarar Daniels and Counsel was ineffective for not getting the **Brady** material.

Claim 11. **Brady** violation for failure to disclose "two(2) cardboard notebook backs" containing notes taken by one of the witness.

On July 22, 2016, a Rule 3.850 Evidentiary Hearing was held. The Honorable Barbara Hobbs advised Petitioner Daniels to proceed with the hearing and allowed Petitioner Daniels to cross-examine the witnesses that were called.

At the end of the hearing, the Honorable Barbara Hobbs

[1] "IB" will designate Petitioner Initial Brief followed by any appropriate page number and/or Exhibit.

At the end of the hearing, the Honorable Barbara Hobbs requested Final Written Closing Arguments to be submitted from the Defense and the State.

Subsequently, the Honorable Barbara Hobbs ruled against the Petitioner. Petitioner Daniels apeeal to the First District Court of Appeal.

The First District Court of Appeal Affirmed Petitioner Daniels' appeal on August 28, 2020. Petitioner petition the Court for Panel Rehearing. The First District Court of Appeal denied the panel rehearing on October 27, 2020.

The Florida Supreme Court dismissed Petitioner appeal on November 9, 2020.

REASON FOR GRANTING THE PETITION

REVIEW SHOULD BE GRANTED WHERE THE PETITIONER WAS DENIED DUE PROCESS RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENT TO THE CONSTITUTION AND WHERE THE FIRST DISTRICT COURT OF APPEAL AND THE SECOND JUDICIAL CIRCUIT COURT HAS DECIDED A CONSTITUTIONAL QUESTION IN DIRECT CONFLICT WITH THE APPLICABLE DECISION OF THE UNITED STATES SUPREME COURT IN BRADY v. MARYLAND, AND STRICKLAND v. WASHINGTON.

The Petitioner acknowledge that an application for writ for Certiorari is reviewed within the discretion of the Court and is not a right of litigant. However, the Petitioner submit that there are compelling reasons to review the decision in this matter, given that a split of authority exist as to two important constitutional issues decided adversely to Petitioner herein.

As a factor to guide the discretion of the Court and to support review, Supreme Court Rule 10(a) provides:

> "...a United States Court of Appeals has entered a decision in conflict with the decision of another U.S. Court of Appeals".

In Brady v. Maryland, 373 U.S. Ct. 1194, 10 L. Ed. 2d(1963) held the United States Attorney shall disclose any evidence favorable to the defendant on the issue of guilt or innocence, without regard to materiality, counsel for the defendant, or the defendant if not represented by counsel shall be provided such evidence promptly after the United States Attorney acquires knowledge thereof.

When rooted in the Due Process Clause...or in the Compulsory Process or Conforntation Clause of the Sixth Amendment the Constitution guarantees criminal defendant a meaningful opportunity to present a complete defense.

This case presents an ideal vehicle for resolving these important issues presented. The Trial Court has overlooked or misapprehended the Constitutional violations presented in this case. The State Attorney deliberate suppression of the "two(2) cardboard notebook backs" denied Petitioner due process of law to examine evidence on the issue of innocence or guilt. This Court should grant the appeal and upheld the Constitutional requirements of **Brady**, **Strickland**, and due process of **Fifth**, **Sixth**, and **Fourteenth Amendment** requires factual issues under these circumstances to be remanded with instructions for a new trial.

A. This Court Should Resolve the Split of Authority Over Whether Suppression of (Some) Evidence is Sufficient According to the Procedures Mandated by **Brady**.

ARGUMENT AND CITATIONS OF AUTHORITY.

1. **The Trial Court erred in denying Petitioner Daniels' Brady violation claim, as the evidence as a matter of law was a constitutional violation pursuant to Brady v. Maryland.**

a. **Argument on Merits.**

Prior to his trial, Petitioner Daniels requested the State to relinquish all **Brady** material. The State did provide Petitioner Daniels with some (Documents) which included a copy of **Florida Department of Law Enforcement Investigative Report.** The Report clearly state:

> "Nelson provided two(2) cardboard notebook backs in which he took notes of what Daniels and he discussed during their encounter back in January 2004".
>
> "The notes will be maintained in Related Item Section of this case file and entered as Related Item #61".

See Appendix C. (copy of Florida Department of Law Enforcement Investigative Report).

At the Evidentiary Hearing after questioning by Mr. Harrison, Petitioner Daniels stated:

> Q. All right. Now I'd to ask you about your claim number 11. Judge Sjostrom ruled that you were entitled to an evidentiary hearing on claim number 11. He summarized it on page 13 of his order as follows. Alleged Brady violation for failure to disclose two cardboard notebook backs containing notes taken by one of the witnesses. Which had information about two cardboard note-book backs, or had written something on those backs?
>
> A. Willie Nelson.
>
> Q. Okay, And do you recall what Willie Nelson testified to at your trial? Did he testify for you?
>
> A. Against me.
>
> Q. Against you. And what did he say that was damaging to you? What did he say that you claim was not true?

A. Say that again.

Q. What did Willie Nelson testify to at trial, as you recall?

A. That was not true? That I admitted to him that I had Constance Dupont killed, that I paid Fernando Taylor to do it. That I went to Sunshine Trailer Park in Leon County and knocked on her door and walked up to --then Fernando Taylor walked up to her door, shot her and ran off.

A. And more stuff, but I can't remember everything.

Q. Okay. Let me ask you this. What is it that was written on the cardboard notebook backs? What were the notes that were written?

A. I don't know. They wasn't ever disclosed to us. I never received a copy of the cardboard notes.

Q. Well--

A. Due to the cross examination.

Q. Okay. And you feel those would have been important for you and for your--

A. It would have contradicted his story from the stand. Backing up the notes would have been the same as what he testified to.

Q. All right. Did you tell Mr. Taylor about this?

A. No. I only discovered the notes -- about the cardboard notes when I was doing my 3.850 motion. Mr. Taylor filed a motion for the State to turn over all **Brady** materials.

Q. All right.

A. They didn't turn over that. They had that evidence, and didn't turn it over.

See Appendix D . (P.41 Line 11-25, P.42 Line 1-25, P.43 Line 1-8) (copy of evidentiary Hearing transcript of Mr. Harrison questioning Appellant Daniels)

The record supports Petitioner Daniels' claim threw his testimony that the State Attorney had the two(2) cardboard notebook backs. The State Attorney never cross-examine Petitioner Daniels on the **Brady** claim, because the State knew that they had

the two(2) cardboard notebook backs but failed to produce them at the Evidentiary Hearing.

The record also supports Petitioner Daniels **Brady** claim threw the State Attorney entering Exhibits No. 1 and 2, which were the Florida Department of Law Enforcement Investigative Report.

The State Attorney during questioning of Mr. Taylor published into evidence State Exhibits 1, which is a copy of answer to discovery filed by the State and Exhibit 2, which is IR 107 which references to the interview of Willie Nelson. The State question went as follows:

> Q. I just referenced to these particular notes, and I'd like to show you what I next marked as State's 2, which is IR 107, which references the interview of Willie Nelson. In reading that IR, if you can turn to page two there, does it indicate, then in that report that Willie Nelson had some notations on the cardboard backs, and that was taken into evidence. **Id.** at **P.54 Line 16-25**(Exhibit A)("IB")

It is indisputable that the two(2) cardboard notebook backs exist. The State Attorney even admitted this in his Response to Specific Demand for **Brady** and **Giglio** Material. Further, the State Attorney produced a copy of the Florida Department of Law Enforcement Investigative Report. The report clearly states;

> "Nelson provided two(2) cardboard notebook backs in which he took notes of what Daniels and he discussed during their encounter back in January 2004".
>
> "The notes will be maintained in the Related Item Section of this case file and entered as Related Item #61".

This was the State Attorney attempting to claim that he meet the Specific Demand for **Brady** and **Giglio** request. The State Attorney further published this exhibit at the Evidentiary Hearing.

However, the State Attorney is mistaken and fell to meet the Specific Demand for **Brady** and **Giglio** request. The State Attorney never produced the actual two(2) cardboard notebook backs or a copy of the two(2) cardboard notebook backs that were signed and dated by Nelson to the defense.

The State Attorney was aware of the existance of the two(2) cardboard notebook backs, once it received the Florida Department of Law Enforcement Investigative Report. The Florida Department of law Enforcement Investigative Report clearly states that the two(2) cardboard notebook backs exist and will be maintained in the Related Item Section of this case file and entered as Related Item #61.

The State Attorney could have easily refuted Petitioner Daniels' **Brady** claim by producing the two(2) cardboard notebook backs, that were maintained by the Florida Department of Law Enforcement, and kept in the Related Item Section, Item #61. But at the Evidentiary Hearing the State Attorney still fell to produce the two(2) cardboard notebook backs signed by Nelson.

In the alternative the State Attorney produced a copy of the Florida Depart of Law Enforcement Investigative Report. This was the same report that the State Attorney used in his Response to Specific Demand for **Brady** material **Id.** at **P.54** of ("IB").

But Petitioner Daniels argues that the "two(2) cardboard notebook backs that were signed by Nelson", is not the same as the Florida Department of Law Enforcement Investigative Report. There is no signature of Nelson on the Florida Department of Law Enforcement Investigative Report. The Report is a list of statement and not a copy of the "two(2) cardboard notebook backs that were

signed by Nelson".

This is the State Attorney attempt to manipulate the court into thinking that the Florida Department of Law Enforcement Investigative Report is the copy of the "two(2) cardboard notebook backs that were signed by Nelson".

Therefore, by the State Attorney own admission and Exhibits No. 1 and 2, supports Petitioner Daniels's **Brady** claim, that the two(2) cardboard notebook backs exist and were taken into evidence.

The two(2) cardboard notebook backs were never produced to Petitioner Daniels, even after Specific Demand for **Brady** and **Giglo** material or at the Evidentiary Hearing. Which is clearly supported by the Evidentiary Hearing Record.

Furthermore, the State Attorney suppressed evidence and the evidence was favorable or exculpatory, and said evidence was material to the case issues.

All favorable evidence in the State's possession, including law enforcement agencies must be disclosed to the Defense.**Brady supra.** Also see **Norris v. Schotten**,146 F. 3d 314, 334(6th Cir. 1998)(stating **Brady** principles (which require prosecutors to disclose evidence favorable to the defendant) only apply when the prosecutors do not provide that information or when they disclose the information late in a way that prejudices the defendant). See **Mahler v. Kaylo**,537 F.3d 494,494(5th Cir. 2008)(reversing district court's denial of defendant's petition for habeas relief. The state court's judgment that the witness statements withheld by the prosecutor were not material was unreasonable under clearly

established federal law.).

Promises, either direct or implied, made to a witness in exchange for his/her testimony must be disclosed because they related directly to the credibility of witness **Giglio,supra** and **Haber v. Wainwright**,756 F. 2d 1520(11th Cir. 1985).

Failure to comply with the requirements of the cases cited above constitutes reversible error if the prosecution suppressed evidence, and the evidence was favorable or exculpatory, and said evidence was material to the case issues. Favorable evidence, as defined in the above cases is material, thus failure to disclose is a constitutional error, if there is a reasonable probability the trial result would be different. **Kyles v. Whitney**,514 U.S. 419 (1995).

b. Standard of Review.

To Establish a violation under **Brady v. Maryland**,337 U.S. 83 S. Ct. 1194, 10 L. Ed. 2d(1963), a defendant must show:

(1) the government possessed evidence favorable to the defendant.

(2) the defendant did not possess the evidence and could not have obtained the evidence with reasonable diligence.

(3) the prosecution suppressed the favorable evidence and

(4) had the evidence been disclosed to the defendant, there is a reasonable probability that the outcome would have been different.

This case is on point with **Brady**. Petitioner Daniels relies on the record, constitutional rights guaranteed by the Fifth, Sixth Amendments and due process clause of the Fourteenth Amendment and the requirements of **Brady**, that clearly states:

"All favorable evidence in State's possession, including law enforcement agencies, **must** be disclosed to the defense"

Petitioner Daniels will establish a violation under **Brady**, by relying on the record.

(1) The government possessed evidence favorable to the defendant.

Petitioner Daniels argues that the government possessed evidence favorable to the defendant in the form of "two(2) cardboard notebook backs, with written signed statements of one of the State's witness".

This evidence was in the State Attorney possession, which was revealed by the State Attorney in its Response to Specific Demand for **Brady** and **Giglio** material, in the form of Florida Department of Law Enforcement Investigative Report, which clearly states:

> "Nelson provided two(2) cardboard notebook backs in which he took notes of what Daniels and he discussed during their encounter back in January 2014"
>
> "The notes will be maintained in Related Item Section of this case file and entered as Related Item #61" Id. at "IB/ pg.9; APPENDIX D.

The record clearly supports this claim.

(2) The defendant did not possess the evidence and could not have obtained the evidence with reasonable diligence.

Petitioner Daniels argues, that he did not posses the evidence and could not have obtained the evidence with reasonable diligence, because the "two(2) cardboard notebook backs" were in the possession of the Florida Department of Law Enforcement and maintained in Related Item Section, entered as Related Item#61.Id. at "IB" pg.16,17,19,20 and APPENDIX D.

(3) The prosecution suppressed the favorable evidence.

Petitioner Daniels argues, that the State Attorney suppressed the favorable evidence. The State Attorney by his own admission, by way of (1) Response to Specific Demand for **Brady** and **Giglio** request; and (2) reproduction of the Response to Specific Demand for **Brady** and **Giglio** material, at the Evidentiary Hearing.**Id.** at "IB" pg.9.

The State Attorney was aware of the existence of the two(2) cardboard notebook backs, once the State Attorney received the Florida Department of Law Enforcement Investigative Report, which clea ly states:

> "Nelson provided two(2) cardboard notebook backs in which he took notes of what Daniels and he discussed during their encounter back in January 2004".
>
> "The notes will be maintained in the Related Item Section of this case file and entered as Related Item#61".

Id. at "IB" pg.9, Exhibit A, and **Appendix D.**

To meet the requirements of **Brady supra**, which states:

> "All **not** some favorable evidence in the State's possession including - law enforcement agencies, **must** be disclosed to the defense".

The Supreme Court's choice of the adjective **"all"** (instead of "some" or "part") and **"must"** (instead of "not required" or "Discretion") in **Brady v. Maryland** is significant. The Supreme Court use the adjective **"all"** to mean everything, and **"must"** to mean necessity or obligation.**Id.** at **Brady.**

The State Attorney clearly suppressed favorable evidence in the form of the "two(2) cardboard notebook backs, that were maintained by the Florida Department of Law Enforcement. Thus,

suppression of the "two(2) cardboard notebook backs denied Petitioner Daniels' due process of his constitutional rights.

Therefore, the failure of the State Attorney to produce "All favorable evidence in the State's possession, including - law enforcement agencies, must be disclosed to the defense, violates **Brady, supra.**

The court's decision was contrary to (conflicting with) clearly established federal law. It is important to note that **dicta** (plural of dictum) are not considered clearly established federal law. Only Supreme Court holdings are considered law clearly established by the Supreme Court. See **Williams v. Taylor** 529 U.S. 362,406, 120 S. Ct. 1495, 1519-20, 146 L. Ed. 2d 389, 426(2000)("A state court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent".); see also **Ramdass v. Angelone**,530 U.S. 156,165-66, 120 S. Ct. 2113,2119-20, L. Ed. 2d 125,135-36 (2000)(stating that "a court acts contrary to clearly established federal law if it applies a legal rule that contradicts our prior holdings or if it reaches a different result from one of our cases despite confronting indistinguishable facts".

The Supreme Court's decision in **Brady v. Maryland** reached a different conclusion from the one reached by Appellant's State Court.

Furthermore, The Attorney General in her Response Brief to Petitioner's Initial Brief stated:

> "Even though trial counsel did not recall having "cardboard" given to him in discovery",...
>
> "Even if trial counsel did not have the cardboard, Petitioner's claim that the cardboard notes would have made a difference in his case were entirely speculative as he admitted that he did not know what they said".

Id. at p.10/11, Attorney General Response Brief. **APPENDIX H.**

Petitioner Daniels argues that the Attorney General is also validating Petitioner Daniels' claim to the importance of the "two(2) cardboard notebook backs, because Petitioner did not know what they said. And neither Petitioner or Trial Counsel ever received a copy of them.

Therefore, by the Attorney General own admission stating that: "Even though trial counsel did not recall having "cardboard" given to him in discovery" and "Even if trial counsel did not have the cardboard". The Attorney General confirms that trial counsel did not have the "two(2) cardboard notebook backs, due to the State Attorney failure to turn over the "two(2) cardboard notebook backs", which violates the **Brady** request.

With that said, Nelson was interviewed by Special Agent Biddle on January 3, 2005 and again March 14, 2005 and provided "two(2) cardboard notebook backs in which he took notes of what Daniels and he discussed during their encounter back in January 2004". "The notes will be maintained in the Related Item Section of this case file and entered as Related Item #61".

This is Petitioner Daniels' point. Petitioner does not know what the "two(2) cardboard notebook backs" contains and they were never disclosed to the Defense for Appellant per **Brady** request.

The fact of the matter is that the "two(2) cardboard notebook backs exists and were not disclosed regardless of their favorable or unfavorable content, to meet the requirements of **Brady**, **supra**, which states:

> "All favorable evidence in the State's possession including - law enforcement agencies, must be disclosed to the defense".

Under the facts of this case, the trial court did abuse its discretion in denying Petitioner's **Brady** claim, and finding that trial counsel was not ineffective for failing to pursue the "two cardboard notebook backs".

The State court adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States in **Brady** v. **Maryland**, 373 U.S. 83,87,83 S. Ct. 1194,1196-97, 10 L. Ed. 2d 215,218(1963): which resulted in light of the evidence presented in the State court proceeding.

Slack v. **McDaniel**, 529 U.S. 473,484,120 S. Ct. 1595,1604,146 L. Ed. 2d 542,555(2000)(reversing after determining defendant had shown reasonable jurists could conclude district court's procedural rulings were wrong). The Second Circuit applied the same standard in **Matias** v. **Artuz**, 8 Fed. Appx. 9,11-12(2nd Cir. 2001).

Miller-El v. Cockrell,537 U.S. 322,327,123 S. Ct. 1029,1034, 154 L. Ed. 931, 944 (2003) ("A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues are adequate to deserve encouragement to proceed further".).

(4) Had the evidence been disclosed to the defendant there is a reasonable probability that the outcome would have been different.

Petitioner Daniels argues, that had the evidence been disclosed, there is a reasonable probability that the outcome would have been different. The two(2) cardboard notebook backs could have been used for the impeachment of Nelson, who testified for the State.**Id.** at "IB" pg. 26.

In the Course of a criminal prosecution, the State has a continuing duty to honor a defendant's constitutional rights,which, according to **Brady**, requires the State to disclose any evidence in its possession or control that is material either to guilt or punishment. In this regard the prosecutor must disclose evidence that could in the eyes of a neutral and objective observer, alter the outcome of the proceeding.

The State Attorney failure to produce the "two(2) cardboard notebook backs violated due process clause and equal protection of the Fourteenth Amendment. The State Attorney deliberate suppression of the "two(2) cardboard notebook backs" denied Petitioner's due process of law to examine evidence on the issue of innocence or guilt. (See **Brady v. Maryland**,373 U.S. 83 10 L. Ed. 2d 215, 83 S. Ct. 1194). (The prosecution's responsibility for failing to disclose

known, favorable evidence rising to a material level of importance is inescapable. **Kyle** U.S. at _ _ _,115 S. Ct. at 1567-68(emphasis added)).

B. This Court Should Resolve Whether Effective Assistance Extend to Presenting Alibi and Pursuing Brady violation, Pursuant to the holdings in **Strickland.**

2. The Trial Court erred in denying Appellant's claim of Ineffective Assistance of Trial Counsel's failure to call an available witness, violating Strickland

a. Standard of Review.

In **Strickland v. Washington**,466 U.S. 668 L. Ed. 2d 674,104 S. Ct. 2054(1984), the Supreme Court established a two prong test to govern ineffective assistance of counsel claims. To obtain reversal of a conviction or to vacate a sentence based on ineffective assistance of counsel the defendant must show (1) that counsel's performance fell below an objective standard of reasonableness; and (2) that there is a probability that, but for counsel's objectively unreasonable performance, the result of the proceeding would have been different.**Id.** 466 at 688-689.

b. Argument on the Merits.

Petitioner asserts that Trial Court erred as a matter of law by denying Petitioner's claim of Ineffective Assistance of Counsel, which cuts two-folds. First(1) due to Counsel's failure to call an available alibi witness thus violating **Strickland.**

At the Evidentiary Hearing, after questioning by the State Attorney and Mr. Harrison, Mr. Taylor(Trial Counsel) admitted he had two theories of defense from the evidence gather from the case. Which were (1) someone else did it and (2) an Alibi that Petitioner did not do it.**Id.** at (Evidentiary Hearing, pg.46).

2. The Trial Court erred in denying Petitioner Daniels' claim of Ineffective Assistance of Trial Counsel's failure to call an available alibi witness, violating Strickland.

a. Standard of Review.

In **Strickland v. Washington**,466 U.S. 668 L. Ed. 2d 674,104 S. Ct. 2054(1984), the Supreme Court established a two prong test to govern ineffective assistance of counsel claims. To obtain reversal of a conviction or to vacate a sentence based on ineffective assistance of counsel the defendant must show (1) that counsel's performance fell below an objective standard of reasonableness; and (2) that there is a probability that, but for counsel's objectively unreasonable performance, the result of the proceeding would have been different.**Id.** 466 at 688-689.

b. Argument on the Merits.

Petitioner Daniels asserts that the Trial Court erred as a matter of law by denying Appellant Daniels' claim of Ineffective Assistance of Trial Counsel, which cuts two-folds. First(1) due to Counsel's failure to call an available alibi witness thus violating **Strickland.**

At the Evidentiary Hearing, after questioning by the State Attorney and Mr. Harrison, Mr. Taylor(Trial Counsel) admitted he had two theories of defense from the evidence gather from the case. Which were (1) someone else did it and (2) an Alibi that Petitioner Daniels did not do it.**Id.** at (Evidentiary Hearing, P.46).

Mr. Taylor further stated that because a snitch witness for the State were saying that, Mr. Daniels and Wolf killed Dupont and another was saying that Mr. Daniels, had Wolf killed Dupont

Mr. Taylor further stated that because a snitch witness for the State were saying that, Mr. Daniels and Wolf killed Dupont and another was saying that Mr. Daniels, had Wolf killed Dupont from the evidence that was presented at trial, which consisted of no physical evidence or no eyewitness that put Mr. Daniels at the crime scene. Mr. Taylor decided to go with pointing the finger at someone else even though he had an alibi for Mr. Daniels waiting to testify. Id. at Evidentiary Hearing. (p.46-59).

After questioning by Petitioner, Mr. Taylor admitted that Renardo Daniels was listed as an alibi witness for Petitioner, but he did not call him to testify.

Mr. Taylor admits that he never talked to Renardo Daniels, but Monica Jordan his investigator would have interviewed Renardo Daniels and any other witnesses. Then Monica Jordan would report her findings and concerns to Mr. Taylor.

In Monica Jordan, Witness Overview that Mr. Taylor received clearly lists Renardo as Possible Witness for the Defense. Petitioner published Monica Jordan's Witness Overview into the record. Id at Evidentiary Hearing (p.62), as follows:

> "Renardo Vontell Daniels (need to be listed as witness, notice of alibi) 850-556-6456.
>
> Daniels brother **alibi**- was riding with Daniels to Bonifay he would drive because Daniels would get tired. Was riding with Daniels in early morning hours of Dupont's death because he learned of her death the next morning. Got back to Renardo's house around 4:15 am.

See Exhibit E((Witness Overview, p.4/13) ("IB"), and **Appendix C**.

Mr. Taylor knew that Renardo Daniels was available to alibi Petitioner and fell to call him as an alibi witness.

Furthermore it was Mr. Taylor own trial strategy.

Mr. Taylor tactical theory not to call alibi witness Renardo Daniels was not sound, because regardless of what theory of defense Mr. Taylor decided to employ, the alibi witness Renardo Daniels would have bolstered the defense theory that someone else did it.

Mr. Taylor identified his strategies but failed to employ them, even after the State Attorney presented evidence that Appellant Daniels, was in Gadsden County the night of Dupont's death. Mr. Taylor still fail to employ his own strategy, with that said, the alibi goes hand and hand with the alternative, that someone else did it. **Id.** at "IB" p.12,13,14,15.

The deficiency in Mr. Taylor actions did not amount to the standards to support sound strategy. Mr. Taylor actions prejudice Petitioner: Daniels because the alibi testimony of Renardo Daniels would have proven that Appellant Daniels was not in Gadsden County, the night of Dupont's death, did not go to Dupont house, and did not see Dupont that night. It would have proven also that Petitioner: Daniels did not talk to or see Fernando Taylor(Wolf) about killing Dupont or hired him to kill Dupont. Fernando Taylor was charged with killing Dupont and found innocent of killing Dupont.

Petitioner: Daniels was deprived of his constitutional right to present evidence in his defense at trial.

Second(2) Petitioner: Daniels asserts that Trial Court erred by denying Petitioner: Daniels' claim of Ineffective Assistance of Counsel, because counsel failed to pursue the two(2) cardboard notebook backs provided by Nelson, thus, violating **Brady** and was

sufficient as a matter of law under **Strickland.**

At the Evidentiary Hearing, Mr. Taylor was questioned by the State Attorney and admitted that he did receive a copy of Response to Specific Demand for **Brady** and **Giglo** material in the form of a copy of the Florida Department of Law Enforcement Investigative Report, which clearly states:

> "Nelson provided two(2) cardboard notebook backs in which he took notes of what Daniels and he discussed during their encounter back in January 2004".
>
> "The note will be maintained in the Related Item Section if this case file and entered as Related Item #61".

Id. at "IB" pg.16,17,and **Appendix D.**

Also at the Evientiary Hearing, Petitioner Daniels, specifically asked Mr. Taylor, did he ever get a physical copy of the two(2) cardboard notebook backs. Mr. Taylor answered that he "didn't get the cardboard, no".**Id** at "IB" pg.18,19

Petitioner Daniels went further with questioning Mr. Taylor and broke the question down in layman terms and asked "they didn't actually give you a copy of the cardboard notes"**Id.** at "IB" pg.19.

Mr. Taylor admitted "I don't recall seeing cardboard notes, copy of statement".**Id** at "IB" pg.19.

Petitioner Daniels questioning of Mr. Taylor went as follows:

> Q. Okay. Did the State Attorney ever produce the two cardboard notebook, or a copy of them? They never did produce those, did they?
>
> A. We keep talking about the cardboard. All I know is I saw written documents or notes that were supposedly taken, and there were some that were block printed. we made a big deal about that, and the issue concerning these specific ones I don't recall right now, but I had every- at the time of the trial and I had the documents in

order to cross examine the witnesses that the State put on. And I think the record shows that.

Q. Okay. But the State never did produce a copy of those?

A. I'm sorry?

Q. Did you ever get a copy -- ask for the Brady Material, and did the State produce a copy of those, or a physical copy of the two cardboard? They never produced that, did they?

A. I didn't get the cardboard, no. But we had the documents. We had copies of writings of witnesses. I don't know how to answer that question.

Q. What I'm trying to go at, the statement never had the actual words that came over the cardboard. It's just had the words through the cardboard that was written, and the State never produced those two cardboard copies of those cardboards for you. After you asked for all the Brady Material, and even though it was Brady, most of that, they didn't produce all the evidence around. So what I'm saying is that they never physically actually produced a copy of those cardboards to you. They produced a copy of the overall, but never actually produced a copy, a physical copy of those two cardboards. Is that correct?

A. I don't recall that. My recollection is that I had all the discovery, and before we start a trial we go down through the check-list of everything that has been provided, and basically one or two of us read off a document, and we then find it and make sure it's there. I don't see anything to indicate I didn't have that discovery, so I don't know how to answer that question. I can't tell you what I don't recall.

Q. Okay. But it still doesn't say -- they didn't actually give you a copy of the cardboard notes. That's all I'm saying.

A. I don't recall seeing cardboard notes, copy of statement --

Q. That's all I'm asking you sir.

A. Okay.

Id. at Evientiary Hearing Transcript and "IB" , also **APPENDIX B**.

There was no plausable excuse for Mr. Taylor not to pursue the "two(2) cardboard notebook backs, provided by Nelson", for the impeachment of Nelson. Mr. Taylor knew that the "two(2) cardboard notebook backs exist and that the Florida Department of Law Enforcement maintained the notebook backs in Related Item Section of their case file and entered as Related Item #61.

The record clearly supports Petitioner Daniels' claim that Trial Counsel (Mr. Taylor), threw his own testimony, was ineffective for failing to pursue the "two(2) cardboard notebook backs provided by Nelson thus violating **Brady** and **Strickland**, and constitutes reversible error.

"Exculpatory or impeaching evidence must also be material, which means that there must be a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different". **United States v. Bagley**,472 U.S. 667,682,105 S. Ct. 3375,3383,87 L. Ed. 2d 481, 494(1985); also see **Kyles v. Whitley**,514 U.S. 419,421-22,115 S. Ct. 1555,1560,131 L. Ed. 2d 490,498(1995) ("|B|ecause the net effect of the evidence withheld by the State in this case raises a reasonable probability that its disclosure would have produced a different result, |defendant| is entitled to a new trial".).

Petitioner further challenge the Trial Court,the State Attorney, and the Attorney General to show him where they actually produced the "two(2) cardboard notebook backs or a copy of the "two(2) cardboard note book backs, that were signed and dated by Nelson at the Evidentiary Hearing.

CONCLUSION

WHEREFORE? the violations of **Brady**, **Giglio** and **Strickland**, Petitioner respectfully request this Honorable Court to reverse his conviction and remand for a new trial.

I declare under penalty of perjury, that I have read the foregoing petition and that the facts stated in it are true and correct.

I HEREBY CERTIFY the foregoing Motion is made in good faith with no attempt to delay or thwart the due administration of Justice.

Signed under the penalty of perjury,

Date: NOVEMBER 22, 2020

HERNANDEZ DANIELS 11742-017
FEDERAL CORRECTIONAL COMPLEX
COLEMAN USP-1
P.O. BOX 1033
COLEMAN, FL 33521

F. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

SOLICITOR GENERAL OF THE UNITED STATES
ROOM 5614, DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20530-001

I declare under penalties of perjury, that I have read the foregoing motion and that the facts stated in it are true and correct.

Date: NOVEMBER 22 2020

Signed under the penalty of perjury,

HERNANDEZ DANIELS 11742-017
FEDERAL CORRECTIONAL COMPLEX
COLEMAN USP-1
P.O. BOX 1033
COLEMAN, Fl. 33521