NO._____

IN THE SUPREME COURT OF THE UNITED STATES

KUANTAU REEDER, Petitioner

Versus

DARREL VANNOY,
WARDEN OF THE LOUISIANA STATE PENITENTIARY
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE LOUISIANA FOURTH CIRCUIT COURT OF APPEAL

PETITION FOR A WRIT OF CERTIORARI

Sheila C. Myers, Louisiana Bar No. 09871
Tulane Law School Criminal Justice Clinic
6329 Freret Street
New Orleans, LA 70118
Phone: (504) 865-5153
Alt. Phone: (504) 554-7498
Fax: (504) 862-8753
smyers@tulane.edu

Attorneys for Petitioner Kuantau Reeder

CRIMINAL CASE

QUESTION PRESENTED FOR REVIEW

Over fifty years ago, in *Brady v. Maryland,* 373 U.S. 83 (1965) and then in *Giglio v. United States,* 405 U.S. 150 (1972), this Court declared that prosecutors must disclose all impeachment evidence concerning a prosecution witness to the defense. The Orleans Parish District Attorney's Office has never contested that it failed to inform Kuantau Reeder's trial counsel that its star witness, whose credibility was critical to convicting Mr. Reeder of second degree murder, had a federal conviction for lying. The following question is presented:

> In a murder prosecution in which the Orleans Parish District Attorney's Office presented no scientific evidence, no video evidence, no motive evidence, no incriminating statements and no physical evidence linked to the defendant, did the Louisiana Fourth Circuit of Appeal fail to correctly apply clearly established federal law as announced by this Court when it held that the prosecutors' failure to disclose the federal for lying of its only eyewitness did not undermine confidence in the jury's verdict?

Petitioner Kuantau Reeder respectfully requests that this Court issue a writ of certiorari to review the decision of the Louisiana Fourth Circuit Court of Appeal which the Untied States Fifth Circuit Court of Appeals declined to reverse.

PARTIES TO THE PROCEEDINGS IN THE COURTS BELOW

Kuantau Reeder, Petitioner

Darrel Vannoy, Warden of the Louisiana State Penitentiary, Respondent

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Petitioner Kuantau Reeder respectfully requests that this Court issue a writ of certiorari to review the judgment of the Louisiana Fourth Circuit Court of Appeal as affirmed by the United States Fifth Circuit Court of Appeals and address the important question of federal law presented.

OPINIONS DELIVERED IN THE COURTS BELOW

The October 20, 2020 decision of the United States Fifth Circuit Court of Appeals denying Mr. Reeder's petition for habeas corpus (978 F.3d 272 (2020)) is set forth in Appendix A. The decision of the District Court for the Eastern District of Louisiana (2014 WL 12815163)) which the Fifth Circuit affirmed is contained in Appendix B and the Report and Recommendation of the federal magistrate judge (2014 WL 12815163) is attached in Appendix C.

The highest state court to render a decision in this matter was the Louisiana Fourth Circuit Court of Appeal. Its May 11, 2012 denial of Mr. Reeder's application for post-conviction relief (698 So.2d 56 (La. App. 4th Cir. 1997)) is set forth in Appendix D. The Louisiana Supreme Court's denial of certiorari without reasons (107 So.3d 623 (La. 2013)) is contained in Appendix E.

STATEMENT OF THE GROUNDS UPON WHICH THE JURISDICTION OF THE COURT IS INVOKED

Petitioner raised federal constitutional issues in his application for writ of certiorari to the Louisiana Fourth Circuit Court of Appeal which denied his writ application on May 11, 2012, as set forth in Appendix D. Discretionary review was denied without reasons by the Louisiana Supreme Court as documented in Appendix E.

As noted above, after granting a Certificate of Appealability, the United States Fifth Circuit Court of Appeals denied Mr. Reeder's appeal of the decision of the District Court's denial of his petition for habeas corpus relief on October 20, 2020. This Court has jurisdiction under 28 U.S.C. 1254(1) to review Mr. Reeder's petition for writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides that:

> In all criminal prosecutions, the accused shall enjoy the right to ... be confronted with the witnesses against him ... and to have the assistance of counsel for his defense.
> U.S. Const. amend, VI.

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or the immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
> U.S. Const. amend. XIV, §1.

STATEMENT OF THE CASE

A. Introduction

The Orleans Parish District Attorney's Office has a long and documented

history of failing to disclose exculpatory and impeachment evidence to the defense in blatant disregard of this Court's clear and unequivocal mandates in *Brady v. Maryland* and *Gigilio v. United States*.[1] Over the years, numerous cases, including several defendants' murder convictions obtained by the Orleans Parish District Attorney's Office, have been reversed following revelation that New Orleans prosecutors withheld exculpatory or impeachment evidence.[2]

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1 373 .S. 83 (1963) and 405 U.S.150 (1972).

[2] A list of cases in which the Orleans Parish District Attorney's Office withheld exculpatory or impeachment evidence was set forth in footnote 6 of Petitioner's writ application to this Court in *Smith v. Cain* and includes the following: "*Kyles v. Whitley*, 514 U.S. 419, 441 (1995); *Monroe v. Blackburn*, 607 F. 2d 148 (5th Cir. 1979); *Davis v. Heyd*, 479 F. 2d 446 (5th Cir. 1973); *State v. Bright*, No. 2002-2793 (La. 01/30/04); 864 So. 2d 638; *State v. Cousin*, No. 96-2973 (La. 4/14/98); 710 So. 2d 1065 (in capital murder case, "[t] he prosecutor did not disclose this obviously exculpatory statement to the defense prior to the trial"); *State v. Lindsey*, 02-2363 (La. App. 4 Cir. 4/2/03); 844 So. 2d 961; Michael Perlstein, *Jordan drops charges in 1975 murder; Two men freed on eve of retrial*, TIMES-PICAYUNE, June 24, 2003, at B-1; *State v. Thompson*, 02-0361 (La. App. 4 Cir. 7/17/02); 825 So. 2d 552; Gwen Filosa, *N.O. man cleared in '84 murder*; *New trial in Liuzza killing brings an emotional end to epic case*, TIMES-PICAYUNE, MAY 9, 2003, at A-1 (after retrial, Thompson acquitted in less than one hour); *State v. Lee*, 00-2429 (La. App. 4 Cir. 1/4/01); 778 So. 2d 656; *State v. Marshall* 81-3115 (La. App. 4 Cir. 9/5/95); 660 So. 2d 819; *State v. Mims*, 94-0333 (La. App. 4 Cir. 1994); 637 So. 2d 1253; *State v. Falkins*, 356 So. 2d 415 (La. 1978); *State v. Parker*, 361 So. 2d 226 (La. 1978); *State v. Curtis*, 384 So. 2d 396 (La. 1980); *State v. Perkins*, 423 So. 2d 1103 (La. 1982); *State v. Evans*, 463 So. 2d 673 (La. 1985); *State v. Dozier*, 553 So. 2d 931 (La. Ct. App. 1989); *State v. Knapper*, 579 So. 2d 956 (La. 1991); *State v. Oliver*, 94-1642, p. 30-34 (La. App. 4 Cir. 1996) ("[a] prosecutor should not fail to make timely disclosure, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused") (*citing ABA Standards for Criminal Justice*, Prosecution Function and Defense Function, 3-3.11 (3d ed. 1993)); *State v. Peters*, 406 So. 2d 189 (La. 1981); *State v. Dawson*, 490 So. 2d 560, 563 (La. App. 4th Cir. 1986); *State v. Felton*, 522 So. 2d 626, 627 (La. App. 4th Cir. 1988); *State v. Rosiere*, 488 So. 2d 965, 969-71 (La. 1986) (failure to turn over statements of witnesses inconsistent with the prosecution case); *State v. Carney*, 334 So. 2d 415, 418-19) (La. 1976); see also *Monroe v. Butler*, 485 U. S. 1024 (1988) (Marshall, J., dissenting from denial of writ of *certiorari* in capital case); *Monroe v. Blackburn*, 476 U.S. 1145 (1986) (same); *State v. Walter*, 514 So. 2d 620 (La. App. 4th Cir. 1987) (reversing where possible *Brady* evidence not produced until day of

This petition presents the Court with yet another case in which the Orleans Parish District Attorney's Office failed to disclose critical impeachment evidence in a murder prosecution. In order to convict Kuantau Reeder of second degree murder, the jury had to find that Earl Price, who was the prosecution's only eyewitness, was credible. Because of the State's non-disclosure, the jurors made their determination of credibility without knowing that Mr. Price had previously been convicted of lying on a federal gun application form in which he swore that the information contained therein was true and correct. As a result, the jurors in Mr. Reeder's case were deprived of this critical information and confidence in their guilty verdict is seriously undermined.

A. State Procedural History

On October 7, 1993, Kuantau Reeder was indicted by an Orleans Parish grand jury for the second degree murder of Mark Broxton. At his arraignment on October 21, 1993, Mr. Reeder entered a plea of "not guilty." The Loyola Law School Criminal Clinic was appointed to represent Mr. Reeder and his attorneys filed numerous pretrial motions on his behalf, including a motion for discovery seeking the criminal convictions of all State witnesses. Mr. Reeder's first trial on

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trial)."

Since the *Smith v. Cain* footnote was written, the cases of *Jones v. Cain*, 151 So.3d 781 (La. App. 4 Cir. 2014); *State v. Johnson*, 229 So.3d6 10 (La. App. 4 Cir. 2018); and *State v. Wells*, 191 So.3d 1127 (La. App 4 Cir. 2016) can be added to the list.

July 8, 1994 ended in a hung jury. Prior to commencement of Mr. Reeder's second trial, defense counsel filed a second discovery motion seeking production of the rap sheets of the victim and all witnesses, including Earl Price, who was the State's only witness to the shooting. Instead of providing the defense with a copy of Mr. Price's federal rap sheet to which the Orleans District Attorney's Office had access, prosecutors provided defense counsel with a *handwritten* response listing several Mississippi state felony convictions of Mr. Price and an Alabama conviction for being a felon in possession of a firearm. They did not reveal his federal conviction in Mississippi for lying on a gun application.

At the conclusion of his second trial on July 13, 1995, Mr. Reeder was found guilty as charged. Court records do not indicate whether the verdict was unanimous.[3] Mr. Reeder was sentenced to a mandatory sentence of life in prison without the benefit of parole, probation, or suspension of sentence on July 19, 1995.

Mr. Reeder appealed his conviction to the Louisiana Fourth Circuit Court of Appeal which denied his appeal on July 16, 1997.[4] Mr. Reeder subsequently filed a *pro se* application for post-conviction relief. Two attorneys were appointed by the trial court on a *pro bono* basis to assist with the application and they filed an

[3] Prior to passage of a constitutional amendment in 2018, Louisiana Code of Criminal Procedure Article 782 provided that a defendant could be convicted of second degree murder by a non-unanimous verdict, as long as ten of twelve jurors voted to convict. To date, no court record has been located by counsel that reveals the composition of the verdict in Mr. Reeder's second trial.
[4] *State v. Reeder*, 698 So. 2d 56 (La. App. 4th Cir. 1997).

amended petition on Mr. Reeder's behalf. The trial court denied Mr. Reeder's application. The supervisory writ for review that was then filed with the Louisiana Fourth Circuit was denied.[5]

Following the unexpected discovery of impeachment evidence about the State's star witness Earl Price, in the form of his Mississippi federal conviction for lying on a gun application, new post-conviction counsel filed a second application for post-conviction relief in state district court on behalf of Mr. Reeder in December of 2009.[6] The Orleans Parish District Attorney's Office did not contest either the factual circumstances surrounding discovery of Mr. Price's federal conviction for lying, as detailed by post-conviction counsel, or trial counsel's affidavit that the conviction for lying had not been disclosed by the prosecution.[7]

The State contended that Mr. Reeder's application was time barred. The trial court agreed with the State; however, the Fourth Circuit Court of Appeal reversed this finding.[8] The Louisiana Supreme Court denied the State's writ application to review the appellate court's ruling and remanded the matter to the trial court.[9]

After consideration on the merits, the trial court denied Mr. Reeder's post conviction application on March 9, 2012. Mr. Reeder sought review of this ruling

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[5] *State v. Reeder*, 882 So. 2d 602 (La. App. 4th Cir. 2004).
[6] The steps that led to discovery of the conviction were described in an affidavit by counsel that was attached to the state court application for post-conviction filed on Mr. Reeder's behalf.
[7] ROA. 64.
[8] *State v. Reeder*, 10-1369, unpub. (La. App. 4th Cir. 12/2/10).
[9] *State v. Reeder*, 61 So. 3d 686 (La. App. 4th Cir. 2011).

by means of a writ application to the Louisiana Fourth Circuit. The court denied his writ, finding that at the time of trial, the defense was aware of some of Mr. Price's felony convictions. It also held that since the jury was advised that Mr. Price had a conviction for a crime of violence, the non-disclosure of his federal conviction for lying "did not render the jury's verdict suspect."[10] Mr. Reeder's writ application to the Louisiana Supreme Court was denied without reasons.[11]

B. Federal Procedural History

On November 22, 2013, counsel with the Tulane Law School Criminal Justice Clinic filed a petition for *habeas* relief on behalf of Mr. Reeder in Federal District Court for the Eastern District of Louisiana.[12] The Orleans Parish District Attorney's Office filed a reply to the petition alleging that it was time barred; it also argued that the petition should be denied on the merits. Mr. Reeder's petition was supplemented on July 25, 2016, with this Court's decision in *Wearry v. Cain.*[13]

The magistrate judge recommended that Mr. Reeder's petition be denied with prejudice concluding that it was time barred.[14] Mr. Reeder timely filed his Objections to the Magistrate's Report and Recommendation and also filed a

[10] *State v. Reeder*, 12-0529, unpub. (La. App. 4th Cir. 05/17/12).
[11] *State v. Reeder*, 107 So. 3d 623 (La. 2013).
[12] ROA. 6.
[13] *Wearry v. Cain*, 136 S. Ct. 1002 (2016)
[14] ROA. 490.

supplement to the petition.[15] The Orleans Parish District Attorney's Office did not file a response.

On March 21, 2017, the district court ruled that Mr. Reeder's *habeas* petition as it related to his *Napue* claim was time barred.[16] The court then ruled that Mr. Reeder's *Brady-Giglio* claim concerning the non-disclosed federal conviction of Mr. Price for lying was not time barred; however, it found that this impeachment evidence was not material and it denied Mr. Reeder's petition. Counsel for Mr. Reeder timely filed a Notice of Appeal[17] and after filing the necessary documentation to proceed *in forma pauperis,* timely filed an Application for a Certificate of Appealability with the appellate court on January 16, 2018.[18]

On October 19, 2018, the Fifth Circuit Court of Appeals Court granted Mr. Reeder a Certificate of Appealability to consider "whether the withheld evidence that the State's key witness had a prior federal conviction for lying on a federal firearms application was material for purposes of *Brady v. Maryland,* 373 U.S. 83 (1963)." The Court also granted Mr. Reeder permission to proceed with his appeal *in forma pauperis*.

Oral argument was presented by video on August 31, 2020, and on October 20, 2020, the Fifth Circuit denied Mr. Reeder's appeal. The Court held that "not

[15] ROA. 524 (repeated at 548 and 565).
[16] *Napue v. Illinois*, 360 U.S. 213 (1959); ROA. 627.
[17] ROA. 666 (repeated 668).
[18] ROA. 676 (repeated at 684).

withstanding the distinction" of a conviction for lying from other convictions, the Louisiana Fourth Circuit's ruling did not involve an unreasonable application of clearly established federal law because "a reasonable jurist could conclude that the undisclosed conviction was merely cumulative of the other convictions that were disclosed to the defense or was rendered cumulative by the revelation to the jury of at least one prior conviction."[19]

In light of this Court's March 19, 2020 Order extending the time period within which to file an application for writ of certiorari from 60 to 150 days due to the Covid pandemic, Petitioner timely submits his application for writ of certiorari with the Court.

C. Statement of Pertinent Case Facts

On April 13, 1993, Mark Broxton was shot multiple times outside the Julian Food Store which was located across from the Fischer Housing Development in the Algiers section of New Orleans. After shooting Mr. Broxton, the assailant fled on foot, discarding the jacket he had been wearing either in or by a dumpster that was located near the store.

Responding New Orleans police officers interviewed several people who had been in or near the store at the time of the shooting. Among those interviewed was a man named Earl Price who frequented the area and often purchased beer

[19] *Reeder v. Vannoy, supra* at ____.

from the nearby Winn Dixie grocery store. Approximately three months after the shooting, a homicide detective showed a six person photographic lineup that contained a picture of Kuantau Reeder to Mr. Price. Mr. Price did not personally know Mr. Reeder and had not named him as Broxton's shooter The lineup also contained the photograph of another suspect named Berjerack Johnson who - according to trial testimony from one of the NOPD officers involved in the investigation - had informed his girlfriend Kirshon Smith prior to the shooting that he intended to make Broxton "pay" for socializing with her while he had been incarcerated. The photo of Mr. Johnson depicted his complexion as lighter than his true skin color. Mr. Price identified the photo of Mr. Reeder as the shooter.[20]

In its case-in-chief, the State called Earl Price as a witness. Mr. Price stated that he was an eyewitness to the shooting and said he had picked out the photo of Mr. Reeder as the shooter several months after the homicide.[21] The State also introduced hearsay testimony from a police officer that Broxton's mother *and* another witness told him that they had heard "word on the street" that Reeder was the person who shot Broxton.[22] Prosecutors introduced the transcript of Mr. Reeder's testimony at his first trial into evidence to prove he acknowledged having a narcotics conviction. The transcript also contained Mr. Reeder's testimony that

[20] Ms. Smith testified at Mr. Reeder's trial that, shortly after Mr. Broxton was shot, Johnson phoned her to inform her of the shooting.
[21] 13,1995 Trial Trans. p. 95.
[22] Id. at 43.

he had been playing basketball with several friends on a court in the Fisher Housing Development at the time of Broxton's shooting.[23]

No State witnesses other than Mr. Price claimed to have witnessed the shooting. There was no video footage of the shooting. The State introduced no weapon and it presented no scientific or physical evidence that tied Mr. Reeder to the shooting. The recovered jacket that was introduced into evidence was not linked to Reeder. In addition, the State presented no motive evidence on the part of Reeder and introduced no evidence to suggest he had ever threatened Broxton in the past or made any incriminating statements following the shooting.

The defense presented the testimony of several persons who confirmed that they were playing basketball at the Fisher Housing Development with Reeder at the time of the shooting. In its cross-examination of these witnesses, the State accused them of being convicted drug offenders and pointed out their friendship with Reeder as motivation for them to lie.

In light of the evidence presented by the prosecution and the alibi testimony presented by the defense, in order to convict Mr. Reeder, jurors had to find that Mr. Price was credible. Because of the State's *Brady/Giglio* violation, they were forced to make this critical determination without the knowledge that Price had previously

[23] Several witness were called by the defense and the also testified that Mr. Reeder had been playing basketball at the time that Mr. Broxton was shit.

lied when swearing the information he provided to obtain a gun was true and correct.

SUMMARY Of ARGUMENT

> "You will find that Earl Price, with everything you know, is a credible witness. He's not perfect – when asked about his convictions, he admitted 'em right away. Not a hesitation, not a lie; admitted them right away. . . ."[24]

These were the words of the prosecutor during his closing argument in Mr. Reeder's murder trial – words spoken despite having failed to disclose that Earl Price had previously been convicted in Federal District Court for the Southern District of Mississippi of lying on a federal gun application.[25] As a result, this case presents the Court with yet another example of the failure of the Orleans Parish District Attorney's Office to honor its *Brady/Giglio* obligation in a murder prosecution.[26]

Price's non-disclosed conviction was "material" given its unique nature as a *crimen falsi* and because it directly related to the jury's credibility determination of the prosecution's key witness. Given the lack of any other evidence directly incriminating Mr. Reeder, the non-disclosure of Price's conviction for lying most

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[24] July 13, 1995 trial transcript, p. 106.

[25] This was a separate and distinct conviction from his Alabama conviction for being a felon in possession of a firearm. Some of the reviewing courts seem to have confused the two convictions.

[26] 373 U.S. 83 (1965); 405 U.S. 150 (1972).

certainly undermines confidence in the jury's verdict of guilty. The Louisiana Fourth Circuit Court of Appeal failed to follow established federal law in declining to so find. As a result, Mr. Reeder should be granted federal habeas relief under 28 USC 2254(d)(1) and the denial of such relief by the United States Fifth Circuit Court of Appeals should be reversed.

ARGUMENT

A. The first two requirements for reversal of Mr. Reeder's state conviction for second degree murder based on a *Brady/Giglo* violation are not in dispute.

There are three requirements that must be satisfied by a defendant in order to prevail on a *Brady-Giglio* claim. They are:

1. the evidence was suppressed or withheld;
2. the evidence was favorable to the accused and/or constituted impeachment evidence; and
3. the evidence was material to guilt or punishment.[27]

Satisfaction of the first two requirements has never been in controversy in Mr. Reeder's case.

1. The Orleans Parish District Attorney's Office has never contested that it failed to disclose that its star witness Earl Price had a federal conviction to Mr. Reeder's counsel prior to his murder trial as mandated by B*rady v. Maryland*, 373 U.S. 83 (1965) and

[27] *Brady v. Maryland*, 373 U.S. 83 (1965); *Giglio v. United States*, 405 U.S. 150 (1972); *Lawrence v. Lensing*, 42 F.3d 252, 257 (5th Cir. 1994)

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

Despite two separate written discovery requests made by the defense, the prosecutor's handwritten response to the specific request for witness rap sheets did not disclose that Earl Price, who was the only alleged eyewitness to the shooting of Mark Broxton to testify at Mr. Reeder's trial, had a federal conviction from the Southern District of Mississippi for lying on a gun application. Throughout the lengthy state post-conviction process and federal habeas proceedings, the Orleans Parish District Attorney's Office has never contended that it disclosed this information.[28] Its failure to disclose Price's conviction for lying is the type of prosecutorial misconduct that "corrupts . . . the truth-seeking function of the trial process."[29]

2. The non-disclosed conviction for lying goes directly to the issue of Earl Price's truthfulness and therefore constitutes impeachment evidence that is favorable to Mr. Reeder under *Brady* and its progeny.

The Orleans Parish District Attorney's Office also never contested that Earl Price's prior conviction for lying constituted favorable evidence that should have been disclosed and could have been used by defense counsel to impeach Price's credibility. Under Louisiana Code of Evidence Article 609.1B, evidence of a

[28] Criminal District Court Judge Darryl Derbigny, who was lead trial counsel for the Loyola Law School Criminal Clinic at Mr. Reeder's trial, executed an affidavit to this effect and his affidavit was never contested by the Orleans Parish District Attorney's Office. (See ROA. 64.).
[29] United States v. Agurs, 427 U.S, 97, 104 (1976).

witness' prior convictions admissible "upon the issue of credibility" in a criminal trial.[30] Convictions involving dishonesty are uniquely relevant to this issue.

In heightened recognition of the significance of prior convictions for crimes of dishonesty, Federal Rule of Evidence 609(a)(2) overrides the usual federal requirement that a criminal conviction must have resulted in a sentence of over a year to be admissible and specifically provides that "evidence that any witness has been convicted of a crime *shall be admitted* if it involved dishonesty or false statement, regardless of the punishment." (Emphasis added.) When discussing Rule 609(a)(2), Congress made it clear that:

> The admission of prior convictions involving dishonesty and false statement is not within the discretion of the Court. *Such convictions are particularly probative of credibility and, under this rule, are always to be admitted.* Thus, judicial discretion granted with respect to the admissibility of other prior convictions is not applicable to those involving dishonesty or false statement.[31] (Emphasis added.)

Under both the Louisiana and federal evidence rules, had the Orleans Parish prosecutors informed Mr. Reeder's trial counsel that Earl Price had a federal conviction for lying, it would have been admissible during the defense's cross-

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[30] The Seventh Circuit recognized this fact in *Crivens v. Roth*, 172 F.3d 991, 998 (7th Cir. 1999). when it ruled that undisclosed evidence that the prosecution's star witness had given alias names when arrested and had committed other acts of dishonesty in the criminal justice system was "distinguishable from other illegal conduct in general and was more damning to the witness' credibility."

[31] *Id.* quoting H.R. Conf. Rep. No 93-1597, 93d Cong., 2d Sess. 9, reprinted in (1974) U.S. Code Cong. & Admin. News, pp. 7098-7103.

examination of him. In addition, the conviction could have been introduced by defense counsel to impeach Price's false statement during cross-examination that, other than his conviction for assault and battery with intent to kill, he had "never been in jail for anything else,"[32] as the Mississippi federal court records discovered by post-conviction counsel document that Price had been incarcerated on his undisclosed conviction for lying. Having impeached Mr. Price, trial counsel would then have been able to effectively attack Price's credibility during his closing and argue to the jury, "If you do not tell the truth about yourself, you cannot tell it about other people."[33]

B. Earl Price's non–disclosed conviction for lying satisfies the "materiality" requirement of *Brady* as clearly established by this Court in *Giglio v. United States,* 405 U.S. 150 (1972).

In order to prevail on a petition for federal habeas relief under 28 U.S.C.A. 2254(d)(1), Mr. Reeder must prove that the Louisiana Fourth Circuit Court of Appeal's denial of post-conviction relief based on a *Brady/Giglio* claim and as affirmed by the federal district court and United States Fifth Circuit, was contrary to, or involved an unreasonable application of clearly established federal law as determined by this Court.[34] A state court decision is "contrary to" clearly established federal law if the state court applies a rule that contradicts governing

[32] July 13, 1995 trial transcript, p. 106.
[33] Virginia Woolf, The Moment and Other Essays, 1948.
[34] 28 U.S.C.A. §2254.

law set forth in the jurisprudence of this Court.[35] The decision is an "unreasonable application of clearly established Supreme Court law" if the state court correctly identifies the governing legal rule from this Court's cases but unreasonably applies it to the facts in the state court defendant's case.[36]

In denying Mr. Reeder's writ application, the Louisiana Fourth Circuit Court of Appeal ruled that the prosecution's failure to inform defense counsel that its star witness had a federal conviction for lying did not render the jury's verdict "suspect." The appellate court cited no jurisprudence in support of this ruling and did not address the issue of materiality and its components as required by *Brady* and its progeny; it also did not evaluate the withheld conviction in the context of the particular evidence introduced at trial. Without any of this consideration, it is impossible to conclude that Fourth Circuit's ruling is not contrary to or an unreasonable application of established Supreme Court law.

Granted, not all favorable evidence that is suppressed is "material.' This Court held in *United States v. Bagley*, suppressed evidence is deemed material for *Brady/Giglio* purposes "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."[37] This does not mean that the suppressed evidence must be of the

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[35] *Jenkins v. Hall*, 910 F.3d 828, 832 (5th Cir. 2018), *cert. denied* ___ U. S. ___ (2019).
[36] *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003).
[37] 473 U.S.667, 685 (1985).

caliber to have required the jury to vote "not guilty," but only that the evidence must cast the case in a different light so as to undermine confidence in the jury's verdict.[38] Because the issue of materiality for purposes of a *Brady/Giglio* violation is a mixed question of law and fact, review of a state's court decision is *de novo*.[39]

The appropriate legal question to be answered when making a determination of materiality is whether the defendant received a fair trial, understood as a trial resulting in a verdict worthy of confidence.[40] As this Court noted in *Kyles*. materiality does not require that a defendant demonstrate by a preponderance of evidence that disclosure of the withheld evidence would have resulted in his acquittal.[41] The value of the non-disclosed impeachment evidence must be evaluated in light of the other evidence in the case. A B*rady* violation is more likely to be material when it "would seriously undermine the testimony of a key witness on an essential issue or [where] there is no strong corroboration."[42]

The Louisiana Fourth Circuit failed to consider that the non-disclosed impeachment evidence of Mr. Price's conviction for lying directly challenged his truthfulness as a witness in a manner distinctly different than a prior conviction for a crime of violence. The fact that jurors learned Mr. Price had a conviction for

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[38] *Kyles v. Whitley*, 514 U.S. 419 (1995); See also" *Strickler v. Greene*, 527 U.S. 263, 289 (1999).
[39] *Mahler v. Kaylo*, 537 F.3d 494, 500 (5th Cir. 2008).
[40] *Id.*
[41] *Kyles*, *supra* at 434.
[42] *Id.* at 397.

assault and battery did not give them critical information upon which to evaluate his truthfulness; but a conviction for lying would have done so.

The materiality of the State's non-disclosed conviction for lying was compounded when the State informed the jury in closing that Mr. Reeder had two drug convictions and that his alibi witnesses also had drug convictions. The misconduct of the prosecutors denied jurors evidence that would have allowed them to weigh the nature of each witness' prior conviction rather than just compare the number of convictions each defense witness had with Price's untruthful claim that he only had one conviction. Reeder's jury was denied the very evidence that would have contradicted the prosecutor's statement and proven Price was a liar.

1. As a matter of law, a conviction for lying is unique and can never be cumulative, even though a witness has other convictions not related to truth-telling.

Contrary to the Fifth Circuit's decision, a reasonable jurist could not find that Price's undisclosed conviction for lying "was merely cumulative of the other convictions that were disclosed to the defense or was rendered cumulative by the revelation to the jury of at lease one prior conviction."[43] There can be no disagreement that a conviction for lying is perhaps the most egregious of the crimes included in the category of *crimen falsi* because it is uniquely probative of

[43] 978 F.3d 272 (U.S. 5th Cir, 2020).

untruthfulness in a way that a conviction for a drug offense or even the most brutal crime of violence is not. An individual who has a prior conviction for lying is a person who has already demonstrated that he will lie when it serves his purpose to do so. This is undoubtedly why Congress held them to be "particularly probative of credibility . . . and always to be admitted."[44]

Many years ago, in *United States v. Giglio,* this Court recognized that when the prosecution's case rests primarily on the credibility of one witness, then impeachment evidence of that witness becomes more significant. In *Smith v. Cain*, the Court reversed a Louisiana defendant's conviction finding that withheld impeachment evidence concerning the witness' ability to identify the defendant was material.[45] The Court's analysis rested on the fact that there was no evidence against the defendant other than the testimony of the eyewitnesses.

In its 2016 decision in *Wearry v. Cain*, this Court reversed a Louisiana defendant's conviction based on a habeas claim concerning withheld impeachment evidence concerning two critical prosecution witnesses. In doing so the Court reiterated that "[t]o prevail on his *Brady* claim, Wearry need not show that he 'more likely than not' would have been acquitted had the new evidence been

[44] See footnote 29 *supra.*
[45] 565 U.S. 73 (2012).

admitted. He must show only that the new evidence is sufficient to 'undermine confidence' in the verdict.'[46]

Since the State's case against Wearry depended on the testimony of two witnesses and the State failed to reveal evidence that impeached their credibility, the Court ruled that a new trial was required.[47] In its decision, this Court explicitly stated, "We conclude that the Louisiana courts' denial of Wearry's *Brady* claim runs up against settled constitutional principles, and . . . a new trial is required as a result."[48] The Court held that, even though the impeachment information taken at face value, may not have had an effect on the outcome of the case, and "[e]ven if the jury—armed with all of this new evidence—*could* have voted to convict Wearry, we have no confidence that it *would* have done so."[49]

The Court's reasoning in *Wearry* is equally applicable in Mr. Reeder's case. Here, Price's non-disclosed conviction for lying and his follow-up uncorrected lie at trial about only having been incarcerated once is amply sufficient to call into question the validity of the jury's verdict. This is especially true given the lack of any other substantial evidence against Mr. Reeder and the favorable defense evidence presented at trial, including: Mr. Reeder's alibi evidence and the existence of an identified alternative suspect who had expressed a motive and

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[46] *Id.* (Internal citation excluded).
[47] *Wearry v. Cain*, 136 S. Ct. 1002 (2016).
[48] *Wearry, supra.*
[49] *Id.* (Internal quotation marks excluded).

desire to make Broxton "pay" for making a pass at his girlfriend while he had been in jail. The fact that a jury might still have found Mr. Reeder guilty, even with the withheld evidence, is not persuasive as, in light of the withheld evidence, one cannot be confident it would have done so. Mr. Reeder had the constitutional right to have his jury hear and weigh the truth related prior conviction evidence against his only direct accuser and that did not happen due to the State's misconduct.

Contrary to the Fifth Circuit's opinion, the fact that *Wearry* and *Cain* were decided after the Louisiana Fourth Circuit Court of Appeal denied relief to Mr. Reeder does not prevent the state court's ruling from being a violation of clearly established federal constitutional law. *Smith* and *Wearry* do not set forth new constitutional law that cannot be considered for purposes of Mr. Reeder's habeas appeal. Instead, the cases provide additional examples of the how the longstanding and well established principles of constitutional law set forth in *Brady* and *Giglio* should be applied. The Fourth Circuit's opinion never even considered the unique nature of a conviction for lying or addressed this Court's pronouncement in *Giglio* when it found that Price's conviction for lying was not material.

In Mr. Reeder's case, the only direct evidence of his guilt came from Earl Price. Mr. Price claimed to have been an eyewitness to the shooting of Mr. Broxton. There were no other witnesses who testified as to having witnessed the shooting. There was no video, physical, or scientific evidence linking Mr. Reeder

to the shooting. The State offered no evidence of motive on the part of Mr. Reeder and presented no evidence that Reeder had ever threatened the victim or that he made any inculpatory statements following the homicide.

Since the State's case rested on the testimony of Mr. Price, the withheld impeachment evidence must be evaluated in this context. The missing impeachment evidence was not an additional crime of violence - which may indeed have been cumulative - but rather a conviction for lying which directly targeted the star witness' credibility. The fact that Mr. Price had another prior conviction for a crime of violence that was withheld by the State would not have caused a jury to question his honesty or reliability in the same manner that knowing he had been previously convicted of lying would. An argument to the contrary is both illogical and misguided. Without the jury having knowledge that Price was someone who had previously lied under oath, there can be no confidence in its verdict of guilty.

As this Court explained in *Bagley,* the disclosure obligation of the prosecution is based on due process and its "purpose is not to displace the advocacy system as the primary means by which truth is uncovered but to insure a miscarriage of justice does not occur."[50] Price's conviction satisfies the *Brady-*

[50] Bagley, *supra* at 675.

Bagley requirement of materiality[51] and its non-disclosure by New Orleans prosecutors resulted in a miscarriage of justice.

2. The fact that Earl Price may have been partially impeached through the use of his testimony at Mr. Reeder's first trial did not render his conviction for lying cumulative.

When a witness has already been significantly impeached, additional impeachment evidence may be deemed merely cumulative and not material for *Brady-Giglio* purposes.[52] Though not even considered by the state appellate court, the federal district court found that defense counsel had so "thoroughly impeached" Mr. Price during cross examination that the withheld conviction for lying was rendered cumulative. Logically, this conclusion can not be correct since if Price had been "thoroughly impeached," Mr. Reeder would not have been convicted at his second trial.

Mr. Price testified at Mr. Reeder's 1995 trial that he arrived at the store in a black Camero while at Reeder's first trial, Price stated he did not know how Reeder arrived at the scene. Price also admitted that he did not tell the initial investigating officer that Reeder had arrived in a car.[53] Defense cross-examination on the car issue was not critical to an identification of the shooter and any variance

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[51] See: the analysis in *United States v. Kohring*, 637 F.3d 912 (9th Cir. 2011) holding that the prosecution's failure to disclose that its star witness had attempted to suborn perjury by a sexual assault victim was material.
[52] *Smith v. Cain, supra.*
[53] ROA. 660.

in Price's testimony on this point could have been regarded by the jury as an insignificant lapse in memory or the later recall of a forgotten detail as opposed to proof he was lying.

Mr. Price also testified that after being shot, the victim entered Julian's Food Store; walked to the rear of the store where he retrieved a soft drink from a cooler; and then walked back up to the counter where he collapsed. The assistant coroner contradicted Mr. Price's version of events testifying that, due to the nature of his injuries, the victim would have been very unlikely to have functioned as reported by Mr. Price.[54] Any conflict between the testimony of Mr. Price and the assistant coroner on this issue could have been accredited to the chaos surrounding the shooting and confusion after the entry of Mr. Broxton into the store. Given the existence of reasonable inferences for the differences in Price's testimony on the only two variances in Price's first and second trial testimony, it cannot be said that Price was so "thoroughly impeached" as to have his identification of Mr. Reeder as the shooter dismissed by the jury.

3. Earl Price's testimony at Mr. Reeder's second trial was not so corroborated as to render the non-disclosure of his conviction for lying legally immaterial.

The Fifth Circuit accepted the district court's finding that there was other evidence of Reeder's guilt presented at his trial in addition to the testimony of Mr.

[54] ROA. 356.

Price. The first type of "other evidence" consisted of some "word on the street" hearsay that was admitted only because trial counsel did not object to its admission. The lack of an objection did not transform the hearsay into reliable evidence. Testimony by a police detective about what the decedent's mother and another woman he interviewed told him they heard from other people is not a legal and reliable means of determining guilt. Hearsay is excluded at criminal trials because it deprives an accused of both his federal and state constitutional rights to confrontation.[55] In addition, the value of the statement provided rests on the credibility of an out-of-court asserter who is not under an oath to impress upon him or her the seriousness of their testimony. The declarant is not subject to cross-examination and not forced to sit face-to-face with jurors who can assess his/her demeanor and observe the manner in which testimony is given in order to determine whether it is worthy of belief.[56] In reality, the officer's testimony described by the district court as "corroboration" was double or - arguably - even triple hearsay.

The district court identified the second "other evidence of guilt" as a blue and black jacket that was recovered from a dumpster near the shooting.[57] In reality, the jacket had no probative value. Though Mr. Price testified that the shooter

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[55] Amend VI, U. S. Constitution; Louisiana Constitution, Article I, Section 16.
[56] *California v. Green*, 399 U.S. 149 (1930); *State v. Willie*, 559 So. 2d 1321 (La. 1990).
[57] ROA. 660.

(whom he alleged was Mr. Reeder) wore a *blue and red* jacket at the time of the shooting, another State witness, who could not identify anyone as the shooter, testified that the shooter was actually wearing a *blue and black* jacket at the time of the shooting. Whatever the actual colors of the shooter's jacket, no scientific, circumstantial, or anecdotal evidence was ever presented to link Mr. Reeder to any jacket that was recovered from a dumpster near the scene of the shooting. The district court's conclusion that "other evidence" supported Reeder's conviction lacks merit.

Given that that Earl Price was one and only witness to testify that Mr. Reeder shot and killed the victim, neither the minor differences in his testimony from that given at Reeder's first trial nor any corroboration of his testimony through hearsay is sufficient to prevent the non-disclosure of his conviction for lying, the ultimate *crimen falsi,* from being material as required by *Brady* and its progeny.

CONCLUSION

The integrity of our criminal justice system depends on its ability to seek out the truth and present it to the fact finder at trial. That did not happen in Mr. Reeder's case because the Orleans Parish District Attorney's Office abdicated its constitutional obligation. In *Berger v. United States*, this Court declared that the

obligation of the state "in a criminal prosecution is not that it shall win a case but that justice shall be done."[58] As the *Berger* Court noted, the jury "has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed." [59]Here, the prosecutor duped the jury and subverted justice.

The State's case rested on the testimony of Earl Price – based on a six person photo identification made three months after the crime - and the triple hearsay statement of a police officer who testified about what the victim's mother told him she heard "on the street." There was no scientific evidence linking Mr. Reeder to the crime; no physical evidence tied him to the murder; there was no evidence of motive or any incriminating statements on his part. In addition, he presented evidence of an alibi.

Had the jury not believed the testimony of Earl Price, Kauntau Reeder could not have been convicted. Yet, the Orleans parish District Attorney's Office hid from the jury the most important piece of information addressing the credibility of Mr. Price – his conviction for lying. And, as if this deception were not enough, the prosecutor argued to the jury in closing, "Earl Price with everything you know is a credible witness . . . when asked about his convictions, he admitted 'em right away. Not a hesitation, not a lie. . ." With only the testimony of Earl Price standing between a guilty verdict and freedom, Price's conviction for lying was actually

[58] 295 U.S. 78 (1935).
[59] Id.

more than material – it was crucial to the jury's determination of the truth. "While he may strike hard blows, he [a prosecutor] is not at liberty to strike foul ones."[60] In Mr. Reeder' s case, the Orleans Parish District Attorney's Office once again struck a foul blow.

Because Earl Price was the only alleged eyewitness presented by the State at trial, the jury's evaluation of his truthfulness and reliability "may well [have been] determinative of guilt or innocence."[61] The Louisiana Fourth Circuit failed to consider this reality and in finding that the verdict was not "suspect," it did not assess the issue of materiality on a case-specific basis. Its decision did not even discuss the unique bearing of the non-disclosed conviction for lying - arguably, the most serious of the *a crimen falsi* - on Price's credibility; the lack of any other direct evidence of Mr. Reeder's guilt; the existence of another identified suspect with a motive; or the alibi evidence presented by the defense.

For all the reasons forth above, the decision of the Louisiana Fourth Circuit Court of Appeal that the non-disclosure of Earl Price's conviction for lying was not material was contrary to and involved an unreasonable application of clearly established federal constitutional law as announced by this Court in *Brady* and its progeny. Accordingly, Mr. Reeder is entitled to have his petition for writ of

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[60] *Id.*

[61] *LaCaze v. Warden of the Louisiana Correctional Institute for Women,* 645 F.3d 728, 735 (5th Cir. 2011).

certiorari granted, and then with the benefit of habeas relief, have his state conviction in Orleans Parish Criminal District Court case number 366-001-E reversed.

Respectfully submitted,

Sheila C. Myers, La. Bar No. 09871
Tulane Criminal Justice Clinic
6329 Freret Street
New Orleans, LA 70118
Phone: (504) 865-5153
Alt. Phone: (504) 554-7498
Fax: (504) 862-8753
smyers@tulane.edu

Attorneys for Kuantau Reeder

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Writ of Certiorari has been/will be served upon opposing counsel by hand delivery and/or depositing a copy of same in the United States mail, postage prepaid and addressed as follows:

Assistant District Attorney Ben Cohen
Chief of Appeals Division
Orleans Parish District Attorney's Office
619 South White Street
New Orleans, Louisiana 70119

This 19 TR day of March, 2021.

Sheila C. Myers, La. Bar #09871