21-8120

No. 21-A633

In the Supreme Court of the United States

WILLIE GREEN,

Petitioners,

v.

DELIJAH WASHINGTON,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

This 6th Day of June 2022

Willie Green
7707 Riverine Rd
Temple Terrace, Fl 33637
(213) 465-9692

ORIGINAL

Willie Green
Petitioner/Pro Se

10

QUESTIONS PRESENTED

I. Are Brady Claims available for defendants who plead guilty when the prosecution withholds materially exculpatory evidence?

II. Does a guilty plea waive a defendant's due process claim that his conviction was based on perjured testimony and false evidence?

III. During the trial court proceedings, the trial judge barred the petitioner's counsel from reviewing and investigating undisclosed evidence that was presented to him on the day of jury selection.

1. Does a trial courts interference with counsel's duty of investigation and refusal to allow counsel to investigate late discovery violate a defendant's Sixth Amendment right to effective assistance of counsel?

2. Can a defendant challenge the voluntariness of his guilty plea if his plea is the result of counsel being unprepared for trial due to being barred by the trial court from reviewing all the evidence to the State's case?

PARTIES TO THE PROCEEDINGS

All parties to the proceeding are set forth in the case caption. See SUP. CT. R. 24.1(b).

CORPORATE DISCLOSURE STATEMENT

The petitioner has no parent corporation or publicly held company that owns 10% or more of its stock

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Cases-continued

Cases-continued

Federal Rules

State Statutes

PETITION FOR A WRIT OF CERTIORARI

Petitioner Willie Green respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the District Court (App., *infra*, 37a-47a) The single- judge circuit court's order denying Petitioner's Application for Certificate of Appealability (App., *infra*, 1a-2a)

JURISDICTION

The judgment of the court of appeals was entered on February 8, 2022. On April 21st 2022 this court extended the time within which to file any petition for a writ of certiorari and extended the deadline for filing this petition to June 8th 2022. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

RELEVANT CONSTITUIONAL PROVISION

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law.

The Sixth Amendment provides that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

A. The State's witness planted evidence against Green to have him falsely arrested

On May 30th 2016 at or around 4:30pm Willie Green and State witness Shardae Allen, whom was Green's live-in girlfriend at the time, as well as the mother of his children, were involved in a verbal dispute surrounding the termination of their relationship. During the verbal dispute Green informed Ms. Allen that he was moving out of their Woodstock, Georgia residence and that he would also be taking his minor children with him as he was the custodial parent of two of the minor children that were in the home. After arguing Ms. Allen, Green left his residence with his minor son and went to a local Home Depot where he went to buy an air condition unit for their residence. After Green left the residence Ms. Allen then concocted a scheme to have Green falsely arrested. Immediately after Green's departure Ms. Allen went into the living room and retrieved a freestanding bathroom door lock that was lying on top of their mantle and that was previously detached from their bathroom door several months prior. After retrieving the door lock from the mantle, Ms. Allen then went to their bathroom and planted the door lock on the bathroom floor so that it would appear to arriving officers that Mr. Green had just broken their bathroom door before he left the residence with his son. After planting the lock on the bathroom floor, Ms. Allen then called 9-11 and falsely claimed that she had just been the victim of domestic violence and claimed that Green had "kicked and broken" their bathroom door during the purported dispute. When officers arrived Ms. Allen repeated her false allegations

of domestic violence to police along with her false claim that Green had "kicked and broken" their bathroom door during the alleged domestic dispute. While investigating Ms. Allen's claims officers entered into their bathroom and observed that the bathroom door was broken and discovered the door lock that was planted on the floor by Ms. Allen before their arrival lying on the bathroom floor. When Green returned to his residence from the store with his son, he was then apprehended by awaiting Cherokee County, Georgia Sheriffs who informed him of Ms. Allen's allegations and he was subsequently arrested and charged with Battery (Family Violence), Criminal Trespass, and Terroristic Threats. All charges based upon Ms. Allen's false accusations. The Following day on May 31st 2016, Ms. Allen then gave perjured testimony in the matter of Shardae M. Allen vs. Willie A. Green III, Cherokee County Superior Court, Civil Action File No: **16CV1007B**. The perjured testimony was the aforementioned false allegations that Ms. Allen had given to police; this time said false allegations being given in a court of law under oath. As a result of Ms. Allen's perjured testimony, she obtained a Family Violence Ex Parte Protective Order. On June 1st 2016, Green returned to his residence to perform a wellness check on his children and was subsequently rearrested and charged with Burglary in the First Degree, Aggravated Stalking, and Hindering an Emergency Telephone Call. All subsequent charges based upon Green's violation of the Temporary Protective Order that Ms. Allen and the State have both since admitted on record, to having being granted to Ms. Allen through her perjured testimony and that was obtained as a

consequence of Ms. Allen admittedly planting evidence against Green on May 30th 2016.

On May 15th 2017, on the eve of trial it was discovered that the State was in possession of evidence that was provided to counsel in discovery. The state claimed to have an audio recording that allegedly contained verbal threats that Green was alleged to have made to the states witness on the day of May 30, 2016. Greens Council objected to the entry of this evidence as it was not provided to counsel in discovery or 10 days before trial as the rules of Georgia discovery required. Court was then placed in recess for the day with the court instructing counsel to return to his office and check his discovery file for the contested recording and informed counsel that if the recording was not provided to him in discovery that he would grant counsel a continuance. The following day on May 16, 2017 when court resumed counsel announced to the court that after checking his discovery file, he could now affirm that the audio recording was not provided to him in discovery and also informed the court that in addition to this he had just now been handed four new pieces of evidence from the State as well. Bringing the total to five new pieces of evidence that was not provided to counsel in discovery. Counsel then asked the court for a continuance so that he could review the new discovery but his request was denied by the trial court. The trial court then decided that he would suppress the new discovery since it was not timely provided to counsel but still refused to grant counsel a continuous so that counsel could investigate the new discovery. Counsel then made repeated announcements to the court that he was no longer ready and prepared to proceed to

trial based upon the states discovery violation and continued to ask the court for more time so that he could investigate and review the new evidence. Counsel also warned the court that if forced to proceed to trial without reviewing all the evidence to the case Green ultimately will not receive a fair trial. However, the trial court was unpersuaded and continued to deny counsel's request to inspect the late discovery and continued to push Green's case forward to jury selection. Because of this green ultimately entered a plea of guilty instead of going to trial with unprepared counsel. After Greens guilty plea had been entered by the court the States witness Shardae Allen then came forth and testified that she had staged a crime scene against Green on the day of his initial arrest on May 30, 2016 and that she had also committed perjury to obtain a protective order. After Mrs. Allen's testimony the prosecutor then corroborated Mrs. Allen's statement and admitted that Mrs. Allen had in fact staged a crime scene against Green and stated that Green and his attorney were "making a big issue about Ms. Allen staging the evidence". The prosecutor also acknowledged that Ms. Allen had committed perjury to obtain the same protective order that the State was using as evidence against Green in their prosecution. However, despite hearing such testimony from Mrs. Allen as well as the statements made by the prosecutor, the trial judge continued forward with Greens guilty plea... and never inquired about any of the admissions that were made by Ms. Allen and the State. Green was then sentenced to a 10-year split sentence 3 to serve in prison and the remaining balance on probation. In June of 2017, Green appealed his convictions to the Georgia Court of Appeals. On August 1st 2017, the court denied Green's appeal

for failure to timely file his appellant brief. On September 25th 2017, Green filed a State Habeas petition in Monroe County, Georgia. Challenging the constitutionality of his convictions. Green raised a total of thirteen (13) claims including but not limited to, violation of his due process rights due to the State's knowing use of perjured testimony and false evidence to obtain his conviction, violation of his sixth amendment right to self- representation, multiple ineffective assistance of counsel claim(s), including ineffective assistance of counsel due to government interference from the trial court and that his plea was unknowingly, involuntarily, and unintelligently entered. On April 18th 2018 the Habeas court held an evidentiary hearing on Green's petition. On December 20th 2018 the Habeas court denied Green's petition for Habeas relief concluding in relevant part that: Green had "waived" his due process violation claim by entering a plea of guilty, "waived" his Sixth Amendment claim for violation of his right to self-representation by entering a plea of guilty, "waived" his claim that he received ineffective assistance of counsel due to government interference from the trial court, and never ruling on or even acknowledging Green's claim that his plea was involuntarily entered due to ineffective assistance of counsel. On January 9th 2019, Green appealed the denial of his Habeas Petition to the Georgia Supreme Court. On October 20th 2019, Green was then released from Prison and has now begun serving out the probation portion of his sentence. On November 18th 2019, the Georgia Supreme Court denied review of Green's application. On May 23rd 2020, Green filed a Federal Habeas Petition to the Northern District of Georgia. On May 27th 2021, the District Court denied Green's

Habeas Petition concluding in relevant part that Green had "waived" his due process claim of the state knowingly using perjured testimony and false evidence to obtain his conviction. The court also misconstrued Green's ineffective assistance claim due to interference from the trial court as a "Brady Claim" and concluded that Green "waived" his claim by entering a plea of guilty, and like the State Habeas Court never ruling on or even acknowledging Green's claim that his plea was involuntarily entered due to ineffective assistance of counsel. On June 25th 2021, Green appealed to the 11th Circuit Court of Appeals. On February 8th 2022, the 11th Circuit Court of Appeals denied Green's application for certificate of appealability concluding that Green did not make the requisite showing required for certificate of appealability. Green now files this his Petition for Writ of Certiorari with this court.

REASONS FOR GRANTING THE PETITION

I. This case first presents the questions of whether Brady Claims are available for defendants who plead guilty when the Government withholds materially exculpatory evidence.

The record of this case shows that the prosecutor waited until after Green entered his plea of guilty and until after the States witness testified that she had staged a crime scene against him to have him falsely arrested and that she had also committed perjury to obtain a restraining order, to now disclose to the defense and to the court that the State was aware that their witness had planted evidence against Green on the day of his initial arrest and that she had also given perjured Ex Parte Testimony to obtain a protective order. (App. Ex. #1 – Exhibit #2). The post-conviction record of this case establishes that the prosecutor never disclosed to

the defense either before or after Green's plea, or at any point during Green's entire criminal proceedings that the State had given their witness a non-prosecution agreement promising that she would not be prosecuted for planting evidence against Green and committing perjury in exchange for her cooperation and testimony with the State's case. This exculpatory evidence was withheld by the State even after Green's counsel filed preliminary motions requesting this information and other exculpatory evidence that may have been available. Had this exculpatory evidence been provided to Green before he entered a guilty plea then the outcome of the proceedings would have been different, as Green would not have never entered a plea of guilty, but instead would have insisted on going to trial under these circumstances, as no reasonable juror would not have found him guilty after learning that the State was admitting that their witness had staged a crime scene against him and that she had also committed perjury to obtain the very protective order that the State was using as evidence against him in its prosecution and that she had also been provided with a non-prosecution agreement in exchange for her cooperation to help send Green to prison. The District Court concluded however, that Green's Brady Claim was procedurally defaulted because he entered a plea of guilty (App. 39a – 42a) and refused to consider Green's new evidence that Ms. Allen was given a promise of non-prosecution in exchange for her cooperation and testimony with the State's case. (App. 42a – 43a). This decision by the District Court in the face of a record that shows that the prosecutor did reveal that she knew that her witness had staged a crime scene against someone until after his

guilty plea was entered and in the face of an affidavit from the State's witness who revealed that she was given a promise of non-prosecution in exchange for her testimony does not comport with fundamental fairness, constitutional justice, or the diligent search of the truth-seeking process that our justice system promises. The District Courts decision should not stand and review is warranted.

A. The Brady Rule

In *Brady v. Maryland,* 373 U.S. 83 (1963) this court held that "the 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" Id. at 87.

In order to show a Brady violation, a Defendant must establish "**(1)** that the Government possessed evidence favorable to the defense, **(2)** that the defendant did not possess the evidence, and could not obtain it with any reasonable diligence, **(3)** that the prosecution suppressed the evidence, and **(4)** that a reasonable probability exists that the outcome of the proceeding would have been different had the evidence been disclosed to the defense." *Moon v. Head,* 285 F.3d 1301, 1308 (11th Cir.2002). "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" See e.g., *Cone v. Bell,* 556 U.S. 449, 469–470 (2009). The only notable supplement to *Brady* was made in *United States v. Ruiz,* 536 U.S. 622, (2002); where this court held that "the Constitution does not require the Government to disclose material *impeaching* evidence prior to entering a plea agreement with a criminal defendant." Id. at 623. However, this court also noted how the defendant's

constitutional rights to receive Brady materials had been protected: ("the proposed plea agreement at issue here specifies, the Government will provide 'any information establishing the factual innocence of the defendant") Id. at 631. By holding in *Ruiz* that the government committed no due process violation by requiring a defendant to waive her right to impeachment evidence before indictment in order to accept a fast-track plea, this court did not imply that the government may avoid the consequence of a Brady violation if the defendant accepts an eleventh-hour plea agreement while ignorant of withheld exculpatory evidence in the government's possession. See *McCann v. Mangialardi*, 337 F.3d 782, 787 (7th Cir.2003) (stating that, given Ruiz's distinction between exculpatory and impeachment evidence, "it is highly likely that the Supreme Court would find a violation of the Due Process Clause if prosecutors ... have knowledge of a criminal defendant's factual innocence but fail to disclose such information to a defendant before he enters into a guilty plea"). Nonetheless, Circuit Courts are split on this courts holding in Ruiz and a defendant's right to exculpatory evidence during the plea-bargaining stage.

THE CIRCUIT COURT SPLIT

B. In Favor of Brady Claims After Guilty Pleas: The Seventh, Ninth, and Tenth Circuits

The Seventh, Ninth, and Tenth Circuits have suggested that the government is constitutionally required to disclose exculpatory evidence to defendants before defendants plead guilty. In 2003, in McCann v. Mangialardi, the Seventh Circuit considered whether Brady v. Maryland requires the pre guilty plea disclosure of exculpatory evidence. Brady v. Maryland, 373 U.S. 83 (1963); See McCann, 337 F.3d

at 787 (exploring the possibility that, after Ruiz, defendants may claim that their guilty pleas were invalid if they were entered without knowledge of undisclosed exculpatory evidence). The court identified two aspects of the United States v. Ruiz decision that suggested a difference between the treatment of exculpatory and impeachment evidence. First, Ruiz relied on the idea that impeachment evidence is not essential information that a defendant must be aware of for a plea to be entered knowingly and voluntarily. Id. at 787; see Ruiz, 536 U.S. at 630 (noting that the required disclosure of favorable information would be unreasonable because such information may be helpful to the defendant, depending on how much they know about the prosecution's case) The Seventh Circuit suggested that the Supreme Court must have intended for Ruiz only to apply to impeachment evidence, because a plea cannot be entered knowingly and voluntarily if a defendant is not aware of critical information like evidence unequivocally establishing the defendant's innocence. See McCann, 337 F.3d at 787–88 (noting that impeachment evidence is distinct from exculpatory evidence, which is critical information a defendant must be aware of to enter a plea voluntarily). Second, the fast-track plea agreement challenged in Ruiz stipulated that the government would turn over any information establishing the defendant's factual innocence. Id.; See Ruiz, 536 U.S. at 631 (pointing out that the plea involved already requires that evidence showing the defendant's innocence be turned over). In 2007, the Ninth Circuit reached a similar conclusion to the Seventh Circuit when it addressed whether Brady applied to plea bargains in Smith v. Baldwin, 510 F.3d at 1148 (2007). In that case, (the court made no reference to Ruiz

but instead turned to its own precedent in Sanchez v. United States to explain disclosure requirements during plea-bargaining); Sanchez v. United States, 50 F.3d 1448, 1454 (9th Cir. 1995) (holding that during a plea, evidence must be turned over if it is likely that the evidence would have encouraged a defendant to go to trial rather than accept a plea) This suggested that the Ninth Circuit did not interpret Ruiz as controlling in situations involving exculpatory evidence. See Smith, 510 F.3d at 1148 (implying that the Ninth Circuit's standard for disclosure during pleas as articulated in Sanchez requires the disclosure of material information, not impeachment evidence, because including impeachment evidence in the standard would mean the standard conflicted with the Supreme Court's holding in Ruiz, which the court in Smith did not address). Finally, in 2005, the Tenth Circuit also agreed that defendants may raise Brady claims after entering guilty pleas in United States v. Ohiri, 133 Fed.Appx. 555 (2005). There, the court reasoned that the evidence withheld constituted exculpatory evidence, not impeachment evidence, which differentiated the case from Ruiz. See id. at 562 (determining that a statement in which the co-conspirator admitted that the defendant was unaware of any illegal behavior constituted exculpatory evidence). Additionally, the court was persuaded by the fact that the defendant entered his plea on the day of jury voir dire, whereas the fast-track plea offered to the defendant in Ruiz had to be entered before indictment. See id. (concluding that because all exculpatory evidence must be turned over to the defendant before trial, the defendant in Ohiri should have had access to the co-conspirator's statement at the time of the plea, which he entered on the day scheduled

for jury selection) The Tenth Circuit reasoned that the holding in Ruiz did not shield the government from Brady claims resulting from pleas entered immediately before trial. See Ohiri, 133 F. App'x at 562 ("[T]he Supreme Court did not imply that the government may avoid the consequence of a Brady violation if the defendant accepts an eleventh-hour plea agreement while ignorant of withheld exculpatory evidence in the government's possession.")

C. Against Brady Claims After Guilty Pleas: The First, Second, Fourth, and Fifth Circuits

The First, Second, Fourth, and Fifth Circuits disagree with the Seventh, Ninth, and Tenth Circuits and have suggested that defendants are not constitutionally entitled to exculpatory information prior to entering guilty pleas. In 2010, in United States v. Mathur, 624 F.3d 498, the court held that Ruiz affirmed that the Court in Brady did not intend to protect defendants from any negative repercussions that may result from entering a guilty plea without knowledge of all pertinent information. See id. at 507 (explaining that, according to Ruiz, Brady does not guarantee that defendants will gain access to all pertinent information before they enter a plea). Similarly, in 2010, the Second Circuit ruled in Friedman v. Rehal that a Brady violation did not occur when the prosecution failed to disclose prior to the defendant pleading guilty that it had used hypnosis to interview witnesses. See Friedman, 618 F.3d at 153–54 (holding that the evidence constituted impeachment, not exculpatory evidence, and even still, there is no constitutional requirement to disclose exculpatory evidence during plea-bargaining). In 2010, the Fourth Circuit also suggested that it would be unwilling to extend Brady to the guilty plea context

in United States v. Moussaoui. See Moussaoui, 591 F.3d at 286 (citing its own precedent which declined to extend Brady to mitigation evidence, which is evidence used to diminish the culpability of defendants facing the death penalty, withheld during a death penalty trial to suggest it would be hesitant to do so for plea bargains) The court cited language asserting that the Brady requirement existed to ensure fair trials. See id. ("The Brady right, however, is a trial right.") Although the court recognized the possibility that Ruiz applied only to impeachment evidence and not exculpatory evidence, it cited a previous decision of the Fourth Circuit which held that undisclosed death penalty mitigation evidence did not invalidate a defendant's guilty plea. See id. at 286 (citing Jones v. Cooper, 311 F.3d 306, 315 (4th Cir. 2002)) (holding that Ruiz prevented a defendant from attempting to invalidate his guilty plea when the government withheld information that might be relevant mitigation evidence during a defendant's death penalty trial). Finally, in Alvarez v. City of Brownsville, 904 F.3d 382 (5th Cir. 2018) the Fifth Circuit held that the Constitution does not require disclosure of exculpatory evidence during the plea-bargaining process. See Alvarez, 904 F.3d at 392–94 (reasoning that Ruiz applies to exculpatory evidence in addition to impeachment evidence, and therefore criminal defendants are not entitled to exculpatory evidence during the plea-bargaining phase) The court reasoned that, because no case law from the Supreme Court or other circuit courts decisively establishes that failure to disclose evidence during the plea-bargaining process constitutes a Brady violation, it will defer to its existing precedent, which held that it does not. Id.

D. The conflict is ripe for resolution

The facts of this case provide a perfect example for why it is of vital importance that this court finally address the Circuit Court's split on a defendant's constitutional right to pre-plea exculpatory evidence during the plea-bargaining stage. For without this constitutional safeguard prosecutors may be tempted to engage in prosecutorial misconduct by withholding exculpatory evidence and knowledge of a defendants legal and factual innocence to solicit and/or coerce guilty pleas. And this case spotlights the importance of why this constitutional safeguard is necessary from this court. Specifically, because the prosecutor's conduct in this case was so egregious by deliberately withholding material exculpatory evidence regarding her personal knowledge about her witness planting evidence against Green and then by refusing to even be honest about these facts until after Green's guilty plea had already been entered is a blatant disregard for each and every holding that this court has held regarding due process and a prosecutor's knowing use of perjured testimony and false evidence. These unconstitutional tactics should not be tolerated by this court or be allowed to have any place in our justice system. A denial to finally make clear of a defendant's right to pre-plea exculpatory evidence could potentially embolden prosecutors to continue withholding exculpatory evidence from criminal defendants during the plea-bargaining stage just as the prosecutor did in Green's case. It will also weaken the trust in the rule of law and a defendant's right to fundamental fairness and that a defendant's constitutional right to the effective assistance of counsel has been satisfied if a defendant's counsel is advising him to

enter a plea of guilty while ignorant of unknown exculpatory evidence that is available because it is being withheld by the State. Counsel cannot adequately provide his client with effective assistance and properly advise his client as to whether to pursue a trial or enter a plea of guilty in absence of this. Furthermore, extending Brady claims to apply to guilty pleas when the evidence withheld is exculpatory would instill actual innocent defendants with the due process rights afforded to them by the Constitution while not raising the burden on prosecutors to disclose all possible relevant information too early in a case. Lastly, it will ultimately provide a constitutional safeguard to the court, that there is a factual basis for the defendant's plea to be accepted by the court and reduce the risk of a criminal defendant later claiming that his plea was not intelligently entered and made in violation of *Brady* and his due process rights. Without further clarity from this court, State courts and District Courts will be left to their own devices to decide whether they believe a Brady claim is available during plea bargaining. The justice system owes defendants a clear standard on whether recourse is available when prosecutors withhold pre-plea materially exculpatory evidence. A system that does not safeguard defendants when obvious exculpatory evidence is withheld cannot be tolerated. For that reason, this court should resolve this conflict and set a heightened materiality standard under *Brady* to hold prosecutors accountable in exceptional cases

II. This case presents the question of does a guilty plea waive a defendant's due process claim that his conviction was based on perjured testimony and false evidence?

A. State's Witness Perjured Ex Parte Testimony

As outlined in the Statement of The Case, On May 30th 2016, the State's witness Shardae Allen in a scheme to have Green falsely arrested, framed Green by staging a crime scene against him when she retrieved a freestanding bathroom door lock from the top of their mantle, that was previously detached from their bathroom door 3 months prior and planted the lock on the bathroom floor of their residence. Ms. Allen then made a false 911 call alleging that she had just been the victim of domestic violence and falsely claimed that Green had "Kicked and Broken" their bathroom door during the purported dispute resulting in Green's false arrest.

On May 31st 2016, at the TPO Ex Parte Hearing, Ms. Allen falsely testified that Green had "kicked" their bathroom door during an alleged domestic dispute. Ms. Allen during her ex parte testimony in pertinent part, stated the following:

"On May 30th 2016 around 4:30pm respondent (Defendant Green) kicked the bathroom door breaking the side of the door and making a hole in the wall"

B. The State's Witness Admitted In A Pre-trial Sworn Affidavit That She Had A Premeditated Plan To Frame Green and Have Him Falsely Arrested

On June 27th 2016, Ms. Allen provided a sworn affidavit to Green's defense attorney during the preliminary stages of his criminal proceedings. In her affidavit Ms. Allen admitted that planting evidence against Green was a premeditated plot and that she knew that she was going to stage a crime scene against Green and make false allegations against him the moment he left the residence that day. In her sworn statement Ms. Allen stated in part that:

"I knew as soon as he left, I was going to call the police and make something up to get him arrested so he wouldn't be able to keep her (daughter) from me. As soon as he left, I went to the living room on top of the fireplace mantel to get a gold lock that was previously broken from the bathroom door a month or so prior. I threw it on the floor in the bathroom near the door to make it look like it was freshly broken" (See App. 63a Ex. #3)

C. State's Witness Admitted to Committing Perjury and Planting Evidence Against Green in Open Court

On May 16th 2017, During the defense's cross-examination of Mrs. Allen, Mrs. Allen admitted that she had committed perjury to obtain a protective order against Green and that the evidence that was observed by police on the bathroom floor of their residence was evidence that she had planted and staged against him.

(See App. 63a Ex. #1)

Mr. Brown: So, Ms. Allen, the perjured testimony that you're referring to what were the allegations of perjury specifically?

Shardae Allen: Because he kicked in the door, not on the day of the 30th he kicked it in previously.

Mr. Brown: Okay. So, the date that's in the indictment is not the date that he kicked in the door, Is that your testimony?

Shardae Allen: Yes, he didn't kick it in on the 30th.

Mr. Brown: Okay. So, the evidence that the police saw on the floor is evidence that you staged?

Shardae Allen: For the 30th?

Mr. Brown: Yes.

Shardae Allen: Yes.

D. The Prosecutor Admitted to Knowing That Ms. Allen Staged A Crime Scene Against Green and That She Committed Perjury To Obtain A Protective Order

After Ms. Allen testimony, the prosecutor then came forth and corroborated Mrs. Allen's testimony and admitted that Ms. Allen did in fact stage a crime scene against Green and claimed that the defense was **"making such a big issue about Ms. Allen staging the evidence"** and stated that Ms. Allen staging evidence against Green was **"not a material element"**. The prosecutor would go on to admit that Ms. Allen committed perjury but stated that **"It shouldn't have any bearing on the outcome of the case"**. (See App. 63a Ex. # 2)

Ms. Murphy: The Defendant in the indictment is not charged with anything to do with a broken-down bathroom door that they keep – keep making such a big issue about, the victim having staged the evidence. It's not charged. It's something that happened throughout the events of this case, but it's not charged. It's not a material element. So, relying on it being perjured testimony or anything like that, it's not – it shouldn't have any bearing on the outcome of this case.

E. Due Process Is Violated When A State Knowingly Uses Perjured Testimony to Obtain A Conviction

This court has long held that "A conviction of a crime in which perjured testimony on a material point is knowingly used by the prosecution is an infringement on the accused's Fifth and Fourteenth Amendment rights to due process of law" *Pyle v. Kansas*, 317 U.S. 213 (1942); *Alcorta v. Texas*, 355 U.S. 28 (1957); *Napue v. Illinois*, 360 U.S. 264 (1959); *Giglio v. United States*, 405 U.S. 150, (1972); *Hysler v. Florida*,

315 U.S. 411 (1942). The prosecutor's statements on the record of this case establishes that the prosecutor knowingly and willfully used false evidence and perjured testimony to obtain Green's conviction. The prosecutor's statements of "**they keep making such a big issue about the victim having staged the evidence**" and "**It's something that happened throughout the events of this case**" but "**it's not a material element**" and her admission that Ms. Allen committed perjury but, arguing that "**it shouldn't have any bearing on the outcome of this case**" (App. 63a Ex. #2) is cogent evidence that the prosecutor had preexisting knowledge that Green's entire criminal prosecution was a consequence of his initial false arrest and him being framed by their witness.

F. A LIE IS A LIE

The prosecutor's suggestion that Ms. Allen planting evidence against Green was "**not a material element**" because Green was no longer being charged with the damage to his bathroom door is simply wrong. (App. 63a Ex #2) As it was of no relevance if Green was no longer being charged with an offense that was related to their witness planting evidence against him, as the State's entire case against Green, including the protective order and all charges unrelated to the planted evidence, was still a direct result of him being falsely arrested after being framed by their witness. Even if the state was to now claim that Green would have possibly been arrested for terroristic threats and battery on the day of his initial arrest anyway, this argument would still be flawed as it still would not justify their

witness staging evidence against him to help secure his arrest and then committing perjury to obtain a protective order.

This court has also noted the immateriality of such a suggestion by the prosecutor as this court has said that:

"It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. **A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth"**. Napue, 360 U.S. at 269-70.

G. The State's Knowing Use Of False Evidence

It is settled law that Due Process protects not only against subornation of perjury but "Due process protects defendants against the knowing use of any false evidence by the State, whether it be by document, testimony, or any other form of admissible evidence". *Hayes v. Brown,* 399 F.3d 972, 984 (9th Cir.2005) This Court has repeatedly addressed this issue of a prosecutor's knowing use of false evidence to obtain a conviction and has made it clear how such deliberate deception of court requires the automatic reversal of a conviction. *Mooney v. Holohan,* 294 U.S. 103 (1935); *United States v. Agurs,* 427 U.S. 97, (1985); *Napue v. Illinois,* 360 U.S. 264 (1959); *Giglio v. United States,* 405 U.S. 150, 155, (1972)

Georgia Law also addresses a person(s) knowing use of false documents or any other form of fictitious information. Under Georgia Law (O.C.G.A. 16-10-20) in pertinent part, provides that

"it is a violation of the law for any person(s) of this state to use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state"

Ms. Allen's confessions to staging a crime scene against Green and committing perjury to obtain a "Temporary Protective Order" effectively rendered the protective order she received as a result of her perjured testimony a false document. The protective order by Ms. Allen's own admission contained both fictitious and fraudulent statements and the State was barred from using this evidence by the due process clause of U.S. Constitution. See *Phillips v. Woodford*, 267 F.3d 966, 984-85 (9th Cir. 2001) ("It is well settled that the presentation of false evidence violates due process.") (citing Napue, 360 U.S. at 269,) and the provisions set forth Under Georgia Law (O.C.G.A. 16-10-20).

Once it became known to the State that the protective order Ms. Allen received was secured through perjured testimony the State at that exact moment was duty bound by the U.S. Constitution and relevant Georgia Law to correct any and all false statements that was provided by Ms. Allen and to immediately discontinue the use of any false documents and evidence (i.e. protective order) against Green that was a consequence of Ms. Allen's perjured testimony. This Court has made it clear that "The duty to correct false testimony is on the prosecutor, and that duty arises when the false evidence appears". *Napue v. Illinois*, 360 U.S. at 269, (1959); See also, *United*

States v. Sanfilippo, 564 F.2d 176 (5th Cir. 1977) See e.g., *U.S. v. LaPage*, 231 F.3d 488 (9th Cir. 2000); Id. at 492 ("If a lawyer has offered testimony or other evidence as to a material issue of fact and comes to know of its falsity, the lawyer must take reasonable remedial measures") *cf.* The Law of Governing Lawyers §120(2) (2019);

Similar circumstances to the matter of Green were found in this court's ruling in *Miller v. Pate*, 386 U.S. 1 (1967); Where this court found that the prosecutor's deliberate deception of court by knowingly using false evidence to obtain the defendant's conviction violated the defendant's Fourteenth Amendment right to due process of law. In that case the court found that the State violated this amendment by making repeated references to the defendant's "bloody shorts" that were allegedly stained with blood matching the victim's blood type. The shorts played a vital part in the prosecution's case, yet they were not actually the defendant's shorts and the prosecutor knew at the time of trial that it was not blood on the shorts, rather paint. The Court held that the prosecutor deliberately misrepresented the facts. *Miller*, 386 U.S. @ 5-7.

The findings in *Miller* are distinguishable to the case of Green as the prosecutor in this case also misrepresented the facts. The day before Ms. Allen's testimony the prosecutor referred to the defenses claims that Ms. Allen had lied to police and planted evidence against Green as "allegations" (App. 63a Ex. # 4 – App. 63a Ex. #5) However, it wasn't until after Ms. Allen voluntarily testified to these facts in open court and until after Green entered a plea of guilty, that the prosecutor would stop referring to the defense's claims against Ms. Allen as allegations but would not admit

that they were true. (App. 63a Ex. # 2). The protective order played a vital role in the prosecutor's case as the protective order was used as the basis for Green's Burglary and Aggravated Stalking indictments and ultimately his entire conviction.

H. State's Witness Revealed That She Was Given A Promise Of Non Prosecution in Exchange For Her Cooperation and Testimony

During Green's Federal Habeas proceedings State witness Shardae Allen, revealed to a member of Green's family that before she agreed to return to the State of Georgia to testify against Green on the State's behalf, that she was given a promise of non-prosecution by the State's prosecutor who agreed to not prosecute her for committing perjury and for planting evidence against Green to have him falsely arrested. Once Ms. Allen's statements were brought to Green's attention, Green immediately hired a law firm located in Orange County, California who contacted Ms. Allen and took her statement in the form of an affidavit (See App. 63a Ex. #6) Green also contacted his trial attorney Mr. Joe Louis Brown, who told Green that he was unaware of any agreement or promise that was given to Ms. Allen during the trial court proceedings and prior to Green's entry of a guilty plea. Mr. Brown also noted to Green that he filed consolidated motions during the elementary stages of his representation and specifically requested that the State disclose any promises, agreements, deals, or considerations that was provided to Ms. Allen in exchange for her cooperation and testimony. However, the State withheld this information and evidence from counsel and never disclose that Ms. Allen had been provided with such an agreement. Mrs. Allen's affidavit is material to this courts review of Green's petition because it further establishes the willful and deliberate fraud upon the court that the prosecutor

engaged in. Ms. Allen essentially admits in her affidavit that she and the prosecutor conspired against Green to send him to prison and that the prosecutor knowingly solicited false testimony from Ms. Allen and knowingly used false evidence (i.e. TPO) that was illegally obtained through Ms. Allen's perjured Ex Parte testimony to obtain Green's conviction. The State's failure to disclose to the defense that a promise of "non-prosecution" was given to Ms. Allen in exchange for her cooperation and testimony is a clear violation of Green's rights to due process of law. In short, Green would have never been convicted had Ms. Allen never came to court, as Ms. Allen admits in her affidavit that it was this promise from the prosecutor that motivated her to participate in the trial court proceedings. As mentioned above, this new evidence was not discovered by Green until he was already in Federal Habeas proceedings. Green diligently tried to bring this new evidence to the District Court's attention, by filing a renewed motion for appointment of counsel and informed the Federal Magistrate that he has learned of new evidence that would prove his actual innocence and that this evidence was not presented or available during the trial court proceedings, and that he needed the assistance of counsel to introduce this evidence to the court. Green's request for counsel was marked by his uncertainty on the proper procedure on how to present this new evidence to the District Court and his assumption that in order to legally and correctly introduce this new evidence, it would require the assistance of counsel so that it could properly be presented to the court for its review and consideration of his Federal Habeas Petition. However, The District Court refused to consider this new evidence and claimed that Green "did not present

this affidavit to the magistrate judge" (App. 43a-44a)... even though Green timely filed a motion notifying the magistrate that he had learned of new evidence that was available in his case and that would further establish his innocence however the Magistrate never ruled on Green's motion or even acknowledged its filing.

I. Giglio Claim

The State violates due process when it obtains a conviction through the use of false evidence or on the basis of a witness's testimony when that witness has failed to disclose a promise of favorable treatment from the prosecution. *Giglio v. United States*, 405 U.S. 150, (1972).

In order to prevail on a *Giglio* claim, it must be established that the prosecutor "knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony and that the falsehood was material." Brown v. Head, 272 F.3d 1308, 1317 (11th Cir.2001). Accordingly, the prosecution has a duty to disclose evidence of promises made to a witness in exchange for testimony. Giglio, 405 U.S. at 154-55, Tarver v. Hopper, 169 F.3d 710, 716 (11th Cir.1999).

The record in this case establishes the necessary elements that is required under the *Giglio* standard for the reversal of Green's conviction. The record of this case proves that:

1. The prosecutor knowingly used perjured testimony, when the prosecutor admitted to her knowledge to the trial court that Ms. Allen had staged evidence against Green and conceded to the court that Ms. Allen has also committed perjury at the TPO Ex Parte hearing **(T.136)**

2. The perjured testimony was material as Ms. Allen's perjured testimony allowed her to fraudulently obtain a temporary protective order that the State

also knew was falsely obtained but would use as evidence against Green in support of his indictment and in support of his convictions, all while fully cognizant of the fact the protective order was now legally considered a false document that contained fictitious and fraudulent statements. And

3. The State's failure to disclose that a promise of non-prosecution was provided to Ms. Allen in exchange for her cooperation and testimony

J. Green's Guilty Plea Did Not Waive Due Process Claim

The facts of this claim are not in dispute by the State. The state has never disputed that Ms. Allen planted evidence against Green to have him falsely arrested and that she committed perjury thereafter nor has the State ever disputed that the prosecutor knew about these events and admitted to these facts on the record of this case. In fact, the District Court also concluded in its final order that it was a fact that Ms. Allen had staged evidence against Green. In the District Court's final order, the court stated that following, in pertinent part:

"It appears that Ms. Allen did, in fact, stage the evidence on May 30th 2016, to make it appear that Petitioner had kicked a door down on that date" ... (See App. 41a). Despite this the District Court still concluded that Green "waived" his due process claim by entering a plea of guilty. These findings by the District Court are an incorrect application of law and are in direct conflict with this courts holding in *Blackledge v. Perry*, 417 U.S. 21 (1974). In *Blackledge* this court held that a guilty plea does not preclude a criminal defendant from raising a constitutional claim this his conviction was obtained in violation of due process of law. Id. at 31. (the prisoner's plea of guilty to the felony charge did not preclude him from raising in the federal habeas corpus proceeding his constitutional claim of violation of due process). And

Just like Perry, Green's due process claim was not simply an attack on the indictment that complained of "antecedent constitutional violations" or of a deprivation of constitutional rights that occurred prior to the entry of the guilty plea" See Tollett v. Henderson, 411 U.S. at 266, (1973) but instead was a clear due process claim that challenged the unconstitutionality of his prosecution and the very power that the court had to haul him in to court in the first place on charges that the State knew from the very beginning was entirely founded and based on perjured testimony and false evidence. The very initiation of the proceedings against Green operated to deny him due process of law and as a result his guilty plea did not preclude him from raising this claim" Id. at 31. For this reason, this court should grant review to affirm that a guilty plea does not waive a defendant's due process claim and that a guilty plea may not be obtained by the State's knowing use of false evidence and perjured testimony.

1. Does a trial courts interference with counsel's duty of investigation and refusal to allow counsel to investigate late discovery violate a defendant's Sixth Amendment right to effective assistance of counsel?

A. Green Was Denied Counsel at A Critical Stage of The Proceedings

The Sixth Amendment right to counsel attaches at all critical stages of a criminal prosecution; a "critical stage" is any stage of a criminal proceeding where substantial rights of a criminal accused may be affected. U.S.C.A. Const.Amend. 6. See, *U.S. v. Yamashiro*, 788 F.3d 1231(2015); (quoting *Mempa v. Rhay*, 389 U.S. 128, 134, (1967)). Green received a constructive denial of counsel at a critical stage in the proceedings when it was revealed that the State was in possession of evidence that was not turned

over to the defense in discovery. Once the discovery violation was uncovered counsel made multiple requests for a continuance to review the late discovery but each of his request were denied by the trial judge. The trial court then scolded counsel for not taking advantage of the State's open file policy and said that he would suppress the late discovery however would still be barring counsel from reviewing the evidence before its suppression. Counsel thereafter made repeated announcements to the court that because of the discovery violation he was no longer ready and prepared to proceed to trial and that he needed a continuance to review the evidence before it's suppression. Counsel then continued to warned the court that Green would not receive a fair trial if forced to proceed to trial without having reviewed all the evidence to the case. Nonetheless, the court continued to deny counsel's request for a continuance and his request to review the discovery and pushed for jury selection to take place. First, the trial court's reliance on the State's open-file policy as reason to deny counsel's request for a continuance and review of untimely discovery was improper, as a State's open-file policy does not, in and of itself, satisfy the rules of disclosure requirement because it does not specify which evidence the government intends to use at trial *United States v. De La Cruz-Paulino*, 61 F.3d 986, 993 (1st Cir. 1995). This court also held that: ("a prosecutor's open file discovery policy in no way substitutes for or diminishes the State's obligation to turn over all exculpatory evidence under Brady"). *Strickler v. Greene,* 527 U.S. 263, 283, 289 (1999). Moreover, the trial judge's refusal to allow Green's counsel to investigate newly discovered evidence violated the Georgia Rules of discovery that allows for a defendant and his

counsel to inspect all evidence no later than 10 days before trial. See Georgia Law O.C.G.A. 17-16-4 (a) (1). This type of interference from the trial judge constitutes as a violation of Green's Sixth Amendment Right to effective assistance of counsel. More specifically, this court has held that the right to the assistance of counsel has been understood to mean that "there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary factfinding process that has been constitutionalized in the Sixth and Fourteenth Amendments". *Herring v. New York,* 422 U.S. 853 (1975). Moreover, "The Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can only be made after investigation of options". *Strickland v Washington,* 466 U.S. 668, (1984); Also See, e.g., *Von Moltke v. Gillies,* 332 U.S. 708 (1948) (Holding that prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered). See also, *House v. Balkcom,* 725 F.2d at 618 (11th Cir. 1984). ("In order "To provide effective assistance of counsel consistent with the Sixth Amendment, defense counsel had an independent duty to investigate the case'.) The trial court's insistence that jury selection began in the midst of a discovery violation also violated Georgia's Uniform Rules of Superior Court which reads as follows:

Under Georgia Uniform Rules of Superior Court 33.2 (A) A defendant shall not be called upon to plead before having an opportunity to retain counsel, or if defendant is eligible for appointment of counsel, until counsel has been appointed or right to counsel waived. A defendant with counsel shall not be required to enter a plea if

counsel makes a reasonable request for additional time to represent the defendant's interest, or if the defendant has not had a reasonable time to consult with counsel.

This court has also found constitutional error when a court insists on proceedings moving forward in the face of a justifiable request for a continuance. See e.g.; *Morris v Slappy,* 461 U.S. 1 (1983) ("although trial courts do indeed have broad discretion concerning request for a continuance "an arbitrary insistence upon expeditious in the face of a justifiable request for delay" violates a defendant's constitutional right to effective assistance of counsel). See also, *White v. Ragen,* 324 U.S. 760, 764 (1945) (Holding that habeas corpus relief held proper if petitioner could show that he was forced to trial with such expedition as to deprive him of the effective aid and assistance of counsel").

B. Government Interference Violates Accused Sixth Amendment Right

The trial court barring Green's Defense attorney from performing any further pre-trial investigations violated Green's Sixth Amendment Right to effective assistance of counsel. Green's counsel could not effectively represent him in a manner that comports with the Sixth Amendment mandate if he was prohibited by the trial judge from investigating all of the evidence to the State's case and so that he could determine its necessity or potential exculpatory nature to his client's defense. "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. U.S.C.A. Const.Amend. 6. See Strickland v. Washington, 466 U.S. 668 at 691 (1984). And by interfering with counsel's duty of investigation and representation the trial court impeded on Green's constitutional right to effective assistance. As this court has explained "government

violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense," *id.* at 686. Also See e.g., Perry v. Leeke, 488 U.S. 272 (1989) (when governmental interference actually or constructively denies assistance of counsel during a critical stage of the proceeding, a defendant does not need to make a specific showing of prejudice").

C. When A Constructive Denial of Counsel Occurs, A Defendant Will Be Relieved from His Burden of Establishing Prejudice Under Strickland and Prejudice Is Presumed

In *United States v. Cronic,* 466 U.S. 648 (1984); This Court held that if a defense attorney is either incapable of or barred from challenging the state's case because of a structural impediment or "if the process loses its character as a confrontation between adversaries" a constructive denial of counsel occurs.

Accordingly, In Strickland v. Washington, 466 U.S. 668, (1984) this court identified three instances in which a defendant would be relieved of his burden to establish prejudice stemming from counsel's errors. **(1)** An actual or constructive denial of counsel, **(2)** Government interference with defense counsel, or **(3)** counsel that labors under an actual conflict of interest that adversely affects his performance.

Additionally, The Cronic exception provides that prejudice is to be presumed, and therefore the harmless error rule does not apply, when a criminal defendant has been completely denied the right to counsel for a critical stage of the trial, which is an error that contaminates the entire proceedings. *United States v. Roy*, 855 F.3d 1133 (11th Cir. 2017)

D. The District Court Misconstrued Green's Ineffective Assistance Claim As A Brady Claim

As mentioned above, The District Court incorrectly construed Green's ineffective assistance claim as a "Brady Claim" based upon Green's framing of his claim on his Federal Habeas Petition. On Ground 3 of Green's Federal Habeas Petition Green claimed that:

"his Sixth and Fourteenth Amendment rights were violated in that the trial court denied plea counsel the right to provide effective assistance when it would not allow plea counsel to investigate undisclosed evidence and Brady material that was not provided to the defense by the State prior to trial and prior to Petitioner entering the plea of guilty".

The court concluded that based on the way Green worded his claim that it was a brady claim and not a claim of ineffective assistance counsel and that this claim was "waived" by Green's entry of a guilty plea. The court's construing of Green's claim was incorrect. Green's contention in both the State and Federal Habeas proceedings regarding this claim has always been that he received ineffective assistance of counsel due to governmental interference from the trial judge and the judge's refusal to allow counsel to investigate pre-trial discovery. Green also raised an additional claim challenging the voluntariness of his plea based upon such interference from the trial judge with counsel's representation... which was disregarded in its entirety by both the State Habeas Court and the District Court and neither court never ruling on Green's claim regarding the involuntariness of his plea. Furthermore, the District Court's rigid construction of Green's claim despite a substantial showing that Green

was arguing ineffective assistance conflicts with this courts holding regarding Pro Se pleadings and how they are to be interpreted. As this court held in *Erickson v. Pardus* 551 U.S. 891, (2007) ("A document filed *pro se* is "to be liberally construed,)" Estelle, 429 U.S., at 106, and "a *pro se* complaint, however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). The District Court's misconstruction of Green's claim and failure to rule on Green's claim that his plea was involuntary entered due to governmental interference from the trial court should not stand and review is warranted.

E. No Waiver Occurs When Defendant Is Faced With A Hobson's Choice

Both the State and Federal Habeas courts disregarded Green's claim of ineffective assistance of counsel due to government interference from the trial judge and did not rule on Green's claim and contention that his plea was involuntarily entered as a result. The record of this case establishes that Green was faced with an unfair Hobson's Choice – i.e. a "take it or leave it" offer) during the trial court proceedings and this court has long found constitutional error when a defendant has been faced with a Hobson's choice and forced to surrender one constitutional right in order to preserve another. The Oxford English Dictionary defines a "Hobson's choice" as the appearance of a choice when none in fact exists. 2 *Oxford English Dictionary* 369 (4th ed. 1978). See also, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (noting that "a Hobson's choice is not a choice") (Souter, J., dissenting). Green was put to an unfair Hobson's choice of having to surrender one important right in order to preserve

another. Green had a constitutional right to pursue a fair trial. See, *United States v. Hasting*, 461 U.S. 499, 506-07, (1983) (A criminal defendant has a constitutional right to a fair trial, but not a perfect one). And with this right came the right to the effective assistance of counsel during the trial proceedings. See, *Strickland v Washington*, 466 U.S. 668 (1984). However, in order to preserve his right to pursue a trial, Green was forced to surrender not only his right to a fair trial, but also his due process rights to review all discovery before the pursuit of any trial or contemplated plea and his Sixth Amendment right to effective assistance of counsel that is adequately prepared to proceed to trial after he has reviewed all the evidence to the state's case. In short, Green had two options. Either **(1)** submit to an unfair trial and proceed to trial with an admittedly unprepared defense attorney who was barred from investigating all the evidence to the State's case by the trial judge and risk a harsher prison sentence or **(2)** plead guilty. The record of this case illustrates that these were the only two options that were available to Green after the court unfairly denied his counsel's justifiable request for a continuance and denied Green's request to self-represent himself. This Court has held that "it is intolerable to force a criminal defendant to surrender one constitutional right in order to assert another" Simmons v. United States, 390 U.S. 377, 394 (1968)

F. A Guilty Plea Is Involuntary When Counsel Is Unprepared for Trial

The record in this case establishes that after the trial court barred Green's counsel from conducting any further investigation into his clients case and refusing to grant counsel a continuance so that he could inspect late discovery that was provided to

him on the day of trial, this effectively contaminated the entire proceedings thereafter, as counsel in excess of five times, repeatedly notified the court that he was now unprepared and no longer ready to proceed to trial and warned the court that Green would not receive a fair trial if forced to trial and the proceedings continued to move forward, as he now needed more time to go back through the State's case file to ensure that he had received all the evidence to the case. (App. E -Exhibits #7-10).

As mentioned above, this placed Green with an unfair Hobson's choice of either going to trial with unprepared counsel and risk a harsher sentence or enter a plea of guilty and receive a lesser sentence. Courts have found that a defendant who enters a guilty plea because his counsel is unprepared for trial has entered that plea involuntarily. For example, similar circumstances to Green were found in *United States v. Bliss*, 84 Fed. Appx. 820, 822 (9th Cir. 2003);

In *U.S. v Bliss* on the day the defendant's trial was set to begin, defense counsel was unprepared to defend him due to his failure to conduct a reasonable investigation of the evidence. The court found that the attorney's lack of preparation was only exacerbated by the district court's rigid and repeated refusal to grant a continuance and that the denial of a continuance by the court, presented the defendant with "a Hobson's choice of: (1) proceeding to trial with unprepared counsel and risk a life sentence or (2) plead guilty and receive a lesser sentence." The court held that under these facts, the defendant's guilty plea was not voluntary, as the "defendant was deprived of effective assistance of counsel in connection with his guilty plea and only entered to avoid life imprisonment" Id. at 822. See, e.g., *United States v. Moore*, 599

F.2d 310, 313 (9th Cir. 1979) ("A plea entered because counsel is unprepared for trial is involuntary"). Interestingly, the same District Court that disregarded Green's claim that his guilty plea was involuntarily entered because his counsel was unprepared for trial came to the same conclusion as *Bliss* 30 years prior in their own holding in Colson v. Smith, 315 F. Supp. 179 (1970).

In *Colson v. Smith*, the court found that counsel's lack of investigation and admission that he was unprepared for trial effectively made the defendant's guilty plea involuntary" holding that ("Colson's plea of guilty was the product of ignorance of his rights under the law, fear of the consequences of going to trial for which counsel was admittedly not prepared, and ineffective assistance of counsel. It therefore was not a voluntary plea of guilty and the conviction based thereupon is invalid") Id. at 182. See also, Colson v. Smith 438 F.2d 1075 (1971) (affirming).

The holdings in *Colson* and *Bliss* reaffirm the Sixth Amendment mandate that "counsel must conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed and to allow himself enough time for reflection and preparation for trial" *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir. 1968). Further, the circumstances in Green's case are more egregious than that of *Colson's*, as the record in *Colson* shows that his counsel was unprepared due to his own negligence and lack of preparation. In Green's case counsel's unreadiness stemmed directly from blatant interference he received from the trial judge who barred him from reviewing late discovery and performing any further investigation into his client's case, because the court was in a hurry to push Green's case to trial.

Green did not believe that he could pursue a trial in good faith, with an attorney that announced that he was no longer prepared to proceed to trial and that was prohibited from reviewing any further evidence on his behalf, and conducting any further investigations, or preparations into his defense. See, e.g., *Hunt v. Mitchell*, 261 F.3d 575, 583 (6th Cir. 2001) (reversing denial of habeas where "counsel was required to proceed to voir dire without ever discussing the case with his client and without conducting any discovery or independent investigation of the facts") nor could Green pursue a trial in good faith, after being openly warned by counsel that if he opted to go to trial that he would not receive a fair trial if forced to proceed under those unyielding circumstances. Based upon these facts and the aforementioned facts herein it is Green's belief that review is warranted and certiorari should be granted.

CONCLUSION

For the foregoing reasons I respectfully ask this Honorable Court to grant this petition for a Writ of Certiorari.

This 6th Day of June 2022

Willie Green
7707 Riverine Rd
Temple Terrace, Fl 33637
(213) 465-9692

Willie Green
Petitioner/Pro Se