

No. 22-6015

IN THE
Supreme Court of the United States

JEFFREY G. HUTCHINSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Florida*

REPLY BRIEF FOR PETITIONER

THIS IS A CAPITAL CASE

STACY R. BIGGART
Counsel of Record
Special Assistant CCRC-North
Florida Bar No. 0089388
3495 SW 106th Street
Gainesville, Florida 32608
(850) 459-2226
stacybiggart@gmail.com

I. Petitioner properly identified the false and/or misleading testimony in his state court pleadings

A prosecutor commits a *Giglio* violation when presenting false or misleading evidence or deceptive argument. *Giglio v. United States*, 405 U.S. 150, 153 (1972). Respondent claims that Petitioner never identified the testimony alleged to be false, even in his petition filed in this Court. BIO at 11, 21. Petitioner argues that Petitioner failed to identify what benefit the Adamses received for testifying that Petitioner's voice was on the 911 tape, nor did he explain how the prosecutor knew the Adamses' testimony was false and/or misleading. BIO at 21.

Respondent rests its argument on the element of "false" testimony and ignores that "misleading" testimony knowingly presented by the prosecutor is also a *Giglio* violation. A prosecutor violates a defendant's due process when the testimony they elicit misleads or gives a false impression. *See Brown v. Wainwright*, 785 F.2d 1457, 1465 (11th Cir. 1986). The prosecutor knew there was an ongoing FBI investigation of the Adamses and their involvement in bank robberies in Walton County and that Mr. Adams was a suspect in the crimes. Yet, the prosecutor presented the Adams' testimony with the impression that their only motivation for testifying against Petitioner was the selfless quest for justice. In addition to falsely asserting that Mr. Adams was not a suspect and not under investigation (R22. 650), the prosecutor elicited testimony that the Adamses only desired to "help" Petitioner in an effort to bolster their credibility. (R29. 2049, 2052, 2069).

The prosecutor then used this testimony to make a misleading argument to the jury that Deanna and Creighton Adams "were his best friends. The only thing that

they've ever done to Jeff Hutchinson that hurt him in any way was come here and tell the truth." (R29. 2195).

The prosecutor presented misleading testimony that the Adamses received no benefit from testifying that Petitioner's voice was on the 911 tape. In reality, Mr. Adams was motivated by an imminent prosecution for two armed bank robberies and the threat of a conviction and lengthy prison sentence. Petitioner sufficiently pled this claim in state court and his petition to this Court.

II. A *Giglio* violation is a federal constitutional claim, and state courts cannot unduly restrict access to it on pleading grounds and then hide behind state law

Giglio created a constitutionally protected liberty interest. A *Giglio* violation is a federal constitutional claim, and the state court cannot unduly restrict access to it on pleading grounds and then hide behind state law. The Florida Supreme Court's application of the law must comport with due process. Petitioner argued that the prosecutor knew there was an intense, ongoing FBI investigation of the Adamses and their involvement in the bank robberies and that Mr. Adams was a suspect in the crimes. Yet, the prosecutor presented the Adams' testimony with the impression that their only motivation for testifying against Petitioner was the selfless quest for justice, not the selfish avoidance of a federal conviction and sentence. Although this Court might allow state courts to enforce "reasonable pleading requirements" (BIO at 19), the Florida Supreme Court's heightened pleading requirements arbitrarily barred Petitioner from seeking *Giglio* relief.

CONCLUSION

This Court should grant a writ of certiorari and review the decision of the Florida Supreme Court.

Respectfully submitted,

/s/ Stacy R. Biggart
STACY R. BIGGART

Counsel of Record
Special Assistant CCRC-North
Florida Bar No. 0089388
3495 SW 106th Street
Gainesville, Florida 32608
(850) 459-2226
stacybiggart@gmail.com