No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

JAMIE MILLS,

Petitioner,

v.

JOHN HAMM,
Commissioner of the
Alabama Department of Corrections,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

PETITIONER'S APPENDIX

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[PUBLISH]

In the United States Court of Appeals
For the Eleventh Circuit

No. 24-11661

JAMIE MILLS,

Petitioner-Appellant,

versus

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 6:17-cv-00789-LSC

Before WILLIAM PRYOR, Chief Judge, and LUCK and ABUDU, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

Jamie Mills, an Alabama inmate scheduled to be executed on May 30, 2024, for committing two murders in 2004, seeks a certificate of appealability for the denial of his motion for relief from the judgment denying his petition for a writ of habeas corpus in 2020. *See* FED. R. CIV. P. 60. Because no reasonable jurist could conclude that the district court abused its discretion, we deny Mills's application and deny as moot his motion to stay his execution.

I. BACKGROUND

In 2007, an Alabama jury convicted Jamie Mills of the capital murders of Floyd and Vera Hill. The trial court accepted the jury's recommendation and sentenced him to death. *See Mills v. State*, 62 So. 3d 553, 556 (Ala. Crim. App. 2008). After Mills and his common-law wife, JoAnn, plotted to rob the Hills, Mills "brutally executed" the Hills "with a machete, tire tool[,] and ball-peen hammer." *Id.* at 557 (citation and internal quotation marks omitted). JoAnn testified against her husband at his trial and later pleaded guilty to murder and was sentenced to life with the possibility of parole.

Mills moved for a new trial on the ground that JoAnn had perjured herself by denying that she testified against him to procure leniency for herself. The trial court denied the motion. The Alabama Court of Criminal Appeals affirmed, *see id.* at 574, and the Supreme Court of Alabama denied Mills's petition for a writ of

certiorari on that issue. Mills also later unsuccessfully sought post-conviction relief under Alabama Rule of Criminal Procedure 32.

Mills petitioned the district court for a writ of habeas corpus in 2017. The district court denied relief on November 30, 2020. We denied his motion for a certificate of appealability, and the Supreme Court denied his petition for a writ of certiorari on April 18, 2022.

On January 29, 2024, the State of Alabama moved to set an execution date. In March 2024, Mills filed a successive motion under Rule 32 in state court. With that motion, he offered, for the first time, an affidavit by JoAnn Mills's attorney, Tony Glenn. Glenn alleged that he had "had several discussions" in 2007 with the district attorney, Jack Bostick, "about a plea offer based on [JoAnn's] tragic mitigation history and her potential testimony at Jamie Mills'[s] upcoming trial." Glenn alleged that Bostick and the victims' family "agreed" that JoAnn would receive a plea deal for "life with parole," instead of capital murder, if she "testified truthfully" at Mills's trial. Glenn alleged that these discussions involving Bostick and the victims' family were recorded on his fee declaration, which Mills attached. And Glenn alleged that the first time he spoke with "any attorneys from the Equal Justice Initiative"—which has represented Mills since 2009—about the matter was February 23, 2024, nearly two years after the Supreme Court denied certiorari.

On April 5, 2024—three-and-a-half years after the district court denied his habeas petition—Mills moved for relief under Federal Rule of Civil Procedure 60. He argued that "[n]ewly discovered

evidence"—the Glenn affidavit and attached declaration—established that Bostick had "engaged in egregious misconduct" by "affirmatively and falsely stat[ing]" to the trial court that "there was no deal" with JoAnn to testify against her husband. Mills sought relief under Rule 60(b)(2), Rule 60(b)(3) and (d), and Rule 60(b)(6).

The district court denied relief on each ground. First, under Rule 60(b)(2), which allows relief for "newly discovered evidence" that "could not have been discovered" with "reasonable diligence" in time to move for a new trial, the district court denied the motion as untimely. It explained that the motion had to be filed "no more than a year after the entry of the judgment or order" from which the party seeks relief. *See* FED. R. CIV. P. 60(c)(1). It alternatively denied relief because Mills failed to exercise reasonable diligence. Mills had known since 2007 that Glenn represented JoAnn and had been arguing since then that she perjured herself. Yet Mills did not approach Glenn until 2024 to discuss whether JoAnn struck a secret plea deal. Mills "offer[ed] no reason why he could not have spoken with Glenn or obtained [his] . . . fee declaration" before then. Second, the district court denied relief under Rule 60(b)(3) and (d). It ruled that relief under Rule 60(b)(3)—for the opposing party's "fraud," "misrepresentation," or "misconduct"—was untimely. *See id*. It also ruled that Mills failed to prove that the State obtained Mills's sentence through fraud on the court. It identified "misstate[ments]" in Glenn's fee declaration, stated that Bostick had alleged in his affidavit that the State did *not* offer JoAnn a plea deal before she testified, and explained that, if Glenn's affidavit "[were] to be believed," Glenn would have sat silently in court in 2007 as he

knowingly watched both JoAnn and Bostick repeatedly perjure themselves. Third, the district court denied relief under Rule 60(b)(6), which allows relief for "any other reason that justifies relief." It ruled that the motion was not "made within a reasonable time." *Id.* R. 60(c)(1). And it denied Mills a certificate of appealability and his motion for a stay of execution.

II. STANDARD OF REVIEW

A party who seeks to appeal the denial of a motion for relief from a judgment denying habeas relief must obtain a certificate of appealability. *See Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1263 (11th Cir. 2004), *aff'd on other grounds sub nom. Gonzalez v. Crosby*, 545 U.S. 524 (2005). We may issue a certificate "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The applicant must establish that jurists of reason could disagree with the resolution of his constitutional claims or that jurists could conclude that "the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Because Rule 60 "vests wide discretion in [district] courts," we ask whether a reasonable jurist could conclude that the district court abused its discretion. *See Buck v. Davis*, 137 S. Ct. 759, 777 (2017). A district court abuses its discretion when it applies an incorrect legal standard, follows improper procedures, makes clearly erroneous factual findings, or applies the law unreasonably. *Loc. 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.*, 762 F.3d 1248, 1253 (11th Cir. 2014).

III. DISCUSSION

Mills seeks a certificate of appealability on three grounds. He argues that a reasonable jurist could conclude that the district court abused its discretion in denying relief under Rule 60(b)(2), Rule 60(b)(3) and (d)(3), and Rule 60(b)(6). We reject each argument.

A. No Reasonable Jurist Could Conclude That the District Court Abused its Discretion in Denying Relief Under Rule 60(b)(2).

Mills argues that reasonable jurists could debate whether the district court abused its discretion in denying his motion for relief under Rule 60(b)(2) as untimely. He argues that the time limit in clause (c)(1) does not apply to his motion because Rule 60 "does not limit" a court's power to "set aside a judgment for fraud on the court." *See* FED. R. CIV. P. 60(d)(3). He argues that Bostick committed fraud on the court.

No reasonable jurist could conclude that the district court abused its discretion in rejecting this argument. We interpret the Federal Rules based on their "plain text." *See City of Jacksonville v. Jacksonville Hosp. Holdings, L.P.*, 82 F.4th 1031, 1034 (11th Cir. 2023); *see also Rosenberg v. DVI Receivables XIV, LLC*, 818 F.3d 1283, 1288 (11th Cir. 2016). Rule 60(c)(1) states that a "motion under Rule 60(b)" "for reasons (1), (2), and (3)" must be made "no more than a year after the entry of the judgment or order" from which the movant seeks relief. FED. R. CIV. P. 60(c)(1). Mills sought relief from the November 30, 2020, judgment and filed his motion on April 5, 2024. Three-and-a-half years is "more than a year." *See id.*

B. No Reasonable Jurist Could Conclude That the District Court Abused its Discretion in Denying Relief Under Rule 60(b)(3) and (d)(3).

No reasonable jurist could conclude that the district court abused its discretion in denying Mills's motion under Rule 60(b)(3) as untimely and under subsection (d)(3) on the merits. The time limit in Rule 60(c)(1) expressly applies to relief under clause (b)(3) based on allegations of the opposing party's fraud, misrepresentation, or misconduct. *See id.* Our precedent forecloses Mills's argument to the contrary: when "more than one year passe[s] between the entry of the original judgment and the filing of [a motion under Rule 60(b)(3)], the plaintiff cannot seek relief under Rule 60(b)(3)." *Travelers Indem. Co. v. Gore*, 761 F.2d 1549, 1550–51 (11th Cir. 1985).

To be sure, there is "no time limit on setting aside a judgment" under Rule 60(d)(3). *See* 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2870 (3d ed. Apr. 2023). But a movant who seeks relief under clause (d)(3) must establish "fraud on the court," FED. R. CIV. P. 60(d)(3), by clear and convincing evidence, *see Booker v. Dugger*, 825 F.2d 281, 283 & n.4 (11th Cir. 1987). That standard is "demanding." *Miller-El v. Dretke*, 545 U.S. 231, 240 (2005). The movant must establish that the alleged fraud is "highly probable." *See Bishop v. Warden, GDCP*, 726 F.3d 1243, 1258 (11th Cir. 2013). Fraud on the court involves a "direct assault on the integrity of the judicial process." 11 Wright, Miller & Kay, *Federal Practice & Procedure* § 2870. It "embrace[s] only that species of fraud" that officers of the court "perpetrate[]" against "the judicial machinery" and that "defile[s] the court itself." *Gore*,

761 F.2d at 1551 (citation and internal quotation marks omitted). It involves "an unconscionable plan or scheme." *See Davenport Recycling Assocs. v. Comm'r*, 220 F.3d 1255, 1262 (11th Cir. 2000) (citation and internal quotation marks omitted) (describing fraud on the court in the context of challenges to a decision of the Tax Court).

No reasonable jurist could conclude that the district court abused its discretion in ruling that Mills failed to establish that it is highly probable that the State hatched an unconscionable scheme. Mills does not dispute that "the dating of some of the relevant events is misstated" in Glenn's fee declaration. For example, the declaration states that Glenn attended trial on September 11 and 12, 2007, to watch JoAnn testify. It is undisputed that JoAnn testified instead on August 22, 2007. Mills dismisses these inconsistencies as "scrivener's errors" or an "inadvertent[]" "transposition of numbers," but the district court did not abuse its discretion in declining to credit a fee declaration with blatant errors about the very events at the heart of this controversy. And no reasonable jurist could conclude that the district court abused its discretion in assessing the *plausibility* of Glenn's affidavit. The district court concluded that, if the affidavit "[were] to be believed," Glenn witnessed both Bostick and JoAnn repeatedly perjure themselves on August 22, 2007, yet said nothing and then, as the Commissioner says, "held his tongue for nearly seventeen years." No reasonable jurist could conclude that the district court abused its discretion in ruling that Mills had not met the "demanding" standard of Rule 60(d)(3), *see Dretke*, 545 U.S. at 240, for proving that the State "defile[d] the court itself,"

Gore, 761 F.2d at 1551 (citation and internal quotation marks omitted).

C. No Reasonable Jurist Could Conclude That the District Court Abused its Discretion in Denying Relief Under Rule 60(b)(6).

Last, Mills argues that a reasonable jurist could conclude that the district court abused its discretion in denying the motion for relief under Rule 60(b)(6). He seeks relief on grounds identical to those on which he premised his requests for relief under Rule 60(b)(2) and (b)(3). But Rule 60(b)(6) states that a court may grant relief only "for . . . any *other* reason" than those listed in clauses (b)(1) through (b)(5). FED. R. CIV. P. 60(b)(6) (emphasis added); *see Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988) (stating that Rule 60(b)(6) "grants federal courts broad authority to relieve a party from a final judgment . . . provided that the motion is . . . not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)"). As a leading treatise on federal civil practice puts it, "much authority" establishes that "clause (6) and the first five clauses [of Rule 60(b)] are mutually exclusive" and that "relief cannot be had under clause (6) if it would have been available under the earlier clauses." 11 Wright, Miller & Kane, *Federal Practice & Procedure* § 2864 (3d ed. Apr. 2023).

No reasonable jurist could conclude that the district court abused its discretion in denying relief under Rule 60(b)(6). Were we to read the Rule as Mills urges, the one-year limit in subsection (c)(1) would be superfluous. And his reading would make clauses (b)(1) through (b)(5) altogether "pointless." *See* Antonin

Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 26, at 176 (2012) (surplusage canon); *see also United States v. Jicarilla Apache Nation*, 564 U.S. 162, 185 (2011) ("[W]e are hesitant to adopt an interpretation . . . [that] renders superfluous another portion of th[e] same law." (citation and internal quotation marks omitted)). Although we agree with the district court that no reasonable jurist would think that Mills's motion for Rule 60(b)(6) relief was timely, we rule that no reasonable jurist would question the denial on the merits as supported by the record. *Cf. Haynes v. McCalla Raymer, LLC*, 793 F.3d 1246, 1249 (11th Cir. 2015) (we may affirm on any ground that the record supports when reviewing for abuse of discretion).

IV. CONCLUSION

We **DENY** Mills's application for a certificate of appealability and **DENY AS MOOT** his motion to stay his execution.

ABUDU, Circuit Judge, Concurring:

The death penalty is the harshest punishment one can receive in this country. The Supreme Court has recognized that "the death penalty is qualitatively and morally different from any other penalty." *Sawyer v. Whitley*, 505 U.S. 333, 361 (1992) (Stevens, J. concurring); *see also Gregg v. Georgia*, 428 U.S. 153, 187 (1976) ("There is no question that death as a punishment is unique in its severity and irrevocability. When a defendant's life is at stake, the Court has been particularly sensitive to insure [sic] that every safeguard is observed." (citations omitted)); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (noting "the need for reliability in the determination that death is the appropriate punishment in a specific case"). As a result, "it is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, the consequence of scrupulously fair procedures." *Sawyer*, 505 U.S. at 361 (internal quotation marks and brackets omitted).

I concur in the denial of Mills' motion for a certificate of appealability ("COA"). I write separately to express concern about the rigid interpretation and application of Rule 60(b)(6), particularly the "extraordinary circumstances" provision in a death penalty case when the petitioner is asserting actual innocence.

I. THE COA STANDARD

We may only grant a petitioner a COA if he "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Importantly, "[a]t the COA stage, the only

question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'" *Buck v. Davis*, 580 U.S. 100, 115 (2017) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)). This question must be decided without a full consideration of the factual or legal basis underlying the petitioner's claims. *Id.* To conduct such merits analysis at the COA stage "is in essence deciding an appeal without jurisdiction." *Miller-El*, 537 U.S. at 337.

Accordingly, at the COA stage, a petitioner does not have to show that his appeal will be successful once it is heard on the merits. *Id.* We cannot "decline the application for a COA merely because [we] believe[] the applicant will not demonstrate an entitlement to relief." *Id.* Instead, we must issue a COA where reasonable jurists could debate the issue presented, and "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that [the] petitioner will not prevail." *Id.* at 338. At minimum, the petitioner seeking a COA must prove "something more than the absence of frivolity" or "good faith" on his part. *Id.* (internal quotation marks omitted).

II. RULE 60(b)(6) MOTIONS

We review for an abuse of discretion the district court's denial of a Rule 60(b)(6) motion. *Buck*, 580 U.S. at 122-23. Rule 60 provides a list of specific grounds on which a movant may seek

relief from a death sentence, including for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1)-(6). Relief under Rule 60(b)(6) is available only in "extraordinary circumstances." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005). The case law supports a rejection of Mills' request for relief under Rule 60(b)(6) as duplicative of the arguments he raised under Rule 60(b)(2), (b)(3), and (d)(3), *see Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863 (1988). However, the Supreme Court also has recognized that Rule 60(b)(6) "does not particularize the factors that justify relief." *Liljeberg*, 486 U.S. at 863-64. Moreover, the Court has emphasized that Rule 60(b)(6) relief is warranted "to vacate judgments *whenever* such action is appropriate to accomplish justice." *Id*. at 864 (emphasis added) (instructing courts to "consider the risk of injustice" and "the risk of undermining the public's confidence in the judicial process"); *see also Cano v. Baker*, 435 F.3d 1337, 1341-42 (11th Cir. 2006) (analyzing a party's Rule 60(b)(6) motion in conjunction with related Rule 60(b)(5) arguments).

III. RELEVANT TENANTS OF FUNDAMENTAL FAIRNESS AT TRIAL

Prosecutors play a special role "in the search for truth in criminal trials." *Strickler v. Greene*, 527 U.S. 263, 281 (1999). As a result, the court, defendants, and juries expect prosecutors to refrain from using improper methods to secure a conviction. *Banks v. Dretke*, 540 U.S. 668, 696 (2004).

The Supreme Court has issued many rulings outlining a prosecutor's duties to the court, litigants, and juries. Most

relevant here, prosecutors cannot suppress "evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The essential elements of a *Brady* claim include: (1) the evidence at issue must be favorable to the petitioner because it was either exculpatory or *impeaching*; (2) the evidence was suppressed by the state, either willfully or *inadvertently*; and (3) the petitioner suffered prejudice. *Banks*, 540 U.S. at 691 (citing *Strickler*, 527 U.S. at 281-82). Thus, "prosecutor[s] may [not] hide," nor must a petitioner "seek" out, the existence of *Brady* materials. *Id.* at 696 (internal quotation marks omitted).

Additionally, prosecutors have an obligation to correct false testimony once it is stated in court. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). In fact, "[t]he principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, *does not cease to apply merely because the false testimony goes only to the credibility of the witness*." *Id.* (emphasis added). As the Supreme Court recognized, "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Id.*

IV. MILLS HAS MET THE THRESHOLD REQUIREMENT TO OBTAIN A COA

In applying the above legal framework, Mills has met the threshold requirement to obtain a COA on the issues of: (1) whether the district court abused its discretion in denying his Rule 60(b)(6) motion as untimely; and (2) whether reasonable jurists could debate the district court's determination that Mills did not establish "extraordinary circumstances" entitling him to relief. *Buck*, 580 U.S. at 116 ("That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable.").

At the very moment JoAnn (Mills' ex-wife and the star witness of the State's case against him) testified at his trial, Mills has asserted that JoAnn was offered a favorable plea deal in exchange for her testimony against him. In fact, Mills has raised this issue no less than 15 times before varying trial, state, and post-conviction courts—each time to no avail. In these instances, the courts denied his claim in reliance on the State's affirmation, made in open court, that it did not offer JoAnn a "promise . . . maybe . . . nudge . . . [or] wink" that she would receive a favorable plea should she testify against Mills. The district court, when it denied Mills' initial 28 U.S.C. § 2254 petition, also relied on the State's averments. This Court then denied Mills a COA to appeal the § 2254 petition's denial, meaning this Court has yet to hear Mills' case on the merits.

Now, Mills has obtained an affidavit from JoAnn's trial attorney, Tony Glenn, and additional information that JoAnn met with state officials before she testified in court against Mills and that a plea deal was discussed. Specifically, Glenn affirmed that he engaged in pre-trial discussions with the district attorney and the victims' daughter regarding JoAnn avoiding the death penalty if she "testified truthfully" at Mills' trial. According to Glenn, before Mills' trial, the victims' daughter agreed not to oppose the State offering JoAnn a plea deal, and the district attorney agreed to not pursue the death penalty against JoAnn—so long as she "testified truthfully" at Mills' trial.

In response, the State submitted two affidavits—one from the district attorney who prosecuted the case and another from the former investigator on the case. The district attorney admitted that JoAnn and her attorney visited his investigator before Mills' trial but denied that the investigator offered her a plea deal or had the authorization to do so. The district attorney also affirmed that he did not offer JoAnn a plea deal because the victims' family wanted to pursue the death penalty, and it was not until after JoAnn testified that the family became comfortable with the state offering JoAnn life imprisonment. The former investigator explained that he encouraged JoAnn to testify and that he did not offer her a plea deal either.

As the record shows, JoAnn did in fact testify at Mills' trial, placing all the blame on Mills for the victims' deaths, while her attorney sat in the courtroom observing the testimony. At trial,

she stated she was not offered any promises or deals in exchange for her testimony. The State asserted the same when asked by Mills' counsel. Nevertheless, ten days after Mills was found guilty, the state dismissed the capital murder charges against JoAnn.

Mills' theory of defense primarily rested on the following facts. First, that although JoAnn pointed the finger at Mills during trial, she initially gave two statements to police implicating Benji Howe—a local drug dealer—as the perpetrator of these horrendous crimes. Additionally, record evidence showed that Mills' DNA was not found on the murder weapons, Howe had equal access and opportunity to place the victims' belongings in the trunk of Mills' car, and Howe was found with the victims' prescription pills in his possession along with a large amount of money. Moreover, Howe's alibi for the date of the incident proved shaky at best, with conflicting witness statements given regarding Howe's whereabouts on the day of the murders.

In denying Mills' claim, the district court found it impossible to believe that the district attorney and JoAnn would have perjured themselves when questioned about whether a plea deal existed to decrease JoAnn's sentence in exchange for her testimony identifying Mills as the killer, and that JoAnn's defense attorney would not have objected or otherwise informed the court of the malfeasance. Yet, Mills produced Glenn's affidavit attesting under oath that such a plea deal in advance of her testimony indeed did exist, and he provided the general date and participants of the alleged plea deal meetings.

The questions that the varying accounts between the district attorney, JoAnn, and Glenn's version of events present, including why JoAnn's attorney would sign an affidavit against his client's interests that could jeopardize his own legal career, are issues the Court need not address at this COA stage. Those factual issues should be resolved by the district court after an evidentiary hearing. Instead, at this phase in Mills' death penalty case, we look to the record evidence only to determine whether a reasonable jurist could debate whether the district court abused its discretion in denying Mills' Rule 60(b)(6) motion on the grounds that "extraordinary circumstances" did not warrant relief. Mills has sufficiently alleged the denial of a constitutional right—the right to have impeachment evidence disclosed to him and the right to ensure his trial is not infected with perjured testimony. *Brady*, 373 U.S. at 87; *Napue*, 360 U.S. at 269. Mills also has demonstrated that, without relief, there exists a "risk of injustice" and "risk of undermining the public's confidence in the judicial process." *Buck*, 580 U.S. at 123. This is especially true given that Mills has maintained his innocence.

Unfortunately, even when a petitioner's life hangs in the balance, our case law does not extend sufficient procedural and substantive due process protections.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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May 28, 2024

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Appeal Number: 24-11661-P
Case Style: Jamie Mills v. Commissioner, Alabama Department of Corrections
District Court Docket No: 6:17-cv-00789-LSC

The enclosed copy of this Court's published order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

No. 24-11661

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DEATH PENALTY CASE

JAMIE MILLS,

Petitioner-Appellant,

v.

JOHN HAMM,
Commissioner of the
Alabama Department of Corrections,

Respondent-Appellee.

MOTION FOR CERTIFICATE OF APPEALABILITY

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May 23, 2024

EXECUTION SCHEDULED FOR MAY 30, 2024 AT 6:00 P.M. CST

CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel certifies the following persons may have an interest in the outcome of this case:

Bentley, John – former Marion County Circuit Court Judge;

Bostick, Jack – former District Attorney for Marion County;

Brasher, Andrew – former Solicitor General of Alabama;

Cashion, James C. – former Marion County District Court Judge;

Coogler, L. Scott – Chief United States District Judge;

Cook, Neal – Assistant District Attorney for Marion County;

Dickinson, Rodney – Attorney initially appointed to represent Petitioner-Appellant at trial;

Dunn, Jefferson S. – former Commissioner, Alabama Department of Corrections and former Respondent;

Govan, Thomas – Counsel for State on direct appeal and in state postconviction and federal habeas proceedings and Assistant Attorney General of Alabama;

Hamm, John – Commissioner, Alabama Department of Corrections and Respondent;

Hill, Floyd – Victim;

Hill, Vera – Victim;

Jackson, Jerry – Attorney initially appointed to represent Petitioner-Appellant at

trial;

King, Troy – Counsel for State on direct appeal and former Attorney General of Alabama;

Marshall, Steve – Attorney General of Alabama and Respondent;

Mathis, William – Trial counsel and counsel for Petitioner-Appellant at the Alabama Court of Criminal Appeals;

Maxymuk, Benjamin – Counsel for Petitioner-Appellant in direct appeal proceedings at the Alabama Supreme Court;

Miller, Kathryn – Counsel for Petitioner-Appellant in state postconviction proceedings;

Mills, Jamie – Petitioner-Appellant;

Mills, JoAnn – Codefendant;

Morrison, Charlotte – Counsel for Petitioner-Appellant in state postconviction and federal habeas proceedings;

Selden, John – Counsel for State in federal habeas proceedings and Assistant Attorney General of Alabama;

Setzer, Angela – Counsel for Petitioner-Appellant;

Simpson, Lauren – Assistant Attorney General of Alabama and counsel for Respondent;

Stevenson, Bryan – Counsel for Petitioner-Appellant in direct appeal proceedings;

Strange, Luther – former Attorney General of Alabama;

Susskind, Randall – Counsel for Petitioner-Appellant;

Vick, Paige – former Assistant District Attorney for Marion County;

Wiley, John – Trial counsel and counsel for Petitioner-Appellant at trial and on direct appeal.

MOTION FOR CERTIFICATE OF APPEALABILITY

Pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, Rule 22-1 of the Eleventh Circuit Rules, Petitioner Jamie Mills respectfully requests that this Court issue a certificate of appealability ("COA") to review the district court's denial of his motion for relief from judgment pursuant Rule 60 of the Federal Rules of Civil Procedure. See Gonzalez v. Sec. for Dep't. of Corr., 366 F.3d 1253, 1263 (11th Cir. 2004) (en banc), overruled on other grounds by Gonzalez v. Crosby, 545 U.S. 524 (2005) (petitioner must obtain certificate of appealability for denial of Rule 60(b) motion related to § 2254 habeas corpus petition).

INTRODUCTION

For seventeen years, Mr. Mills has maintained that the District Attorney had an undisclosed deal with the State's central witness, JoAnn Mills, in exchange for her sole eyewitness testimony. And for seventeen years, the State has denied the existence of any agreement with JoAnn.

Newly discovered evidence establishes that the District Attorney's statements at trial, and the State's representatives throughout the appeals and postconviction proceedings, were false. The declaration of Attorney Tony Glenn, who represented JoAnn Mills in her capital murder case, establishes that prior to Mr. Mills' capital trial, Mr. Glenn met with District Attorney Jack Bostick and the family of Vera and Floyd Hill and that during that meeting, he advocated for JoAnn

by presenting her life history of mitigating evidence in an effort to obtain a deal that could spare her from the death penalty. Doc. 42-1. Mr. Glenn was successful: the District Attorney ultimately agreed to a life sentence, instead of the death penalty, if she would testify truthfully at Mr. Mills' trial. Doc. 42-2. Mr. Glenn's affidavit is corroborated by his attorney fee declaration and by the fact that, consistent with the prosecution's plea deal with JoAnn, on September 24, 2007, just ten days after Jamie Mills was sentenced to death, the State dismissed Capital Murder charges against her and she pled to the lesser included offense of straight Murder. Doc. 42-2.

This new evidence means that District Attorney Jack Bostick falsely told the trial court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

Now that this new evidence has emerged, the District Attorney admits that the meeting occurred but that he believed it did not need to be disclosed—despite being asked repeatedly before, during, and after trial—because his investigator conducted the meeting and because a formal agreement was never signed. Any

reasonable prosecutor would have known that the State was required to disclose the fact that its star witness requested to meet regarding a potential plea, that the District Attorney ordered the witness be brought from the jail to meet with his investigator, and that the witness previewed her testimony at the meeting. The court-ordered discovery in this case included information that "would tend to show bias or tend to impeach the witness's testimony or would lead to impeaching information." (C1. 54.) Moreover, well-established U.S. Supreme Court precedent provides that a prosecutor may reach an agreement verbally and through a representative *not* authorized to enter into the agreement, and still be required to disclose. Giglio v. United States, 405 U.S. 150, 152 (1972) (requiring disclosure of inducement offered by assistant DA *without authority* to enter into plea agreement, even when inducement was not communicated to prosecuting attorney and was not in writing).

Because the State's false representations were unquestionably material to critical decisions made by the district court, including whether Mr. Mills was entitled to an evidentiary hearing, discovery, a certificate of appealability and, ultimately, to habeas corpus relief, Mr. Mills filed a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure, seeking relief from the district court's November 30, 2020, order denying habeas corpus relief.

Mr. Mills filed his Rule 60 motion on April 5, 2024. See Doc. 42. The

district court denied Mr. Mills' Rule 60 motion and motion for a stay of execution on May 17, 2024, see doc. 48, and denied Mr. Mills' motion for a certificate of appealability on May 21, 2024. Doc. 50. In denying relief, the district court concluded that the District Attorney cannot be held accountable for this misconduct because the burden was on Mr. Mills to know what the State hid all these years. Insulating prosecutors from accountability for making knowingly false representations would render virtually unenforceable a basic premise of our legal system that the prosecution will refrain from dishonest and illegal conduct. Berger v. United States, 295 U.S. 78, 88 (1935) ("Courts, litigants, and juries properly anticipate that 'obligations . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.").

Moreover, in making this finding, the district court ignored both the record in this case—which establishes that Mr. Mills has diligently pursued this evidence, in asking the State to comply with state and federal requirements to reveal the existence of a prior plea deal with JoAnn Mills—and clearly established Supreme Court case law, which provides that defendants are not required to "scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed." Banks v. Dretke, 540 U.S. 668, 695 (2004).

Because the State seeks to execute Mr. Mills on May 30, 2024, there is a critical need for this Court to grant a certificate of appealability, address this fundamental violation of Mr. Mills' rights, and grant appropriate relief.

LEGAL STANDARD FOR CERTIFICATE OF APPEALABILITY

The standard for a COA is very low. A court should issue one where "reasonable jurists would find the district court's assessment of the constitutional claims debatable. . . ." Slack v. McDaniel, 529 U.S. 473, 484 (2000). In the Rule 60 context, the COA question is "whether a reasonable jurist could conclude that the district court abused its discretion in declining to reopen the judgment." Buck v. Davis, 580 U.S. 100, 123 (2017). The United States Supreme Court has held that a petitioner is *not* required "to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003); see also Buck, 580 U.S. at 115 (The "threshold question should be decided without full consideration of the factual or legal bases adduced in support of the claims.") (internal quotations and citations omitted). The Court has also held that "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Miller-El, 537 U.S. at 338.

JAMIE MILLS IS ENTITLED TO A COA

In Mr. Mills' case, a reasonable jurist would conclude that the district court abused its discretion in denying Rule 60 relief by (1) applying the incorrect legal standard in contravention of Banks v. Dretke and its progeny; (2) concluding that Attorney Tony Glenn's affidavit is "mere impeachment evidence" and not "material evidence" by applying the incorrect legal standard and relying on incorrect factual findings; and (3) reaching the incorrect conclusion that Mr. Mills is required to produce *additional* documentary evidence of a plea deal, beyond the lawyer's affidavit, in contravention of Brady v. Maryland and its progeny.

I. Newly Discovered Evidence Demonstrates That The State Withheld Evidence That Its Principal Witness, Joann Mills, Met With Prosecutors Before Trial And Testified Pursuant To An Agreement To Dismiss Capital Murder Charges Against Her In Exchange For Her Testimony.

This is a case primarily built on the testimony of a single witness: JoAnn Mills. Without her testimony, the State's case against Mr. Mills was very weak because the State's physical evidence was consistent with Mr. Mills' theory of defense that he was framed by Benjie Howe who was arrested on the night of the offense with the victims' pills and a large amount of cash. (R1. 40-41, 876, 882.) The victims' belongings, a machete, hammer, and tire iron, and clothing with the victims' DNA were found in the trunk of the Mills' car (R1. 545-48), but the State conceded that the vehicle's trunk had no functioning lock and could be easily opened (R1. 538, 792), and that Benjie Howe, a "well known" drug "user/dealer"

in Guin, had been at the Mills' home numerous times in the weeks leading up to the crime (R1. 419, 422-23). In fact, the State's evidence established that Benjie had been at the Mills' home on the day of the murders both *before* and *after* the offense, giving him an opportunity to have put the evidence in the trunk. (R1. 375, 418-19, 422-25, 520-21, 708-09, 798-801, 881). Unidentified DNA profiles were found on the murder weapons but testing comparing Jamie Mills excluded him. (R1. 616, 626.) Testing was never directly conducted with respect to Benjie Howe. (R1. 617, 645.)

The State's efforts to establish an alibi for Benjie Howe also backfired at trial. The State presented testimony from Benjie Howe's alibi witnesses, his cousins Thomas Green and Melissa Bishop. (R1. 866, 868.) However, Green and Bishop's testimony contradicted Benjie Howe on several key points. (R1. 864-66, 868-870.) Benjie Howe testified that he spent June 24, 2004, with Thomas Green, only leaving Green's house to go to Jamie and JoAnn's house around 7:00 p.m. "with two girls." (R1. 873-74, 877-78.) Melissa Bishop, however, testified that she picked Benjie up from Thomas Green's house sometime between noon and 3:00 p.m. that day, not 7:00 p.m. as Benjie testified. (R1. 868-69.) Thomas Green also admitted that he had told defense counsel previously that Benjie's trip with Melissa was in the afternoon, not in the evening. (R1. 865-66.) And while Benjie Howe testified two women were in the car, Melissa Bishop testified that only she and

Benjie Howe were in the car. (R1. 868-69.) Benjie Howe's alibi witnesses also gave contradictory testimony about the length of time Benjie was gone from Thomas Green's home. While Melissa Bishop testified that they were gone for only a few minutes (R1. 868-69), Thomas Green testified that Benjie left with Melissa Bishop for several hours. (R1. 864-66.) Melissa testified that if her cousin Thomas stated they were "gone four hours" then "he'd be lying." (R1. 869-70.)

The State also presented the testimony of a neighbor who said that she saw a white car similar to the Mills' car driving by their house (R1. 428), but Mr. Mills' car did not require a key to start (R1. 792) and Benjie admitted to driving the car on previous occasions (R1. 881).

Other than the evidence found in the unlocked car trunk, the only evidence connecting Mr. Mills to the crime was the third of three statements given by JoAnn Mills implicating Jamie Mills.[1] Because her third statement was unquestionably necessary to the prosecution's case, the State took steps to ensure (1) that she testified consistent with this third statement (the one implicating Jamie Mills) and (2) that the jury not be informed that she was testifying to gain favor with the State.

[1] In the two statements provided on June 25, 2004, JoAnn Mills denied any involvement in the murders, provided an alibi for Jamie Mills, and implicated Benjie Howe. JoAnn then provided a third statement on June 28, 2004, implicating Jamie Mills but JoAnn also told investigators that Benjie had been at her house twice on the day of the offense: once early in the morning to do meth and once in the evening to buy Lortab pills. (R1. 37, 58-60.)

Shortly before trial, JoAnn was provided with a copy of her third statement. (R1. 747.) Because the relative credibility of JoAnn and Jamie Mills was a central question of fact for the jury, the existence or non-existence of any inducement for JoAnn's testimony at trial was pivotal for both the State and defense counsel. District Attorney Bostick understood this and that is why his first questions elicited her denial of any plea offer:

> Q: And are you doing this of your own free will?
>
> A: Yes, sir.
>
> Q: Have there been any deals or offers or anything like that made to you?
>
> A: No, sir.

(R1. 685-86.) Defense counsel, who had sought evidence of any pleas or inducements prior to trial, also questioned her about the existence of a deal:

> Q: You're just up here admitting to capital murder without any hope of help from the district attorney's office?
>
> A: No, sir.
>
> Q: You do expect help from the district attorney's office?
>
> A: No, sir.
>
> Q: Has anybody told you that if you get up here and tell this story that the district attorney will have pity for you and let you plead to something besides murder?
>
> A: No, sir.

> Q: So you expect as a result of your testimony today to get either life without parole or death by lethal injection?
>
> A: Yes.

(R1. 720-21.)

Defense counsel asked the trial court for permission to question District Attorney Jack Bostick "on the record" about the existence of a plea offer or any inducement. Bostick responded: "There is not." (R1. 830.)

> MR. WILEY: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an Inducement.
>
> MR. BOSTICK: There is none.
>
> MR. WILEY: None?
>
> MR. BOSTICK: Have not made her any promises, nothing.
>
> MR. WILEY: Have you suggested that a promise might be made after she testifies truthfully?
>
> MR. BOSTICK: No.
>
> MR. WILEY: No inducement whatsoever?
>
> MR. BOSTICK: No.

(R1. 830).

JoAnn Mills' testimony—that there was no deal—was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach

her:

> She was not tripped up on anything. Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did. The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching. . . .

(R1. 915.)

During closing arguments, both the prosecution and the defense discussed the forensic evidence, the alleged role of methamphetamine in the crime, the possible role of Benjie Howe in the crime, and the possibility that the evidence in the Mills' car trunk was staged or planted. (See R1. 887–920.) But the primary question for the jury was whether or not to believe JoAnn Mills: If the jury found her to be credible, then Mr. Mills' testimony and defense counsel's arguments would have been undermined. On the other hand, if the jury had reason to question JoAnn's credibility, then the entire prosecution's case would have been called into question.

Without knowing that JoAnn had been given a plea deal by the State that would save her life, the jury convicted Mr. Mills of capital murder on all three counts on August 23, 2007. (C1. 78-80.) On September 14, 2007, he was sentenced to death. (C1. 116.)

Ten days later, on September 24, 2007, the State dismissed capital murder

charges against JoAnn Mills. Doc. 42-2.

After learning that the State dismissed capital murder charges against JoAnn Mills, only thirty days after confessing to capital murder in her testimony at Mr. Mills' trial, counsel for Mr. Mills filed a motion for a new trial arguing that this evidence was sufficient to establish the existence of a deal. (C. 120-21.) Mr. Mills' motion for a new trial was denied without a hearing. (C. 120.) Mr. Mills raised this issue throughout state postconviction and federal habeas corpus proceedings in the district court, asking prosecutors whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, and the trial court that there was no plea offer in exchange for JoAnn's testimony, and at each stage the State has asserted that there was no deal and that JoAnn and the District Attorney testified truthfully.

As the declaration submitted to the district court reveals, newly discovered evidence establishes that the District Attorney's statements at trial, and the State's representatives throughout the appeals and postconviction proceedings, were false. Attorney Glenn's affidavit establishes that prior to Mr. Mills' capital trial, Mr. Glenn had several conversations with District Attorney Jack Bostick about a plea agreement in exchange for JoAnn Mills' testimony at Jamie Mills' trial and that the District Attorney agreed to a life sentence, instead of the death penalty or life without parole, if she would testify truthfully at Mr. Mills' trial. See Doc. 42-1.

This evidence means that District Attorney Jack Bostick falsely told the trial

court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

Now that this new evidence has emerged, the District Attorney admits that the meeting occurred but that he believed it did not need to be disclosed—despite being asked repeatedly before, during, and after trial—because his investigator conducted the meeting and because a formal agreement was never signed. Any reasonable prosecutor would have known that the State was required to disclose the fact that its star witness requested to meet regarding a potential plea, that the District Attorney ordered the witness be brought from the jail to meet with his investigator, and that the witness previewed her testimony at the meeting. The court-ordered discovery in this case included information that "would tend to show bias or tend to impeach the witness's testimony or would lead to impeaching information." (C1. 54.) Moreover, well-established U.S. Supreme Court precedent provides that a prosecutor may reach an agreement verbally and through a representative *not* authorized to enter into the agreement, and still be required to disclose. Giglio v. United States, 405 U.S. 150, 152 (1972) (requiring disclosure of inducement offered by assistant DA *without authority* to enter into plea agreement,

even when inducement was not communicated to prosecuting attorney and was not in writing).

II. Reasonable Jurists Could Debate Whether the District Court Erred in Finding Mr. Mills Had Not Made the Showing Required to Reopen His Case Pursuant to Rule 60(b)(6).

In finding that this new evidence did not justify reopening Mr. Mills' case, the district court found that **(1)** Mr. Mills did not make a showing of "extraordinary circumstances" justifying relief; **(2)** he did not present sufficient evidence of a plea deal; and **(3)** his claim is untimely because he "could have produced [evidence of the State's misconduct] years ago." Doc. 48, at 22. At a minimum, it is debatable that the district court was wrong on each of these points. Miller-El, 537 U.S. at 348 ("The COA inquiry asks only if the District Court's decision was debatable.").

A. Mr. Mills' Case Presents "Extraordinary Circumstances."

Attorney Glenn's affidavit establishes that the District Attorney met with JoAnn to discuss a plea deal and her expected testimony against Mr. Mills. The District Attorney admits that the meeting occurred but that he believed it did not need to be disclosed—despite being asked repeatedly before, during, and after trial—because his investigator conducted the meeting and because a formal agreement was never signed. The district court found that this misconduct was not sufficiently "extraordinary" because the misconduct was, essentially, *too*

extraordinary:

> Finally, the Court must note that if Glenn's affidavit is to be believed, then Glenn sat in court on August 22, 2007, and watched both JoAnn and District Attorney Bostick repeatedly perjure themselves, yet said nothing to the Court.

Doc. 48, at 21. This finding turns the legal standard on its head. Mr. Mills' allegation is that the failure to tell the judge and jury that there was a plea agreement with JoAnn Mills was fundamental to the prosecution's case, and that the lawyers who were part of the agreement committed extraordinary misconduct. Yet the district court seems to hold that because "saying nothing to the court" would, in fact, be extraordinary, it must not be credible. The court's finding—that the extraordinary nature of the alleged misconduct made it more likely that it did not happen—is circular and is not a legitimate basis for dismissing the Rule 60 motion in this case.

At a minimum, a COA is warranted because reasonable jurists could disagree with the district court's conclusions. The factors presented by Mr. Mills constitute a situation that is at least debatably extraordinary. Miller-El, 537 U.S. at 348 ("The COA inquiry asks only if the District Court's decision was debatable."). Mr. Mills has demonstrated that leaving the prior judgment against him intact risks a profound injustice in his case. Mr. Mills faces execution pursuant to a jury verdict whose reliability is undermined by the State's false representations that JoAnn was

offered nothing in exchange for her testimony. As the District Attorney told the jury, this case came down to a he said/she said:

> You've got two people, a husband and a wife, that say -- both say we were together all day long. One says they went looking at houses and bought cigarettes. The other one says they participated in a horrible, horrible double murder. You can't put those two together. . . . Somebody's got to be telling a story.

(R1. 911.) JoAnn's testimony that there was no agreement was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach her:

> [Defense counsel] got on her statement, and the only thing he got her confused on, the only thing, was when they put the stuff in the blue bag. When did the garbage bag come into play? That was it. She was not tripped up on anything. **Made a promise? No. That's her choice**. She presented us with she wanted to testify, and she did. The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching . . . JoAnn didn't need that statement. She was there. She saw it. You looked at those pictures. She didn't look at a single picture up there on the stand, and she nailed it. She went through that crime scene. She took you through everything and didn't miss a thing. Again, they tripped her up on a garbage bag at their house, or tried to, and that was it. She shucked it down, as the saying goes. She told y'all exactly what happened. . .

(R1. 915-17 (emphasis added).)

Mr. Mills' Rule 60(b)(6) claim centers around the fundamental unfairness to Mr. Mills in never receiving process on a meritorious claim, a claim he was unable

to provide supporting evidence for because the State at all stages was affirmatively withholding and misrepresenting the evidence, and the fundamental unfairness of facing execution by the State of Alabama who improperly procured his conviction and sentence. Moreover, the State did not correct these false statements in federal habeas corpus proceedings, as it is obligated to do, Napue v. Illinois, 360 U.S. 264, 269 (1959),[2] and instead urged the district court to rely on these false statements—and the district court did in fact rely on these statements—in denying Mr. Mills process and review of his claim. Mr. Mills asked for, and the district court denied, discovery, an evidentiary hearing, habeas corpus relief, and a certificate of appealability.

The State's extraordinary misconduct rendered the trial, appellate, and postconviction proceedings against Mr. Mills "fundamentally unfair," United States v. Agurs, 427 U.S. 97, 103 (1976) ("[A] conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."), and undermines the reliability of the verdict and appeals in this case.

> [I]f a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by

[2] See also Alcorta v. State of Tex., 355 U.S. 28, 32 (1957) (petitioner entitled to habeas corpus relief where witness at trial lied regarding relationship with victim and prosecutor willfully failed to correct misrepresentation).

> a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.

Mooney v. Holohan, 294 U.S. 103, 112 (1935). Reliability is critical in any criminal proceeding where someone's liberty is at stake but in a death penalty case where the life of the accused hangs in the balance, there is a heightened obligation to address allegations of serious state misconduct that reveal fundamental violations of the law. Ford v. Wainwright, 477 U.S. 399, 411 (1986) (citing Woodson v. North Carolina, 428 U.S. 280, 305 (1976)) ("In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a heightened standard of reliability. . . This special concern is a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different.").

Mr. Mills is entitled to relief under Rule 60(b)(6) due to the "extraordinary circumstances" his case presents. Buck, 580 U.S. at 123, 128 (finding petitioner to be entitled to relief pursuant to Rule 60(b)(6) where use of race undermined integrity of the proceedings and "poison[ed] public confidence in the judicial process") (internal quotations and citations omitted); see also Bucklon v. Sec'y, Fla. Dep't of Corr., 606 F. App'x 490, 493 (11th Cir. 2015) (finding petitioner established "extraordinary circumstances" necessary for relief under Rule 60(b)(6)

where intervening decision established error in how federal court interpreted its own procedural rules).

The State's assertions in federal habeas proceedings that JoAnn in fact did not receive a plea deal in exchange for her testimony and that the District Attorney did not knowingly deceive the trial court and the jury,[3] as well as the district court's reliance on those false assertions,[4] constitutes "a defect in the integrity of the habeas proceedings," and requires relief from the district court's prior judgment. Gonzalez, 545 U.S. at 532 (federal courts have jurisdiction to consider Rule 60(b) motions in federal habeas proceedings where the motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings"); Williams v. Chatman, 510 F.3d 1290, 1295 (11th Cir. 2007) (finding claim that district court should have granted

[3] The State has never corrected these false statements and in fact urged the district court to rely on them. Answer to Pet. for Writ of Habeas Corpus, ¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017); Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017).

[4] The district court relied on the District Attorney's knowingly false statements in resolving this issue and declining to grant merits review: "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony . . . Mills still fails to allege what specific evidence or arguments his trial counsel could have presented . . . to show that JoAnn lied on the stand and was in fact testifying against Mills in exchange for a lesser sentence." Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 78 (N.D. Ala. Nov. 30, 2020).

additional briefing to be a proper Rule 60(b) motion because it attacks a "defect in the integrity of the federal habeas proceedings") (internal citations omitted).

Rule 60(b)(6) is intended to prevent this unnecessary "risk of injustice" and "risk of undermining the public's confidence in the judicial process." Liljeberg, 486 U.S. at 864; see also Buck, 580 U.S. at 123. The district court's dismissal of Mr. Mills' Brady, Giglio, and Napue claim, and decision not to grant merits-based review, was based on the State's fraudulent assertions in its habeas petition and the District Attorney's knowingly false statements at trial, that no understanding existed with JoAnn Mills prior to her testimony. Mills, 2020 WL 7038594, at *77-78. To allow such a ruling to stand "injures not just [Mr. Mills], but the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts." Buck, 580 U.S. at 124 (quoting Rose v. Mitchell, 443 U.S. 545, 556 (1979)) (internal quotations omitted).

Here, as in Buck, the district court failed to appreciate the serious nature of the constitutional violation at issue and instead placed blame on defense counsel. Buck, 580 U.S. at 121-24 (rejecting Fifth Circuit's portrayal of racial bias at issue as "de minimis" and rejecting finding that defense counsel's role in error requires no relief). The Court in Buck found that to fail to grant relief where a serious constitutional error is at issue ignores the harm to the defendant as well as the injury to "the law as an institution." Id. at 124 (citations omitted). Such errors are

"precisely among those [ ] identified as supporting relief under Rule 60(b)(6)." Id.

The newly discovered evidence of the District Attorney's egregious misconduct raises serious questions about the integrity of the review process in the district court. The extraordinary constitutional violation is grounds for Rule 60(b) relief. "Rule 60(b) vests wide discretion in courts," Buck, 580 U.S. at 123, and "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice,'" Liljeberg, 486 U.S. at 864 (quoting Klapprott v. United States, 335 U.S. 601, 614-15 (1949) in discussion of Rule 60(b)(6)); see also Gonzalez, 545 U.S. at 538 (Rule 60(b) motion appropriate if it challenges "the District Court's failure to reach the merits . . . and can [ ] be ruled upon by the District Court without precertification").

B. Evidence That There Was a Plea Agreement Amounts to More Than "Mere Impeachment Evidence."

The district court concluded that the evidence of a plea agreement "is mere impeachment evidence and would not have changed the result of Mills' trial" because "even if Glenn were correct and JoAnn had perjured herself as to the existence of a pretrial plea agreement, that would not constitute evidence that she lied as to the rest of her testimony" and because "JoAnn's testimony was but one part of the overwhelming evidence against Mills." Doc. 48, at 16.

The district court's finding that evidence that the District Attorney elicited false testimony from JoAnn is not material to the case against Mr. Mills runs

contrary to well-established Supreme Court and Eleventh Circuit case law and seeks to minimize an essential premise of our trial system—that a prosecutor can be trusted to seek truth and justice, not a conviction at any cost. See, e.g., Giglio v. United States, 405 U.S. 150, 154 (1972) (quoting Napue, 360 U.S. at 269) ("When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule."); Guzman v. Sec'y, Dep't of Corr., 663 F.3d 1336, 1350 (11th Cir. 2011); Brown v. Wainwright, 785 F.2d 1457, 1464 (11th Cir. 1986); see also Mooney, 294 U.S. at 112 ("[I]f a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance . . . is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.").

Not only did the District Attorney elicit JoAnn's false testimony that she was not testifying in exchange for leniency, the District Attorney himself affirmatively told the jury there was no deal: "Made a promise? No. That's her choice. She presented us with [sic] she wanted to testify, and she did." (R1. 915.) The District Attorney then vouched for JoAnn's credibility by claiming that she "t[old] the same story" and "didn't vary a whole lot" from her previous statement to police, (R1. 916) even though this prior statement was not in evidence and even

though in this prior statement, JoAnn did not implicate Jamie Mills, but instead implicated Benjie Howe (R1. 44, 92-93, 375).

The prosecutor's repeated presentation of this false evidence demonstrates that evidence of a plea deal with JoAnn in exchange for her testimony was much more than impeachment evidence and was instead central to the State's ability to make a case against Jamie Mills: "The fact that the lead detective and the lead witness twice denied the existence of the payment is at least a tacit admission that it was perceived to have relevance to a reasonable fact finder viewing the credibility of this witness." Guzman, 663 F.3d at 1350 (quoting Guzman v. Sec'y, Dep't of Corr., 698 F. Supp. 2d 1317, 1332 (M.D. Fla. 2010)). The evidence provides "substantial and specific evidence of [JoAnn's] motivation to lie against [Mr. Mills]." Id.; see also Brown, 785 F.2d at 1464 ("This case does not involve mere nondisclosure of impeaching evidence but knowing introduction of false testimony and exploitation of that testimony in argument to the jury.").

In addition, the district court's conclusion that the State's misconduct is harmless because the evidence against Mr. Mills was "overwhelming" is clearly erroneous. Every court, including the district court, has recognized the centrality of JoAnn Mills' testimony to the conviction in this case. See Mills, 2020 WL 7038594, at *17 (district court finding that "overwhelming evidence" against Mr. Mills came from JoAnn's testimony: "JoAnn gave eyewitness testimony

inculpating Mills, both four days after the murders to law enforcement, and again at trial, and her testimony both times was consistent.").[5]

Without JoAnn's testimony the prosecution could not have proven its case against Mr. Mills beyond a reasonable doubt. This is because there was a real question about whether Benjie Howe was the person who committed the crime in this case. Benjie was arrested and charged with the murders in this case. He was found with the victims' pills and a large amount of cash. (R1. 40-41, 874, 882.) While the State found the murder weapons, clothing, and victims' belongings in the trunk of the Mills' car, there was undisputed evidence that anyone could have opened the trunk (R1. 46, 538, 792) and that Benjie had just as much access to it on the day of the offense as Mr. Mills (R1. 58, 874, 877), as well as testimony that Benjie was at the Mills' home twice on the day of the offense—both before and after the murders (R1. 37, 58-60).

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[5] See also, e.g., C1. 127-29 (Sentencing order extensively citing JoAnn Mills' testimony in the statement of facts)); Ex parte Mills, 62 So. 3d 574, 599 (Ala. 2010) ("JoAnn's testimony was **crucial evidence** in the State's case against Mills") (emphasis added); see also Mills v. State, 62 So. 3d 553, 559-60 (Ala. Crim. App. 2008) (extensively citing JoAnn Mills' testimony in the statement of facts); Mills v. Dunn, No. 6:17-cv-00789-LSC, 2020 WL 7038594 (N.D. Ala. Nov. 30, 2020) (reciting Court of Criminal Appeals' statement of facts that heavily relies on JoAnn's testimony); Br. of the Appellee, 39, Mills v. State, CR-130724 (Ala. Crim. App. Dec. 8, 2014) (State's brief to the Court of Criminal Appeals in Rule 32 proceedings citing JoAnn's testimony that "she witnessed Mills, not Howe, commit the murders" as primary evidence that "overwhelmingly established" Mr. Mills' guilt).

JoAnn Mills inculpated Benjie, not Jamie, in her first two statements and only inculpated Jamie in her third statement. (R1. 44, 57, 747, 837-39.) As the District Attorney told the jury in closing argument, this case came down to a he said/she said and "somebody's got to be telling a story." (R1. 911.) JoAnn's testimony was critical to, if not dispositive of, the State's case.

It is also undisputed that the trunk of the Mills' car can be popped open with a finger and that Benjie Howe was familiar with and had used the car on several occasions. (R1. 538, 792). When officers found the weapons and evidence from the Hills' home in the trunk, JoAnn's first statements were that she was worried about what Benjie Howe had put in their trunk. (R1. 92-93 ("her main concern was that Benjie Howe had put something in the trunk of the car"); R1. 375 ("Benjie Howe came by here last night . . . he's left stolen stuff before. You know, I don't want to get in trouble for something Benjie Howe has done."); R1. 728.) Only after a weekend in jail, and after officers lied to JoAnn and told her that Mr. Mills' DNA was found at the scene (R1. 841) and threatened that she would never see her children again (R1. 843-44), did JoAnn implicate Mr. Mills (R1. 44, 56-59, 747, 837-39).

Mr. Mills was excluded from the DNA evidence found on the murder weapons (R1. 616, 626) Benjie Howe's DNA, however, was never directly compared to these profiles. (R1. 617, 645.)

Finally, Benjie's "alibi" witnesses, Thomas Green and Melissa Bishop were unable to vouch for him. Benjie Howe testified that he spent June 24, 2004, with Thomas Green, only leaving Green's house to go to Jamie and JoAnn's house around 7:00 p.m. (R1. 873-74, 877-78.) Melissa Bishop, however, testified that she picked Benjie up from Thomas Green's house sometime between noon and 3:00 p.m. that day, not 7:00 p.m. as Benjie testified. (R1. 868-69.) She also testified that they were gone for only a few minutes. (R1. 868-69.) Thomas Green, however, testified Melissa and Benjie were gone for several hours. (R1. 864-66.) In direct conflict with this "alibi," Melissa testified that if Thomas stated they were "gone four hours" then "he'd be lying." (R1. 869-70.)

Because the State also did not provide a time of death for Floyd Hill, the Hills could have been killed or attacked much earlier in the day and not around 6:00 p.m., as the State attempted to establish at trial. (R1. 740). If the crime occurred earlier in the day, Benjie Howe and JoAnn Mills would have no alibi. JoAnn was not with Jamie Mills, who testified that he slept until late on June 24th, waking sometime after lunch, and then spent the rest of the day with JoAnn. (R1. 795-96.) And Benjie was not with his two "alibi" witnesses in the first half of the day either: Neither Thomas Green nor Melissa Bishop established what time they first saw Benjie on June 24th. Their testimony was inconsistent regarding Benjie's whereabouts in either the afternoon or the evening, and provided no account for his

activities on the morning of the 24th.

The State primarily tried to establish the timing of the murders through JoAnn's testimony, but her account was also inconsistent. She testified that she, Mr. Mills, and the Hills went outside to look at the yard sale items at the Hills' home "[s]omewhere close to" 6:00 p.m., but then stated, "I'm not sure" about the time. (R1. 740.) She also testified that she did not know how long they were in the Hills' home or how long they were talking. (R1. 696.) JoAnn also testified that it was "dusky dark" when they went outside (R1. 697) but later stated it was not "dark dark," (R1. 739) and that it was raining. (R1. 697). Benjie testified that it was not raining (R1. 877) and Thomas Green testified that it was "sunny" that day (R1. 867).[6]

Testimony from the victims' family similarly raised questions about time. The Hills' granddaughter, Angela Jones, testified that her mother had called her around 6:30 p.m. on June 24, 2004, because her mother was "worried" that she "couldn't get in touch" with her parents. (R1. 388.) After receiving the call from her mother, Ms. Jones drove by her grandparents' house at about 8:05 p.m. (R1. 389.) When no one answered the door when she knocked, she called 911 for a welfare check. (R1. 392.) No evidence was presented as to how long Ms. Jones's

[6] Further, contrary to JoAnn's testimony that the murder of the Hills took place around 6:00 p.m., Benjie testified that Mr. Mills called him around 6:00 p.m., or maybe as early as 5:00 p.m., to say that he had some Lortabs for Benjie to pick up that he had obtained from the Hills. (R1. 879.)

mother had been trying to get in contact with the Hills, just that as of 6:30 p.m., their daughter was concerned enough to call Ms. Jones because "she couldn't get in touch with them." (R1. 388.)

During Mr. Mills' testimony, he stated that after he woke up that afternoon he and Joann were together until they went to his dad's home. (R1. 821.) From the timeline established at trial, the Hills could have been killed earlier that day while Mr. Mills was sleeping and while he would have no knowledge of where JoAnn was, or if she or Benjie had access to his car. During this time, JoAnn admitted to using methamphetamines (R1. 690) and in her June 28, 2004 statement, stated Benjie was over early that morning using methamphetamines with them. (R1. 58.)

During closing arguments, both the prosecution and the defense discussed the forensic evidence, the alleged role of methamphetamine in the crime, the possible role of Benjie Howe in the crime, and the possibility that the evidence in Mr. Mills' car trunk was staged or planted. (See R1. 887–920.) But the primary question for the jury was whether or not to believe JoAnn Mills: If the jury found her to be credible, then Mr. Mills' testimony and defense counsel's arguments would have been undermined. On the other hand, if the jury had reason to question JoAnn's credibility, then the entire prosecution's case would have been called into question.

Therefore, contrary to the district court's finding, doc. 48, at 16, JoAnn's

testimony was "crucial" to, if not dispositive of, the State's case. Mills, 62 So. 3d at 599. Her testimony was the key piece of evidence that specifically connected Mr. Mills to this crime—otherwise, the evidence equally incriminated JoAnn herself or Benjie Howe. In the face of DNA testing excluding Jamie Mills, and the State's refusal to directly test the DNA against Benjie Howe, Benjie Howe in fact remains the most credible suspect.

Without JoAnn's testimony, the Court is left with evidence that Benjie Howe had equal access to the Mills' unlocked trunk (R1. 422-25, 538, 792, 798-801, 881); that Mr. Mills was excluded as a contributor to the unidentified DNA found on the handles of the murder weapons (R1. 616, 626); that the State never directly compared this DNA to Benjie Howe's DNA profile (R1. 617, 645); that Benjie Howe and JoAnn Mills do not have alibis for critical periods of June 24 (R1. 795-96, 865-70); that the State did not establish *when* the Hills were killed; that JoAnn's testimony against Mr. Mills was obtained only after she was told capital murder charges would be dismissed if she testified against Mr. Mills, doc. 42-2; and most critically, that the State prosecutor intentionally deceived not only defense counsel, but also the jury and the courts (R1. 829-30).

Evidence that JoAnn Mills did in fact receive a plea deal in exchange for her story, *prior* to her testimony, doc. 42-1, that JoAnn Mills affirmatively lied about the existence of such a deal (R1. 685-86, 720-23), and most critically, that the State

prosecutor himself knowingly made false statements to the jury, defense counsel, and the courts about the existence of a deal (R1. 829-30), undoubtedly creates a probability of a different result at trial. Granting a COA on the question of whether Mr. Mills should be permitted to reopen his case would prevent a "grave miscarriage of justice." United States v. Beggerly, 524 U.S. 38, 47 (1998). On the other hand, affirming the district court decision would reward the State's exceptional misconduct—misconduct that has prevented Mr. Mills from ever receiving merits review of this issue—and undermine the integrity of Mr. Mills' conviction and death sentence. Giglio, 405 U.S. at 153 ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'") (quoting Mooney, 294 U.S. at 112).

Given the centrality of JoAnn's testimony to Mr. Mills' conviction and denial of habeas review, there is a "reasonable likelihood" that this new evidence would affect the judgment of the jury. Agurs, 427 U.S. at 103; Giglio, 405 U.S. at 154 (requiring reversal where "the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility") (citations omitted).

C. Tony Glenn's Affidavit is Corroborated by Additional Evidence which Justifies Reopening Mr. Mills' Case.

Reasonable jurists could debate whether the district court's finding of no "proof of a *Brady* violation," doc. 48, at 21, was contrary to both the factual record

and controlling precedent. First, reasonable jurists could debate whether the "only 'evidence'" that Mr. Mills offered in support of his claim was Mr. Glenn's "2024 affidavit which references his September 2017 attorney fee declaration." Doc. 48, at 17-18; see also Doc. 48, at 15 ("Mills has produced no documentary evidence of a plea deal prior to Mills' trial. He has merely produced Glenn's affidavit, in which he makes vague references to entries in his fee declaration.").

Attorney Glenn affirmed under penalty of perjury that he and the District Attorney "agreed that if JoAnn testified truthfully, he would not pursue the capital charge and would agree to a plea of murder." Doc. 42-1. The district court cites the affidavits of District Attorney Jack Bostick and Investigator Ted Smith's affidavits, Doc. 44-1, 44-2, to rebut Mr. Glenn's assertion that there was an agreement. See Doc. 48, at 10-11, 15. But in fact, these two affidavits actually corroborate Mr. Glenn's affidavit in a significant way by establishing that a representative from the District Attorney's office, Investigator Smith, met with JoAnn and that he "encouraged [JoAnn] to testify for the State in the case of Jamie Mills." Doc. 44-2; see also Doc. 44-1.

When taken together, the three affidavits establish the following: that Tony Glenn reached an agreement with the District Attorney's office that if JoAnn testified truthfully, she would not be subject to capital charges, doc. 42-1; that District Attorney Bostick pursued a plea deal on JoAnn's behalf with the victims'

family prior to her testimony, doc. 44-1; that while District Attorney Bostick states he did not personally extend an offer to JoAnn, Ted Smith "talked to JoAnn Mills about her testimony," doc. 44-1; that "investigators knew [they] were not allowed to negotiate any sort of deal," which was "strictly the purview of the prosecutors," doc. 44-1; but that nonetheless Ted Smith "encouraged [JoAnn] to testify for the State in the case of Jamie Mills," doc. 44-2; that District Attorney Bostick was aware of this meeting but failed to disclose it, doc. 44-1; and that "Tony Glenn believed it would be in his client's best interest to testify against Jamie Mills," doc. 44-1. Additionally, JoAnn Mills' plea to life *with* parole just days after Mr. Mills' sentencing corroborates Mr. Glenn's affidavit and is evidence of an agreement with the State. Doc. 42-2.

And, to the extent that the district court characterized Mr. Glenn's affidavit as containing "vague references to entries in his fee declaration," doc. 48, at 15,[7] it is certainly debatable whether the court's reading of the affidavit is unreasonable. On its face, Tony Glenn's affidavit is evidence that a plea understanding was reached prior to JoAnn's testimony. This evidence is made all the more credible by the position it places Mr. Glenn in. As the district court points out "if Glenn's affidavit is to be believed, then Glenn sat in court on August 22, 2007, and watched

[7] Mr. Glenn asserts that he had multiple meetings with the District Attorney prior to JoAnn's testimony. He states those meetings are recorded in his attached fee sheet. Doc. 42-1. These references are straightforward and concrete.

both JoAnn and District Attorney Bostick repeatedly perjure themselves, yet said nothing to the Court." Doc. 48, at 21. This emphasizes both the exceptional nature of the situation warranting relief under Rule 60(b)(6) and the reason why Mr. Glenn would not have come forward with this information earlier—it is in fact *incredible* that Mr. Glenn would make these assertions if they were not true.

Moreover, even if this Court were to discount the corroborating value of evidence of multiple meetings held before trial and JoAnn Mills' subsequent plea to a parolable sentence, despite being charged with capital murder at the time of her testimony, it is certainly debatable among jurists of reason as to whether the district court's finding—that Mr. Glenn's affidavit is insufficient to establish a Brady violation for purposes of reopening his case pursuant to Rule 60—conflicts with well-established Eleventh Circuit and U.S. Supreme Court precedent providing that the State may reach an agreement verbally and through a representative *not* authorized to enter into the agreement, and still be required to disclose. Giglio, 405 U.S. at 152, 154-55 (requiring disclosure of inducement offered by assistant DA *without authority* to enter into plea agreement, even when inducement was not communicated to prosecuting attorney and was not in writing); see also Guzman v. Sec'y, Dep't of Corr., 663 F.3d 1336, 1349 (11th Cir. 2011) (requiring disclosure of monetary reward made to State's critical witness by detective, even where detective "could not recall if [this benefit] was disclosed to

the trial prosecutor"); Brown v. Wainwright, 785 F.2d 1457, 1461 (11th Cir. 1986) (requiring disclosure of offer of "favorable consideration" if key witness testified against petitioner).

The district court also relies on several scrivener's errors in Mr. Glenn's fee affidavit to undermine the entire integrity of Mr. Glenn's affirmation. Doc. 48, at 18-20. No one, however, contests that Mr. Glenn was present at Mr. Mills' trial when JoAnn testified on August 22, 2007. See, e.g., Doc. 48, at 3; Doc. 47, at 4. Clearly, Mr. Glenn erroneously listed the dates of JoAnn's testimony at Mr. Mills' trial as 09/11/07 and 09/12/07 instead of 08/21/07 and 08/22/07. Although JoAnn only offered testimony on August 22, 2007 (R1. 685-777), Mr. Glenn and JoAnn were prepared for her to potentially testify the day prior, on August 21. Additionally, the verdict in Mr. Mills' case indisputably took place on 08/23/07 but again, Mr. Glenn's discussion with JoAnn about the verdict was inadvertently listed as taking place on 09/13/07 in his fee affidavit. Scrivener's errors do not destroy a document's credibility, in fact the State often argues that scrivener's errors in important documents, such as indictments, do not affect the document's reliability or purpose. See, e.g., United States v. Wall, 285 F. App'x 675, 684 (11th Cir. 2008) (finding "a scrivener's error in the indictment is not grounds for reversal").

Additionally, given the clear transposition of numbers in Mr. Glenn's

affidavit, all of the plea discussions with the district attorney take place prior to JoAnn's testimony at trial. See Doc. 42-1. The meetings that take place after the verdict are regarding "entry of plea" and "ramifications of plea," as opposed to ongoing negotiations. Doc. 42-1. The district court also emphasizes that "Glenn's fee declaration nowhere states explicitly that District Attorney Bostick proposed this plea offer or that discussions were actually fruitful for Glenn and JoAnn." Doc. 48, at 20. There is no requirement, however, that the District Attorney be the person who offers the agreement or that there be notations about the agreement in writing. Giglio, 405 U.S. at 152, 154-55. Tony Glenn's affidavit is the explicit evidence that an understanding was reached prior to JoAnn's testimony at Mr. Mills' trial. Doc. 42-1. This evidence is corroborated both by the quick dismissal of capital charges against JoAnn after her testimony and the exposure to capital charges JoAnn's testimony gave her. It is again incredible that Tony Glenn would allow JoAnn to testify as she did without at least some informal understanding that she would not be subject to capital charges. The district court's failure to give Tony Glenn's affidavit adequate weight, without a hearing or any serious inquiry, was an abuse of discretion.

In Tharpe v. Sellers, the U.S. Supreme Court vacated the Eleventh Circuit's denial of a COA where the court failed to credit an affidavit establishing the fact at issue, that a juror based their vote on the race of the defendant. 583 U.S. 33, 34

(2018); see also Miller-El, 537 U.S. at 341 (finding denial of COA to be in error where "District Court did not give full consideration to the substantial evidence petitioner put forth" and "[i]nstead, accepted without question the [lower] court's evaluation" of the facts at issue). The Court found that based on the affidavit presented, "reasonable jurists" could disagree as to the prejudice to the defendant. Id. Likewise here, reasonable jurists could certainly find that Tony Glenn's affidavit establishes the existence of a plea deal, even in light of the State's affidavits, and that Mr. Mills was prejudiced by this. The district court's wholesale dismissal of the affidavit was in error. See Miller-El, 537 U.S. at 348 ("The COA inquiry asks only if the District Court's decision was debatable.").

D. Mr. Mills' Motion Is Timely.

Rule 60 requires that the Plaintiff bring a Rule 60(b)(6) motion within a "reasonable time." Liljeberg, 486 U.S. at 863, 869 (finding motion brought in reasonable time where "the entire delay is attributable to Judge Collins' inexcusable failure to disqualify himself"). The district court found that Mr. Mills did not bring this motion within a "reasonable time" because he could have acquired Tony Glenn's affidavit earlier. Doc. 48, at 21-22. In making this finding, the district court ignores both the record in this case—which establishes that Mr. Mills has diligently pursued this evidence, in asking the State to comply with state and federal requirements to reveal the existence of a prior plea deal with JoAnn

Mills—and the clearly established Supreme Court case law, which provides that defendants are not required to "scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed." Banks v. Dretke, 540 U.S. 668, 695 (2004); see also Moore v. Sec'y, Fla. Dep't of Corr., 762 F. App'x 610, 623 (11th Cir. 2019) (finding abuse of discretion in denying Rule 60(b)(6) motion where district court relied on an incorrect application of case law).

For seventeen years, counsel for Mr. Mills has been asking prosecutors in this case whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, the district court and the appellate courts that there was no plea offer in exchange for JoAnn's testimony. And for seventeen years, the State has continued to assert that no such evidence exists, denying Mr. Mills any opportunity for process on this important issue.

Since his arrest, Mr. Mills has made fifteen distinct requests for information about a plea offer, and each time the State failed to disclose this information as it is constitutionally obligated to do:

1. In a pre-trial motion filed July 14, 2004, defense counsel requested disclosure of any deals, promises or inducements given to witnesses. (C1. 19-25.)

2. In a second pre-trial motion filed February 2, 2007, defense counsel again requested disclosure of any deals, promises or inducements given to witnesses. (C1. 59-61.)

3. At trial, defense counsel questioned JoAnn Mills at length about the existence of any deal. (R1. 720-23) ("Q. You're just up here admitting to capital murder without any hope of help from the district attorney's office? A. No sir. Q. You do expect help from the district attorney's office? A. No, sir. Q. Has anybody told you that if you get up here and tell this story that the district attorney will have pity on you and let you plead to something besides murder? A. No, sir. Q. So you expect as a result of your testimony today to get either life without parole or death by lethal injection? A. Yes. Q. Is that what you expect? A. Possibly.")

4. At trial, defense counsel asked the trial court to allow him to question District Attorney Jack Bostick on the record about any inducements (R1. 829-30) (Mr. Wiley: We want to ask you -- or ask Judge to direct him to assure us, him being Jack [District Attorney Bostick], that there is no inducement for JoAnn's testimony. Mr. Bostick: There is not. Mr. Wiley: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an inducement. Mr. Bostick: There is none. Mr. Wiley: None? Mr. Bostick: Have not made any promises, nothing. Mr. Wiley: Have you suggested that a promise might be made after she testifies truthfully? Mr. Bostick: No. Mr. Wiley: No inducement whatsoever? Mr. Bostick: No.)

5. On October 2, 2007, Mr. Mills filed a motion for a new trial, arguing that the State's dismissal of capital murder charges and JoAnn's plea to murder just days after Mr. Mills was sentenced to death was evidence that JoAnn had an agreement with the State. (C1. 120-21.)

6. In 2008, Mr. Mills raised this issue on appeal to the Alabama Court of Criminal Appeals, arguing that the State failed to disclose a "deal, arrangement or understanding" with JoAnn Mills "in spite of having been ordered to do so by the Court" and in spite of its obligations under State and Federal law. (Appellant's Br. 13-14, Mills v. State, CR-06-2256 (Ala. Crim. App. Feb. 1, 2008).)

7. In 2009, Mr. Mills raised this issue again in his Petition for Writ of Certiorari to the Alabama Supreme Court. (Pet. for Writ of Cert., 117-18, Mills v. State, No. 1080350 (Ala. Feb. 6, 2009).)

8. In 2011, Mr. Mills raised this Brady issue in his Rule 32 Petition. (Pet. for Relief from Judgment Pursuant to Rule 32, ¶¶ 177-181, Mills v. State, CC-2004-402.60 (Marion Cty. Circ. Ct. Nov. 21, 2011).)

9. In 2011, Mr. Mills requested an evidentiary hearing on his Brady/Napue, ineffective assistance of counsel, and juror misconduct claims. (Id., ¶ 194.) The trial court granted the request for a hearing on the juror misconduct claims, but summarily dismissed the Brady/Napue claim and the ineffective assistance of counsel claims without a hearing. (Order, Mills v. State, CC-2004-402.60 (Marion Cty. Circ. Ct. July 19, 2013).)

10. In 2014, Mr. Mills filed a motion to reconsider the trial court's order denying his Rule 32 petition specifically requesting that the court allow him to present evidence in support of the Brady/Napue and ineffective assistance of counsel claims at an evidentiary hearing. (Mot. to Reconsider Order Denying Rule 32 Pet., Mills v. State, CC-2004-402.60 (Marion Cty. Circ. Ct. Feb. 12, 2014).) The trial court summarily denied the motion. (Order, Mills v. State, CC-2004-402.60 (Marion Cty. Circ. Ct. Feb. 13, 2014).)

11. In 2014, Mr. Mills appealed the lower court's dismissal of the Brady claim to the Court of Criminal Appeals. (Appellant's Br. 90-91, Mills v. State, CR-130724 (Ala. Crim. App. Oct. 28, 2014).)

12. In 2016, Mr. Mills filed a petition for writ of certiorari to the Alabama Supreme Court raising the State's failure to disclose this evidence in violation of Brady. (Pet. for Writ of Certiorari, 66-67, Mills v. State, No. 1150588 (Ala. Mar. 11, 2016).)

13. In 2017, Mr. Mills filed a Petition for Writ of Habeas Corpus with the district court. (Pet. for Writ of Habeas Corpus, ¶¶ 200-04, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. May 12, 2017) ("Mr. Mills alleges that JoAnn Mills received an undisclosed deal in return for her testimony and guilty plea. The State did not provide such information to the defense, despite trial counsel's request for such information.") The State told the Court that there is no evidence to support this claim other than Mr. Mills' "pure speculation." (Resp't Br. on the Merits, 96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017).)

14. In 2018, Mr. Mills filed a motion asking the district court for an evidentiary hearing on this claim arguing that the State "failed to disclose that its key witness, JoAnn Mills, received an undisclosed deal in return for her testimony and guilty plea, that the State was aware that JoAnn gave perjured testimony and that the State failed to report it to the court in violation of Napue v. Illinois, 360 U.S. 264, 269 (1959) and Brady v. Maryland, 373 U.S. 83, 87 (1963)" and that because "Mr. Mills was diligent in seeking an evidentiary hearing in state court, and his allegations, taken as true, entitle him to habeas relief, he is entitled to a federal evidentiary hearing." (Req. for an Evidentiary Hr'g, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. April 3, 2018).)

15. In 2024, Mr. Mills filed a Second Rule 32 Petition alleging that newly discovered evidence establishes that the District Attorney had promised JoAnn leniency in exchange for her testimony; that he illegally concealed this evidence from defense counsel; that he made false representations to the Court during trial that no such evidence existed; that he permitted JoAnn Mills to falsely testify that she did not have a deal; and that the State has continued to rely on this falsehood, instead of disclosing the agreement as it is required to do, for seventeen years. (Pet. for Relief from Judgment Pursuant to Rule 32, Mills v. State, CC-2004-402.61 (Marion Cty. Circ. Ct. Mar. 4, 2024).)

Despite Mr. Mills' continued and persistent efforts, the district court found that Mr. Mills had a duty to make Mr. Glenn disclose the State's misconduct at an earlier time—to essentially hold the State to its prosecutorial oath—and that any delay must be held against Mr. Mills. (Doc. 48, at 22 ("Mills' counsel never spoke to him about Mills' case or JoAnn's testimony until February 23, 2024, nearly a month after the State moved for Mills' execution to be set.").) Mr. Mills, however, is definitively not required to "scavenge" for misconduct in the face of

representations from the State that "all such material has been disclosed." Banks, 540 U.S. at 695-96 ("A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process."). Mr. Mills has continually attempted to uncover the existence of JoAnn's plea deal but, much like the district court, relied on the State's continued denials that "any such deal existed." (Doc. 44, at 24.)

In Banks, the State argued (as the State does here) that Banks failed to establish good cause, or diligence, because he did not attempt to locate and interview possible witnesses to establish his claim that the prosecution suppressed evidence that Farr, a key state witness, was a paid informant, specifically that Banks failed "to attempt to locate Farr and ascertain his true status, or to interview the investigating officers, such as Deputy Huff, to ascertain Farr's status." Banks, 540 U.S. at 695 (internal quotations omitted). The Supreme Court's rejection of this argument was unequivocal: "Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed." Id.

The Eleventh Circuit has followed this precedent in Rule 60 proceedings, finding the fact that the petitioner eventually gained access to withheld evidence through other means, did not "diminish [his] due diligence." In re Glob. Energies, LLC, 763 F.3d 1341, 1349 (11th Cir. 2014) ("the parties, who had the evidence that

Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal"); see also Liljeberg, 486 U.S. at 869 (finding that although delay would typically foreclose relief, "in this case the entire delay is attributable to Judge Collins' inexcusable failure to disqualify himself" and therefore, the delay cannot be held against the petitioner). Accordingly, the State's argument—that Mr. Mills has failed to bring this motion within a reasonable time because he failed to uncover evidence in the face of definitive assurances from the State that no such evidence exists—must be rejected.

III. Reasonable Jurists Could Debate Whether the District Court Erred in Finding Mr. Mills Is Not Entitled to Relief Pursuant to Rule 60(b)(2).

Rule 60(b)(2) permits relief from a final judgment, order, or proceeding based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) . . . ." Fed . R. Civ. P. 60(b)(2). To be entitled to relief under Rule 60(b)(2), the movant must demonstrate the new evidence was discovered after the judgment was entered and that he exercised due diligence in discovering that evidence, that the evidence is material and not merely cumulative or impeaching, and that the evidence was

likely to produce a different result. In re Glob. Energies, LLC, 763 F.3d 1341, 1347 (11th Cir. 2014).

The district court applied the wrong legal standard in concluding that Mr. Mills "did not exercise reasonable diligence in discovering his new evidence." Doc. 48, at 14. Mr. Mills was not required to "scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed." Banks, 540 U.S. at 695. The fact that Mr. Mills eventually gained access to withheld evidence through other means, did not "diminish [his] due diligence." In re Glob. Energies, LLC, 763 F.3d at 1349.

Accordingly, the district court's conclusion—that Mr. Mills has failed to exercise reasonable diligence for failing to uncover evidence in the face of definitive assurances from the State that no such evidence exists—is an abuse of discretion. Mr. Mills exercised due diligence in discovering this evidence. For seventeen years, counsel for Mr. Mills has been asking prosecutors in this case whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, the district court and the appellate courts that there was no plea offer in exchange for JoAnn's testimony. Because the State denied the existence of this evidence under oath, and continued to rely on this denial throughout the appeals process, this evidence was not known to Mr. Mills or his counsel prior to February 23, 2024, when Tony Glenn revealed to undersigned counsel that he had a plea

agreement in place when JoAnn Mills testified against Jamie Mills. In re Glob. Energies, LLC, 763 F.3d at 1348 (plaintiff entitled to relief from judgment on the basis of discovery of new evidence that involuntary bankruptcy filing was done in bad faith); see also Liljeberg, 486 U.S. at 869 (finding that although delay would typically foreclose relief, "in this case the entire delay is attributable to Judge Collins' inexcusable failure to disqualify himself" and therefore, the delay cannot be held against the petitioner).

The Eleventh Circuit has addressed this scenario in the Rule 60(b)(2) context, in which "a sworn officer of the court" obstructed access to evidence. In re Glob. Energies, LLC, 763 F.3d at 1348. There, the Court found the fact that the petitioner eventually gained access to the evidence through other means, did not "diminish [his] due diligence." Id. at 1349 ("the parties, who had the evidence that Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal"); see also Banks v. Dretke, 540 U.S. 668, 693 (2004) ("[B]ecause the State persisted in hiding Farr's informant status and misleadingly represented that it had complied in full with its Brady disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr's connections to

Deputy Sheriff Huff.").

The district court also found that Mr. Mills' claim for relief under Rule 60(b)(2) is untimely because it was not brought within a year. Doc. 48, at 14. However, because Mr. Mills' alleges facts that establish fraud on the court, Mr. Mills' claim was not limited by the one year rule. Rule 60 specifically provides that the "rule does not limit" a federal court's power to "entertain an independent action to relieve a party from a judgment, order, or proceeding" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(1), (3); see also Galatolo v. United States, 394 F. App'x 670, 671 (11th Cir. 2010) ("no limitations period diminishes a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; [or] ... (3) set aside a judgment for fraud on the court.") (internal citations and quotations omitted).

IV. Reasonable Jurists Could Debate Whether the District Court Erred in Finding Mr. Mills Claim to Relief under Rule 60(b)(3) Is Untimely and Without Merit.

The District Attorney made false statements under oath and on the record in this case. The State did not correct these false statements in federal habeas corpus proceedings, as it is obligated to do, Napue v. Illinois, 360 U.S. 264, 269 (1959), and instead urged the district court to rely on these false statements—and the district court did in fact rely on these statements—in denying Mr. Mills process and review of his claim. Mr. Mills asked for, and the district court denied, discovery, an

evidentiary hearing, habeas corpus relief, and a certificate of appealability. Concealing evidence about the plea deal that was central to Mr. Mills' habeas corpus petition is the kind of "fraud" contemplated by Rule 60 because it improperly influenced the district court's decisions related to this issue and prevented the court from performing an impartial review of the claim in this case. Relief is warranted pursuant to Rule 60 because to allow the State to proceed with an execution predicated on a false representation about a critical question of fact for the jury and the district court—JoAnn's reliability—would be a miscarriage of justice.

Rule 60(b)(3) protects against this miscarriage of justice by permitting a court to set aside a judgment due to "fraud . . . by an opposing party." The district court applied the wrong legal standard in finding that Mr. Mills' claim is untimely. The Court applied the one year period of Rule 60(c)(1) to find that Mr. Mills' claim is untimely. Doc. 48, at 17. However, because Mr. Mills alleges facts that establish fraud on the court, Rule 60(c)(1) does not apply to bar review of his claim. In cases of fraud on the court, Rule 60 "does not limit a court's power to" either "entertain an independent action to relieve a party from a judgment" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(b)(3), (d)(1), (d)(3). The commentary to Rule 60 notes that Rule 60(d) reflects the inherent power to vacate a judgment obtained by fraud on the court that the Supreme Court espoused in

Hazel-Atlas. Fed. R. Civ. P. 60 advisory committee's note, 1946 Amendment (referencing Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944)) ("the rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause").

Relief is warranted pursuant to Rule 60(b)(3) because new evidence establishes that the District Attorney committed egregious misconduct by lying to the court, the jury, and defense counsel, about the existence of a plea deal. The State continued to rely on this false evidence in arguing that Mr. Mills is due no process on his claims in federal court. The State's representation in its response to Mr. Mills' § 2254 petition that no evidence of a deal exists; failure to correct the false representations on the record; and use of those false representations in asking the district court to find that Mr. Mills is entitled to no process on his claim, are evidence of fraudulent deception. Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1309 (11th Cir. 2003) (citing Frederick v. Kirby Tankships, Inc., 205 F.3d 1277, 1287 (11th Cir. 2000)) (Rule 60(b)(3) warranted where moving party establishes that adverse party's misconduct "prevented them from fully presenting his case").

The State, through District Attorney Bostick, made knowingly false statements to the trial court, the jury, and defense counsel, about a critical question of fact at trial. The State has not corrected these deceptive statements and has

continued to repeat them in the district court. Fraud has been committed on the district court by the State's knowing endorsement of the District Attorney's intentional deception. Zakrzewski, 490 F.3d at 1267 (quoting Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1551 (11th Cir. 1985)) ("'Fraud upon the court' . . . embrace[s] . . . fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.'").

The district court also found that Mr. Mills' claim for relief under Rule 60(b)(3) is untimely because it was not brought "within a year." However, because Mr. Mills' alleges facts that establish fraud on the court, Mr. Mills' claim was not limited by the one year rule. Rule 60 specifically provides that the "rule does not limit" a federal court's power to "entertain an independent action to relieve a party from a judgment, order, or proceeding" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(1), (3); see also Galatolo v. United States, 394 F. App'x 670, 671 (11th Cir. 2010) ("no limitations period diminishes a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; [or] ... (3) set aside a judgment for fraud on the court.") (internal citations and quotations omitted).

The district court's conclusions—that Mr. Mills is not entitled to relief under 60(b)(3) and that his claim is untimely—constitute an abuse of discretion. Rule

60(d) relief must be available in a case such as Mr. Mills in which, not only an attorney is implicated, but a State prosecutor is responsible. Berber v. Wells Fargo, NA, No. 20-13222, 2021 WL 3661204, at *3 (11th Cir. Aug. 18, 2021). The fraud "denied Petitioner of his right to due process and his right to full and fair access to [the district court], and it subsequently led to the denial of Petitioner's habeas petition[,]" as well as denial of his ability to obtain discovery or an evidentiary hearing. Zakrzewski, 490 F.3d at 1266-67 (remanding to district court for proceedings to determine if the petitioner had met the requirements for fraud on the court).

V. CONCLUSION.

For these reasons, Petitioner Jamie Mills respectfully requests from this Court a certificate of appealability for this critical issue, discussed herein.

Respectfully submitted,

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May 23, 2024

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume litigation of Fed R. App. P. 32(a)(7)(B), made applicable by Eleventh Circuit Rule 22-2, because it contains 12,723 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman font.

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: **Lauren Simpson**.

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON

No. 24-11661

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DEATH PENALTY CASE

JAMIE MILLS,

Petitioner-Appellant,

v.

JOHN HAMM,
Commissioner of the
Alabama Department of Corrections,

Respondent-Appellee.

EMERGENCY MOTION FOR STAY OF EXECUTION

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May 23, 2024

EXECUTION SCHEDULED FOR MAY 30, 2024 AT 6:00 P.M. CST

CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel certifies the following persons may have an interest in the outcome of this case:

Bentley, John – former Marion County Circuit Court Judge;

Bostick, Jack – former District Attorney for Marion County;

Brasher, Andrew – former Solicitor General of Alabama;

Cashion, James C. – former Marion County District Court Judge;

Coogler, L. Scott – Chief United States District Judge;

Cook, Neal – Assistant District Attorney for Marion County;

Dickinson, Rodney – Attorney initially appointed to represent Petitioner-Appellant at trial;

Dunn, Jefferson S. – former Commissioner, Alabama Department of Corrections and former Respondent;

Govan, Thomas – Counsel for State on direct appeal and in state postconviction and federal habeas proceedings and Assistant Attorney General of Alabama;

Hamm, John – Commissioner, Alabama Department of Corrections and Respondent;

Hill, Floyd – Victim;

Hill, Vera – Victim;

Jackson, Jerry – Attorney initially appointed to represent Petitioner-Appellant at

trial;

King, Troy – Counsel for State on direct appeal and former Attorney General of Alabama;

Marshall, Steve – Attorney General of Alabama and Respondent;

Mathis, William – Trial counsel and counsel for Petitioner-Appellant at the Alabama Court of Criminal Appeals;

Maxymuk, Benjamin – Counsel for Petitioner-Appellant in direct appeal proceedings at the Alabama Supreme Court;

Miller, Kathryn – Counsel for Petitioner-Appellant in state postconviction proceedings;

Mills, Jamie – Petitioner-Appellant;

Mills, JoAnn – Codefendant;

Morrison, Charlotte – Counsel for Petitioner-Appellant in state postconviction and federal habeas proceedings;

Selden, John – Counsel for State in federal habeas proceedings and Assistant Attorney General of Alabama;

Setzer, Angela – Counsel for Petitioner-Appellant;

Simpson, Lauren – Assistant Attorney General of Alabama and counsel for Respondent;

Stevenson, Bryan – Counsel for Petitioner-Appellant in direct appeal proceedings;

Strange, Luther – former Attorney General of Alabama;

Susskind, Randall – Counsel for Petitioner-Appellant;

Vick, Paige – former Assistant District Attorney for Marion County;

Wiley, John – Trial counsel and counsel for Petitioner-Appellant at trial and on direct appeal.

INTRODUCTION

Petitioner Jamie Mills respectfully requests that this Court stay his execution pending the disposition of his Motion for a Certificate of Appealability ("COA") filed simultaneously with this Court on May 23, 2024, and pending the disposition of his underlying Rule 60 motion.

For seventeen years, Mr. Mills has maintained that the District Attorney had an undisclosed deal with central witness, JoAnn Mills, in exchange for her sole eyewitness testimony. And for seventeen years, the State has denied the existence of any agreement with JoAnn.

Newly discovered evidence establishes that the District Attorney's statements at trial, and the State's representatives throughout the appeals and postconviction proceedings, were false. The declaration of Attorney Tony Glenn, who represented JoAnn Mills in her capital murder case, establishes that prior to Mr. Mills' capital trial, Mr. Glenn met with District Attorney Jack Bostick and the family of Vera and Floyd Hill and that during that meeting, he advocated for JoAnn by presenting her life history of mitigating evidence in an effort to obtain a deal that could spare her from the death penalty. Doc. 42-1. Mr. Glenn was successful: the District Attorney ultimately agreed to a life sentence, instead of the death penalty, if she would testify truthfully at Mr. Mills' trial. Doc. 42-2. Mr. Glenn's affidavit is corroborated by his attorney fee declaration and by the fact that,

consistent with the prosecution's plea deal with JoAnn, on September 24, 2007, just ten days after Jamie Mills was sentenced to death, the State dismissed Capital Murder charges against her and she pled to the lesser included offense of straight Murder. Doc. 42-2.

This new evidence means that District Attorney Jack Bostick falsely told the trial court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

Now that new evidence has emerged that the District Attorney met with JoAnn to discuss a plea deal and her expected testimony against Mr. Mills, the District Attorney admits that the meeting occurred but that he believed it did not need to be disclosed—despite being asked repeatedly before, during, and after trial—because his investigator conducted the meeting and because a formal agreement was never signed. Any reasonable prosecutor would have known that they were required to disclose the fact that its star witness requested to meet regarding a potential plea, that the District Attorney ordered the witness be brought from the jail to meet with his investigator, and that the witness previewed her

testimony at the meeting. The court-ordered discovery in this case included information "that would tend to show bias or tend to impeach the witness's testimony or would lead to impeaching information." (C1. 54.) Moreover, well-established U.S. Supreme Court precedent provides that a prosecutor may reach an agreement verbally and through a representative *not* authorized to enter into the agreement, and still be required to disclose. Giglio v. United States, 405 U.S. 150, 152 (1972) (requiring disclosure of inducement offered by assistant DA *without authority* to enter into plea agreement, even when inducement was not communicated to prosecuting attorney and was not in writing).

Because the State's false representations were unquestionably material to critical decisions made by the district court, including whether Mr. Mills was entitled to an evidentiary hearing, discovery, a certificate of appealability and, ultimately, to habeas corpus relief, Mr. Mills filed a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure, seeking relief from the district court's November 30, 2020, order denying habeas corpus relief.

Mr. Mills filed his Rule 60 motion on April 5, 2024. See Doc. 42. The district court denied Mr. Mills' Rule 60 motion and motion for a stay of execution on May 17, 2024, see doc. 48, and denied Mr. Mills' motion for a certificate of appealability on May 21, 2024. Doc. 50. In denying relief, the district court concluded that the District Attorney cannot be held accountable for this

misconduct because the burden was on Mr. Mills to know what the State hid all these years. Insulating prosecutors from accountability for making knowingly false representations would render virtually unenforceable a basic premise of our legal system that the prosecution will refrain from dishonest and illegal conduct. Berger v. United States, 295 U.S. 78, 88 (1935) ("Courts, litigants, and juries properly anticipate that 'obligations . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.").

Moreover, in making this finding, the district court ignores both the record in this case—which establishes that Mr. Mills has diligently pursued this evidence, in asking the State to comply with state and federal requirements to reveal the existence of a prior plea deal with JoAnn Mills—and clearly established Supreme Court case law, which provides that defendants are not required to "scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed." Banks v. Dretke, 540 U.S. 668, 695 (2004).

Mr. Mills is entitled to a stay of execution to enable him to obtain a COA and a proper consideration of this critical issue.

Mr. Mills is currently scheduled to be executed by the State of Alabama on May 30, 2024. A stay is warranted to prevent mooting of Mr. Mills' claims while this Court considers the critical issues raised. Lonchar v. Thomas, 517 U.S. 314, 320–21 (1996) ("If the district court cannot dismiss the petition on the merits

before the scheduled execution, it is obligated to address the merits and must issue a stay to prevent the case from becoming moot."); Barefoot v. Estelle, 463 U.S. 880, 893–94 (1983) ("[A] circuit court, where necessary to prevent the case from becoming moot by the petitioner's execution, should grant a stay of execution. . ."). Mr. Mills is entitled to a stay of execution where he demonstrates:

> (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.

Siebert v. Allen, 506 F.3d 1047, 1049 (11th Cir. 2007). This Circuit has held that where the State is the opposing party, the third and fourth elements are the same. Swain v. Junior, 958 F.3d 1081, 1091 (11th Cir. 2020) (citing Nken v. Holder, 556 U.S. 418, 435 (2009)).

ARGUMENT

I. Mr. Mills is Likely to Prevail on the Merits.

The capital conviction in this case was built primarily on the third statement of JoAnn Mills.[1] As the District Attorney told the jury, this case came down to a he said/she said:

[1] In the two statements provided on June 25, 2004, JoAnn Mills denied any involvement in the murders, provided an alibi for Jamie Mills, and implicated Benjie Howe. JoAnn then provided a third statement on June 28, 2004, implicating Jamie Mills but JoAnn also told investigators that Benjie had been at her house twice on the day of the offense: once early in the morning to do meth and once in the evening to buy Lortab pills. (R1. 37, 58-60.)

> You've got two people, a husband and a wife, that say -- both say we were together all day long. One says they went looking at houses and bought cigarettes. The other one says they participated in a horrible, horrible double murder. You can't put those two together. . . . Somebody's got to be telling a story.

(R1. 911.)

Because her third statement implicating Jamie Mills was unquestionably necessary to the prosecution's case, the State took steps to ensure (1) that she testified consistent with her third statement (the one implicating Jamie Mills) and (2) that the jury not be informed that she was testifying to gain favor with the State. Because the relative credibility of JoAnn and Jamie Mills was a central question of fact for the jury, the existence or non-existence of any inducement for JoAnn's testimony at trial was pivotal for both the State and defense counsel. District Attorney Bostick understood this and that is why his first questions elicited her denial of any plea offer:

> Q: And are you doing this of your own free will?
>
> A: Yes, sir.
>
> Q: Have there been any deals or offers or anything like that made to you?
>
> A: No, sir.

(R1. 685-86.) Defense counsel, who had sought evidence of any pleas or inducements prior to trial, also questioned her about the existence of a deal:

> Q: You're just up here admitting to capital murder without

any hope of help from the district attorney's office?

A: No, sir.

Q: You do expect help from the district attorney's office?

A: No, sir.

Q: Has anybody told you that if you get up here and tell this story that the district attorney will have pity for you and let you plead to something besides murder?

A: No, sir.

Q: So you expect as a result of your testimony today to get either life without parole or death by lethal injection?

A: Yes.

(R1. 720-21.)

Defense counsel asked the trial court for permission to question District Attorney Jack Bostick "on the record" about the existence of a plea offer or any inducement. Bostick responded: "There is not." (R1. 830.)

MR. WILEY: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an Inducement.

MR. BOSTICK: There is none.

MR. WILEY: None?

MR. BOSTICK: Have not made her any promises, nothing.

MR. WILEY: Have you suggested that a promise might be made after she testifies truthfully?

MR. BOSTICK: No.

MR. WILEY: No inducement whatsoever?

MR. BOSTICK: No.

(R1. 830).

JoAnn Mills' testimony—that there was no deal—was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach her:

> She was not tripped up on anything. **Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did.** The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching. . . .

(R1. 915 (emphasis added).)

Mr. Mills has consistently maintained that the District Attorney illegally concealed a plea agreement with JoAnn Mills in exchange for her testimony. As evidence, he pointed to the fact that just days after she testified against him, the State **dismissed capital murder charges against her and agreed to a life sentence with parole.** Mr. Mills raised this issue throughout state postconviction and federal habeas corpus proceedings in the district court, asking prosecutors whether District Attorney Jack Bostick and JoAnn Mills truthfully represented to

the jury, defense counsel, and the trial court that there was no plea offer in exchange for JoAnn's testimony, and at each stage the State has asserted that there was no deal and that JoAnn and the District Attorney testified truthfully.

As the declaration submitted to the district court reveals, newly discovered evidence establishes that the District Attorney's statements at trial, and the State's representatives throughout the appeals and postconviction proceedings, were false. Attorney Glenn's affidavit establishes that prior to Mr. Mills' capital trial, Mr. Glenn had several conversations with District Attorney Jack Bostick about a plea agreement in exchange for JoAnn Mills' testimony at Jamie Mills' trial and that the District Attorney agreed to a life sentence, instead of the death penalty or life without parole, if she would testify truthfully at Mr. Mills' trial. See Doc. 42-1. This new evidence means that District Attorney Jack Bostick falsely told the trial court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

Any reasonable prosecutor would have known that they were required to disclose the fact that its star witness requested to meet regarding a potential plea, that the District Attorney ordered the witness be brought from the jail to meet with

his investigator, and that the witness previewed her testimony at the meeting. The court-ordered discovery in this case included "any and all other information [ ] that would tend to show bias or tend to impeach the witness's testimony or would lead to impeaching information." (C1. 54.) Moreover, well-established U.S. Supreme Court precedent provides that a prosecutor may reach an agreement verbally and through a representative *not* authorized to enter into the agreement, and still be required to disclose. Giglio v. United States, 405 U.S. 150, 152, 154–55 (1972) (requiring disclosure of an inducement offered by an assistant DA *without authority* to enter into a plea agreement, even when the inducement was not communicated to the prosecuting attorney and was not in writing); see also Guzman v. Sec'y, Dep't of Corr., 663 F.3d 1336, 1349 (11th Cir. 2011) (requiring disclosure of a monetary reward made to the State's critical witness by a detective, even where the detective "could not recall if [this benefit] was disclosed to the trial prosecutor"); Brown v. Wainwright, 785 F.2d 1457, 1461 (11th Cir. 1986) (requiring disclosure of an offer of "favorable consideration" if a key witness testified against the petitioner).

The District Attorney's misconduct was extraordinary and went to the crux of the State's case. JoAnn's testimony was key to the State's ability to prove its case against Mr. Mills beyond a reasonable doubt. The only pieces of physical evidence linking Mr. Mills to the offense were found in the trunk of the Mills' car.

(R1. 545-48.) The trunk, however, did not have a functioning lock (R1. 46, 538, 792) and the car itself did not require a key to start (R1. 792). Benjie Howe had driven the Mills' car previously (R1. 881), and had access to it shortly before and after the offense (R1. 419, 422-23, 799-800). Benjie also had a key to the Mills' home (R1. 791) and was found with the victims' medicine and a large amount of cash (R1. 40-41, 874, 882).

In two of her three statements to police, JoAnn Mills implicated Benjie Howe, not Jamie Mills. (R1. 88 ("She immediately said that Benjie Howe had been over at the residence."); R1. 121, 728-30, 837-838.) She told investigators that she thought Benjie had left stolen items in the house and directed them to some of the items. (R1. 88, 122-23.) She also stated that she was worried about items Benjie might have left in the trunk of their car. (R1. 92-93 ("her main concern was that Benjie Howe had put something in the trunk of the car").)

Mr. Mills was excluded from the DNA evidence found on the murder weapons (R1. 616, 626) and this evidence was never directly compared to Benjie Howe's DNA profile. (R1. 617, 645.)

In light of this new evidence, this Court is left with evidence that Benjie Howe had equal access to the Mills' unlocked trunk (R1. 422-25, 538, 792, 798-801, 881); that Mr. Mills was excluded as a contributor to the unidentified DNA found on the handles of the murder weapons (R1. 616, 626); that the State

never directly compared this DNA to Benjie Howe's DNA profile (R1. 617, 645); that Benjie Howe and JoAnn Mills do not have alibis for critical periods of June 24 (R1. 795-96, 865-70); that the State did not establish *when* the Hills were killed; that JoAnn's testimony against Mr. Mills was obtained only after she was told capital murder charges would be dismissed if she testified against Mr. Mills (Doc. 42-1, 42-2); and most critically, that the State prosecutor intentionally deceived not only defense counsel, but also the jury and the courts (R1. 829-30).

Evidence that JoAnn Mills did in fact receive a plea deal in exchange for her story, *prior* to her testimony, that JoAnn Mills affirmatively lied about the existence of such a deal (R1. 685-86, 720-23), and most critically, that the State prosecutor himself knowingly made false statements to the jury, defense counsel, and the courts about the existence of a deal (R1. 829-30), undoubtedly creates a probability of a different result at trial. Accordingly, Mr. Mills is likely to prevail on his claims for relief pursuant to Rules 60(b)(2), (b)(3), (b)(6), and (d), and "reasonable jurists" would more than "find the district court's assessment of the constitutional claims debatable." Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also Miller-El v. Cockrell, 537 U.S. 322, 348 (2003) ("The COA inquiry asks only if the District Court's decision was debatable.").

A. Mr. Mills is Entitled to Relief Pursuant to Rule 60(b)(6)

Mr. Mills is entitled to a COA and to relief pursuant to Rule 60(b)(6) due to the "extraordinary circumstances" his case presents. Buck v. Davis, 580 U.S. 100, 123, 128 (2017) (finding petitioner to be entitled to relief pursuant to Rule 60(b)(6) where use of race undermined integrity of the proceedings and "poison[ed] public confidence in the judicial process") (internal quotations and citations omitted).

The District Attorney at Mr. Mills' trial falsely denied the existence of any understanding with JoAnn Mills prior to her trial testimony (R1. 829-30) and deliberately misinformed the jury of this fact because he knew that JoAnn was the crux of the State's case against Mr. Mills. The State has never corrected these false statements and in fact urged the district court to rely on them in Mr. Mills' federal habeas proceedings. See Answer to Pet. for Writ of Habeas Corpus, ¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017); Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017).

The district court then relied on the District Attorney's knowingly false statements in resolving this issue and in declining to grant merits review: "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony . . . Mills still fails to allege what specific evidence or arguments his trial counsel could have

presented . . . to show that JoAnn lied on the stand and was in fact testifying against Mills in exchange for a lesser sentence." Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 78 (N.D. Ala. Nov. 30, 2020).

The State's assertions in federal habeas proceedings that JoAnn in fact did not receive a plea deal in exchange for her testimony and that the District Attorney did not knowingly deceive the trial court and the jury, as well as the district court's reliance on those false assertions, constitutes "a defect in the integrity of the habeas proceedings," and requires relief from this Court's prior judgment. Gonzalez v. Crosby, 545 U.S. 524, 532 (2005) (federal courts have jurisdiction to consider Rule 60(b) motions in federal habeas proceedings where the motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings"); Williams v. Chatman, 510 F.3d 1290, 1295 (11th Cir. 2007) (finding claim that district court should have granted additional briefing to be a proper Rule 60(b) motion because it attacks a "defect in the integrity of the federal habeas proceedings") (internal quotations and citations omitted).

Rule 60(b)(6) is intended to prevent this unnecessary "risk of injustice" and "risk of undermining the public's confidence in the judicial process." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988); see also Buck, 580 U.S. at 123. Mr. Mills is entitled to a COA on this issue—it is more than debatable

that the district court abused its discretion in denying Mr. Mills' Rule 60 motion. See Miller-El, 537 U.S. at 348 ("The COA inquiry asks only if the District Court's decision was debatable."); see also Tharpe v. Sellers, 583 U.S. 33, 34 (2018) (vacating the Eleventh Circuit's denial of a COA where the court failed to credit an affidavit establishing the fact at issue, that a juror based their vote on the race of the defendant).

B. Mr. Mills is Entitled to Relief Pursuant to Rule 60(b)(2)

The evidence contained in Tony Glenn's affidavit entitles Mr. Mills to relief from this Court's dismissal of his federal habeas petition pursuant to Rule 60(b)(2) based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) . . . ." Fed. R. Civ. P. 60(b)(2). As discussed *infra* in section IV, Mr. Mills exercised reasonable diligence in attempting to obtain this evidence. In re Glob. Energies, LLC, 763 F.3d 1341, 1349 (11th Cir. 2014) ("the parties, who had the evidence that Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal"); see also Banks v. Dretke, 540 U.S. 668, 693 (2004) ("[B]ecause the State persisted in hiding Farr's informant status and misleadingly represented that

it had complied in full with its Brady disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr's connections to Deputy Sheriff Huff.").

The evidence is not cumulative to any other evidence presented and is much more than impeachment evidence—without JoAnn's testimony the prosecution could not have proven its case against Mr. Mills beyond a reasonable doubt. Giglio, 405 U.S. at 153 ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice" and requires reversal) (internal quotations omitted). And as discussed *supra*, this evidence creates a probability of a different result at trial. Therefore, Mr. Mills is entitled to a COA on this issue because "a reasonable jurist could conclude that the district court abused its discretion in declining to reopen the judgment" on this basis. Buck, 580 U.S. at 123.

C. Mr. Mills is Entitled to Relief Pursuant to Rule 60(b)(3) and (d)

Additionally, Mr. Mills is entitled to relief from this Court's prior judgment pursuant to Rule 60(b)(3), which permits a court to set aside a judgment due to "fraud . . . by an opposing party" and Rule 60(d)(1) and (3), which provides that Rule 60 "does not limit a court's power to" either "entertain an independent action to relieve a party from a judgment" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(b)(3), (d)(1), (d)(3).

Relief is warranted pursuant to Rule 60(b)(3) because new evidence establishes that the District Attorney committed egregious misconduct by lying to the court, the jury, and defense counsel, about the existence of a plea deal. The State continued to rely on this false evidence in arguing that Mr. Mills is due no process on his claims in federal court. The State's representation in its response to Mr. Mills' § 2254 petition that no evidence of a deal exists; failure to correct the false representations on the record; and use of those false representations in asking this Court to find that Mr. Mills is entitled to no process on his claim, are evidence of fraudulent deception. Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1309 (11th Cir. 2003) (citing Frederick v. Kirby Tankships, Inc., 205 F.3d 1277, 1287 (11th Cir. 2000)) (Rule 60(b)(3) warranted where moving party establishes that adverse party's misconduct "prevented them from fully presenting his case").

Relief is also warranted pursuant to Rule 60(d) where a party's fraudulent conduct interferes with the Court's ability to perform its duty in adjudging cases. Zakrzewski v. McDonough, 490 F.3d 1264, 1267 (11th Cir. 2007). The State, through District Attorney Bostick, made knowingly false statements to the trial court, the jury, and defense counsel, about a critical question of fact at trial. The State has not corrected these deceptive statements and has continued to repeat them in the district court. Fraud has been committed on the district court by the State's knowing endorsement of the District Attorney's intentional deception.

Zakrzewski, 490 F.3d at 1267 (quoting Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1551 (11th Cir. 1985)) ("'Fraud upon the court' . . . embrace[s] . . . fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.'"). Mr. Mills is entitled to a COA pursuant to Rule 60(b)(3) and (d) because "a reasonable jurist could conclude that the district court abused its discretion in declining to reopen the judgment" on this basis. Buck, 580 U.S. at 123.

II. Mr. Mills will be Irreparably Harmed Absent a Stay.

Mr. Mills will be irreparably harmed absent a stay because he will be wrongfully executed on the basis of false evidence—a claim that has never received merits-review. Nken v. Holder, 556 U.S. 418, 435–36 (2009) (recognizing irreparable harm in wrongful deportation context). To allow the State to proceed with an execution predicated on a false representation about a critical question of fact for the jury and this Court—the sole eyewitness's reliability—would be a miscarriage of justice. The district court's dismissal of Mr. Mills' Brady, Giglio, and Napue claim, and decision not to grant merits-based review, was based on the State's fraudulent assertions in its habeas petition and the District Attorney's knowingly false statements at trial, that no understanding existed with JoAnn Mills prior to her testimony. Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL

7038594, at *60, 77–79 (N.D. Ala. Nov. 30, 2020). Further, this claim is readily distinguishable from a methods-challenge brought at the eleventh hour to challenge policies that had long been in place but calls into question Mr. Mills' conviction and death sentence. "There is no do-over in this scenario." Smith v. Comm'r, Ala. Dep't of Corr., 844 F. App'x 286, 294 (11th Cir. 2021) (finding irreparable harm to outweigh any allegations of delay where "ADOC will likely execute Smith" without relief on his meritorious claim).

III. The Public Interest is in Mr. Mills' Favor.

The public interest is unquestionably in Mr. Mills' favor. "[T]he public interest is served when constitutional rights are protected." Melendez v. Sec'y, Fla. Dep't of Corrs., No. 21-13455, 2022 WL 1124753, at *17 (11th Cir. Apr. 15, 2022) (internal quotations and citation omitted); see also Smith, 844 F. App'x at 294 (recognizing that "neither Alabama nor the public has any interest in carrying out an execution in a manner that violates . . . the laws of the United States") (internal citation omitted).

The district court concluded that the District Attorney cannot be held accountable for this misconduct because the burden was on Mr. Mills to know what the state hid all these years. Insulating prosecutors from accountability for making knowingly false representations would render virtually unenforceable a basic premise of our legal system that the prosecution will refrain from dishonest and

illegal conduct. Berger v. United States, 295 U.S. 78, 88 (1935)("Courts, litigants, and juries properly anticipate that 'obligations . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.").

The issues raised by Mr. Mills directly affect the integrity of the trial process and his conviction and death sentence. Giglio, 405 U.S. at 153 ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice" and requires reversal) (internal quotations omitted); see also United States v. Bagley, 473 U.S. 667, 680 (1985) (quoting Agurs, 427 U.S. at 104) (when a prosecutor knowingly lies, it is not only prosecutorial misconduct but involves "a corruption of the truth-seeking function of the trial process," and undermines the integrity of the outcome). To allow Mr. Mills to be executed without a merits review of this critical issue "injures not just [Mr. Mills], but the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts." Buck, 580 U.S. at 124 (quoting Rose v. Mitchell, 443 U.S. 545, 556 (1979)) (internal quotations omitted).

IV. Mr. Mills Diligently Pursued the Underlying Claim.

Finally, Mr. Mills has diligently pursued his claims. Mr. Mills has not delayed unnecessarily in bringing his Rule 60 Motion or in appealing the district court's denial. When Mr. Mills first brought the Rule 60 motion in early April, soon after discovering the evidence contained in Tony Glenn's affidavit, there was

sufficient time to "allow consideration of the merits without requiring entry of a stay." Hill v. McDonough, 547 U.S. 573, 584 (2006) (quoting Nelson v. Campbell, 541 U.S. 637, 650 (2004)).

Further, as recognized by this Circuit, "a delay is not dispositive" and does not establish that a claim is aimed at manipulation. Smith, 844 F. App'x at 294 (citing Wreal, LLC v. Amazon.com, Inc., 840 F.3d 1244, 1247 (11th Cir. 2016)) (finding delay not to be dispositive where claim raised several weeks prior to execution); see also Ray v. Comm'r, Ala. Dep't of Corr., 915 F.3d 689, 702 (11th Cir. 2019) ("That the claim was brought at the last minute does not necessarily establish that it was brought in a dilatory manner."). Over the course of seventeen years, Mr. Mills has made fifteen separate requests for evidence of JoAnn Mills' plea agreement, and each time the State has failed to disclose this information as it is constitutionally required to do. See Doc. 45, at 4–7. Mr. Mills has more than diligently pursued this critical issue throughout his entire appeals and postconviction process. Banks v. Dretke, 540 U.S. 668, 695 (2004) ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed."). It cannot be that the State may conceal critical evidence throughout all stages of capital proceedings—trial, appeals, state and federal postconviction—and then rely on procedural hurdles and arguments of delay to

prevent Mr. Mills from obtaining any process on this claim. *The State* has delayed a substantive review of this issue, not Mr. Mills. Ramirez v. Collier, 595 U.S. 411, 434–35 (2022) (quoting Gildersleeve v. New Mexico Mining Co., 161 U.S. 573, 578 (1896)) ("Respondents argue that Ramirez inequitably delayed this litigation by filing suit just four weeks before his scheduled execution. But this is not a case in which a litigant 'slept upon his rights.' . . . To the contrary, Ramirez had sought to vindicate his rights for months. . . respondents can hardly complain about the inequities of delay when their own actions were a significant contributing factor.").

Mr. Mills requests that he be finally granted process as to this long-pursued claim and that this Court hold the State to its duty to pursue truth and justice, over the finality of an unsound conviction. Giglio, 405 U.S. at 153; see also Bagley, 473 U.S. at 680; Agurs, 427 U.S. at 103; Berger v. United States, 295 U.S. 78, 87-88 (1935); Mooney, 294 U.S. at 112.

V. Conclusion and Prayer for Relief.

Mr. Mills requests that this Court enter an order enjoining the State from executing him on May 30, 2024, pending the disposition of his Motion for a Certificate of Appealability and the disposition of his underlying Rule 60 motion.

Respectfully submitted,

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May 23, 2024

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume litigation of Fed R. App. P. 32(a)(7)(B), made applicable by Eleventh Circuit Rule 22-2, because it contains 5,384 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman font.

Date: May 23, 2024

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: **Lauren Simpson**.

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON

FILED
2024 May-17 PM 01:50
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

JAMIE MILLS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**6:17-cv-00789-LSC**
	)	
	)	
JEFFERSON S. DUNN, Commissioner, Alabama Department of Corrections,	)	
	)	
Respondent.	)	

MEMORANDUM OF OPINION AND ORDER

I. Introduction

On November 30, 2020, this Court dismissed this habeas petition filed by death row inmate Jamie Mills and closed this case. (Docs. 26 & 27.) Over three years later, on April 5, 2024, Mills filed a motion seeking relief from the judgment under Rules 60(b)(2), (b)(3), (b)(6), and (d) of the Federal Rules of Civil Procedure. (Doc. 42.) Mills raises a claim that he has raised unsuccessfully many times since his 2007 trial: that his common law wife, JoAnn Mills, who testified against him, and the District Attorney, Jack Bostick, hid the fact that JoAnn received a plea bargain for her testimony. However, Mills never offered any evidence in support of this claim. On January 29, 2024, following the exhaustion of all of Mills' appeals, the State of

Alabama moved the Alabama Supreme Court to authorize the Governor to set Mills' execution date. Less than one month later, Mills' longtime counsel, the Equal Justice Initiative, procured an affidavit from JoAnn's lawyer, dated February 26, 2024, in which he claims that JoAnn received a plea deal for her testimony prior to Mills' trial. Based on this affidavit, Mills now asks this Court for relief in a Rule 60 motion. Mills has also recently sought similar relief in the Alabama state courts, but he has been denied. Mills' execution is currently set for May 30, 2024. For the following reasons, the motion for relief from judgment (doc. 42) is due to be denied.

Additionally, this morning, Mills filed a Motion for Stay of Execution pending disposition of his Rule 60 motion. (Doc. 46.) Several hours later, Respondent filed a response in opposition. (Doc. 47.) As the Rule 60 motion is due to be denied, so will be the motion for stay of execution.

II. Background and Procedural History

This Court set out the facts of Mills' crime in its November 2020 opinion, taking them from the Alabama Court of Criminal Appeals' decision on direct appeal. (*See* Doc. 26.) In brief, on the afternoon of June 24, 2004, Mills and JoAnn went to the home of Floyd and Vera Hill in Guin, Alabama, intending to rob them. Floyd, 87, was Vera's caretaker, as she was in poor health. When Floyd took Mills out to his backyard shed to show him some items for an upcoming yard sale, Mills beat Floyd

to death. Vera and JoAnn came out to see about the commotion, and Mills hit Vera in the head with a ball-peen hammer. He also used a tire tool and a machete to beat the Hills while JoAnn stood by. Mills and JoAnn then stole several items from the Hills' home, including Vera's purse, a phone, and a locked tackle box containing Vera's prescription medications. Mills called Benjie Howe, a local drug user, and invited him over to purchase some of Vera's pain pills. Mills and JoAnn were apprehended the next day as they were pulling out of their driveway with the bloody murder weapons, stolen property, and a cement block in the trunk of their car. While Floyd died at the scene, Vera lingered until September 12, 2004, when she died due to complications from blunt head trauma.

Mills and JoAnn were each indicted for capital murder. Mills went to trial in the Circuit Court of Marion County on August 20, 2007. JoAnn was the State's final witness at Mills' trial, testifying on August 22. Her attorney, J. Tony Glenn, sat in the courtroom as she testified. At the beginning of her testimony, JoAnn stated that she had no agreement with the prosecution, as follows:

Q. Do you have an attorney?

A. Yes, sir.

Q. Is that attorney Tony Glenn?

A. Yes, sir.

> Q. Is he here in the courtroom with you today?
>
> A. Yes, sir.
>
> Q. Has he discussed with you the implications of you coming and testifying before the jury? Has he talked to you about coming and testifying before the jury?
>
> A. Yes.
>
> Q. And are you doing this of your own free will?
>
> A. Yes, sir.
>
> Q. Have there been any deals or offers or anything like that made to you?
>
> A. No, sir.
>
> Q. And this is after a discussion with your attorney you chose to testify?
>
> A. Yes, sir.

(Doc. 37-8 at R. 685-86.) JoAnn went on to offer graphic testimony of what Mills did to the victims and what the two of them did thereafter to cover their tracks. Under cross-examination, JoAnn insisted there was no deal for her testimony:

> Q. And you're telling us today that your lawyer and you—you're a codefendant in this case, right?
>
> A. Yes.
>
> Q. Your lawyer and you have decided that it's a good idea for you to get up here and basically admit to capital murder where if you're convicted, the only two sentences are life without parole or death by lethal injection, and that you haven't made a deal with the DA?

A. No, sir.

Q. You're just up here admitting to capital murder without any hope of help from the district attorney's office?

A. No, sir.

Q. You do expect help from the district attorney's office?

A. No, sir.

Q. Has anybody told you that if you get up here and tell this story that the district attorney will have pity on you and let you plead to something besides murder?

A. No, sir.

Q. So you expect as a result of your testimony today to get either life without parole or death by lethal injection?

A. Yes.

[…]

Q. But you hope by doing this today to get off of life without parole or death by lethal injection, don't you, because you said a minute ago possibly. That's what you expect, don't you?

A. No.

Q. And your lawyer has suggested that you do this today, right?

A. He left it up to me.

Q. Okay. He let you decide whether or not to admit to being an accomplice to capital murder, where if convicted you only get life without parole or death by lethal injection? Your lawyer suggested that?

A. Yes.

Q. And you say that you don't expect some benefit from your testimony today?

A. Some forgiveness from God.

(*Id.* at R. 720-23.) At the conclusion of the day's testimony, once the jury had been dismissed, the defense raised the issue of JoAnn's testimony again:

MR. WILEY: Oh, there is one thing that we need to get on the record. We want to ask you—or ask Judge to direct him to assure us, him being Jack [Bostick], that there is no inducement for JoAnn's testimony.

MR. BOSTICK: There is not.

MR. WILEY: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an inducement.

MR. BOSTICK: There is none.

MR. WILEY: None?

MR. BOSTICK: Have not made her any promises, nothing.

MR. WILEY: Have you suggested that a promise might be made after she testifies truthfully?

MR. BOSTICK: No.

MR. WILEY: No inducement whatsoever?

MR. BOSTICK: No.

MR. WILEY: Thank you, Your Honor.

(*Id.* at R. 829-30.) Glenn was present in court for JoAnn's testimony, and he said nothing to the trial court to indicate that she or the District Attorney had lied.

Mills was convicted of three counts of capital murder on August 23, 2007. At the conclusion of the penalty phase the following day, the jury recommended 11–1 that he receive a death sentence. The court then held a sentencing hearing on September 14 and sentenced Mills to death. On September 24, 2007—ten days after Mills' sentencing hearing—JoAnn was permitted to plead guilty to a single count of murder and was sentenced to life with the possibility of parole.

Mills filed a motion for new trial alleging that JoAnn perjured herself by declaring that her testimony was not given in an attempt to procure leniency for herself. The trial court denied the motion.

On direct appeal, Mills again argued that the prosecution illegally failed to disclose the plea deal that he contended must have occurred, violating Mills' rights under the Sixth, Eighth, and Fourteenth Amendments, as well as the Supreme Court's holding in *Banks v. Dretke*, 540 U.S. 668 (2004), that due process requires that evidence of bias and impeachment evidence must be revealed to the defense. The Alabama Court of Criminal Appeals affirmed the trial court's denial of the motion for new trial, noting that Mills did not offer any evidence that JoAnn had in

fact made any deal with the State. The Alabama Supreme Court denied certiorari on this claim.

Mills has been represented by the Equal Justice Initiative in his post-conviction proceedings, since December 2009. In both his 2011 post-conviction proceedings pursuant to Alabama Rule of Criminal Procedure 32 and before this Court in his federal habeas petition in 2017, Mills made similar claims. More specifically, he argued that his trial counsel were ineffective in litigating the motion for new trial because they failed to present evidence and that the State committed violations of *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959) in withholding evidence of the supposed plea deal. The Rule 32 court and this Court rejected these claims for the same reasons: Mills did not offer any evidence, other than speculation, that JoAnn lied about not having a plea deal. (*See* Memorandum of Opinion, Doc. 26 at 154-55, 200-203.) The Eleventh Circuit Court of Appeals declined to issue a certificate of appealability in his federal habeas case, and the Supreme Court denied certiorari on April 18, 2022. This concluded Mills' appeals.

For nearly two years, Mills made no attempt to bring his claims before any court or to further investigate his claims of perjury. On January 29, 2024, the State moved for Mills' execution to be set. His counsel moved for an enlargement of time

to answer that motion and were granted until March 7 to do so. On March 4, Mills filed a successive Rule 32 petition in the Marion County Circuit Court. For the first time, he offered the affidavit from JoAnn's attorney, Glenn, dated February 26, 2024. In relevant part, Glenn stated the following:

> 3. During the summer of 2007, prior to Jamie Mills' trial, I had several discussions with Jack Bostick, who was the Marion County District Attorney at the time, about a plea offer based on Jo Ann's tragic mitigation history and her potential testimony at Jamie Mills' upcoming trial.
>
> 5. Prior to testifying in Jamie Mills' case, Jo Ann and I met with Mr. Bostick and the victim's daughter. I presented Jo Ann's tragic mitigation history. Based on Jo Ann's terrible childhood, the victim's family agreed for Jo Ann to get a plea to life without parole if she testified truthfully at Jamie Mills' trial. Mr. Bostick agreed that if Jo Ann testified truthfully, he would not pursue the capital charge and would agree to a plea of murder.
>
> 6. These meetings are recorded on my Attorney Fee Declaration Sheet.

(Doc. 42-1 at 2.) Glenn also stated that he did not speak with any attorney from the Equal Justice Initiative "regarding Jamie Mills' case or JoAnn's testimony in her husband's case" until February 23, 2024. (*Id.*) Glenn's fee declaration, dated September 25, 2007, is attached to the affidavit.

On March 7, Mills also answered the State's execution motion in the Alabama Supreme Court, arguing that the court should postpone setting his execution until after the Rule 32 court had considered his new claim.

On March 11, the State responded to both Mills' successive Rule 32 petition in the Marion County Circuit Court and to Mills' request that the Alabama Supreme Court postpone his execution. The State attached to both filings affidavits from District Attorney Bostick and Investigator Ted Smith denying the allegations in Glenn's affidavit. District Attorney Bostick stated, in relevant part:

> 3. That prior to Jamie Ray Mills' trial I met with the family of Floyd and Vera Hill to discuss all the options and potential plea offers for both Jamie and JoAnne Mills. The family was adamant that we pursue the death penalty.
>
> 4. That Tony Glenn believed it would be in his client's best interest to testify against Jamie Mills.
>
> 5. That prior to Jamie Mills' trial Tony Glenn had JoAnne Mills brought to our office to speak to Ted Smith who was one of our investigators and who had known JoAnne Mills and her family for many years.
>
> 6. That Ted Smith talked to JoAnne Mills about her testimony but did not offer her any sort of plea deal as the investigators knew that they were not allowed to negotiate any sort of deal.
>
> 7. That I did not and could extend any sort of offer to JoAnne Mills prior to Jamie Mills' trial because the family had made their position very clear.
>
> 8. That after the Jamie Mills trial I did sit down with the family of Floyd and Vera Hill and they felt that JoAnne Mills was sincere and remorseful in her testimony and they agreed at that point to offer her a life sentence. No offers were extended prior to her testimony.

(Doc. 44-1 at 2.)

Investigator Smith stated the following in relevant part:

> I was employed for a period of 15 years as Investigator and Trial Coordinator in the District Attorney's Office for the 25th Judicial Circuit. During this time I was involved in the investigation of Jamie Mills and JoAnn Mills for the murder of Floyd and Vera Hill in Marion County, Alabama. I was well acquainted with defendant, JoAnne Mills and encouraged her to testify for the State in the case of Jamie Mills. At no time did I offer any plea deal to JoAnne Mills as any decision of that nature would have been made by the District Attorney or one of the Assistant District Attorney's, not an Investigator.

(Doc. 44-2 at 2.)

On March 20, 2024, the Alabama Supreme Court denied Mills' request to postpone his execution, and the Governor has scheduled Mills' execution for May 30, 2024. *Ex parte Mills*, No. 1080350 (Ala. Mar. 20, 2024); Doc. 42-3.

On April 5, 2024, Mills filed the instant Rule 60(b) motion for relief from the judgment in this case. (Doc. 42.) Respondent responded in opposition (doc. 44), and Mills filed a reply in support (doc. 45.)

On April 15, 2024, the Marion County Circuit Court dismissed Mills' second Rule 32 petition as successive precluded by Rule 32.2(b), reasoning that Mills cannot show that good cause exists for why the information presented in Glenn's affidavit was not known or could not have been ascertained through reasonable diligence. *Mills v. State of Alabama*, Order, Doc. 17, 49-CC-2004-000402.61 (Ala. Ct. Crim. App. April 16, 2024). The court stated: "Mr. Glenn represented JoAnn Mills before,

during and after Petitioner's trial and continues to practice law and maintain a law office in Hamilton, Alabama. There is no evidence before the Court as to why the Petitioner could not have secured the affidavit of Mr. Glenn prior to February 26, 2024." (*Id.*) The court also rejected Mills' contention that the affidavit is newly discovered evidence pursuant to Ala. R. Crim. P. 32.1(e), reasoning:

> Petitioner raised the question of a plea deal with JoAnn Mills during his trial in 2007. Petitioner waited nearly 17 years to speak with the attorney for JoAnn Mills and offers no reason for the delay. District Attorney Jack Bostick denied the existence of a plea deal at trial and continues to do so today. Petitioner failed to exercise due diligence an ails to satisfy Rule 32.1(e)(1).
>
> The affidavit of Tony Glenn merely amounts to impeachment evidence. Petitioner offers the affidavit as potential impeachment evidence in this petition claiming JoAnn Mills and District Attorney Jack Bostick were untruthful about the existence of a plea agreement. Tony Glenn's affidavit or testimony would have served the same purpose seventeen (17) years ago at trial. Petitioner fails to satisfy Rule 32.1(e)(2).
>
> Petitioner surmises that had attorney Tony Glenn's statements of a plea deal been known at trial, the result probably would have been different. Petitioner's assertion is nothing more than mere speculation. There was ample testimony from which the jury could conclude Petitioner murdered Floyd and Vera Hill. In particular, in its Sentencing Order the Trial Court noted the murder weapon and bloody clothing were found in the Petitioner's car. Petitioner fails to satisfying the requirements of Rule 32.1(e)(4).
>
> Lastly, to prevail under Rule 32.1(e)(5), the facts must establish that the petitioner is innocent of the crime for which he was convicted or should not have received the sentence given. Petitioner has presented no evidence that would establish he is innocent of murder.

> The affidavit of Tony Glenn does not establish or prove the existence of a plea deal prior to the testimony of JoAnn Mills. The existence of a plea deal has been vigorously refuted by the State for nearly seventeen (17) years. Petitioner fails to satisfy the requirements of Rule 32.1(e)(5).

(*Id.*)

III. Rule 60(b) and (d) Standards

Rule 60(b) sets forth grounds by which a party may be relieved from a final judgment or other order. Relevant here, Rule 60(b)(2) provides that a party may be entitled to relief based upon "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Additionally, Rule 60(b)(3) provides that a party may be entitled to relief based upon "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Relatedly, Rule 60(d) states that Rule 60 does not limit a court's power to grant relief in various respects, including "for fraud on the court." Finally, Rule 60(b)(6) is a catchall provision "any other reason that justifies relief."

IV. Discussion

A. Rule 60(b)(2) – newly discovered evidence

Mills contends that relief is warranted here under Rule 60(b)(2) because he exercised due diligence in discovering his new evidence—the February 2024 affidavit—because the new evidence is material and neither cumulative nor merely

impeachment evidence, and because there is a reasonable probability of a different result had evidence that JoAnn had a pretrial agreement with the prosecution been presented at trial. The Court disagrees.

First, this claim is untimely. A Rule 60(b)(2) motion must be made "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). This Court denied habeas relief on November 30, 2020, making Mills' April 5, 2024, Rule 60(b)(2) claim untimely.

Even if it were timely filed, Mills cannot satisfy the requirements of Rule 60(b)(2). "A motion for a new trial under Rule 60(b)(2) is an extraordinary motion and the requirements of the rule must be strictly met." *Scutieri v. Paige*, 808 F.2d 785, 793 (11th Cir. 1987). The Eleventh Circuit has explained that the movant must show the following:

> (1) the evidence must be newly discovered since the trial; (2) due diligence on the part of the movant to discover the new evidence must be shown; (3) the evidence must not be merely cumulative or impeaching; (4) the evidence must be material; and (5) the evidence must be such that a new trial would probably produce a new result.

Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316 (11th Cir. 2000).

Mills cannot make this showing. First, Mills did not exercise reasonable diligence in discovering his new evidence. Mills knew no later than August 22, 2007, that Glenn represented JoAnn. The record is clear that Glenn sat in the courtroom

during JoAnn's testimony as her counsel. Glenn filed his attorney fee declaration the day after JoAnn entered her guilty plea to murder, and Mills could have acquired it at some point between 2007 and 2020, let alone 2024. Mills offers no reason why he could not have spoken with Glenn or obtained Glenn's September 2007 fee declaration before February 2024, nor does he plead that Glenn refused to speak with him at an earlier date. Mills has been claiming since his motion for new trial in October 2007 that JoAnn perjured herself because she received a plea deal in exchange for her testimony. The State unequivocally denies—and has denied since 2007—that any such deal existed. JoAnn testified under oath that there was no deal, and District Attorney Bostick likewise informed the trial court that there was no deal. And now, both District Attorney Bostick and Investigator Smith again deny the existence of a pretrial deal with JoAnn in their affidavits. Mills has produced no documentary evidence of a plea deal prior to Mills' trial. He has merely produced Glenn's affidavit, in which he makes vague references to entries in his fee declaration. The fee declaration has errors, as discussed further herein. There is certainly no note from Glenn's files documenting the terms of this alleged plea deal for JoAnn's testimony or anything signed by JoAnn or by the prosecution prior to JoAnn's testimony.

Additionally, Glenn's affidavit is mere impeachment evidence and would not have changed the result of Mills' trial. The affidavit is Glenn claiming that JoAnn and District Attorney Bostick were untruthful because a plea agreement existed. Had Mills presented this evidence at trial, it would have served as impeachment evidence. Further, even if Glenn were correct and JoAnn had perjured herself as to the existence of a pretrial plea agreement, that would not constitute evidence that she lied as to the rest of her testimony. Additionally, JoAnn's testimony was but one part of the overwhelming evidence against Mills, including a second witness linking his vehicle to the crime scene, as well as the fact that a pair of his work pants (with his name on the inside tab) stained with the victims' blood, murder weapons containing the victims' DNA, and a concrete block were found in his trunk. In sum, even if JoAnn's testimony been excluded at Mills' trial, there was sufficient evidence to convict him for the murders.

For these reasons, Mills' Rule 60(b)(2) claim is untimely and meritless.

B. Rule 60(b)(3) and (d) – fraud

Mills also claims that relief is warranted here under Rule 60(b)(3) and Rule 60(d) because District Attorney Bostick lied under oath about the existence of a pretrial plea deal with JoAnn, and the State did not correct his allegedly false statements. Meanwhile, the State maintains that District Attorney Bostick's

testimony was truthful and that there has been no fraud perpetrated upon the Court. Mills is due no relief under these provisions.

At the outset, to the extent that Mills brings this as a Rule 60(b)(3) claim, it is untimely. A Rule 60(b)(3) motion must be made "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). As explained above, this Court denied habeas relief on November 30, 2020, making Mills' April 5, 2024, Rule 60(b)(3) claim untimely. Even if the "reasonable time" standard in Rule 60(c)(1) were used, Mills has failed to offer this Court any reason why he could not have talked with Glenn and brought his Rule 60 motion before now, more than three years following this Court's memorandum of opinion and order dismissing this habeas case.

Even if it were timely filed, Mills cannot establish that he is entitled to relief under Rule 60(b)(3), which requires him to "prove[] by clear and convincing evidence that an adverse party has obtained the verdict through fraud, misrepresentation, or other misconduct," and "show that the conduct prevented the losing party from fully and fairly presenting his case or defense." *Cox Nuclear Pharmacy, Inc. v. CTI, Inc.*, 478 F.3d 1303, 1314 (11th Cir. 2007) (quoting *Frederick v. Kirby Tankships, Inc.*, 205 F.3d 1277, 1287 (11th Cir. 2000)). The only "evidence" that Mills has offered of fraud by the State is Glenn's February 2024 affidavit, which

references his September 2007 attorney fee declaration. As an initial matter, the fee declaration is problematic because the dating of some of the relevant events is misstated. Glenn's fee declaration lists the following items of potential support for his affidavit that he struck a pretrial plea deal with the State for JoAnn:

> 07/17/07 Meeting with DA re defendant & proposed plea offer 1.00
>
> 07/23/07 Meeting with Defendant re proposed plea offer 0.60
>
> 08/01/07 Discussions with DA re testimony of defendant @ trial 0.50
>
> 08/22/07 Discussions with DA re trial of co-defendant 0.30
>
> 08/24/07 Meetings with Defendant @ Jail – re testimony 2.00
>
> 08/27/07 Research re proposed plea & ramifications of testimony 3.20
>
> 08/29/07 Continued discussions with DA re defendant & plea 0.50
>
> 09/03/07 Meeting with Defendant re plea & testimony 0.50
>
> 09/04/07 Meeting with Defendant @ Jail – prep for testimony 3.00
>
> 09/05/07 Meeting with DA re defendant & plea offer 0.40
>
> 09/06/07 Meeting with Defendant @ Jail re plea offered 4.00
>
> 09/10/07 Meeting with Defendant @ Jail re testimony 1.60
>
> 09/11/07 Attendance @ trial of co-defendant for testimony of client 4.00
>
> 09/12/07 Attendance @ trial during testimony of client 2.00
>
> 09/13/07 Meeting with Defendant @ Jail re jury verdict 1.00

09/18/07 Discussions with DA re entry of plea for defendant 0.40

09/19/07 Meeting with Defendant @ Jail re plea offered 1.50

09/21/07 Meeting with Defendant @ Jail re entry of plea 2.00

09/24/07 Attendance @ plea agreement hearing 0.50

09/24/07 Discussing with Defendant ramifications of plea 0.40

09/24/07 Discussions with DA re acceptance of plea 0.20

09/24/07 Representation of Defendant @ presentation of plea 2.00

(Doc. 42-1 at 2.) However, it is undisputed that JoAnn testified at Mills' trial on August 22, 2007, that the penalty phase of Mills' trial concluded on August 23, and that JoAnn entered her plea on September 24, 2007. Thus, Glenn's claim in his fee declaration that he attended Mills' trial to watch JoAnn testify for four hours on September 11, 2007, and for another two hours on September 12 is inaccurate. Given these inaccuracies, the accuracy of Glenn's other entries, dated in September after Mills' trial, which reference prepping JoAnn for her testimony, like the one on September 4, 2007, is also called into question. Mills claims that these are mere "scrivener's errors," but the fact remains that Mills would have the Court find that District Attorney Bostick perjured himself and the State lied to this Court based upon the statements in this fee declaration that contain errors.

More importantly, as seen above, Glenn's fee declaration makes reference to a "meeting with DA re defendant [JoAnn] & proposed plea offer" on July 17 and a "meeting with Defendant re proposed plea offer" on July 23, 2007, which would have occurred prior to JoAnn's testimony at Mills' trial. (Doc. 42-1 at 2.) However, Glenn's fee declaration nowhere states explicitly that District Attorney Bostick proposed this plea offer or that the discussions were actually fruitful for Glenn and JoAnn. Meanwhile, District Attorney Bostick states in his affidavit that Glenn "believed it would be in his client's best interest to testify against Jamie Mills." (Doc. 44-1 at 2.) He further states that while Glenn brought JoAnn to the District Attorney's Office to speak with Investigator Smith, Investigator Smith did not offer her a plea deal—nor could he, as such was the district attorney's purview. (*Id.*) District Attorney Bostick insists that he did not offer JoAnn a deal prior to Mills' trial because the victims' family "was adamant that we pursue the death penalty" as to both Mills and JoAnn. (*Id.*) However, after Mills' trial, District Attorney Bostick sat down with the family, who felt that JoAnn had been "sincere and remorseful in her testimony." (*Id.*) At that point, they agreed that she could be offered a plea bargain for a life sentence. (*Id.*) Considering that timeline, Glenn's time entries indicating that he had discussions with JoAnn of a plea deal after August 23, 2007—such as the entries dated August 27 and 29, and September 3 and 5, support District

Attorney Bostick's recollection of events. Finally, the Court must note that if Glenn's affidavit is to be believed, then Glenn sat in court on August 22, 2007, and watched both JoAnn and District Attorney Bostick repeatedly perjure themselves, yet said nothing to the Court. In sum, Glenn's affidavit and fee declaration is simply not clear and convincing evidence of proof of a *Brady* violation or outright fraud upon this Court. Therefore, his Rule 60(b)(3) claim is untimely and meritless.

C. Rule 60(b)(6) – catchall

Finally, Mills is not due relief under this catchall provision. First, this claim is untimely. Rule 60(c)(1) provides that claims brought pursuant to Rule 60(b)(6) "must be made within a reasonable time." "What constitutes a 'reasonable time' depends upon the circumstances of each case, including 'whether the parties have been prejudiced by the delay and whether a good reason has been presented for failing to take action sooner.'" *Gill v. Wells*, 610 F. App'x 809, 812 (11th Cir. 2015) (quoting *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 (11th Cir. 2008)). While there is no explicit time limit for filing Rule 60(b)(6) motions, as opposed to Rule 60(b)(1), (b)(2), or (b)(3) motions, the delay before filing must be reasonable. Mills claims that his three-plus-year delay is reasonable because Glenn's "willingness to come forward this year allowed Mr. Mills to discover the evidence contained in [] Glenn's affidavit just one-month prior, on February 23, 2024." But

as Glenn stated in his affidavit, Mills' counsel never spoke to him about Mills' case or JoAnn's testimony until February 23, 2024, nearly a month after the State moved for Mills' execution to be set. The State also has an interest in seeing that Mills' execution is carried out, and for Mills to wait until after the State has set his execution to attempt to reopen his habeas litigation based upon information he could have produced years ago is prejudicial to the State's interests.

Even if it were timely filed, Mills cannot show that he is due relief under the catchall provision of Rule 60(b). A "movant seeking relief under Rule 60(b)(6) [has] to show 'extraordinary circumstances' justifying the reopening of a final judgment." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005). The Supreme Court has stated that "[s]uch circumstances will rarely occur in the habeas context." *Id.* For the reasons stated above, Mills cannot make this showing.

V. Conclusion

For the foregoing reasons, Mills' Rule 60 motion (doc. 42) is **DENIED**. Additionally, the motion for stay of execution pending this Court's resolution of the Rule 60 motion (doc. 46) is also hereby **DENIED**.

DONE and **ORDERED** on May 17, 2024.

L. Scott Coogler
United States District Judge
160704

FILED
2024 May-21 PM 02:09
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

JAMIE MILLS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**6:17-cv-00789-LSC**
	)	
	)	
JEFFERSON S. DUNN, Commissioner, Alabama Department of Corrections,	)	
	)	
Respondent.	)	

ORDER

Petitioner Jamie Mills has filed a motion for a certificate of appealability from this Court's denial of his motion for relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure. (Doc. 49.)

Rule 11(a) of the Rules Governing Section 2254 Cases requires the district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. *See also* Fed. R. App. P. 22(b). This Court may issue a certificate of appealability "only if the applicant has a made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, a "petitioner must demonstrate that reasonable jurist would find the district court's assessment of the constitutional claims debatable and wrong," *Slack v. McDaniel*,

529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000), or that "the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039 (2003) (internal quotations omitted). This Court finds that Mills' claims do not satisfy either standard. Accordingly, the motion for a certificate of appealability (doc. 49) is DENIED.

A certificate of appealability under 28 U.S.C. § 2253(c) will not be issued. The petitioner is advised that he may file a request for a certificate of appealability directly with the Court of Appeals for the Eleventh Circuit.

DONE AND ORDERED ON MAY 21, 2024.

L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

160704

FILED
2024 Apr-05 PM 06:03
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

JAMIE MILLS,	*	
	*	
Petitioner,	*	
	*	
vs.	*	**Case No. 6:17-cv-00789-LSC**
	*	
JOHN HAMM[1], Commissioner, Alabama Department of Corrections,	*	
	*	
Respondent.	*	

MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60

Petitioner Jamie Mills was convicted of capital murder and sentenced to death in Marion County, Alabama. After exhausting his state court appeals, he petitioned for federal habeas corpus relief, which this Court denied in 2020. The Eleventh Circuit denied a certificate of appealability in 2021. Newly discovered evidence calls into question not only the reliability of the capital trial verdict in this case, but also the integrity of this Court's consideration of Mr. Mills' habeas petition. Specifically, this new evidence establishes that the District Attorney engaged in egregious misconduct when he affirmatively and falsely stated to the trial court, the

[1] At the time of Mr. Mills' initial habeas petition, Jefferson Dunn was the Commissioner of Alabama Department of Corrections. John Hamm is now the Commissioner as of January 1, 2022.

jury, and defense counsel that there was no deal with the State's central witness, JoAnn Mills, who was at the time Jamie Mills' wife and whose testimony was crucial for the prosecution. An affidavit recently signed by JoAnn Mills' attorney, Tony Glenn, establishes that, prior to JoAnn's testimony, the District Attorney agreed to forgo the death penalty and to a life with parole sentence in her case if she agreed to testify against Jamie Mills. (Ex. 1.)

At every stage of the proceedings in this case—in motions proceedings before trial, to the judge and the jury at trial, on appeal to the State courts, in state postconviction proceedings, and again to this Court—the State has asserted that at the time of Mr. Mills' capital trial, the prosecution had no plea agreement with its central witness, JoAnn Mills. In his habeas corpus petition, Mr. Mills alleged that the failure to disclose the plea deal violated his constitutional rights and undermined the fairness of his trial and reliability of the verdict in the case. In response to Mr. Mills' allegation, the State did not disclose to this Court that there was a plea deal and argued that habeas relief should be denied. These knowingly false representations violate a basic premise of our legal system that the prosecution will refrain from dishonest and illegal conduct. "Courts, litigants, and juries properly anticipate that 'obligations . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.'" Banks v. Dretke, 540 U.S. 668, 696 (2004) (quoting Berger v. United States, 295 U.S. 78, 88 (1935)).

Because the State's false representations were unquestionably material to critical decisions made by this Court, including whether Mr. Mills was entitled to an evidentiary hearing, discovery, a certificate of appealability and, ultimately, to habeas corpus relief, Mr. Mills seeks relief from this Court's November 30, 2020, order denying habeas corpus relief and a certificate of appealability pursuant to Rule 60(b) and Rule 60(d). **Because the State now seeks Mr. Mills' execution, there is a critical need for this Court to address this fundamental violation of Mr. Mills' rights and grant appropriate relief.**

I. STATEMENT OF FACTS.

This is a case primarily built on the testimony of a single witness: JoAnn Mills. Without her testimony, the State's case was very weak. The physical evidence was consistent with Mr. Mills' theory of defense that he was innocent and being framed by Benjie Howe who was identified as a suspect in the murders and arrested with the victims' pills and a large amount of cash. (R1. 40-41, 876, 882.) The victims' belongings, a machete, hammer, and tire iron, and clothing with the victims' DNA were found in the trunk of the Mills' car (R1. 545-48), but the State conceded that the vehicle's trunk had no functioning lock and could be easily opened (R1. 538, 792), and that Benjie Howe, a "well known" drug "user/dealer" in Guin, had been at the Mills' home numerous times in the weeks leading up to the crime (R1. 419, 422-23). In fact, the State's evidence established that Benjie

had been at the Mills' home on the day of the murders both *before* and *after* the offense, giving him an opportunity to have put the evidence in the trunk. (R1. 375, 418-19, 422-25, 520-21, 708-09, 798-801, 881). Unidentified DNA profiles were found on the murder weapons but testing comparing Jamie Mills excluded him. (R1. 616, 626.) Testing was never conducted with respect to Benjie Howe.[2] (R1. 617, 645.)

Mr. Mills chose to testify at trial. (R1. 785-827.) He testified that he did not know Vera or Floyd Hill or know where they live (R1. 792), that the hammer introduced into evidence was not his hammer (R1. 795), and that he did not kill Vera or Floyd Hill (R1. 811-12). Mr. Mills further testified that Benjie Howe had a key to the Mills' home (R1. 791) and had access to the Mills' car because "there was no key to the ignition and no lock on the trunk." (R1. 792).

On rebuttal, the State sought to discredit Mr. Mills' testimony with

[21] The director of the Huntsville DFS Laboratory, Rodger Morrison, testified that the DNA samples were searched against Alabama's State DNA database and that "there were no matches in our database." (R1. 637.) Morrison further testified, however, that he did not take DNA standards from Benjie Howe or DNA type Benjie Howe himself, and did not compare Benjie's DNA against the DNA on the machete handle and lug wrench. (R1. 645.) "[N]o matches" in CODIS is not an exclusion. See, e.g., Williams v. State, No. 09-14-00463-CR, 2017 WL 1455962, at *1-2 (Tex. App. Apr. 19, 2017) (although "data entry sheet" indicated DNA profile had been uploaded to CODIS, profile had actually never been uploaded to CODIS database); State v. Police, 343 Conn. 274, 279 n. 3, 280 (Conn. 2022) (despite prison record that indicated DNA profile had been taken and uploaded to CODIS, DNA profile was in fact *not* in CODIS).

testimony from Benjie Howe who denied participation in the murders. (R1. 875-76.) Although Benjie was found with one of Vera Hill's prescription pill bottles, he testified that Mr. Mills sold him some of her pills on the evening of the murders. (R1. 877-78.) The State also sought to provide an alibi for Benji Howe through the testimony of cousins Thomas Green and Melissa Bishop. (R1. 866, 868.) However, Green and Bishop's testimony contradicted Benjie Howe on several key points. (R1. 864-66, 868-870.) Benjie Howe testified that he spent June 24, 2004, with Thomas Green, only leaving Green's house to go to Jamie and JoAnn's house around 7:00 p.m. "with two girls." (R1. 873-74, 877-78.) Melissa Bishop, however, testified that she picked Benjie up from Thomas Green's house sometime between noon and 3:00 p.m. that day, not 7:00 p.m. as Benjie testified. (R1. 868-69.) Thomas Green also admitted that he had told defense counsel previously that Benjie's trip with Melissa was in the afternoon, not in the evening. (R1. 865-66.) And while Benjie Howe testified two women were in the car, Melissa Bishop testified that only she and Benjie Howe were in the car. (R1. 868-69.) Benjie Howe's alibi witnesses also gave contradictory testimony about the length of time Benjie was gone from Thomas Green's home. While Melissa Bishop testified that they were gone for only a few minutes (R1. 868-69), Thomas Green testified that Benjie left with Melissa Bishop for several hours. (R1. 864-66.) Melissa testified that if her cousin Thomas stated they were "gone four hours" then

"he'd be lying." (R. 869-70.)

Other than the evidence found in the unlocked car trunk, the only evidence connecting Mr. Mills to the crime was the third of three statements given by JoAnn Mills implicating Jamie Mills.[3] Because her third statement was unquestionably necessary to the prosecution's case, the State took steps to ensure (1) that she testified consistent with this third statement (the one implicating Jamie Mills) and (2) that the jury not be informed that she was testifying to gain favor with the State. Shortly before trial, JoAnn was provided with a copy of her third statement. (R1. 747.) Because the relative credibility of JoAnn and Jamie Mills was a central question of fact for the jury, the existence or non-existence of any inducement for JoAnn's testimony at trial was pivotal for both the State and defense counsel. District Attorney Bostick understood this and that is why his first questions elicited her denial of any plea offer:

Q: And are you doing this of your own free will?

A: Yes, sir.

Q: Have there been any deals or offers or anything like that made to you?

[3] In the two statements provided on June 25, 2004, JoAnn Mills denied any involvement in the murders, provided an alibi for Jamie Mills, and implicated Benjie Howe. JoAnn then provided a third statement on June 28, 2004, implicating Jamie Mills but JoAnn also told investigators that Benjie had been at her house twice on the day of the offense: once early in the morning to do meth and once in the evening to buy Lortab pills. (R1. 37, 58-60.)

A: No, sir.

(R1. 685-86.) Defense counsel, who had sought evidence of any pleas or inducements prior to trial, also questioned her about the existence of a deal:

Q: You're just up here admitting to capital murder without any hope of help from the district attorney's office?

A: No, sir.

Q: You do expect help from the district attorney's office?

A: No, sir.

Q: Has anybody told you that if you get up here and tell this story that the district attorney will have pity for you and let you plead to something besides murder?

A: No, sir.

Q: So you expect as a result of your testimony today to get either life without parole or death by lethal injection?

A: Yes.

(R1. 720-21.)

Defense counsel asked the trial Court for permission to question District Attorney Jack Bostick "on the record" about the existence of a plea offer or any inducement. Bostick responded: "There is not." (R. 830.)

MR. WILEY: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an Inducement.

MRf. BOSTICK: There is none.

MR. WILEY: None?

MR. BOSTICK: Have not made her any promises, nothing.

MR. WILEY: Have you suggested that a promise might be made after she testifies truthfully?

MR. BOSTICK: No.

MR. WILEY: No inducement whatsoever?

MR. BOSTICK: No.

(R. 830).

JoAnn Mills' testimony—that there was no deal—was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach her:

> She was not tripped up on anything. Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did. The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching. . . .

(R1. 915-17.)

During closing arguments, both the prosecution and the defense discussed the forensic evidence, the alleged role of methamphetamine in the crime, the possible role of Benjie Howe in the crime, and the possibility that the evidence in

Mr. Mills' car trunk was staged or planted. (See R1. 887–920.) But the primary question for the jury was whether or not to believe JoAnn Mills: If the jury found her to be credible, then Mr. Mills' testimony and defense counsel's arguments would have been undermined. On the other hand, if the jury had reason to question JoAnn's credibility, then the entire prosecution's case would have been called into question.

Without knowing that JoAnn had been given a plea deal by the State that would save her life, the jury convicted Mr. Mills of capital murder on all three counts on August 23, 2007. (C1. 78-80.) On September 14, 2007, he was sentenced to death. (C1. 116.)

Ten days later, on September 24, 2007, the State dismissed capital murder charges against JoAnn Mills. (Ex. 3.)

After learning that the State dismissed capital murder charges against JoAnn Mills, only thirty days after confessing to capital murder in her testimony at Mr. Mills' trial, counsel for Mr. Mills filed a motion for a new trial arguing that this evidence was sufficient to establish the existence of a deal. (C. 120-21.) Mr. Mills' motion for a new trial was denied without a hearing. (C. 120.) Mr. Mills raised this issue throughout state postconviction and federal habeas corpus proceedings in this Court, asking prosecutors whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, and the trial court that there was no plea

offer in exchange for JoAnn's testimony, and at each stage the State has asserted that there was no deal and that JoAnn and the District Attorney testified truthfully.

As the attached declaration reveals, newly discovered evidence establishes that the District Attorney's statements at trial, and the State's representatives throughout the appeals and postconviction proceedings, were false.

Attorney Tony Glenn represented JoAnn Mills in her capital murder case. Mr. Glennasserts that prior to Mr. Mills' capital trial, he met with District Attorney Jack Bostick and the family of Vera and Floyd Hill and that during that meeting, he advocated for JoAnn by presenting her life history of mitigating evidence in an effort to obtain a deal that could spare her from the death penalty. Mr. Glenn was successful: the District Attorney ultimately agreed to a life sentence, instead of the death penalty, if she would testify truthfully at Mr. Mills' trial. (Ex. 3.) Mr. Glenn's affidavit is corroborated by his attorney fee declaration[4] and by the fact that, consistent with the prosecution's plea deal with JoAnn, on September 24, 2007, just ten days after Jamie Mills was sentenced to death, the State dismissed Capital

[4] In responding to Mr. Mills' March 4, 2024 state postconviction petition filed in the Marion County Circuit Court, the State pointed to several scrivener's errors in Mr. Glenn's fee declaration. The State's attempt, however, to assert that these errors undermine the reliability of Mr. Glenn's fee declaration is unpersuasive. Mr. Glenn inadvertently transposed the dates of JoAnn's testimony at Mr. Mills' trial and some of his preparation of JoAnn for this testimony. No party contests, however, the dates of Mr. Mills' trial, or the dates of JoAnn's plea on September 24, 2004. In fact, the State's affidavits filed with their Answer and Motion to Dismiss confirm that meetings did take place with the District Attorney's office *before* JoAnn's testimony at Mr. Mills' trial to "encourage" her to testify.

Murder charges against her and she pled to the lesser included offense of straight Murder. (Ex. 3.)

This evidence means that District Attorney Jack Bostick falsely told the trial court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

II. FEDERAL HABEAS CORPUS PROCEEDINGS.

Mr. Mills filed a petition for habeas corpus relief in this Court on May 12, 2017, in which he alleged that the State withheld favorable evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and Napue v. Illinois, 360 U.S. 264 (1959). Pet. for Writ of Habeas Corpus, ¶¶ 200-04, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. May 12, 2017). Mr. Mills sought an evidentiary hearing and discovery relating to this claim. Pet. for Writ of Habeas Corpus, 112-13, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. May 12, 2017); Req. for an Evidentiary Hr'g, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. April 3, 2018). In response, the State argued that no understanding existed between the State and JoAnn prior to her testimony, and it urged this Court to dismiss the claim. Answer to Pet. for Writ of Habeas Corpus,

¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017); Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017). This Court dismissed Mr. Mills' claim without discovery or a hearing, and sua sponte denied a certificate of appealability. Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *79 (N.D. Ala. Nov. 30, 2020); see also Dismissal Order, Mills v. Dunn, 6:17-CV-00789-LSC (N.D. Ala. Nov. 30, 2020); Order, Mills v. Dunn, 6:17-CV-00789-LSC (N.D. Ala. May 7, 2018) (denying motion for evidentiary hearing). In denying Mr. Mills relief, this Court relied on the understanding that no deal existed. "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony." Mills, 2020 WL 7038594, at *60.

The United States Court of Appeals for the Eleventh Circuit denied Mr. Mills a certificate of appealability on August 12, 2021. Mills v. Comm'r, Ala. Dep't of Corr., No. 21-11534, 2021 WL 5107477 (11th Cir. Aug. 12, 2021).

On January 29, 2024, the State filed a motion with the Alabama Supreme Court asking it to authorize the Governor to set an execution date for Mr. Mills. On March 4, 2024, Mr. Mills filed a Second Petition for Rule 32 Relief in the Marion County Circuit Court, alleging that newly discovered evidence establishes that the District Attorney engaged in serious misconduct when he affirmatively

stated to the trial court, the jury, and Mr. Mills that there was no deal with the State's central witness, whose testimony was crucial for the State. On March 20, 2024, the Alabama Supreme Court authorized the Governor to schedule an execution date. On March 27, 2024, the Alabama Governor scheduled an execution for May 30, 2024. (Ex. 3.)

III. THIS CASE PRESENTS EXTRAORDINARY CIRCUMSTANCES MERITING RELIEF.

Tony Glenn represented JoAnn Mills in her capital murder case. Mr. Glenn's attached declaration asserts that prior to Mr. Mills' capital trial, he had several conversations with District Attorney Jack Bostick about a plea agreement in exchange for JoAnn Mills' testimony at Jamie Mills' trial and that the District Attorney agreed to a life sentence, instead of the death penalty or life without parole, if she would testify truthfully at Mr. Mills' trial. (Ex. 1.) The fact that the prosecution had a plea deal with JoAnn before Mr. Mills' trial means that District Attorney Jack Bostick falsely told the court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

The prosecutor violated his constitutional obligation to disclose to a criminal

defendant any known exculpatory and impeachment evidence. Brady v. Maryland, 373 U.S. 83, 86-88 (1963); Giglio v. United States, 405 U.S. 150, 153-55 (1972). The District Attorney also violated Mr. Mills' due process rights by eliciting testimony from JoAnn that she did not have a plea deal. Napue v. Illinois, 360 U.S. 264, 269-72 (1959). Moreover, the District Attorney's extraordinary misconduct rendered the proceedings against Mr. Mills "fundamentally unfair," United States v. Agurs, 427 U.S. 97, 103 (1976) ("[A] conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."), and undermines the reliability of the verdict and appeals in this case.

> [I]f a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.

Mooney v. Holohan, 294 U.S. 103, 112 (1935).[5]

The District Attorney's misconduct was extraordinary and went to the crux

[5] A prosecutor "is the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." Berger v. United States, 295 U.S. 78, 88 (1935); see also Cone v. Bell, 556 U.S. 449, 469 (2009) (quoting Berger, 295 U.S. at 88) ("Although the State is obliged to 'prosecute with earnestness and vigor,' it 'is as much [its] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.'").

of the State's case. Jamie and JoAnn's testimony were equally consistent with the physical evidence in this case. While no one disputed that the victim's belongings and the murder weapons were found in the Mills' car (R1. 545-48, 553-55), there was undisputed evidence that anyone could have opened the trunk (R1. 46, 538, 792), testimony that Benjie had just as much access to it on the day of the offense as Mr. Mills, having been at the home both before and after the offense (R1. 58, 874, 877), and evidence that the car did not require a key to start. (R1. 789-92, 818-19; see also R1. 881, 689). Benjie was also found with the victim's medicine and a large amount of cash, consistent with the State's theory that the motive for the robbery was the large amount of cash the victims were known to carry. (R1. 40-41, 874, 882.) Moreover, Benjie's alibi witnesses, Thomas Green and Melissa Bishop, provided testimony that was inconsistent with Benjie's alibi and each other as to when Benjie went to the Mills, with whom he went, and how long he was gone. (R1. 864-66, 868-70, 873-78.)[6]

[6] Critically as to timing, because the State did not provide a time of death for Floyd Hill, the Hills could have been killed or attacked much earlier in the day and not around 6:00 p.m., as the State attempted to establish. (R1. 740). Testimony from the victims' family raised questions about time. The Hills' granddaughter, Angela Jones, testified that her mother had called her around 6:30 p.m. on June 24, 2004, because her mother was "worried" that she "couldn't get in touch" with her parents. (R1. 388.) No evidence was presented as to how long Ms. Jones's mother had been trying to get in contact with the Hills, just that as of 6:30 p.m., their daughter was concerned enough to call Ms. Jones because "she couldn't get in touch with them." (R1. 388.) Neither Benjie Howe nor JoAnn Mills have an alibi for earlier that day. Thomas Green testified he was not with Benjie for several hours on the afternoon of June 24th. (R1. 865-66.) The State presented no

As the District Attorney told the jury, this case came down to a he said/she said:

> You've got two people, a husband and a wife, that say -- both say we were together all day long. One says they went looking at houses and bought cigarettes. The other one says they participated in a horrible, horrible double murder. You can't put those two together. . . . Somebody's got to be telling a story.

(R1. 911.) JoAnn's testimony that there was no agreement was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach her:

> [Defense counsel] got on her statement, and the only thing he got her confused on, the only thing, was when they put the stuff in the blue bag. When did the garbage bag come into play? That was it. She was not tripped up on anything. Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did. The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching. . . . JoAnn didn't need that statement. She was there. She saw it. You looked at those pictures. She didn't look at a single picture up there on the stand, and she nailed it. She went through that crime scene. She took you through everything and didn't miss a thing. Again, they tripped her up on a garbage bag at their house, or tried to, and that was it. She shucked it down, as the saying goes. She told y'all exactly what happened. . .

(R1. 915-17.)

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corroboration for Joann Mills' whereabouts while Jamie Mills was sleeping. (R1. 795, 821.)

After state court appeals, Mr. Mills filed a federal habeas petition and alleged in this Court that his constitutional rights were violated because he suspected that there was a plea deal, but the State continued to maintain that there was no plea deal. Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017) ("concerning the substance of Mills's Brady claim, he offers no evidence . . . that an undisclosed Brady claim actually occurred in this case. Thus, Mills is due no relief."); see also Answer to Pet. for Writ of Habeas Corpus, ¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017). Relying on assurances from the State, this Court ruled on all aspects of Mr. Mills' constitutional claims related to the plea deal, denying Mr. Mills relief without access to discovery or an opportunity to present witnesses under oath at an evidentiary hearing, and also denied him a certificate of appealability. Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *79 (N.D. Ala. Nov. 30, 2020); see also Dismissal Order, Mills v. Dunn, 6:17-CV-00789-LSC (N.D. Ala. Nov. 30, 2020).

Where, as here, a State prosecutor engages in "deliberate deception of a court and jurors by the presentation of known false evidence," a new trial should have been ordered in state court and federal habeas corpus relief should have been granted by this Court. Giglio, 405 U.S. at 153 (deliberate deception of this kind "is incompatible with rudimentary demands of justice") (internal quotations omitted);

see also United States v. Bagley, 473 U.S. 667, 680 (1985) (quoting Agurs, 427 U.S. at 104) ("[T]he knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves 'a corruption of the truth-seeking function of the trial process.'").

The State made knowing false statements to the trial judge, jury, defense counsel, and then to this Court, which went to the central question of fact for the jury at trial and this Court in its consideration of the habeas corpus claim. This misconduct undermines the confidence in the outcome of Mr. Mills' trial and postconviction proceedings. Kyles v. Whitley, 514 U.S. 419, 434 (1995). The withholding of this information, considered individually and cumulatively, denied Mr. Mills his rights to due process, a fair trial, and a reliable sentencing procedure in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Alabama law. Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Mooney v. Holohan, 294 U.S. 103 (1935).

IV. THE STATE'S EXTRAORDINARY MISCONDUCT COMPELS RELIEF PURSUANT TO RULE 60.

At trial and at every stage of his appeals, Mr. Mills asked prosecutors whether Jack Bostick, the District Attorney, and JoAnn Mills truthfully represented to the jury, defense counsel, and the trial court that there was no plea offer in exchange for JoAnn's testimony. At each stage, the State falsely asserted that this

testimony was true.

The District Attorney's extraordinary misconduct—engaging in intentional deception of the trial court, the jury, and defense counsel—seriously undermines the integrity of every proceeding in this case, including the proceedings on Mr. Mills' federal claims in this Court. Mr. Mills was unable to obtain federal review of this claim because this Court relied on these false statements. In its order dismissing this claim as procedurally defaulted without an evidentiary hearing or discovery and denying a certificate of appealability, this Court evaluated Mr. Mills' claim against the factual backdrop established by these false statements:

> By way of background, JoAnn testified at trial that she had not made any deals in exchange for her testimony. Mills thoroughly cross-examined her regarding whether she had made any deals in exchange for her testimony. The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony.

Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 78-79 (N.D. Ala. Nov. 30, 2020).

The newly discovered evidence of the District Attorney's egregious misconduct raises serious questions about the integrity of the review process in this Court. The extraordinary constitutional violation is grounds for Rule 60(b) relief. "Rule 60(b) vests wide discretion in courts," Buck v. Davis, 580 U.S. 100, 123 (2017), and "provides courts with authority 'adequate to enable them to vacate

judgments whenever such action is appropriate to accomplish justice,'" Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 864 (1988) (quoting Klapprott v. United States, 335 U.S. 601, 614-15 (1949) in discussion of Rule 60(b)(6)); see also Gonzalez v. Crosby, 545 U.S. 524, 538 (2005) (Rule 60(b) motion appropriate if it challenges "the District Court's failure to reach the merits . . . and can [ ] be ruled upon by the District Court without precertification").

A. Relief is Warranted Under Rule 60(b)(2)

Rule 60(b)(2) permits relief from a final judgment, order, or proceeding based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) . . . ." Fed. R. Civ. P. 60(b)(2). To be entitled to relief under Rule 60(b)(2), the movant must demonstrate the new evidence was discovered after the judgment was entered and that he exercised due diligence in discovering that evidence, that the evidence is material and not merely cumulative or impeaching, and that the evidence was likely to produce a different result. In re Glob. Energies, LLC, 763 F.3d 1341, 1347 (11th Cir. 2014). Mr. Mills meets each of these requirements.

i. Despite Mr. Mills' due diligence, evidence that the State falsely denied the existence of a plea was not discovered until after judgment was entered in this case.

Mr. Mills exercised due diligence in discovering this evidence. For seventeen years, counsel for Mr. Mills has been asking prosecutors in this case

whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, this Court and the appellate courts that there was no plea offer in exchange for JoAnn's testimony. Because the State denied the existence of this evidence under oath, and continued to rely on this denial throughout the appeals process, this evidence was not known to Mr. Mills or his counsel prior to February 23, 2024, when Tony Glenn revealed to undersigned counsel that he had a plea agreement in place when JoAnn Mills testified against Jamie Mills. In re Glob. Energies, LLC, 763 F.3d at 1348 (plaintiff entitled to relief from judgment on the basis of discovery of new evidence that involuntary bankruptcy filing was done in bad faith).

The Eleventh Circuit has addressed this scenario in the Rule 60(b)(2) context, in which "a sworn officer of the court" obstructed access to evidence. In re Glob. Energies, LLC, 763 F.3d at 1348. There, the Court found the fact that the petitioner eventually gained access to the evidence through other means, did not "diminish [his] due diligence." Id. at 1349 ("the parties, who had the evidence that Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal"); see also Banks v. Dretke, 540 U.S. 668, 693 (2004) ("[B]ecause the

State persisted in hiding Farr's informant status and misleadingly represented that it had complied in full with its Brady disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr's connections to Deputy Sheriff Huff.").

ii. The new evidence is material and does not constitute cumulative or mere impeachment evidence.

The evidence that JoAnn Mills had a plea agreement with the State is not cumulative to other facts that were known at trial. With respect to evidence about the plea deal itself, the State presented false evidence that no deal or inducement "whatsoever" existed, (R1. 829-30), so there is nothing remotely cumulative about the new revelation that there was a plea deal.

More importantly, without JoAnn's testimony the prosecution could not have proven its case against Mr. Mills beyond a reasonable doubt. This is because there was a real question about whether Benjie Howe was the person who committed the crime in this case. Benjie was arrested and charged with the murders in this case. He was found with the victims' pills and a large amount of cash. (R1. 40-41, 874, 882.) While the State found the murder weapons, clothing, and victims' belongings in the trunk of the Mills' car, there was undisputed evidence that anyone could have opened the trunk (R1. 46, 538, 792) and that Benjie had just as much access to it on the day of the offense as Mr. Mills (R1. 58, 874, 877), as well as testimony that Benjie was at the Mills' home twice on the day of the offense—both before

and after the murders (R1. 37, 58-60). JoAnn Mills inculpated Benjie, not Jamie, in her first two statements and only inculpated Jamie in her third statement. (R1. 44, 57, 747, 837-39.) As the District Attorney told the jury in closing argument, this case came down to a he said/she said and "somebody's got to be telling a story." (R1. 911.) JoAnn's testimony was critical to, if not dispositive of, the State's case. Scutieri v. Paige, 808 F.2d 785, 794 (11th Cir. 1987) (requiring under (b)(2) that outcome of case would "probably" have been different with new evidence).

Similarly, this Court's reliance on the State's the false statements that no plea deal existed, when in fact, one did, was critical to its decision to deny Mr. Mills discovery or the opportunity to prove his claim at an evidentiary hearing, a certificate of appealability and, ultimately to dismiss Mr. Mills' habeas petition and deny him relief. "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony." Mills, 2020 WL 7038594, at *60, 77-79.

Evidence that the District Attorney lied to the trial court, jury, and defense counsel about the most critical issue at trial is not merely impeachment evidence, it undermines the reliability and integrity of the trial process. Giglio v. United States, 405 U.S. 150, 153 (1972) ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of

justice" and requires reversal) (internal quotations omitted); see also Bagley, 473 U.S. at 680 (quoting Agurs, 427 U.S. at 104) (when a prosecutor knowingly lies, it is not only prosecutorial misconduct but involves "a corruption of the truth-seeking function of the trial process," and undermines the integrity of the outcome).

iii. There is a reasonable probability of a different result.

Had evidence of JoAnn Mills' agreement with the State been presented at trial, the result would probably have been different. JoAnn's testimony was critical to the State's ability to prove its case against Mr. Mills beyond a reasonable doubt. The only pieces of physical evidence linking Mr. Mills to the offense were found in the trunk of the Mills' car. (R1. 545-48.) The trunk, however, did not have a functioning lock (R1. 46, 538, 792) and the car itself did not require a key to start (R1. 792). Benjie Howe had driven the Mills' car previously (R1. 881), and had access to it shortly before and after the offense (419, 422-23, 799-800). Benjie also had a key to the Mills' home (R1. 791) and was found with the victims' medicine and a large amount of cash (R1. 40-41, 874, 882).

In two of her three statements to police, JoAnn Mills implicated Benjie Howe, not Jamie Mills. (R1. 88 ("She immediately said that Benjie Howe had been over at the residence."); R1. 121, 728-30, 837-838.) She told investigators that she thought Benjie had left stolen items in the house and directed them to some of the items. (R1. 88, 122-23.) She also stated that she was worried about items Benjie

might have left in the trunk of their car. (R1. 92-93 ("her main concern was that Benjie Howe had put something in the trunk of the car").)

Mr. Mills was excluded from the DNA evidence found on the murder weapons (R1. 616, 626) and this evidence was never directly compared to Benjie's DNA profile. (R1. 617, 645.)

In light of this new evidence, this Court is left with evidence that Benjie Howe had equal access to the Mills' unlocked trunk (R1. 422-25, 538, 792, 798-801, 881); that Mr. Mills was excluded as a contributor to the unidentified DNA found on the handles of the murder weapons (R1. 616, 626); that the State never directly compared this DNA to Benjie's DNA profile (R1. 617, 645); that Benjie Howe and JoAnn Mills do not have alibis for critical periods of June 24 (R1. 795-96, 865-70); that the State did not establish *when* the Hills were killed; that JoAnn's testimony against Mr. Mills was obtained only after she was told capital murder charges would be dismissed if she testified against Mr. Mills (Ex. 2); and most critically, that the State prosecutor intentionally deceived not only defense counsel, but also the jury and the courts (R1. 829-30).

Evidence that JoAnn Mills did in fact receive a plea deal in exchange for her story, *prior* to her testimony (Ex. 1), that JoAnn Mills affirmatively lied about the existence of such a deal (R1. 685-86, 720-23), and most critically, that the State prosecutor himself knowingly made false statements to the jury, defense counsel,

and the courts about the existence of a deal (R1. 829-30), undoubtedly creates a probability of a different result at trial. Granting Mr. Mills relief from this Court's judgment would prevent a "grave miscarriage of justice." United States v. Beggerly, 524 U.S. 38, 47 (1998). A denial of this motion would reward the State's exceptional misconduct—misconduct that has prevented Mr. Mills from ever receiving merits review of this issue—and undermines the integrity of Mr. Mills' conviction and death sentence. Giglio, 405 U.S. at 153 ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'") (quoting Mooney v. Holohan, 294 U.S. 103, 112 (1935)).

B. The State's Representations Constitute the Kind of Fraud that Warrants Relief Under Rule 60(b)(3) and Rule 60(d).

The District Attorney made false statements under oath and on the record in this case. The State did not correct these false statements in federal habeas corpus proceedings, as it is obligated to do, Napue v. Illinois, 360 U.S. 264, 269 (1959),[7] and instead urged this Court to rely on these false statements—and this Court did in fact rely on these statements—in denying Mr. Mills process and review of his claim. Mr. Mills asked for, and this Court denied, discovery, an evidentiary hearing, habeas corpus relief, and a certificate of appealability. Concealing

[7] See also Alcorta v. State of Tex., 355 U.S. 28, 32 (1957) (petitioner entitled to habeas corpus relief where witness at trial lied regarding relationship with victim and prosecutor willfully failed to correct misrepresentation).

evidence about the plea deal that was central to Mr. Mills' habeas corpus petition is the kind of "fraud" contemplated by Rule 60 because it improperly influenced the Court's decisions related to this issue and prevented the Court from performing an impartial review of the claim in this case. Relief is warranted pursuant to Rule 60 because to allow the State to proceed with an execution predicated on a false representation about a critical question of fact for the jury and this Court—JoAnn's reliability—would be a miscarriage of justice.

Rule 60 provides two avenues for pursuing relief from a judgment: Rule 60(b)(3), which permits a court to set aside a judgment due to "fraud . . . by an opposing party" and Rule 60(d)(1) and (3), which provides that Rule 60 "does not limit a court's power to" either "entertain an independent action to relieve a party from a judgment" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(b)(3), (d)(1), (d)(3). The commentary to Rule 60 notes that Rule 60(d) reflects the inherent power to vacate a judgment obtained by fraud on the court that the Supreme Court espoused in Hazel-Atlas. Fed. R. Civ. P. 60 advisory committee's note, 1946 Amendment (referencing Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944)) ("the rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause").

Relief is warranted pursuant to Rule 60(b)(3) because new evidence establishes that the District Attorney committed egregious misconduct by lying to the court, the jury, and defense counsel, about the existence of a plea deal. The State continued to rely on this false evidence in arguing that Mr. Mills is due no process on his claims in federal court. The State's representation in its response to Mr. Mills' § 2254 petition that no evidence of a deal exists; failure to correct the false representations on the record; and use of those false representations in asking this Court to find that Mr. Mills is entitled to no process on his claim, are evidence of fraudulent deception. Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1309 (11th Cir. 2003) (citing Frederick v. Kirby Tankships, Inc., 205 F.3d 1277, 1287 (11th Cir. 2000)) (Rule 60(b)(3) warranted where moving party establishes that adverse party's misconduct "prevented them from fully presenting his case").

Relief is also warranted pursuant to Rule 60(d) where a party's fraudulent conduct interferes with the Court's ability to perform its duty in adjudging cases. Zakrzewski v. McDonough, 490 F.3d 1264, 1267 (11th Cir. 2007). The State, through District Attorney Bostick, made knowingly false statements to the trial court, the jury, and defense counsel, about a critical question of fact at trial. The State has not corrected these deceptive statements and has continued to repeat them in this Court. Fraud has been committed on this Court by the State's knowing endorsement of the District Attorney's intentional deception. Zakrzewski, 490 F.3d

at 1267 (quoting Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1551 (11th Cir. 1985)) ("'Fraud upon the court' . . . embrace[s] . . . fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.'").

Rule 60(d) relief must be available in a case such as Mr. Mills in which, not only an attorney is implicated, but a State prosecutor is responsible. Berber v. Wells Fargo, NA, No. 20-13222, 2021 WL 3661204, at *3 (11th Cir. Aug. 18, 2021). The fraud "denied Petitioner of his right to due process and his right to full and fair access to [the district court], and it subsequently led to the denial of Petitioner's habeas petition[,]" as well as denial of his ability to obtain discovery or an evidentiary hearing. Zakrzewski, 490 F.3d at 1266-67 (remanding to district court for proceedings to determine if the petitioner had met the requirements for fraud on the court).

The State's extraordinary constitutional violation is grounds for Rule 60(b) and (d) relief allowing Mr. Mills to obtain merits review of this claim. Mr. Mills has always maintained his innocence and has persistently tried in every court available—including this Court—to get the State to reveal the truth about the plea deal, but the State has always maintained that there was no such deal, thereby preventing adequate consideration of the most important issue in this case.

C. Relief is Warranted Under Rule 60(b)(6)

Mr. Mills is entitled to relief under Rule 60(b)(6) due to the "extraordinary circumstances" his case presents. Buck v. Davis, 580 U.S. 100, 123, 128 (2017) (finding petitioner to be entitled to relief pursuant to Rule 60(b)(6) where use of race undermined integrity of the proceedings and "poison[ed] public confidence in the judicial process") (internal quotations omitted); see also Bucklon v. Sec'y, Fla. Dep't of Corr., 606 F. App'x 490, 493 (11th Cir. 2015) (finding petitioner established "extraordinary circumstances" necessary for relief under Rule 60(b)(6) where intervening decision established error in how federal court interpreted its own procedural rules).[8]

The District Attorney at Mr. Mills' trial falsely denied the existence of any understanding with JoAnn Mills prior to her trial testimony (R1. 829-30) and deliberately misinformed the jury of this fact because he knew that JoAnn was the crux of the State's case against Mr. Mills. The State has never corrected these false statements and in fact urged this Court to rely on them. Answer to Pet. for Writ of

[8] See also Thompson v. Bell, 580 F.3d 423, 442, 444 (6th Cir. 2009) (reversing district court's denial of Rule 60(b)(6) motion that asserted the district court erred when it dismissed four of petitioner's ineffective assistance claims as procedurally defaulted in death penalty case, finding "[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged") (quoting Sanders v. United States, 373 U.S. 1, 8 (1963)); Cmty. Dental Servs. v. Tani, 282 F.3d 1164, 1172 (9th Cir. 2002) (petitioner entitled to relief pursuant to Rule 60(b)(6) where attorney engaged in "grossly negligent conduct").

Habeas Corpus, ¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017); Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017).

This Court relied on the District Attorney's knowingly false statements in resolving this issue and declining to grant merits review: "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony . . . Mills still fails to allege what specific evidence or arguments his trial counsel could have presented . . . to show that JoAnn lied on the stand and was in fact testifying against Mills in exchange for a lesser sentence." Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 78 (N.D. Ala. Nov. 30, 2020).

The State's assertions in federal habeas proceedings that JoAnn in fact did not receive a plea deal in exchange for her testimony and that the District Attorney did not knowingly deceive the trial court and the jury, as well as this Court's reliance on those false assertions, constitutes "a defect in the integrity of the habeas proceedings," and requires relief from this Court's prior judgment. Gonzalez, 545 U.S. at 532 (federal courts have jurisdiction to consider Rule 60(b) motions in federal habeas proceedings where the motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity

of the federal habeas proceedings"); Williams v. Chatman, 510 F.3d 1290, 1295 (11th Cir. 2007) (finding claim that district court should have granted additional briefing to be a proper Rule 60(b) motion because it attacks a "defect in the integrity of the federal habeas proceedings").

Rule 60(b)(6) is intended to prevent this unnecessary "risk of injustice" and "risk of undermining the public's confidence in the judicial process". Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988); see also Buck v. Davis, 580 U.S. 100, 123 (2017). This Court's dismissal of Mr. Mills' Brady, Giglio, and Napue claim, and decision not to grant merits-based review, was based on the State's fraudulent assertions in its habeas petition and the District Attorney's knowingly false statements at trial, that no understanding existed with JoAnn Mills prior to her testimony. Mills, 2020 WL 7038594, at *77-78. To allow such a ruling to stand "injures not just [Mr. Mills], but the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts." Buck, 580 U.S. at 124 (quoting Rose v. Mitchell, 443 U.S. 545, 556 (1979)) (internal quotations omitted).

Much like the impermissible use of race in Buck, to prevent Mr. Mills from receiving federal merits-review based on the District Court's reliance on the State's false statements "is a disturbing departure from a basic premise of our criminal justice system." Buck, 580 U.S. at 123. It is a basic premise of our criminal justice

system that prosecutors tell the truth and do not impermissibly obstruct or mislead the appellate and federal review process. See, e.g., Cone v. Bell, 556 U.S. 449, 469 (2009); Banks v. Dretke, 540 U.S. 668, 696 (2004); Strickler v. Greene, 527 U.S. 263, 281 (1999); Berger v. United States, 295 U.S. 78, 88 (1935). Mr. Mills' case presents "extraordinary circumstances" because to date, the State has successfully impeded the federal review process by presenting the District Attorney's false statements. Buck, 580 U.S. at 123.

Mr. Mills brought this motion within a "reasonable time," as required by Rule 60(c)(1). Fed. R. Civ. P. 60(c)(1). Ms. Mills' attorney's willingness to come forward this year allowed Mr. Mills to discover the evidence contained in Tony Glenn's affidavit just one-month prior, on February 23, 2024. Bucklon, 606 F. App'x at 494–95 (finding 18-month delay to be reasonable given facts and circumstances of case). Further, Mr. Mills exercised diligence in attempting to establish the State's false statements. Mr. Mills should not be punished for the time in which it took him to establish the *State's* misconduct—this Court has found it is reasonable for defense counsel to take "the government at its word" and "not undertake additional steps" to investigate issues of prosecutorial misconduct or Brady violations. Scott v. United States, 890 F.3d 1239, 1259 (11th Cir. 2018). Mr. Mills' case, however, presents the extraordinary circumstance in which a petitioner continues to attempt to establish the State's deception despite no requirement that

he do so, in an effort to finally receive federal review of his claim. This is precisely the type of diligence that makes this case "extraordinary." Gonzalez, 545 U.S. at 537.

Because Mr. Mills has never received merits-based review of this issue, "an 'extreme' and 'unexpected' hardship will result" if this Court allows the State of Alabama to proceed with Mr. Mills' death sentence, with no review of the State's grave misconduct, and with no consequences to the State's knowing endorsement of the District Attorney's false statements before this Court. Horton v. Hand, 785 F. App'x 704, 706 (11th Cir. 2019) (quoting Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984)). Further, providing relief in this case will "not produce injustice in other cases" but to the contrary, "may prevent a substantive injustice in some future case by encouraging" prosecutors and State attorneys to undertake their oath to pursue truth and justice, as opposed to upholding a conviction at any cost. Liljeberg, 486 U.S. at 868 ("providing relief in cases such as this [pursuant to Rule 60(b)(6)] will not produce injustice in other cases; to the contrary, the Court of Appeals' willingness to enforce § 455 may prevent a substantive injustice in some future case by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered"); see also Buck, 580 U.S. at 126 (quoting Gonzalez, 545 U.S., at 529)

("[T]he 'whole purpose' of Rule 60(b) 'is to make an exception to finality.'"). Mr. Mills must be granted relief from this Court's prior judgment.

V. CONCLUSION.

The "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'" Giglio, 405 U.S. at 153 (quoting Mooney, 294 U.S. at 112). To allow Mr. Mills to be executed without a merits review of his underlying Brady, Giglio, and Napue claim would reward the State's misconduct and fly in the face of this Supreme Court precedent. The State has successfully prevented federal review of Mr. Mills' underlying claim by knowingly endorsing the District Attorney's false statements. Although Mr. Mills has diligently pursued this claim at all stages, he only recently obtained proof that an understanding *did* in fact exist between the State and their central witness. It cannot be that the State may conceal critical evidence throughout all stages of capital proceedings—trial, appeals, state and federal postconviction—and then rely on procedural hurdles and arguments of delay to prevent Mr. Mills from obtaining any process on this claim. *The State* has delayed a substantive review of this issue, not Mr. Mills. In light of the extraordinary aspects of Mr. Mills' case, relief under Rule 60(b) and (d) is warranted.

Respectfully submitted,

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON
ANGELA L. SETZER
RANDALL S. SUSSKIND
Equal Justice Initiative
122 Commerce Street
Montgomery, AL 36104
Phone: (334) 269-1803
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asetzer@eji.org
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Counsel for Mr. Mills

April 5, 2024

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: **Lauren Simpson**.

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON

EXHIBIT 1

AFFIDAVIT OF TONY GLENN

1. My name is Tony Glenn. I am a practicing attorney in Hamilton, Alabama. My law office is located at 164 Bexar Ave. W., Hamilton, AL 35570.

2. I represented Jo Ann Mills in Marion County Case No. 2004-403. My client, along with her husband, Jamie Mills, were charged with capital murder in the deaths of Floyd and Vera Hill. My Attorney Fee Declaration Sheet in this case is attached.

3. During the summer of 2007, prior to Jamie Mills' trial, I had several discussions with Jack Bostick, who was the Marion County District Attorney at the time, about a plea offer based on Jo Ann's tragic mitigation history and her potential testimony at Jamie Mills' upcoming trial.

5. Prior to testifying in Jamie Mills' case, Jo Ann and I met with Mr. Bostick and the victim's daughter. I presented Jo Ann's tragic mitigation history. Based on Jo Ann's terrible childhood, the victim's family agreed for Jo Ann to get a plea to life with parole if she testified truthfully at Jamie Mills' trial. Mr. Bostick agreed that if Jo Ann testified truthfully, he would not pursue the capital charge and would agree to a plea to murder.

6. These meetings are recorded on my Attorney Fee Declaration Sheet.

7. The first time I spoke with any attorneys from the Equal Justice Initiative regarding Jamie Mills' case or Jo Ann's testimony in her husband's case was February 23, 2024.

I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that the above and foregoing is a true and correct statement.

James Tony Glenn — 02-26-2024

Tony Glenn Date

Subscribed and sworn before me on this 26th day of March, 2024.

Angela Cumbo My commission expires 10-8-2025

Notary Public

ANGELA CUMBO
Notary Public, Alabama State At Large
My Commission Expires 10/8/2025

COPY

State of Alabama
Unified Judicial System

Form CR-63A Rev.8/06

ATTORNEY'S FEE DECLARATION
(Adult)
[For Work Performed On or After 10/1/2000]

County Code: 47

Case Number: CC 2004-403
(Jurisdiction Year Case# Suffix)

Mark Appropriate Court:
- ☑ Circuit Court of Marion County
- ☐ District Court of _____ County
- ☐ Municipal Court of _____
- ☐ Alabama Court of Criminal Appeals
- ☐ Alabama Court of Civil Appeals
- ☐ Supreme Court of Alabama

Indicate If Original Charge Is: Limits
- Capital Case (or charge carrying sentence of life without parole) ☑ (NO Limit) CC
- Class A Felony ☐ ($3,500) FA
- Class B Felony ☐ ($2,500) FB
- Class C Felony ☐ ($1,500) FC
- Other ☐ ($1,000) OT
- Appeal ☐ ($2,000) AP
- Petition for Writ of Certiorari ☐ ($2,000) WC
- Post-Conviction/Habeas Corpus ☐ ($1,000) PC

Attorney Name (Please type or print)
J. Tony Glenn

63-1116644
Social Security Number or FEIN

STYLE OF CASE: ☑ STATE OF ALABAMA ☐ MUNICIPALITY OF _____ v. JoAnn Green Mills (Defendant)

CHARGE: Murder - Capital - Robbery (x2), Murder - Capital - Two or more

Companion case numbers and charges or convictions: _____

The undersigned attorney declares that on (date) December 13 2004, the Honorable John Bentley, Judge, appointed the undersigned to represent the above-named defendant or appellant, and on (date) 9/24/07 the case was heard by the Honorable John Bentley, Judge. The case was disposed of by Plea Agreement

(Plea of guilty, conviction, acquittal, affirmance, reversal, cert. denied)

(1)	In court Appearance (Trial Level or Post-Conviction Proceeding)	Total Hours 30.10	x $ 60.00 per hour =	1,806.00
(2)	Out-of-Court Preparation (Trial Level or Post-Conviction Proceeding)	Total Hours 101.75	x $ 40.00 per hour =	4,070.00
(3)	Preparation (Appellate Level)	Total Hours _____	x $ 60.00 per hour =	
(4)	Extraordinary Expenses (If approved in advance by court)	Preliminary Hearing Transcript		126.70
(5)	Overhead Expenses (If approved in advance by court)	Total Hours 117.45	x $ 35 Per hour =	4,110.75
		TOTAL CLAIM OF ATTORNEY		10,113.45

NOTICE TO ATTORNEY: Complete this form. Attach a copy of a complete itemization of (1) in-court appearance; (2) out-of-court preparation; (3) preparation for appeals;(4) extraordinary expenses; and/or (5)overhead expenses reflecting the date of actions and amount of time involved in each activity. Make a copy of same for the court's record and a copy for your records.

The undersigned attorney further declares that the above claim is true and correct and represents the services actually rendered by him/her as an attorney and the amount is due and payable. I further declare that the above claim is not a duplication of charges and expenses in any case (companion or otherwise)

Signature of Attorney

Attorney Code GLE 003

Sworn to and subscribed before me this _____

Day of September 2007

Notary Public

Mailing Address of Attorney
(please type or print) (including city, state, and zip code)
PO Drawer 1945
Hamilton, AL 35570

Telephone Number 921-5000 Fax Number 921-9697

I, the undersigned judge, hereby certify that the foregoing claim has been presented to me, and I have reviewed the same and believe the same to be true and correct. I am further of the opinion that said attorney is not duplicating said charges and expenses in any case (companion or otherwise).

Based on the above, I hereby approve the declaration and claim in the amount of $ 10,113.45

Done this September day of 25th 2007

Judge's Signature

NOTICE TO ATTORNEY AND JUDGE: Sections 15-12-21 through 15-12-23, Ala. Code 1975, provide for the payment of attorney fees and extraordinary expenses incurred by counsel appointed to represent indigent defendants at the trial level on appeal (including petition for writ of certiorari to the Alabama Supreme Court) and in post-conviction proceedings.

THIS FORM MUST CONTAIN ORIGINAL SIGNATURES OF THE ATTORNEY AND THE JUDGE. THIS FORM WITH ATTACHED ITEMIZATION MUST BE SUBMITTED TO THE TRIAL COURT JUDGE OR PRESIDING JUDGE OR CHIEF JUSTICE OF THE APPELLATE COURT FOR APPROVAL. AFTER APPROVAL, FILE WITH THE CLERK, WHO SHALL SUBMIT THE ORIGINAL DECLARATION TO THE STATE COMPTROLLER (EXCEPT IN MUNICIPAL CASES) FOR AUDIT.

Filed in the Clerk's Office at Hamilton, Alabama, on 9-25-07 (date)

FILED
SEP 25 2007
CIRCUIT CLERK
HAMILTON, ALABAMA
MARION COUNTY

EXCEPT IN MUNICIPAL CASES, MAIL TO: State Comptroller, Indigent Defense Section, P.O. BOX [illegible], Montgomery, Alabama 36130-2602.

Original: Comptroller Yellow: Court File Pink: Attorney

Form CR-52 (back) Rev. 8/06

EXPLANATION OF RIGHTS AND PLEA OF GUILTY

(Habitual Felony Offender – Circuit District Court)

18 to person under age (18) or 13A-12-231(drug trafficking), Ala.Code 1975, you shall be assessed an additional fee of $1,000 if you are a first-time offender or $2,000 if you are a repeat offender under one of these sections. Collection of all or part of the penalty will be suspended if, with court approval, you enter a drug rehabilitation program and if you agree to pay for a part of all of the program costs, upon successful completion of the program, you may apply to the court to reduce the penalty by the amount actually paid by you for participation in the program. Any suspension of the penalty can be withdrawn by the court if you fail to enroll in or successfully pursue or otherwise fail to complete an approved program. In addition, pursuant to Section 13A-12-214 (unlawful possession of marijuana in the second degree), Section 32-5A-191(a)(3) or Section 32-5A-191(a)(4)(DUI offenses involving drugs), you will lose your privilege to drive a motor vehicle for a period of six months, which shall be in addition to any suspension or revocation otherwise provided by law.

☐ **Alcohol/Drug Related Offenses:** If you are convicted of an alcohol or drug-related offense, you will be required to undergo an evaluation for substance abuse. Based upon the results of any such evaluation, you will be required to complete the recommended course of education and/or treatment and to pay for the evaluation and any cost of program to which you are referred. Failure to submit to an evaluation or failure to complete any program to which you may be referred will be considered a violation of any probation or parole you may be granted. You may also be required to attend monitoring sessions, including random drug and alcohol testing or blood, urine and/or breath, tests and to pay a fee for this service. You may request a waiver of part of all of the fees assessed if you are indigent or for any portion of time you are financially unable to pay. Community service may be ordered by the court in lieu of the monetary payment of fees.

☐ **DNA Samples for Criminal Offenses in §36-18-24:** Section 36-18-25(a), Ala. Code 1975, provides that, all persons convicted of any of the offenses set out in Section 36-18-24(felony offense or any offense contained in Chapter 6 of Title 13A - offenses involving danger to the person –or attempt, conspiracy, or solicitation thereof), shall be ordered by the court to submit to the taking of a DNA sample or samples.

☐ **Drug Possession:** If you are convicted in any court of this state for drug possession, drug sale, drug trafficking, or drug paraphernalia offenses as denied in Section 13A-12-211 to 13A-12-260, inclusive, Ala. Code 1975, an additional fee of $100.00 will be assessed pursuant to Section 36-18-7, Ala. Code 1975.

☐ Other:_____

RIGHTS YOU HAVE AND WAIVER OF YOUR RIGHTS

Under the Constitution of the United States and the Constitution and laws of the State of Alabama, you have a right to remain silent and you may not be compelled to give evidence against yourself. You attorney cannot disclose any confidential talks he/she has had with you. You are not required to answer any questions. If you do answer questions knowing that you have a right to remain silent, you will have waived this right.

You have the right to enter, and continue to assert, a plea of "Not Guilty" or "Not Guilty by Reason of Mental Disease or Defect", and have a public trial before a duly selected jury. The jury would decide your guilt or innocence based upon the evidence presented before them. If you elect to proceed to trial, you would have the right to be present, you would have the right to have your attorney present to assist you, you would have the right to confront and cross examine your accuser(s) and all the State's witnesses, you would have the right to subpoena witnesses to testify on your behalf and to have their attendance in court and their testimony required by the court, and you would have the right to take the witness stand and to testify, but only if your choose to do so, as no one can require you to do this. If you elect to testify, you can be cross examined by the State, just as any other witness is subjected to cross examination. If you decide not to testify, no one but your attorney will be allowed to comment about that fact to the jury. Your attorney is bound to do everything he/she can honorably and reasonably do to see that you obtain a fair and impartial trial.

If you elect to proceed to trial, you come to court presumed to be innocent. This presumption of innocence will follow you throughout the trial until the State produces sufficient evidence to convince the jury (or the court if the trial is non-jury) of your guilt beyond a reasonable doubt. You have no burden of proof in this case. If the State fails to meet its burden, you would be found not guilty. If you are entering a guilty plea to a charge for which you have not yet been indicted, you are waiving indictment by a grand jury and you will be pleading guilty to a charge preferred against you by a District Attorney's Information filed with the court.

IF YOU PLEAD GUILTY, THERE WILL BE NO TRIAL. YOU WILL BE WAIVING THE RIGHTS OUTLINED ABOVE, EXCEPT YOUR RIGHTS RELATING TO REPRESENTATION BY AN ATTORNEY. THE STATE WILL HAVE NOTHING TO PROVE, AND YOU WILL BE CONVICTED AND SENTENCED BASED ON YOUR GUILTY PLEA. BY ENTERING A PLEA OF GUILTY, YOU WILL ALSO WAIVE YOUR RIGHT TO APPEAL, UNLESS (1) YOU HAVE, BEFORE ENTERING THE PLEA OF GUILTY, EXPRESSLY RESERVED THE RIGHT TO APPEAL WITH RESPECT TO A PARTICULAR ISSUE OR ISSUES, IN WHICH EVENT APPELLATE REVIEW SHALL BE LIMITED TO A DETERMINATION OF THE ISSUE OR ISSUES RESERVED, OR (2) YOU HAVE TIMELY FILED A MOTION TO WITHDRAW THE PLEA OF GUILTY AFTER PRONOUNCEMENT OF SENTENCE ON THE GROUND THAT THE WITHDRAWAL IS NECESSARY TO CORRECT A MANIFEST INJUSTICE, AND THE COURT HAS DENIED YOUR MOTION TO WITHDRAW YOUR PLEA, OR THE MOTION HAS BEEN DEEMED DENIED BY OPERATION OF LAW.

IF YOU HAVE A RIGHT TO APPEAL UNDER ONE OF THE CONDITIONS ABOVE AND YOU ARE DETERMINED BY THE COURT TO BE INDIGENT, COUNSEL WILL BE APPOINTED TO REPRESENT YOU ON APPEAL IF YOU SO DESIRE AND IF THE APPEAL IS FROM A CIRCUIT COURT JUDGMENT OR SENTENCE, A COPY OF THE RECORD AND REPORTER'S TRANSCRIPT WILL BE PROVIDED AT NO COST TO YOU.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS OR THE CONSEQUENCES OF PLEADING GUILTY, PLEASE LET THE COURT KNOW NOW AND FURTHER EXPLANATION WILL BE MADE.

9/24/07
Date

Judge

ATTORNEY'S CERTIFICATE

I certify that the above was fully read to the defendant by me; that I explained the penalty or penalties involved with the defendant; that I discussed in detail defendant's rights and the consequences of pleading guilty; and that, in my judgment, the defendant understands the same and that he/she is knowingly, voluntarily, and intelligently waiving his/her rights and entering a voluntary and intelligent plea of guilty. I further certify to the court that I have in no way forced or induced the defendant to plead guilty and to my knowledge no one else has done so.

09/24/07
Date

Attorney

DEFENDANT'S STATEMENT OF WAIVER OF RIGHTS AND PLEA OF GUILTY

I certify to the court that my attorney has read and explained the matters set forth above; that my rights have been discussed with me in detail and fully explained; that I understand the charge or charges against me; that I understand my rights, the punishment or punishments provided by law as they may apply to my case, and I understand the consequences of pleading guilty; that I am not under the influence of any drugs, medicines, or alcoholic beverages; and I have not been threatened or abused or offered any inducement, reward, or hope of reward to plead guilty other than the terms of the plea agreement which will be stated on the record.

I further state to the court that I am guilty of the charge to which I am entering a plea of guilty, that I desire to plead guilty, that I made up my own with my attorney's services and his/her handling of my case.

09/24/07
Date

JoAnn Mills
Defendant

Original – Court File | Copy – Defendant | Copy – District Attorney | Copy – Defense Attorney

Defendant JoAnn Green Mills
Case No. DC 04-1045 and CC 2004-403

Date	In Court Time	Hours	AMOUNT
12/13/04	Attendance & representation @ Preliminary Hearing	3.00	
01/11/05	Representation of defendant @ arraignment	2.00	
04/07/05	Plea - Attendance at	0.50	
04/25/05	Trial - Attendance at	0.50	
06/10/05	Plea - Attendance at	0.50	
06/20/05	Trial - Attendance at	0.50	
09/01/05	Plea - Attendance at	0.50	
09/12/05	Trial - Attendance at	0.50	
11/04/05	Plea - Attendance at	0.50	
11/14/05	Trial - Attendance at	0.50	
02/07/06	Plea - Attendance at	0.50	
02/13/06	Trial - Attendance at	0.50	
04/06/06	Plea - Attendance at	0.50	
04/24/06	Trial - Attendance at	0.50	
08/31/06	Plea - Attendance at	0.50	
09/11/06	Trial - Attendance at	0.50	
11/03/06	Plea - Attendance at	0.50	
11/13/06	Trial - Attendance at	0.50	
02/09/07	Plea - Attendance at	0.50	
02/12/07	Trial - Attendance at	0.50	
04/05/07	Plea - Attendance at	0.50	
04/30/07	Trial - Attendance at	0.50	
06/08/07	Plea - Attendance at	0.50	
06/08/07	Attendance & representation @ motions hearing	5.00	
06/18/07	Trial - Attendance at	0.50	
09/11/07	Attendance @ trial of co-defendant for testimony of client	4.00	
09/12/07	Attendance @ trial during testimony of client	2.00	
09/24/07	Attendance @ plea agreement hearing	0.50	
09/24/07	Discussing with Defendant ramifications of plea	0.40	
09/24/07	Discussions with DA re acceptance of plea	0.20	
09/24/07	Representation of Defendant @ presentation of plea	2.00	
TOTAL		30.10	1,806.00

Date	Out of Court Preparation	Hours
07/12/04	Set up office file	0.50
07/13/04	Conference with defendant's relatives	5.00
07/14/04	Meeting with Defendant @ Jail re issues & charges	3.50
07/21/04	Notice of appearance (DC04-105) preparation & filing	0.50
07/21/04	Motion for discovery (DC04-105) preparation & filing	0.50
07/21/04	Moton for mental examination (DC04-105) prep & filing	0.50
07/29/04	Order for mental evaluation - receipt & review	0.10
07/29/04	Order for preliminary hearing - receipt & review	0.10
07/29/04	Order setting preliminary hering for 8/23/04	0.10
07/30/04	Meeting with Defendant re evaluation @ Taylor Hardin	1.80
08/05/04	Letter from Taylor Hardin re psychiatric evaluation	0.20
08/06/04	Meeting with Defendant re infor for psychiatric evaluation	1.00
08/09/04	Completion of info for Taylor Hardin for evaluation	0.60
08/12/04	Motion for extra ordinary expenses - prep & filing	0.50
08/12/04	Order approving expenses - receipt & review	0.10
08/19/04	Letter from Alabama Prison Project	0.20
09/14/04	Telephone call from Defendant	0.20
09/22/04	Meeting with relatives of Defendant	2.00
10/06/04	Telephone conference with JoAnn & her relatives	1.00
10/20/04	Meeting with Defendant @ Jail	0.50
11/16/04	Research re issues pertaining to defendant's charges	0.80
12/13/04	Meeting with Defendant @ Jail	1.60
12/16/04	TC with Lucia Penland of Alabama Prison Project	0.30
12/22/04	Calendar 1/11/05 arraignment	0.10
12/23/04	Letter to Defendant re arraignment scheduled 1/11/05	0.30
12/28/04	Motion for discovery & inspection - prep & filing	0.50
12/28/04	Motion to Suppress - preparation & filing	0.50
01/07/05	Motion for Gag Order - preparation & filing	0.50
01/07/05	Motion to Sever - preparation & filing	0.50
01/07/05	Motion to appoint special investigator - prep & filing	0.50
01/07/05	Motion for copy of scientific reports - prep & filing	0.50
01/07/05	Motion for change of venue - preparation & filing	0.50
01/12/05	Meeting with Defendant @ Jail	1.50
01/13/05	Review of Carraway NW Med records re defendant	1.50
01/20/05	Telephone call with relatives of defendant	0.20
01/30/05	Letter from defendant	0.30
02/01/05	Review of letter from co-defendant to defendant	0.10
02/02/05	Meeting with Defendant @ Jail	2.00
02/03/05	Meeting with Defendant @ Jail	0.80
02/23/05	Telephone call from Defendant's aunt	0.30

02/23/05	Letter from defendant	0.20
03/02/05	Motion for appointment of psychiatrist - prep & filing	0.50
03/02/05	Motion for psychiatric assistance - preparation & filing	0.50
03/18/05	Calendar 4/7/05 plea & 4/25/05 trial dockets	0.10
03/24/05	Letter to Defendant re 4/7/05 & 4/25/05 dockets	0.30
03/28/05	Evaluation report of Taylor Hardin - receipt & review	0.50
04/25/05	Conference with Defendant @ jail	4.25
05/05/05	Letter from defendant	0.20
05/05/05	Letter to Jimmie D. Short re preliminary transcript	0.30
05/10/05	Calendar 6/10/05 plea & 6/20/05 trial dockets	0.10
05/11/05	Letter to Defendant re 6/10 & 6/20 trial dockets	0.30
06/10/05	Telephone call re issues with client @ jail	0.20
08/10/05	Communication with EJI re capital cases	0.20
08/17/05	Calendar 9/1/05 plea & 9/12/05 trial dockets	0.10
08/23/05	Conference with Defendant's aunt	1.90
08/23/05	Letter from defendant	0.20
08/23/05	Letter to Defendant re 9/1 & 9/12/05 dockets	0.30
10/04/05	Research law re motions to be filed	3.50
10/07/05	Motion for mitigation expert - preparation & filing	0.50
10/07/05	Motion for witness list w/memorandum - prep & filing	0.50
10/07/05	Motion to inspect physical evidence - prep & filing	0.50
10/07/05	Motion for appointment of additional counsel - prep & file	0.50
10/07/05	Demand for indictment & list of witnesses - prep & file	0.50
10/07/05	Motion for appointment of special investigator - prep & file	0.50
10/08/05	Research ABA Guidelines in capital cases	1.20
10/11/05	Calendar 11/4/05 plea & 11/14/05 trial dockets	0.10
10/18/05	Letter to Defendant re 11/4/05 & 11/14/05 dockets	0.30
11/18/05	Letter to Defendant re synopsis of life background	0.40
01/11/06	Calendar 2/7/06 plea & 2/13/06 trial dockets	0.10
01/20/06	Letter to Defendant re 2/7 and 2/13/06 dockets	0.30
02/06/06	Letter from defendant	0.40
02/13/06	Letter from defendant	0.20
03/06/06	Letter from defendant	0.20
03/20/06	Review forensic exam & analyses - Vera Hill	0.60
03/22/06	Calendar 4/6/06 plea & 4/24/06 trial dockets	0.10
04/27/06	Review forensic exam & analyses - Floyd Hill	0.60
06/22/06	Letter from defendant	0.20
07/24/06	Letter from defendant	0.20
08/15/06	Receipt of letter from client	0.30
08/16/06	Calendar 8/31/06 plea & 9/11/06 trial dockets	0.10
10/06/06	Letter from defendant	0.20
10/11/06	Calendar 11/3/06 plea & 11/13/06 trial dockets	0.10
10/13/06	Letter from defendant	0.20
10/31/06	Letter to Defendant re being relocated	0.30

10/31/06	Letter from defendant re being moved to another jail	0.30	
01/11/07	Calendar 2/9/07 plea & 2/12/07 trial dates	0.10	
02/27/07	Research law in preparation for defense & motions	4.20	
03/06/07	Preparation & filing motion to reveal mitigating	0.40	
03/06/07	Research law re mitigating circumstances	1.50	
03/06/07	Preparation & filing motion to sever	0.50	
03/06/07	Research law re severing of trial from co defendant	2.00	
03/06/07	Preparation & filing motion for enlargement of venire	0.50	
03/06/07	Preparation & filing motion to preclude prejudicial photos	0.50	
03/06/07	Research law re prejudicial photo evidence	1.60	
03/12/07	Order granting motion to sever	0.10	
03/12/07	Order denying enlargement of venire	0.10	
03/22/07	Calendar 4/5/07 plea & 4/30/07 trial dates	0.10	
05/02/07	Meeting with Defendant @ Jail	1.00	
05/05/07	Research law re issues for defense	2.90	
05/07/07	Preparation & filing motion to heightened standards	0.50	
05/07/07	Preparation & filing motion in limine	0.90	
05/07/07	Preparation & filing motion for prosecution files, etc.	0.60	
05/07/07	Research law re heightened standards	2.10	
05/11/07	Calendar 6/8/07 plea & 6/18/07 trial dates	0.10	
06/05/07	Calendar setting motions hearing 6/8/07	0.20	
07/08/07	Review of discovery and research	3.00	
07/17/07	Meeting with DA re defendant & proposed plea offer	1.00	
07/23/07	Meeting with Defendant re proposed plea offer	0.60	
08/01/07	Discussions with DA re testimony of defendant @ trial	0.50	
08/15/07	Meeting with Defendant re proposed plea & testimony	0.70	
08/21/07	Telephone call from Defendant	0.20	
08/21/07	Telephone call from relatives of defendant	0.20	
08/22/07	Discussions with DA re trial of co-defendant	0.30	
08/24/07	Meeting with Defendant @ Jail - re testimony	2.00	
08/27/07	Research re proposed plea & ramifications of testimony	3.20	
08/29/07	Continued discussions with DA re defendant & plea	0.50	
09/03/07	Meeting with Defendant re plea & testimony	0.50	
09/04/07	Meeting with Defendant @ Jail - prep for testimony	3.00	
09/05/07	Meeting with DA re defendant & plea offer	0.40	
09/06/07	Meeting with Defendant @ Jail re plea offered	4.00	
09/10/07	Meeting with Defendant @ Jail re testimony	1.60	
09/13/07	Meeting with Defendant @ Jail re jury verdict	1.00	
09/18/07	Discussions with DA re entry of plea for defendant	0.40	
09/19/07	Meeting with Defendant @ Jail re plea offered	1.50	
09/21/07	Meeting with Defedant @ Jail re entry of plea	2.00	
TOTAL		*101.75*	4,070.00

Pre-Approved Office Overhead	*Hours*	
Attorney's Office Overhead	117.45	4,110.75
Preliminary Hearing Transcript		126.70
		10,113.45

EXHIBIT 2

2

State of Alabama
Unified Judicial System

Form CR-52 (front) Rev. 8/06

EXPLANATION OF RIGHTS AND PLEA OF GUILTY

(Habitual Felony Offender – Circuit or District Court)

Case Number
Count 09-463
(count #, if applicable)

IN THE Circuit (Circuit or District) COURT OF Marion (Name of County), ALABAMA

STATE OF ALABAMA v. _____
Defendant

TO THE ABOVE-NAMED DEFENDANT: After the Court was informed that you wish to enter a plea of guilty in this case, this is to inform you of your rights as a criminal defendant.

PENALTIES APPLICABLE TO YOUR CASE

You are charged with the crime of Murder 13A-6-2, which is Class A Felony. The court has been informed that you desire to enter a plea of guilty to ☐ this offense or ☐ to the crime of _____ which is a _____ Felony. The sentencing range for the above crime(s) is set out below:

FELONY	
Class A	Not less than ten (10) years and not more than ninety-nine (99) years imprisonment or life imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed $60,000.
Class B	Not less than two (2) years and not more than twenty (20) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed $30,000. For imprisonment not more than 3 years, confinement may be in the county jail and sentence may include hard labor.
Class C	Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed $15,000. For imprisonment not more than 3 years, confinement may be in the county jail and sentence may include hard labor.

You will also be ordered to pay the costs of court, which may include the fees of any appointed attorney, and restitution if there is any. You will also be ordered to pay an additional monetary penalty for the use and benefit of the Alabama Crime Victims Compensation Commission of not less than $50 and not more than $10,000 for each felony for which you are convicted.

As a reported habitual offender, you are further advised that the Alabama Habitual Offender Act, Section 13A-5-9, Ala. Code 1975, as amended by Act 2000-759, provides the following enhanced punishment for anyone who has been previously convicted of one or more felonies and who then is convicted of a subsequence felony:

Prior Felonies This offense	No Prior Felonies	One Prior Felony	Two Prior Felonies	Three + Prior Felonies
Class C Felony	1 Yr. & 1 Day – 10 Years In State Penitentiary Fine Up To $15,000	2 – 20 Years In State Penitentiary Fine Up To $30,000	10 – 99 Years In State Penitentiary Fine Up To $60,000	15 – 99 Years or Life In State Penitentiary Fine Up To $60,000
Class B Felony	2 – 20 Years In State Penitentiary Fine Up To $30,000	10 – 99 Years Or Life In State Penitentiary Fine Up To $60,000	15 – 99 Years or Life In State Penitentiary Fine Up To $60,000	Mandatory Life Imprisonment or any term of not less than 20 years Fine Up To $60,000
Class A Felony *(No prior convictions for any Class A Felony)*	10 – 99 Years or Life In State Penitentiary Fine Up To $60,000	15 – 99 Years or Life In State Penitentiary Fine Up To $60,000	Life Imprisonment or Any Term Of Years Not Less Than 99 Fine Up To $60,000	Mandatory Imprisonment For Life or Life Imprisonment Without Possibility of Parole Fine Up To $60,000
Class A Felony *(One or more prior convictions for any Class A Felony)*	10 – 99 Years or Life In State Penitentiary Fine Up To $60,000	15 – 99 Years or Life In State Penitentiary Fine Up To $60,000	Life Imprisonment or Any Term Of Years Not Less Than 99 Fine Up To $60,000	Mandatory Imprisonment For Life Without Possibility of Parole Fine Up To $60,000

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CIRCUIT CLERK, MARION COUNTY
HAMILTON, ALABAMA 35570

This crime is also subject to the following enhancements or additional penalties as provided by law: (Provisions Checked Apply To Your Case)

☐ **Enhanced Punishment For Use Of Firearm Or Deadly Weapon:** Sections 13A-5-6 (a) (4) and (a) (5), Ala. Code 1975, provide for the enhancement of a punishment for a Class A, B, or C, felony in which a "firearm or deadly weapon was used or attempted to be used in the commission of the felony." This section provides for the following punishments in such events: For the commission of a Class A Felony, a term of imprisonment of not less than 20 years; for the commission of a Class B or C Felony, a term of imprisonment of not less than 10 years.

☐ **Enhanced Punishment for a Felony Criminal Sex Offense Involving a Child.** Sections 13A-5-6 (a) (4) and (a) (5), Ala. Code 1975, provide for the enhancement of a punishment for a Class A or B felony criminal sex offense involving a child as defined in Section 15-20-21 (5). These Sections provide for the following punishment in such events: For a Class A felony criminal sex offense, not less than 20 years; for a Class B felony sex offense, not less than 10 years.

☐ **Enhanced Punishment for Drug Sale Near School:** Section 13A-12-250, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public or private school, college, university or other educational institution, must be punished by an additional penalty of five years imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and the punishment imposed shall not be suspended or probation granted.

☐ **Enhanced Punishment for Drug Sale Near Housing Project:** Section 13A-12-270, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public housing project owned by a housing authority must be punished by an additional penalty of five years' imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and the punishment imposed shall not be suspended or probation granted.

☐ **Enhanced Punishment For Sales Of Controlled Substance To Anyone Under 18:** Section 13A-12-215, Ala. Code 1975, provides that anyone convicted of selling, furnishing, or giving away a controlled substance to one who has not yet attained the age of 18 years, shall be guilty of a Class A Felony and the punishment imposed shall not be suspended or probation granted.

☐ **Drug Demand Reduction Assessment Act and Loss of Driving Privileges:** Section 13A-12-281, Ala. Code 1975, provides that, if you are convicted of a violation of §13A-12-202 (criminal solicitation to commit controlled substance crime), 13A-12-203 (attempt to commit a controlled substance crime), 13A-12-204 (criminal conspiracy), 13A-12-211(unlawful distribution of a controlled substance), 13A-12-212 (unlawful possession or receipt of a controlled substance), 13A-12-213 (unlawful possession of marijuana, 1st), 13A-12-215 (sale, furnishing, etc., of controlled substance by person over age

Original – Court File Copy – Defendant Copy – District Attorney Copy – Defense Attorney

IN THE CIRCUIT COURT OF Marion COUNTY, ALABAMA

STATE OF ALABAMA)
)
V.) Case No.: CC 04-403
)
John Mills)
DEFENDANT)

PLEA AGREEMENT

After discussion and negotiation between the parties, after a full explanation of rights has been given to Defendant, as evidenced by the accompanying Explanation of Rights form, and after such disclosure of information between the parties as each deems sufficient, it is agreed in this case, subject to acceptance by the Court, that:

1. Defendant will enter a plea of GUILTY:
   - [ ] As charged in the indictment.
   - [X] To the charge of Murder 13A-6-2, and the Prosecutor will move for dismissal with prejudice of all other offenses charged in the indictment.
2. The Prosecutor will recommend to the Court that the Defendant be given a sentence of Life years and _____ months.
3. [ ] The Prosecutor will recommend to the Court that the sentence given to the Defendant by the Court be suspended and that the Defendant be placed on [ ] supervised/[ ] unsupervised probation for a period of _____ years and _____ months.
   - [ ] The Prosecutor will not oppose the Court's suspending the sentence given to Defendant by the Court and placing Defendant on probation.
   - [ ] The Prosecutor will oppose probation.
   - [ ] Defendant will not apply for probation.
   - [ ] The Prosecutor will recommend to the Court that the sentence given to Defendant be split, with Defendant to serve _____ years and _____ months and the balance of Defendant's sentence to be suspended and Defendant place on [ ] supervised/[ ] unsupervised probation for a period of _____ years and _____ months.
4. Other cases now pending against Defendant in this Court shall be treated as follows:

Case Numbers:	Action to be Taken:
	[ ] Dismissed with prejudice.
	[ ] Continued, to be dismissed with prejudice if restitution in the amount of $_____ is paid within _____ months.

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MARION, ALABAMA

5. Youthful Offender treatment:
   - [ ] Will be recommended by the Prosecutor
   - [ ] Will be opposed by the Prosecutor
   - [ ] Will not be applied for by Defendant.
   - [ ] Is not applicable

   A domestic violence fee in the amount of $_____
   A drug demand reduction assessment fee in the amount of $_____
   A forensic science trust fund fee in the amount of $_____
6. Defendant will pay court costs, a victim's assessment fee in the amount of $ 50, restitution in the amount of $ 11,094 (Agree), and any court-ordered reimbursement of attorney's fees as follows:
   - [ ] In full within _____ days.
   - [X] In [ ] weekly, [X] monthly installments of $ 100* beginning on 90 days from release until paid in full.
7. Other matters agreed upon:
   - [ ] Defendant shall submit to mental health evaluation and treatment at _____
   - [ ] Defendant shall submit to the Court Referral Officer Program for evaluation and referral to an appropriate education and/or treatment program.
   - [ ] Defendant shall attend and complete the _____ sex offender program.
   - [X] Defendant shall reimburse the State of Alabama for monies expended for his/her court-appointed counsel.
   - [ ] Defendant shall be trespassed from the person and property of _____
   - [ ] Defendant shall not drive nor otherwise operate any motor vehicle in any manner nor for any purpose for a period of _____ years and _____ months.
   - [ ] Other: _____
8. Any applicable provisions or terms contained in Paragraphs 6, 7, and/or 8 shall be made a special condition or special conditions of any probation granted to Defendant by the Court.
9. Defendant knowingly and voluntarily waives his right to appear and certifies that he is fully satisfied with the legal representation provided to him by his counsel.
10. Defendant warrants as a material condition of this agreement that the following is a complete listing of his past criminal convictions and juvenile and/or youthful offender adjudications (include name of offense and date of conviction or adjudication) _____

Defendant understands and acknowledges that this plea agreement shall be void and the Prosecutor shall not be bound by any term contained herein if there is any misrepresentation as to Defendant's past criminal record.

11. Defendant understands and acknowledges that this plea agreement shall be void and the Prosecutor shall not be bound by any term contained herein if Defendant is arrested for any criminal offense or violation between this date and the date of any sentencing, probation, split-sentence, or youthful offender hearing or hearings.
12. Defendant understands and acknowledges that the Court is not bound by the terms of this plea agreement nor by any recommendations made by the Prosecutor, and the Court may reject the same pursuant to Rule 14.3 (c)(2), *Alabama Rules of Criminal Procedure*.

This agreement entered into on this 24th day of September, 2007.

John Mills
DEFENDANT

DEFENDANT'S COUNSEL

PROSECUTOR

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Case No. CC-04-403

THE STATE vs. JOANN MILLS

(BENCH) ORDERS OF THE COURT

DATE OF ORDER: September 24, 2007

The Defendant appeared in open Court with Counsel J. Tony Glenn and waived reading of the indictment; said defendant, upon hearing the charges(s) therein read and explained, for plea thereto says she is guilty of Murder. The court proceeded to examine defendant under oath and ascertained that defendant fully understands her constitutional rights, the crime charged against her, and the consequences of a guilty plea.

The court finds that defendant understandingly and voluntarily pleads guilty and waives her rights; it is ordered and adjudged that defendant's plea of guilty and waiver is accepted, and Court's Exhibit 2 be entered in the minutes of the court.

It is further ORDERED AND ADJUDGED that defendant is guilty of Murder, and any remaining counts are dismissed upon motion of the District Attorney.

Defendant continuing present with said counsel was afforded an opportunity to make a statement in her own behalf before sentencing. Both the State and defense waive any sentence hearing.

It is ORDERED AND ADJUDGED and is the sentence of the law that defendant be imprisoned in the penitentiary of this State for a period of Life, on which sentence she is entitled to total jail time credit as of this date of eleven hundred eighty-six (1186) days.

Defendant is further ordered to pay court costs, a $50.00 Victim's Assessment Fee, $11,094.00 to the Alabama Crime Victim's Compensation Commission and reimburse the State for court-appointed attorney fees.

All monies are payable through the Circuit Clerk's Office in monthly installments of $100.00 beginning ninety (90) days after release and continuing each month thereafter until paid in full.

JOHN H. BENTLEY, Circuit Judge

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SEP 26 2007

CIRCUIT CLERK, MARION COUNTY
HAMILTON, ALABAMA 35570

EXHIBIT 3

OFFICE OF THE GOVERNOR

KAY IVEY
GOVERNOR

STATE CAPITOL
MONTGOMERY, ALABAMA 36130

(334) 242-7100
FAX: (334) 242-3282

STATE OF ALABAMA

March 27, 2024

John Q. Hamm, Commissioner
Alabama Department of Corrections
301 S. Ripley Street
Montgomery, AL 36130

Dear Commissioner Hamm:

The Supreme Court of Alabama has entered an order authorizing you to carry out inmate Jamie Mills' sentence of death for the capital murders of Floyd and Vera Hill. According to the Supreme Court's order, the execution must occur within a time frame to be set by the governor to begin not less than 30 days from March 20, 2024, the date of the order.

Accordingly, I hereby set a thirty-hour time frame for the execution to occur beginning at 12:00 a.m. on Thursday, May 30, 2024, and expiring at 6:00 a.m. on Friday, May 31, 2024.

The order of the Supreme Court of Alabama, which I enclose with this letter, constitutes the death warrant.

Although I have no current plans to grant clemency in this case, I retain my authority under the Constitution of the State of Alabama to grant a reprieve or commutation, if necessary, at any time before the execution is carried out.

Sincerely,

Kay Ivey

Kay Ivey
Governor

Enclosure
cc: Frieda Foresee, Court Specialist, Alabama Supreme Court

FILED
2024 May-16 PM 04:40
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

JAMIE MILLS,	*	
	*	
Petitioner,	*	
	*	
vs.	*	Case No. 6:17-cv-00789-LSC
	*	
JOHN HAMM,	*	**CAPITAL CASE**
Commissioner, Alabama	*	**Execution Scheduled**
Department of Corrections,	*	**May 30, 2024**
	*	
Respondent.	*	

MOTION FOR STAY OF EXECUTION

Petitioner Jamie Mills respectfully requests that this Court stay his execution pending the disposition of his Rule 60 motion filed April 5, 2024 with this Court. Petitioner has presented this Court with extraordinary circumstances: newly discovered evidence establishing that the District Attorney in his case engaged in egregious misconduct when he affirmatively and falsely stated to the trial court, the jury, and defense counsel that there was no deal with the State's central witness, JoAnn Mills, when, in fact, the District Attorney had agreed to forgo the death penalty for a life with parole sentence in exchange for her testimony against Jamie Mills. The State's continued reliance on this false evidence in both state postconviction and in *this* Court to argue that Mr. Mills should be executed without review of this claim warrants relief under Rule 60.

After Mr. Mills filed his Rule 60 motion on April 5, 2024, see Doc. 42, the State filed its Answer on April 9, 2024. See Doc. 44, and Mr. Mills filed his Reply to the State's Answer on April 16, 2024. See Doc. 45.

Mr. Mills is currently scheduled to be executed by the State of Alabama on May 30. A stay is warranted to prevent mooting of Mr. Mills' claims while this Court considers the critical issues raised. Lonchar v. Thomas, 517 U.S. 314, 320–21 (1996) ("If the district court cannot dismiss the petition on the merits before the scheduled execution, it is obligated to address the merits and must issue a stay to prevent the case from becoming moot."); Barefoot v. Estelle, 463 U.S. 880, 893–94 (1983) ("[A] circuit court, where necessary to prevent the case from becoming moot by the petitioner's execution, should grant a stay of execution. . ."). Mr. Mills is entitled to a stay of execution where he demonstrates:

> (1) he has a substantial likelihood of success on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the stay would not substantially harm the other litigant; and (4) if issued, the injunction would not be adverse to the public interest.

Ray v. Comm'r, Ala. Dep't of Corr., 915 F.3d 689, 695 (11th Cir. 2019) (granting stay of execution) (internal citations omitted). The Eleventh Circuit has held that where the State is the opposing party, the third and fourth elements are the same. Swain v. Junior, 958 F.3d 1081, 1091 (11th Cir. 2020) (citing Nken v. Holder, 556 U.S. 418, 435 (2009)).

I. Mr. Mills is Likely to Prevail on the Merits.

First, Mr. Mills is likely to prevail on the merits of the underlying motion. (Doc. 42, 45). Mr. Glenn's affidavit asserts that prior to Mr. Mills' capital trial, Mr. Glenn had several conversations with District Attorney Jack Bostick about a plea agreement in exchange for JoAnn Mills' testimony at Jamie Mills' trial and that the District Attorney agreed to a life sentence, instead of the death penalty or life without parole, if she would testify truthfully at Mr. Mills' trial. (Doc. 42-1.) The encouragement or understanding established by Mr. Glenn's affidavit, as well as the State's affidavits (Doc. 44-1, 44-2), is more than sufficient to require disclosure. Giglio v. United States, 405 U.S. 150, 152, 154–55 (1972) (requiring disclosure of an inducement offered by an assistant DA *without authority* to enter into a plea agreement, even when the inducement was not communicated to the prosecuting attorney and was not in writing); see also Guzman v. Sec'y, Dep't of Corr., 663 F.3d 1336, 1349 (11th Cir. 2011) (requiring disclosure of a monetary reward made to the State's critical witness by a detective, even where the detective "could not recall if [this benefit] was disclosed to the trial prosecutor"); Brown v. Wainwright, 785 F.2d 1457, 1461 (11th Cir. 1986) (requiring disclosure of an offer of "favorable consideration" if a key witness testified against the petitioner).

The fact that the prosecution had a plea deal with JoAnn before Mr. Mills' trial means that District Attorney Jack Bostick falsely told the court that JoAnn

testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

The prosecutor violated his constitutional obligation to disclose to a criminal defendant any known exculpatory and impeachment evidence. Brady v. Maryland, 373 U.S. 83, 86-88 (1963); Giglio, 405 U.S. at 153-55. The District Attorney also violated Mr. Mills' due process rights by eliciting testimony from JoAnn that she did not have a plea deal. Napue v. Illinois, 360 U.S. 264, 269-72 (1959). Moreover, the District Attorney's extraordinary misconduct rendered the proceedings against Mr. Mills "fundamentally unfair," United States v. Agurs, 427 U.S. 97, 103 (1976) ("[A] conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."), and undermines the reliability of the verdict and appeals in this case. Mooney v. Holohan, 294 U.S. 103, 112 (1935).

The District Attorney's misconduct was extraordinary and, critically, went to the crux of the State's case. JoAnn's testimony was key to the State's ability to prove its case against Mr. Mills beyond a reasonable doubt. The only pieces of

physical evidence linking Mr. Mills to the offense were found in the trunk of the Mills' car. (R1. 545-48.) The trunk, however, did not have a functioning lock (R1. 46, 538, 792) and the car itself did not require a key to start (R1. 792). Benjie Howe had driven the Mills' car previously (R1. 881), and had access to it shortly before and after the offense (R1. 419, 422-23, 799-800). Benjie also had a key to the Mills' home (R1. 791) and was found with the victims' medicine and a large amount of cash (R1. 40-41, 874, 882).

In two of her three statements to police, JoAnn Mills implicated Benjie Howe, not Jamie Mills. (R1. 88 ("She immediately said that Benjie Howe had been over at the residence."); R1. 121, 728-30, 837-838.) She told investigators that she thought Benjie had left stolen items in the house and directed them to some of the items. (R1. 88, 122-23.) She also stated that she was worried about items Benjie might have left in the trunk of their car. (R1. 92-93 ("her main concern was that Benjie Howe had put something in the trunk of the car").)

Mr. Mills was excluded from the DNA evidence found on the murder weapons (R1. 616, 626) and this evidence was never directly compared to Benjie Howe's DNA profile. (R1. 617, 645.)

In light of this new evidence, this Court is left with evidence that Benjie Howe had equal access to the Mills' unlocked trunk (R1. 422-25, 538, 792, 798-801, 881); that Mr. Mills was excluded as a contributor to the unidentified

DNA found on the handles of the murder weapons (R1. 616, 626); that the State never directly compared this DNA to Benjie Howe's DNA profile (R1. 617, 645); that Benjie Howe and JoAnn Mills do not have alibis for critical periods of June 24 (R1. 795-96, 865-70); that the State did not establish *when* the Hills were killed; that JoAnn's testimony against Mr. Mills was obtained only after she was told capital murder charges would be dismissed if she testified against Mr. Mills (Doc. 42-1, 42-2); and most critically, that the State prosecutor intentionally deceived not only defense counsel, but also the jury and the courts (R1. 829-30).

Evidence that JoAnn Mills did in fact receive a plea deal in exchange for her story, *prior* to her testimony, that JoAnn Mills affirmatively lied about the existence of such a deal (R1. 685-86, 720-23), and most critically, that the State prosecutor himself knowingly made false statements to the jury, defense counsel, and the courts about the existence of a deal (R1. 829-30), undoubtedly creates a probability of a different result at trial. Accordingly, Mr. Mills is likely to prevail on his claims relief pursuant to Rules 60(b)(2), (b)(3), (b)(6), and (d).

A. Mr. Mills is Entitled to Relief Pursuant to Rule 60(b)(2)

The evidence contained in Tony Glenn's affidavit entitles Mr. Mills to relief from this Court's dismissal of his federal habeas petition pursuant to Rule 60(b)(2) based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) . . . ." Fed.

R. Civ. P. 60(b)(2). As discussed *infra* in section IV, Mr. Mills exercised reasonable diligence in attempting to obtain this evidence. In re Glob. Energies, LLC, 763 F.3d 1341, 1349 (11th Cir. 2014) ("the parties, who had the evidence that Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal"); see also Banks v. Dretke, 540 U.S. 668, 693 (2004) ("[B]ecause the State persisted in hiding Farr's informant status and misleadingly represented that it had complied in full with its Brady disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr's connections to Deputy Sheriff Huff.").

The evidence is not cumulative to any other evidence presented and is much more than impeachment evidence—without JoAnn's testimony the prosecution could not have proven its case against Mr. Mills beyond a reasonable doubt. Giglio, 405 U.S. at 153 ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice" and requires reversal) (internal quotations omitted). And as discussed *supra*, this evidence creates a probability of a different result at trial.

B. Mr. Mills is Entitled to Relief Pursuant to Rule 60(b)(3) and (d)

Additionally, Mr. Mills is entitled to relief from this Court's prior judgment pursuant to Rule 60(b)(3), which permits a court to set aside a judgment due to "fraud . . . by an opposing party" and Rule 60(d)(1) and (3), which provides that Rule 60 "does not limit a court's power to" either "entertain an independent action to relieve a party from a judgment" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(b)(3), (d)(1), (d)(3).

Relief is warranted pursuant to Rule 60(b)(3) because new evidence establishes that the District Attorney committed egregious misconduct by lying to the court, the jury, and defense counsel, about the existence of a plea deal. The State continued to rely on this false evidence in arguing that Mr. Mills is due no process on his claims in federal court. The State's representation in its response to Mr. Mills' § 2254 petition that no evidence of a deal exists; failure to correct the false representations on the record; and use of those false representations in asking this Court to find that Mr. Mills is entitled to no process on his claim, are evidence of fraudulent deception. Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1309 (11th Cir. 2003) (citing Frederick v. Kirby Tankships, Inc., 205 F.3d 1277, 1287 (11th Cir. 2000)) (Rule 60(b)(3) warranted where moving party establishes that adverse party's misconduct "prevented them from fully presenting his case").

Relief is also warranted pursuant to Rule 60(d) where a party's fraudulent conduct interferes with the Court's ability to perform its duty in adjudging cases. Zakrzewski v. McDonough, 490 F.3d 1264, 1267 (11th Cir. 2007). The State, through District Attorney Bostick, made knowingly false statements to the trial court, the jury, and defense counsel, about a critical question of fact at trial. The State has not corrected these deceptive statements and has continued to repeat them in this Court. Fraud has been committed on this Court by the State's knowing endorsement of the District Attorney's intentional deception. Zakrzewski, 490 F.3d at 1267 (quoting Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1551 (11th Cir. 1985)) ("'Fraud upon the court' . . . embrace[s] . . . fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.'").

C. Mr. Mills is Entitled to Relief Pursuant to Rule 60(b)(6)

Finally, Mr. Mills is entitled to relief pursuant to Rule 60(b)(6) due to the "extraordinary circumstances" his case presents. Buck v. Davis, 580 U.S. 100, 123, 128 (2017) (finding petitioner to be entitled to relief pursuant to Rule 60(b)(6) where use of race undermined integrity of the proceedings and "poison[ed] public confidence in the judicial process") (internal quotations and citations omitted).

The District Attorney at Mr. Mills' trial falsely denied the existence of any understanding with JoAnn Mills prior to her trial testimony (R1. 829-30) and

deliberately misinformed the jury of this fact because he knew that JoAnn was the crux of the State's case against Mr. Mills. The State has never corrected these false statements and in fact urged this Court to rely on them. Answer to Pet. for Writ of Habeas Corpus, ¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017); Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017).

This Court relied on the District Attorney's knowingly false statements in resolving this issue and declining to grant merits review: "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony . . . Mills still fails to allege what specific evidence or arguments his trial counsel could have presented . . . to show that JoAnn lied on the stand and was in fact testifying against Mills in exchange for a lesser sentence." Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 78 (N.D. Ala. Nov. 30, 2020).

The State's assertions in federal habeas proceedings that JoAnn in fact did not receive a plea deal in exchange for her testimony and that the District Attorney did not knowingly deceive the trial court and the jury, as well as this Court's reliance on those false assertions, constitutes "a defect in the integrity of the habeas proceedings," and requires relief from this Court's prior judgment. Gonzalez v.

Crosby, 545 U.S. 524, 532 (2005) (federal courts have jurisdiction to consider Rule 60(b) motions in federal habeas proceedings where the motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings"); Williams v. Chatman, 510 F.3d 1290, 1295 (11th Cir. 2007) (finding claim that district court should have granted additional briefing to be a proper Rule 60(b) motion because it attacks a "defect in the integrity of the federal habeas proceedings") (internal quotations and citations omitted).

Rule 60(b)(6) is intended to prevent this unnecessary "risk of injustice" and "risk of undermining the public's confidence in the judicial process." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988); see also Buck, 580 U.S. at 123.

II. Mr. Mills will be Irreparably Harmed Absent a Stay.

Mr. Mills will be irreparably harmed absent a stay because he will be wrongfully executed on the basis of false evidence—a claim that has never received merits-review. Nken v. Holder, 556 U.S. 418, 435–36 (2009) (recognizing irreparable harm in wrongful deportation context). To allow the State to proceed with an execution predicated on a false representation about a critical question of fact for the jury and this Court—the sole eyewitness's reliability—would be a miscarriage of justice. This Court's dismissal of Mr. Mills' Brady, Giglio, and

Napue claim, and decision not to grant merits-based review, was based on the State's fraudulent assertions in its habeas petition and the District Attorney's knowingly false statements at trial, that no understanding existed with JoAnn Mills prior to her testimony. Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 77–79 (N.D. Ala. Nov. 30, 2020). Further, this claim is readily distinguishable from a methods-challenge "brought at the eleventh hour to challenge policies that had long been in place" but calls into question Mr. Mills' conviction and death sentence. Ray, 915 F.3d at 702. "There is no do-over in this scenario." Smith v. Comm'r, Ala. Dep't of Corr., 844 F. App'x 286, 294 (11th Cir. 2021) (finding irreparable harm to outweigh any allegations of delay where "ADOC will likely execute Smith" without relief on his meritorious claim).

III. The Public Interest is in Mr. Mills' Favor.

The public interest is unquestionably in Mr. Mills' favor. "[T]he public interest is served when constitutional rights are protected." Melendez v. Sec'y, Fla. Dep't of Corrs., No. 21-13455, 2022 WL 1124753, at *17 (11th Cir. Apr. 15, 2022) (internal quotations and citation omitted); see also Ray, 915 F.3d at 702 (recognizing that "neither Alabama nor the public has any interest in carrying out an execution in a manner that violates . . . the laws of the United States").

The issues raised by Mr. Mills directly affect the integrity of the trial process and his conviction and death sentence. Giglio, 405 U.S. at 153 ("deliberate

deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice" and requires reversal) (internal quotations omitted); see also United States v. Bagley, 473 U.S. 667, 680 (1985) (quoting Agurs, 427 U.S. at 104) (when a prosecutor knowingly lies, it is not only prosecutorial misconduct but involves "a corruption of the truth-seeking function of the trial process," and undermines the integrity of the outcome). To allow Mr. Mills to be executed without a merits review of this critical issue "injures not just [Mr. Mills], but the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts." Buck, 580 U.S. at 124 (quoting Rose v. Mitchell, 443 U.S. 545, 556 (1979)) (internal quotations omitted).

IV. Mr. Mills Diligently Pursued the Underlying Claim.

Finally, Mr. Mills has diligently pursued his claims. Mr. Mills has not delayed unnecessarily in bringing his Rule 60 Motion. When Mr. Mills first brought this motion in early April, soon after discovering the evidence contained in Tony Glenn's affidavit, there was sufficient time to "allow consideration of the merits without requiring entry of a stay." Ray, 915 F.3d at 702 (quoting Hill v. McDonough, 547 U.S. 573, 584 (2006)).

Further, as recognized by the Eleventh Circuit, simply because a "claim was brought at the last minute does not necessarily establish that it was brought in a dilatory manner." Id. Over the course of seventeen years, Mr. Mills has made

fifteen separate requests for evidence of JoAnn Mills' plea agreement, and each time the State has failed to disclose this information as it is constitutionally required to do. See Doc. 45, at 4–7. Mr. Mills has more than diligently pursued this critical issue throughout his entire appeals and postconviction process. Banks v. Dretke, 540 U.S. 668, 695 (2004) ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed."). It cannot be that the State may conceal critical evidence throughout all stages of capital proceedings—trial, appeals, state and federal postconviction—and then rely on procedural hurdles and arguments of delay to prevent Mr. Mills from obtaining any process on this claim. *The State* has delayed a substantive review of this issue, not Mr. Mills.

Mr. Mills requests that he be finally granted process as to this long-pursued claim and that this Court hold the State to its duty to pursue truth and justice, over the finality of an unsound conviction. Giglio, 405 U.S. at 153; see also Bagley, 473 U.S. at 680; Agurs, 427 U.S. at 103; Berger v. United States, 295 U.S. 78, 87-88 (1935); Mooney, 294 U.S. at 112.

V. Conclusion and Prayer for Relief.

Mr. Mills requests that this Court hold a hearing on this motion for a stay of execution and enter an order enjoining the State from executing him on May 30,

2024 while this case is pending.

Respectfully submitted,

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May 16, 2024

Counsel for Mr. Mills

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: **Lauren Simpson** and **Henry Johnson**.

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON

NO. 1080350

IN THE SUPREME COURT OF ALABAMA

EX PARTE: JAMIE MILLS

JAMIE MILLS,	*
	*
Petitioner-Appellant,	*
	*
v.	*
	*
STATE OF ALABAMA,	*
	*
Respondent-Appellee.	*

RESPONSE TO THE STATE OF ALABAMA'S MOTION TO AUTHORIZE EXECUTION

On January 29, 2024, the State of Alabama filed a motion requesting that this Court authorize the execution of Jamie Mills. However, as detailed in a Rule 32 petition filed this week in the Marion County Circuit Court, newly discovered evidence establishes that the District Attorney in Mr. Mills' case engaged in serious misconduct when he failed to disclose that the State had a plea agreement with the State's central witness, JoAnn Mills. An affidavit recently signed by JoAnn Mills' attorney, Tony

Glenn, establishes that, prior to JoAnn Mills' testimony, the District Attorney agreed to forgo the death penalty and to impose a life with parole sentence in her case if she agreed to testify against Jamie Mills.

This Court should not authorize Mr. Mills' execution until the circuit court has addressed the extraordinary constitutional violation that is alleged in his Rule 32 petition. Because circuit courts do not have authority to stay executions under Rule Ala. R. App. P. 8(d)(1), the setting of an execution date would compromise the ability of lower courts to adequately consider whether Mr. Mills' conviction and sentence are unreliable in light of the newly discovered evidence. Allowing circuit courts to first consider claims like the one in this case, before an execution date is scheduled, is based on basic principles of due process and fundamental fairness, and has been recognized by this Court in other capital cases. See Arthur v. State, 71 So. 3d 733, 738 (Ala. Crim. App. 2010) (noting that this Court postponed execution date in order to allow petitioner to litigate his Rule 32 claim); Ex parte Kuenzel, No. 1891805 (Ala. Feb. 11, 2015) (this Court ordered execution postponed to allow Mr. Kuenzel to litigate denial of Rule 32 claim on appeal).

Before trial, the District Attorney concealed evidence of the plea deal with JoAnn from defense counsel, and during trial he made false representations to the court that no such evidence existed. (R1. 829-30.) The prosecution also permitted JoAnn Mills to falsely testify that she did not have a deal, let alone a deal that spared her from the death penalty in exchange for her testimony. (R1. 685-86, 720-23.) At the time of trial, JoAnn was Jamie Mills' wife and her testimony was crucial for the prosecution. The District Attorney's misconduct undermines a basic premise of our criminal legal system: that the prosecution will refrain from dishonest and illegal conduct. "Courts, litigants, and juries properly anticipate that 'obligations . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.'" Banks v. Dretke, 540 U.S. 668, 696 (2004) (quoting Berger v. United States, 295 U.S. 78, 88 (1935)).

Mr. Mills has always maintained his innocence and has persistently tried in every court available—including this Court both on direct appeal and in Rule 32 proceedings—to get the State to reveal the truth about the plea deal, but the State has always maintained that there was no such deal, thereby preventing adequate consideration of the most important

issue in this case. This newly discovered evidence goes to the central question of fact for the jury, establishes Mr. Mills' innocence, and raises questions about the alibi for the initial suspect in this case whose guilt the State has a responsibility now to review.

Now that the truth about the plea deal has come to light, undersigned counsel requests that this Court not grant the State's motion until after the circuit court below determines whether the prosecutorial misconduct in this case undermined the reliability of Mr. Mills' conviction and sentence of death. In support of this request, counsel states as follows:

I. A SIGNIFICANT ISSUE CONCERNING THE RELIABILITY OF THE CONVICTION AND DEATH SENTENCE HAS EMERGED IN THIS CASE.

On March 4, 2024, Mr. Mills filed a Second Rule 32 Petition in the Marion County Circuit Court seeking relief pursuant to Rule 32.1(a) and Rule 32.1(e) based on newly discovered evidence obtained from Tony Glenn who represented Mr. Mills' codefendant, JoAnn Mills, in her Capital Murder case. Mr. Glenn's affidavit establishes that prior to Mr. Mills' capital trial, he and JoAnn met with District Attorney Jack Bostick who agreed to a life sentence, instead of the death penalty, if she would

testify truthfully at Mr. Mills' trial. As detailed in the Petition, evidence that the State had a plea deal with JoAnn Mills means that District Attorney Jack Bostick falsely told the trial court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a deal. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills before the jury—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

Because the State not only denied the existence of this evidence under oath but affirmatively presented false evidence that this deal did not exist, this evidence was not known to Mr. Mills or his counsel prior to February 23, 2024, when Tony Glenn revealed to undersigned counsel that he had a plea agreement in place when JoAnn Mills testified against Jamie Mills. Banks, 540 U.S. at 693 ("[B]ecause the State persisted in hiding Farr's informant status and misleadingly represented that it had complied in full with its Brady disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr's

connections to Deputy Sheriff Huff."); see also id. at 693 ("[T]he State asserted, on the eve of trial, that it would disclose all Brady material. . . Banks cannot be faulted for relying on that representation.").

This newly discovered evidence raises a significant concern about the reliability of Mr. Mills' conviction. Mr. Mills has consistently maintained his innocence. The State's physical evidence connecting Jamie Mills to the crime was weak and consistent with defense counsel's theory that another person, Benjie Howe, committed the offense. Mr. Mills testified at trial and maintained his innocence. The State's primary way of connecting Mr. Mills to the crime was JoAnn Mills' testimony. As the District Attorney told the jury, this trial came down to a he said/she said and the jury's job was to assess the relative credibility of Jamie and JoAnn Mills:

> You've got two people, a husband and a wife, that say -- both say we were together all day long. One says they went looking at houses and bought cigarettes. The other one says they participated in a horrible, horrible double murder. You can't put those two together. . . Somebody's got to be telling a story.

(R1. 911.)

Because the relative credibility of JoAnn and Jamie Mills was a central question of fact for the jury, the existence or non-existence of any

inducement for JoAnn's testimony at trial was pivotal for both the State and defense counsel. District Attorney Bostick understood this and that is why his first questions elicited her denial of any plea offer:

Q: And are you doing this of your own free will?

A: Yes, sir.

Q: Have there been any deals or offers or anything like that made to you?

A: No, sir.

(R1. 685-86.)

Defense counsel also questioned her about the existence of a deal:

Q: You're just up here admitting to capital murder without any hope of help from the district attorney's office?

A: No, sir.

Q: You do expect help from the district attorney's office?

A: No, sir.

Q: Has anybody told you that if you get up here and tell this story that the district attorney will have pity for you and let you plead to something besides murder?

A: No, sir.

Q: So you expect as a result of your testimony today to get either life without parole or death by lethal injection?

A: Yes.

(R1. 720-21.)

After JoAnn Mills denied the existence of a plea deal, defense counsel asked the trial court for permission to question District Attorney Jack Bostick "on the record" about the existence of a plea offer or any inducement.

Mr. Wiley: We want to ask you -- or ask Judge to direct him to assure us, him being Jack [District Attorney Bostick], that there is no inducement for JoAnn's testimony.

Mr. Bostick: There is not.

Mr. Wiley: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an inducement.

Mr. Bostick: There is none.

Mr. Wiley: None?

Mr. Bostick: Have not made any promises, nothing.

Mr. Wiley: Have you suggested that a promise might be made after she testifies truthfully?

Mr. Bostick: No.

Mr. Wiley: No inducement whatsoever?

Mr. Bostick: No.

(R1. 829-30.)

JoAnn Mills' testimony—that there was no deal—was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach her:

> She was not tripped up on anything. Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did. The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching. . .

(R1. 915-17.)

The newly discovered evidence establishes the State (1) withheld evidence, that defense counsel diligently tried to establish at trial, in violation of Brady; (2) failed to correct JoAnn Mills' false statement in violation of Napue; and (3) lied to the jury, defense counsel, and the trial court about the existence of a deal, in violation of the prosecutor's oath and Mr. Mills' rights to due process, a fair trial, and a reliable sentencing

procedure in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Alabama law. Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Napue v. Illinois, 360 U.S. 264 (1959); Mooney v. Holohan, 294 U.S. 103 (1935); Ex parte Monk, 557 So. 2d 832 (Ala. 1989); Ala. R. Crim. P. 16.1. To allow Mr. Mills to be executed based on the false testimony of the District Attorney regarding inducements made to its key witness would be a miscarriage of justice.

II. SETTING AN EXECUTION DATE FOR MR. MILLS AT THIS TIME IS INAPPROPRIATE.

The circuit court below should be afforded an opportunity to address this fundamental issue that goes to the reliability of the conviction and death sentence in this case. Mr. Mills has asked for expedited review of this case in the circuit court with the understanding that the State seeks an execution date.

This Court should not authorize Mr. Mills execution until the lower courts have adjudicated this important issue. Once an execution date is set, only this Court has the authority to grant a stay. Ala. R. App. P. 8(d)(1) ("The supreme court shall at the appropriate time enter an order

authorizing the Commissioner of the Department of Corrections to carry out the inmate's sentence of death . . . and it may make other appropriate orders upon disposition of the appeal or other review.").

This case presents evidence of extraordinary misconduct by a District Attorney who misrepresented a critical issue that the jury, trial court and reviewing courts relied on. The State had the ability to reveal this information for over seventeen years and should be held accountable. Banks v. Dretke, 540 U.S. 668, 693 (2004) ("[B]ecause the State persisted in hiding Farr's informant status and misleadingly represented that it had complied in full with its Brady disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr's connections to Deputy Sheriff Huff."); see also Id. at 695 ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed.").

The Court should not allow the State to move forward with an execution in this case until these important issues have been resolved. Allowing Mr. Mills to be executed without full review would be a

miscarriage of justice.

> [I]f a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.

Mooney v. Holohan, 294 U.S. 103, 112 (1935).

FOR THESE REASONS, Mr. Mills respectfully requests that the Court not authorize the State's motion and allow the lower courts to fully adjudicate the issues raised in his Rule 32 Petition.

Respectfully submitted,

/s/ Angela L. Setzer

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March 7, 2024

Counsel for Jamie Mills

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limitation set forth in Ala. R. App. P. 27(d). According to the word-count function of WordPerfect, the motion contains **2,156** words. I further certify that the motion complies with the font requirements of Ala. R. App. P. 32(a)(7). The brief was prepared in the Century Schoolbook font using 14-point type.

/s/ Angela L. Setzer
Angela L. Setzer

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2024, I served a copy of the attached pleading by electronic mail on the following:

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/s/ Angela L. Setzer
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