No. _____

IN THE

Supreme Court of the United States

MICHAEL BELL
Petitioner,

v.

STATE OF FLORIDA
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JULY 15, 2025, AT 6:00 P.M.

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CAPITAL CASE
QUESTION PRESENTED

After Michael Bell's death warrant was signed, a key witness, Henry Edwards, recanted his trial testimony and admitted that he had not witnessed Bell commit the murders. Then, a second key witness, Charles Jones, recanted his trial testimony and admitted that Bell did not confess to him and that he did not see Bell with the murder weapon. Both witnesses said they lied at Bell's trial, at the behest of the lead detective and the prosecutor, due to coercion and threats and in exchange for undisclosed leniency. Despite the extreme limitations of the 32-day warrant period, Bell found a number of other trial witnesses who corroborated the recanting witnesses' claims of coercion and threats by law enforcement and some of these witnesses also changed important parts of their trial testimony. Bell was granted an evidentiary hearing.

At the hearing, the State and judge warned the witnesses that they may be prosecuted for perjury for saying anything that contradicted their trial testimony. Predictably, the witnesses took the 5th. The judge also permitted the witnesses to assert nearly blanket Fifth Amendment privileges when challenged about what they had recently told Bell's investigators. The Florida Supreme Court affirmed the trial court's finding that Bell did not prove that his case had been tainted by lying witnesses, witnesses with credibility issues, and police and prosecutorial misconduct. This case presents the following question:

Does the Petitioner's execution violate the Eighth and Fourteenth amendments to the United States Constitution when the conduct of the government and the trial court interfered with Petitioner's ability to present evidence in warrant litigation?

STATEMENT OF RELATED PROCEEDINGS

Trial
Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida
State of Florida v. Michael Bell, Case No. 1994-CF-9776
Guilty verdicts entered on March 9, 1995.
Death sentence imposed on June 2, 1995.

Direct Appeal
Bell v. State, 699 So. 2d 674, 676-79 (Fla. 1997).
Judgment entered July 17, 1997; Rehearing denied Sept. 17, 1997.

Denial of Initial Motion for Postconviction Relief
State of Florida v. Michael Bell, Case No. 1994-CF-9776
Denial entered on May 31, 2002.

Appeal of Denial of Initial Motion for Postconviction Relief
Bell v. State, 965 So. 2d 48 (Fla. 2007)
Judgment entered on June 7, 2007.

Denials of Successor Motions for Postconviction Relief
State of Florida v. Michael Bell, Case No. 1994-CF-9776
Denial entered on March 23, 2011.

State of Florida v. Michael Bell, Case No. 1994-CF-9776
Denial entered on March 10, 2017.

Appeals of Denials of Successor Motions for Postconviction Relief
Bell v. State, 91 So. 3d 782 (Fla. 2012) (Ineffective Assistance)
Judgment entered on April 26, 2012.

Bell v. State, 235 So. 3d 287 (Fla. 2018) (*Hurst*)
Judgment entered on January 29, 2018.

Bell v. State, 284 So. 3d 400 (Fla. 2019) (*Buck v. Davis*)
Denial entered on November 7, 2019.

Habeas Proceedings in the Middle District of Florida
Bell v. McDonough, No. 3:07-cv-860, 2009 WL 10698415
Judgment entered on January 15, 2009.

Bell v. Fla. Att'y Gen., No. 3:07-cv-860, 2016 WL 11048052
Judgment entered on April 5, 2016.

Eleventh Circuit Court of Appeals Denials
Bell v. Fla. Att'y Gen., 461 F. App'x 843 (11th Cir. Circuit)
Judgment entered on February 7, 2012.

Bell v. Fla. Att'y Gen., No. 16-11791, 2017 WL 11622107 (11th Cir. 2017)
Judgment entered on June 19, 2017.

Denials of Certiorari
United States Supreme Court Case No. 07–6240
Michael Bernard Bell v. Florida
Denial entered: November 5, 2007.

United States Supreme Court Case No. 09-10782
Michael Bell v. Pam Bondi
Denial entered: August 16, 2013.

United States Supreme Court Case No. 13–8415
Michael Bell v. Pam Bondi
Denial entered: May 19, 2014.

United States Supreme Court Case No. 17-9361
Michael Bernard Bell v. Florida
Denial entered: January 29, 2018

United States Supreme Court Case No. 19-7503
Michael Bernard Bell v. Florida
Denial entered: November 7, 2019

Denial of Successive Motion for Postconviction Relief (Death Warrant)
State of Florida v. Michael Bell, Case No. 1994-CF-9776
Denial entered on June 24, 2025.

Denial of Emergency Motions to Reconsider (Death Warrant)
State of Florida v. Michael Bell, Case No. 1994-CF-9776
Denial entered on June 24, 2025.

Appeal of Successive Denial of Motion for Postconviction Relief (Death Warrant)
Bell v. State, No. SC2025-0891 (Fla. July 8, 2025).

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OPINION BELOW

The opinion of the Florida Supreme Court [App. 1a–54a] is reported at *Bell v. State*, No. SC2025-0891 (Fla. July 8, 2025).

JURISDICTION

The Florida Supreme Court issued its judgment affirming Petitioner's death sentence on July 8, 2025. This Court has jurisdiction pursuant to 28 U.S.C. §1257. While the Florida Supreme Court rejected Bell's claim based on state-law procedural limits on postconviction relief [App. 19a], the opinion also says that Bell did not avoid the bar because he did not sufficiently prove reasonable diligence [App. 21a], which is a necessary component of any *Brady*[1] claim. Thus, the court's reliance on state law depended on the merits of Bell's federal claims. *See Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (holding that state court decisions are independent only if the state court "make[s] clear by a plain statement" that its resolution of the state-law question does not depend on its resolution of the federal question.). This leaves Bell free to petition this Court as to that claim as well as the claim he makes here – that the fact development process below was unconstitutionally hampered by the specter of perjury and improper Fifth Amendment invocations violating Bell's due process rights and making his death sentence unreliable. *See also Nezowy v. United States*, 723 F.2d 1120, 1128 (3d Cir. 1983) ("The privilege against self-incrimination protected by the Fifth Amendment is, of course, of constitutional magnitude.").

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides I relevant part the "In all criminal prosecutions, the accused shall enjoy the right… to be confronted with the witnesses against him… and to have the assistance of counsel in his defense."

The Eighth Amendment to the United States Constitution provides in relevant part that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution provides in relevant part that the United States as well as any state shall not deprive "any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The trial evidence that put Michael Bell on death row consisted largely of eyewitnesses (Henry Edwards, Dale George, and Ned Pryor) who testified that Bell was the shooter, and other witnesses (Charles Jones, Paula Goins, Ericka Williams) who testified that Bell confessed. The State did call other witnesses at trial, including other eyewitnesses from the scene, but only Edwards, George, and Pryor positively identified Bell as the shooter.

Since Bell's death warrant was signed on June 13, 2025, two key witnesses against Bell recanted their 1995 trial testimony. The recanting witnesses as well as several other trial witnesses implicated the prosecutor George Bateh and lead Detective William Bolena in misconduct relating to their testimony. At an evidentiary hearing on June 23, 2025, Bell was unable to fully develop this evidence due to the witnesses' fear of being prosecuted for perjury for disavowing any prior testimony. Witness after witness was permitted to invoke the Fifth Amendment privilege and refuse to answer crucial questions, sabotaging Bell's last opportunity to bring to light new evidence prior to his execution.

I. Guilt Phase

In June 1993, Theodore Wright killed Bell's brother, Lamar, in self-defense. *Bell v. State*, 699 So. 2d 674, 675 (Fla. 1997). The State's theory was that Bell planned to kill Wright out of revenge. *Id.* To effectuate this, Bell, through his girlfriend, purchased a firearm and ammunition. *Id.* On December 9, 1993, the night after the firearm purchase, witnesses testified that Bell spotted Wright's car. He left the area and quickly

returned with two friends and the now-loaded firearm. *Id.* Bell did not know that Wright had previously sold the car to Wright's half-brother, Jimmy West. *Id.* When West left the lounge with Tamecka Smith and another female and got into the car, witnesses said Bell approached them and shot West and Smith several times. The other female ducked down and escaped injury. *Id.* After shooting West and Smith, witnesses said Bell shot bullets toward the front of the liquor lounge, where multiple people had been waiting to go inside. *Id.* Witnesses testified that Bell confessed to the murder. *Id.*

II. Penalty Phase

A security guard testified for the State that several people were in the line of fire when the shots were fired into the parking lot. *Id.* The State introduced a copy of a record showing that appellant was convicted of armed robbery in 1990. *Id.* Also during the penalty phase, Bell's mother testified for the defense that she and Bell had received death threats from Wright and West. The trial court followed the jury's unanimous death recommendation, finding three aggravating circumstances (Bell had been convicted of a prior violent felony; that he had knowingly created a great risk of death to many persons; and that the killings were committed in cold, calculated, and premeditated manner) and one mitigating circumstance (the death of his brother caused an extreme mental or emotional disturbance). *Id.* at 676.

III. Procedural History

Bell's direct appeal was denied which raised the following claims: (1) the trial court violated his right to act as his own counsel, (2) evidence of the cold, calculated, and premeditated aggravating factor was insufficient, (3) the jury instructions were

unconstitutionally vague, and (4) the trial court failed to properly consider mitigation. *Bell v. State*, 699 So. 2d 674 (Fla. 1997). Bell's initial postconviction relief motion – which raised inter alia claims that trial testimony had been false and coerced – was denied by the trial and appellate court after an evidentiary hearing where several witnesses denied the allegations. *Bell v. Florida*, 552 U.S. 1011 (2007).

Bell filed several successive postconviction motions. *Bell v. State*, 91 So. 3d 782 (Fla. 2012) (ineffective assistance); *Bell v. State*, 235 So. 3d 287 (Fla. 2018) (*Hurst*); *Bell v. State*, 284 So. 3d 400 (Fla. 2019) (affirming summary denial of successive motion alleging that comments made during Bell's jury trial improperly injected racial animus into the proceedings in violation of *Buck v. Davis*, 580 U.S. 100 (2017)).

Bell filed multiple unsuccessful habeas petitions. *Bell v. McDonough*, No. 3:07-cv-860, 2009 WL 10698415 (M.D. Fla. Jan. 15, 2009); *Bell v. Fla. Att'y Gen.*, 461 F. App'x 843 (11th Cir. 2012); *Bell v. Fla. Att'y Gen.*, No. 3:07-cv 860, 2016 WL 11048052 (M.D. Fla. Apr. 5, 2016); *Bell v. Fla. Att'y Gen.*, No. 16-11791, 2017 WL 11622107 (11th Cir. 2017).

IV. Evidence Developed Under Warrant Relevant to this Petition[2]

The day the death warrant was signed, Bell's attorneys were alerted that two trial witnesses had potential new information.

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[2] Counsel expects a separate petition to be filed originating from federal court which will address the merits of the *Brady* and newly discovered evidence claims raised below. This Petition only contains facts relevant to the instant constitutional claims of improper government interference with Bell's opportunity to present evidence at his warrant-stage evidentiary hearing.

On June 18th and 19th, 2025, two key trial witnesses – Henry Edwards ("Edwards") and Charles Jones ("Jones") – recanted their trial testimony. [App. 1b-3b, 1c-3c] Henry Edwards stated that that he never actually witnessed the shooting but instead was fed information about Bell by Detective Bolena and lied at Bell's trial in exchange for undisclosed favorable treatment. [App. 1b-3b] Charles Jones stated that Bell never confessed to him, that he never saw Bell with the supposed murder weapon, that he was coached by prosecutor George Bateh, and that he lied at Bell's trial in exchange for help with his own criminal charges. [App. 1c-3c]

At the June 23, 2025, evidentiary hearing, after being advised by the State and the court that recanting may result in perjury charges, five of the six witnesses, after consulting with attorneys appointed by the court, invoked their Fifth Amendment right against self-incrimination and refused to answer numerous, legitimate questions relevant to these proceedings.

A. Henry Edwards

At trial, Edwards testified that he knew Bell, had seen him 35 times prior to identifying him, and that while he was outside in the parking lot he witnessed Bell commit the murders [App. 4i-10i]. His trial testimony about the circumstances of telling law enforcement this is as follows: While he was in Duval County jail, Bolena came to see him about the incident and he told Bolena everything he said at trial [App. 11i]. He then told the State Attorney's Office the same thing [App. 11i]. He didn't ask Bolena for any help or leniency and the State made him no promises [App. 12i, 14i]. He claimed that pending charges he had were dropped after "they"

investigated and determined he was "innocent" [App. 10i].

Prior to the June 23, 2025, hearing, Edwards signed a sworn affidavit providing detailed information regarding police and prosecutorial misconduct and recanting his eyewitness trial testimony [App. 1b-3b].

At the evidentiary hearing, when Edwards was questioned regarding his affidavit, he made numerous statements disavowing the affidavit [App. 74d-89d]. Edwards' disavowal of his affidavit was based on repeated claims that the affidavit was untrue, that he thought the investigators were making a movie, that he just went along with what they said, and that he did not read it. [App. 74d-89d]

When further questioned about his disavowal, Edwards pleaded the Fifth to the following:

1. Whether he was inside and Bolena told him to say he was outside [App. 78d-79d]
2. If he could actually identify the perpetrator [App. 81d-85d] (This was after he admitted he didn't know Bell as well as he claimed he did at trial.)
3. If Bolena took him on furloughs from jail to visit his wife [App. 89d-90d]
4. If he had contact with the surviving female victim who told him facts about the shooting [App. 90d-91d]
5. If he was threatened by Bolena [App. 91d]

Because of his invocations, the defense was unable to fully confront Edwards about his disavowals, which impaired Bell's ability to show the disavowal was not credible. Additionally, the questions regarding his ability to identify the perpetrator, if in fact he was outside like he claimed at trial, were important because at the evidentiary hearing, Edwards testified that he didn't know Bell and might have seen

him one time prior to trial [App. 80d-81d], contrary to his trial testimony that Bell was well known to him in an eyewitness identification case.

It should be noted that although Edwards said the facts stated in the affidavit were lies, the furloughs from Duval County jail that he detailed in the affidavit were testified to by his ex-wife Cathy Robertson [App. 231d-234d]. And Edwards' close working relationship with Bolena – which he detailed in the affidavit then later denied on the stand – was testified to by Robertson [App. 231d-234d] and Glory Mitchell [App. 240d-242d].

B. Charles Jones

At trial Jones testified that Bell tried to sell him an AK-47 after the murders and confessed to him [App. 5j-8j] His trial testimony as to the circumstances of telling law enforcement this was as follows: While Jones was in custody on federal charges Bolena contacted him about an AK-47 and Jones told Bolena and the State Attorney's Office what he testified to in trial [App. 8j-9j]. Jones testified that although it was possible testifying could help him in his federal case he did not think his testimony would net him any benefit and that he was not hoping for any benefit from it [App. 3j-5j, 9j-11j]. After trial, prosecutor Bateh assisted Jones in obtaining a downward departure for his federal sentence [App. 1c-3c].

Before the June 23, 2025, hearing, Jones signed a sworn affidavit in which he recanted his trial testimony against Bell. It also provided details regarding police and prosecutorial misconduct [App. 1c-3c].

At the June 23, 2025, hearing, the trial court allowed Jones to take the Fifth

to virtually every question regarding the affidavit. [App. 54d-69d] Jones did, however, answer one very significant question:

> Q Okay. I want you to look at this. I'm holding it up where you can see it. Let me know. I affirm under the penalty for perjury that I have read the foregoing and the facts contained therein and true. They are true. Did you —- you signed that, right?
>
> A Yes.
>
> [App. 66d]

When asked a follow up to this question, he again took the Fifth [App. 66d-67d]. The State did not cross-examine Jones at all [App. 69d-70d], not even on the matter of him acknowledging he signed the affidavit under penalty of perjury and that the facts contained therein were true.

C. Ericka Williams

At trial, Williams testified that she was Bell's girlfriend, that she purchased an AK-47 for him and that he made incriminating statements to her. Her trial testimony as to the circumstances of her telling law enforcement about the incriminating statements is as follows: she filed a police report about an AK-47 being stolen, a Detective Johnson came to her home to talk to her about the police report, and she told him everything about the case [App. 17e].

At the June 23, 2025, hearing, Williams presented a much different picture regarding how she came to tell law enforcement incriminating evidence about Bell. The first thing that happened was Bolena left a card on her door which said he needed to talk to her about a "matter of life an death". [App. 203d]. After getting the card,

someone from law enforcement showed up at her home and said she had to come downtown right now. After getting a neighbor to watch her sick child, she went downtown [App. 203d]. Her initial reluctance to this was that she was "petrified" [App. 204d].

Once downtown, she was put in an interrogation room where she was kept for 12 to 14 hours [App. 204d]. During this period, she had contact with two officers who would come in and out of the room [App. 204d-206d]. The two officers screamed at her and threatened to take her children away. When asked what the officers said or did to finally get her to talk, she pleaded the Fifth [App. 206d].

Williams also pleaded the Fifth when asked the following questions:

1. If Bolena used scare tactics with her [App. 199d]
2. If the two officers threatened to do anything to her if she did not talk to them [App. 205d]
3. If anybody told her that she could go to jail for ten years [App. 205d]
4. If anyone threatened her with being charged with accessory after the fact [App. 205d]
5. If there were any threats during the 12-14 hour time when she was with law enforcement [App. 205d-206d]
6. If she was reminded at a later time that they would take her children from her [App. 205d-206d]
7. If she was told what could happen to her if she changed her statement [App. 205d-206d]
8. If she was afraid she would be charged with perjury [App. 206d]
9. If she was afraid she could be charged as an accessory [App. 205d]

It should be stated that when Williams was cross-examined by the State, she could not recall if she had told the truth at trial or at the 2002 postconviction hearing [App. 207d-208d].

D. Ned Pryor

At trial, Pryor testified that he was good friends with Bell [App. 15f], the day before the murders Bell showed him an AK-47 [App. 12f-13f], that he witnessed Bell commit the murders [App. 11f-15f], and that Bell made statements to him [App. 15f].

His trial testimony as to the circumstances of his telling these things to law enforcement was as follows: he was arrested in October 1994 for criminal mischief, Bolena came to ask him questions about the Moncrief murders and he told Bolena and the State Attorney's Office the same things he testified to at trial [App. 16f-17f]. Pryor said at trial that he did not receive any help or lenient treatment for his testimony [App. 3f-5f, 17f].

At the June 23, 2025, hearing, Pryor said that he did not see Bell with a gun the night of the murders [App. 213d] contrary to his trial testimony [App. 11f-15f]. Pryor also testified that he was not there the night of the murders [App. 213d-214d] contrary to his trial testimony [App. 11f-15f]. When follow up questions were posed to Pryor about these matters, he took the Fifth [App. 214d]. Because Pryor pleaded the Fifth, Bell was precluded from further developing his record.

E. Dale George

At trial, George testified that he was a close friend of Bell [App. 5g], that he was with Bell at the time of the murders and that he fled the scene with Bell [App. 5g-12g].

His trial testimony as to the circumstances of him providing law enforcement with this information was as follows: he lied to Bolena at first and said he knew

nothing about the case, but after being arrested for being an accessory to the murders two months later he told Bolena and the State Attorney's Office what he knew [App. 14g-15g].

At the June 23, 2025, hearing, George was questioned regarding the circumstances of his statement to Bolena. George pleaded the Fifth to the following questions:

1. If Bolena "clotheslined" him when he was handcuffed [App. 228d-229d]
2. If Bolena threatened him [App. 229d]
3. If he was afraid of the victim's family [App. 228d-229d]
4. If he was afraid of the State pulling his plea offer [App. 230d]
5. If he was afraid of perjury charges [App. 230d]

Had the trial court required George to answer these questions, additional and significant evidence regarding a pattern of police misconduct would have been developed.

F. Paula Goins

The final witness relevant to this Petition, Paula Goins, did not invoke the Fifth Amendment privilege nor was she warned about perjury. She did, however, testify about police and prosecutorial misconduct. Consistent with other witnesses, she said that Detective Bolena fed her testimony, told her what to say at trial, and physically intimidated her during interrogation. [App. 179d-185d, 191d] Detective Bolena also threatened her with losing her home, job, and child custody if she did not testify. [App. 180d-185d] She said, contrary to her trial testimony that Bell had confessed directly to her [App. 7h-19h, 24h-26h] and said "I got him", that what

actually happened was that she merely overheard Bell talking to Williams, and what Bell actually said was "we got him" [App. 180d, 191d-192d] (Emphasis supplied.)

V. The Florida Supreme Court Ruling

The Florida Supreme Court affirmed the trial judge's finding that the limited testimony Bell did manage to obtain from the witnesses was not enough to prove any newly discovered evidence of either false trial testimony or misconduct. [App. 18a]

SUMMARY OF THE ARGUMENT

State courts are the principal forum for rectifying constitutional errors in state capital convictions and sentences. So, the process such state courts provide cannot be structured to arbitrarily deny capital defendants the right to an opportunity to present full and complete evidence.

Generally, claims should not fail for lack of proof when prosecutors and state court judges work to actively prevent fact development by applying pressure to defense witnesses. Specifically, in the instant case, it was improper for the State and the trial court to interfere with Bell's right to present evidence by threatening defense witnesses with perjury, especially in a case where there are credible allegations that much of the original trial testimony was coerced lies. The trial court erred further in allowing witnesses to plead the Fifth to critical questions, including questions that had nothing to do with any potential criminal misconduct of their own and questions on topics about which they had already volunteered answers.

Interference of this magnitude is a violation of the heightened reliability and due process guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States. Because Bell's warrant-stage litigation was designed for him to fail, his execution cannot constitutionally be carried out.

REASONS FOR GRANTING THE PETITION

I. THE PROSECUTION AND THE TRIAL COURT ACTIVELY IMPAIRED EVIDENCE PRESENTATION THUS PREVENTING THE SUCCESS OF A COMPELLING RECANTATION CLAIM

In capital cases, the government is required to abide by two "fundamental, constitutional principles". *United States v. Beckford*, 964 F.Supp. 993, 999 (E.D. Va. 1997). The first is heightened reliability because the sentence of death is final, and therefore qualitatively different from other punishments. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *Ford v. Wainwright*, 477 U.S. 399, 410-11 (1986). The second is that it is absolutely necessary to present the sentencer with as much information as possible to ensure that the sentence imposed is individualized. *See Jurek v. Texas*, 428 U.S. 262, 276 (1976).

The process below marred by the threat of perjury – from both the State and the trial court – and the witnesses' ensuing rampant abuse of the Fifth Amendment privilege to avoid testifying impaired Bell's Fourteenth Amendment due process right to fairly present a defense and the distorted testimony such threats produced undermined the heightened reliability and procedural safeguards required under the Eighth Amendment.

a. The Specter of Perjury, introduced by the State and magnified by the Trial Court, Deprived Bell of Crucial Evidence

"Few rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). "The Supreme Court has expressly recognized that a party's right to present his own witnesses in

order to establish a defense is a fundamental element of due process." *Washington v. Texas*, 388 U.S. 14, 19 (1967); U.S. CONST. AMEND. XIV. The government may not substantially interfere with the testimony of defense witnesses. *See United States v. Juan*, 704 F.3d 1137, 1141 (9th Cir. 2013).

Although the Florida Supreme Court correctly recognized that in many circumstances, warning a witness about the possibility and consequences of perjury charges is warranted [App'x 51a], it is improper to "combine[] a standard admonition against perjury … with an unambiguous statement of [the questioner's] belief that [the witness] would be lying" if he testified as anticipated. *United States v. Vavages*, 151 F.3d 1185, 1185 (9th Cir. 1998).

Due process can be violated where judicial action (*Webb v. Texas*, 409 U.S. 95 (1972)) or prosecutorial action (*United States v. Morrison*, 535 F.2d 223 (3d Cir. 1976)) leads to interference with the right to present the testimony of witnesses, and in Bell's case we have both the judge and the State presenting as a united front. The State and judge both conflated telling lies with testifying differently than they did before, giving the witnesses the wrong idea about what would be perjurious and thus improperly broadcasting a "belief that [the witness] would be lying" if they testified as anticipated. *United States v. Vavages*, 151 F.3d 1185, 1185 (9th Cir. 1998).

The State said in open court that charging Bell's witnesses with perjury was a "possibility if they come on the stand **and they say that their prior testimony was a lie.**"

[App. 22d] (Emphasis supplied.) Perjury is lying under oath. See § 837.021, Florida Statutes.[3]

The judge appointed the witnesses lawyers to advise them about the consequences for perjury but also exacerbated the State's pressure on the witnesses to lock into their previous testimony by warning them all individually that they could be exposed to perjury not for false testimony but instead for any testimony "contradictory" to or "different" than their prior testimony. See App. 26d [Judge to Edwards]: "Okay. So you heard a lot of talk about perjury, and so I just want to advise you that, you know, you're being called here as a witness. You'll be put under oath. The expectation of everybody is that you're going to come up here on the stand and testify on the record, and that testimony may be **different than testimony you've given in the past.**"; [App. 31d-32d] [Judge to Jones]: "you'd be asked questions and that [] testimony might possibly **contradict other sworn testimony you've given previously.**"; [App. 154d] [Judge to Williams]: "you could be perhaps giving answers that might **contradict the answers you gave previously under oath, which could potentially implicate charges of perjury**" ; [App. 160d] [Judge to Pryor]: "could be asked things that might potentially **contradict prior sworn testimony**"; [App. 166d] [Judge to George]: "the questions you would be asked today **would implicate previously sworn testimony** that you have given, and it

[3] Compounding this error, what the State asserted is a legally incorrect theory of prosecution for perjury in Florida. Lies told at Bell's 1995 trial, even though in a capital case, would not be actionable in 2025 because it would be subject to Florida's pre-1997 statute of limitations (up to three years) which would have already expired. *See Sheppard v. State*, 338 So. 3d 803, 825 n. 6 (Fla. 2022).

could have perjury implications". (Emphasis supplied.) It does not require much of an "interpretative gloss" on the warning from the State and judge here to conclude that if the witnesses did anything but affirmed their prior testimony, they would be prosecuted. *Vavages*, 151 F.3d at 1190.

The witnesses here were reasonably expected to repeat in court what they told Bell's investigators and thus provide testimony favorable to Bell. The only reason they did not do that was the threat of perjury. Had the recanters and the other supportive witnesses not been dissuaded by the perjury threat, there is reason to believe that the trial court would have found two separate and distinct recantations credible and granted Bell's motion for a new trial or at least a new penalty phase. So, Bell was harmed by the prevention of testimony that would have bolstered his case. *See United States v. Valenzuela-Bernal*, 458 U.S. 858, 872 (1982) (due process is offended where the defendant is wrongfully denied testimony that "would have been favorable and material."); *United States v. Thomas*, 488 F.2d 334, 336 (6th Cir. 1973) (reversing conviction where the government's conduct "substantially interfered with any free and unhampered determination the witness might have made as to whether to testify and if so as to the content of such testimony").

The State could have challenged any witness who testified favorably for Bell through the traditional means of cross-examination and the presentation of contrary evidence. Instead, this meddling with defense witness testimony distorted the judicial fact-finding process and the pressure brought to bear on these witnesses interfered with the voluntariness of their choice and infringed Bell's constitutional right to have freely-

given testimony and to mount a fair and complete defense during warrant litigation in order to ensure the reliability of his convictions and his death sentence prior to his execution.

b. The Refusal of the Trial Judge to Cabin the Witnesses' Use of Fifth Amendment Privilege Deprived Bell of the Opportunity to Develop a Complete Record

The witnesses' near blanket invocations of the Fifth Amendment right against self-incrimination was improper and the judge interfered with Bell's ability to prove his claim by permitting it. A witness must invoke the privilege question by question, so the trial court can determine as to each question whether the answer would endanger the witness's rights. *See United States v. Thornton*, 733 F.2d 121, 125 (D.C. Cir. 1984). An exception to this requirement exists only if there is a reasonable basis to believe that answering any relevant questions may endanger the witness. *Id.* at 126. Here, however, the record does not demonstrate, nor were the witnesses even required to allege, such danger.

The recanting witnesses' sworn affidavits stated they had lied about Bell at trial but also asserted allegations of police and prosecutorial misconduct in the case. After the witnesses were locked into their prior testimonies under threat of perjury, Bell attempted to prove the veracity of some of the other statements in the recantations about how the State and police investigating Bell's case had threatened and coerced witnesses. Bell asked Henry Edwards, Charles Jones, Ericka Williams, Ned Pryor, and Dale George, about such misconduct but they were all permitted to refuse to answer.

Jones took the Fifth every time he was asked whether the lead detective or the prosecutor coerced, coached, or threatened him [App. 59d-64d]; Edwards took the Fifth regarding his assertion in his sworn affidavit that he received furloughs from jail in exchange for his trial testimony against Bell [App. 89d-90d], whether he was allowed to confer with other witnesses about his trial testimony [App. 91d], and whether he was threatened by Detective Bolena [App. 91d]; Williams took the Fifth when asked what police said or did to finally get her to talk and whether she was subject to any more serious threats other than losing custody of her children [App. 199d-206d]; George took the Fifth when questioned at the evidentiary hearing about his statement to investigators that the lead detective in Bell's case had threatened him and physically assaulted him when he was interviewed about the murders [App. 227d-230d].

What criminal liability would a witness to police misconduct conceivably be subject to? Reaching, the Florida Supreme Court ruled that all of the witnesses properly invoked the Fifth because they were at least at risk of being prosecuted for perjury if they did not invoke the privilege [App. 13a-14a]. This badly misapprehends the intersection between the Fifth Amendment and perjury. Indeed, " 'I might lie' isn't a basis for asserting the Fifth Amendment." *United States v. Howard*, No. 18-CR-667, 2024 WL 2019412, at *6 (N.D. Ill. May 6, 2024). A witness cannot avoid testifying based on the possibility that he might perjure himself. That is, the possibility of committing a future crime – a new act of perjury – is not enough. *See, e.g., United States v. Thompson*, 561 F. Supp. 2d 938, 958 (N.D. Ill. 2008) ("[N]o one has the constitutional right not to testify on the ground that she will lie and thus be subjected to a perjury prosecution.");

United States v. Whittington, 783 F.2d 1210, 1218 (5th Cir. 1986) (same). *See also United States v. Allmon*, 594 F.3d 981, 987 (8th Cir. 2010) ("[T]he Fifth Amendment confers no right upon a witness to avoid testifying simply because he refuses, for one reason or another, to do so truthfully."). So, the witnesses should have been required to testify – under penalty of perjury – to the truth. And the trial court should have been able to receive that truth, whatever it was, and decide Bell's death warrant claims based on that and not a skewed version of the facts.

Additionally, several witnesses volunteered answers thus waiving their right to assert privilege on those same topics. Despite Jones and Edwards both admitting to signing the oaths contained in their sworn recantations swearing the contents were true, and especially despite Edwards repeated and specific disavowals, they were both allowed to plead the Fifth. Williams, despite voluntarily answering questions about police threats, was permitted to take the Fifth as to follow up questions. [App. 203d-206d] Pryor, despite testifying that he was not there the night of the murders [App. 213d-214d] contrary to his trial testimony that he witnessed Bell commit the murders [App. 11f-15f], was permitted to take the Fifth to follow up questions. Once the witnesses chose to talk about certain things, they should not have been given continued license to use the privilege as a shield after such admissions. A witness "may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details." *Mitchell v. United States*, 526 U.S. 314, 321 (1999). When the witness testifies, "[t]he privilege is waived for the matters to which the witness testifies." *Id.*

c. Executing Mr. Bell Without a Full and Complete Opportunity to Prove that False Testimony Contributed to his Convictions and Death Sentence Would Raise Serious Constitutional Issues

To hear the State tell it – Bell has had more than his fair share of due process because he's been accusing trial witnesses of lying and accusing the police and prosecutor of misconduct in this case for over two decades without proof. However, in June of 2025, witnesses finally began admitting he was right all along. But the State made sure that finality would prevail over any reasoned determination of the truth by announcing in open court that perjury charges could result from any change in previous testimony. The trial court repeated this conflation of true perjury (lying) with contradicting former testimony to the witnesses. Unsurprisingly, this worked to shut the witnesses down. The recanting witnesses backtracked. And hardly any of the witnesses admitted to the misconduct they had described to Bell's investigators just days earlier.

The Florida Supreme Court's adoption of the trial court's reasoning, resting as it does on the quantity and quality of substantive evidence presented by Bell on June 23, 2025, was skewed because the fact development process itself was hampered. Had Bell's witnesses answered questions about the false testimony, coercion, threats, undisclosed promises, and police brutality they told Bell's investigators about, the trial court would have had a full record on which to make a reliable determination about the substantive points Bell was trying to prove but also about the credibility of his witnesses – good or bad. Instead, Bell's last chance to prove what he's known for twenty years was decided on incomplete evidence.

This Court cannot overlook the fact that what is aggravating enough to warrant a death sentence despite the presence of mitigation, or what is mitigating enough to extend mercy despite the presence of substantial aggravation, is different for every juror. The prejudicial impact of potential false testimony placing Bell at the scene and the murder weapon in his hand, as well as the value of evidence of police or prosecutorial misconduct, cannot be diminished.

If Edwards had said in 1995, like he did two weeks ago to Bell's investigators, that he actually didn't see Bell commit the murders, and if Jones had told Bell's jury that he didn't actually hear Bell confess and didn't see him later with the murder weapon, and if the jury was told that in order to get the other witnesses to testify against Bell police and the prosecutor had to coerce and threaten them, individual jurors, or the jury as a whole, could have evaluated the credibility of the witnesses and the aggravation in the case much differently when assessing his guilt but especially when deciding whether he should put to death.

Michael Bell's death sentence, very likely imposed after such a tainted jury verdict, and definitely affirmed in a warrant-stage litigation so lacking in process that it offends due process and heightened reliability requirements cannot constitutionally be carried out. This Court should grant certiorari to remedy the egregious violation, to prevent its recurrence, and to ensure reliability in capital sentencing.

CONCLUSION

This Court should grant the petition for a writ of certiorari; stay the execution and order further briefing, and / or remand this case.

Respectfully submitted,

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