

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2010

JUAN SMITH,

Petitioner,

vs.

BURL CAIN, Warden, Louisiana State Penitentiary,

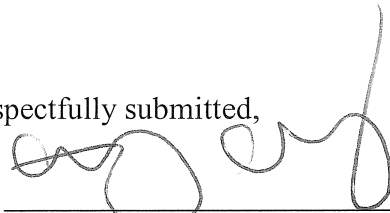
Respondent.

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

**PETITIONER'S MOTION TO PROCEED
IN FORMA PAUPERIS**

Petitioner Juan Smith respectfully requests leave to proceed *in forma pauperis*. Smith was declared indigent by the Judicial District Court of Orleans Parish, Louisiana. His affidavit demonstrating indigence is attached. Pursuant to Sup. Ct. R. 39(1), Petitioner therefore moves to proceed with the filing of his Petition for Writ of Certiorari *in forma pauperis*.

Respectfully submitted,



*Kathleen Kelly, LA Bar Roll # 25433
Capital Post-Conviction Project of
Louisiana
1340 Poydras Street, Suite 1700
New Orleans, Louisiana 70112
Telephone: (504) 212-2110
Facsimile: (504) 212-2130
Attorney for Petitioner

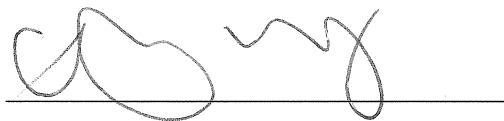
*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that I have served Petitioner's Motion to Proceed In Forma Pauperis upon counsel for opposing party, by depositing a copy of same by means of U.S. Mail, and sending it to the following address:

Donna Andrieu, Assistant District Attorney
Orleans Parish District Attorney's Office
1340 Poydras St., Suite 700
New Orleans, LA 70112

This 20 day of December, 2010.

A handwritten signature in dark ink, appearing to be 'Kathleen Kelly', written over a horizontal line.

*Kathleen Kelly, LA Bar Roll # 25433
Capital Post-Conviction Project of Louisiana
1340 Poydras Street, Suite 1700
New Orleans, Louisiana 70112
Telephone: (504) 212-2110
Facsimile: (504) 212-2130
Attorney for Petitioner

*Counsel of Record

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Juan Smith)
 Plaintiff)
 v.) Civil Action No.
Burl Cain)
 Defendant)

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: Louisiana State Penitentiary.
 If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

N/A

My gross pay or wages are: \$ 0, and my take-home pay or wages are: \$ 0 per
 (specify pay period) N/A.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|--|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ 103.38 .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:

N/A

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses *(describe and provide the amount of the monthly expense)*:

N/A

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

N/A

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:

N/A

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 10-6-10

X Juan Smith
Applicant's signature

Juan Smith
Printed name

STATEMENT OF ACCOUNT

(Certified Institutional Equivalent)

I hereby certify that Juan Smith, inmate number 376126,

the Plaintiff herein has the following sums of money on account to his credit at LOUISIANA STATE PENITENTIARY,

Angola, Louisiana 70712, the institution where he is confined:

Prison Drawing Account: \$ 103.38

Prison Savings Account: \$ 0.00

A. Cash \$ unknown

B. Bonds \$ unknown

I further certify that the average monthly deposits for the preceding six months is \$ 52⁵⁰.

(The average monthly deposits are to be determined by adding the deposits made during a given month and dividing that total by the number of deposits made during that month. This is repeated for each of the six months. The average from each of the six months are to be added together and the total is to be divided by six.)

I further certify that the average monthly balance for the preceding six months is \$ 53³⁰.

(The average monthly balanced is to be determined by adding each days balance for a given month and dividing that total by the number of days in that month. This is to be repeated for each of the six months. The balance of the six months are to be added together and the total is to be divided by six.)

10/4/2010
Date Certified

DATE

OCT - 4 2010

Andreath B. Carney
Signature of Authorized Officer of Institution

CERTIFIED

VB-6

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
CORRECTIONS SERVICES
INMATE WITHDRAWAL REQUEST

ML 2-10-04

Code **DRAWING ACCOUNT**

73 ☐ Send Money to Inmate Club.

74 ☒ Inmate Withdrawal - See Dept. Reg. 40-18
Purpose: Inmate

74 ☐ U.S. Savings Bond

82 ☐ Miscellaneous
Explanation: _____

Code **SAVINGS ACCOUNT**

94 ☐ U.S. Savings Bond

79 ☐ Court Cost

82 ☐ Education

Check Number _____ Date _____

NOTE: Print name and address of payee in box at right. Attach necessary documents including a stamped self-addressed envelope for all outside mail.

DOC NUMBER
376126

NAME (LAST NAME, FIRST NAME, INITIAL)
Smith, Juan

LIVING QUARTERS	DATE OF REQUEST	OFFICE USE ONLY
<i>Death Row K-3</i>	MO. <i>2</i> DAY <i>9</i> YEAR <i>04</i>	

WRITTEN AMOUNT _____ DOLLARS
TOTAL AMOUNT \$ **3.85**

YOU MUST ATTACH A STAMPED, ADDRESSED ENVELOPE FOR ALL OUTSIDE MAIL.

PAY TO THE ORDER OF:

VENDOR NO.

SAVINGS ACCT. NO.

NAME

ADDRESS

CITY

STATE

ZIP

☐ REQUEST DENIED. REASON: _____

INMATE SIGNATURE

RIGHT THUMB PRINT

VERIFIED BY:

TITLE:

APPROVED BY:

TITLE:



John Ligon (CCL)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2010

JUAN SMITH,

Petitioner,

vs.

BURL CAIN, Warden, Louisiana State Penitentiary,

Respondent.

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

PETITION FOR A WRIT OF CERTIORARI

*Counsel of Record

*Kathleen Kelly, LA Bar Roll # 25433
Matilde J. Carbia, LA Bar Roll # 32834
Capital Post-Conviction Project of Louisiana
1340 Poydras Street, Suite 1700
New Orleans, Louisiana 70112
Telephone: (504) 212-2110
Facsimile: (504) 212-2130
Electronic Mail: kkelly@cpcl.org
Attorney for Petitioner

CRIMINAL CASE

QUESTIONS PRESENTED FOR REVIEW

In this Louisiana criminal case, the state trial court, the Louisiana Fourth Circuit Court of Appeal, and the Louisiana Supreme Court, without making any factual findings, or providing any reasons for their rulings, denied Petitioner Juan Smith post-conviction relief. Smith contends that the Louisiana state courts reached this result only by disregarding firmly-established precedents of this Court regarding suppression of material evidence favorable to a defendant and presentation of false or misleading evidence by a prosecutor.

- I. Is there a reasonable probability that, given the cumulative effect of the *Brady* and *Napue/Giglio* violations in Smith's case, the outcome of the trial would have been different?**
- II. Did the Louisiana state courts ignore fundamental principles of due process in rejecting Smith's *Brady* and *Napue/Giglio* claims?**

Petitioner Juan Smith respectfully requests that this Court issue a writ of certiorari to review the decision of the Louisiana Supreme Court.

PARTIES TO THE PROCEEDING IN THE COURTS BELOW

1. Juan Smith, Plaintiff/Appellant
2. Burl Cain, Warden, Louisiana State Penitentiary

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	ii
PARTIES TO THE PROCEEDING IN THE COURTS BELOW	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
OPINIONS DELIVERED IN THE COURTS BELOW	1
STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
A. Procedural History.....	3
B. Statement of Facts.....	5
REASONS FOR GRANTING THE WRIT.....	9
I. There is a Reasonable Probability that the Cumulative Effect of the <i>Brady</i> , <i>Napue</i> and <i>Giglio</i> Violations in this Case Would Have Changed the Outcome of the Proceedings.....	9
II. The Louisiana State Courts Ignored Fundamental Principles of Due Process in Rejecting Smith’s <i>Brady</i> and <i>Napue/Giglio</i> Claims.....	21
CONCLUSION	23
CERTIFICATE OF SERVICE	24
INDEX TO APPENDICES	25

TABLE OF AUTHORITIES

Cases

<i>Banks v. Dretke</i> , 540 U.S. 668 (2004).....	22
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963).....	passim
<i>Davis v. Heyd</i> , 479 F.2d 446 (5th Cir. 1973).....	9
<i>Giglio v. United States</i> , 405 U.S. 150 (1972).....	passim
<i>In re: Roger W. Jordan, Jr.</i> , No. 04-2397 (La. 06/29/2005); 913 So.2d 775.....	11
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995).....	passim
<i>Monroe v. Blackburn</i> , 607 F.2d 148 (5th Cir. 1979).....	9, 10
<i>Mooney v. Holohan</i> , 294 U.S. 103 (1935) (<i>per curiam</i>).....	21
<i>Monroe v. Butler</i> , 485 U.S. 1024 (1988).....	10
<i>Napue v. Illinois</i> , 360 U.S. 264 (1959).....	passim
<i>State v. Ates</i> , 418 So.2d 1326, 1329 (La. 1982)	10
<i>State v. Bright</i> , No. 2002-2793 (La. 01/30/04); 864 So. 2d 638.....	9
<i>State v. Carney</i> , 334 So.2d 415 (La. 1976).....	10
<i>State v. Cousin</i> , No. 96-2973 (La. 4/14/98); 710 So.2d 1065.....	9
<i>State v. Curtis</i> , 384 So.2d 396 (La. 1980).....	9
<i>State v. Davenport</i> , 399 So.2d 201 (La. 1981).....	10
<i>State v. Dawson</i> , 490 So.2d 560 (La. App. 4th Cir. 1986).....	10
<i>State v. Dozier</i> , 553 So.2d 931 (La. Ct. App. 1989).....	9
<i>State v. Evans</i> , 463 So.2d 673 (La.1985).....	9
<i>State v. Falkins</i> , 356 So.2d 415 (La. 1978).....	9
<i>State v. Felton</i> , 522 So.2d 626 (La. App. 4th Cir. 1988).....	10
<i>State v. Knapper</i> , 579 So.2d 956 (La. 1991).....	10
<i>State v. Lee</i> , 00-2429 (La. App. 4 Cir. 1/4/01); 778 So.2d 656.....	9
<i>State v. Lindsey</i> , 02-2363 (La. App. 4 Cir. 4/2/03); 844 So.2d 961.....	9
<i>State v. Miller</i> , 05-1111 (La. 03/10/2006); 923 So.2d 625.....	11
<i>State v. Marshall</i> , 81-3115 (La. App. 4 Cir. 9/5/95), 660 So.2d 819.....	9
<i>State v. Mims</i> , 94-0333 (La. App. 4 Cir. 1994); 637 So.2d 1253.....	9
<i>State v. Oliver</i> , 94-1642 (La. App. 4 Cir. 1996).....	10
<i>State v. Parker</i> , 361 So.2d 226 (La. 1978).....	9
<i>State v. Perkins</i> , 423 So.2d 1103 (La.1982).....	9
<i>State v. Peters</i> , 406 So.2d 189 (La. 1981).....	10
<i>State v. Rosiere</i> , 488 So.2d 965 (La. 1986).....	10
<i>State v. Smith</i> , 2009-1164 (La. 09/24/10); 45 So.3d 1065.....	1
<i>State v. Thompson</i> , 02-0361 (La. App. 4 Cir. 7/17/02); 825 So.2d 552.....	9
<i>State v. Walter</i> , 514 So. 2d 620 (La. App. 4th Cir. 1987).....	10
<i>United States v. Agurs</i> , 427 U.S. 97 (1976).....	22

Other Authorities

U.S. Const. amend. XIV, §1.	2
----------------------------------	---

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2010

JUAN SMITH,

Petitioner,

vs.

BURL CAIN, Warden, Louisiana State Penitentiary

Respondent.

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

Petitioner Juan Smith respectfully requests that this Court issue a writ of certiorari to review the judgment of the Louisiana state courts and address the important questions of federal constitutional law presented.

OPINIONS DELIVERED IN THE COURT BELOW

The oral judgment of the Orleans Judicial District Court, Orleans Parish, Louisiana, issued on February 2, 2009, is attached as Appendix A. The Louisiana Fourth Circuit Court of Appeal's denial of Petitioner's application for review, issued on April 29, 2009, is attached as Appendix B. The unpublished opinion of the Louisiana Supreme Court denying Petitioner's application for a supervisory writ of review issued on September 24, 2010 and is reported at *State v. Smith*, 2009-1164 (La. 09/24/10); 45 So.3d 1065. It is attached as Appendix C.

**STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE
COURT IS INVOKED**

The Louisiana Supreme Court issued its denial of Petitioner's application for a supervisory writ of review issued on September 24, 2010 and that order became final on that date. The Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case involves §1 of the Fourteenth Amendment, reading in relevant part:

“No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .
.” U.S. Const. amend. XIV, §1.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2010

JUAN SMITH,

Petitioner,

vs.

BURL CAIN, Warden, Louisiana State Penitentiary

Respondent.

**ARGUMENT ON PETITION FOR CERTIORARI, AND REASONS FOR GRANTING
THE WRIT**

STATEMENT OF THE CASE

A. Procedural History

On August 31, 1995, Juan Smith was indicted for five counts of first-degree murder. The trial court denied Mr. Smith's motions to suppress the evidence and identification on October 31, 1995. Mr. Smith went to trial in December 1995, and was convicted of five counts of first-degree murder on December 7, 1995. The trial court sentenced Mr. Smith to life imprisonment without the benefit of parole on December 15, 1995.

Laura Pavy was appointed to represent Mr. Smith on direct appeal. Mr. Smith's conviction and sentence were affirmed by the Louisiana Fourth Circuit Court of Appeal on July 18, 2001. Petitioner timely filed an application for writ of review with the Louisiana Supreme Court on August 22, 2001. The Louisiana Supreme Court denied the application for writ of review on September 13, 2002. Mr. Smith filed for a writ of certiorari to the United States Supreme Court and was denied on February 24, 2003.

On February 6, 2004, Mr. Smith filed his first Application for Post-Conviction Relief with Memorandum in Support, as well as a Motion for Leave to Supplement and/or Amend the Original Application for Post-Conviction Relief, and a Motion to Hold the Pro Se Application for Post-Conviction Relief in Abeyance Until Counsel is Assigned to Handle Applicant's Death Sentence Case.

On June 27, 2008, Kathy Kelly was enrolled as counsel of record for the purpose of amending Petitioner's first Application for Post-Conviction Relief, with the agreement of all parties. Petitioner timely filed the supplemental post-conviction petition on August 27, 2008. The State filed a reply brief on October 2, 2008. The District Court ordered hearings on the *Brady*, *Napue*, and *Giglio* claims, which were held January 13, 14, 22 and February 2, 2009.

The district court orally denied relief on Mr. Smith's post-conviction petition on February 2, 2009, without issuing a written opinion, making any factual findings, or providing any reasons for its ruling. *See* Appendix A. On February 2, 2009, Petitioner orally moved to seek writs to the Fourth Circuit Court of Appeal. Petitioner further requested a return date of March 2, 2009 and asked that all further post-conviction proceedings be stayed pending the resolution of the writ application. Also on February 2, 2009, the district court orally set a return date of March 2, 2009 for Petitioner to seek supervisory writs.

On March 2, 2009, Petitioner filed an application for supervisory review in the Louisiana Fourth Circuit Court of Appeal. On April 29, 2009, the Fourth Circuit Court of Appeal denied the application for review. *See* Appendix B.

On May 28, 2009, Petitioner filed an application for supervisory review in the Louisiana Supreme Court. On September 24, 2010, the Louisiana Supreme Court denied the application for review. *See* Appendix C. Petitioner's Petition for a Writ for Habeas Corpus was timely filed

in the United States District Court for the Eastern District of Louisiana on October 7, 2010 and is currently pending.

This writ is timely filed.

B. Statement of Facts

Events Leading Up to Trial

On February 4, 1995, sometime in the evening after 8:00 pm, Tangie Thompson, her boyfriend, Andre White and her three-year-old child were killed in their residence on Morrison Road in New Orleans, Louisiana.¹

Another seemingly unrelated murder occurred on March 1, 1995. On that evening, sometime after 8:30 p.m., three armed gunmen entered the home of Reba Espadron on North Roman Street in New Orleans. Six people were ordered by three armed black men to lie on the floor. Five people were shot multiple times and died as a result. Four victims were found inside the home and another was found outside, toward the back of the house. One of the victims, Shelita Russell, was severely injured but conscious after the attack. She was interviewed by police, and this interview was never turned over to the defense. Ms. Russell died several days after the offense as a result of her wounds.

Reba Espadron and Reginald Harbor, who were in a back bedroom of the house during the incident, were not injured. Larry Boatner also survived—he was not shot, but suffered a laceration to his head when one of the gunmen struck him on the head when he did not comply with the gunman's demands. All survivors were interviewed by the New Orleans Police Department and provided statements detailing the incident.

¹ Juan Smith was convicted and sentenced to death for these murders after his conviction in the instant case. The conviction in the instant case was introduced by the State as an aggravator in the penalty phase of the capital trial. Herein this petition the capital case will be referred to as "Morrison Road" and the non-capital conviction in the instant case is referenced as "Roman Street."

Larry Boatner told police that he opened the door to the Espadron residence and saw three armed black men get out of a white four-door car with a loud muffler and enter the Espadron residence. The men demanded money, and one man hit Boatner on the head. The gunmen made the occupants of Espadron's home lie down on the floor and then started shooting. In an interview with the police, Boatner described the guns used by the perpetrators as an AK assault rifle, a Tech-Nine handgun, and a silver handgun, but could not supply any other information on the guns or the perpetrators. In fact, Boatner told police he was "too scared to look at anybody," and thus could not provide a more detailed description of the assailants. Ex. 1, DA File, at 4284-86.

Phillip Young also survived the shootings, but was identified as one of the perpetrators of the shootings because he was unknown to Reba Espadron and Larry Boatner. Young was shot in the incident and was initially unable to give police any information about what had occurred due to his severe injuries. Police recovered a beeper from Young, and learned the message "187" had been sent to Young's beeper from Kintaid Phillips' address shortly before the murders. Ex. 1, DA File, at 3737. 187 is the police code used for murder in California, and is a commonly used slang term for murder. *Id.*

Police interviewed Michelle Branch, Phillip Young's girlfriend, about her knowledge of the Roman Street murders. Ex. 1, DA File, at 3751; 3759; 4301-06. The Michelle Branch interviews were never disclosed to defense counsel. Ms. Branch told police that Phillip Young used her car on March 1, 1995, the day of the Roman Street murders, and that Young never returned with her car. *Id.* Ms. Branch described her car as a "light yellow" LeBaron which at night "would look white." Ex. 1, DA File, at 3759; 4301-06. Michelle's car "didn't have a muffler." Ex. 1, DA File, at 4302. Michelle also told police that she had received phone calls

telling her that Kintaid Phillips was driving her car in the Calliope Housing Projects after the Roman Street shootings. *Id.* Ms. Branch also told police she heard rumors that Kintaid Phillips was responsible for the Roman Street murders. Ex. 1, DA File, at 3751.

Pursuant to this information, police conducted an extensive police investigation into the Roman Street murders, wherein they focused their attention on Kintaid Phillips and his known associates, including Donielle Bannister. Ex. 1, DA File, at 3755-3756. However, neither Reba Espadron nor Larry Boatner could identify anyone from thirteen photographic line-ups that included all known associates of Phillips and Bannister. R. 94. Notably, Juan Smith's photograph was never included in the photographic line-ups as an associate of Phillips and Bannister. Both the Morrison Road and Roman Street cases stalled as police could not gather enough evidence to arrest the main suspects in either of the cases.

Then, on May 6, 1995, three individuals—Robert Trackling, Romalice McGhee, and Donielle Bannister—were arrested and charged with the attempted murder of Carol Firth, a 13-year-old girl, in the city of New Orleans.

While incarcerated for the attempted murder charge, Robert Trackling shared a cell with Eric Rogers at the Orleans Parish Prison. On May 19, 1995, Eric Rogers gave a police statement in which he stated that Robert Trackling had confessed to Rogers about his involvement in the Morrison Road and North Roman Street murders. The State never disclosed Trackling's involvement to the defense. Trackling was never charged with the Roman Street murders despite his own admission that he committed these crimes. Instead, he entered into an agreement with Assistant District Attorney Rodger Jordan which provided Trackling with a very favorable deal in exchange for his testimony against Juan Smith in the Morrison Road trial.

Even as the State concealed Trackling's involvement in the Roman Street murders, New Orleans Police Department Detective John Ronquillo developed a photographic lineup that included Juan Smith based upon Trackling's statement. Detective Ronquillo presented the lineup to Reba Espadron, who was unable to identify Juan Smith as one of the perpetrators. A few days later, on June 7, 1995, an article appeared in the Times Picayune that included a photograph of Mr. Smith and Kintaid Phillips, stating they were wanted for the Morrison Road murders.

Police approached Larry Boatner with a photographic line-up containing Juan Smith's picture. Boatner ultimately identified Mr. Smith from the photo line-up, but the State failed to disclose the true circumstances that led to Juan Smith's identification.

When Detective Ronquillo approached Mr. Boatner with the photographic line-up, Mr. Boatner was housed in a psychiatric ward at Charity Hospital, where he was being treated for alcohol abuse. When Boatner viewed the line-up he knew that the suspected perpetrator's photograph was included. Boatner told staff at Charity Hospital that he heard from friends that police had identified the suspected killers in the Roman Street murders, but that they were not yet in custody. At the time Boatner made the statement, only the New Orleans Police Department knew Trackling had implicated Juan Smith and Kintaid Phillips for the crime. Boatner could only have learned this information from Espadron, who had been previously pressured by Detective Ronquillo to identify Juan Smith as one of the perpetrators. Boatner was thus pressured to identify someone he knew the police believed was responsible.

The day he made the identification, Boatner told medical staff that he felt confused, overwhelmed and afraid. Ex. 1, DA File, at 2079, 2099. He also complained that he was being

harassed by Detective Ronquillo to make an identification of the Roman Street perpetrator. Post-Conviction Ex. 1, DA File, at 2079.

After going through thirteen other line-ups with numerous other suspects, the NOPD arrested Juan Smith in August, 1995, a full five months after the Roman Street murders. Mr. Smith was charged with first-degree murder for both the Morrison Road and the Roman Street murders. His co-defendants in the Morrison Road case (Donielle Bannister, Kintaid Phillips and Robert Trackling) were not arrested or charged in the Roman Street murders.

REASONS FOR GRANTING THE WRIT

I. There is a Reasonable Probability that the Cumulative Effect of the *Brady*,² *Napue*³ and *Giglio*⁴ Violations in this Case Would Have Changed the Outcome of the Proceedings

A. The History of *Brady* Violations in Orleans Parish

"The previous administration had a policy of keeping away as much information as possible from the defense attorney."

—Orleans Parish District Attorney Eddie Jordan, on the former District Attorney responsible for prosecuting this case.⁵

The Orleans Parish District Attorney's Office under former District Attorney Harry Connick's reign has a well-documented history of hiding exculpatory evidence from defense counsel.⁶ In the same year of Petitioner's arrest, this Court admonished the Orleans Parish

² 373 U.S. 83 (1963).

³ 360 U.S. 264 (1959).

⁴ 405 U.S. 150 (1972).

⁵ *Jordan targets backlog of cases; Volunteer lawyers to pitch in, DA says*, TIMES-PICAYUNE, Feb. 25, 2003, at National 1.

⁶ The history of the Orleans Parish District Attorney's *Brady* violations began before and continued after Mr. Smith's trial. They include *Kyles v. Whitley*, 514 U.S. 419, 441 (1995); *Monroe v. Blackburn*, 607 F.2d 148 (5th Cir. 1979); *Davis v. Heyd*, 479 F.2d 446 (5th Cir. 1973); *State v. Bright*, No. 2002-2793 (La. 01/30/04); 864 So.2d 638; *State v. Cousin*, No. 96-2973 (La. 4/14/98); 710 So.2d 1065 (in capital murder case, "[t]he prosecutor did not disclose this obviously exculpatory statement to the defense prior to the trial"); *State v. Lindsey*, 02-2363 (La. App. 4 Cir. 4/2/03); 844 So.2d 961; Michael Perlstein, *Jordan drops charges in 1975 murder; Two men freed on eve of*

District Attorney's Office about its cavalier attitude toward the disclosure of exculpatory evidence:

Unless, indeed, the adversary system of prosecution is to descend to a gladiatorial level unmitigated by any prosecutorial obligation for the sake of truth, the government simply cannot avoid responsibility for knowing when the suppression of evidence has come to portend such an effect on a trial's outcome as to destroy confidence in its result.

Kyles v. Whitley, 514 U.S. 419, 439 (1995).

Indeed, of the seven men exonerated from Louisiana's death row since 1981, four were prosecuted in Orleans Parish, and all four of these cases – *Kyles*, *Cousin*, *Thompson* and *Bright* – involved serious *Brady* violations.⁷

Rather than heeding this Court's directive in *Kyles*, the Orleans Parish DA's office continued its pattern of deceit by concealing material, exculpatory evidence from the defense in the instant case.

retrial, TIMES-PICAYUNE, June 24, 2003, at B-1; *State v. Thompson*, 02-0361 (La. App. 4 Cir. 7/17/02); 825 So.2d 552; Gwen Filosa, *N.O. man cleared in '84 murder; New trial in Liuzza killing brings an emotional end to epic case*, TIMES-PICAYUNE, May 9, 2003, at A-1 (after retrial, Thompson acquitted in less than one hour); *State v. Lee*, 00-2429 (La. App. 4 Cir. 1/4/01); 778 So.2d 656; *State v. Marshall*, 81-3115 (La. App. 4 Cir. 9/5/95); 660 So.2d 819; *State v. Mims*, 94-0333 (La. App. 4 Cir. 1994); 637 So.2d 1253; *State v. Falkins*, 356 So.2d 415 (La. 1978); *State v. Parker*, 361 So.2d 226 (La. 1978); *State v. Curtis*, 384 So.2d 396 (La. 1980); *State v. Perkins*, 423 So.2d 1103 (La. 1982); *State v. Evans*, 463 So.2d 673 (La. 1985); *State v. Dozier*, 553 So.2d 931 (La. Ct. App. 1989); *State v. Knapper*, 579 So.2d 956 (La. 1991); *State v. Oliver*, 94-1642, p. 30-34 (La. App. 4 Cir. 1996) ("[a] prosecutor should not fail to make timely disclosure, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.") (citing *ABA Standards for Criminal Justice*, Prosecution Function and Defense Function, 3-3.11 (3d ed. 1993)); *State v. Ates*, 418 So.2d 1326, 1329 (La. 1982); *State v. Peters*, 406 So.2d 189 (La. 1981); *State v. Davenport*, 399 So.2d 201, 204 (La. 1981); *State v. Dawson*, 490 So.2d 560, 563 (La. App. 4th Cir. 1986); *State v. Felton*, 522 So.2d 626, 627 (La. App. 4th Cir. 1988); *State v. Rosiere*, 488 So.2d 965, 969-71 (La. 1986) (failure to turn over statements of witnesses inconsistent with the prosecution case); *State v. Carney*, 334 So.2d 415, 418-19 (La. 1976); see also *Monroe v. Butler*, 485 U.S. 1024 (1988) (Brennan, J., dissenting from denial of writ of *certiorari* in capital case); *Monroe v. Blackburn*, 476 U.S. 1145 (1986) (same); *State v. Walter*, 514 So.2d 620 (La. App. 4th Cir. 1987) (reversing where possible *Brady* evidence not produced until day of trial).

⁷ In *Kyles v. Whitley*, 514 U.S. 419 (1995), this Court ordered Mr. Kyles' conviction be set aside because of the extent of the *Brady* violations by the Orleans Parish District Attorney's Office. The State failed to disclose evidence favorable to Mr. Kyles that included: (1) conflicting eyewitness statements taken by the police following the murder, (2) statements made by a police informant who never testified at trial, and (3) a list of license plates of potential suspects that did not list the license plate number of Mr. Kyles' car.

Not only does the Orleans Parish District Attorney's Office have a history of violating *Brady*, but in particular, Roger Jordan, the prosecutor in Mr. Smith's trial, has personally violated *Brady* on a number of occasions. In fact, Jordan was sanctioned by the Louisiana Office of Disciplinary Counsel (ODC) for his failure to produce material exculpatory evidence to the defense in the State's first-degree murder case against Shareef Cousin. *In re: Roger W. Jordan, Jr.*, No. 04-2397 (La. 06/29/2005); 913 So.2d 775. In that case, the Louisiana Supreme Court agreed with the ODC, who found that Jordan violated *Brady*, as well as Rule 3.8(d) of the Louisiana Rules of Professional Conduct by failing to disclose a March 5, 1995 eyewitness statement that "was clearly exculpatory." *Id.* at 782. Jordan withheld a police statement from the State's only testifying eyewitness, in which the eyewitness noted that because she did not have her glasses or contacts at the time she saw the alleged perpetrator, she had difficulty seeing the suspect. *Id.* at 777. As a result of Jordan's *Brady* violation, he was sanctioned with a three-month suspension from the practice of law. *Id.*

Less than a year later, Roger Jordan was found to have violated *Brady* yet again, this time in the Corey Miller case. *State v. Corey Miller*, 05-1111 (La. 03/10/2006); 923 So.2d 625. There were numerous *Brady* violations in the Corey Miller case, including the State's failure to disclose a "clearly exculpatory" eyewitness statement in which an eyewitness specifically stated to police that she had witnessed the murder, and told police Mr. Miller had not been involved. Mr. Jordan also suppressed another exculpatory eyewitness statement, as well as the accurate criminal history of two of its key witnesses against Mr. Miller. Because Roger Jordan's failure to comply with *Brady* undermined confidence in the verdict, the Louisiana Supreme Court reinstated the district court's ruling granting Mr. Miller a new trial. *Id.*

In the instant case, much like the Corey Miller and Shareef Cousin cases, prosecutor Roger Jordan concealed important eyewitness statements that were clearly exculpatory. In Mr. Smith's case, the State failed to disclose information that the testimony of its only eyewitness, Larry Boatner, was false and riddled with inconsistencies. The State also concealed police interviews of several other eyewitnesses stating that all of the gunmen wore masks, evidence that was inconsistent with Larry Boatner's eyewitness identification and subsequent trial testimony. In addition, the prosecution allowed several other witnesses to testify falsely.

B. The Trial

The State tried Mr. Smith for the instant case before the Morrison Road capital case. On December 2-5, and December 7, 1995, Juan Smith was tried in front of a jury for the Roman Street murders.

At trial, Reba Espadron testified that she had never seen Juan Smith before and that throughout the shooting the only man she had seen had his face covered, wore a hat to cover his hair, and only revealed his eyes. R. 96. She stated that this gunman was holding a "big handgun." R. 96.

Detective John Ronquillo testified that on June 28, 1995, at around 2:55 p.m., he showed Larry Boatner a photographic lineup at Charity Hospital. R. 99. According to Ronquillo, he met with Boatner for about fifteen minutes. Ronquillo stated he did not force or coerce Boatner to make the identification. Ronquillo testified that he showed Boatner the photographs and Boatner reportedly immediately picked out Juan Smith's photograph. R. 100.

On cross-examination, Detective Ronquillo agreed that Boatner was the only eyewitness to have identified Juan Smith. R. 109. Ronquillo stated that Boatner was supposed to meet with him at Reba Espadron's home on June 3, 1995 to view the line-up, but that Boatner didn't show

up. Ronquillo denied that Boatner ever told him that friends had given him information about who might have committed the shootings. R. 111. Ronquillo testified that Boatner told him on June 28, 1995, that he had seen Juan Smith's photograph in the newspaper. Ronquillo believed it was the June 4th Times Picayune. R. 112.

Larry Boatner was the only witness who could testify that Juan Smith was one of the armed men responsible for the killings at Roman Street. During the trial, Boatner testified that he was at the house on March 1, 1995. According to Boatner, Juan Smith was the first man to enter the home, and Boatner was positive that Mr. Smith was not wearing a mask. R. 154. Boatner testified that Juan Smith was face-to-face with him while Mr. Smith held a gun to Boatner's head. He stated that he definitely saw Juan Smith's face. R. 155. Boatner stated that Mr. Smith ordered him to get on the floor. When asked about one of the other men who had a AK-47, Boatner did not know whether that other man was wearing a mask or not. R. 156.

Boatner said he checked himself into Charity Hospital to stop drinking on June 26, 1995. While at Charity Hospital, Boatner met with Detective John Ronquillo and one of the nursing staff members. R. 171. Boatner claimed that Detective Ronquillo showed him a line-up and that he immediately picked Juan Smith, claiming "I'll never forget Juan's face, never." R. 172. In the courtroom, Boatner then identified Juan Smith as the man who put a .9mm to his head, stating, "like I say, I'll never forget him." R. 173. Boatner also stated that the armed gunman had a mouth full of gold.

On cross-examination, Boatner stated that he had told the police on March 1st "how his hair was and I told him about the golds in his mouth." He also recalled that the gunman was heavy set. Boatner admitted that in the photographic line-up he could not see any gold in Mr. Smith's teeth. R. 178.

The defense called one witness to testify that Larry Boatner suffered from acute alcohol abuse at the time he identified Mr. Smith. R. 220-221.

After the close of evidence the jury found Juan Smith guilty as charged to each of the five counts of first-degree murder.

C. Post-Conviction Evidentiary Hearings

Evidentiary hearings on Petitioner's *Brady*, *Napue* and *Giglio* claims were held January 13, 14 and 22, and February 2, 2009 at the order of the Orleans Parish criminal district court. Petitioner called six witnesses, including defense trial counsel, Frank Larre, Barbara Riley, former head nurse at the Rehab Institute of New Orleans, Detective John Ronquillo, Eric Rogers, and Janie Mills, a former Psychiatric Technician at Charity Hospital. The State called four witnesses, including Reba Espadron's neighbor, Dale Mims, Larry Boatner and Sergeant Archie Kaufman. At the hearing, Petitioner introduced exhibits P-1, P-2, P-3, P-4, and P-5.

Frank Larre, Mr. Smith's trial lawyer, was shown Petitioner's Exhibit 1 (in globo documents obtained from the District Attorney's file in Mr. Smith's case) as well as Petitioner's Exhibit 2 (in globo documents obtained from the New Orleans Police Department). Mr. Larre testified that he was not provided these documents prior to or at any time during the trial. 1/13/09 P.C. Hearing at 9-98.

a. Eyewitnesses Dale Mims and Shelita Russell

Mr. Larre testified he was never given a police interview of eyewitness Dale Mims in which Mims stated that on the night of the offense he heard multiple shotgun blasts and then saw four black males wearing masks and carrying rifles drive away in a white four-door Buick Oldsmobile car. Mr. Larre stated that he could have used this interview to impeach Larry

Boatner's testimony that the men were not wearing masks and that he was hit with a handgun. 1/13/09 P.C. Hearing at 10-11.

On January 13, 2009, the State called Dale Mims as a witness. Mr. Mims testified that immediately after hearing gunfire he saw two men run out of Reba Espadron's home and get into a four-door white car. 1/13/09 P.C. Hearing at 103. The car then passed in front of Mr. Mims' house and he saw three men inside it. *Id.* at 112. He further testified that at least two or maybe all three men were wearing masks when they exited the home. *Id.* at 102-103.

On cross examination Mr. Mims gave further details of what he recalled—that he saw two men outside and when they passed his house there were three men:

Q. There were three?

A. Yes. Like I said, the AKA'S stopped shooting. I saw the two guys, one on either side with the guns get in the car. Then I heard the twelve gauge going off in the background. *Id.* at 111.

The defense called Detective Ronquillo to testify regarding his interview with Dale Mims shortly after the shooting. According to Ronquillo, Mims told him all of the men were wearing ski masks and carrying rifles. He couldn't see any of the men's faces. 1/22/09 P.C. Hearing at 71-72.

Defense counsel also testified he was never given a police interview of another eyewitnesses, Shelita Russell, who died later at the hospital. Ms. Russell told the police at the crime scene that she was in the kitchen and that the first gunmen who entered the house had a black cloth across his face. 1/13/09 P.C. Hearing at 11-12. Mr. Larre testified that he could have used Ms. Russell's statement to impeach Larry Boatner's testimony that Juan Smith was not wearing a mask after identifying him as the first person through the door. *Id.* at 14.

b. Larry Boatner's Prior Inconsistent Statements to Police

Mr. Frank Larre testified that the State never provided him with multiple statements Larry Boatner made to police, many of which contradict his testimony at trial. Specifically, the State never disclosed a statement made the night of the murders that he could not “supply a description of the perpetrators other than they were black males”; his next statement that he was “too scared to look at anybody”; and his pretrial statement that he could not identify any of the weapons other than to state they were an “AK type assault rifle, one Tech nine type handgun, and a silver colored handgun.” 1/13/09 P.C. Hearing at 16-18.

Mr. Larre also testified as to how he would have used these undisclosed police interviews to support Mr. Smith's defense during his trial:

Well, it would have totally contradicted what Mr. Boatner was testifying to under my cross examination. It certainly was a previous statement that is inconsistent to what he was saying in court. It would have been very, very exculpatory. *Id.* at 18.

c. Circumstances Surrounding Boatner's Identification of Petitioner

On January 13, 2009, Frank Larre testified that he was unaware that Larry Boatner was being harassed by an NOPD Detective into making identification in the Roman Street case, as indicated by notes in Boatner's Charity Hospital records. 1/13/09 P.C. Hearing at 27.

When Mr. Larre was questioned about how this information might have changed his actions at trial, he stated that he would have attempted to locate witnesses mentioned in the records, and, if unsuccessful, would have attempted to introduce the Charity Hospital records as “defense evidence showing that the police had reports indicating that there were claims of police harassment to identify the witness.” *Id.* at 27-28.

Petitioner called Janie Mills as a witness on January 14, 2009. At the time Larry Boatner identified Mr. Smith, Ms. Mills was a Psychiatric Technician at Charity Hospital on the floor

which housed Mr. Boatner. 1/14/09 P.C. Hearing at 11. Ms. Mills reviewed Mr. Boatner's medical records and was able to identify the handwriting and signature of the individual who stated that Mr. Boatner was "being harassed by an NOPD Detective Steve Ruffilo to identify a suspected perpetrator or perpetrators that were allegedly involved in shooting incident last March." DA 2079; *see* 1/14/09 P.C. Hearing at 16. Ms. Mills identified the individual as social worker Anna Blossom. 1/14/09 P.C. Hearing at 16. She further testified that Ms. Blossom is now deceased. *Id.* at 17.

d. Additional Evidence that Larry Boatner Testified Falsely at Petitioner's Trial

At trial, Larry Boatner testified that he saw Juan Smith's photograph on June 7, 1995 on the front page of the Times-Picayune and recognized him as one of the assailants. That testimony bolstered his later identification of Mr. Smith from a photographic lineup.

Detective Ronquillo's notes and testimony showed that Mr. Boatner claimed to have seen Mr. Smith's photograph on June 4, 1995. 1/22/09 P.C. Hearing at 11. Ronquillo also confirmed that Reba Espadron told him on June 10, 1995, that when she last spoke to Mr. Boatner on June 4, 1995 he told her the same thing. In fact Mr. Smith's photograph did not appear in the newspaper until June 7, 1995, three days after Mr. Boatner claimed he saw it.

In the hearing, Mr. Boatner testified that he gave police a height and weight description of the man he alleged was Mr. Smith. 1/14/09 P.C. Hearing at 46-47. During the trial, however, Detective Ronquillo testified at the trial that he never gave a height or weight description he was focused on the gun. R. 115. Moreover, Detective Archie Kaufman agreed that Boatner never gave any description of height or weight. 1/22/09 P.C. Hearing at 11.

Amazingly, Mr. Boatner testified at the hearing that there may have been only two men in the house. “I don’t know how many people was in there. But, I know at that time it was two, for sure, like I said. It was Juan and someone else.” 1/14/09 P.C. Hearing at 37. In all of his police interviews and at trial he testified to and described three men.

e. The Confession of Robert Trackling

On January 13, 2009, Petitioner called Eric Rogers, a cellmate of Robert Trackling, to whom Trackling confessed about his participation in Roman Street. Rogers testified that after Trackling confessed to him, Rogers made a statement to Detective Byron Adams of the NOPD. 1/13/09 P.C. Hearing at 123-125. Rogers stated that before he gave his official, tape-recorded statement, he was informally interviewed by Detective Adams. *Id.* at 128-29. In this informal, unrecorded statement, Rogers testified that he told police “Trackling told me that him, Banister [sic], and McGee [sic] had committed the crime.” *Id.* at 129. In fact, Rogers stated that Trackling never mentioned Juan Smith in his confession, nor did Trackling tell Rogers that Short Dog was Juan Smith. *Id.* at 139.

According to Rogers, after he gave police this initial statement, Detective Adams indicated that Juan Smith was involved in the Roman Street incident and asked Rogers to implicate Mr. Smith:

[W]hen I talked to Byron Adams, he asked me about a Short Dog. Did I know a Short Dog? So, I told him no. So, he said, did I hear of a Juan Smith? So, I told him no. And, he said that this was one of the guys that was supposed to have been in a murder. So, he said that if I do him a favor he would go talk to some people and get my life sentence took back. So, he had asked me to involve Short Dog, Juan Smith. 1/13/09 P.C. Hearing at 125.

Rogers further testified that the first time he had heard the name Juan Smith or Short Dog was from Detective Adams, and that he did not know either Juan Smith or Short Dog. *Id.* at 130. Nevertheless, because Detective Adams offered Eric Rogers a reduced sentence in his own

offense, Rogers gave police a statement that implicated Short Dog in the Roman Street murders. *Id.* at 131-34. Rogers testified that he was never interviewed by Juan Smith's lawyer about his knowledge of the Roman Street incident. *Id.* at 139.

Frank Larre was called by Petitioner on January 13, 2009, and testified that the State had not informed him that Robert Trackling had confessed to Eric Rogers about his participation in Roman Street. 1/13/09 P.C. Hearing at 30. Mr. Larre further testified as to how he would have used Trackling's confession to further his defense of Mr. Smith:

Well, I could use it to show that some people said there were four people, that there was a chaos going on and nobody really knew what happened, especially since we have witnesses that said that they had masks on their faces. And, obviously, since this guy has confessed, I would suggest that he would know who was in the car and who did the shooting, and he denies that it was Short Dog. 1/13/09 P.C. Hearing at 32.

Moreover, Mr. Larre "would have used it for impeachment in cross examination." *Id.* at 33.

f. Phillip Young's Improved Medical Condition

On January 13, 2009, Petitioner called Barbara Riley, the head nurse at the Rehab Institute of New Orleans at the time when Phillip Young was receiving treatment at that facility after the Roman Street incident. 1/13/09 P.C. Hearing at 117. Mrs. Riley remembered Phillip Young, and testified that Young "did not speak" but was able to communicate by shaking his head yes or no when asked questions. *Id.* at 117-18. When questioned by the State about whether Young suffered from amnesia, Ms. Riley responded, "No, I recollect aphasia, a lack of speech." *Id.* at 120-21.

Ms. Riley testified that she was present when a detective from the New Orleans Police Department arrived on the unit and the detective asked Ms. Riley to be present during his questioning of Phillip Young. *Id.* at 118. Ms. Riley was present for the entire length of the questioning, and witnessed the detective administer the Miranda rights to Mr. Young. *Id.*

According to Ms. Riley, Mr. Young communicated that he understood his rights and could answer the detective's questions. *Id.* The questioning lasted about ten or fifteen minutes. *Id.* at 118-19.

On January 22, 2009, Petitioner called Detective John Ronquillo, who verified that he interviewed Phillip Young at the Rehab Institute of New Orleans. 1/22/09 P.C. Hearing at 47-48. Petitioner presented handwritten notes to Detective Ronquillo, which Ronquillo confirmed he had written during the course of the interview. *Id.* at 48. Detective Ronquillo testified as follows:

- Q. Now, in your notes your [sic] indicate that he shook his head. You have no, that didn't shoot me; and no—and then it has a paragraph that has Short Dog/Buckle (written phonetically)/Fats (written phonetically)?
- A. Right.
- Q. And, then next to it, it says, "No didn't shoot me." And underneath that it says, "No, not with me when went to house."
- A. Right. *Id.* at 49.
- Q. And then on the next question, it is got a yes on that he---that one of the people in the house shot him, is that correct?
- A. That's what it says. *Id.* at 50.⁸

Mr. Larre testified that he was never provided with Detective Ronquillo's notes regarding his interview with Phillip Young during which Young indicated that Short Dog was not responsible and did not go to the house on the night of the offense. 1/13/09 P.C. Hearing at 29. Mr. Larre then described that he would have used this information as indicating that an admitted

⁸ Mr. Young's answer that one of the people inside Roman Street shot him is accurate. At Mr. Smith's trial, the State introduced the .25 gun that Robert Simon has been armed with that day. R. 91. Reba Espadron also testified that Robert Simon was armed with a .25 pistol the day of the incident. R. 75. Moreover, NOPD recovered .25 casings from the scene of the crime. R. 132-33.

participant in the offense “[d]enies that Short Dog, who was alleged to have been my client, participated in the robbery and murder and did not shoot him.” *Id.* at 29.

In the instant case, the sum of the *Brady* and *Napue/Giglio* violations completely changes the lens through which the State’s case against Mr. Smith can be viewed. In light of the *Brady* evidence, Larry Boatner’s testimony, which provided the only evidence linking Mr. Smith to the murders, is untrustworthy and unreliable. Not only is Boatner’s testimony refuted by his own undisclosed previous statements to police, but it is also impeached by other undisclosed eyewitness statements. Further, the suppressed evidence establishes that Phillip Young, an alleged perpetrator in the offense, asserted that Petitioner was *not* involved in the offense. In withholding this information from defense counsel, the State prevented the defense from subjecting its case against Mr. Smith to any meaningful adversarial treatment. Because the suppressed evidence was material and prevented the jury from fully evaluating the integrity of the state’s case, Mr. Smith’s conviction is unreliable and should be reversed.

II. The Louisiana State Courts Ignored Fundamental Principles of Due Process in Rejecting Smith’s *Brady* and *Napue/Giglio* Claims

In the thirty years after *Mooney v. Holohan*, 294 U.S. 103 (1935) (*per curiam*), this Court identified an important class of due process rights now commonly referred to as the *Brady* doctrine. This series of cases has uniformly condemned the prosecution’s presentation of evidence that is false, that is known to create a false impression, as well as the suppression of evidence that is favorable or exculpatory to the defense.

In *Napue v. Illinois*, 360 U.S. 264 (1959), this Court held that there is no difference between false evidence offered by the state and false evidence that goes “uncorrected when it

appears,” 360 U.S. at 268; *see also Giglio v. United States*, 405 U.S. 150 (1972) (government required to disclose evidence of the deal with its witness when his credibility is material to guilt). The landmark case of *Brady v. Maryland*, 373 U.S. 83 (1963) noted the prosecution’s obligation to disclose any evidence in its possession that is favorable to the defense or that may “tend to exculpate [the defendant] or reduce the penalty.”

Id. at 88.

The truth-seeking policy underlying the *Brady* doctrine mandates that it encompass two situations: the prosecution’s offering of evidence that it knew or should have known to be false and the prosecution’s suppression of evidence favorable to the defense. Because each type of prosecutorial misconduct perverts and “corrupt[s] . . . the truth-seeking function of the trial process,” *United States v. Agurs*, 427 U.S. 97, 104 (1976), this Court has uniformly and adamantly denounced both.

In *Kyles v. Whitley*, 514 U.S. 419 (1995), the Court emphasized that the prosecution’s duty to disclose favorable evidence under *Brady* “turns on the cumulative effect of all such evidence suppressed by the government” and that “the prosecutor remains responsible for gauging that effect regardless of any failure by the police to bring favorable evidence to the prosecutor’s attention.” *Id.* at 421; *see also Banks v. Dretke*, 540 U.S. 668 (2004).

The Louisiana state courts have abdicated their responsibility in failing to address the due process violations present in Petitioner’s case. After Petitioner’s state post-conviction petition was filed, four days of evidentiary hearings were held at the order of the trial court judge. During the evidentiary hearings, Petitioner was able to present for the first time certain favorable evidence that the prosecution never disclosed either before or during trial. Despite this, the trial court orally issued its ruling denying relief at the close of the fourth day:

BY THE COURT: I am ready to rule in the case. I don't have to take any time for this. I have been listening to this for quite a while. I am denying post-conviction relief. 2/02/09 P.C. Hearing at 18.

The Fourth Circuit Court of Appeal and the Louisiana Supreme Court both declined to review Petitioner's claims. All three state courts denied Petitioner relief without making any factual findings or providing any reasons for their ruling. As a result, the suppressed evidence that Petitioner presented has never received meaningful consideration by the Louisiana state courts.

CONCLUSION

Wherefore, for the foregoing reasons, Mr. Smith respectfully moves the Court to grant review of this matter and reverse Mr. Smith's conviction.

Respectfully submitted,



*Kathleen Kelly, LA Bar Roll # 25433
Matilde J. Carbia, LA Bar Roll # 32834
Capital Post-Conviction Project of Louisiana
1340 Poydras Street, Suite 1700
New Orleans, Louisiana 70112
Telephone: (504) 212-2110
Facsimile: (504) 212-2130
Electronic Mail: kkelly@cpcpl.org
Attorney for Petitioner

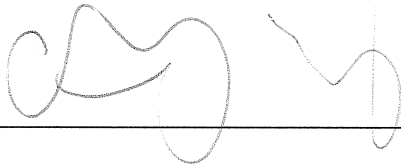
*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Petition for Writ Certiorari upon counsel for opposing party, by depositing a copy of same by means of U.S. Mail, and sending it to the following address:

Donna Andrieu, Assistant District Attorney
Orleans Parish District Attorney's Office
619 S. White Street
New Orleans, Louisiana 70119

This 20 day of December, 2010.



*Kathleen Kelly, LA Bar Roll # 25433
Matilde J. Carbia, LA Bar Roll # 32834
Capital Post-Conviction Project of Louisiana
1340 Poydras Street, Suite 1700
New Orleans, Louisiana 70112
Telephone: (504) 212-2110
Facsimile: (504) 212-2130
Electronic Mail: kkelly@cpcl.org
Attorney for Petitioner

*Counsel of Record

INDEX TO APPENDICES

- Appendix A Transcript of the oral ruling of the Orleans Judicial District Court, Orleans Parish, Louisiana, denying post-conviction relief dated February 2, 2009.
- Appendix B Unpublished decision of the Louisiana Fourth Circuit Court of Appeal denying Petitioner's application for review dated April 29, 2009.
- Appendix C Unpublished opinion of the Louisiana Supreme Court affirming the denial of post-conviction relief dated September 24, 2010.