

IN THE SUPREME COURT OF FLORIDA

No. SC03-1352

Scott Mansfield,
Appellant

versus,

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT,
IN AND FOR OSCEOLA COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

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REPLY TO THE APPELLEE'S STATEMENT OF THE CASE AND FACTS

A. Trial Stage

Mr. Mansfield does not dispute the Appellee's procedural history. He does dispute whether reliance on "facts" recited in the in this Court's opinion is fair or appropriate in deciding this appeal. This Court based its recitation of the facts on the record that was developed during pretrial and trial. While this Court's recitation was fair, based on the record, the record on which this Court was forced to rely hardly encompassed the true facts of Mr. Mansfield's case.

The true facts of Mr. Mansfield's case did not emerge until the postconviction hearing that is the subject of this appeal. The jury, the trial court and, until now, this Court, never had the true facts. The reason the true facts of Mr. Mansfield's case did not emerge was the troubling combination of ineffective assistance of counsel and State misconduct. Acting in tandem, ineffective assistance of counsel and State misconduct deprived the decision makers in this case, the jury and the courts, the true facts upon which to render their decisions. As a result, Mr. Mansfield was denied a fair trial, a fair sentence, and true justice.

Respectfully, Mr. Mansfield asks this Court to consider the

facts as they emerged during postconviction in determining whether Mr. Mansfield should be granted relief.

B. Postconviction Proceedings

The facts contained in Mr. Mansfield's initial brief are exhaustive and an accurate representation of the facts that emerged at the postconviction hearing. Through these facts, this Court can address the serious constitutional deprivations that occurred in Mr. Mansfield's case.

From the facts that emerged at Mr. Mansfield's post conviction hearing it is clear that a number of important areas of evidence were never brought to the attention of the jury. Most of the State's discussion of Billy Finneran in the Postconviction Proceeding section of the answer brief deals with a portrait of Mr. Finneran that was self servingly painted by Mr. Finneran and other State witnesses at Mr. Mansfield's trial. This is precisely the problem: because of the failures of trial counsel and misconduct by the State, the jury never heard the truth about Mr. Finneran's involvement and his self-serving testimony went unchallenged. The same must be said about State witness Christopher Randall. The State, in its answer, chooses to focus on his false and inflammatory trial testimony, not the real Christopher Randall that emerged at this hearing. The

State's reliance on the trial record was a poor substitute for the facts that Mr. Mansfield raised in postconviction and in this appeal.

The State's discussion about the pager omits how inconsistent the witnesses at the postconviction hearing were in describing the location of the pager, which is precisely what the jury should have heard at trial. The State listed a number of items from the direct appeal and parenthetically notes that one of two gold chains was found in close proximity to Mr. Mansfield's pager. The only photograph of the pager, State's Trial exhibit three, showed the pager against a wall. There was no gold chain in close proximity. Also, in the videotape of the crime scene, admitted into evidence at the hearing as Defense Exhibit 10, there was no gold chain seen in proximity to the pager. There simply was no pager at all in the crime scene video. There was no documentary evidence at all of the pager in relation to any other item.

While the State argued that the victim's watch was one of many relevant factors used in determining the time of death, the watch was the only piece of evidence that had any remote value. For instance, the receipts were speculative at best. The State was correct in noting that the statement the victim also had on a watch that was stopped at 3:00 o'clock, and upon which

law enforcement based its theory of time of death was not supported by the text of DIR. VOL. VI T. 739. See (AB 7 n.2)

The problem with the watch is best seen in the State's opening. In opening, the prosecutor, without objection, argued:

Another thing that the police noticed at the scene when Sara Robles's body was found that she did - was wearing a watch and you'll see that watch in the photography and that the watch was taken into evidence and that the watch had been broken. It evidently had become broken during the struggle for her life. And the time that the register - - that the watch is broken at is 3:00 o'clock, which the evidence will show is consistent with you know, a time close in that proximity when the cashier would have seen them leaving; that they would have had an opportunity to be outside the in that parking lot next to that Winn-Dixie. You will also hear that Scott Mansfield, the Defendant, and Sara Robles were seen outside afterwards. After they left the Winn-Dixie, they were seen outside over near the area where she was eventually killed.

(Dir. Vol. II T. 262).

While the prosecutor's opening statement was not evidence, it does show the importance that law enforcement placed on the watch.

There was no testimony that the victim's watch was working before the offense. The point was that if law enforcement insisted on basing a time of death on 3:00 o'clock, it showed that Mr. Finneran was in proximity to the crime scene. The medical examiner was not questioned by the State or defense

counsel as to how she came up with a 3:00 a.m. time of death. The medical examiner was asked "Did you reach an opinion as to the date of death?" (Dir. Vol. III. T. 460). Unresponsively, the medical examiner answered: "Yes. I believe she died at approximately 3:00 a.m. on the morning of October 15, 1997 - - 1995, I'm sorry, 1995." (Dir. Vol. III T. 460). This simply was not a medical opinion.

Contrary to the State's assertion, Mr. Mansfield did make reference to the cash register receipts. The presence of Mr. Mansfield, the victim *and* Billy Finneran also was discussed elsewhere in Mr. Mansfield's initial brief, as was the eyewitness testimony that placed Mr. Finneran in proximity to the murder scene and the evidence that Mr. Finneran was calling Charles Sturdevant in close proximity to the crime scene at approximately 3:15 a.m.

REPLY TO APPELLEE'S ANSWER TO ARGUMENT I

THE TRIAL COURT ERRED IN DENYING CLAIM FOURTEEN OF MR. MANSFIELD'S POSTCONVICTION MOTION AND IN FAILING TO GRANT HIS MOTION TO DISQUALIFY. MR. MANSFIELD WAS DENIED HIS RIGHT TO A FAIR TRIBUNAL THROUGHOUT THE GUILT AND PENALTY PHASES OF HIS TRIAL AND DURING POSTCONVICTION. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO DISQUALIFY THE TRIAL JUDGE

Mr. Mansfield was denied his right to a fair tribunal and

the effective assistance of counsel under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida Constitution. This Court should grant the relief requested in this appeal and in Mr. Mansfield's postconviction motion. Because the Constitutions of this State and this Nation demand a remedy from this Court, Mr. Mansfield stands firmly by this issue as raised in his initial brief and postconviction motion.

At issue in this argument is one of the most essential safeguards in a criminal proceeding, the right to a fair tribunal. The trial court's comments made clear that Mr. Mansfield was denied this most fundamental of rights. Trial counsel had a duty to protect Mr. Mansfield's right to a fair tribunal and did nothing. Trial counsel allowed the trial court, which now had overtly manifested its bias in favor of the State and against Mr. Mansfield, to sentence Mr. Mansfield to death. Once the trial court made the comments in question, it was clear that Mr. Mansfield had not received a fair tribunal throughout the entire proceedings. Contrary to the State and the lower court's positions, Mr. Mansfield was not procedurally barred from raising this ineffective assistance of counsel claim in postconviction. With few exceptions this Court has found that postconviction, not direct appeal, is the proper forum to raise

a claim of ineffective assistance of counsel. In this Court's direct opinion in *Mansfield v. State*, 758 So. 2d 636 (Fla. 2000), this Court reiterated that a claim of ineffective assistance of counsel is generally not cognizable on direct appeal. *Id.* at 642; (citations omitted).

Mr. Mansfield's case needed further factual development at an evidentiary hearing. Trial counsel was given the opportunity to explain their failure to move to disqualify the lower court. See (Vol. VII PCR 776). While effective trial counsel would have done so, counsel either could not remember any reason to object or did not see any reason to object. See (Vol. VII PCR 776). The State offered nothing at the hearing that refuted Mr. Mansfield's claim. Apart from appellate counsel's failure to raise this issue, which is addressed in Mr. Mansfield's concurrently filed habeas petition, Mr. Mansfield was entitled to the effective assistance of counsel at each stage of the proceedings against him.

Certainly, cross examination of the trial judge who made the comments in question would have allowed for fuller development of this issue. The lower court's *ex post facto* justification for the statements at issue in Mr. Mansfield's postconviction motion, upon which the State relied in its answer, were unsworn,

not subject to cross examination, and deprived Mr. Mansfield of his confrontation rights.

The lower court's denial of Mr. Mansfield's motion to disqualify was not dispositive of this issue. Moreover, while this Court denied Mr. Mansfield's Petition for a Writ of Prohibition, Mr. Mansfield was still entitled to a fair and impartial postconviction tribunal. Despite this Court's denial of Mr. Mansfield's Petition, this Court can still remedy this error by granting Mr. Mansfield a new postconviction hearing if this Court should find that Mr. Mansfield is not entitled to relief on this issue as it stands or the other issues before this Court on appeal.

Contrary to the State's position, Mr. Mansfield was denied the effective assistance of counsel and a fair tribunal. Counsel had a duty to protect Mr. Mansfield's right to a fair tribunal but failed to do so. There can be no confidence in the outcome of Mr. Mansfield's case. Mr. Mansfield was the only party entitled to any sort of presumption, the presumption of innocence. The law requires that he be presumed innocent and that the death penalty be presumed not to apply. The prejudice was great, Mr. Mansfield was denied the most basic rights that ensure a fair trial. This Court should reverse.

REPLY TO APPELLEE'S ANSWER TO ARGUMENT II

THE TRIAL COURT ERRED IN DENYING RELIEF ON CLAIM TWO OF MR. MANSFIELD'S POSTCONVICTION MOTION. TRIAL COUNSEL WAS INEFFECTIVE DURING JURY SELECTION WHICH DENIED MR. MANSFIELD A FAIR TRIAL. ACCORDINGLY, THIS COURT SHOULD REVERSE.

Mr. Mansfield was denied his right to the effective assistance of counsel and a fair trial under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida Constitution. This Court should grant the relief requested in this appeal and in Mr. Mansfield's postconviction motion. Because the Constitutions of this State and this Nation demand a remedy from this Court, Mr. Mansfield stands firmly by this issue as raised in his initial brief and motion.

The State asserts that the lower court properly denied this postconviction claim. Mr. Mansfield raised in postconviction, and in this appeal, the issue of whether trial counsel were ineffective during jury selection. Mr. Mansfield had the right to the effective assistance of counsel during this crucial stage of the proceedings against him. The lower court's reliance on the alleged fact that Mr. Mansfield "participated" in jury selection, and the State's restatement of this position in its answer, fail to consider the implications of such a

justification for the denial of postconviction relief. It was never Mr. Mansfield's responsibility to select his own jury. The trial court, in considering Mr. Mansfield's alleged participation, rendered the Sixth Amendment's right to the effective assistance of counsel meaningless.

In the instant case, the jury questionnaires provided counsel with important information from the potential jurors. Counsel failed in a number of instances to question the jurors about specific statements in the questionnaires that any reasonable counsel would have pursued. Moreover, counsel allowed jurors who answered crucial questions concerning their knowledge of the case in their questionnaires to not respond to the trial court's questions.

While the responses of Juror Best in his questionnaire were some of the most troubling, many of the other jurors were also not properly questioned. Counsel's failure to address the issues raised by the jurors clearly showed an overall ineffectiveness in selecting Mr. Mansfield's jury. As the initial brief made clear, these failures showed counsel's performance went beyond a mere isolated incident and clearly showed that some greater "strategy" was not employed during jury selection.

The State relies on a claim of strategy to defend trial counsel's performance. But strategy only justifies counsel's conduct if it was based on proper investigation. Here, counsel was confronted with troubling responses and inconsistent answers from the jurors. Counsel had the opportunity to use the jury selection information to properly investigate the bias and prejudice of the jurors but counsel did nothing in response.

Much like the jury questionnaire in *Spencer v. State*, 842 So. 2d. 52(Fla. 2003), the questionnaire here "was designed to seek out biases, including whether the juror or someone close to the juror had been the victim of a violent crime or domestic violence and to elicit what newspapers, periodicals, and media the juror regularly read or viewed." *Id.* at 65. Unlike *Spencer*, however, the record in this case does not support that the jurors addressed in Mr. Mansfield's postconviction motion passed this standard. The jurors at issue gave answers that were inconsistent with their questionnaires, the jurors failed to respond to questions by the court of the entire jury panel, or the jurors were simply not questioned at all by the lower court or counsel to any degree.

While this Court found that the jurors in question in *Spencer* met the standard for being on the jury, it was apparent

that the attorneys in *Spencer* actually used the questionnaires that they had prepared. Here, counsel never even looked at the questionnaires when selecting the jury, see (Dir. VOL. I 186), and could not recall much of the particulars of jury selection at the postconviction hearing, see(VOL. VII PCR. 844).

Unlike in *Armstrong v. State*, 862 So. 2d 705, 714 (Fla. 2003) which was cited in the State's answer,(AB 47), Mr. Mansfield's postconviction jury selection allegations were not refuted by the record. In *Armstrong*, the appellant made one allegation against a single juror. *Id.* The allegation was that the prosecutor's questioning of the juror "indicated an apparent familiarity" with the juror. *Id.* The juror at issue in *Armstrong* answered "no" when the panel was asked if anyone knew the prosecutor. *Id.* In Mr. Mansfield's case, because counsel failed to ask questions based on the information provided in the jury questionnaires, the jurors in question did not answer one way or the other. Moreover, unlike *Armstrong*, in Mr. Mansfield's case, jurors failed to respond to questions of the court to the panel when they had given affirmative answers in their questionnaires.

Lusk v. State, 446 So. 2d 1038, 1041 (Fla. 1984), as cited by the State, (AB 47), did state this Court's test for

determining juror competency: Whether the juror can lay aside any bias or prejudice and render a verdict solely on the evidence presented and the instructions on the law given by the court. *Id.* In Mr. Mansfield's case the record does not establish that "each of the eight identified met this standard." (AB 47). The record does not establish that the jurors met this standard because counsel was ineffective in failing to ask the jurors about the areas of bias that would have caused effective counsel grave concern. The jurors in question were never asked about their biases, or never responded to questions of the entire panel. Accordingly, on the important areas of bias raised by Mr. Mansfield, the record does not show that the jurors could lay aside any bias or prejudice because trial counsel never asked the jurors about the important areas of concern raised by the questionnaires.

There was no conceivable strategy in not questioning the jurors as detailed in Mr. Mansfield's postconviction motion. Had counsel asked the jurors at issue about these grave issues of concern the jurors could have allayed the grave concerns about their sitting on the jury. If not, counsel could have moved to strike the jurors for cause or used the numerical evaluation system in a strategic manner. Counsel failed in this regard and their error fell squarely on the shoulders of Mr.

Mansfield.

Indeed, the prejudice to Mr. Mansfield was overwhelming. Instead of a jury that was selected after the careful questioning of the jurors based on the information trial counsel had available, areas of grave concern were simply overlooked. The record in this case does not establish that the jurors met the standard for jurors in a death penalty case or any other criminal trial. Counsel's performance during jury selection did not assure that Mr. Mansfield was tried by a fair and impartial jury. Accordingly, Mr. Mansfield's conviction and death sentence must not stand. This Court should reverse.

REPLY TO APPELLEE'S ANSWER TO ARGUMENT III

THE TRIAL COURT ERRED IN DENYING CLAIMS ONE, THREE AND SIX OF MR. MANSFIELD'S MOTION FOR POSTCONVICTION RELIEF. AS ALLEGED IN THESE CLAIMS AND AS PROVEN AT HEARING, MR. MANSFIELD'S COUNSEL WAS INEFFECTIVE THROUGHOUT THEIR REPRESENTATION OF MR. MANSFIELD. ACCORDINGLY, THIS COURT SHOULD REVERSE.

Mr. Mansfield was denied his right to the effective assistance of counsel and a fair trial under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida

Constitution. This Court should grant the relief requested in this appeal and in Mr. Mansfield's postconviction motion. Because the Constitutions of this State and this Nation demand a remedy from this Court, Mr. Mansfield stands firmly by this issue as raised in his initial brief and motion.

The State argued in its answer that the lower court properly denied Claims I, III and VI of Mr. Mansfield's postconviction motion because Mr. Mansfield failed to meet his burden of proof. (AB at 49). The evidentiary hearing, however, proved otherwise. After review of the record from Mr. Mansfield's trial and evidentiary hearing and considering his written closing argument, it is clear, that counsel was ineffective.

Counsel failed to present a coherent defense to the jury in Mr. Mansfield's case. Such a coherent defense should have included reasonable cross and direct examination and a complete closing argument. A coherent defense would have showed the jury why the State had not proved its case against Mr. Mansfield beyond and to the exclusion of every reasonable doubt. This assured that Mr. Mansfield was falsely convicted of a crime for which he has steadfastly maintained his innocence.

An important area of Mr. Mansfield's trial was the pager that law enforcement used to put Mr. Mansfield in proximity to

the victim. This evidentiary hearing showed that this proximity was questionable at best. If law enforcement followed any of the usual procedures for crime scene documentation, there would have been evidence documenting the pager's location. Instead, the only piece of evidence showing the pager was State exhibit three, which provided no relation of the pager to anything in the crime scene. Trial counsel did nothing to contradict the impression created by the State that the pager's location was inculpatory.

Counsel failed to properly cross-examine William Finneran. Key areas of Mr. Finneran's testimony, as Mr. Mansfield's initial brief makes clear, were not addressed by counsel. Effective counsel would have attacked Mr. Finneran's testimony as part of a coherent defense strategy.

Counsel's failure to properly examine Christopher Randall was also an important factor in the false verdict against Mr. Mansfield. Certainly, as addressed in Argument V, relief was warranted because of the State's misconduct surrounding the disclosure of any promise or benefit Mr. Randall would receive and the State's failure to correct Mr. Randall's false statements that contradicted the State's opening. Trial counsel, however, had a duty to address the federal charges that

were discussed in Mr. Randall's deposition. The State's misconduct did not absolve trial counsel of their duty to properly cross-examine Mr. Randall but rather greatly increased the constitutional deprivation suffered by Mr. Mansfield.

Counsel's performance during closing was the capstone of the ineffectiveness. Counsel's performance must be considered in light of the evidence that was adduced at trial, that should have been adduced, and that should never have been adduced. In the first category, there was plenty of evidence that counsel could have argued to the jury that showed that Mr. Finneran was equally as inculcated as Mr. Mansfield. In the second category, as detailed in this appeal, and in postconviction, there were a number of facts that the jury should have considered which the jury was denied, such as the pager being moved. The jury should have had the opportunity to consider that Mr. Randall had far greater motive to lie. This was not brought out by the State because of the State's *Giglio* violation and because of trial counsel's ineffectiveness in failing to use Christopher Randall's clues about his federal charges. The third category, evidence that the jury should not have heard, was the video taped interrogation and the other evidence that should not have been admitted against Mr. Mansfield.

Counsel's failure in the area of closing argument differs

greatly than from counsel in *Bell v. Cone*, 535 U.S. 685 (2002). In *Bell v. Cone*, counsel knowingly decided to waive closing argument. *Id.* at 701. In Mr. Mansfield's case, trial counsel made no such decision and counsel's failure to argue in the first closing in any detail cannot be considered strategy. In *Cone*, the State made its closing penalty phase argument after a hearing that lasted only three hours. *Id.* at 690. The penalty phase testimony was fresh in the jury's mind when *Cone's* attorney decided to waive closing argument. Unlike in *Cone*, Mr. Mansfield's jury needed to have multiple pieces of the puzzle, developed over a number of days, linked together to show why the jury should have a reasonable doubt about his guilt.

Indeed, counsel's performance was far worse than in *Cone*. Rather than make no argument and let the jury sort through the evidence they heard over a number of days, the jury in Mr. Mansfield's case was left with the distinct impression that the brief first closing made by trial counsel was all that could be said in Mr. Mansfield's defense.

Contrary to the State's position, the evidence showed that Mr. Mansfield was denied the effective assistance of counsel. The prejudice was overwhelming. A verdict of not guilty was well within the grasp of effective counsel. This is not hindsight

but the only conclusion that can follow from Mr. Mansfield's postconviction litigation. Accordingly this Court should reverse.

REPLY TO APPELLEE'S ANSWER TO ARGUMENT IV

THE TRIAL COURT ERRED IN DENYING RELIEF ON CLAIM FIVE OF MR. MANSFIELD'S MOTION FOR POSTCONVICTION RELIEF. COUNSEL WAS INEFFECTIVE FOR NOT MOVING TO SUPPRESS ALL EVIDENCE ILLEGALLY SEIZED BY LAW ENFORCEMENT FOLLOWING THE ILLEGAL SEIZURE OF MR. MANSFIELD.

Mr. Mansfield was denied his right to the effective assistance of counsel, a fair trial and the right to be secure in his property and free from illegal seizures under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida Constitution. This Court should grant the relief requested in this appeal and in Mr. Mansfield's postconviction motion. Because the Constitutions of this State and this Nation demand a remedy from this Court, Mr. Mansfield stands firmly by this issue as raised in his initial brief and motion.

Law enforcement illegally seized Mr. Mansfield's ring from his property and illegally took photographs of his half naked body. Contrary to the State's answer, these acts of law

enforcement were not justified by any exception to the Warrants Clause of the Fourth Amendment. Counsel had a duty to protect Mr. Mansfield's constitutional rights by filing a motion to suppress. Reasonable counsel would have moved to suppress the ring and photographs. Mr. Mansfield was greatly prejudiced by counsel's failure in this regard because inadmissible evidence was admitted to Mr. Mansfield's detriment.

The State's reliance on *United States v. Edwards*, 415 U.S. 800 (1974), was misplaced. *Edwards* involved facts that were completely distinguishable from those of Mr. Mansfield's case. First, unlike *Edwards*, the seizure of Mr. Mansfield was without probable cause. Through the record on appeal and the hearing at issue, it was clear that law enforcement had at best a mere hunch. As discussed in the initial brief, there was nothing that showed it was more likely that Mr. Mansfield rather than Mr. Finneran committed the homicide in question.

In *Edwards*, the respondent was lawfully arrested, *Id.* at 801; Mr. Mansfield was not. Beyond this crucial fact, *Edwards* can also be distinguished. In *Edwards*, the respondent was arrested and placed in what the Court called a "local jail." *Id.* The lower court opinion, however, made clear that law enforcement took the respondent "to the Lebanon Police Station

where he was placed in a cell." *United States v. Edwards*, 474 F.2d 1206, 1208 (6th Cir. Ct. App. 1973). In the context of both courts' opinions it was clear that the Lebanon Police Station was not the same as a county jail in Florida. A county jail in Florida is entrusted with holding arrested persons awaiting disposition of their cases, regardless of whether a municipality or the county sheriff is responsible for the arrest. The Lebanon Police Station apparently was a temporary holding cell in a municipal police station. It was so temporary that law enforcement purchased clothes for the respondent so that law enforcement could take the very clothes off his back, the same clothes that were at issue in the respondent's motion to suppress. *Id.* at 802. Law enforcement in *Edwards* did not take the evidence from the respondent's property after the respondent had been processed into the county jail to await disposition of his case. In Mr. Mansfield's case law enforcement took other items from Mr. Mansfield prior to booking but allowed him to be processed into the county jail with his ring.

In upholding the search and seizure in *Edwards*, the Court did not "conclude that the Warrant Clause of the Fourth Amendment is never applicable to post-arrest seizures of the effects of an arrestee." *Id.* at 808. The seizure of Mr. Mansfield's ring was after he was placed into the custody of the

jail not while he was waiting to be transported to the jail at the police station.¹

Unlike *Jennings v. State*, 512 So. 2d 169 (Fla. 1987), as cited in State's answer brief at p. 63, law enforcement did not have probable cause to arrest Mr. Mansfield with or without the videotaped interrogation of Mr. Mansfield. Contrary to *Jennings, Id.* at 171-72, both the ring and the pictures would not have been "inevitably obtained" if law enforcement had not arrested Mr. Mansfield illegally.

Contrary to the State's argument, the finding of probable cause by the circuit court judge was not irrespective of the *Miranda* violation. First, this argument does not apply to the photographs because the photographs were taken at the close of Mr. Mansfield's illegal interrogation which occurred before the circuit court found probable cause for the continued custody of Mr. Mansfield. Second, the probable cause charging affidavit was overwhelmingly, and Mr. Mansfield's submits deceptively,

¹Here law enforcement seized the ring when it was in Mr. Mansfield's property at the jail. (DIR. VOL. V T. 675-76). Law enforcement did not seize the ring when it was on Mr. Mansfield's finger while the interrogation was taking place on October 15, 1995. Rather, the ring was seized on October 17, 1995 by Detective Tim Fisher without a warrant. (Dir. VOL. V T. 675-676). The Initial Brief erroneously cites to volume IV when the cite should be to Volume V of the trial transcript.

based on law enforcement's interpretation of Mr. Mansfield's statements in the video taped interrogation. See (Vol. I Dir. 8-9).

The State's answer fails to address simply how vague the location of the pager was in the charging affidavit. Law enforcement merely stated that the pager was found "in the area where it appeared the victim was assaulted." See (Vol. I Dir. 8-9). As the hearing showed, the measurements taken at crime scene are crucial to a proper investigation. Had law enforcement actually taken measurements that put the pager near the victim, law enforcement could have listed the exact distance by reference to the crime scene diagram. "In the area" was such a vague description that Mr. Mansfield could have been miles away from the scene and still fall within the "area." Certainly a motion to suppress the pager could have brought law enforcement's vague location of the pager to the motion court's attention.

Law enforcement more accurately described the probable cause at the motion to suppress the videotaped interrogation. As argued in the initial brief, law enforcement stated: "[w]e had the pager registered to him . . . " that was allegedly found ". . . in the vicinity of the body." The only other information that Detective Schroeder had was that Mr. Mansfield was seen

with the victim in "a couple type situation" along with Billy Finneran. (MT 178). In the words of Detective Schroeder, "[t]hat's about it, sir." That certainly was not probable cause, irrespective of how law enforcement cast the purported evidence. Thus, the circuit court's finding of probable cause for the continued custody of Mr. Mansfield did not justify law enforcement's seizure of the ring and the taking of photographs of Mr. Mansfield's half nude body.

Trial counsel were clearly ineffective for failing to raise the illegal seizure of Mr. Mansfield's ring and the taking of photographs. Counsel had an obligation to protect Mr. Mansfield's rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. The failure of counsel led to both the false conviction and Mr. Mansfield's death sentence. This Court should reverse.

REPLY TO APPELLEE'S ANSWER TO ARGUMENT V

THE LOWER COURT ERRED IN DENYING MR. MANSFIELD'S CLAIM THAT THE STATE PRESENTED FALSE OR MISLEADING TESTIMONY AND ARGUMENT AT MR. MANSFIELD'S TRIAL IN VIOLATION OF GIGLIO V. UNITED STATES AND NAPUE V. ILLINOIS.

Mr. Mansfield was denied his right to due process and a fair trial under the Fifth, Sixth, Eighth and Fourteenth Amendments

of the United States Constitution and the corresponding provisions of the Florida Constitution. This Court should grant the relief requested in this appeal and in Mr. Mansfield's postconviction motion. Because the Constitutions of this State and this Nation demand a remedy from this Court, Mr. Mansfield stands firmly by this issue as raised in his initial brief and motion.

The trial court erred in denying Mr. Mansfield's claim. As a result of the misleading testimony in this case, the jury which found Mr. Mansfield guilty and recommended that he be sentenced to death was deprived of crucial information about State snitch Christopher Randall. As discussed in Mr. Mansfield's initial brief, the courts and the jury that have heard Mr. Mansfield's case have never heard about the real Christopher Randall. When the real Christopher Randall that emerged at the postconviction hearing is considered, it is clear that Mr. Mansfield's rights were violated.

Contrary to the State's position, the evidence at Mr. Mansfield's hearing showed that the State presented false testimony from Mr. Randall concerning the true nature and extent of the charges pending against him at the time he testified against Mr. Mansfield. It showed further that the State withheld its true intentions regarding benefits Mr. Randall

would receive as a result of his testimony. Finally, it showed that the State knew the testimony was false and that the false testimony likely affected the outcome of Mr. Mansfield's case.

The State's own time line in its answer showed that Mr. Randall clearly knew of his pending federal charges. See (AB 67). In the inmate request form the Sheriff's Office told Mr. Randall that he had a hold for escape and for bank robberies. See (AB 67). Mr. Randall, in addition to knowing the crimes he had committed also knew he was in federal custody and absconded from federal custody. The information in the inmate request form was attributable to the State through the Osceola County Sheriff's Office.

The real clues as to why Mr. Randall testified against Mr. Mansfield, the pending federal charges he faced, first emerged in the answers to trial counsel's questions during his deposition. After a discussion of Mr. Randall's numerous prior offenses Mr. Randall made the statements which alerted the State to his true legal predicament. First, Mr. Randall said that his federal sentence expired while he was "in the Osceola County Jail, which would have been November 5th of 1995. [Mr. Randall] was arrested September 16th of 1995, in Osceola County, in Kissimmee." (RDP. 15). Mr. Randall went on to state that he "was never released from federal custody." (RDP. 19). When

asked if he went to the halfway house in Tampa on June 9, 1995,

Mr. Randall responded:

A: Right. I was still in the custody of the Bureau of Prisons.

Q: How much were you supposed to serve at the half way house?

A: Five months.

Q: But, in July you left?

A: Right.

Later in the deposition, Mr. Randall was asked "When did they find out about your federal hold?" (RDP. 25). Mr. Randall responded that he believed "it was the 18th of September, couple days after." (RDP. 25). Mr. Randall also clarified that he "wasn't classified as a federal inmate, [he] was in state custody with a federal hold." (RDP. 27).

Further, to explain why Mr. Randall was in custody in Pinellas County where the deposition took place, Mr. Randall stated:

There was a bank robbery here, the State, I don't know what they are going to do with it, one way or the other. They are either going to turn it over to the federal side of it, because I was technically in federal custody when all this happened - -

(RDP. 82).

When asked if Mr. Randall believed that he had been indicted in

federal court, he responded: "Oh, I have been told as much, but I have also been told it doesn't - - that I haven't been. So it's been kind of confused on that part." (RDP. 83). The deposition showed that the State, trial counsel and Mr. Randall were present at the deposition and all knew of Mr. Randall's federal charges.

All but one week after Mr. Mansfield was found guilty, with lead Mansfield prosecutor Dorothy Sedgwick in the Courtroom, the prosecutor on Mr. Randall's cases stated that Mr. Randall had federal holds. See (Defense Exhibit #15 PCR. p. 3,4.) Mr. Randall clearly knew he was in peril because of the federal holds that he was informed of in the inmate request form. Add to that the fact that Ms. Sedgwick and Lt. Lewis wrote letters for Mr. Randall's benefit after Mr. Randall asked him to "keep him in mind," (Vol. VI PCR. 715), and it is clear that the State committed a most egregious *Giglio* violation.

Prior to trial, the State filed a written document entitled Statement of Existence or Non Existence of Benefit, Promise or Special Treatment of Witnesses. (DIR. VOL. IV R. 915-918). This was entered into evidence at Mr. Mansfield's hearing as Defense Exhibit 13 for Evidence. The Statement specifically references the State aiding Mr. Finneran on his federal charges.

The Statement does not mention the exact federal charges of Christopher Randall but does state that there had not "been any discussion or agreement with any federal prosecutor reference [Christopher Randall]'s State testimony or any agreement not to charge cases." Nowhere does this document disclose the existence of the ten federal charges that Christopher Randall faced.

Mr. Randall's statements on direct and cross contradicted Ms. Sedgwick's statements in opening. Ms. Sedgwick told the jury in opening that Mr. Randall:

will tell you that there was no particular agreement; that there was never any agreement on pleading guilty to charges he pled guilty, but he is hoping that his cooperation - - that he has a sentencing date and he is hoping that his cooperation will amount for something for him.

Defense Exhibit #16 PCR.

Under *Giglio*, the State had the burden of not presenting false or misleading testimony to the jury. The State and Mr. Randall knew that Mr. Randall had a federal hold on him concerning bank robberies. Given that information, the State had a duty to find out from the federal court what the nature of those charges were. This could have easily been accomplished by calling the Middle District Clerk's Office in Orlando, Florida. Instead, the State recklessly allowed Mr. Randall to testify

only about the existence of State charges which were of a far less serious nature. This left the jury without the critical information that Mr. Randall was cooperating in State court to obtain credit for substantial assistance in federal court. Of course, this was exactly what followed for Mr. Randall after Mr. Mansfield's conviction. Contrary to the State's argument, the obligation of the State under *Giglio* goes beyond putting on a noted snitch and hoping for the truth.

Mr. Randall testified falsely when he stated he expected no benefit from his testimony in the Mansfield case as this directly contradicted the opening statement of Assistant State Attorney Dorothy Sedgwick. Beyond the direct evidence that Mr. Randall lied about his expectations, the circumstantial evidence introduced at the hearing of what Mr. Randall actually received and the actions that the State took to benefit him in state and federal court clearly showed a *Giglio* violation.

Contrary to the State's position, the prejudice of Mr. Randall's testimony was great. Mr. Randall took the State's case beyond a pure circumstantial evidence case and a certain judgment of acquittal. Without further impeachment, Mr. Randall ensured that Mr. Mansfield would be found guilty of a crime for which he has steadfastly maintained his innocence. There was not overwhelming evidence of Mr. Mansfield's guilt even with the

illegal evidence of his videotaped interrogation and illegally seized ring. Certainly, if the jury would have considered the "Real Christopher Randall," the jury's decision would have been different.

When the entirety of Mr. Randall's false testimony is considered it is clear that there is a reasonable likelihood that the false testimony affected the judgment of the jury. Certainly, while Mr. Randall was cross-examined, had the jury heard of his pending federal charges, the jury could have chosen not to believe him. Moreover, if the jury understood the full benefit Mr. Randall was to receive on his State cases, the jury also could have chosen not to believe his testimony as well. Had the State fully disclosed the important impeaching information concerning Mr. Randall's pending charges to the jury, the result in this case would have been different. Accordingly this Court should reverse.

REPLY TO APPELLEE'S ANSWER TO ARGUMENT VI

THE CUMULATIVE EFFECT OF THE CONSTITUTIONAL ERROR THROUGHOUT THE GUILT PHASE AND PENALTY PHASE ALLEGED IN THIS MOTION DENIED SCOTT MANSFIELD A FAIR TRIAL AND RENDERED THE HARMLESS ERROR OF ADMITTING THE ILLEGAL INTERROGATION PREJUDICIAL.

Mr. Mansfield was denied his right to the effective assistance of counsel and a fair trial under the Fifth, Sixth,

Eighth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida Constitution. This Court should grant the relief requested in this appeal and in Mr. Mansfield's postconviction motion. Because the Constitutions of this State and this Nation demand a remedy from this Court, Mr. Mansfield stands firmly by this issue as raised in his initial brief and motion.

The State is incorrect in asserting that Mr. Mansfield is not entitled to relief under the cumulative error theory. Mr. Mansfield's trial was fraught with individual errors that denied him a fair trial and a fair determination of his guilt or innocence. Mr. Mansfield petitioned the trial court for relief, only to be denied a remedy from a biased trial court.

Following postconviction, it is clear that not one aspect of Mr. Mansfield's case can be described as fair or worthy of confidence. The postconviction hearing in this case has made clear that none of the safeguards in a criminal case were present in Mr. Mansfield's case. Each error argued in this appeal demands relief. Should, however, this Court find that any of these errors in this case were individually harmless, these errors, cumulatively, were of such a great constitutional magnitude, this Court should still reverse. This is especially so if this Court considers these errors in conjunction with the

unconstitutional admission of Mr. Mansfield's illegal interrogation.

In Mr. Mansfield's case, law enforcement conducted an incomplete and cursory investigation which led to Mr. Mansfield's false conviction and the false exclusion of William Finneran as a suspect. Law enforcement failed to fully document the evidence in this case which allowed the State to obtain its conviction based on conjecture and illusion.

Law enforcement ignored the Constitution's restraints on its conduct. Law enforcement violated Mr. Mansfield's rights during interrogation and arrested Mr. Mansfield without probable cause. From there, law enforcement seized Mr. Mansfield's ring and took photographs of his half naked body. This evidence was used by the State at trial to obtain the false conviction of Mr. Mansfield.

Mr. Mansfield was denied the effective assistance of counsel in a number of ways. During the pretrial stage, counsel failed to file a motion to suppress Mr. Mansfield's ring and photographs. Counsel failed to provide Mr. Mansfield with the effective assistance of counsel that the Constitution demands. From pretrial through to counsel's failure to move to disqualify the trial judge before imposing a death sentence, Mr. Mansfield

was without the safeguards that effective counsel bring to a criminal proceeding, thus denying the legitimacy of the verdict and Mr. Mansfield's death sentence.

Mr. Mansfield's conviction and death sentence were also the result of the false testimony of Christopher Randall. The jury that found Mr. Mansfield guilty was denied important information about the "real Christopher Randall." The jury was denied the whole truth about what Mr. Randall expected in return for his testimony against Mr. Mansfield. The State and Christopher Randall failed to disclose to the jury the motive and bias that Mr. Randall had to testify against Mr. Mansfield. Defense counsel failed to act upon the information that Mr. Randall disclosed at deposition.

None of the important decision makers in Mr. Mansfield's case, the trial judge and the jury, had the reliability that normally would have imparted a sense of confidence in their decisions. The trial judge's partiality was clear from the statements addressed in Argument I of this appeal. Argument II clearly showed that because of the ineffectiveness of trial counsel, the jury was comprised of individuals whose possible bias and apparent bias in their questionnaires were unaddressed. Accordingly, without an effective jury selection, the jury's verdict was unreliable.

Throughout Mr. Mansfield's contact with the criminal justice system, he has not been treated fairly and has been denied the most basic of protections the Constitution affords. Accordingly, if this Court does not reverse on any of the individual errors addressed in this appeal, this Court should reverse on the cumulative error.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Initial Brief has been furnished by United States mail to all counsel of record on this 18th day of October 2004.

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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Reply Brief of the Appellant was generated in a courier new 12 point font, pursuant to Fla. R. App. P. 9.210.

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