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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

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

PETITIONER'S REPLY TO STATE'S ANSWER TO MR. MILLS' RULE 60 MOTION

For seventeen years, Mr. Mills has maintained that the District Attorney made affirmative, false statements at trial that the State offered nothing to its star witness, JoAnn Mills, in exchange for her testimony. The State continued to deny the existence of any agreement with JoAnn in exchange for her testimony throughout Mr. Mills' appeals and postconviction processes, including in his habeas corpus proceedings in this Court, preventing Mr. Mills from receiving merits-review of this claim. New evidence establishes that the State did in fact have an agreement with JoAnn Mills. Because the State's representations that no deal existed are both false and material to critical decisions made by this Court, Mr. Mills filed the present motion asking this Court to grant Rule 60 relief.

In its answer, the State asserts that this evidence has been discovered too late by Mr. Mills, ignoring U.S. Supreme Court precedent that prohibits the State from shifting its duty to disclose to a criminal defendant by requiring the accused to "seek" while the State may "hide." Banks v. Dretke, 540 U.S. 668, 695-96 (2004).

The State also argues that the District Attorney's false testimony that the State offered JoAnn nothing in exchange for her testimony—testimony upon which every court has relied in dismissing this claim—is merely impeachment evidence and therefore does not fall within the scope of this Court's authority to grant relief. This argument contravenes U.S. Supreme Court precedent recognizing that "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule." Giglio v. United States, 405 U.S. 150, 154 (1972) (quoting Napue v. Illinois, 360 U.S. 264, 269 (1959)). In the same vein, the State argues that the outcome of Mr. Mills' trial would not have been different even if the jury had known that JoAnn was testifying to save herself from the death penalty. This argument is undermined by what every court, including this Court, has recognized: that JoAnn's testimony, given for no personal gain, was "crucial" to Mr. Mills' conviction, Ex parte Mills, 62 So. 3d 574, 599 (Ala. 2010); see also Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *17 (N.D. Ala. Nov. 30, 2020) (citing JoAnn's "eyewitness testimony" as the primary piece of "overwhelming

evidence" against Mr. Mills).

The State also asks this Court to find that Benjie Howe could not be the probable suspect in this case, despite "alibi" witnesses who directly contradicted each other and in fact presented no alibi for Benjie Howe.

Finally, the State attaches affidavits—from the District Attorney and his investigator—which in many ways corroborate Tony Glenn's affidavit. District Attorney Bostick's affidavit confirms very critical facts that a meeting with the victims' family actually did take place before trial regarding a potential plea offer for JoAnn, that he then met with JoAnn about her testimony, and that after she testified against Jamie Mills the victims' family was satisfied with her testimony. (Doc. 44-1.) In addition, both of the State's affidavits concede that JoAnn was "encouraged [ ] to testify for the State in the case of Jamie Mills." (Doc. 44-1, Doc. 44-2.) While neither affidavit provides information about what was said to "encourage" JoAnn to testify, the District Attorney's affidavit lends credibility to Tony Glenn's that as a result of the District Attorney's encouragement, there was an understanding that it was in JoAnn's best interest to testify and confess to capital murder. (Doc. 44-1.)

Because the State's affidavits do not negate most of the factual allegations raised by Mr. Mills in his Rule 60 Motion, the motion cannot be resolved without expedited discovery, additional briefing, and an evidentiary hearing.

I. MR. MILLS' MOTION IS TIMELY BECAUSE THE STATE HID THE EVIDENCE.

For seventeen years, counsel for Mr. Mills has been asking prosecutors in this case whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, this Court and the appellate courts that there was no plea offer in exchange for JoAnn's testimony.

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

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

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

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

4. At trial, defense counsel asked the trial court to allow him to question District Attorney Jack Bostick on the record about any inducements (R1. 829-30) (Mr. Wiley: We want to ask you -- or ask Judge to direct him to assure us, him being Jack [District Attorney Bostick], that there

is no inducement for JoAnn's testimony. Mr. Bostick: There is not. Mr. Wiley: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an inducement. Mr. Bostick: There is none. Mr. Wiley: None? Mr. Bostick: Have not made any promises, nothing. Mr. Wiley: Have you suggested that a promise might be made after she testifies truthfully? Mr. Bostick: No. Mr. Wiley: No inducement whatsoever? Mr. Bostick: No.)

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

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

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

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

9. In 2011, Mr. Mills requested an evidentiary hearing on his Brady/Napue, ineffective assistance of counsel, and juror misconduct claims. (Id., ¶ 194.) The trial court granted the request for a hearing on the juror misconduct claims, (see Vol. 17, Tab #R-58), but summarily dismissed the Brady/Napue claim and the ineffective assistance of counsel claims without a hearing. Order, Mills v. State, CC-2004-402.60 (Marion Cty. Circ. Ct. July 19, 2013).)

10. In 2014, Mr. Mills filed a motion to reconsider the trial court's order denying his Rule 32 petition specifically requesting that the court allow him to present evidence in support of the Brady/Napue and

ineffective assistance of counsel claims at an evidentiary hearing. (Mot. to Reconsider Order Denying Rule 32 Pet., Mills v. State, CC-2004-402.60 (Marion Cty. Circ. Ct. Feb. 12, 2014).) The trial court summarily denied the motion. (Order, Mills v. State, CC-2004-402.60 (Marion Cty. Circ. Ct. Feb. 13, 2014).)

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

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

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

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

15. In 2024, Mr. Mills filed a Second Rule 32 Petition alleging that newly discovered evidence establishes that the District Attorney had

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

Mr. Mills has been more than reasonably diligent in asking the State to comply with state and federal requirements to reveal the existence of a prior plea deal with JoAnn Mills. And for seventeen years, the State has continued to assert that no such evidence exists, denying Mr. Mills any opportunity for process on this important issue.

Despite Mr. Mills' continued and persistent efforts, the State now asserts that Mr. Mills had a duty to make Mr. Glenn disclose the State's misconduct at an earlier time—to essentially hold the State to its prosecutorial oath. (Doc. 44, at 25 ("Mills has offered no reason why he could not have spoken to Glenn or obtained Glenn's September 2007 fee declaration before 2024").) Mr. Mills, however, is definitively not required to "scavenge" for misconduct in the face of representations from the State that "all such material has been disclosed." Banks v. Dretke, 540 U.S. 668, 695-96 (2004) ("A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process."). Mr. Mills has continually attempted to uncover the

existence of JoAnn's plea deal but, much like this Court, relied on the State's continued denials that "any such deal existed." (Doc. 44, at 24.)

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

The Eleventh Circuit has followed this precedent in Rule 60 proceedings, finding the fact that the petitioner eventually gained access to withheld evidence through other means, did not "diminish [his] due diligence." In re Glob. Energies, LLC, 763 F.3d 1341, 1349 (11th Cir. 2014) ("the parties, who had the evidence that Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to

this appeal"). Accordingly, the State's argument—that Mr. Mills has failed to exercise reasonable diligence for failing to uncover evidence in the face of definitive assurances from the State that no such evidence exists—must be rejected.

Additionally, Mr. Mills' Rule 60 Motion is timely. Rule 60 specifically provides that the "rule does not limit" this Court's power to "entertain an independent action to relieve a party from a judgment, order, or proceeding" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(1), (3); see also Galatolo v. United States, 394 F. App'x 670, 671 (11th Cir. 2010) ("no limitations period diminishes a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; [or] ... (3) set aside a judgment for fraud on the court.") (internal citations and quotations omitted).

Further, Rule 60(b)(6) is intended to prevent "the risk of injustice" and "the risk of undermining the public's confidence in the judicial process". Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988); see also Buck v. Davis, 580 U.S. 100, 123-24 (2017) (An error that "injures not just the defendant, but 'the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts.' . . . [is] precisely among those we have identified as supporting relief under Rule 60(b)(6).") (quoting Rose v. Mitchell, 443 U.S. 545, 556 (1979)). To ensure that this Rule is able to operate as

intended, Rule 60(c)(1) simply provides that motions under Rule 60(b)(6) must be made within a "reasonable time." Fed. R. Civ. P. 60(c)(1). Given Mr. Mills' "overall diligence in advancing his claim" and given the "'extraordinary circumstance[s]' at issue," Mr. Mills has brought this claim within a reasonable time. Bucklon v. Sec'y, Fla. Dep't of Corr., 606 F. App'x 490, 495 (11th Cir. 2015) (finding 18-month delay reasonable and pointing to other circuits that have "approved of longer amounts of time," such as four years) (citing Thompson v. Bell, 580 F.3d 423, 443 (6th Cir. 2009)).

Finally, Mr. Mills' Rule 60(b)(6) claim is not a "rewording" of his claims brought under Rule 60(b)(2) or 60(b)(3), (d)(1), (3). (Doc. 44 at 36). Rule 60(b)(6) "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" Liljeberg, 486 U.S. at 864 (quoting Klapprott v. United States, 335 U.S. 601, 614–615 (1949)). Just as the petitioners in Liljeberg and Buck, Mr. Mills' Rule 60(b)(6) claim centers around the fundamental unfairness to Mr. Mills in never receiving process on a meritorious claim, a claim he was unable to provide supporting evidence for because the State at all stages was affirmatively withholding and misrepresenting the evidence, and the fundamental unfairness of facing execution by the State of Alabama who improperly procured his conviction and sentence. In Buck, the unfairness centered around the ineffective assistance of counsel of Buck's state habeas and trial

counsel, which had prevented him from presenting his claim previously. Buck, 580 U.S. at 101. In Liljeberg, it was the judge's failure to disclose a fiduciary interest in the litigation at issue. Liljeberg, 486 U.S. at 867-68 ("If we focus on fairness to the particular litigants, a careful study of Judge Rubin's analysis of the merits of the underlying litigation suggests that there is a greater risk of unfairness in upholding the judgment in favor of Liljeberg than there is in allowing a new judge to take a fresh look at the issues."). Here, the State's efforts have prevented Mr. Mills from ever receiving review of this critical issue.

To prevent Mr. Mills from receiving federal merits-review based on the District Court's reliance on the State's false statements "is a disturbing departure from a basic premise of our criminal justice system" that "'poisons public confidence' in the judicial process." Buck, 580 U.S. at 123-24 (quoting Davis v. Ayala, 576 U.S. 257, 285 (2015)). "Such concerns are precisely among those [the Supreme Court] ha[s] identified as supporting relief under Rule 60(b)(6)." Id. at 124.

Rule 60 is designed to address extraordinary circumstances such as this, "to make an exception to finality." Gonzalez v. Crosby, 545 U.S. 524, 529 (2005). It would run directly contrary to U.S. Supreme Court precedent, such as Banks v. Dretke, to reward the State for continuing to hide material evidence such as this until after habeas proceedings and after any statutes of limitations have run.

II. JOANN'S TESTIMONY WAS THE CENTRAL PIECE OF EVIDENCE AGAINST MR. MILLS AND IN LIGHT OF THIS NEW EVIDENCE, THERE IS A REASONABLE LIKELIHOOD THAT IT WOULD HAVE AFFECTED THE JUDGMENT OF THE JURY.

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

The primary evidence cited by this Court to demonstrate the "overwhelming evidence" against Mr. Mills, was JoAnn's testimony: "JoAnn gave eyewitness testimony inculpating Mills, both four days after the murders to law enforcement, and again at trial, and her testimony both times was consistent." Mills, 2020 WL 7038594, at *17. Given the centrality of JoAnn's testimony to Mr. Mills'

conviction and denial of habeas review, there is a "reasonable likelihood" that this new evidence would affect the judgment of the jury. United States v. Agurs, 427 U.S. 97, 103 (1976).

The State asserts that JoAnn's testimony "was not the only piece of evidence tying Mills to the crime" and therefore, "Mills has failed to show that the new evidence is such that a new trial would probably produce a different result." (Doc. 44, at 26.) The State points to several pieces of evidence to assert that even without JoAnn's testimony, Mr. Mills would have been convicted of capital murder: Mr. Mills' testimony that he was unaware of whether Benjie Howe drove his car on the day of the crime, the testimony of the victims' neighbor who saw a white car similar to the Mills' car drive by her house, and evidence found in the trunk of the Mills' unlocked trunk. (Doc. 44, 26-27.) The State cites this evidence outside the critical context given at trial. More importantly, without JoAnn's testimony, this evidence was both insufficient for a capital murder conviction and equally consistent with Mr. Mills' defense that he was innocent and being framed for this crime.

Although Mr. Mills was unaware of whether Benjie Howe drove his car on the day of the crime (R1. 818-19), uncontested evidence established that Mr. Mills was not awake until noon on the day of the crime (R1. 795-96). Therefore, Mr. Mills would not have known whether someone else had driven his car during the

first half of the day. The testimony the State cites to from the victims' neighbor, that she saw a white car similar to the Mills' car driving by their house (Doc. 44, at 26-27), does not single out Mr. Mills, but instead places a car that looks like his and JoAnn's car near the scene—a car that does not require a key to start (R1. 792) and a car Benjie himself admitted to driving on previous occasions (R1. 881).

It is also undisputed that the trunk of the Mills' car, (Doc. 44, at 27) can be popped open with a finger and that Benjie Howe was familiar with and had used the car on several occasions. (R1. 538, 792). When officers found the weapons and evidence from the Hills' home in the trunk, JoAnn's first statements were that she was worried about what Benjie Howe had put in their trunk. (R1. 92-93 ("her main concern was that Benjie Howe had put something in the trunk of the car"); R1. 375 ("Benjie Howe came by here last night . . . he's left stolen stuff before. You know, I don't want to get in trouble for something Benjie Howe has done."); R1. 728.) Only after a weekend in jail, and after officers lied to JoAnn and told her that Mr. Mills' DNA was found at the scene (R1. 841)[1] and threatened that she would never

[1] Investigator Ken Mays reading his June 25, 2004 statement he made to JoAnn: "we had experts from Huntsville and Birmingham, DNA experts, come here, and we know [Jamie] was there for a fact, okay?" (R1. 841.)

see her children again (R1. 843-44),[2] did JoAnn implicate Mr. Mills (R1. 44, 56-59, 747, 837-39).

Additionally, the items found in the trunk were never connected to Jamie Mills through DNA testing. The State fails to address this fact: unidentified DNA profiles were found on the murder weapons but testing comparing Jamie Mills excluded him. (R1. 616, 626.) Benjie Howe's DNA, however, was never directly compared to these profiles. (R1. 617, 645.)

Finally, the State cites to Benjie Howe's testimony to assert that he is not a credible suspect. (Doc. 44, at 28-29.) In doing so, the State completely disregards Benjie's motive for denying involvement in a capital murder and ignores the conflicting testimony of his two "alibi" witnesses, Thomas Green and Melissa Bishop. Benjie Howe testified that he spent June 24, 2004, with Thomas Green, only leaving Green's house to go to Jamie and JoAnn's house around 7:00 p.m. (R1. 873-74, 877-78.) Melissa Bishop, however, testified that she picked Benjie up from Thomas Green's house sometime between noon and 3:00 p.m. that day, not 7:00 p.m. as Benjie testified. (R1. 868-69.) She also testified that they were gone for only a few minutes. (R1. 868-69.) Thomas Green, however, testified Melissa

[2] "Jamie is in trouble. Now, you think about JoAnn . . . You was telling me [a] while ago today is your little girl's birthday . . . You owe it to your children . . . You think about them, JoAnn . . . you know that little girl, she needs her mama, and the truth of the matter is this has just gone on too long, and you've allowed this to ruin your life, and you're going to allow it to ruin your daughter's life." (R1. 843-44.)

and Benjie were gone for several hours. (R1. 864-66.) In direct conflict with this "alibi," Melissa testified that if Thomas stated they were "gone four hours" then "he'd be lying." (R. 869-70.)

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

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

was "dusky dark" when they went outside (R1. 697) but later stated it was not "dark dark," (R1. 739) and that it was raining. (R1. 697). Benjie testified that it was not raining (R1. 877) and Thomas Green testified that it was "sunny" that day (R1. 867).[3]

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

During Mr. Mills' testimony, he stated that after he woke up that afternoon he and Joann were together until they went to his dad's home. (R1. 821.) From the timeline established at trial, the Hills could have been killed earlier that day while Mr. Mills was sleeping and while he would have no knowledge of where JoAnn

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

was, or if she or Benjie had access to his car. During this time, JoAnn admitted to using methamphetamines (R1. 690) and in her June 28, 2004 statement, stated Benjie was over early that morning using methamphetamines with them. (R1. 58.)

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

Therefore, contrary to the State's arguments, JoAnn's testimony was "crucial" to, if not dispositive of, the State's case. Mills, 62 So. 3d at 599. Her testimony was the key piece of evidence that specifically connected Mr. Mills to this crime—otherwise, the evidence equally incriminated JoAnn herself or Benjie Howe. In the face of DNA testing excluding Jamie Mills, and the State's refusal to directly test the DNA against Benjie Howe, Benjie Howe in fact remains the most credible suspect. The State's attempts to downplay JoAnn's testimony at this stage is incredible and without any basis in the evidence.

III. THE STATE'S AFFIDAVITS CORROBORATE MANY ASPECTS OF MR. MILLS' CLAIM.

The affidavits submitted by the State of former District Attorney Jack Bostick and his investigator Ted Smith corroborate Tony Glenn's account of a meeting to discuss JoAnn's testimony prior to trial. In his affidavit, Mr. Glenn states that he left that meeting with an assurance that he could safely have his client confess to capital murder under oath and not face the death penalty or life without parole. (Doc. 42-1.) Tony Glenn's fee declaration corroborates his affidavit.[4] In District Attorney Bostick's affidavit, he acknowledges there was a meeting and that the meeting was conducted by Ted Smith. (Doc. 44-1.) Ted Smith asserts that he did not have authority to enter into a plea agreement but that he did, in fact, encourage JoAnn to testify. (Doc. 44-2.) While Mr. Smith does not give any information about *how* he encouraged JoAnn, what is significant about his affidavit is that it does not contradict Tony Glenn's assertion that he left the meeting with an understanding that the District Attorney's Office would not pursue capital murder charges against JoAnn if she testified against Mr. Mills.

[4] In Mr. Glenn's fee declaration, he listed the dates of his attendance of JoAnn's testimony at Mr. Mills' trial as 09/11/07 and 09/12/07, transposing the dates of Mr. Mills' trial: 08/21/07 and 08/22/07. A scrivener's error does not destroy a document's credibility, in fact the State often argues that scrivener's errors in important documents, such as indictments, do not affect the document's reliability or purpose. See, e.g., United States v. Wall, 285 F. App'x 675, 684 (11th Cir. 2008) (finding "a scrivener's error in the indictment is not grounds for reversal").

In his affidavit, District Attorney Bostick asserts that "Tony Glenn believed it would be in his client's best interest to testify against Jamie Mills" and this assertion is only credible if there was an agreement. (Doc. 44-1.) No attorney would consider exposing their client to the death penalty as being in their client's best interest without some assurance.

Further, as the State concedes, days after JoAnn's testimony, the District Attorney quickly moved to dismiss the capital murder charges against JoAnn and allowed her to plead to a parole eligible sentence. While the State is denying that there was an official plea offer, the actions of the District Attorney at the time are more consistent with Tony Glenn's assertion that there was an understanding that JoAnn would benefit from her testimony against Mr. Mills.

District Attorney Bostick and Mr. Smith's affidavits fail to counter the most important aspects of Mr. Mills' Rule 60 Motion and his underlying claim.

IV. EVIDENCE OF THE STATE'S ONGOING AND AFFIRMATIVE MISREPRESENTATIONS TO THIS COURT, PRIOR COURTS, AND MR. MILLS' JURY IS MATERIAL TO THE RELIABILITY AND INTEGRITY OF MR. MILLS' CONVICTION.

Evidence that the State made affirmative, false statements to the trial court, the jury, defense counsel, and then continued to make and vouch for this misrepresentation to courts, including this Court, throughout Mr. Mills' appeals and postconviction processes, preventing him from receiving any process on this claim, is more than mere impeachment evidence. The evidence goes to the core of

the State's case against Mr. Mills and the integrity of his capital conviction and sentence. Giglio v. United States, 405 U.S. 150, 153 (1972). The State in its Answer asserts that this evidence is "nothing more than potential impeachment evidence" because it simply shows "JoAnn and District Attorney Bostick were untruthful." (Doc. 44, at 26.)

As an initial matter, it is shocking that the State, in a death penalty case, would assert that the honesty and truthfulness of the critical State witness is not something the State, or this Court, should be concerned with. Moreover, the State's argument runs contrary to well-established Supreme Court and Eleventh Circuit case law and seeks to minimize an essential premise of our trial system—that a prosecutor can be trusted to seek truth and justice, not a conviction at any cost. See, e.g., Giglio, 405 U.S. at 154 (quoting Napue, 360 U.S. at 269) ("When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule."); Guzman v. Sec'y, Dep't of Corr., 663 F.3d 1336, 1350 (11th Cir. 2011); Brown v. Wainwright, 785 F.2d 1457, 1464 (11th Cir. 1986); see also Mooney v. Holohan, 294 U.S. 103, 112 (1935) ("[I]f a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance . . . is as inconsistent with the

rudimentary demands of justice as is the obtaining of a like result by intimidation.").[5]

In addition to the District Attorney's affirmative false statements to the judge and defense counsel that there was no plea deal with JoAnn prior to her testimony (R1. 829-30), the District Attorney falsely presented to the jury that there was no deal: "Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did." (R1. 915.)

Denials of a deal were also the first statements elicited by the District Attorney during JoAnn Mills' testimony against Mr. Mills. (R1. 685-86.) District Attorney Bostick then vouched for JoAnn's credibility by claiming that she "t[old] the same story" and "didn't vary a whole lot" from her previous statement to police, (R1. 916) even though this prior statement was not in evidence and even though in this prior statement, JoAnn did not implicate Jamie Mills, but instead implicated Benjie Howe (R1. 44, 92-93, 375).

As the Eleventh Circuit held in Guzman, the repeated presentation of this false evidence demonstrates that evidence of a plea deal with JoAnn in exchange

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

for her testimony was much more than impeachment evidence and was instead central to the State's ability to make a case against Jamie Mills: "The fact that the lead detective and the lead witness twice denied the existence of the payment is at least a tacit admission that it was perceived to have relevance to a reasonable fact finder viewing the credibility of this witness." Guzman, 663 F.3d at 1350 (quoting Guzman v. Sec'y, Dep't of Corr., 698 F. Supp. 2d 1317, 1332 (M.D. Fla. 2010)). The evidence provides "substantial and specific evidence of [JoAnn's] motivation to lie against [Mr. Mills]." Id.; see also Brown, 785 F.2d at 1464 ("This case does not involve mere nondisclosure of impeaching evidence but knowing introduction of false testimony and exploitation of that testimony in argument to the jury."). Further, Mr. Mills' claim is that not only did the District Attorney make repeated false statements at trial, the State has continued to misrepresent and vouch for this false evidence, which this Court and others have relied on in denying Mr. Mills relief without any process or merits-review.

V. VERBAL INDUCEMENTS OR UNDERSTANDINGS CREATE AN OBLIGATION TO DISCLOSE.

The encouragement or understanding established by the State's affidavits is more than sufficient to require disclosure. Both the U.S. Supreme Court and the Eleventh Circuit do not require a formal plea agreement in writing to require disclosure—verbal inducements or understandings create an obligation to disclose. The State asks this Court to ignore this established case law in asserting Mr. Mills'

motion fails because he "does not provide so much as a note from Glenn's files outlining the terms of this alleged plea deal for JoAnn's testimony, much less anything signed by JoAnn or by the prosecution." (Doc. 44, at 25, 31.) Federal courts clearly require the State to disclose the type of understanding established by Tony Glenn and the State's affidavits and have ordered new trials where the State withheld **(1)** an inducement offered by an assistant DA *without authority* to enter into a plea agreement, even when the inducement was not communicated to the prosecuting attorney and was not in writing, Giglio v. United States, 405 U.S. 150, 152, 154-55 (1972), **(2)** a verbal understanding that a witness would have to "rely on the 'good judgment and conscience of the Government'" after testifying, Id., at 153, n. 4,[6] **(3)** a monetary reward made to the State's critical witness by a detective, even where the detective "could not recall if [this benefit] was disclosed to the trial prosecutor," Guzman v. Sec'y, Dep't of Corr., 663 F.3d 1336, 1349 (11th Cir.

[6] In the course of litigation, the State offered an affidavit which acknowledged a witness was encouraged to testify, just as in Mr. Mills' case, but disputed that an official agreement had been reached. The Court found that this affidavit, standing alone, contains an "implication" that the State "would regard the cooperation of the witness" and confirms "the existence of some understanding for leniency." Id., at 153, n. 4.

2011),[7] and **(4)** an offer of "favorable consideration" if a key witness testified against the petitioner, Brown v. Wainwright, 785 F.2d 1457, 1461 (11th Cir. 1986).

Mr. Mills' motion does not fail simply because the State asserts there was not a formal written agreement before JoAnn's testimony. As the Eleventh Circuit held in Brown v. Wainwright, "[t]he government has a duty to disclose evidence of *any* understanding or agreement as to prosecution of a key government witness." Id. at 1464 (citing Haber v. Wainwright, 756 F.2d 1520 (11th Cir.1985)) (emphasis added).

VI. REQUESTED RELIEF

Given Mr. Mills' May 30, 2024 execution date, Mr. Mills requests expedited discovery of the Marion County District Attorney's files, including the files of Ted Smith, the District Attorney's investigator, and any state or local investigation files

[7] This is because prosecutors, including the Alabama Attorney General's Office, have a "duty to learn" of evidence of this type. Guzman, 663 F.3d at 1349 (quoting Kyles v. Whitley, 514 U.S. 419, 437–38 (1995)). In Guzman, the Eleventh Circuit found it "objectively unreasonable" to conclude that "there is no reasonable possibility that the false testimony regarding the $500 reward could have affected the judgment of the factfinder." Id. at 1350.

that relate to the testimony of JoAnn Mills.[8] The State asserts that Mr. Mills "does not provide . . . actual evidence of anything in the State's possession providing the existence of a pretrial deal" (Doc. 44, at 25), however, this Court dismissed Mr. Mills' habeas petition, without access to discovery, based on the State's false representations about the existence of a plea deal. Mills, 2020 WL 7038594, at *60, 78-79. Mr. Mills also requests additional briefing based on any discovery obtained and a hearing to present further evidence in support of this claim. The State's Answer emphasizes the need for an evidentiary hearing, to determine what exactly was offered by Ted Smith at the meeting with JoAnn and Mr. Glenn. This sort of determination cannot be made based on the exhibits provided by the State.

Mr. Mills is entitled to relief from this Court's judgment pursuant to Rule 60(b) and (d) because the State has continued to make, and vouch for, false statements that had more than a "reasonable likelihood" of affecting the judgment of the jury. United States v. Agurs, 427 U.S. 97, 103 (1976); see also Guzman, 663 F.3d at 1355; Brown, 785 F.2d at 1466. The Alabama Attorney General's Office

[8] See, e.g., Miller v. Hamm, No. 2:22-CV-506-RAH, 2022 WL 12029102, at *1-2 (M.D. Ala. Oct. 20, 2022) (granting in part motion for expedited discovery and finding petitioner established good cause where "the State of Alabama has moved the Alabama Supreme Court to reset his execution on an expedited basis, and he needs the discovery to litigate his claims before the State attempts to execute him again and effectively forever moot his claims"); Reeves v. Dunn, No. 2:20-CV-027-RAH, 2021 WL 8316642, at *1 (M.D. Ala. Nov. 24, 2021) (granting expedited discovery where "time is of the essence" for a petitioner with a pending execution date).

attempts to overcome Mr. Glenn's affidavit with continued denials of a plea agreement and threats of perjury charges against everyone but District Attorney Bostick. Mr. Mills requests that he be granted process as to this long-pursued claim and that this Court hold the State to its duty to pursue truth and justice, over the finality of an unsound conviction. Giglio v. United States, 405 U.S. 150, 153 (1972); see also United States v. Bagley, 473 U.S. 667, 680 (1985); Agurs, 427 U.S. at 103; Berger v. United States, 295 U.S. 78, 87-88 (1935); Mooney v. Holohan, 294 U.S. 103, 112 (1935).

Respectfully submitted,

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April 15, 2024

Counsel for Mr. Mills

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: **Lauren Simpson**.

/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON