No. 17-1113

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America ex rel. JAMIE SNOW (Reg. No. N-50072),	)	
Petitioner/Appellant	)	Appeal from the United States District Court for the Northern District of Illinois
vs.	)	
RANDY PFISTER, Warden,	)	Case No. 13 CV 3947
Respondent/Appellee	)	The Honorable Elaine E. Bucklo, Presiding

PETITIONER-APPELLANT'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR A CERTIFICATE OF APPEALABILITY

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Now comes Petitioner, JAMIE SNOW, by and through his attorneys, and presents this memorandum of law in support of his previously filed Motion for a Certificate of Appealabilty.

Introduction

Jamie Snow is serving a life sentence for a crime he did not commit. The State's case began with a seemingly compelling eyewitness and a corroborating witness who, together, appeared to place Snow outside a gas station shortly after the attendant was shot and killed inside. Those witnesses were bolstered by a group of people who testified to being Snow's confidants who claimed Snow had confessed to them at various times in the decade following the shooting. His co-defendant, Susan Powell, was acquitted in a separate trial right before his. Her defense counsel thoroughly impeached the so-called eyewitnesses. In contrast, Snow was convicted at a trial for which his lead defense counsel—a mentally ill, alcoholic, gambling addict—did not interview key witnesses or fully review or use available discovery material. In Snow's case the State withheld numerous pieces of critical exculpatory evidence that would have shown its case was wholesale fabrication intended to manufacture a conviction absent direct evidence of guilt.

The district court essentially agreed Snow's counsel was ineffective and that, as to his *Brady* claims, evidence was withheld from the defense. What the district court found lacking was a showing of prejudice – it denied Snow's claims because it believed Snow would have been convicted even if he had effective counsel and received all exculpatory evidence. The district court issued a lengthy opinion that disregarded the individual and collective prejudice the State's various *Brady* violations and ineffectiveness issues caused. The district court's analysis was wrong, and this Court should grant a Certificate of Appealability to correct it.

I. Claims for Which Mr. Snow Seeks a Certificate of Appealability

Jamie Snow filed his petition for a writ of *habeas* corpus on May 28, 2013. Snow seeks a Certificate of Appealability on certain of the grounds raised therein:

Ground 1: Jamie Snow was denied effective assistance of trial counsel under the Sixth and Fourteenth Amendments to the United States Constitution. Mr. Snow was denied effective assistance of counsel when his trial counsel **(i)** failed to use available evidence to discredit and impeach Danny Martinez's testimony that he saw Snow coming out of the gas station and **(ii)** failed to call Thomas Sanders, whose testimony was readily available from Susan Claycomb's trial, to discredit Carlos Luna's "identification" of Jamie Snow.

Ground 4: Jamie Snow was denied Due Process under the Fifth and Fourteenth Amendments to the United States Constitution when **(i)** the police and/or prosecution provided affirmative details of the crime to witness Steve Scheel without disclosing that they were the source of this testimony; **(ii)** failed to disclose deals they had made with witnesses in exchange for their testimony or pressure they had exerted on witnesses for their testimony; **(v)** failed to disclose documents and information indicating that Danny Martinez told authorities in or prior to 1994 that Mr. Snow was not the person he saw at the gas station; and **(vii)** failed to disclose impeachment evidence relating to Steve Scheel.

Section 2253 allows a Certificate of Appealability to issue where the appellant has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a court denies a petition on the merits, a certificate must issue if the petitioner can demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable

or wrong. *See, e.g.*, *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rutledge v. United States*, 230 F.3d 1041, 1047 (7th Cir. 2000). This is true for each of Snow's claims raised herein.[1]

ARGUMENT

II. Ground 1: The District Court's Decision Denying Petitioner's Ineffective Assistance of Trial Counsel Claims as to Danny Martinez and Thomas Sanders Was Wrong or at Least Debatable

Jamie Snow's habeas petition identified numerous ways trial counsel was ineffective, pointing first to counsel's main error, the failure to use available evidence to discredit and impeach Danny Martinez's testimony that he saw Jamie Snow coming out of the gas station. Martinez testified that while filling his tires in the parking lot, he looked toward the gas station door and saw a man walking out. Martinez identified the man as Snow. Trial counsel failed to elicit from the responding officer, Jeff Pelo, that this was impossible because Pelo, as he described in a post-trial affidavit and in recorded interviews produced to the defense before trial, was watching Martinez at the exact moment Martinez claimed he saw Snow, and Pelo saw no one but Martinez. The second responding officer similarly saw no one else outside the station. There was no other man there for Martinez to see. Pelo averred that the prosecutor implied he should lie and not reveal this information unless asked, but the defense could have elicited this information using the pretrial interview. Trial counsel also failed to use other available evidence discrediting Martinez's identification, including that Martinez, whose identification of Snow came eight years after the supposed gas station encounter, was contacted in the meantime by the victim's mother after the police gave her his number; and witnesses would have testified

[1] Snow has filed extensive habeas pleadings. The district court's opinion is 90 pages long. Even recounting the relevant facts would take more pages than allowed for this memorandum. Snow respectfully requests that this Court review his memorandum of law filed in support of his habeas petition for a review of the relevant facts and procedural history of the case.

Martinez knew Snow from growing up, and would have testified Martinez had told them over the years before his identification that he did not think the man he saw was Snow.

The district court recognized the errors in counsel's actions, but concluded they were not prejudicial because the evidence would not have changed the outcome. (Dckt. 60 at 37-38.) In particular, the district court believed that there was another witness who identified Snow, Carlos Luna, and Luna plus the witnesses who claimed Snow confessed meant that even "completely undermin[ing]" Martinez's credibility at trial would not have mattered. (*Id.* at 38.) This conclusion ignored Snow's other ineffective assistance of counsel claim on which he seeks review from this court, that trial counsel should have called Thomas Sanders, the sketch artist for the police department who testified at Snow's co-defendant's trial that shortly after the crime he spoke to Luna to try to prepare a composite drawing, but Luna did not get a good enough look at the person outside the gas station to prepare a description. The district court found Snow had procedurally defaulted this claim by not specifically raising it in his prayer for leave to appeal to the Illinois Supreme Court. (Dckt. 60 at 23-24.)

The district court recognized what the state court would not, that Snow's trial counsel cannot explain why he failed to use available evidence to impeach Martinez.[2] There is no strategy that justifies his failure to investigate and impeach Danny Martinez. And the conclusion that Snow was not prejudiced by counsel's mistake is wrong in several ways. First, the district court incorrectly treated Luna's testimony as interchangeable to Martinez's. Luna testified he lived across the street from the gas station, and that around 8:15 he saw, for no more than 5

[2] The district court ignored evidence that Snow's lead trial counsel (his other counsel played a minor role after suffering a stroke) was drinking heavily, and had a gambling addiction and other personal problems. The district court concluded that was irrelevant unless connected to specific acts of ineffectiveness. (Dckt. No. 60 at 42-45.) While not offered as a cognizable separate claim, this Court should consider this evidence to rebut any suggestion trial counsel's decisions were strategic.

seconds and at a distance of over 200 feet, a white man walk out. He gave contradictory statements about the man's clothes. And, importantly, he did not identify Snow at trial. Instead, he purportedly identified Snow in a 1991 lineup. The lineup officer and the public defender who viewed it both testified that Luna never made a positive identification of Snow, but instead picked Snow because of "the shape of his face and his hair." Luna also testified that when he looked out his window and saw this man in the parking lot, he did not see Martinez, someone he knew. This raises serious questions about Martinez's testimony and about the timing of what Luna saw. And, as described earlier, there was testimony at Snow's co-defendant's trial from Thomas Sanders that Luna did not get a good enough look to make a composite sketch. Moreover, in an affidavit attached to Snow's post-conviction and habeas pleadings, Luna reaffirmed that he identified Snow in the lineup because Snow best fit the description of who he saw, and he believed the police had caught the person who had done this. In other words, all that Luna provided at trial was vague information somewhat corroborating Martinez's identification.[3]

Moreover, as Snow argued to the district court, he did not procedurally default the Sanders evidence.[4] Snow raised his claim about Sanders' testimony in the state trial court, on appeal, and raised an ineffective assistance of counsel claim in his prayer for leave to appeal to the Illinois Supreme Court. He satisfied the requirements for exhaustion by identifying his ineffectiveness claim and providing the Illinois Supreme Court with "a meaningful opportunity

[3] As Snow advised the district court, additional investigation in his case has revealed other newly-discovered evidence, including about Luna's unreliability. Snow recognizes this Court cannot assess that evidence, but regardless, Luna does not save the significant problems with Martinez's testimony.

[4] The district court incorrectly concluded that Snow relegated his procedural default argument to a footnote of his lower court pleadings, overlooking the discussion for several pages of his reply brief on this topic. (Dckt. No. 51 at 3-5.)

to pass upon the substance of the claims." *Rodriguez v. Scillia*, 193 F.3d 913, 916 (7th Cir. 1999). The district court should have considered the Sanders evidence.

Neither Luna nor any other trial evidence overcomes the prejudice caused by counsel's failure to impeach Danny Martinez. Martinez was the key witness against Snow at trial, the only person who put him at the scene of the crime. There was no physical evidence putting him there. Courts have recognized the powerful impact that eyewitness identification evidence has on juries. *See Watkins v. Sowders*, 449 U.S. 341, 352 (1981) ("Juries seem most receptive to, and not inclined to discredit, the testimony of a witness who states that he saw the defendant commit the crime.") (Brennan, J., dissenting) (citing to Dr. Geoff Loftus); *United States v. Bolton*, 977 F.2d 1196, 1201 (7th Cir. 1992) (mentioning Supreme Court's "concern that eyewitness testimony convinces juries but is often unreliable").

As set forth *infra* in Section III, the district court should not have just separately evaluated the prejudice of each constitutional error in this case. Collectively or individually evaluated, though, the unpresented evidence discredits Martinez, and would have acquitted Snow. Snow's co-defendant's attorney presented much of this evidence at her trial, and she was acquitted. If a jury believed that Martinez was lying about seeing Snow at the gas station, the only evidence the jury would have had to convict Snow would have been the purported inculpatory statements made to a series of people with reasons to lie. Luna's "identification" of Snow was not enough for the jury to believe Snow was there. At most, it supported that a white man meeting Snow's general description was at the station. This is hardly enough to hang Snow's conviction on when he met the general description of any number of men living in the area at the time. At the time of the lineup, Snow was Caucasian, had long hair, and had average

build and height. In other words, he was an average-looking white man wearing his hair in a common style for the time period living in an overwhelmingly white town.

Moreover, a jury would have questioned the State's reliance on Martinez, and Martinez's late identification of Snow. This is not the typical mistaken eyewitness case. The responding officers could have testified, had defense counsel elicited it, that at the exact moment Martinez claimed he saw Snow, there was no one else in the parking lot but Martinez. Martinez was lying, not mistaken. The suspiciousness of his testimony is also reflected in the suspicious timing of his years-later identification of Snow. Despite having failed to pick Snow out of a lineup and out of photo arrays in August of 1991 and November of 1993 (the jury never heard about these arrays), Martinez claimed he identified Snow after seeing his photograph in the newspaper years later, and claimed he waited until he was being prepped for trial to reveal the identification to prosecutors. If the jury had heard that the responding officers contradicted Martinez's dramatic encounter in the parking lot, that Martinez knew Snow and had told friends Snow was not the man he saw in the parking lot, and that the victim's mother was contacting Martinez because police gave her the number, it would have viewed the remainder of his suspicious testimony with equal suspicion. And all of this suspicion about Martinez would have bled over to other aspects of the State's case. This evidence would have supported an argument that witnesses in this case were being pressured to testify to save the State's weak and contrived case.

III. Ground IV: The District Court's Decision Denying Snow's *Brady* Claims Was Wrong or at Least Debatable

Snow's habeas petition also identified numerous violations of *Brady v. Maryland* in the State's failure to produce exculpatory evidence. In general, the district court concluded this evidence was withheld, but that there was no prejudice. This conclusion is wrong. The State's

case was built on purported statements Snow gave to a series of witnesses, but the State kept from the defense the ways in which it had threatened, coerced, or induced each of those witnesses. The jury falsely believed these witnesses were neutral. Had the jury understood their motivations, the outcome would have been different.

A. The District Court's Diminishment of Steven Scheel's Affidavit And Polygraph Report Was Wrong

Ground 4(i) and 4(vii) of Snow's habeas petition raised the State providing affirmative details of the crime to Steven Scheel without disclosing they were the source of his testimony, and the State's failure to disclose impeachment evidence on Scheel. The district court rejected Snow's *Brady* claims as to Scheel because it found Snow had not shown Scheel was actually pressured by detectives. (Dckt. 60 at 57-58.) The district court did not address the claim that the State had provided details of Scheel's testimony to him, which is an important *Brady* issue in Snow's case. And as to Scheel's polygraph, the district court mistakenly deemed this evidence unusable, ignoring its impeachment value. Each of these findings is wrong.

1. The Investigator's Affidavit about Scheel Demonstrates Scheel Was Pressured and Fed Information

Scheel gave detailed testimony that Snow confessed to him at a party. Scheel has recanted that testimony and explained that it was the product of police pressure, that the state fed him information, his testimony was coached, and he testified against Snow because he was afraid. A post-conviction investigator interviewed Scheel and prepared an affidavit that Scheel told him: the State had pressured Scheel into giving false testimony, erased portions of an audiotaped interview when Scheel gave answers they didn't like (such as telling police Snow had not confessed to him), failed to disclose statements Scheel made denying Snow had confessed, and fed Scheel details about what Snow was wearing when he "confessed."

Snow presented evidence not only that Scheel had been "coached" about what Snow was wearing—the district court's characterization that defanged the State's misconduct—but that the police tried get Scheel to testify falsely. If the State had not withheld this exculpatory evidence, there is a reasonable probability that the outcome of the trial would have been different. Scheel's testimony at trial was very damaging in the face of weak defense cross-examination. The State's closing argument argued convincingly that Scheel had no motive to lie, and this argument depended on the State withholding evidence that would rebut it.

The district court's conclusion that Snow needed to do more to show that Scheel had actually been coerced places a higher burden on habeas litigants than even AEDPA imposes. Snow has never had an evidentiary hearing on his claims, and no court could properly make credibility findings adverse to Snow based on affidavits alone. He has never had an opportunity to question the investigating detectives about any misconduct. Scheel told the investigator that the detectives had told him they knew he was lying, that they pursued him to several states to question him, and that he believed they were behind him spending time in segregation at prison and that he knew they could revoke his parole. He said he only agreed to testify so that the state would "stop harassing him." The only people who could deny or corroborate this are the state actors themselves. What Scheel said is more than enough to establish that the State knew, but did not disclose, that Scheel's ultimate testimony was the product of coaching and relentless pressure. If details are needed to establish that finding, Snow should have an opportunity to make that showing at an evidentiary hearing. *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations which, if true, would entitle the applicant to federal habeas relief.") (internal citations omitted).

Moreover, as to Scheel and the other claims of deals and coercion discussed in Section III(B) *supra*, the idea that evidence that any one witness was coerced has a limited impact because there were other witnesses who claimed Snow confessed ignores the impact of a revelation that the State was coercing witnesses to lie. Of course there were other "confession" witnesses, but if the jury had heard that Scheel was coerced and pressured to testify falsely, it would have discredited the testimony of the other "confession" witnesses. The State argued in closings that there were so many witnesses who testified against Snow that they could not all be lying: "Looking at the State's witnesses as a whole, it's astonishing that so many people could have gotten it so wrong if you don't believe them." In response, Snow's counsel argued that the jury could infer that because witnesses came forward years later, these witnesses "all sat on their information waiting – I don't know what they were waiting for. I guess a visit from the cops." It was difficult for this argument to gain traction because counsel had no evidence to support his inferences. If the State had disclosed the material, exculpatory evidence discussed above, it would have given weight to these assertions.

2. Scheel's Polygraph Report Is Relevant and The Information Contained Therein Is Admissible

In 2012, Snow received through FOIA unredacted reports for 1993 and 2000 polygraphs administered to Scheel. In the first polygraph examination, Scheel told authorities Snow never confessed to him. The district court accepted that this evidence was withheld and that Snow had met the cause and prejudice test for failing to raise this evidence earlier. However, the district court rejected the import of the evidence, finding that it was inadmissible. (Dckt. No. 60 at 79.)

Even setting aside whether that is a correct statement of the law (Snow argued below it is not), the district court misunderstood how Snow would have used the examination results. It is

not necessarily relevant that Scheel took a polygraph, but it is highly relevant that in 1993, Scheel told a polygrapher that Snow had not confessed to him. (In 2000, the polygrapher indicated deception when this time Scheel claimed Snow had, in fact, confessed.) At trial Scheel could have been impeached by the 1993 question – not as to evidence he took a polygraph, but as to the 1993 admission that Snow had not confessed. The 2000 results, while inadmissible, would have shown defense counsel Scheel was unreliable – in 2000, when Scheel was telling the State's story, the polygrapher did not believe it. Collectively, these results were meaningful.

B. The District Court's Setting Aside of Witness Deals and Pressure Was Wrong

Snow presented evidence of a pattern of undisclosed deals, incentives, and state coercion towards witnesses who testified Snow confessed. The district court rejected some of this evidence as partially unexhausted and therefore procedurally defaulted, and concluded that evidence about Kevin Schaal and Jody Winkler receiving deals was publicly-available. The district court did consider such evidence relating to Bruce Roland and Ed Palumbo. The district court found that the additional evidence about Bruce Roland presented in Snow's second post-conviction petition was procedurally defaulted because he had not met the prejudice requirement of the cause and prejudice test. (Dckt. 60 at 72-73.) In short, the district court rejected all of this evidence on prejudice grounds. This was wrong.

In total, there was evidence that all four of these testifying witnesses testified after pressure and under expectation of deals. Ed Palumbo testified Snow confessed, and denied any expectation of a deal, but in a new affidavit he said that he testified falsely because prosecutors and police threatened to put him in prison segregation, charge him with perjury, or imprison him for not cooperating.

Kevin Schaal also he and Snow discussed this crime. At trial it came up that he had just been sentenced in federal court in Florida, but he said he had "no idea" if that sentencing was impacted by his cooperation. In fact, undisclosed documents show that at Schaal's sentencing hearing, the court gave Schaal a downward departure "to recognize his substantial assistance" with an Illinois murder case.

Jody Winkler testified that while he and Snow lived in Florida, they had conversations where Snow said he had "done it." He specifically denied getting anything in exchange for his testimony, but admitted he had inquired about a deal. Sentencing records show that he received a significantly shorter sentence on then-pending forgery charges than expected.

Bruce Roland testified that in 1994, he had a brief conversation with Jamie Snow in prison and Snow told him that he shot the gas station attendant because the attendant would not give him a free pack of cigarettes, and he was afraid the attendant would identify him. Roland claimed he had first gone to the police after his release from prison when he was arrested for a DUI. He claimed he came forward to be "a good citizen." In fact, new evidence showed that Roland had first contacted the authorities from prison telling them he had information he would exchange for help on his pending case, and he ultimately received light sentences, bond, and other sentencing favors on his pending cases. His now ex-wife Danielle Prosperini also provided defense counsel an affidavit after trial averring that after trial Roland told her that he had lied and that he received a deal in exchange for his testimony. Prosperini also averred that police had threatened Roland and told them he would be "put away unless he helped them."[5]

[5] As set forth in Snow's habeas pleadings, other witnesses also provided corroborative evidence that other witnesses were threatened and offered deals. Those other threats and deals also form a part of Snow's request for a Certificate.

Although Schaal and Winkler's deals were reflected in public documents that counsel might have located before trial, that does not erase the *Brady* violation in the State's failure to disclose. The district court did not address the line of cases such as *Banks v. Dretke*, 540 U.S. 668 (2004), which make clear that the State cannot withhold exculpatory information assuming the defense counsel will find it. *Id*. at 695 ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed."); *see also id.* at 696 (rejecting the State's argument that the prosecution can lie and conceal exculpatory evidence as long as the "potential existence" of prosecutorial misconduct might have been detected by the prisoner: "A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process.")

With all of these witnesses, whether they were made specific or vague promises or threats, *Brady* applies either way. In *Wisehart v. Davis*, 408 F.3d 321, 323-24 (7th Cir. 2005), the Seventh Circuit explained that even a "tacit understanding" about a break on pending charges is an agreement that must be disclosed. All the deals in this case meet the *Wisehart* standard. In Roland's case, for instance, police reports indicate that Roland's attorney was told that the prosecutor "had a history of taking the person's cooperation into consideration at sentencing time." Similarly, in the Supreme Court's recent decision in *Wearry v. Cain*, 136 S. Ct. 1002, 577 U.S. __ (2016), one of the State's witnesses testified that he had not received any prosecutorial favor for his testimony. The State, in closings, also asserted there had been no deal. In fact, the State had told the witness that there would be no promises, but that they would "talk to the D.A." if he told the truth. (Dckt. 41.2, Petition for Writ of Certiorari in *Wearry* at 18-19.) The Supreme Court found that the withholding of this information constituted a *Brady* violation even though

Wearry had not actually received or been promised any deal because "any juror who found Scott [another State's witness] more credible in light of Brown's testimony might have thought differently had she learned that Brown may have been motivated to come forward not by his sister's relationship with the victim's sister—as the prosecution had insisted in its closing argument—but by the possibility of a reduced sentence on an existing conviction." *Id.* at 1006. In other words, evidence that one witness was incentivized to testify can impact the credibility of other witnesses.

These cases support Snow's *Brady* claims about undisclosed deals and favorable treatment to Schaal, Roland, Palumbo and Winkler because even a promise to "talk to the D.A." absent something more specific can be a violation that makes a difference. And like the *Wearry* case (and as argued in Section II(B) *infra*), if the jury in this case believed one witness had fabricated testimony in order to curry favor or avoid punishment, the jury would likely have believed the state applied this same tactic to other witnesses.

C. The District Court Was Wrong to Disregard Evidence That Before 1994 Danny Martinez Told Authorities Snow Was Not Who He Saw

Snow presented to the state court new evidence showing that Martinez actually told the police that Snow was *not* the person he saw outside the gas station where Little was killed. This information was never produced to Snow at any point before he obtained it via FOIA in 2012. The district court found Snow demonstrated cause for failing to present this evidence earlier, but had not demonstrated prejudice. (Dckt. 60 at 77.) The district court concluded these notes could mean that Martinez told a polygrapher in 1994 that he did not recognize Snow, and that this evidence was cumulative to Martinez's failure to identify Snow in a lineup. (*Id.*)

The district court's tortured reading of the polygrapher notes goes against their plain meaning – the polygrapher wrote that "w says this s not person he saw." The notes do not say "w does not id s" or "no identification" but very specifically states that Snow was "not person he saw." The fact that Martinez told the State that Snow was not the person he saw in the parking lot, but then testified completely the opposite, shows that the State knew that Martinez's testimony was perjured but concealed that knowledge. This violated Snow's due process right to a fair trial. *See Mooney v. Holohan*, 294 U.S. 103, 112-13 (1935); *Kyles v. Whitley*, 514 U.S. 419, 433 (1995).

Even if this evidence were insufficient to show that the State knew that Martinez's testimony was perjured, it constitutes exculpatory evidence that should have been disclosed because it creates a reasonable probability that the outcome of the trial would have been different. Martinez said at trial that he was unsure who was outside the gas station until he saw Snow's picture in the paper after his arrest. Martinez explained away his failure to identify Snow in a lineup by saying the lighting was bad, that he was focusing on other things, and implying that when Snow was first specifically brought to his attention, he was able to identify him. This new evidence says that sometime prior to 1994, the years immediately following the crime, Martinez said Snow was *not* the person who he saw. This revelation completely Martinez's testimony and the implication Snow was never brought to his attention before the newspaper photo. This information was critical impeachment evidence and would have supported the theory that police were manipulating witnesses against Snow. This evidence is particularly material when considered cumulatively in light of the other evidence developed in Snow's habeas petition, including the evidence discussed in Section II *infra*. For instance, evidence that Martinez had told police Snow was not the person he saw would have made the

testimony from other witnesses that Martinez had told them the same more credible and provided fertile cross-examination material for Snow's trial counsel. This evidence would have negated Martinez's critical testimony.

D. The District Court Never Truly Examined These Violations Cumulatively

The district court's analysis paid lip service to the idea of cumulative analysis of *Brady* violations, but the district court did not engage in real cumulative analysis of the prejudicial effects of what the State withheld, as required by the Supreme Court's recent decision in *Wearry v. Cain*, 136 S. Ct. 1002, 577 U.S. ___ (2016) and by *Kyles v. Whitley*, 514 U.S. 419, 441 (1995) ("We evaluate the tendency and force of the undisclosed evidence item by item; there is no other way. We evaluate its cumulative effect for purposes of materiality separately and at the end of the discussion …."). In total, Snow obtained 14 new affidavits from involved witnesses and 3 affidavits from investigators recounting conversations with involved witnesses, each of which provides new evidence that witnesses were threatened, lying, or otherwise impeachable. Three of these witnesses recanted their trial testimony outright (one through an investigator). Of the eight witnesses who the State argued in closing the jury would have to disbelieve in order to acquit, Edward Hammond is the only one for which Snow did not present new evidence to discredit. Hammond's testimony at trial was the weakest and most impeached of anyone who testified.

"Cumulative analysis of the force and effect of the undisclosed pieces of favorable evidence matters because the sum of the parts almost invariably will be greater than any individual part." *Smith v. Secretary, Dep't of Corr.*, 572 F.3d 1327, 1347 (11th Cir. 2009). That cumulative analysis applies here. At trial, the defense could only argue by implication that these witnesses were lying. It could only suggest that these witnesses were motivated by deals or

pressure, because everyone who testified who was asked denied receiving a deal. Everyone appeared to be the "good citizen" that Bruce Roland claimed he was being by testifying.

This case has always been the proverbial house of cards. At trial this case appeared to rest on mutually corroborative testimony, and as the State argued in closing, appeared to be the classic case where there are just too many witnesses to disbelieve everyone. The district court fell victim to this thinking in rejecting the materiality of Snow's evidence and concluding nothing would have prevented Snow's conviction. This thinking and the reliance on pure numbers of witnesses is what is so insidious about Snow's conviction. This Court should look behind the numbers. If the State was able to successfully coerce or incentivize one witness to testify against Snow, there is no reason why it could not do so for multiple witnesses. The district court's decision was wrong. This Court can rectify those errors.

WHEREFORE, Petitioner Jamie Snow respectfully requests that this Court grant him a Certificate of Appealability on the above-identified claims to allow him to argue more fully to this Court why he is entitled to a new trial or, at minimum, an evidentiary hearing on his claims.

DATED: February 7, 2017 Respectfully submitted,

/s/ Tara Thompson
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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/s/ Tara Thompson
Attorney for Petitioner
Dated: February 7, 2017

CERTIFICATE OF SERVICE

I, Tara Thompson, certify that on February 7, 2017, I delivered the attached Memorandum of Law in Support of His **Motion for a Certificate of Appealability** to counsel of record through the Court's CM/ECF system.

/s/ Tara Thompson