DERRIEN DOUGLAS,	*	IN THE
Petitioner,	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND,	*	WICOMICO COUNTY
Respondent.	*	Case No. 22K09000845

* * * * * * * * * * * * *

PETITION FOR POST-CONVICTION RELIEF

Petitioner, Derrien Douglas, by and through his undersigned attorneys, hereby petitions this Court for post-conviction relief pursuant to Maryland Criminal Procedure Article §§7-101 to 7-109 and Maryland Rules 4-401 to 4-408. Douglas, inmate number 369424, is currently incarcerated at North Branch Correctional Institution, in Cumberland, Maryland.

Pursuant to Maryland Rule 4-402(c), which provides that "amendment of the petition shall be freely allowed to do substantial justice," undersigned counsel will continue investigation of this case and, if applicable, raise additional claims in an amendment to this Petition.

I. INTRODUCTION

Derrien Douglas was convicted for allegedly murdering Brandon Jones, and sentenced to life in prison. He has always maintained his innocence, and this petition proves it.

Douglas' conviction was based entirely on the dubious testimony of two eyewitnesses, both of whom gave inconsistent statements to police, and both of whom

had questionable motives for testifying. During the course of Douglas' three-day trial, the State did not present any other evidence that affirmatively linked Douglas to the crime. Douglas was not linked to any of the various weapons seized during the police investigation; neither DNA nor fingerprints placed him at the scene; and there was no evidence of any connection whatsoever between Douglas and the victim. In fact, the State did not even present a motive as to why Douglas, the 19-year-old son of a University of Maryland Eastern Shore professor, would kill Jones.

Making matters worse, Douglas appeared at trial in prison clothes. Despite the fact that Douglas' parents had a suit and tie available for Douglas to wear, the Court forced Douglas to stand trial in Department of Corrections garb.

Douglas' convictions for first- and second-degree murder and use of a handgun during the commission of a felony or violent crime must be vacated because they were obtained in violation of Douglas' constitutional right to effective assistance of counsel and due process. Specifically, Douglas raises the following allegations of error:

1. Prosecutorial misconduct for improperly withholding *Brady* evidence pertaining to the State's most important witness, Ramonte Jones;
2. In the alternative to Issue One (above), ineffective assistance of counsel for failure to cross-examine Ramonte Jones about the deal he entered into with the State;
3. Due process violation by State for presenting false, coerced testimony;
4. Ineffective assistance of counsel for stipulating to the cell phone records of Charles Moor;
5. Prosecutorial misconduct for failure to disclose pending litigation against Detective Tanya Ehrisman;
6. Ineffective assistance of counsel for failure to properly raise the jail clothes issue;
7. Ineffective assistance of appellate counsel; and

8. Cumulative ineffective assistance of counsel.

II. PROCEDURAL HISTORY

Douglas was initially tried in June 2010. On June 4, 2010, following a three-day trial, the jury was unable to reach a verdict and the court declared a mistrial.

Douglas was re-tried a few months later, and, on September 9, 2010, he was convicted by a jury in the Circuit Court for Wicomico County of first- and second-degree murder, and use of a handgun during the commission of a felony or crime of violence. Douglas was represented at trial by James Podlas, who is now deceased.

On November 19, 2010, Judge Donald C. Davis sentenced Douglas to life in prison for first-degree murder, and 20 years for the handgun, to run consecutive to the life sentence. The second-degree murder merged with the first-degree murder for purposes of sentencing. In addition, Douglas is not eligible for parole during the first 15 years of the life sentence.

Douglas filed a timely appeal to the Court of Special Appeals in which he raised a single issue:

- Whether the trial court erred in refusing, prior to the onset of trial on the charge of murder, to allow Douglas to change from a t-shirt into a suit and tie, which were immediately available, where the reason given was the absence of either the "facilities or manpower" to screen the garment.

In an unreported opinion filed on May 22, 2012, the Court of Special Appeals affirmed the judgment of the Circuit Court.

Douglas then filed a Petition for Writ of Certiorari with the Court of Appeals on June 5, 2012, in which he presented the following questions for review:

1. Whether the requirement of due process and equal protection govern the right of a defendant in a murder case not to be tried in clothing which, while not "prison garb," is nevertheless of a nature which may result in a prejudicial assessment by a jury.

2. Whether the trial court erred in refusing, prior to the onset of trial on the charge of murder, to allow Douglas to change from a t-shirt into a suit and tie, which were immediately available, where the reason given was the absence of either the "facilities or manpower" to screen the garment.

The Court of Appeals denied Douglas' Petition on September 24, 2012.

On May 20, 2013, Douglas timely filed a *pro se* petition for post-conviction relief, which was dismissed without prejudice on May 28, 2013. Pursuant to Md. Code. Ann., Crim. Pro. § 7-103, this is Douglas' first petition for post-conviction relief, and it is timely filed.

III. STATEMENT OF FACTS

At approximately 4:21 p.m. on October 5, 2009, Salisbury City Police received a 911 call reporting a shooting at 530 Hammond Street. T. 9/7/2010, 125, 135. The caller, Ramonte Jones, stated that his cousin, Brandon Jones, had been shot, but he could not identify the shooter. T. 9/7/2010, 130. Jones[1], who had been shot twice in the back, subsequently died from his wounds. T. 9/8/2010, 11.

Within minutes of the broadcast, Officer Jonathan Oliver responded to the scene. T. 9/7/2010, 136-37. Upon entering the residence at 530 Hammond Street, Oliver found Jones lying on the floor and unresponsive. T. 9/7/2010, 138. While EMS personnel

[1] Because there are several individuals with the surname "Jones," Petitioner will only refer to the victim as Jones; others will be identified by their first names.

focused on Jones, Oliver spoke with Ramonte. T. 9/7/2010, 138-39. Ramonte stated that he had been in the kitchen at the time of the shooting and that he did not see anything, other than Jones entering the residence and collapsing. T. 9/7/2010, 142-43; T. 9/8/2010, 123. While being interviewed by Oliver, Ramonte was "very nervous" and hesitant to answer questions. T. 9/7/2010, 139. Ramonte also had to be physically restrained from leaving the scene. *Id.*

That evening, Detective Tanya Ehrisman and several other officers attempted to locate Ramonte for further questioning, but could not find him. T. 9/8/2010, 116-18. After speaking with Ramonte's mother the following morning, detectives were able to locate Ramonte and take him to police headquarters. T. 9/8/2010, 118-19. There, Ramonte provided a recorded statement in which he inculpated a "D-Dugs" in the shooting. T. 9/7/2010, 250-51; T. 9/8/2010, 100, 120-21, 134. Contrary to his initial statements to the 911 dispatcher and to Oliver, Ramonte provided a description of "D-Dugs." T. 9/8/2010, 100. Ramonte also admitted that he had not known the individual's name or nickname at the time of the incident, and that someone else told him that D-Dugs "might be [the shooter's] name." T. 9/7/2010, 275; T. 9/8/2010, 135.

After hearing the nickname, Detective Ehrisman accessed the "in-house data system" and came up with Petitioner, Derrien Douglas. T. 9/8/2010, 100. A photographic array was prepared and presented to Ramonte, who – despite having been unable to provide the 911 dispatcher with a description of the assailant – identified Douglas' picture as being that of the shooter. T. 9/8/2010, 101, 136.

Meanwhile, inside Jones' bedroom, detectives found marijuana, a .32 caliber

revolver, a 9 millimeter handgun, and ammunition. T. 9/7/2010, 178-79, 189-91, 209. Following testing, neither DNA nor fingerprints were recovered from the guns. T. 9/7/2010, 194-95.

Sometime after the shooting, Jones' father, Donald Jones, advised police that a week after the shooting, during Jones' memorial service, Ramonte locked himself in Jones' room. T. 9/8/2010, 107, 109, 177-78, 184. After Ramonte left, Donald recovered a .32 millimeter revolver from the room. T. 9/8/2010, 107, 180-81, 184. Several weeks later, Ramonte tried to get his gun back, but Donald refused. T. 9/8/2010, 184. Five months later, in March 2010, Donald notified and turned the weapon over to police. T. 9/7/2010, 198-200, 221; T. 9/8/2010, 107-08, 110, 182. Donald never gave an explanation as to why he kept the gun, and this information, from the police for five months. T. 9/8/2010, 108.

At trial, Ramonte inculpated Douglas in the shooting. Ramonte testified that on the afternoon in question, he and Jones went to a nearby convenience store and then returned to Jones' house. T. 9/7/2010, 231. A group of youths was hanging out in the parking lot behind the house, and in court, Ramonte identified Douglas as one of the individuals in the group. T. 9/7/2010, 232-33, 264-65. Ramonte testified that as he and Jones were about to enter the house, he heard someone make a comment and, upon turning around, saw Douglas aiming a revolver at Jones. T. 9/7/2010, 234-40, 265. According to Ramonte, after Jones "hit the gun and went to walk away," Douglas fired three or four shots and then fled. T. 9/7/2010, 236-40. Jones grabbed his chest and ran into the house, and Ramonte then called 911. T. 9/7/2010, 238, 241, 276. Ramonte testified that when

police arrived, he lied to them by asserting that he had not seen the shooting. T. 9/7/2010, 245, 276-77. Ramonte has since recanted his testimony, indicating that he did not see who did the shooting. Ex. 1 (Affidavit of Ramonte Jones).

Charles Moor also testified at trial. He stated that at approximately 4:00 p.m. on the afternoon of the shooting, he was sitting on the back steps outside of his son's home when he noticed a group of youths across the street. 9/8/2010, 190-94. Moor testified that he overheard someone "yelling all about the money." T. 9/8/2010, 199. Moor then saw Jones come out of one of the apartments and tell the group to "take that shit down the road." T. 9/8/2010, 199-200. He then heard Jones tell someone not to put his "f—ing hands" on him and saw Jones push the person away. T. 9/8/2010, 201. Moor identified Douglas as the person Jones had pushed. *Id.* According to Moor, Douglas then pulled out a gun "and started shooting." T. 9/8/2010, 204-05. Upon arrival of the police, however, Moor denied having seen anything. T. 9/8/2010, 209, 229-30.

Moor acknowledged that, later that night, he was involved in a fight at the Cactus Club.[2] T. 9/8/2010, 213, 218-19. Moor asserted that another patron, Brandon Christian, had badgered him throughout the evening and, when a physical altercation ensued, Moor knocked Christian to the floor and left the bar. T. 9/8/2010, 215-16, 219.

Officer Michael Mitchell responded to the Cactus Club. 9/9/2010, 28. Upon arrival, he was told that Christian, who had left the scene "bleeding and disoriented," had been assaulted by Moor. T. 9/9/2010, 28-29. Mitchell was able to reach Moor by phone

[2] Moor also acknowledged prior convictions for theft, burglary, and arson. T. 9/8/2010, 222, 227.

and told Moor to return to the Cactus Club to discuss the incident. T. 9/9/2010, 32-33. Moor refused, telling the officer he was afraid he would be arrested. *Id.* During the telephone conversation, Moor made no mention of having witnessed the shooting earlier that day. T. 9/9/2010, 31.

Over the next several days, continued efforts by police to meet with Moor were unsuccessful. T. 9/8/2010, 219-20.

While Moor denied that he had been charged with the assault and denied having made a deal with the prosecutor in order to avoid such charges, T. 9/8/2010, 221, Mitchell testified that criminal charges for assault and reckless endangerment had in fact been filed on the morning of October 6, 2009. T. 9/9/2010, 31-32. Indeed, a warrant for Moor's arrest was issued on that same date. *See* Ex. 2 (Docket Sheet for *State v. Charles Moor*, Case No. 0H00053032).

Six days after the shooting, on October 11, 2009, Detective Ehrisman interviewed Moor with respect to the shooting. T. 9/8/2010, 103, 139. Ehrisman was aware that there was a warrant for Moor's arrest as a result of the Cactus Club assault, but pursuant to instructions from the State's Attorney's Office, Moor was not arrested.[3] T. 9/8/2010, 143-44. During this interview, Moor told Ehrisman that he had witnessed the shooting at Hammond Street. T. 9/8/2010, 103, 141, 220-21. Moor then made a cross-racial identification, via photographic array, in which he identified Douglas as the shooter. T.

[3] As of the time of trial, Moor still had not been arrested on the warrant, which was still outstanding. T. 9/8/2010, 145. After the trial in this case concluded, the warrant for Moor was recalled. On September 27, 2010, the State entered a *nolle prosequi* in Moor's assault case. Ex. 2.

9/8/2010, 104-05.

At trial, Ehrisman acknowledged that none of the DNA or fingerprint evidence, nor cell phone records, linked Douglas to the shooting death of Brandon Jones. T. 9/8/2010, 159. Nor did the State present any motive for the shooting. The testimony of Ramonte Jones and Charles Moor was the only evidence linking Douglas to the murder.

Cassandra Burke, an expert in forensic chemistry, testified that gunshot residue was found on the right palm of Ramonte's hand on the day of the shooting. T. 9/8/2010, 82. On the other hand, testing performed on Douglas the following day revealed no gunshot residue. *Id.* Burke testified that the presence of gunshot residue meant one of three things: the person either discharged a firearm, was present when the firearm was discharged, or handled something that contained gunshot residue. T. 9/8/2010, 85, 90. Burke also testified that gunshot residue testing is only accurate when performed within four-to-five hours of a shooting. T. 9/8/2010, 87.

Additional facts will be set forth as they relate to the claims raised herein.

IV. LEGAL BACKGROUND

Courts evaluate claims of ineffective assistance of counsel by applying the two-part test established by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *Strickland* requires that a petitioner first establish that his trial attorney performed deficiently by committing an unreasonable error. *Id.* at 687. Next, the petitioner must establish that his trial attorney's deficient conduct prejudiced the defense. *Id.* To establish prejudice under the second prong of Strickland, the petitioner must establish "that there is

a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Id.* at 694.

In *Strickland*, the Supreme Court explained that, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case." *Strickland*, 466 U.S. at 693; *see also Jones v. State*, 138 Md. App. 178, 207-08 (2001) (quoting this same sentence from *Strickland* referencing the "more likely than not" language). "Nor must the prejudicial effect satisfy a preponderance of the evidence standard." *Jones*, 138 Md. App. At 208. As explained by the Court of Appeals, the prejudice prong of *Strickland* requires proof that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Redman v. State*, 363 Md. 298 (2001) (quoting *Williams v. Taylor*, 529 U.S. 362, 391 (2000)). When there is a "reasonable" probability that the outcome of the trial was influenced by counsel's errors, then fundamental reliability has been undermined, and the defendant has been denied his constitutional right to effective representation. *Strickland*, 466 U.S. at 693. Put another way, prejudice exists when the attorney's deficiency gives rise to "a probability sufficient to undermine confidence in the outcome" of the trial. *Id.* at 694.

Each attorney error may be considered individually and cumulatively under *Bowers v. State*, 320 Md. 416, 436, 578 A.2d 734, 744 (1990). In *Bowers*, the Court of Appeals explained that even if separate unreasonable errors by the trial attorney did not cause enough prejudice alone to warrant a new trial, the errors can be considered cumulatively. Under *Bowers*, the prejudice flowing from these individual errors, when

combined, can create a reasonable probability that but for trial counsel's errors the result of the proceedings would have been different.

V. POST-CONVICTION CLAIMS

1. Prosecutorial Misconduct, Ineffective Assistance of Counsel, and Due Process Violation Related to Key Prosecution Witness Ramonte Jones.

a. Background

Police improperly withheld *Brady* information pertaining to their star eyewitness, Ramonte Jones. Specifically, Ramonte had a side deal with the police that, in exchange for his testimony against Douglas, the police would dismiss an open drug case against him. The defense was never made aware of this arrangement. Had it been disclosed, as is required under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), the outcome of the proceeding would have been different.

On June 26, 2009, Ramonte Jones was pulled over by police in Salisbury, Maryland. The police searched his vehicle and recovered a small amount of marijuana. The officers, Underwood and Deboe, did not arrest Ramonte or issue a ticket or citation at that time. It appeared as if he would be let off the hook with a warning.

More than three months later, on October 5, 2009, Brandon Jones was shot and killed. That same day, as Ramonte became a critical witness for the investigation, police resuscitated the marijuana incident and issued a warrant for his arrest. The case was docketed in Maryland Judiciary Case Search under the spelling "RA'MONTE JONES." Ex. 3 (Docket Sheet & Warrant for Case No. 2H0005299).

Ramonte was brought in for questioning, and he gave a statement implicating Douglas. Three days later, on October 8, 2009, the warrant was recalled. *Id.* On October 26, 2009, the charges were *nolle prossed*. *Id.* After Douglas was arrested and charged with the murder, Ramonte moved to Florida.

As Douglas' first trial date approached and police realized that Ramonte was a necessary but reluctant witness, they re-filed the marijuana possession charges on February 17, 2010. *See* Ex. 4 (Docket Sheet for Case No. 6H00054473). As evidenced by the date of the offense and the complaining officer listed in this case, it is apparent that these "new" charges related back to the same June 26, 2009, incident, which had been previously dismissed.

Douglas' trial was scheduled for April 6, 2010, but just days before it was set to begin, the trial was postponed until June. Police knew that they would again need the assistance of Ramonte, who was living in Florida. To that end, on April 8, 2010, Ramonte was charged a third time for the same June 26, 2009, traffic stop. The charges were taken out by Det. Tanya Ehrisman, the lead detective in Douglas' case, who had no involvement in the traffic stop that occurred almost ten months prior. *See* Ex. 5 (Docket Sheet and Related Documents for Case No. 2H00054980).

A second warrant was issued in the case and Det. Ehrisman served it on Ramonte in Florida on April 28, 2010. The police extradited Ramonte back to Maryland on the marijuana charge. During another round of questioning by police, Det. Ehrisman told Ramonte that this case would go away if he testified against Douglas at trial. Ex. 1 (Ramonte Affidavit).

The deal went through just as planned. Ramonte testified against Douglas on September 7, 2010, claiming he had seen Douglas pull the trigger and kill his cousin. Defense counsel, unaware that Ramonte had been promised a deal, was unable to effectively cross-examine the State's star witness.

Douglas was convicted on September 9, 2010, and three days later the charges against Ramonte were *nolle prossed*.[4] Ex. 5.

b. Law Applicable to *Brady* Claims

It is a violation of due process when the State fails to disclose a deal with a testifying witness. The remedy is a new trial.

As the Supreme Court has made clear, "the suppression by the prosecution of evidence favorable to an accused… violates due process where the evidence is material either to guilt or punishment, irrespective of the good or bad faith of the prosecution." *Brady v. Maryland,* 373 U.S. 83, 87 (1963). In order to establish a *Brady* violation, a petitioner must establish (1) that the prosecutor suppressed or withheld evidence that is (2) favorable to the defense – either because it is exculpatory, provides a basis for mitigation of sentence, or because it provides grounds for impeaching a witness – and (3) that the suppressed evidence is material. Evidence favorable to the

[4] This is very similar to what happened to Charles Moor, whose assault charges were dismissed following his testimony in this case. For almost a year, there was no movement in Moor's assault case – no arrest, no hearing, no trial; and within weeks of Douglas' conviction, the charges were inexplicably dismissed. It is doubtful that this was mere coincidence; rather, it suggests a pattern by the police in this case of leveraging both of their key witnesses' criminal charges in exchange for their testimony against Douglas.

defendant must be disclosed even absent a specific request by the defendant. *Conyers v. State*, 367 Md. 571, 597 (2002); *Brady,* 373 U.S. at 87.

Evidence is material under *Brady* if there is a reasonable probability that the outcome of the proceeding would have been different had the evidence been disclosed. *Id.* at 598. "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668 (1982)).

Among the factors Maryland courts look to when determining materiality are the following: (1) the closeness of the case against the defendant and the cumulative weight of other independent evidence of guilt; (2) the centrality of the particular witness to the State's case; (3) the significance of any inducement to testify; (4) whether and to what extent the witness's credibility is already in question; and (5) prosecutorial emphasis on witness's credibility in closing arguments. *Wilson v. State*, 363 Md. 333, 345 (2001).

***c. Brady* Violation by State**

The State violated *Brady* – and Douglas' constitutional right to a fair trial – when it failed to disclose the police's promise to dismiss Ramonte's criminal charges in exchange for his testimony against Douglas. There can be no question that this agreement constitutes material evidence that the State was required to disclose. This was material impeachment evidence against the State's star witness that Douglas was entitled to receive, and which the jury was entitled to hear. *See Giglio*, 405 U.S. at 154-55 ("evidence of *any* understanding or agreement as to a future prosecution would be relevant to [a key witness's] credibility") (emphasis added). Indeed, this is a

quintessential *Giglio* claim, and the only adequate remedy is to vacate Douglas' conviction.

Maryland courts have held, repeatedly and without equivocation, that evidence of any agreement or understanding between the State and a key witness must be disclosed to the defense, and failure to do so constitutes a *Brady* violation. *See, e.g., Ware v. State*, 348 Md. 19 (1997) (failure to disclose key prosecution witness's pending motion for reconsideration of sentence in unrelated case constituted a *Brady* violation warranting new trial); *Wilson v. State*, 363 Md. 333 (2001) (State's suppression of plea agreements with two key codefendants who testified at trial violated due process and warranted new trial); *Conyers v. State*, 367 Md. 571 (2002) (State's suppression of fact that jailhouse informant sought benefit in exchange for his statement constituted *Brady* violation and warranted new trial, even where informant's subsequent plea agreement was disclosed); *Harris v. State*, 407 Md. 503 (2009) (State's failure to disclose agreements with two key witnesses to support their requests for sentence reductions constituted *Brady* violation warranting new trial).

Undersigned counsel is aware of no case in which the failure to disclose such an agreement with a key prosecution witness did not result in reversal of the defendant's conviction.

In the instant case, there was an agreement between the police and Ramonte, in which criminal charges against Ramonte – which had been filed three separate times – would be dismissed in exchange for his testimony at trial. This is important impeachment evidence that the State was required to disclose – whether the agreement was formal or

informal. *See Ware*, 348 Md. at 41 ("[e]vidence that the State has entered into an agreement with a witness, whether formally or informally, is often powerful impeachment evidence and the existence of such a 'deal' must be disclosed to the accused").

This information was also material. This was a close case in which the only evidence linking Douglas to the crime was the testimony of two alleged eyewitnesses, the most significant of the two being Ramonte Jones. There was no physical evidence placing Douglas at the scene or linking him to the shooting. Ramonte was at the scene of the crime; he testified that Douglas shot Jones and explained to the jury how it happened. His testimony placed the gun in Douglas' hands. He was undoubtedly the most crucial witness in the case against Douglas. Impeaching his credibility would have sunk the State's case.

In addition, criminal charges were not filed against Ramonte until he became a material witness in Jones's shooting. Those charges were filed – and subsequently dismissed – a total of three times, and Ramonte was even arrested and spent several weeks in jail as a result of those charges. The promise of having those charges taken care of, and of avoiding further incarceration, provided a strong motive for Ramonte to testify against Douglas in a manner that would appease the State. Indeed, Ramonte has since recanted his trial testimony and has stated, under penalty of perjury, that he does not know who shot Brandon Jones, and that he never saw Douglas either possess or shoot a gun. Ex. 1 (Ramonte Affidavit). Ramonte has explained that he felt pressured to testify

because of the potential criminal charges against him, and the detectives' promise not to proceed with those charges. *Id.*

This is critical impeachment information that the jury was entitled to hear, and which the State improperly withheld. Had trial counsel known this information, he could have exposed Ramonte's bias and motives for testifying falsely, and there is a reasonable probability that Douglas would not have been convicted.

d. Ineffective Assistance of Counsel for Failure to Cross-Examine Ramonte Regarding Deal

Alternatively, if this Court finds that, somehow, Ramonte's deal was disclosed to the defense (despite there being no evidence that it was), then trial counsel was constitutionally ineffective for failing to cross-examine Ramonte about this deal. The defense theory was that someone else had committed the shooting and that the two eyewitnesses were lying. Thus, trial counsel should have cross-examined Ramonte about any benefit he expected to receive in exchange for his testimony. Had he done so, Ramonte's credibility would have been significantly diminished, which in turn would have undermined the State's entire case and led to a different result.

e. Due Process Violation

Douglas' constitutional right to due process was violated when the State presented false evidence in the form of Ramonte's testimony. Police coerced Ramonte into falsely testifying that Douglas was the shooter, when in fact, Ramonte never saw Douglas shoot or even possess a gun. Ex. 1 (Ramonte affidavit). Police harassed Ramonte and threatened his liberty by repeatedly filing criminal charges against him, and even arresting him, extraditing him from Florida, and detaining him upon his arrival in

Maryland. Through their conduct, police made it crystal clear that Ramonte's legal problems would continue unless he cooperated with them. As a result, Ramonte felt he had no choice but to testify that Douglas was the shooter – even though it was not true. Ex. 1.

Under various legal principles, including those of *Brady v. Maryland*, 373 U.S. 83 (1963), knowledge of the police's misconduct and coercive tactics is imputed to the State. By presenting Ramonte's false, coerced testimony, the State violated Douglas' due process rights, and his conviction must be vacated.

2. Ineffective Assistance of Counsel for Stipulating to Cell Phone Records of Charles Moor

a. Background

Trial counsel was constitutionally ineffective when he agreed to stipulate to the timing of the 411 call in the phone records of Charles Moor, the second eyewitness against Douglas. At trial, counsel stipulated that Moor called 411 at 4:47 p.m. – approximately 27 minutes after the shooting – when in fact, Moor's phone records showed that he did not call 411 until 5:47 p.m., almost an hour-and-a-half after the shooting. These records proved that Moor lied on the stand, and that he was probably nowhere near the shooting when it occurred. But instead of exposing this – which would have destroyed Moor's credibility – trial counsel stipulated to the wrong call time, thereby corroborating Moor's claims that he was present when the shooting occurred and bolstering his credibility.

Charles Moor was the State's second critical witness at trial, as he claimed to have observed the shooting and identified Douglas as the shooter. However, Moor's initial statement to police was inconsistent with his trial testimony. Specifically, Moor was questioned by Detective Dubas on the night of the shooting. He told Dubas that he came to the area after hearing about the shooting because he wanted to check on his ex-girlfriend and their son, who lived across the street from where the shooting occurred. He further stated that he was not in the area at the time of the shooting, and that police, firemen and paramedics were already on scene when he arrived. Moor's phone records were consistent with this version of events.

However, about one week after the shooting – after being charged with assault in connection with a bar fight, and after Douglas' mugshot had been shown all over the news – Moor changed his story. He told police, and later testified at trial, that he had observed the shooting while he was outside of his ex-girlfriend Stacey Wheatley's house, waiting for his son to get home. He claimed he arrived at Wheatley's house shortly after 4:00 p.m. to visit his son. He also claimed that Wheatley arrived home about 25 minutes after the shooting (which would have been at about 4:45 p.m., as the shooting occurred at approximately 4:20 p.m.).

Moor further testified that he attempted to call Wheatley shortly after the shooting to warn her not to come home. However, he did not have her work phone number, so he called 411 to obtain the number. While he was unsure of the precise timing of the call, he maintained that it was about ten minutes after the shooting. The timing of Moor's call to

411 thus became central to placing him at the scene of the crime around the time of the shooting.

Trial counsel subpoenaed Moor's cell phone records and introduced them at trial. He was attempting to challenge Moor's timeline by establishing that Moor did not call Wheatley (or 411) until much later than he claimed. However, Moor at times could not understand trial counsel's questions, and he was argumentative when responding. The State then objected to the form of trial counsel's questions (which the court sustained). Finally, trial counsel showed Moor his cell phone records, but Moor stated he did not recall having seen them previously. Upon seeing trial counsel floundering, the State offered to stipulate to the time of the 411 call. Trial counsel accepted the State's offer and stipulated that Moor's call to 411 occurred at 4:47 p.m. – approximately 25 minutes after the shooting. As a result, rather than undermining Moor's testimony, these records were used at trial to corroborate Moor's story and to establish that he was present when the shooting occurred.

The problem is that Moor did not call 411 until 5:47 p.m. – almost an hour-and-a-half after the shooting (not shortly after the shooting as he claimed). The 4:47 "call" to which trial counsel stipulated was actually an incoming text message, not an outgoing call. *See* Ex. 6 (Affidavit of Gerald Grant). Moor's records show two entries related to 411 on October 5, 2009: an *incoming* entry at 16:47:48 (or 4:47:48 p.m.), and an *outgoing* entry at 17:47:09 (or 5:47:09 p.m.). Ex. 7 (Cell Phone Records of Charles Moor), at 10. The records that trial counsel subpoenaed from Sprint explained how to identify text messages in the call records, and the 4:47 p.m. "call" has all of the

characteristics of a text message. *Id.* at 16. There is no question that the outgoing "call" to which trial counsel stipulated at trial was actually an incoming text message.

Further, because of the manner in which Sprint recorded text messages at the time, the incoming 411 entry reflects Central time, not Eastern time. *See* Ex. 6 (Grant Affidavit). Thus, while the text message appears to have been received at 4:47 p.m., it was actually received at 5:47 p.m., almost an hour-and-a-half after the shooting, and just a few seconds *after* Moor called 411 for Wheatley's number.

The only call Moor made to 411 – as clearly demonstrated in his phone records – was at 5:47 p.m., not at 4:47 p.m. Immediately after his call to 411 ended, at 5:47:45 p.m., Moor called Wheatley's work phone number.[5] *See* Ex. 7 (Cell Phone Records) at 10. Thus, Moor's call to Wheatley, which he claims to have made soon after the shooting in order to warn her not to come home, did not occur until an hour-and-a-half after the shooting. This sequence of events completely undermines Moor's trial testimony, casting serious doubt on his claim that he was at Wheatley's home around 4:00 p.m. and that he observed the shooting.

b. Ineffective Assistance of Counsel

Trial counsel was constitutionally ineffective for failing to properly review and interpret Moor's cell phone records, and for stipulating to a demonstrably incorrect fact at trial. Had trial counsel reviewed the records in their entirety – including the accompanying instructions for interpreting the call records – trial counsel would have

[5] At trial, Wheatley testified that one of the phone numbers for the childcare center where she worked was (410) 341-0333 – the same number Moor called immediately after terminating his call with 411. T. 09/09/2010 at 25.

known that the 411 entry recorded at 16:47:48 was an incoming text message, not an outgoing call. He also would have known that Moor made only one outgoing call to 411, and that call occurred at 5:47 p.m. – 87 minutes after the shooting. Thus, he stipulated to an incorrect fact not for any strategic reason, but because he failed to review and understand the very records that he had subpoenaed. Had the jury known that Moor did not call his ex-girlfriend until an hour-and-a-half after the shooting, his trial testimony – and thus, his credibility – would have been significantly undermined, and there is a reasonable probability that the outcome of this trial would have been different.

As the only other alleged eyewitness – and thus, the only other link between Douglas and this shooting – Moor was a material witness for the State. He claimed to have observed the shooting, identified Douglas as the shooter, and testified that no other person had a gun. His phone records were used to corroborate his claims and bolster his credibility, which was critical to the State's case. However, rather than confirming that he was present at the time of the shooting, Moor's phone records – properly interpreted – actually corroborate his initial statement to police: that by the time he arrived, the shooting had already occurred, police and paramedics were already on scene, and he then tried to reach his wife to check on her.

Under no circumstance can stipulating to an incorrect fact be deemed a reasonable trial strategy, and particularly not under the circumstances of this case. During cross-examination, trial counsel attempted to challenge Moor's timeline in order to prove that Moor did not actually see the shooting. For example, he challenged what time Moor actually got to Wheatley's home, as well as what time Wheatley normally got out of and

got home from work.[6] Trial counsel also questioned Moor about his call to 411 and attempted to discredit Moor's claim that he called Wheatley shortly after the shooting. However, Moor could not understand trial counsel's questions, and after an objection by the State, trial counsel simply accepted the State's offer to stipulate – incorrectly – to the timing of the 411 call. *See* T. 09/08/2010 at 253-56.

Had trial counsel fully and properly reviewed these records, and had he not stipulated that Moor called 411 at 4:47 p.m., the jury would have heard critical information that would have destroyed Moor's credibility. In addition to undermining Moor's trial testimony and corroborating his initial, pretrial statement, the records also would have corroborated the testimony of Moor's ex-girlfriend, Wheatley, who testified that she always arrived home at 6:00 p.m., and that Moor would have had no reason to be at her house at 4:00 p.m. In turn, the State's entire case would have been undermined, and Douglas likely would not have been convicted.

3. Prosecutorial Misconduct for Failure to Disclose Pending Litigation Against Detective Ehrisman

The State improperly withheld information about pending litigation against Detective Tanya Ehrisman that was ongoing at the time of Douglas' arrest and trial, and which was ultimately substantiated through settlement. This information was material impeachment evidence that the State was required to disclose pursuant to *Giglio v. United States*, 405 U.S. 150 (1972).

[6] Trial counsel even called Wheatley as a defense witness, and she testified that (1) she worked until 5:30 p.m. every day, (2) she normally got home at 6:00 p.m., (3) she was never home by 5:00 p.m., and (4) Moor was not authorized to be there or visit his son when she was not home. T. 09/09/2010 at 19-20.

In 2008, Detective Ehrisman – the lead detective in Douglas' case – was sued by Ceasar Savage in the United States District Court for the District of Maryland, alleging deprivation of rights and other constitutional violations. *See Savage v. Mayor and City Council of Salisbury, Maryland, et al.*, Criminal No. CCB-08-3200. The claims arose from an incident involving Detective Ehrisman that occurred in 2007, prior to the arrest of Douglas. According to the Complaint, after stopping Savage in his mother's yard for trespassing, and while he was handcuffed, Ehrisman and several other officers repeatedly punched and kicked Savage. Ehrisman threatened to kill him if he did not tell her where the drugs were, and she continued to assault him until he lost consciousness. After surviving Ehrisman's Motion to Dismiss and a Motion for Summary Judgment, the case ultimately settled, and a Settlement Order was signed by the judge on August 29, 2011.

This litigation was ongoing during the murder investigation in this case, and during both of Douglas' trials. This is information that the State was required to disclose, as it was material impeachment information that could have been used to discredit Detective Ehrisman. *See Giglio*, 405 U.S. at 154 (evidence affecting the credibility of a material witness must be disclosed). Impeaching the credibility of the detective who led the investigation against Douglas would have dealt a significant blow to the State's case. Had trial counsel known about the pending litigation against Detective Ehrisman, he would have been able to cross-examine her about it, and there is a reasonable probability the outcome of the trial would have been different.

4. Ineffective Assistance of Counsel for Failure to Properly Raise Jail Clothes Issue

Trial counsel was constitutionally ineffective when he failed to protect Douglas' right not to be tried in jail clothes, and when he failed to make a continuing objection, on each day of trial, to Douglas being tried in jail clothes. On the morning of trial, before the jury was selected, trial counsel requested that Douglas "be allowed to dress in regular street clothes," noting that Douglas' family had brought him a suit and tie. T. 9/7/2010, 2. The trial court refused to let Douglas change, noting that his jail uniform was similar enough to "regular street clothes." T. 9/7/2010, 3. The court further noted that "on a day like today," which was "the first workday… after Labor Day," the court simply did not have "the facilities or manpower" to screen the clothing. T. 9/7/2010, 3-4. During the remainder of the trial, which lasted three days, trial counsel raised no further objections and made no more requests for Douglas to be changed out of his jail clothes.

The problem with trial counsel's objection is that he got the issue wrong. When he asked that Douglas be allowed to change, trial counsel argued that Douglas would otherwise be deprived of "the right to present himself in the best light to the jury." T. 9/7/2010, 3. Trial counsel clearly did not understand the law. A defendant does not have a constitutional right to "present himself in what he believes to be his best light." T. 9/7/2010, 3. What he *does* have, however, is a constitutional right not to be compelled to stand trial wearing jail clothes. *Estelle v. Williams*, 425 U.S. 501, 503-05 (1976) (compelling a defendant to stand trial in identifiable prison attire impairs the presumption of innocence and the right to a fair trial, and implicates both the Due Process and Equal

Protection Clauses of the Fourteenth Amendment); *Knott v. State*, 349 Md. 277 (1998) (same).

In *Estelle v. Williams*, 425 U.S. 501 (1976), the Supreme Court explained the fundamental injustice that stems from defendants wearing prison clothing at trial:

> [A]n accused should not be compelled to go to trial in prison or jail clothing because of the possible impairment of the presumption [of innocence] so basic to the adversary system. . . . [T]he constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment. The defendant's clothing is so likely to be a continuing influence throughout the trial that . . . an unacceptable risk is presented of impermissible factors coming into play[.]

Id. at 504–05.

Trial counsel's duty with respect to this issue was two-fold: first, he had to object to Douglas being tried in prison attire, which he did. *Knott*, 349 Md. At 287. Next, he had to establish that, under the circumstances, the clothing Douglas was wearing was identifiable as such. *See Bucio v. State*, 2015 WL 9394118 at *5 (Md. App. Dec. 23, 2015), unreported ("appellant must also demonstrate that the clothing he was wearing was 'identifiable prison attire.'"). He also had to properly identify which of Douglas' rights were implicated. It is in these two latter obligations that trial counsel failed.

In requesting that Douglas be "allowed to dress in clothing of his choice," T. 9/7/2010, 2-3, trial counsel did not mention Douglas' Division of Corrections ("DOC") uniform a single time. Not once did he mention the presumption of innocence, and how Douglas' attire would impair that presumption. Trial counsel all but conceded that Douglas' clothes were, as the trial court stated, regular street clothes. But they were not. While his white t-shirt was not stamped "D.O.C." or "detention center," this was not

dispositive. Douglas wore blue, draw-string pants with no pockets, and no-brand, plain, white shoes. Douglas' outfit – which he wore every day, for three days – was clearly jail-issued. The fact that it would be readily identified as such by the jury was even more likely in a small town like Salisbury, where much of the jury panel had some connection to law enforcement and to Eastern Correctional Institution in particular.

That connection was strikingly apparent during voir dire. 11 potential jurors – one of whom ended up sitting on the jury – indicated that they knew at least one of the law enforcement witnesses who would testify in the case. T. 9/7/2010, 23-39. Seven others had either been charged with a crime themselves, or had immediate family members who had been charged with and even served time for committing crimes; and five others – one of whom sat on the jury – had participated in the prosecution of persons accused of crimes. T. 9/7/2010, 40-56. Most notably, after asking whether any member of the panel had been employed by a law enforcement agency, including the local detention center or Eastern Correctional Institution ("ECI"), Judge Davis stated, "Let me put it another way. Have any of you *not* been employed?" T. 9/7/2010, 57 (emphasis added). 19 potential jurors answered affirmatively, with ten of those having some connection to either the local detention center or ECI. T. 9/7/2010, 57-73. Of this last group, two sat on the jury. While the court found that these jurors could be impartial despite their connections to ECI, law enforcement, and the criminal justice system, it would be alarming if not one of these people knew what a jail uniform looked like and was able to recognize Douglas' clothing as such.

In light of all of this, trial counsel should have properly objected to Douglas being tried in his prison uniform (properly raising the presumption of innocence and Douglas' right to a fair trial and to not be compelled to stand trial in prison garb), and he should have raised a continuing objection each day of trial. Being short-staffed is not an adequate justification for violating a criminal defendant's constitutional right to a fair trial. In addition, by the second and third days of Douglas' trial, the trial court's initial justification became even less valid. On the first day of trial, the trial judge explained that the courthouse was short-staffed because it was the day after a holiday. But each subsequent day was no longer "the first workday… after Labor Day," T. 9/7/2010, 3-4, and the court should have had the manpower necessary to screen a criminal defendant's trial clothing.

Had trial counsel properly raised this issue, and made a continuing objection, there is a reasonable probability that Douglas would not have been tried in his DOC uniform, and that the outcome of the proceeding would have been different.

5. Ineffective Assistance of Appellate Counsel

Appellate counsel was constitutionally ineffective for failing to raise, on appeal, an issue related to the trial court's refusal to ask one of defense counsel's requested *voir dire* questions. During jury selection, trial counsel asked the court to question the venire about potential associations with civilian crime watch groups, neighborhood watch groups, or similar organizations. T. 09/07/2010 at 83. Trial counsel explained that, in his experience, "people who belong to those kinds of groups don't necessarily have an open mind in terms of the state of the evidence. They often tend to be State oriented." *Id.* at 83-

84. Without explanation (indeed, without even formally denying trial counsel's request), the trial court refused to propound the requested question. Trial counsel preserved his objection at the close of voir dire. *See id.* at 91.

The question trial counsel requested was designed to uncover potential biases in favor of the State and was not adequately covered by any other voir dire question. Thus, the trial court should have granted trial counsel's request and posed this question to the jury panel. In a small town where the majority of the panel had some connection to law enforcement, it is possible (if not likely) that at least one member of the jury was associated with some sort of crime-fighting organization and thus may have been biased in favor of the State. Douglas was entitled to explore this potential bias, and the court's refusal to propound this question constituted error. Appellate counsel should have raised this issue on appeal. Had he done so, there is a reasonable probability that Douglas' conviction would have been reversed.

Appellate counsel was also constitutionally ineffective for failing to raise other viable issues that could have resulted in appellate relief to Douglas.

6. Cumulative Ineffective Assistance of Counsel

Defense counsel was cumulatively ineffective for the reasons described above, as well as any other deficiency proven at the hearing in this matter. *See Bowers v. State*, 320 Md. 416, 436 (1990).

VI. RELIEF REQUESTED

Petitioner prays that his conviction be set aside and that he be granted the following post-conviction relief:

1. Grant a new trial;

2. Grant such other and further relief as may be found to be just, fair and equitable; and

3. Award the costs of these proceedings.

VII. REQUEST FOR HEARING

Petitioner requests an evidentiary hearing on all matters raised in this Petition.

Respectfully submitted,

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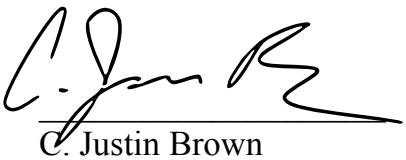
CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2020, a copy of the Petition for Post-Conviction Relief was served via MDEC on all parties entitled to service.



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