[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 15-15714

HARRY FRANKLIN PHILLIPS,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:08-cv-23420-AJ

Before WILSON, JILL PRYOR, and NEWSOM, Circuit Judges.

PER CURIAM:

Florida death row inmate Harry Franklin Phillips appeals the district court's denial of his § 2254 petition for a writ of habeas corpus. After a thorough review of the record and with the benefit of oral argument, we affirm the district court's denial of the petition.

I. FACTS AND PROCEDURAL HISTORY

On the evening of August 31, 1982, Bjorn Thomas Svenson, a parole supervisor in Miami, was working late. He carried a stack of old telephone books outside to throw them away in a dumpster.

Svenson never returned. At 8:38 p.m., he was shot multiple times and died from the gunshot wounds. There were no eyewitnesses to the shooting. From bullets found on the scene, law enforcement officers determined the gun used was either a .357 Magnum or a .38 Special. But no murder weapon was ever recovered.

Phillips was charged with first-degree murder of Svenson. In this section, we start by discussing the evidence of Phillips's guilt introduced at his criminal trial. We then review the history of Phillips's direct appeal, his post-conviction proceedings in Florida state court, and his post-conviction proceedings in federal court.

A. Evidence of Guilt at Phillips's Criminal Trial

The State relied on several categories of evidence to prove that Phillips murdered Svenson, including evidence about (1) Phillips's interactions with Svenson and other parole officers before the murder, (2) statements Phillips made in interviews after the

murder, and (3) confessions Phillips made to other inmates while in custody. We review each category of evidence in turn.

1. Phillips's Interactions with Svenson and Other Parole Officers

At trial, the State introduced evidence showing that Phillips first encountered Svenson in 1980, while Phillips was on parole in Florida. Several parole officers, including Nanette Russell and Michael Russell,[1] testified at Phillips's criminal trial. The parole officers described a series of interactions that Svenson had with Phillips beginning in 1980 and continuing through the day of the murder.

In June 1980, Nanette, who reported to Svenson, was assigned to serve as Phillips's parole officer in Dade County. Under the terms of his parole, Phillips could not leave Dade County without permission. One night a few months into the parole term, Phillips showed up at a grocery store in Broward County where Nanette was shopping. When Nanette left the store, Phillips was waiting by her car. Phillips asked Nanette if they could sit in the car and talk. She refused. He then said, "I just want a goodnight kiss. I don't want any sex from you. I just want a goodnight kiss." Nanette ended the conversation, got in her car, and drove to the home that she shared with Michael, her boyfriend at the time (they later married). That night, Phillips drove by Nanette's home several times.

[1] For ease of reference, we refer to Nanette Russell as "Nanette" and Michael Russell as "Michael."

Nanette called Svenson and reported Phillips's conduct. She also called the police.

The next morning, Phillips called Nanette at home, even though she had not given him the number. He told her that a woman had offered him money to attack Michael.

After these incidents, Svenson assigned Phillips a new parole officer. Svenson also met with Phillips and told him to stay away from Nanette.

The parole commission petitioned to revoke Phillips's parole because he had traveled outside Dade County without permission. The witnesses at the parole hearing included Svenson, Nanette, and Michael. Phillips's parole was revoked, and he was incarcerated for an additional 20 months.

When Phillips was released from prison in August 1982, he was again placed on parole. He was assigned a parole officer who worked in a different building from Nanette. A few days after his release, Phillips went to Nanette's office and tried to see her. Nanette refused to see him and reported the incident to Svenson, who then met with Phillips.

Phillips showed up at Michael's office next. Michael refused to see him. Supervisors in Michael's office met with Phillips and warned him not to contact Nanette or Michael.

A few days later, someone fired four shots through the front window of the home Nanette and Michael shared. There were no eyewitnesses to the shooting. From bullets recovered on the scene,

law enforcement officers determined that the shooter used a .357 Magnum or a .38 Special.[2]

Police investigated whether Phillips was the shooter. On the night of the shooting, several officers went to Phillips's home, which he shared with his mother. The officers tested Phillips's hands for gunpowder residue. The next day, Svenson and other parole officers searched Phillips's home for the gun used in the shooting. When Phillips saw Svenson speaking to his mother, he became "very belligerent" and yelled at Svenson.

The next day at work, Phillips approached a coworker whose father was a police officer. Phillips told her that he had recently fired a gun with a friend and that the police had tested his hands for gunpowder residue. He asked whether the test would detect residue if he had washed his hands with Comet after firing the gun. (Phillips's test for gunpowder residue later came back as inconclusive.)

Around this time, Phillips ran into a friend, Tony Smith,[3] at a bar. Phillips complained that two parole officers (a man and a woman) had been hassling his mother. He told Tony that he was going to put a stop to it and had tried to shoot the female officer

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[2] The evidence introduced at trial showed that these weapons were common and there were thousands of them in Florida at the time of the murder.

[3] We refer to Tony Smith as "Tony" to distinguish him from Greg Smith, the lead detective who investigated Svenson's murder. We refer to Greg Smith as "Smith."

but missed. That evening, Tony saw Phillips carrying a weapon that appeared to be a .357 Magnum or a .38 Special.

Phillips interacted with both Nanette and Svenson on August 31, the day Svenson was murdered. That morning, Nanette reported for a hearing on the courthouse's fourth floor. After entering the building, she walked to the elevator. She spotted Phillips standing by the elevator. To avoid him, she changed her route and used the escalator. When she arrived on the fourth floor, she again saw Phillips, and they made eye contact. She was frightened and reported the incident to court security and Svenson.

A court security officer stopped Phillips and asked whether he was following his former female parole officer. Phillips denied following anyone and said that he was in the building to meet with his attorney, James Woodard. Phillips also said that he would not recognize his former parole officer if he saw her.

Svenson and other parole officers then met with Phillips. Svenson told him to stay away from Nanette. Phillips was warned that if his behavior continued, he would be arrested for violating his parole. That evening, Svenson was murdered.

2. Phillips's Statements in Police Interviews

At trial, the jury heard testimony from Greg Smith, the lead investigator into Svenson's murder, and other officers involved in the investigation. These officers interviewed Phillips several times about Svenson's murder and told the jury about statements he made in the interviews.

The day after Svenson was murdered, detective Linda Beline interviewed Phillips. He denied murdering Svenson and told Beline that he had an alibi. He reported that he had left work at 5:00 p.m. and returned home at 5:20. Afterward, he ran a few errands, including picking his sister up from work and taking her children to church, before returning home. At 7:50 p.m., he went to a Winn-Dixie store to purchase a few items for dinner, left the Winn-Dixie between 8:10 and 8:15, and was home before 8:30. When Phillips arrived home, his mother asked for a ride to his sister's house. Shortly after he returned home, Phillips drove his mother to his sister's house, stopping to buy gas along the way. Phillips told Beline that he was home for the night by 9:00 p.m.

Beline uncovered evidence that conflicted with Phillips's timeline. She obtained a copy of Phillips's receipt from the Winn-Dixie store, which showed that he checked out at 9:13 p.m., approximately one hour later than he had reported. Phillips's sister confirmed that he arrived with their mother around 9:35 p.m., again about one hour later than the time Phillips had said.

Smith testified about other statements Phillips made during interviews. Phillips told Smith that after his release from prison he went to the office where Nanette worked because "he had received a phone call from an anonymous white male" who told him to report to the parole office and see Nanette. Phillips said that he saw Svenson at the parole office. According to Phillips, he spoke with Svenson for about an hour, they had a "general conversation about

the parole," and Svenson never instructed him to stay away from Nanette.

Phillips also admitted in an interview that he saw Svenson the day after the shooting at Nanette's home. Phillips denied arguing with Svenson that day.

Smith testified that he asked Phillips about seeing Nanette at the courthouse on August 31, the day of the murder. Phillips explained that he was at the courthouse that morning to meet with his attorney, Jim Woodward.[4] He denied seeing Nanette at the courthouse, maintaining that he had not seen her since the revocation hearing years earlier.

Smith also questioned Phillips about whether Svenson was present when Phillips met with parole officers later that morning. He told Smith that Svenson had not attended the meeting. But other officers who were at the meeting testified that Svenson was present.

At trial, Smith recounted other statements Phillips made during interviews. During one interview, Phillips asked whether Smith "had ruled out that there had been two people involved in this homicide." Smith responded that police were still investigating. Phillips then suggested that the number of shots fired at Svenson indicated that there had been more than one shooter. Smith then asked Phillips how he knew how many times Svenson had

[4] Woodward testified at trial that Phillips never was his client, and they had no appointment to meet on that day or any other day.

been shot. Phillips responded, "I heard he was shot many times." According to Smith, though, the police had never publicly released information about the number of times Svenson had been shot.

Phillips suggested to Smith that Svenson might have been murdered because he was a drug dealer. Phillips refused to tell Smith why he believed Svenson was a drug dealer. The police found no evidence, however, that Svenson was involved with drugs or any other illegal activities.

Phillips volunteered that he had heard other inmates in the jail say that they did not like Smith. According to Phillips, these inmates, whom he would not identify, knew Smith's home address and that he had a teenage son. Phillips warned that these inmates could cause "great bodily harm."

Smith also testified about Phillips's reaction upon hearing that he had been charged with Svenson's murder. Phillips said that the State had no case because it had no eyewitnesses and had never found the murder weapon. Phillips then said that he "didn't kill the motherfucker[,] but he was glad he was dead." Phillips continued, "They're lucky they got me when they did because I would have killed every last motherfucker in that office." "If somebody does me harm, I do them harm," he added.

Phillips then brought up Nanette, saying, "I fucked her, that skinny bitch, in the ass." He told Smith that he and Nanette had sexual intercourse the night he saw her at the grocery store. He ended the conversation by saying, "Smith, you ain't got no witnesses. There ain't nobody saw me kill that motherfucker."

3. Evidence of Phillips's Confession to Four Jailhouse Informants

The State also presented trial testimony about confessions Phillips made to four inmates: William Scott,[5] William Farley, Larry Hunter, and Malcolm Watson. Each inmate testified at trial that Phillips had confessed to murdering Svenson. We turn to the evidence about each confession.

a. Confession to Scott

Scott testified that Phillips confessed to him in jail shortly after Svenson was murdered. In August 1982, Scott, who was on probation, was arrested for attacking his wife's friend and violating the terms of his parole by traveling out of state. After his arrest, Scott was taken to the Dade County jail. In jail in early September, Scott saw Phillips, whom he had known for at least 10 years.[6]

Phillips asked what Scott was doing in jail. Scott explained that he had been arrested for aggravated battery and violating his parole. Phillips then said that he was in jail because "I just downed one of them motherfuckers." During that conversation, Scott warned Phillips that he needed to get rid of the murder weapon. Phillips responded, "Don't worry about the gun . . . 'cause some

[5] William Scott also used the name William Smith. We refer to him as Scott.

[6] After Svenson was murdered, Phillips was arrested for a parole violation. When Phillips encountered Scott, he had had not yet been charged with Svenson's murder.

woman got it." Phillips told Scott that he committed the murder because Svenson had "been riding him."

After Phillips confessed, Scott called Detective Hough with the Metro-Dade Police Department, whom Scott had known for decades. Scott told Hough about Phillips's confession. Hough then connected Scott with Smith.

Within a few days of reporting Phillips's confession, Scott was released from jail. Upon his release, Scott went to see Phillips's sister. At trial, Scott mentioned in passing that he had spoken with Phillips's sister about the murder. But he did not say why he had gone to see Phillips's sister or what they discussed.[7]

During his trial testimony, Scott was asked what he would receive from the State for testifying against Phillips. He denied that he had been promised anything for his testimony or that anyone had told him to talk to Phillips.

Scott also told the jury about what had happened to his criminal charges. He explained that the aggravated battery charge against him had been dropped because the victim had decided not

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[7] Before trial, Phillips deposed Scott. At his deposition, Scott gave more details about visiting Phillips's sister. According to Scott, he went to see Phillips's sister on the day that he was released from Dade County Jail to bring her $20 to deposit in Phillips's commissary account.

As we describe below, at the post-conviction evidentiary hearing Scott testified that he went to see Phillips's sister at the direction of officers investigating the murder. *See infra* Section I-C-1-d. Scott did not mention this fact at his pretrial deposition or at trial.

to pursue the charge. After this charge was dropped, he had been released on his own recognizance. He acknowledged that he still had a pending charge for violating his parole but told the jury that the charge was "being taken care of."

On cross examination, Phillips questioned Scott about his motivation for testifying. He pointed out that Scott had previously worked as a confidential informant for the federal government and had been paid $1,000 a month for a four-year period.[8]

Phillips probed why Scott called Hough to report the confession. Scott explained that he had given Hough information in the past when a man had confessed to a killing. When the man confessed, Scott called Hough and asked him to "check it out." Scott testified that he reported Phillips's confession to Hough for the same reason. Phillips then asked, "Are you a member of any police agency that you wanted this checked out?" Scott responded, "No, no, no, I'm not a police agent." Phillips followed up by asking, "You run an investigative agency or something, your checking things out like this?" Scott answered, "No, man, no."

Smith testified at trial that he "made no promises" to Scott. And he denied playing any role in the State's decision to drop Scott's aggravated battery charge. Smith was not asked whether he played a role in securing Scott's release on his own recognizance for the parole revocation charge.

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[8] At his pretrial deposition, Scott denied that he had worked as a confidential informant for the Metro-Dade police.

b. Confession to Farley

Farley testified at trial that Phillips had confessed to murdering Svenson. Farley met Phillips for the first time shortly after Svenson's murder when they were cellmates at the Reviewing Medical Center at Lake Butler. Soon after Farley and Phillips became cellmates, Smith and another officer interviewed Phillips. After the interview, they met with Farley and asked whether Phillips had spoken about the murder. Farley responded that he had not. During the interview, the officers did not tell Farley to ask Phillips any questions about the murder.

When Farley returned to his cell, Phillips mentioned that he had been questioned by two officers. Farley said that he too had been questioned. Phillips apologized for not warning Farley that the officers investigating Svenson's murder might try to speak to him.

According to Farley, Phillips then showed him a copy of a newspaper article about Svenson's funeral. Phillips told Farley that he had "murdered the cracker." He described how he committed the murder, saying that he "laid across the street" waiting for Svenson and "shot him a whole heap of times." He said that that he killed Svenson for having "sent him back to prison" for a parole violation. Phillips also said that Svenson was "toting an object" at the time he was shot.

After Phillips confessed, Farley told a prison official that he wanted to speak with Smith. Farley was moved to a new prison and met with Smith a few days later. Smith took a recorded

statement in which Farley described Phillips's confession. At trial, Farley testified that he and Smith did not discuss the confession before the recording began. But the recorded statement itself showed that they discussed Phillips's confession before the recording began.[9] When Farley described what Phillips had said about waiting for Svenson, Smith interrupted and asked, "In the pre-interview you said something about being behind a building? Did he say something about being behind a building across the street or anything like that?"

At trial, Farley was asked about his motivation for telling police about Phillips's confession. Farley said that he went to Smith because Phillips "had no respect for human life." Farley also said that he felt bad for Svenson's family.

Farley was questioned about what he expected to receive in exchange for his testimony. He testified that he was currently serving a prison sentence with a presumptive release date in November (about 11 months after the trial). Farley explained that he had an interview with the parole board scheduled for March, and based on the interview he could secure an earlier release date. He acknowledged that Smith and David Waksman, the lead prosecutor, had promised to write letters to the parole board on his behalf if he testified against Phillips.

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[9] As we describe in greater detail below, at Phillips's post-conviction evidentiary hearing, Smith admitted that he discussed the confession with Farley for approximately 90 minutes before the recording began. *See infra* Section I-C-1-a.

Farley testified that Waksman had helped him in another way as well. Before Phillips's trial, inmates learned that Farley was testifying against Phillips, labeled Farley a snitch, and attacked him. Waksman arranged for Farley to be moved for his safety.

On cross-examination, Phillips suggested that Farley made up the story about the confession. He introduced an affidavit from Farley stating that Farley made up the story about the confession "to get out of prison." But Farley testified that a group of inmates had forced him to sign the affidavit.

When Smith testified, he was asked about his meetings with Farley. He denied ever telling Farley what to say about Phillips's confession. He was not asked about whether he and Farley spoke about Phillips's confession before Smith began recording.[10]

Smith also described what had been promised to Farley. He explained that when Farley gave the recorded statement about Phillips's confession, he had not made any promises to Farley or agreed to give Farley anything in return. Smith said he later told Farley that he would send a letter to the parole board on Farley's behalf.

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[10] Smith testified in a pretrial deposition that Farley's "full statement . . . would be within [his] report." The record does not indicate whether Smith was aware that Waksman had redacted the portion of his report stating that Smith talked with Farley before taking the recorded statement. *See infra* Section I-C-1-a (describing Waksman's redaction practices).

c. Confession to Hunter

The third inmate to testify that Phillips had confessed was Hunter. Hunter had previously been convicted of four crimes. In January 1983, he was again arrested and held at the Dade County jail, where he met Phillips in the jail's law library.

Hunter testified that Phillips confessed to murdering Svenson. Phillips told Hunter how he approached the parole building and shot Svenson in the parking lot. Phillips said that he murdered Svenson because Svenson had testified against him at the revocation hearing. Hunter said that Phillips asked him to serve as an alibi witness to say that he had seen Phillips at the Winn-Dixie around 8:30 p.m. on the night of the murder.

After this conversation with Phillips, Hunter said, he spoke with his cellmate. According to Hunter, without his knowledge, his cellmate reported to the police that Hunter had information about Svenson's murder. Smith then interviewed Hunter. Hunter reported Phillips's confession and turned over notes from Phillips telling Hunter what to say about seeing Phillips at the Winn-Dixie.

Hunter was asked what he expected to receive in exchange for his testimony. He explained that he had pending criminal charges and his case was set for trial in a few weeks. He testified that the police and prosecution had promised him that, if he was convicted, they would go to court and inform the judge that he had been a witness for the State at Phillips's trial. (When Smith testified, he confirmed making this promise.) But Hunter told the jury that

this assistance would not matter because he was innocent of the charges against him.

Hunter also testified that Waksman assisted him by having him transferred to another jail after Phillips threatened him. Before the trial, Phillips demanded that Hunter sign an affidavit saying he knew nothing about the case. When Hunter refused to sign, Phillips threatened his family. Afterward, Waksman had Hunter transferred to a different jail.

d. Confession to Watson

Watson was the fourth inmate who testified that Phillips confessed. Watson, who had three or four prior felony convictions, testified that he encountered Phillips in jail.

Watson told the jury that he had known Phillips for several years. In 1980, Phillips asked to borrow $50 from Watson and offered to give him a gun as collateral. During this conversation, Phillips told Watson that he was going to get even with a parole officer who was trying to send him back to prison. Watson did not lend Phillips any money or take the gun.

A few years later, Watson, who was then serving a sentence for armed robbery, encountered Phillips in the Dade County jail. When Watson saw Phillips, he exclaimed, "You did it. You finally did it?" Phillips responded, "Yeah, yeah, yeah." Watson then said, "You really killed a parole officer, right?" Phillips answered, "Yeah, yeah, but they got to prove it." Phillips told Watson that the police had no eyewitnesses and the gun was thrown away. On another

occasion, Watson heard Phillips tell another inmate that "he had fired a shot around at his parole officer's house."

Watson called police and reported Phillips's confession. He explained that he went to police because his brother was a law enforcement officer who had been shot and ended up paralyzed.

After Watson reported Phillips's confession, Phillips and other inmates threatened to kill Watson and his family if Watson testified. The prosecution then had Watson moved to another area of the jail for his safety. Watson admitted that on occasions he had told other inmates that he knew nothing about Phillips's case. But he said that he had lied to these inmates so that they would not harass him.

At trial, Watson was asked what he expected in exchange for his testimony. He explained that he had already been convicted and sentenced on the armed robbery charge. Although he admitted that he had participated in the robbery, he denied using a gun during the crime. According to Watson, Smith promised that he would arrange for Watson to receive a polygraph test for the underlying crime. If the polygraph test showed that Watson was not lying when he denied having a gun, Smith agreed to "speak up" for him in his criminal case. Smith confirmed making this agreement.

After hearing all this evidence at trial, the jury found Phillips guilty of murdering Svenson. During the penalty phase, by a vote of 7 to 5, the jury recommended a sentence of death.

B. Direct Appeal

Phillips appealed his conviction and sentence. On direct appeal, the Florida Supreme Court affirmed. *See Phillips v. State (Phillips I)*, 476 So. 2d 194 (Fla. 1985).

C. State Post-Conviction Proceedings

Phillips filed a Rule 3.850 post-conviction motion in state court. As relevant for our purposes,[11] he alleged that the State had failed to fulfill its disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and had run afoul of *Giglio v. United States*, 405 U.S. 150 (1972).

Phillips claimed that *Brady* and *Giglio* violations occurred in connection with the testimony of the four inmates. He alleged that the inmates falsely testified to his confessions, the State withheld evidence about what had been promised to the inmates for testifying against him, and the State allowed the inmates to testify falsely about these promises. He further alleged that the State either withheld material evidence about the inmates or allowed them to give false testimony on other topics, including Scott's relationship with the Metro-Dade police, how law enforcement learned of Phillips's confession to Hunter, the extent of Farley's and Watson's criminal histories, and Hunter's mental health history.

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[11] In post-conviction proceedings, Phillips raised numerous challenges to his conviction and death sentence. We limit our discussion to Phillips's *Brady* and *Giglio* claims, the only claims before us in this appeal.

After an evidentiary hearing, the state court denied Phillips's post-conviction motion. In this section, we begin by describing the evidence introduced at the hearing. We then review the state court's order denying Phillips's claims. We conclude with the Florida Supreme Court's decision affirming that order.

1. The Evidentiary Hearing

At the evidentiary hearing, Phillips introduced evidence to support his *Brady* and *Giglio* claims. We discuss the evidence introduced at the hearing on the following topics: (1) whether Phillips confessed to Farley and Hunter, (2) the benefits promised to the inmates for testifying, (3) Scott's relationship with Metro-Dade police, (4) how the State learned of Phillips's confession to Hunter, (5) the extent of Farley's and Watson's criminal histories, and (6) Hunter's mental health history. We review each category of evidence in turn.

a. Evidence About Phillips's Confessions to Farley and Hunter

At the hearing, Phillips introduced testimony from Farley and Hunter in which they recanted their trial testimony about Phillips's confession. Farley and Hunter testified that Phillips never confessed and that Smith and Waksman told them what to say about Phillips's confession.

Farley. Farley testified at the hearing that Phillips never confessed to him. He also offered a new account of what happened before Smith took his recorded statement about Phillips's confession. Farley said he met with Smith for "15 or 20 minutes" before

giving his recorded statement. During this time, Smith instructed him what to say about Phillips's confession. At one point, Smith asked Farley how many times Phillips said he shot the victim. Farley initially responded, "once or twice," but Smith corrected him, saying "the victim was shot numerous times." And Farley said that both Smith and Waksman told him to say that Phillips had mentioned that Svenson was carrying something at the time of the shooting.

Smith and Waksman denied telling Farley what to say about Phillips's confession. Smith admitted that he and Farley discussed Phillips's confession before Farley gave the recorded statement. He testified that this conversation lasted for approximately 90 minutes and that Farley was "mistaken" when he testified at trial that no such conversation had occurred.

Although Smith noted in his police report that he met with Farley before taking the recorded statement, this portion of his report was not disclosed to Phillips before trial. Waksman removed the mention of the meeting from the copy of the report produced to Phillips because he did not believe that the statement had to be disclosed.

But Waksman did more than simply redact the statement from the police report. He reproduced the police report so that Phillips could not tell that any information had been removed. To do this, Waksman copied the report and cut out the part mentioning that Farley and Smith spoke before the recording began. He then pasted the report back together so that it appeared that no

information had been removed. He produced a copy of the reconstructed report to Phillips.

Waksman testified that his practice of cutting and pasting to remove information that was not discoverable was "rather common." Waksman defended his practice, saying that the rules "tell[] me what I'm supposed to disclose. I disclose what I think I have to, and I do not disclose the balance."

Hunter. At the evidentiary hearing, Phillips introduced an affidavit in which Hunter disavowed his trial testimony. According to the affidavit, Phillips "never made a confession" to and "never spoke" with Hunter about the murder. Hunter swore that the "only knowledge" he had about Svenson's murder came from Smith and Waksman.

In the affidavit, Hunter also told a new story about the notes he had turned over to Smith. Hunter said that he approached Phillips in jail and told Phillips that he had been at the Winn-Dixie on the night of the murder. Hunter offered to serve as an alibi witness and asked Phillips to write the notes to help him remember the details.

At the evidentiary hearing, Phillips called Hunter as a witness. But Hunter asserted his Fifth Amendment right against self-incrimination and refused to testify because he was worried about being prosecuted for perjury. When Waksman and Smith testified, they denied telling Hunter what to say about Phillips's confession.

b. Evidence About Promises Made to the Inmates and the Assistance They Ultimately Received

The second category of evidence introduced at the evidentiary hearing concerned what the State had promised the four inmates for cooperating and testifying against Phillips, as well as the benefits the inmates ultimately received. Phillips introduced evidence showing that, for testifying against him, each inmate received reward money and assistance from the State in a pending criminal case or a sentence he was serving.

First, Phillips introduced evidence showing that the four inmates received payments after the trial: Scott received $300, while Farley, Hunter, and Watson each received $175. Farley, Scott, and Hunter all stated that they knew about the reward money at the time they testified against Phillips.

Smith and Waksman acknowledged at the evidentiary hearing that each inmate was paid reward money after the criminal trial. Smith explained that the money came from the Police Benevolent Association as a reward for providing information the led to the conviction of Svenson's murderer. But he denied that any of the inmates were told about the money before trial. Waksman, too, testified that the inmates were not told about the reward money until the trial was over.

Second, Phillips introduced evidence about the assistance that each inmate received from the State for testifying against him. We review the evidence introduced as to each inmate.

Scott. Phillips introduced evidence showing that the State played a role in securing Scott's release from jail on his pending probation revocation charge. At trial, Scott testified that his battery charge was dropped after the victim decided not to press charges and then the parole board agreed that he could be released on his own recognizance pending a revocation hearing. At the evidentiary hearing Phillips introduced evidence showing that Smith had contacted the parole board and advised that Scott was assisting in Phillips's case.

***Farley*.** Phillips introduced evidence showing that Farley had been promised and, in fact, received additional assistance from Waksman and Smith that went beyond what was disclosed at trial. At the evidentiary hearing, Farley testified that Waksman had promised that if he testified against Phillips, Waksman would try to assist him in getting out of prison.

After Phillips's trial, Smith and Waksman helped to secure Farley an earlier release from prison. In January 1984, about a month after Phillips's criminal trial, Smith and Waksman jointly sent a letter to the parole board on Farley's behalf, stating that Farley had provided "outstanding assistance" at Phillips's trial and "recommend[ing] him for early parole."

The parole board did not act immediately on the letter, however. Farley, who remained in custody, became angry. He threatened Waksman that unless the parole board confirmed his release date, "I will do everything I can to sabotage the case and get Phillips

an acquittal." About a month later, Farley was granted parole and released from custody.

After his release from prison, Farley got into more trouble. He was arrested on new charges and faced up to five years in prison. Farley asked Waksman to contact the prosecutor, saying that he was "deathly afraid" to return to prison because he was worried about being attacked by other inmates. After Waksman wrote a letter on Farley's behalf, Farley ended up serving a year and a day in custody.

After Farley completed this sentence, he was arrested again, and again he contacted Waksman for help. When Waksman refused to assist him, Farley threatened to "sabotage" Phillips's case.

Smith and Waksman denied promising Farley that he would be released from custody if he testified against Phillips. Instead, they testified, before Phillips's trial they had promised Farley that if he testified truthfully, they would notify his attorney and the parole board about his assistance.

Hunter. Phillips introduced evidence showing that Hunter had been promised and, in fact, received additional assistance from Waksman and Smith that went beyond what was disclosed at trial. In his affidavit, Hunter explained that at the time of Phillips's trial, he had pending state charges for sexual battery, car theft, and possession of cocaine. Hunter said that Waksman promised he would receive a sentence of five years' probation if he testified against Phillips, but life if he did not. Waksman also instructed him to testify falsely that no such deal existed.

Approximately two weeks after Phillips's trial, Hunter and the State entered into a plea agreement. Under the plea agreement, which Waksman helped negotiate, Hunter pled guilty to grand theft and armed sexual battery and received a sentence of five years' probation. The State agreed to this deal because of Hunter's "invaluable help" in Phillips's murder trial.

Smith and Waksman denied promising Hunter that he would receive a sentence of probation if he testified against Phillips. Rather, they said they told Hunter the same thing they told the other inmates: if he testified against Phillips, they would "tell his judge he cooperated, period."

According to Waksman, he decided *after* Phillips's trial to assist Hunter with the plea deal. He maintained that he made this decision after seeing how Hunter "had been beat up in the county jail" and "had to spend months in [a] small safety cell[]" before Phillips's trial.

After his release from prison, Hunter continued to seek assistance from Waksman. While on probation, Hunter was arrested. He called Waksman seeking help because he was worried for his safety in jail. Waksman contacted a prison official, explained that Hunter had testified "against a seasoned inmate who had a lot of friends," and asked that Hunter be moved to another prison. After he was transferred to a new prison, Hunter reached out to Waksman again, but Waksman provided no further assistance.

Watson. Phillips introduced evidence showing that after Watson testified against Phillips, assistance from Smith and

Waksman resulted in Watson's life sentence being vacated and his being released from prison.

After Phillips's trial, Smith and Waksman arranged for Watson to take a polygraph test about whether he handled a gun during the robbery that resulted in his conviction for armed robbery. Watson passed the polygraph test and then filed a post-conviction motion challenging his armed robbery conviction. The State then agreed to vacate Watson's conviction for robbery with a firearm and allow him to plead guilty to robbery. Watson's sentence was reduced from life imprisonment to a term of 15 years' imprisonment, the unserved portion of which was suspended, and five years of probation. As a result, he was released from prison. Waksman represented the State in the proceedings in which the sentence was reduced.

c. Evidence About Scott's Relationship with the Metro-Dade Police

Phillips's evidence also covered Scott's role as an informant working for the Metro-Dade Police. The evidence showed that from 1972 Scott occasionally worked as a paid informant for Metro-Dade. He assisted the Metro-Dade police with Phillips's case. About a week after Phillips confessed to Scott, Scott was released from jail. That day, Scott met with Smith and another officer. The officers gave him $20 and asked him to find out whether Phillips's sister had information about the location of the murder weapon.

Although Smith's notes reflected that Scott went to see Phillips's sister at the police's direction, this information was not

disclosed to Phillips before trial. Once again, after deciding that the State was not required to turn over this information, Waksman performed a cut-and-paste job on Smith's report to remove the reference to Scott's visit with Phillips's sister.

According to Smith, during the pendency of Phillips's case, Scott was "not a documented informant" with Metro-Dade police. But Smith admitted that when Scott went to see Phillips's sister, he was acting as "an agent" of Metro-Dade Police. According to Smith, it was only after Phillips's trial that he opened an informant file for Scott and Scott was a assigned a number as a confidential informant. For his part, Waksman admitted that he knew during Phillips's trial that Scott had "periodically" provided information to Hough.

d. Evidence About How the State Learned of Phillips's Confession to Hunter

Also introduced at the evidentiary hearing was evidence about how law enforcement learned about Phillips's confession to Hunter. Recall that at trial, Hunter testified that his cellmate reached out to Smith. But at the evidentiary hearing, Hunter testified that he had contacted Waksman about Phillips's confession. Waksman then had Smith interview Hunter.

Smith's notes reflected that Hunter, not his cellmate, first contacted police. But Phillips did not know this information at the time of trial because Waksman had determined that the State was not required to disclose this information and had redacted it. And again, Phillips could not tell that Smith's notes had been redacted.

e. Evidence About Farley's and Watson's Criminal Records

Evidence at the hearing revealed that Farley and Watson did not fully disclose their criminal histories at Phillips's trial. At trial, Farley testified that he had one conviction and one parole violation. But Farley admitted at the hearing that he had two additional convictions. Farley's explanation for giving false testimony about his criminal record was, "I forgot a few things."

At trial, Watson testified that he was a convicted prisoner but said that he had never been on probation or parole. Phillips's hearing evidence showed that, to the contrary, Watson had actually been sentenced to probation twice.

f. Evidence About Hunter's Mental Health

Lastly, Phillips introduced into evidence records about Hunter's mental health from the period before Phillips's trial. The records included an inmate classification report, which had been found in the files of the prosecutor's office in another case, showing that in 1969 Hunter had been found not guilty by reason of insanity in two criminal cases. In addition, mental health records from 1970 through 1972 showed that Hunter had been diagnosed with paranoid schizophrenia. Records from this period also reflected that medical providers had determined that Hunter did not appreciate the wrongfulness of his conduct and was unable to adequately assist in his own defense in a criminal case.

2. The State Court's Order

After the evidentiary hearing, the state court denied Phillips's motion for post-conviction relief. In its order, the court discussed why it denied Phillips relief on his *Brady* claim but did not mention his *Giglio* claim.

In rejecting Phillips's *Brady* claim, the state court addressed whether the State violated *Brady* by failing to disclose two things: (1) that Phillips never confessed to Farley and Hunter and (2) that the four inmates received benefits beyond what was disclosed at trial.

First, as to whether the State violated *Brady* by failing to disclose that Phillips never confessed to Farley or Hunter, the court found Farley's hearing testimony to be "totally incredulous and unbelievable" and Hunter's affidavit to be "totally at odds with the facts." The court credited instead Waksman's and Smith's testimony. Based on these credibility determinations, the court concluded that Phillips failed to prove that the State withheld information showing that Phillips never confessed to Farley or Hunter.

Second, the court considered whether the State failed to disclose the full extent of what it had promised the inmates for testifying against Phillips. The court found that Phillips failed to substantiate his allegations that the inmates were told about reward money before they testified or that the State had made promises to the inmates beyond what was disclosed at trial. The court thus concluded that there was no *Brady* violation.

3. Florida Supreme Court's Decision

Phillips appealed the denial of his post-conviction motion to the Florida Supreme Court. In relevant part, the Florida Supreme Court affirmed. *See Phillips v. State (Phillips II)*, 608 So. 2d 778 (Fla. 1992). In its decision, the Florida Supreme Court discussed Phillips's *Brady* and *Giglio* claims.

The Florida Supreme Court quickly disposed of Phillips's *Brady* claim. *See id.* at 780–81. First, it rejected his arguments that the State violated *Brady* by failing to disclose that Phillips had never actually confessed to Farley and Hunter or that Smith and Waksman had told the inmates what to say about Phillips's confessions. *Id.* at 780. The Court explained that at the evidentiary hearing there was conflicting testimony, with Farley and Hunter, on the one hand, saying that the police gave them the information about Phillips's confessions, and Waksman and Smith, on the other hand, denying these allegations. *Id.* The Florida Supreme Court concluded that there was "competent, substantial evidence" to support the lower court's finding that Waksman and Smith were credible and that Farley and Hunter were not. *Id.* at 781.

Second, the Florida Supreme Court rejected Phillips's argument that the State violated *Brady* by withholding information about the benefits the inmates were promised. *Id.* at 780–81. Again, the Florida Supreme Court relied on the lower court's credibility determination. Given Waksman's testimony that at the time of the trial he had informed the inmates only that he would write letters on their behalf and did not know "to what extent he would end up

helping" the inmates, the Florida Supreme Court concluded there was no *Brady* violation. *Id.* at 780.

Next, the Florida Supreme Court addressed Phillips's *Giglio* claim based on the State's failure to correct the following trial testimony: (1) Scott's denial that he was an agent of the police, (2) Farley's statement that Smith started the tape recording immediately instead of speaking with him before he gave the recorded statement about Phillips's confession, and (3) statements from Farley and Watson about their criminal records. *Id.* at 781. The Court rejected each of these bases for the claim.

The Court began with the standard for establishing a *Giglio* violation: Phillips had "to demonstrate (1) the testimony was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material." *Id.* (citing *Routley v. State*, 590 So. 2d 397, 400 (Fla. 1991)).

For Scott's testimony denying that he acted as a police "agent," the Court concluded there was no *Giglio* violation because there was no false testimony. *Id.* Although "Scott was on the federal government payroll at the time of trial and was assigned an informant number for the federal authorities," the Court explained, "he did not, at that time, have an informant number for the Metro-Dade police, and therefore evidently did not believe that he was an agent for that department." *Id.* It further observed that, "[e]ven at the postconviction hearing, Scott seemed confused over whether he was an informant for Metro-Dade" when he provided information about Phillips. *Id.* Because "[a]mbiguous testimony

does not constitute false testimony for the purposes of *Giglio*," the Court concluded that no violation occurred. *Id.*

The Florida Supreme Court then considered whether a *Giglio* violation occurred when Farley testified that Smith immediately began to record his statement about Phillips's confession. The Court concluded that any misstatement was "immaterial," noting that it "could have been corrected by the defense, had it been important, since the defense was aware of the pre-interview." *Id.*

Next the Court addressed whether there was a *Giglio* violation when Farley and Watson testified falsely about their criminal records. *Id.* The Court accepted that these inmates gave "incorrect" statements about their criminal records at Phillips's trial. *Id.* But the Court concluded that Phillips failed to establish materiality because there was "no reasonable probability that the false testimony affected the judgment of the jury." *Id.* Because the jury had heard that Farley and Watson were convicted felons, the Court concluded, "the admission of an additional conviction or probationary sentence would have added virtually nothing to further undermine their credibility." *Id.*

The Florida Supreme Court did not explicitly address whether a constitutional violation occurred when (1) the State failed to disclose that Scott met with Phillips's family at the direction of law enforcement, (2) Hunter testified that his cellmate initially contacted Waksman; or (3) the State failed to turn over Hunter's mental health records. The Florida Supreme Court also did not address Waksman's routine practice of redacting police

records and cutting and pasting the records so that no redaction was apparent.

D. Federal Habeas Proceedings

After the Florida Supreme Court denied relief, Phillips filed a federal habeas petition raising *Brady* and *Giglio* claims. The district court denied relief.

On the *Brady* claim, the district court concluded that the Florida Supreme Court's decision was entitled to deference. Because there was conflicting evidence about whether the State had encouraged or coached witnesses to give false testimony and whether it had disclosed all the promises made to the inmates, the district court explained, this claim "rest[ed] on the credibility of the witnesses." The court concluded that Phillips "failed to overcome the presumption of correctness" owed to the state court's credibility determinations and other factual findings.

Addressing Phillips's *Giglio* claim, the district court began by considering whether a *Giglio* violation occurred when Scott testified at trial that he was not a police "agent." The district court gave deference to the Florida Supreme Court's determination that Scott did not give false testimony when he denied that he was a police agent because of the ambiguous way the question at trial had been formulated.

The district court also reviewed whether a *Giglio* violation occurred when Farley testified that he had not discussed Phillips's confession with Smith before giving his recorded statement. The court concluded that the Florida Supreme Court's decision that this

statement was not material was reasonable and thus entitled to deference. Similarly, the district court concluded that the Florida Supreme Court reasonably determined that Farley's and Watson's false statements about the extent of their criminal history were not material.

The district court also considered Waksman's redactions. The court explained that Waksman's conduct implicated *Giglio* because he "purposefully withheld" information from the defense, and "witnesses testified falsely concerning certain facts that had been withheld."

But the court explained that to establish his entitlement to relief, Phillips had to show not only that the false statements were material for purposes of *Giglio*, but also that any error was not harmless under *Brecht v. Abrahamson*, 507 U.S. 619 (1993). To satisfy this standard, Phillips had to show that the "error had a substantial and injurious effect or influence on the jury's verdict." The court concluded that this standard was not satisfied given the other circumstantial evidence of Phillips's guilt, which included the evidence of Phillips's "serious problems" with Svenson and tying Phillips to a gun.

This is Phillips's appeal.

II. STANDARD OF REVIEW

We review *de novo* a district court's denial of a petition for a writ of habeas corpus. *Morrow v. Warden, Ga. Diagnostic Prison*, 886 F.3d 1138, 1146 (11th Cir. 2018).

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs our review of federal habeas petitions. *See* 28 U.S.C. § 2254(d). "AEDPA prescribes a highly deferential framework for evaluating issues previously decided in state court." *Sears v. Warden GDCP*, 73 F.4th 1269, 1279 (11th Cir. 2023). Under AEDPA, a federal court may not grant habeas relief on claims that were "adjudicated on the merits in [s]tate court" unless the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court of the United States" or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d).

A state-court decision is "contrary to" clearly established law if the court "applie[d] a rule that contradicts the governing law" set forth by the Supreme Court or the state court confronted facts that were "materially indistinguishable" from Supreme Court precedent but arrived at a different result. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). To meet the unreasonable application of law standard, "a prisoner must show far more than that the state court's decision was merely wrong or even clear error." *Shinn v. Kayer*, 592 U.S. 111, 118 (2020) (internal quotation marks omitted). Rather, the decision must be "so obviously wrong that its error lies beyond any possibility for fairminded disagreement." *Id.* (internal quotation marks omitted). This standard is "difficult to meet and . . . demands that state-court decisions be given the benefit of the doubt." *Raulerson v. Warden*, 928 F.3d 987, 996 (11th Cir. 2019) (internal quotation marks omitted).

Federal courts must defer to a state court's determination of the facts unless the state court decision "was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d)(2). Section 2254(d)(2) works much like § 2254(d)(1) in that it requires us to give state courts "substantial deference." *Brumfield v. Cain*, 576 U.S. 305, 314 (2015). "We may not characterize . . . state-court factual determinations as unreasonable merely because we would have reached a different conclusion in the first instance." *Id.* at 313–14 (alteration adopted) (internal quotation marks omitted). We presume a state court's factual determinations are correct absent clear and convincing evidence to the contrary. *See Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1035 (11th Cir. 2022) (en banc).

On each claimed basis for relief, we review "the last state-court adjudication on the merits." *Greene v. Fisher*, 565 U.S. 34, 40 (2011). "When a federal claim has been presented to a state court and the state court has denied relief," we presume "the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Harrington v. Richter*, 562 U.S. 86, 99 (2011).

III. LEGAL ANALYSIS

Phillips argues on appeal that the Florida Supreme Court's decision is not entitled to deference and that he is entitled to habeas relief on his *Giglio* and *Brady* claims under a *de novo* standard. In this section, we begin by reviewing the standard that applies to *Giglio* and *Brady* claims before addressing the claims in turn.

A. Overview of *Giglio* and *Brady*

In *Brady*, the Supreme Court recognized that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment." 373 U.S. at 87. The Court has since clarified that a defendant need not request favorable evidence from the State to be entitled to it. *See Kyles v. Whitley*, 514 U.S. 419, 433 (1995).

"There are two categories of *Brady* violations, each with its own standard for determining whether the undisclosed evidence is material and merits a new trial." *Smith v. Sec'y, Dep't. of Corr.*, 572 F.3d 1327, 1333 (11th Cir. 2009). The first category of violations (often referred to as *Giglio* violations) occurs when "the undisclosed evidence reveals that the prosecution knowingly made false statements or introduced or allowed trial testimony that it knew or should have known was false." *Id.* at 1334; *see Giglio*, 405 U.S. at 153. However, "there is no violation of due process resulting from prosecutorial non-disclosure of false testimony if defense counsel is aware of it and fails to object." *United States. v. Stein*, 846 F.3d 1135, 1147 (11th Cir. 2017) (alteration adopted) (internal quotation marks omitted). But when the government "affirmatively capitalizes" on the false testimony, "the defendant's due process rights are violated despite the government's timely disclosure of evidence showing the falsity." *Id.*

When a *Giglio* violation occurs, the defendant generally is entitled to a new trial "if there is any reasonable likelihood that the

false testimony *could* have affected the judgment of the jury." *United States v. Agurs*, 427 U.S. 97, 103 (1976) (emphasis added). This standard "requires a new trial unless the prosecution persuades the court that the false testimony was harmless beyond a reasonable doubt." *Smith*, 572 F.3d at 1333 (internal quotation marks omitted). "This standard favors granting relief." *Id.* We have described it as "defense friendly." *Ford v. Hall*, 546 F.3d 1326, 1333 (11th Cir. 2008).

But when a *Giglio* claim arises on collateral review, a petitioner also must satisfy the more onerous standard set forth in *Brecht*. *Rodriguez v. Sec'y, Fla. Dep't of Corr.*, 756 F.3d 1277, 1302 (11th Cir. 2014) (citing *Brecht*, 507 U.S. at 637). Under *Brecht*, a federal constitutional error is not a basis for relief on collateral review unless it resulted in "actual prejudice." 507 U.S. at 637 (internal quotation marks omitted). Under this standard, relief may be granted "only if the federal court has grave doubt about whether a trial error of federal law had substantial and injurious effect or influence in determining the jury's verdict." *Davis v. Ayala*, 576 U.S. 257, 267–68 (2015) (internal quotation marks omitted). There must be "more than a reasonable possibility that the error was harmful." *Id.* at 268 (internal quotation marks omitted).

This standard requires us to "consider the specific context and circumstances of the trial to determine whether the error contributed to the verdict." *Al-Amin v. Warden, Ga. Dep't of Corr.*, 932 F.3d 1291, 1301 (11th Cir. 2019); *see Mansfield v. Sec'y, Dep't of Corr.*, 679 F.3d 1301, 1313 (11th Cir. 2012) (explaining that this analysis "is necessarily fact-specific and must be performed on a case-

by-case basis"). The *Brecht* standard requires a reviewing court to "'ask directly' whether the error substantially influenced the jury's decision." *Granda v. United States*, 990 F.3d 1272, 1293 (11th Cir. 2021) (quoting *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995)). "[I]f the court cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, the court must conclude that the error was not harmless." *Id.* (internal quotation marks omitted). An error is "likely to be harmless" when "there is significant corroborating evidence or where other evidence of guilt is overwhelming." *Mansfield*, 679 F.3d at 1313 (citations omitted); *see Brecht*, 507 U.S. at 639 (concluding that error was harmless when "the State's evidence of guilt was, if not overwhelming, certainly weighty" and noting that "circumstantial evidence . . . pointed to petitioner's guilt").

The *Brecht* standard reflects the view that the State should "not be put to the arduous task of retrying a defendant based on mere speculation that the defendant was prejudiced by trial error." *Ayala*, 576 U.S. at 268 (alterations adopted) (internal quotation marks omitted); *see Fry v. Pliler*, 551 U.S. 112, 116 (2007) (explaining that the *Brecht* standard reflects "concerns about finality, comity, and federalism"). As a result, "*Brecht* can prevent a petitioner from obtaining habeas relief even if he can show that, were he raising a *Giglio* claim in the first instance on direct appeal before a state appellate court, he would be entitled to relief." *Rodriguez*, 756 F.3d at 1302.

"Because the *Brecht* harmlessness standard is more strict from a habeas petitioner's perspective than the *Giglio* materiality standard," we have recognized that "federal habeas courts confronted with colorable *Giglio* claims in § 2254 petitions . . . may choose to examine the *Brecht* harmlessness issue first." *Id.* at 1303 n.45 (internal quotation marks omitted). And, "[b]ecause we consider the *Brecht* question in the first instance on federal habeas review, there is no state court *Brecht* actual-prejudice finding to review or to which we should defer." *Trepal v. Sec'y, Fla. Dep't of Corr.*, 684 F.3d 1088, 1112 (11th Cir. 2012). "Of course, we still . . . defer to the state court's other fact findings derived from testimony, documents, and what happened at trial and the [evidentiary] hearing." *Id.*

The second category of *Brady* violations (often referred to as *Brady* violations) occurs when "the government suppresses evidence that is favorable to the defendant[], although the evidence does not involve false testimony or false statements by the prosecution." *Smith*, 572 F.3d at 1334. The defendant is entitled to a new trial if he establishes that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* (internal quotation marks omitted). "A reasonable probability of a different result exists when the government's evidentiary suppressions, viewed cumulatively, undermine confidence in the guilty verdict." *Id.* (internal quotation marks omitted). On federal habeas review of the denial of a claim that the State suppressed favorable evidence, we do not conduct a *Brecht* inquiry because the applicable materiality standard

"necessarily entails the conclusion that the suppression must have had substantial and injurious effect or influence in determining the jury's verdict." *Rodriguez*, 756 F.3d at 1303 (internal quotation marks omitted).

B. The *Giglio* Claim

Phillips argues that the State violated *Giglio* because it presented false testimony on the following topics:

(1) whether Farley discussed Phillips's confession with Smith before giving the recorded statement;

(2) the assistance promised to the inmates for testifying against Phillips;

(3) Scott's relationship with the Metro-Dade police department, including whether he was acting as an agent of the department;

(4) how Hunter first came into contact with the State about Phillips's confession; and

(5) the extent of Farley's and Watson's criminal histories.

In support of his *Giglio* claim, Phillips also points to Waksman's redactions, which he says concealed that the inmates gave false testimony.

In reviewing the Florida Supreme Court's denial of the *Giglio* claim, we begin with its determination that the State did not introduce false testimony about what had been promised to the inmates in exchange for their testimony or about Scott's relationship

with Metro-Dade Police. *See Phillips II*, 608 So. 2d at 781. As we explain in greater detail below, we conclude that this determination was not unreasonable. For the other alleged *Giglio* violations, the Florida Supreme Court concluded that any false testimony was not material. Rather than address whether this aspect of the Florida Supreme Court's decision is entitled to deference under AEDPA,[12] we conclude that Phillips is not entitled to relief because, under *Brecht*, any error was harmless given the State's other evidence about Phillips's guilt that was separate from and independent of any evidence the inmates supplied.

1. Reasonableness of the Determinations About Promises Made to the Inmates and Whether Scott Was an Agent

We now consider whether the Florida Supreme Court's decision—that no *Giglio* violation occurred when the inmates testified about the extent of assistance promised to them and when Scott denied acting as an agent of the State—was reasonable. As to the promises made to the inmates, the Florida Supreme Court reasonably concluded that no false testimony was given. As to Scott's testimony about his status as an agent, the Florida Supreme Court likewise reasonably concluded that Scott gave no false testimony.

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[12] Phillips argues that the Florida Supreme Court's decision is not entitled to deference because it failed to apply the correct materiality standard or to conduct a cumulative analysis of materiality.

a. Testimony About Promises Made to the Inmates

We begin with the issue of whether a *Giglio* violation occurred when the inmates testified at trial about what they were promised for testifying against Phillips. The Florida Supreme Court reasonably rejected this claim based on the lower court's factual finding that Waksman and Smith did not decide until after trial to give additional assistance to the inmates.

As we described in detail above, at the evidentiary hearing, the parties introduced conflicting evidence on the factual question of what the State promised the inmates for testifying against Phillips. *See supra* Section I-C-1-b. To summarize, on the one hand, Smith and Waksman testified that as to any criminal charges or existing sentences, the inmates generally were told that in exchange for their testimony against Phillips, the State would tell the judges in their criminal cases (or the parole board) that they had assisted by testifying against Phillips. According to Smith and Waksman, it was only after the criminal trial that they decided to provide additional help to the inmates and told them about the reward money. On the other hand, some of the inmates testified at the evidentiary hearing that they were told about the reward money and promised additional assistance before trial.

Ultimately, the state court resolved this factual dispute by crediting Smith's and Waksman's testimony over the inmates' testimony. *See Phillips II*, 608 So. 2d at 780–81. Phillips challenges the state court's findings of fact. But AEDPA requires us to presume

that the state court's factual findings were correct unless rebutted by "clear and convincing evidence." 28 U.S.C. § 2254(e)(1). And after carefully reviewing the record, we cannot say that Phillips came forward with the clear and convincing evidence necessary to reject the state court's credibility determinations. *See Pye*, 50 F.4th at 1045 n.13. Thus, taking as correct the state court's factual determination that Smith's and Waksman's testimony was truthful, we cannot say that it was unreasonable for the Florida Supreme Court to reject Phillips's claim that the State presented false testimony about the promises made to the inmates.[13]

b. Testimony About Scott's Status as an Agent

We now turn to Phillips's claim that a *Giglio* violation occurred when Scott denied that he was acting as an agent of the State. As a refresher, at trial, Phillips questioned Scott about why he reported Phillips's confession to law enforcement. Scott testified that he wanted the police to "check it out." Phillips's attorney then asked a line of questions comparing Scott to individuals who normally would investigate a confession. He began by asking, "Are

[13] In state court, Phillips also argued that a *Giglio* violation occurred because Hunter and Farley falsely testified that Phillips had confessed. The Florida Supreme Court rejected this claim, explaining that "competent, substantial evidence" supported the state court's finding that Farley and Hunter's hearing testimony was "completely unbelievable." *See Phillips* II, 608 So. 2d at 781. After carefully reviewing Phillips's appellate brief, we do not see an argument challenging this determination as unreasonable. But even assuming that he adequately raised this argument on appeal, we would conclude that the state court's decision was entitled to deference.

you a member of any police agency that you wanted this checked out?" Scott responded, "No, no, no, I'm not a police agent." Phillips's attorney then followed up by asking, "You run an investigative agency or something, your checking things out like this?" And Scott answered, "No, man, no."

Phillips argues that Scott gave false testimony when he denied being a "member of any police agency" and said he was "not a police agent." Because testimony at the evidentiary hearing indicated that Scott was working as an agent of police, Phillips reasons that Scott must have given false testimony at trial.

But, as the Florida Supreme Court explained, even at the evidentiary hearing, "Scott seemed confused over whether he was an informant for Metro-Dade." *Phillips II*, 608 So. 2d at 781. And from the record of the trial, it is not entirely clear what Scott meant when he answered that he was not an agent. He made the statement in response to a question asking whether he was a "member of any police agency." Phillips takes Scott's answer to be a denial that he had any relationship with the Metro-Dade police. But it is just as possible that Scott was denying being an employee of any police department or agency (as the question asked at trial suggested). Given this ambiguity, and because there is no evidence suggesting that Scott was an employee or member of a police department or agency, we hold that the state court reasonably concluded that Scott did not testify falsely and there was no *Giglio* violation. *See United States v. Petrillo*, 821 F.2d 85, 89 (2d Cir. 1987).

2. Harmlessness of Any Other *Giglio* Violation

Phillips also claimed that the State violated *Giglio* in other ways. But we need not decide whether it was unreasonable for the Florida Supreme Court to reject the remainder of his *Giglio* claim because any error was harmless under *Brecht*. Given the other evidence of Phillips's guilt, we are left with no grave doubt about whether the alleged *Giglio* violations had a substantial and injurious effect or influence on the jury's verdict.

In analyzing harmlessness, we assume that if the false testimony had been disclosed, Phillips would have been able to impeach the inmates to such an extent that the jury would not have relied on their testimony in reaching a verdict. But given the substantial evidence of Phillips's guilt that was unrelated to the four inmates, we conclude that any error was harmless.

To begin, the State introduced strong evidence of Phillips's motive. Testimony from multiple witnesses without questionable motivations indicated that Phillips was seeking vengeance on Svenson and Nanette. After Phillips harassed Nanette, showing up at her home and following her to a grocery store, Svenson and Nanette both played roles in sending him back to prison. Upon his release from prison, Phillips showed up at Nanette's office and tried to see her. A week later, shots were fired through the front window of her home. When Svenson searched Phillips's house after this shooting, he became belligerent. And on the morning of Svenson's murder, he and Phillips had another confrontation after Nanette spotted Phillips at the courthouse. Svenson met with Philips and

warned him that he might send him back to jail for intimidating Nanette. A few hours later, Svenson was murdered.

Moreover, Phillips made statements indicating that he sought revenge on Svenson and Nanette for sending him back to prison. Upon learning of the murder charge, Phillips said, "They're lucky they got me when they did because I would have killed every last motherfucker in that office" and also "[i]f somebody does me harm, I do them harm."

Motive aside, there was ample evidence that Phillips was the person who shot into Nanette's home and that he had access to a firearm around the time of the murder. Phillips admitted to Tony Smith that he had tried to shoot a female parole officer. Tony Smith saw Phillips carrying a .38 Special or a .357 Magnum, the same type of weapon that was used to shoot into Nanette's home and to murder Svenson. And on the evening of the shooting at Nanette's home, police tested Phillips's hands for gunpowder residue; after this test, Phillips told a coworker that he had recently fired a weapon and was concerned that officers would find gunpowder residue on his hands.

The State also introduced evidence showing that Phillips gave the police a false alibi. In an interview the day after the murder, Phillips reported that he had been shopping at the Winn-Dixie until 8:30 p.m. (the murder occurred at 8:38) and then drove home. He claimed that upon returning home from the grocery store, he drove his mother to his sister's house.

But the alibi quickly fell apart. Police obtained Phillips's Winn-Dixie receipt, which showed that he was at the store nearly one hour later, meaning that there was time for Phillips to drive to the parole office, wait for Svenson, shoot him, travel to the Winn-Dixie, and check out by 9:19 p.m. His sister admitted at trial that Phillips and his mother came to her house later than he told police. Phillips's false alibi further supports our conclusion on harmlessness. *See Hodges v. Att'y Gen., Fla.*, 506 F.3d 1337, 1343 (11th Cir. 2007) (considering, when assessing harmlessness of error under *Brecht*, that State had introduced evidence disputing the defendant's "alibi defense"); *United States ex rel. Hines v. LaValee*, 521 F.2d 1109, 1113 (2d Cir. 1975) (holding error was harmless because of, among other things, "the adverse inference to be drawn from [the defendant's] attempted use of a false alibi").

In addition to the false alibi, the State introduced evidence of other false statements Phillips made to police in interviews. When Phillips was asked about seeing Svenson the day after the shooting at Nanette's house, he denied arguing with Svenson. But the denial conflicted with testimony from other parole officers who were there. And Phillips said in interviews that Svenson was not at the meeting with parole officers on August 31. But several witnesses testified that Svenson was present.

Viewing the entire record, we cannot say that we have a grave doubt about whether the alleged *Giglio* errors had a substantial and injurious effect on the trial's outcome. Even though the State's evidence in this case was largely circumstantial and we

cannot say it was overwhelming, there was significant enough corroborating evidence of Phillips's guilt that any *Giglio* error was harmless. *See Brecht*, 507 U.S. at 639; *Mansfield*, 679 F.3d at 1313.

Phillips argues that our decision in *Guzman v. Secretary, Department of Corrections*, 663 F.3d 1336 (11th Cir. 2011), compels the opposite conclusion. We find the case distinguishable and therefore disagree.

James Guzman was convicted in Florida state court of murdering David Colvin. *Id.* at 1339–40. At the time of the murder, Guzman was living at a motel with Martha Cronin. *Id.* at 1340. Colvin also lived at the motel. *Id.* One morning, Colvin and Guzman left the motel together to drink beer and eat breakfast. *Id.* According to Guzman, when they returned, the two men went separate ways. *Id.* Later that day, Colvin was robbed and stabbed to death. *Id.* There were no eyewitnesses to the murder. *Id.* at 1354.

When police initially questioned Guzman and Cronin, both said they knew nothing about the murder. *Id.* at 1341. Months later, police again interviewed Cronin, who had an outstanding warrant for a probation violation. She reported that Guzman had confessed to robbing and murdering Colvin. *Id.* at 1341–42. A few weeks later, Cronin testified before the grand jury about Guzman's confession. *Id.* at 1342.

At Guzman's criminal trial, Cronin again testified that Guzman had confessed. *Id.* at 1340–41. The jury heard from both Cronin and the lead detective that Cronin had not received anything in exchange for her testimony. *Id.* at 1342. Guzman testified in his

own defense and denied robbing or murdering Colvin. *Id.* at 1352. He also introduced evidence of other "viable suspects," including two individuals who had previously used knives in physical altercations with Colvin at the motel. *Id.* at 1353 & n.21. Ultimately, Guzman was convicted and sentenced to death. *Id.* at 1339–40.

In post-conviction proceedings, Guzman raised a *Giglio* claim based on evidence showing that the lead detective gave Cronin a $500 reward before she testified to the grand jury. *Id.* at 1342–43. The Florida Supreme Court affirmed the denial of relief on the *Giglio* claim, concluding that "the evidence was immaterial." *Id.* at 1345 (internal quotation marks omitted). Guzman then filed a § 2254 petition in federal court. *Id.* The district court granted the petition and concluded that Guzman was entitled to a new trial. *Id.* We affirmed.

We held that the Florida Supreme Court's decision on materiality was unreasonable and thus not entitled to AEDPA deference. *Id.* at 1349. We also concluded that the *Giglio* error was not harmless under *Brecht* because the error had a "substantial and injurious effect on the outcome of [Guzman's] trial." *Id.* at 1355. We explained that the State's case had "significant weaknesses" and "boiled down essentially [to] a credibility contest between Guzman [who had testified] on the one side, and Cronin and [the detective] on the other." *Id.* at 1356. Cronin's credibility was "critical to the State's case." *Id.* at 1351. But due to the *Giglio* error, Guzman was unable to attack Cronin's credibility by showing that she changed her story to obtain the reward money. *Id.* at 1352. The *Giglio* error

also deprived Guzman of the opportunity to impeach the detective by showing that she gave false testimony about the payment, and such impeachment would have "impugned not only her veracity but the character of the entire investigation." *Id.* at 1353 (internal quotation marks omitted). In assessing the overall weakness of the State's case, we emphasized, too, that Guzman had identified "other viable suspects." *Id.* After viewing the "entire record," we were left with "grave doubt" about whether the *Giglio* error had swayed the outcome of the trial and thus affirmed the grant of relief. *Id.* at 1356 (internal quotation marks omitted).

Guzman is distinguishable from this case. Importantly, the State's case against Phillips was stronger than its case against Guzman. Here, the State's case included particularly robust evidence of motive (Svenson's role in sending Phillips back to prison and threatening to send him back to prison again) as well as evidence that Phillips had possessed a firearm, similar to the one used to shoot into Nanette's home and to murder Svenson, around the time of the murder; had shot into Nanette's home; and provided a false alibi. And at Phillips's trial, there was no evidence of other viable suspects. Given the totality of the evidence introduced at Phillips's trial, we simply cannot say that the alleged errors had a substantial and injurious effect or influence on the jury's guilty verdict. Even after considering *Guzman*, we remain convinced that the error here was harmless under *Brecht*.

Before moving on, we emphasize that our conclusion that any *Giglio* error was harmless should not be taken as condoning

Waksman's conduct in this case. To the contrary, we condemn the conduct. Waksman redacted discoverable material and then covered his tracks with his improper cut-and-paste practices, making the alterations undetectable. This behavior was dishonest and unethical. But our inquiry here is a different one. The Supreme Court has made clear that to be entitled to relief on collateral review, a state prisoner must do more than show a constitutional error; he also must show that the error had a substantial and injurious effect or influence on the jury's verdict. *See Fry*, 551 U.S. at 116. Because after carefully considering the entire record in the case we are not left with grave doubt about whether the outcome of the trial was swayed by *Giglio* error, we affirm the district court's order denying Phillips relief.

C. Phillips's *Brady* Claim

Finally, we turn to Phillips's *Brady* claim. Phillips argues that the State violated *Brady* when it suppressed evidence about (1) the "monetary and sentencing benefits" promised to the four inmates and (2) Hunter's mental health history. Because the Florida Supreme Court's decision denying relief on this claim was not unreasonable, we conclude that it is entitled to AEDPA deference.

We begin by considering whether the State violated *Brady* by failing to disclose the full range of monetary and sentencing benefits promised to the inmates. Of course, the State was required to disclose any promises made to the inmates about benefits they might receive for testifying because those promises could be used to impeach the witnesses and thus would qualify as "[e]vidence . . .

favorable to the accused for *Brady* purposes." *Stein*, 846 F.3d at 1146. But for the reasons we discussed in Section III-B-1 above, we conclude that the state court reasonably rejected Phillips's claim based on its factual determination that the State disclosed the promises made to the inmates before Phillips's criminal trial.

Phillips also contends that a *Brady* violation occurred when the State failed to turn over mental health records showing that in a previous case Hunter had been found not guilty by reason of insanity. We conclude that the decision rejecting this claim is entitled to deference because the Florida Supreme Court reasonably could have determined that the records were not material, meaning there was no reasonable probability of a different result if the State had disclosed the records.[14]

These records show that between 1970 and 1972 (approximately 10 years before the relevant time period), Hunter had mental health problems, including schizophrenia, and was found not guilty of a crime by reason of insanity. Given the strength of the State's case, which we discussed in Section III-B-2 above, it was

[14] In its decision, the Florida Supreme Court never expressly addressed the claim that the State violated *Brady* by failing to turn over Hunter's mental health records. Instead, it silently rejected the claim. *See Phillips II*, 608 So. 2d at 780. In determining whether this decision is entitled to AEDPA deference, we consider what arguments or theories "could have supported" the decision and ask whether those arguments or theories were reasonable. *Richter*, 562 U.S. at 102. The Florida Supreme Court could have rejected the *Brady* claim because the mental health records were not material, a conclusion we find to be reasonable.

reasonable for the Florida Supreme Court to conclude that there was not a reasonable probability of a different result if the records had been disclosed.

IV. CONCLUSION

For the above reasons, we affirm the district court's denial of Phillips's habeas petition.

AFFIRMED.

WILSON, Circuit Judge, concurring:

I concur in the thorough and well-reasoned majority opinion. But this case presents a close call as to whether any *Giglio*[1] error was harmless under the *Brecht*[2] standard. I write separately to highlight the implications of, as the majority aptly describes, Prosecutor Waksman's "dishonest and unethical" behavior.

At a post-conviction evidentiary hearing, Phillips elicited extensive information about Prosecutor Waksman's role in obtaining the informants' testimony and about Prosecutor Waksman's redaction of police reports—none of which Phillips knew at the time of his trial. In an affidavit, Larry Hunter stated that Prosecutor Waksman told him to testify at trial that he received no deal for his testimony, but in reality, Hunter was actually promised probation instead of life imprisonment. The evidence also showed that Prosecutor Waksman edited Detective Smith's police report to remove any reference to Prosecutor Waksman's contact with Hunter. This edited copy was the version handed over to the defense during discovery.

Phillips introduced a letter that William Farley had written on February 1, 1984 (the day Phillips was sentenced), stating that Prosecutor Waksman had not tried to get Farley out of prison as Farley expected and suggesting that Prosecutor Waksman had "used" him. According to Farley, Detective Smith visited him in

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[1] *Giglio v. United States*, 405 U.S. 150 (1972).

[2] *Brecht v. Abrahamson*, 507 U.S. 619, 638 (1993).

jail after the first letter, upset that Farley would tell the truth, specifically that Detective Smith told Farley what he should say before the recorded interview. Farley was subsequently transferred to a harsher area of prison. Farley then sent a second letter on February 14, 1984, in which he accused Prosecutor Waksman of lying to him "about everything," including failing to send a letter to the parole commissioner on his behalf. A check was also introduced showing Farley cashed $175 from Prosecutor Waksman. Phillips also presented Detective Smith's unredacted report indicating that he and Farley spoke for 1.5 hours prior to the start of the recording. Prosecutor Waksman had edited Detective Smith's police report to remove reference to this unrecorded interview prior to handing the report over in discovery.

When confronted with this evidence, Prosecutor Waksman testified that he routinely redacted police reports in a manner that concealed the redaction to defense counsel. Prosecutor Waksman also admitted to providing the informants with benefits greater than what he had admitted to at trial; however, he justified these rewards because he decided to provide them *after* trial. Therefore, according to Prosecutor Waksman, the rewards did not incentivize the informants and could not be used as impeachment evidence.

Again, like the majority notes, under *Brecht*, any error was harmless. We use "harmless" to mean that the remainder of evidence on the record is sufficient to convict Phillips. *See Mansfield v. Sec'y, Dep't of Corr.*, 679 F.3d 1301, 1313 (11th Cir. 2012) ("[T]he erroneous admission of evidence is likely to be harmless under

the *Brecht* standard where there is significant corroborating evidence."). However, "harmless" should not be read to minimize Prosecutor Waksman's routine practice of redacting discovery documents. Prosecutorial misconduct like this is so egregious that it can easily cast a shadow on the entire criminal trial and our criminal justice system more broadly. But for the significant corroborating evidence in this case, Waksman's conduct amounts to a *Giglio* violation.