

NO. 2013-CA-00882-SCT

IN THE SUPREME COURT

STATE OF MISSISSIPPI

WILLIE JEROME MANNING

PETITIONER-APPELLANT

V.

STATE OF MISSISSIPPI

RESPONDENT-APPELLEE

**BRIEF OF *AMICUS CURIAE*, THE INNOCENCE NETWORK IN
SUPPORT OF APPELLANT, WILLIE JEROME MANNING**

APPEAL FROM THE CIRCUIT COURT OF OKTIBBEHA COUNTY

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**BRIEF OF *AMICUS CURIAE*, THE INNOCENCE NETWORK
IN SUPPORT OF APPELLANT, WILLIE JEROME MANNING**

The Innocence Network (the Network) is an association of organizations dedicated to providing pro bono legal and/or investigative services to prisoners for whom evidence discovered post-conviction can provide conclusive proof of innocence. The 62 current members of the Network represent hundreds of prisoners with innocence claims in all 50 states and the District of Columbia, as well as Australia, Canada, the United Kingdom and the Netherlands.¹ The Network is also dedicated to improving the accuracy and reliability of the criminal justice system in future cases.

The Innocence Network has an interest in this case because it features several factors that research has shown most frequently correlate with wrongful homicide convictions: (1) perjured witness testimony; (2) incentivized witness testimony; (3) inaccurate forensics; (4) a recanting witness; and (5) State suppression of exculpatory evidence. The Network is committed to assisting courts around the country to understand and apply the lessons learned from the hundreds of known wrongful convictions documented in the last 25 years and use these lessons to remedy potential wrongful convictions promptly when they arise. This commitment forms the basis of the Network's *amicus* brief filed in support of Appellant, Willie Jerome Manning.

I. BACKGROUND ON RESEARCH AND STUDY OF CAUSES

Since the first post-conviction DNA exoneration in 1989, 1268 prisoners have been exonerated in the United States.² DNA testing was used to exonerate 311 of those innocent prisoners.³ The vast majority of criminal cases, however, do not involve biological evidence that

¹ Member organizations are listed in the accompanying Motion for Leave to File Brief of *Amicus Curiae* and are available at the Innocence Network's website, www.innocencenetwork.org (last visited Dec. 18, 2013).

² See The National Registry of Exonerations, www.exonerationregistry.org (last visited Dec. 18, 2013), discussed below at page 4.

³ See Innocence Project, Homepage, www.innocenceproject.org (last visited Dec. 17, 2013).

could be subjected to DNA testing to prove innocence after trial.⁴ The advent of DNA testing has alerted the criminal justice community to the phenomenon of the actually innocent being convicted, but the phenomenon is not limited to those with DNA in their cases. Therefore, scholars, lawyers, law enforcement officials and commentators have reviewed hundreds of cases where convictions were overturned and prisoners released to determine which involve someone who was truly exonerated based on new evidence of innocence. Data obtained from these studies has revealed several recurring themes and conclusions about causes of wrongful convictions. This brief of *amicus curiae* will discuss several of the findings relevant to Mr. Manning’s case.

II. MR. MANNING’S CASE CONTAINS ALL THE HALLMARKS OF A WRONGFUL HOMICIDE CONVICTION.

From studies of exonerations and the experience of member organizations working to exonerate the innocent, the Network has identified hallmarks that can flag potential wrongful conviction cases even in cases with no DNA evidence. In this way, the Network can alert courts around the country to the “symptoms” of a wrongful conviction. The symptoms present in this case are: (1) perjured witness testimony; (2) incentivized witness testimony; (3) inaccurate forensics; (4) a recanting witness; and (5) State suppression of exculpatory evidence.

A. PERJURED WITNESS TESTIMONY AT TRIAL IS THE SINGLE MOST FREQUENT CAUSE OF PROVEN WRONGFUL HOMICIDE CONVICTIONS.

Unimpeachable sources, including law enforcement notes, establish that the State’s key witness in this case, Kevin Lucious, lied at Mr. Manning’s trial. Lucious testified that he lived across the street from the victims with his girlfriend and infant daughter and—from that apartment—saw Mr. Manning force his way into the victims’ apartment. However, police records show that the apartment where Lucious allegedly lived was actually vacant at the time of the crime and records

⁴ See, e.g., Richard Rosen, *Innocence & Death*, 82 N.C. L. Rev. 61, 73 (2003) (“[F]or every defendant who is exonerated based on DNA evidence, there have been certainly hundreds . . . who have been convicted” on comparable evidence yet whose cases lack biological evidence on which DNA testing could be performed).

from the apartment complex show that Lucious's girlfriend did not lease the apartment until February 1, 1993, approximately two weeks after the crime. (RE 3 and 4).⁵ Mr. Lucious and his girlfriend both confirmed in Mr. Manning's post-conviction hearing that they moved into the apartment across the street from the victims after the crime. (PCR T. 66, 85-86, 101).⁶ Lucious's perjured testimony puts this case squarely with the majority of wrongful homicide convictions caused, at least in part, by lying witnesses.⁷

A recent joint project between the law schools at Northwestern and Michigan Universities has produced the single most comprehensive resource on proven wrongful convictions. The result, the National Registry of Exonerations, is an online database of all proven wrongful convictions in the United States since 1990.⁸ A report of the statistical trends evidenced therein and the causes of the first 873 wrongful convictions identified by the Registry was published in 2012.⁹

The report shows that false testimony or accusations were the single largest factor in wrongful homicide convictions between 1989 and 2012, contributing to 66% of the cases studied. Gross & Shaffer at 54. Overall, perjury contributed to 52% of wrongful convictions. *Id.* If the data is broken down to consider different kinds of false testimony, 27% of all exonerations involve

⁵ For convenience, this brief uses the same citation form as the appellant's brief.

⁶ Lucious also testified that he lied about allegedly hearing Mr. Manning make incriminatory statements before and after the crimes, testimony corroborated by Mr. Manning's brother, Marshon Manning, who was an alleged witness to the statements but was never called at trial. (PCR T. 50-51).

⁷ A very recent example is the case of Kash Register, exonerated in California on Friday December 13, 2013 after being wrongly convicted for 34 years due to two lying eyewitnesses, whose false testimony was exacerbated by the State's withholding of exculpatory evidence. Ashley Powers, *Witness' Sister Helps Free Man Convicted in 1979 Killing*, L.A. Times, Nov. 7, 2013; Lara Bazelon, *The Exoneration of Kash Register and the Problem of False Eyewitness Testimony*, Slate, Dec. 17, 2013, www.slate.com/articles/news_and_politics/jurisprudence/2013/12/the_exoneration_of_kash_register_and_the_problem_of_false_eyewitness_testimony.html.

⁸ The National Registry of Exonerations, www.exonerationregistry.org (last visited Dec. 17, 2013).

⁹ Samuel R. Gross & Michael Shaffer, National Registry of Exonerations, *Exonerations in the United States, 1989-2012* (2012), available at https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf (hereinafter "Gross & Shaffer").

deliberate misidentifications by supposed eyewitnesses, but this rises to 44% in homicide cases. *Id.* at 52.¹⁰ The fact Mr. Lucious did not live in Brooksville Gardens at the time of the crime is also evidence he deliberately misidentified Willie Manning. The Registry’s findings confirm an earlier, pre-DNA-era study finding approximately 33% of 350 erroneous convictions studied were due to “perjury by prosecution witnesses.” Hugo Adam Bedau & Michael Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 *Stan. L. Rev.* 21, 60-61 n.184 (1987).

B. INCENTIVIZED WITNESSES, A SUBSET OF LYING WITNESSES, ARE AN ESPECIALLY PROBLEMATIC CAUSE OF WRONGFUL CONVICTIONS.

Testimony from incentivized witnesses has been shown by DNA and non-DNA exonerations alike to be a significant cause of wrongful convictions. Indeed, while Gross and Shaffer’s study found that perjury by witnesses occurred in 66% of wrongful homicide convictions, in over one-third of those cases, the perjury was not “lies by eyewitnesses; the false witnesses were all jailhouse snitches, law enforcement officers, forensic witnesses, and so forth.” Gross & Shaffer at 53-54.¹¹ A subset of those witnesses is incentivized witnesses (informants or others with something to gain from testifying against the defendant, like lenient treatment by law enforcement, reward money or deflecting attention from themselves as a suspect).

A recent study by the Northwestern University School of Law’s Center on Wrongful Convictions found that 45.9% of all wrongful capital convictions in the United States resulted from the false testimony of an informant, making “snitches the leading cause of wrongful convictions in

¹⁰ Decades of research confirm the unreliability of eyewitness testimony generally. Hundreds of innocent people have been convicted based on either deliberately false or genuinely mistaken eyewitness testimony. *See, e.g.*, Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (2011) (analyzing the first 250 DNA exonerations).

¹¹ Notably, the case against Mr. Manning consisted exclusively of two categories of evidence shown to often cause wrongful homicide convictions: a witness falsely claiming to be an eyewitness and an apparent jailhouse informant.

U.S. capital cases.”¹² Additional scholarship explains that the lies of such witnesses often go undetected because prosecutors have little incentive to ferret out the truth. Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 Golden Gate U. L. Rev. 107, 108 (2006).

In this case Herbert Ashford was the only witness other than Kevin Lucious to provide affirmative evidence against Mr. Manning. Ashford testified at trial that he had seen Mr. Manning in the apartment complex on the day of the murders and heard Mr. Manning make incriminating statements about the murder. (T. 427, 431). Ashford, who suggested Mr. Manning’s name to investigators over a year after the crime, repeatedly asked for help from Oktibbeha County law enforcement in getting his federal sentence reduced. (PCR Ex. 12 & 13). That sentence was reduced on the government’s motion a few months before he testified in Mr. Manning’s trial. (PCR Ex. 13, 14). The record supports an inference that Mr. Ashford was a quintessential incentivized witness, motivated entirely by his desperation to get out of prison.

Kevin Lucious testified during post-conviction that his incentive to give statements to law enforcement and testify at trial was that he felt he could be charged with the crime himself. (PCR T. 53-54). In numerous wrongful conviction cases, a witness’s desire to deflect attention from himself as a suspect has featured as the motive to provide false testimony against another. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 445-49 (1995) (key witness for State was in possession of dead victim’s car and his statements implicating Kyles deflected attention from himself); *Connick v. Thompson*, 131 S. Ct. 1350, 1371-72 (2011) (State’s main witness against Thompson, who was subsequently exonerated, was man who fit description of single assailant and who had been named to the victim’s family).

¹² Rob Warden, Center on Wrongful Convictions, *The Snitch System: How Snitch Testimony Sent Randy Steidl & Other Innocent Americans to Death Row* 3 (2004), <http://www.innocenceproject.org/docs/SnitchSystemBooklet.pdf>.

C. PRESENTATION OF INACCURATE FORENSIC EVIDENCE FEATURES IN NEARLY ONE QUARTER OF WRONGFUL HOMICIDE CONVICTIONS.

Forensic misrepresentation occurs in nearly one-fourth of proven wrongful convictions. In the National Registry of Exonerations' study of causes of wrongful convictions, false or misleading forensic evidence was presented in 22% of all these cases and 24% of homicides. Gross & Shaffer at 40.¹³ The jury at Mr. Manning's trial heard inaccurate forensic evidence. It heard that a bloody shoeprint was found near one of the victims, but that no conclusions could be reached as to the size or make of the shoe. (T. 506, 539). Mississippi Crime Laboratory documents show that the analyst actually concluded the print came from a size 8 shoe of unknown brand. (RE 5). In contrast, Mr. Manning wears anything between a size 10 ½ and 11 ½ shoe. (PCR Ex. 5, PCR T. 122, 124). While the court below discounted the probative value of the shoeprint, this does not change the fact inaccurate evidence was presented; a print of unknown size is not the same as a print from a size 8 shoe. Indeed, because the jury was not told the known size of the bloody shoeprint, they were free to conclude that it supported the State's theory that Mr. Manning was the murderer, when in fact the truth was just the opposite: the forensic evidence supported the defense's case that someone else committed the murder.

D. RECANTING WITNESSES ARE A STRONG INDICATOR OF WRONGFUL CONVICTION AND OFTEN COINCIDE WITH SUPPRESSED EVIDENCE.

In this case, Kevin Lucious recanted his trial testimony. (PCR T. 50). Though courts around the country have traditionally treated recantations from trial witnesses with skepticism, the correlation between recanting witnesses and proven wrongful convictions is undeniable, causing many commentators to call for a revised approach to recantations. Rob Warden, *Time To Rethink Recantations*, Chicago Sun Times, Nov. 7, 2013. Recantations have featured prominently in

¹³ See also Brandon L. Garrett & Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 Va. L. Rev. 1 (2009); Brandon L. Garrett, *Convicting the Innocent: When Criminal Prosecutions Go Wrong*, Ch. 4 (2011).

exoneration cases, especially homicide exonerations, but study shows that courts often ignore them for years while innocent defendants remain in prison.¹⁴ The Network's experience suggests that recanting witnesses, though sometimes susceptible to the usual pressures or incentives of any witness, are a red flag for a wrongful conviction and that courts should review evidence in cases with a recanting witness with extra scrutiny, not less. Tellingly, the nation's very first post-conviction DNA exoneree, Gary Dotson from Illinois, was rebuffed by the Illinois courts when, six years after his conviction, he presented the rape victim's recantation. Bruce A. Green & Ellen Yaroshefsky, *Prosecutorial Discretion & Post-Conviction Evidence of Innocence*, 6 Ohio St. J. Crim. L. 467, 513 (2009). Four years later, DNA proved the recantation correct and Dotson became the nation's first DNA exoneree. *Id.* Scores of other cases have followed the Dotson case – with DNA proving the recantations credible. For example, five years after Frank Smith was sentenced to death for raping and murdering a child in Florida, courts rejected a key witness's recantation and denied his efforts to for relief. He was later exonerated by DNA evidence. *Id.* at n.265. In the Ford Heights Four case, authorities ignored the key accuser's recantation for 18 years — from June 1978 until DNA proved it truthful in June 1996. Warden, *supra*.

A preliminary study of cases involving recanting witnesses from the National Registry of Exonerations tracked 250 exoneration cases in which a witness recanted and found that, in homicide cases, a post-trial witness recantation almost always correlates with false testimony by that witness at trial (91% of homicide exonerations with a recantation also involved perjury or a false accusation during prior proceedings) and that a significant majority of recantation cases also involved official

¹⁴ The National Registry of Exonerations found significant delays between the recantation becoming known to the courts and the wrongful conviction being corrected by the courts. Samuel Gross & Alexandra Gross, National Registry of Exonerations, *Witness Recantation Study: Preliminary Findings* (2013), http://www.law.umich.edu/special/exoneration/Documents/RecantationUpdate_5_2013.pdf (hereinafter "Gross & Gross").

misconduct (73% of homicide exonerations involving a recantation also involved official misconduct). Gross & Gross at 8. Given the record of trial perjury by Mr. Lucious and the State's withholding of evidence in this case, it again appears to bear all the hallmarks of a wrongful homicide conviction.

E. STATE SUPPRESSION OF EVIDENCE IS A LEADING CAUSE OF PROVEN WRONGFUL HOMICIDE CONVICTIONS.

Each of the factors discussed above that contributed to Mr. Manning's conviction – lying witnesses, incentivized witnesses and inaccurate forensic testimony – could have been detected and weighed by the jury that convicted him if the State had honored its obligations under *Brady v. Maryland*. See *Brady v. Maryland*, 373 U.S. 83 (1963).

Bedrock constitutional principles underlying the right to due process have been borne out by decades of research into proven exonerations, confirming that when the State suppresses evidence favorable to the accused in criminal cases, innocent people are convicted of crimes they did not commit. The *Brady* doctrine – the obligation of the prosecution in a criminal case to disclose to the accused favorable information in its possession – is possibly the most fundamental protection against conviction that the Constitution affords the innocent. “The *Brady* rule is based on the requirement of due process. Its purpose is . . . to ensure that a miscarriage of justice does not occur.” *U.S. v. Bagley*, 473 U.S. 667, 675 (1985). See also *Herrera v. Collins*, 506 U.S. 390, 398-99 (1993). Therefore it is no surprise that when the State disregards its *Brady* obligations, deliberately or—as in *Kyles v. Whitley*, 514 U.S. 419 (1995)—constructively, innocent people are convicted.

1. STATE SUPPRESSION OF EVIDENCE EXACERBATES OTHER CAUSES OF WRONGFUL CONVICTION.

Analysis of exonerations shows a strong correlation between cases where prosecutors violate *Brady* and wrongful convictions. Official misconduct occurred in 42% of the exonerations compiled by the Registry of Exonerations, and in 57% of homicide exonerations. Gross & Shaffer at 67.

While Gross and Shaffer classify official misconduct as various kinds of action, including *Brady* violations, they conclude that their numbers probably underestimate the amount of *Brady* violations in wrongful homicide convictions because a) there are various factors relating to homicide investigations that increase the pressure on officials,¹⁵ and b) *Brady* violations are by their very nature concealed and, unless uncovered, often go unnoticed even after an innocent prisoner is exonerated.¹⁶ Other studies confirm this correlation of official misconduct with wrongful convictions. In an Innocence Project study of 74 DNA exonerations, police misconduct was a factor in 37 of the 74 and prosecutorial misconduct was a factor in 33 of the 74.¹⁷

Unsurprisingly, cases in which the State does not honor its *Brady* obligations and an innocent person gets convicted are often also the cases in which the State's evidence involves either a lying or incentivized witness or inaccurate forensics. A recent study on the causes of wrongful conviction, funded by the National Institute of Justice (NIJ), explains this phenomenon.¹⁸ The NIJ study

¹⁵ Gross and Shaffer reason as follows:

It is likely that misconduct by police or prosecutors or both is more common in homicide exonerations than others for reasons we've discussed: Homicides are more important than other crimes, and often also more difficult to investigate and prosecute, so the temptation to lie and cheat is unusually strong. Perjury and false confessions are both more common in homicide cases than sexual assault cases; perjury by government agents *is* official misconduct, and both of these types of false statements may be obtained by misconduct.

Gross & Shaffer at 67.

¹⁶ See, e.g., *Connick v. Thompson*, 131 S.Ct. 1350, 1385 (2011) (Ginsburg, J., dissenting) (“Vigilance in superintending prosecutors' attention to *Brady's* requirement is all the more important for this reason: A *Brady* violation, by its nature, causes suppression of evidence beyond the defendant's capacity to ferret out.”).

¹⁷ See, Innocence Project, *Understand the Causes: Forensic Science Misconduct – Government Misconduct* (2010), www.innocenceproject.org/understand/Government-Misconduct.php. See also Emily M. West, Innocence Project, *Court Findings of Prosecutorial Misconduct Claims in Post-Conviction Appeals and Civil Suits Among the First 255 Exoneration Cases* (2010), www.innocenceproject.org/docs/Innocence_Project_Pros_Misconduct.pdf (of 65 DNA exoneration cases, courts found prosecutorial misconduct – rising to the level of error, in 48% of cases but only 18% led to reversals before DNA testing exonerated the prisoner).

¹⁸ Jon Gould et al., *Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice* (2012), www.ncjrs.gov/pdffiles1/nij/grants/241389.pdf (hereinafter “NIJ study”).

identified causes of wrongful conviction at trial by distinguishing wrongful convictions (where the innocent prisoner was exonerated after conviction) from “near misses” (where the criminal justice system weeded out the innocent person before conviction). The study looked at 460 cases, 260 of which were wrongful convictions and 200 of which were “near-misses.” It concluded that the very same systemic failures that occurred in Mr. Manning’s case are those which make it more likely an innocent person will be convicted than cleared before trial. They are: (1) a weak prosecution case; (2) law enforcement failing to turn over exculpatory evidence to the *prosecutor*; and (3) a lying witness.

In this case, both the Starkville Police and the Mississippi State Crime Laboratory did not pass on exculpatory information (at least about Kevin Lucious’s non-residence in the relevant apartment and the shoeprint incompatible with Mr. Manning) to the trial prosecutor. As a result, the prosecutor could not investigate the discrepancies, let alone disclose the information to the defense. This withholding of exculpatory evidence is one of the exact factors the NIJ Study found caused innocent people to be convicted, rather than cleared. NIJ Study at 90, 93, 166.

The NIJ study found it particularly important in a case of deliberate misidentification (as is alleged here) that the prosecutors have full information about a witness. “[A] close reading of the cases revealed that a lying eyewitness may actually be easier for police and prosecutors to detect with further investigation than one who is honestly mistaken.” *Id.* at 76. However, that is clearly impossible if the prosecutor is unaware of the problem with the witness, as he was in this case. Here, the trial prosecutor testified he would have investigated the problems with Lucious if he had been aware of them. (PCR T. 305).

The study also identified forensic errors as making the difference between pre-conviction clearances and wrongful convictions. NIJ Study at 76. In cases in which a laboratory obtained accurate results, the reason for the error at trial was “[p]oor communication between the forensic lab

and the police and prosecutor's offices, as well as inadequate training among criminal justice officials." *Id.* at 77. In Mr. Manning's case, the record shows that the Crime Lab analyst's notes on the size of the shoeprint were not disclosed to the prosecutor, echoing exactly the kinds of cases referred to in the NIJ Study, where prosecutors are not given full information by law enforcement and are therefore unable to weed out bad indictments before the case goes irretrievably wrong.

The NIJ study concluded that, once innocent people are charged, exactly the kind of systemic errors that occurred in Mr. Manning's case are what lead them to be wrongly convicted:

Regardless of what brought innocent defendants into the system, the officials charged with protecting their rights more often failed those who were erroneously convicted than those who had their cases dismissed or were acquitted. . . . [T]heir prosecutors were less willing to turn over exculpatory evidence when required by law; their cases relied disproportionately on flawed forensics and lying non-eyewitnesses; and their investigators more often engaged in tunnel vision, perhaps because criminal justice officials were under heightened pressure by their local culture to punish a presumed wrongdoer or because police officers figured the defendant must have done something wrong because he was young and had a prior record. Under these circumstances, it is understandable how a case would proceed to judgment even though it had weaker prosecution facts than did those cases the state dismissed. *Indeed, if there is but one conclusion from our research it is that, overall, the erroneously convicted are truly cases of systemic failure.*

Id. at 93-94 (emphasis added).

If a prosecutor withholds—constructively or deliberately—exculpatory or impeachment evidence, the defense cannot function, the jury cannot perform its truth-seeking function, the process breaks down and innocent people are convicted. In this case, Mr. Manning's defense was denied information that would have provided it with crucial cross-examination material to use against the State's main witness, Kevin Lucious. The Supreme Court has recognized, "[c]ross-examination is the principle means by which the believability of a witness and the truth of his testimony are tested." *Davis v. Alaska*, 415 U.S. 308, 316 (1974). The importance of full-disclosure to facilitate the jury's truth-seeking function is especially acute in a case that hinges on one witness,

as this one did. (T. 57). "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Napue v. Illinois*, 360 U.S. 264, 269 (1959). "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general [*Brady*] rule." *Giglio v. United States*, 405 U.S. 150, 154-55 (1972). See also *Kyles v. Whitley*, 514 U.S. 419, 445 (1995) (heightened expectation of consistency when witness, by State's own admission, is essential to investigation and made case against defendant).

2. SCORES OF CASES BEAR OUT THE STRONG CORRELATION BETWEEN BRADY VIOLATIONS AND WRONGFUL HOMICIDE CONVICTIONS.

The cases below are examples from hundreds around the nation demonstrating that when the State violates *Brady*, the innocent are often convicted and the real perpetrator walks free. In the examples below, courts addressed *Brady* violations (mostly involving withheld witness impeachment evidence or withheld forensics) and reversed convictions based on the violation. As a result, the cases were reinvestigated, the defendants fully exonerated and, in many cases, the real perpetrator, who had theretofore gone undetected, was identified.

- In Texas, Anthony Graves's conviction was reversed due to undisclosed prior inconsistent statements from the State's only witness (a participant in the crime) that would have impeached the witness's trial testimony or revealed it to be false. *Graves v. Dretke*, 442 F.3d 334, 344 (5th Cir. 2006). Following the reversal, the State extensively reinvestigated the case and concluded that Mr. Graves was innocent and should not be retried.¹⁹
- In Virginia, Michael Hash's conviction was reversed because the State withheld the fact that both its witnesses had received undisclosed deals for testifying and one had given expressly false testimony about his deal. *Hash v. Johnson*, 845 F. Supp. 2d 711, 722-23 (W.D. Va. 2012). Following the reversal, the Commonwealth Attorney (who presented the false evidence) resigned and Mr. Hash's charges were dismissed in light of the *Brady* evidence and new ballistics evidence connecting another suspect to the crime.²⁰

¹⁹ See National Registry of Exonerations: Anthony Graves, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3253> (last visited Nov. 1, 2013).

²⁰ See National Registry of Exonerations: Michael Hash,

- In North Carolina, Jonathon Hoffman’s conviction was reversed due to the non-disclosure of an immunity agreement that could have been used to impeach the State’s only witness. *State v. Hoffman*, Union County Superior Court No. 95-CRS15695-97 (Apr. 30, 2004). After the conviction was reversed, the State dismissed charges after that witness recanted and revealed he had only implicated Mr. Hoffman due to a grudge over debt.²¹
- In North Carolina, Lesly Jean’s conviction was reversed because the State withheld the fact that hypnosis was used on the victim without adequate procedural safeguards, impeaching the reliability of the victim’s post-hypnosis identification of Mr. Jean. *Jean v. Rice*, 945 F. 2d 82, 87 (4th Cir. 1991). Charges against Mr. Jean were dismissed after his conviction was reversed, but he still pursued DNA testing, which conclusively cleared his name and secured him an executive determination of innocence in 2001.²²
- In Indiana, Jerry Watkins’s conviction was reversed due to withheld evidence including impeachment evidence concerning a jailhouse informant the State used as a witness. *Watkins v. Miller*, 92 F. Supp. 2d 824, 855 (S.D. Ind. 2000). The court also seriously considered evidence that the State knowingly used false testimony from the informant, but concluded it should not delay resolution of the case to determine the issue because there were already ample grounds for reversal. *Id.* at 852-54. After the reversal, the State found previously unavailable DNA-testable evidence which, when tested, excluded Mr. Watkins and matched another man in the DNA database. The true perpetrator was then convicted.²³
- In Oklahoma, Ronald Williamson’s conviction was reversed due to a combination of *Brady* violations and the errors of trial counsel that kept critical evidence from the jury. *Williamson v. Reynolds*, 904 F. Supp. 1529 (E.D. 1995) *aff’d sub nom. Williamson v. Ward*, 110 F. 3d 1508 (10th Cir. 1997). This included evidence impeaching a State’s witness named Glen Gore. *Id.* at 1549. After Mr. Williamson’s conviction was reversed, DNA testing not only proved him and his co-defendant, Dennis Fritz, innocent, but it helped identify Glen Gore as the perpetrator, who was subsequently convicted of the crime.²⁴
- In the Maryland case of Kirk Bloodsworth, the State violated *Brady* at Mr. Bloodsworth’s first trial. *Bloodsworth v. State*, 512 A. 2d 1056 (Md. Ct. App. 1986). Subsequent DNA testing not only conclusively cleared Mr. Bloodsworth, it also showed that—while violating Mr. Bloodsworth’s rights—the State had overlooked an obvious suspect that DNA now proved actually perpetrated

<http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3977> (last visited Nov. 1, 2013).

²¹ See National Registry of Exonerations: Jonathon Hoffman,

<http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3797> (last visited Nov. 1, 2013).

²² See National Registry of Exonerations: Lesly Jean, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3324> (last visited Nov. 1, 2013).

²³ See National Registry of Exonerations: Jerry Watkins,

<http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3724> (last visited Nov. 1, 2013).

²⁴ See National Registry of Exonerations: Ronald Williamson,

<http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3752> (last visited Nov. 1, 2013).

the crime.²⁵ Mr. Bloodsworth was the first person sentenced to death and then exonerated by DNA testing and now lends his name to the federal DNA testing fund.²⁶

- In the Arizona case of Ray Krone, the State violated Mr. Krone’s rights by failing to timely disclose a video concerning a forensic bite mark examination it relied on at trial. *State v. Krone*, 897 P.2d 621 (Ariz. 1995). Subsequent DNA testing confirmed that the conclusions related to the video were false and the crime had been perpetrated by a man named Kenneth Phillips who ultimately pled guilty to it.²⁷

The converse of these cases are the many in which courts have denied *Brady* relief, usually based on a misapplication of the materiality standard and, in so doing, upheld wrongful convictions for years until other evidence proved the defendant innocent. As but one example, Calvin Washington was convicted of murder and sentenced to life in prison. *Washington v. Texas*, 822 S.W.2d 110 (Tex. Ct. App. 1991). On appeal, he raised several *Brady* claims regarding the content of the prosecution’s files, which contained: a) an interview with a fellow inmate who revealed a State’s witness had said Washington “wasn’t the one;” b) evidence that a State investigator who testified at trial was known to cut deals with inmates; c) notes of a police investigator (who later also testified) containing exculpatory and impeachment leads, including a change of jail record benefiting a State’s witness; and d) testimony about the location of the victim’s car. *Id.* In remarkably similar reasoning to that of the trial court in this case, the Texas court nevertheless held that because the State’s witnesses were cross-examined—despite the fact that defense counsel did not have key exculpatory and impeachment information—it did not “believe” “disclosure of further information . . . would have created a reasonable doubt” and upheld the conviction. *Id.* at 122. The court did not apply the proper test – analyzing whether the new evidence undermined confidence in the jury’s verdict—and

²⁵ See Stephanie Hanes, *'84 investigation quick to overlook the culprit*, Baltimore Sun, May 22, 2004, at 1A.

²⁶ See National Registry of Exonerations: Kirk Bloodsworth, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3032> (last visited Nov. 1, 2013).

²⁷ See National Registry of Exonerations: Ray Krone, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3365> (last visited Nov. 1, 2013); Paul Davenport, *Phoenix man gets prison in slaying previously pinned on wrong man*, Tucson Citizen, Aug 18., 2006, available at <http://tucsoncitizen.com/morgue/2006/08/18/23213-phoenix-man-gets-prison-in-slaying-previously-pinned-on-wrong-man/>.

as a result an innocent man spent another ten years in prison before DNA testing completely exonerated him of the crime.²⁸

CONCLUSION

In the last 25 years, well over one thousand people have been exonerated in this country after their wrongful convictions were reversed. Most of their cases involved the exact same problems with witnesses, evidence and State misconduct that infected the prosecution and trial of Willie Jerome Manning. If the thousands of years (combined) that those innocent people spent in prison are not to be in vain, our criminal justice system must learn lessons from the tragedies of their wrongful convictions. In a case with a clear record that the State's main witness perjured himself at trial and has since completely recanted, the only other witness had a strong and express incentive to win law enforcement favor and the State withheld exculpatory and impeachment evidence, including favorable forensic analysis, undersigned *amicus* respectfully urges this Court to consider carefully the strong possibility that these constitutional violations—so common in other wrongful convictions—again caused the conviction of the wrong person, Willie Jerome Manning. That this possibility even exists should, at the very least, mean Mr. Manning's conviction should be reversed so the case may be reinvestigated. *Amicus*, the Innocence Network, respectfully urges this Court to do so.

Respectfully Submitted,

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²⁸ See Innocence Project, Know the Cases – Calvin Washington, www.innocenceproject.org/Content/283.php (last visited Nov. 11, 2013).

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Motion for Leave to File Brief of *Amicus Curiae*, The Innocence Network and Brief of *Amicus Curiae* to be served electronically on the following parties:

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On this 19th day of December, 2013.

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