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IN THE SUPREME COURT OF FLORIDA

STEVEN RICHARD TAYLOR,

Appellant,

v.

CASE NO. SC18-520
Lower Tribunal No.
1991CF2456
DEATH PENALTY CASE

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellant, Steven Richard Taylor, was convicted of the 1990 first-degree murder, burglary of a dwelling, and sexual battery of Alice Vest and sentenced to death. Taylor v. State, 630 So. 2d 1038, 1039 (Fla. 1993), cert. denied, Taylor v. Florida, 513 U.S. 832 (1994). The "victim had been stabbed approximately twenty times, strangled, and sexually assaulted" by Taylor and his accomplice, Gerald Murray. Taylor, 630 So. 2d at 1039. The stab wounds were made by both a knife and scissors, the victim was strangled with an electrical cord, had a fractured jaw and contusions likely made with a broken bottle, a metal bar, and a candlestick, and was alive for approximately ten minutes after the stabbing began. Id. The victim's phone line had been cut and her home was burglarized. Id. Various pieces of the victim's jewelry were missing. Id.

In January 1991, Appellant's former roommate, Johnny Allen Taylor, "discovered a small plastic bag buried in the ground near the fence" that he and his brother were removing on their property. Taylor, 630 So. 2d at 1040. "The bag contained the pieces of jewelry taken from the victim's home during the attack and burglary." Id. Appellant returned to his former residence and was observed staring at the place where the fence had been removed, and on another visit, returned from the backyard with dirty hands.

Id. When asked what he was doing, "Taylor allegedly responded that he had left some things there and that they were gone." Id.

Additional evidence presented at trial revealed that Taylor made inculpatory statements to an investigating officer and to his cellmate. Taylor, 630 So. 2d at 1040. Additionally, a Florida Department of Law Enforcement (FDLE) analyst "testified that semen found in the victim's blouse matched Taylor's DNA profile." Id.

During his case-in-chief, "Taylor presented only one witness, an agent of the Federal Bureau of Investigation (FBI). The agent testified that certain hairs found on the victim's body and clothing matched the pubic hairs of Taylor's accomplice." Taylor, 630 So. 2d at 1040. Taylor's counsel then argued that Murray was the sole perpetrator. (Record at 730, 744-45).

> The jury found Taylor guilty on all counts and
>
> > recommended the death sentence by a vote of ten to two. In sentencing Taylor to death, the trial judge found the following aggravating factors: (1) the murder was committed during the course of a burglary and/or sexual battery; (2) the murder was committed for financial gain; and (3) the murder was committed in an especially heinous, atrocious, or cruel manner. As the sole nonstatutory mitigating factor, the trial judge found that Taylor was mildly retarded. The trial judge sentenced Taylor to death for the first-degree murder, to fifteen years' imprisonment for the burglary, and to twenty-seven years' imprisonment for the sexual battery.

Taylor, 630 So. 2d at 1041. This Court affirmed the conviction and sentence. Id. at 1043.

This Court also affirmed the denial of Taylor's post-conviction motion and simultaneously denied a petition for writ of habeas corpus. Taylor v. State, 62 So. 3d 1101, 1106 (Fla. 2011). In his post-conviction motion and habeas petition, Taylor raised various ineffective assistance of counsel claims related to the DNA, including

> (1) Failing to request a Frye hearing; (2) failing to object to admission of DNA evidence and to Dr. Pollock's testimony about DNA; (3) failing to provide any expert testimony to support trial counsel's attack on the DNA evidence; (4) withdrawing previously filed motion for continuance; (5) failing to request a Richardson hearing when Zeigler's name was revealed for the first time at trial; (6) failing to develop the theory of a second blouse; and (7) failing to object to improper prosecutorial comments.

Id. at 1110; Frye v. United States, 293 F. 1013 (D.C. Cir. 1923); Richardson v. State, 246 So. 2d 771 (Fla. 1971). This Court affirmed the denial of the post-conviction motion concluding "that Taylor has failed to satisfy his burden to demonstrate ineffectiveness for any of these claims." Id.

Appellant filed a successive post-conviction motion for relief pursuant to Hurst. Hurst v. Florida, 136 S. Ct. 616 (2016); Hurst v. State, 202 So. 3d 40 (Fla. 2016), cert. denied, Florida v. Hurst, 137 S. Ct. 2161 (2017). However, since Appellant's case became final in 1994, prior to Ring, Appellant was not entitled to any relief pursuant to Hurst under this Court's well settled precedent. Ring v. Arizona, 536 U.S. 584 (2002); Hitchcock v.

State, 226 So. 3d 216, 217 (Fla. 2017), cert. denied, Hitchcock v. Florida, 138 S. Ct. 513 (2017). Thus, this Court properly affirmed the post-conviction court's denial of Appellant's successive post-conviction motion. Taylor v. State, 234 So. 3d 649, 649-50 (Fla. 2018).

On January 12, 2018, Appellant filed a second successive post-conviction motion (Motion) raising two claims of newly discovered evidence. The first claim of newly discovered evidence was based on an affidavit written by James Dixon which stated the following:

> I, James Dixon worked for Walter Holton in the early 90's doing odd jobs. Holton sold large amounts of cocaine with a Cuban Friend from Miami, who drove a Porsche. Both men were dangerous if you crossed them and were known to put contract hits out on people who crossed them. I was questioned by Police about a sailboat necklace that was possibly connected to a homicide. I got the sailboat necklace from Angela Smith, who was the girlfriend of Walter Holton at the time. She told me that she got it from his Cuban friend, who told her to "never get rid of it". I did not tell the police where I got the necklace from, because I was afraid of Walter Holton and his Cuban friend. My DNA was collected by the police and I was cleared of any involvement with the homicide.

(Motion Attachment 1).

The second claim of newly discovered evidence was based on a motion filed in Murray's case. (Motion Attachment 2). The motion refers to hair samples. These hair samples were linked to Murray, but Appellant was excluded as a possible contributor to the mixture of DNA found on the hair samples.

On March 1, 2018, the post-conviction court summarily denied Appellant's two claims of newly discovered evidence. On March 12, 2018, Appellant filed a Motion for Rehearing and a Motion for Discovery. On March 14, 2018, the post-conviction court denied the Motion for Rehearing. On March 30, 2018, Appellant filed a Notice of Appeal of the post-conviction court's summary denial of his Motion and the denial of his Motion for Rehearing. Appellant filed his initial brief on May 28, 2018, and this is the State's reply.

SUMMARY OF THE ARGUMENTS

Failure of the post-conviction court to hold a case management conference was harmless because Appellant was not entitled to an evidentiary hearing. Though the post-conviction court failed to hold a case management conference before summarily denying Appellant's Motion, this error was harmless because Appellant was not entitled to an evidentiary hearing and was not entitled any other relief on his claims of newly discovered evidence.

Summary denial of Appellant's legally insufficient claims of newly discovered evidence was appropriate. Summary denial was appropriate because Appellant's Motion was legally insufficient on its face and directly contradicted by the evidence of his guilt which was presented at trial. In his Motion, Appellant failed to satisfy the test for newly discovered evidence. Appellant cannot demonstrate that his claims were timely filed. The "new"

information is in direct conflict with evidence at trial and does not raise any doubt as to Appellant's culpability. Appellant's claims are procedurally barred, facially insufficient, and without merit. Summary denial was appropriate and this Court should affirm.

ARGUMENT

ISSUE I: FAILURE OF THE POST-CONVICTION COURT TO HOLD A CASE MANAGEMENT CONFERENCE WAS HARMLESS BECAUSE APPELLANT WAS NOT ENTITLED TO AN EVIDENTIARY HEARING

Appellant alleges that he was denied due process when the post-conviction court summarily denied his two claims of newly discovered evidence because the post-conviction court did not provide him an opportunity to "argue his claim." (Initial Brief at 30). However, because Appellant's Motion was legally insufficient on its face and refuted by the record the post-conviction court's failure to hold a case status conference, commonly referred to as a Huff hearing, was harmless error. Huff v. State, 622 So. 2d 982 (Fla. 1993); see Sochor v. State, no. SC17-929, 2018 WL 1100831, *1 (Fla. Mar. 1, 2018) ("Because the motion was legally insufficient on its face and refuted by the record, we find that the trial court's failure to hold a case status conference was harmless error, and that no evidentiary hearing was required.")(citing Marek v. State, 14 So. 3d 985, 999 (Fla. 2009); Rutherford v. State, 926 So. 2d 1100, 1108 (Fla.

2006)). Because this error was harmless, this Court should affirm the post-conviction court's denial of relief.

Appellant also argues that he is entitled to post-conviction discovery related to DNA testing that was conducted in Murray's case. (Initial Brief at 27). Though the post-conviction court never ruled on Appellant's Motion for Discovery, which was filed simultaneously with his Motion for Rehearing, it should be deemed denied as denial of the Motion is proper. A "trial judge's inherent authority to permit postconviction discovery 'should be used only upon a showing of good cause.'" Muhammad v. State, 132 So. 3d 176, 204 (Fla. 2013)(quoting State v. Lewis, 656 So. 2d 1248, 1250 (Fla. 1994)). Here, Appellant failed to demonstrate any cause why the trial judge should grant him post-conviction discovery.

In Appellant's discovery request, he vaguely refers to DNA testing "conducted on various pieces of evidence" during Murray's post-conviction proceedings. (Motion for Discovery). However, taken in conjunction with his Motion, it appears Appellant is referring to the DNA testing of hair samples, which was a point of contention in Murray's case, but never were used to tie Taylor to the crime. (Motion Attachment 2); see Murray v. State, 692 So. 2d 157, 160-64 (Fla. 1997); Murray v. State, 838 So. 2d 1073, 1077-82 (Fla. 2002); Murray v. State, 3 So. 3d 1108, 1113-19 (Fla. 2009) ("pubic hairs recovered from the victim's body and from a nightgown

were found to have the same microscopic characteristics as Murray's pubic hair, but not Taylor's"). Further, Appellant was aware at trial that the hair samples only implicated Murray in the crime. Appellant's lone witness testified that these hairs "matched the pubic hairs of Taylor's accomplice," Murray. Taylor, 630 So. 2d at 1040. Appellant's counsel then used this evidence to argue that Murray alone committed the crime. (Record at 730, 744-45). Thus, any additional DNA testing of the hair samples, and Taylor's exclusion as a possible contributor, is both cumulative and not relevant to Taylor's case. As such, Appellant has failed to establish entitlement to post-conviction discovery. Denial of the Appellant's Motion for Discovery was a proper exercise of judicial discretion. Muhammad, 132 So. 3d at 204. This Court should affirm the denial of Appellant's Discovery Motion.

ISSUE II: SUMMARY DENIAL OF APPELLANT'S LEGALLY INSUFFICIENT CLAIMS OF NEWLY DISCOVERED EVIDENCE WAS APPROPRIATE

Appellant argues that the post-conviction court erred in summarily denying the two claims of newly discovered evidence raised in his Motion. Appellant argues that he was entitled to an evidentiary hearing to explore these two claims of newly discovered evidence. However, both claims were legally insufficient on the face of the motion and the trial record directly refutes both claims. Thus, summary denial was appropriate.

In support of his first claim of newly discovered evidence, the Appellant solely provided Mr. Dixon's very short and nebulous affidavit. This affidavit vaguely suggests an implausible theory of an alternate perpetrator. This theory is conclusively refuted by the evidence of Appellant's guilt found in the record at trial.

In support of his second claim of newly discovered evidence, Appellant solely provided a DNA motion from Murray's case. The information contained in the DNA motion is cumulative to evidence that Appellant presented at his own trial.

The trial and appellate records in this case conclusively demonstrate that neither item constitutes newly discovered evidence and that Appellant was not entitled to an evidentiary hearing and not entitled to any relief. Since Appellant's Motion was plainly meritless, the post-conviction court's summary denial was proper. This Court should affirm the post-conviction court's denial of relief.

A court can summarily deny a claim if "(1) the motion, files, and records in the case conclusively show that the movant is entitled to no relief, or (2) the motion or particular claim is legally insufficient." Franqui v. State, 59 So. 3d 82, 94-95 (Fla. 2011) (citing Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000)). Appellant claims the affidavit and DNA motion constitute newly discovered evidence.

> [F]or a conviction to be set aside based on a claim of newly discovered evidence, the defendant must meet two requirements. First, the evidence must not have been known by the trial court, the party, or counsel at the time of the trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial.

Spann v. State, 91 So. 3d 812, 815 (Fla. 2012) (citing Jones v. State, 709 So. 2d 512, 521 (Fla. 1998)).

To satisfy the first prong of the newly discovered evidence test and to "be considered timely filed as newly discovered evidence, the successive rule 3.851 motion was required to have been filed within one year of the date upon which the claim became discoverable through due diligence." Jimenez v. State, 997 So. 2d 1056, 1064 (Fla. 2008). Due diligence requires that if the Appellant is aware of the existence of a record, he must try to obtain that record or request it. See Tompkins v. State, 872 So. 2d 230, 239 (Fla. 2003) (defense counsel knew of a police report and could have requested a legible copy). Appellant cannot satisfy prong one for either of his claims of newly discovered evidence.

To satisfy the second prong of the newly discovered evidence test, defense must demonstrate that the newly discovered evidence "weakens the case against [the Appellant] so as to give rise to a reasonable doubt as to his culpability." Spann, 91 So. 2d at 815 (quoting Jones, 709 So. 2d at 526). Further,

> [i]n determining whether the newly discovered evidence compels a new trial, the trial court must "consider all newly discovered evidence which would be admissible," and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial."

Spann, 91 So. 2d at 815-16 (quoting Jones v. State, 591 So. 2d 911, 916 (Fla. 1991)). Appellant also cannot meet prong two of the newly discovered evidence test because neither Dixon's affidavit nor the hair sample DNA evidence would probably produce an acquittal on re-trial. Because Appellant cannot meet prong two of the newly discovered evidence, the post-conviction court was proper in summarily denying his two claims of newly discovered evidence.

Claim One of Newly Discovered Evidence

For his first claim related to Dixon's affidavit, Appellant's Motion does not recount when he discovered the information contained therein. Instead, Appellant states that he "could only learn of this evidence now, when the witness disclosed it." (Motion at 12). Dixon's affidavit is dated September 15, 2017, and Appellant would have this Court rely on this as the date of the "newly discovered evidence." Appellant also does not state when Mr. Holton died, though he alludes to this as the reason for Mr. Dixon's choosing to disclose this information. Further, Appellant does not cite to the sources of the information contained in the Motion which are not a part of Mr. Dixon's affidavit. Nor

does Appellant disclose when the information not contained in Mr. Dixon's affidavit was discovered. Since there is no information about when Mr. Holton died, or where the information in the Motion which is not contained in Mr. Dixon's affidavit came from, Appellant has not shown that due diligence was used in obtaining this information in a timely manner. Appellant's Motion failed to plead sufficient facts to demonstrate that his claim of "newly discovered evidence" was filed within one year of the date upon which the claim became discoverable through due diligence. Therefore, Appellant's Motion failed to meet the first prong of the newly discovered evidence test and his claim was properly summarily denied.

In addition to failing to meet prong one of the newly discovered evidence test, Appellant also fails to meet prong two. Mr. Dixon's affidavit was the only evidence presented by the Appellant to this Court in support of his claim of newly discovered evidence. Mr. Dixon's very short paragraph sheds no light on the murder of Alice Vest. Whether or not Ms. Vest's jewelry is linked to other individuals makes little difference in determining Taylor's culpability. The specific bag of jewelry, including the "sailboat pin" that the detective discussed during his testimony at Taylor's trial, was found buried in a bag at Taylor's former place of residence. Dixon's affidavit does not refute these facts from the trial record. Based on the trial record, the information

in Dixon's affidavit is obviously immaterial and the claim should be summarily denied.

Additionally, though Dixon's affidavit can be read to be in conflict with Taylor's commission of the crime, it does not disprove or provide an alternate explanation for the evidence presented against Taylor at his trial. If an "affidavit is inherently incredible or obviously immaterial to the verdict and sentence," the claim of newly discovered evidence can be summarily denied. Nordelo v. State, 93 So. 3d 178, 185 (Fla. 2012)(quoting Davis v. State, 26 So. 3d 519, 526 (Fla. 2009)). Dixon's affidavit is both obviously immaterial and inherently incredible.

There is nothing in the trial record about Ms. Vest's jewelry having been pawned. There is nothing in the trial record about Mr. Dixon being investigated because of his link to pawned jewelry. If Mr. Dixon was in fact questioned by police, then Taylor's trial counsel would have known of his existence and should have known about the jewelry at the pawn shop. This information could have been presented at Taylor's trial as part of his defense that there was an alternate theory of the murder with an alternate perpetrator, perhaps even blaming Dixon or Holton. However, no theory of an alternate culprit was presented at trial. In fact, Taylor tried to place the blame on Murray. Thus, Taylor should have discovered this evidence through due diligence and it is now

untimely to present a claim based on this evidence more than twenty-five years after the trial.

In addition to being obviously immaterial, Mr. Dixon's affidavit is also inherently incredible. All of the information contained in the Motion which was not part of the affidavit was assumedly provided by Dixon, though Taylor does not directly state the source. As such, this information should have been included in Dixon's affidavit. The fact that it was not included indicates that Dixon was unwilling to swear to it being true. For example, Appellant alleged Holton's girlfriend "Angela Smith lied to police when she provided an alibi for Mr. Holton. . . ." (Motion at 7). Yet, Mr. Dixon's sworn affidavit makes no mention of Ms. Smith. Another example is when Appellant alleges "Mr. Holton admitted he murdered Ms. Vest because she threatened him after one of her friends had a drug-related conflict with Mr. Holton." (Motion at 8). Again, this information is provided in Appellant's Motion but is not provided in Mr. Dixon's affidavit. Nor is this information supported by any testimony in the trial record. Further, this information does not refute the evidence which was presented against Taylor at his trial. Based on the trial record, the information provided by Dixon is inherently incredible in addition to being obviously immaterial. Thus, this claim was properly denied without an evidentiary hearing.

Taylor has not only failed to present a legally sufficient claim, with sufficient supporting documentation, such as police records or pawn records, to bolster his newly discovered evidence claim, he has also presented a theory of the case that is directly contrary to the record at trial and the evidence which supported Taylor's guilt at trial. There was evidence linking Taylor to jewelry from the victim, including that it was found buried in the yard of the residence where Taylor lived at the time. Taylor, 630 So. 2d at 1039. Taylor's semen was found on the victim's blouse. Id. Taylor made inculpatory statements, including asking the police when the laboratory results on blood and hair samples would be ready because he wanted to know when they would "be back out to pick him up." Id. Taylor also made comments to a cellmate which match the facts of the murder. Id. Additionally, in one claim on direct appeal, "Taylor argues that identity was not a factor in this case because the State presented an abundance of evidence establishing that Taylor was present when the victim was murdered." Id. at 1042.

Mr. Dixon's affidavit does not contradict any of the evidence listed above. Thus, Taylor cannot show that Mr. Dixon's affidavit would probably produce an acquittal on re-trial. The trial record on its face directly refutes the version of events in Taylor's Motion. Since Taylor cannot meet prong two of the newly discovered evidence test for his first claim, the claim was properly denied.

In Bogle, this Court determined that DNA evidence from the fingernails of the victim could not meet prong two of the newly discovered evidence test because it was "not of such a nature that it would probably produce an acquittal on re-trial." Bogle v. State, 213 So. 3d 833, 851 (Fla. 2017). The evidence at issue was a DNA sample from the victim's fingernails that likely came from two unknown male contributors. Id. This Court found that the evidence was relevant to counter the State's argument that the scratches on Bogle were made during a struggle with the victim. Id. at 850-51. However, the evidence did not demonstrate that either of the DNA contributors were in fact the murderer, or that Bogle could conclusively be excluded as one of the contributors. Id. at 851. Thus, Bogle's claim of "newly discovered evidence" was denied. Id.

Taylor's claim of newly discovered evidence is even more tenuous than Bogle's. Mr. Dixon's affidavit does not say that Mr. Holton committed the murder. It merely says that he got a sailboat necklace from Mr. Holton's girlfriend. Like in Bogle, even if Dixon received a sailboat necklace from Holton's girlfriend, it is a far leap to say that Holton was the actual murderer. Further, like in Bogle, Mr. Dixon's version of events does not exclude Taylor from being the perpetrator. Perhaps Taylor, or Murray, gave the necklace to Holton to pay off a debt. Taylor, or Murray, could have dropped the necklace in the aftermath of the murder,

and Holton found it and gave it to his girlfriend. The conjecture of alternate theories based on Dixon's meager affidavit are endless. Even if Dixon's affidavit is true, if presented to a jury at a new trial, this information would not yield an acquittal. Thus, like in Bogle, Taylor cannot meet prong two of the newly discovered evidence test.

Further, since Dixon states he was questioned by police in conjunction with the murder of Ms. Vest, he is likely changing his statement from what he told police over 27 years ago in 1990. This Court has repeatedly recognized that recantations are exceedingly unreliable. See Archer v. State, 934 So. 2d 1187, 1196 (Fla. 2006). Additionally, Taylor claims that Dixon has "decided to come forward" because "Mr. Holton has passed." (Motion at 10). If Mr. Holton is in fact deceased, there is now no one to contradict Mr. Dixon's assertions. Such a situation is extremely unreliable and should be treated as such by this Court.

Additionally, Dixon's leaps of information appear to be uncorroborated hearsay and conjecture on the part of Mr. Dixon, which would not be admissible at trial. Dixon would also be impeached by his felony convictions if he were to testify at trial. (see Duval County case nos. 1991-CF-4517, 1991-CF-3217, 1991-CF-6364, 1991-CF-5114, etc.).

Appellant presented the post-conviction court with a legally insufficient claim that Dixon's affidavit constitutes "newly

discovered evidence." Appellant cannot demonstrate that based on this information, he would probably be acquitted at a new trial. Further development of this claim at an evidentiary hearing would also not demonstrate that Appellant was entitled to relief as the affidavit is in direct conflict with the record at trial. Thus, Appellant cannot meet either prong of the test for newly discovered evidence and summary denial of the claim was appropriate.

Claim Two of Newly Discovered Evidence

For his second claim, Appellant fails to meet either prong of the newly discovered evidence test. Appellant presented evidence that he was excluded as a contributor to the hair samples at his trial. In fact, he used this as his sole defense, to attempt to shift the blame to Murray alone. Since this evidence was already presented at trial, it is not newly discovered. Additionally, since the jury was already presented with and rejected this alternate theory of the case, this information would not lead to an acquittal upon retrial. Because Appellant's Motion failed to meet both prongs of the newly discovered evidence test, his claim was properly summarily denied.

Taylor claims that DNA results and litigation from Murray's case establish that Taylor was excluded as a contributor to the DNA evidence and thus would be exculpatory. However, the DNA evidence from Murray's case is related to hair samples from which Taylor has always been excluded as a contributor. Taylor, 630 So.

2d at 1040. The DNA which was used as evidence against Taylor in his case is related to semen found on the victim's blouse. Id. The evidence that Taylor was excluded as a contributor to the hair samples was presented at trial and the jury still convicted Taylor. Additional evidence showing Taylor is excluded as a contributor to the hair evidence would be cumulative and would not be exculpatory. Since Taylor cannot meet either prong of the newly discovered evidence test for claim two, this claim was properly denied.

Additionally, Appellant raised various claims of ineffective assistance of counsel related to the DNA from his case in his previous post-conviction motion which cannot be re-litigated. Taylor, 62 So. 3d at 1110-19. In seeking to re-litigate the validity of the DNA evidence in his case, Taylor is requesting that this Court re-review a claim that this Court has already decided. (Motion at 18); Taylor, 62 So. 3d at 1112. Claims that have been previously raised and decided are procedurally barred under the law of the case doctrine, or collateral estoppel.

> The doctrine of the law of the case requires that questions of law actually decided on appeal must govern the case in the same court and the trial court, throughout all subsequent stages of the proceedings. See Green v. Massey, 384 So. 2d 24, 28 (Fla. 1980) ("All points of law which have been adjudicated become the law of the case and are, except in exceptional circumstances, no longer open for discussion or consideration in subsequent proceedings in the case.").

Fla. Dep't of Transp. v. Juliano, 801 So. 2d 101, 105 (Fla. 2001). "In Florida, collateral estoppel prevents the same parties from

relitigating issues that have already been fully litigated and determined." Zeigler v. State, 116 So. 3d 255, 258 (Fla. 2013)(citing State v. McBride, 848 So. 2d 287, 290-91 (Fla. 2003)); see also Allen v. State, 854 So. 2d 1255, 1262 (Fla. 2003) (finding inmate was precluded from raising claim relating to proportionality review in habeas petition as claim had already been raised and rejected on direct appeal). Because Taylor is re-raising a previous DNA claim, this claim is procedurally barred and should be denied.

Further, Taylor is attempting to use Murray's case as a reason to overturn his own. However, the DNA evidence that the State introduced at Taylor's trial was different than the DNA evidence introduced at Murray's trial. The DNA evidence from Murray's trial is not relevant to Taylor and would not cause him to be acquitted at a re-trial.

In Taylor's case, a FDLE lab "analyst testified that semen found in the victim's blouse matched Taylor's DNA profile." Taylor, 630 So. 2d at 1040. However, in Murray's case, the DNA evidence came from a hair sample recovered from the victim's nightgown. Murray, 692 So. 2d at 160; Murray, 838 So. 2d at 1076. The hair samples in Murray's case were contentious and caused the reversal of his first and second trials. See Murray, 692 So. 2d at 160-64; Murray, 838 So. 2d at 1076, 1080-84, 1087. In Murray's latest trial, the hair samples were again at issue. Murray, 3 So.

3d at 1113. This Court described the evidence as follows: "pubic hairs recovered from the victim's body and from a nightgown were found to have the same microscopic characteristics as Murray's pubic hair, but not Taylor's." Id. The testimony came from Joseph DiZinno, a "hair specialist" with the FBI. Id.

Even if the DNA evidence from Murray's case did affect Taylor's case, Taylor should have known of the issue when this Court reversed Murray's first two trials in 1997 and in 2002. In order to be timely, Taylor should have raised a claim within one year of the reversals. Jimenez, 997 So. 2d at 1064. It is now sixteen years since Murray's second trial was reversed by this Court and this claim is time barred. Fla. R. Crim. P. 3.851(d).

To support his current claim, Taylor points to a motion from Murray's case that was filed December 29, 2016. (Motion Attachment 2). Taylor claims this attachment shows that "there have been subsequent DNA testing done by FDLE in Mr. Murray's case that excluded Mr. Taylor." (Motion at 19). However, just as discussed earlier, the DNA referred to in the attachment relates to the hair samples which were linked to Murray, not the semen samples which were linked to Taylor. See (Motion Attachment 2 at 3). The reference to Taylor in the attachment is as follows:

> Second, out of the six hairs tested, the lone hair (Q20, Hair #5) allegedly containing Mr. Murray's DNA also contained a mixture of another person's DNA that excluded the victim and the co-Defendant, Mr. Taylor.

(Motion Attachment 2 at 3). Whether or not Taylor is excluded as a contributor to the hair sample found on the nightgown is not relevant to semen matching Taylor's DNA having been found on the victim's blouse.

Even Taylor recognizes the differentiation between the semen samples and the hair samples. Taylor's lone witness at trial was an agent from the FBI, the same Joseph DiZinno who testified in Murray's case regarding the hair samples. Murray, 3 So. 3d at 1115-17. In Taylor's case, Agent DiZinno "testified that certain hairs found on the victim's body and clothing matched the pubic hairs of Taylor's accomplice" Murray. Taylor, 630 So. 2d at 1040. Using this and other evidence from trial, Taylor's counsel attempted to place blame for the murder solely on Murray during his closing argument. (Record at 730, 744-45). However, "[o]n cross-examination, the agent conceded that it is possible to commit a sexual battery and not leave any fibers or hair." Id. This theory of competing DNA evidence was presented to the jury at trial and was not successful at procuring an acquittal for Taylor. Whether or not Taylor was excluded as a contributor for the hair sample does not exculpate Taylor from having committed the murder. Thus, Taylor cannot meet prong two of the newly discovered evidence test because it is conclusive from Taylor's trial that this hair sample DNA evidence did not produce an acquittal.

The records in this case conclusively show that Taylor is not entitled to relief on this claim and summary denial was proper. Through due diligence, Taylor could have discovered that this Court reversed Murray's convictions because of issues related to the hair sample DNA. Since Taylor did not file a "newly discovered evidence" claim related to that evidence within one year of those reversals, they are now procedurally barred and were properly denied.

Further, the inadmissibility of the hair samples in Murray's case has no bearing on Taylor's own culpability. In fact, Taylor unsuccessfully used the hair sample evidence to his benefit in an attempt to demonstrate that Murray was the sole perpetrator. Therefore, the problems surrounding the DNA hair evidence in Murray's case are not likely to produce an acquittal on re-trial for Taylor. Thus, this claim was properly denied and this Court should affirm the denial.

CONCLUSION

WHEREFORE, this Court should affirm the summary denial of Appellant's post-conviction motion and affirm the conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13th day of June, 2018, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Michael Reiter, Esq., at mreiter37@comcast.net, Attorney for Appellant.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of the type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ Jennifer A. Donahue
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