

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-520

STEVEN RICHARD TAYLOR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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ON APPEAL FROM THE CIRCUIT COURT  
OF THE FOURTH JUDICIAL CIRCUIT,  
IN AND FOR DUVAL COUNTY, STATE OF FLORIDA  
FROM DENIAL OF SECOND SUCCESSIVE 3.851 MOTION

Lower Tribunal Case No. 161991CF002456XXXMA

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REPLY BRIEF OF APPELLANT

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## ARGUMENT I

### MR. TAYLOR WAS DENIED DUE PROCESS DURING HIS POSTCONVICTION PROCEEDINGS.

The State argues that a case management conference was not necessary because Mr. Taylor was not entitled to an evidentiary hearing (AB at 5). First, Florida Rule of Criminal Procedure 3.851(f)(5)(B) requires that Mr. Taylor be provided an opportunity to be heard on his claims. See Fla. R. Crim. P. 3.851(f)(5)(B) ("Within 30 days after the state files its answer to a successive motion for postconviction relief, the trial court **shall** hold a case management conference . . . "). The Rule also makes clear that the purpose of the conference is to allow the trial court to hear argument on any purely legal claims or to determine if an evidentiary hearing is necessary. *Id.* Here, Mr. Taylor was deprived of the opportunity to be heard.

Further, the error that occurred was not harmless. See *Mordenti v. State*, 711 So. 2d 30, 32 (Fla. 1998). This Court held in *Mordenti*:

In *Huff*, we directed that trial judges must allow the attorneys in a capital case the opportunity to appear before the court to be heard on an initial rule 3.850 motion. We found that such a hearing was necessary due to the severity of the punishment at issue in death cases. The purpose of what has now come to be known as a "Huff hearing" is to allow the trial judge to determine whether an evidentiary hearing is required and to hear legal argument relating to the motion. In *Huff*, we acknowledged that the requirement

for this type of hearing does not mean that the judge must conduct an evidentiary hearing in all death penalty postconviction cases; however, we concluded that a Huff hearing does help to ensure that a defendant's due process rights are protected.

*Id.* at 31. While Mr. Taylor's motion was not an initial postconviction motion, it was one in which new facts were alleged; facts which the State acknowledges contradicts the evidence of Mr. Taylor's guilt at trial. Therefore, both the Rule and the circumstances presented clearly compel that a case management conference was required.

The State relies on the currently unpublished opinion of *Sochor v. State*, 2018 WL 1100831 (Fla. Mar. 1, 2018). However, *Sochor* is distinguishable from Mr. Taylor's case. At issue in *Sochor* was an alleged statement to the affiant from Mr. Sochor's brother claiming more culpability in the crime. But, as this Court made clear, the evidence, taken as true, constituted inadmissible hearsay and therefore did not constitute new evidence "which would be admissible" at a retrial. See *Spann v. State*, 91 So. 3d 812, 815 (Fla. 2012). In Mr. Taylor's case, Dixon's testimony, contained in his sworn affidavit, along with the information law enforcement uncovered about Dixon at the time of the homicide investigation, is admissible and exculpatory. Thus, not only was a case management required, but also Mr. Taylor met the standard to show that an evidentiary hearing was required.

ARGUMENT II

**THE TRIAL COURT ERRED IN SUMMARILY DENYING MR. TAYLOR'S SECOND SUCCESSIVE RULE 3.851 MOTION AND MOTION FOR REHEARING, WHICH WERE PREMISED ON NEW DNA EVIDENCE, AND AN INTERVIEW AND AFFIDAVIT FROM JAMES DIXON, WHO EXPLAINED TO AN INVESTIGATOR THAT HE KNOWS THE TRUE PERPETRATOR IS WALTER HOLTON - A MAN ORIGINALLY INTERVIEWED ABOUT THE INSTANT CASE, THEREBY VIOLATING MR. TAYLOR'S DUE PROCESS RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE FEDERAL CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION TO A FAIR, FULL, AND IMPARTIAL POSTCONVICTION HEARING**

The State argues that summary denial of Mr. Taylor's successive Rule 3.851 motion was appropriate because the allegations contained in the motion: "directly contradicted the evidence of his guilt which was presented at trial." (AB at 5-6). However, the fact that Mr. Taylor's allegations directly contradict the evidence presented at trial is exactly why Mr. Taylor was entitled to an evidentiary hearing on his claim. Mr. Taylor's allegations must be taken as true. And, when they are, they present an alternative theory for the murder of the victim. An evidentiary hearing is necessary to determine which evidence is more credible.

Moreover, contrary to the State's argument, Mr. Taylor must not prove his claim of newly discovered evidence via his pleadings. That standard is imposed upon him once he has been provided an opportunity to present his evidence. At this juncture, in order to be granted an evidentiary hearing, Mr.

Taylor must merely show that "the motion and record [**do not**] conclusively show that the defendant is entitled to no relief." *Gaskin v. State*, 737 So. 2d 509, 516 (Fla. 1999). "Further, this Court is guided by the principle that courts are encouraged to liberally view the allegations to allow evidentiary hearings on timely raised claims that commonly require a hearing. See generally Amendments to Fla. Rules of Crim. Pro. 3.851, 797 So.2d 1213, 1219-20 (Fla. 2001)." *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2010). Here, there is nothing in the record refuting Mr. Taylor's evidence. Indeed, law enforcement's investigation of the homicide supports and corroborates much of Mr. Dixon's affidavit. Under the law, Mr. Taylor is entitled to an evidentiary hearing. Specifically, as to Mr. Taylor's diligence, the rule is the same for a successive postconviction motion, where allegations of previous unavailability of new facts, as well as diligence of the movant, warrant evidentiary development if disputed or if a procedural bar does not "appear on the face of the pleadings." *Card v. State*, 652 So. 2d 344, 346 (Fla. 1995).<sup>1</sup> Factual allegations as to the merits of a constitutional

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<sup>1</sup>Successive Rule 3.851 petitioners have received evidentiary hearings based on newly discovered evidence and merits consideration. *State v. Mills*, 788 So. 2d 249, 250 (Fla. 2001) (this Court affirmed the circuit court's grant of sentencing relief on a third Rule 3.850 motion premised upon a testifying co-defendant's inconsistent statements to an individual while incarcerated); *Lightbourne v. State*, 742 So. 2d 238, 249 (Fla. 1999) (remanding for an evidentiary hearing to

claim as well as to issues of diligence must be accepted as true, and an evidentiary hearing is warranted if the claims involve "disputed issues of fact." *Maharaj v. State*, 684 So. 2d 726, 728 (Fla. 1996). Here, the State argues that Mr. Taylor was not diligent. ...

Indeed, in *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998), this Court held that newly discovered evidence satisfies the second prong of the *Jones* test if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." Further, "[t]he determination of whether the

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evaluate the reliability and veracity of trial testimony); *Melendez v. State*, 718 So. 2d 746 (Fla. 1998) (noting that lower court held an evidentiary hearing on defendant's allegations that another individual had confessed to committing the crimes with which defendant was charged and convicted); *Swafford v. State*, 679 So. 2d 736, 739 (Fla. 1996) (remanding for an evidentiary hearing to determine if evidence would probably produce an acquittal); *Roberts v. State*, 678 So. 2d 1232, 1235 (Fla. 1996) (remanding for evidentiary hearing because of trial witness recanting her testimony); *Scott v. State*, 657 So. 2d 1129, 1132 (Fla. 1995) (holding that lower court erred in failing to hold an evidentiary hearing and remanding); *Johnson v. Singletary*, 647 So. 2d 106, 111 (Fla. 1994) (remanding case for limited evidentiary hearing to permit affiants to testify and allow appellant to "demonstrate the corroborating circumstances sufficient to establish the trustworthiness of [newly discovered evidence]"); *Jones v. State*, 591 So. 2d 911, 916 (Fla. 1991) (remanding for an evidentiary hearing on allegations that another individual confessed to the murder with which Jones was charged and convicted and was seen in the area close in time to the murder with a shotgun).

statements are true and meet the due diligence and probability prongs of *Jones II* **usually requires an evidentiary hearing to evaluate credibility unless the affidavit is inherently incredible or obviously immaterial to the verdict and sentence.**" *Davis v. State*, 26 So. 3d at 526. Based on these principles, it is clear that Mr. Taylor is entitled to an evidentiary hearing.

Further, as to Mr. Taylor's request for the discovery concerning the recent DNA testing in Mr. Murray's case, the State claims that the recent test results are not relevant to Mr. Taylor. However, Mr. Taylor must be entitled to determine what relevance, if any, the new testing and results have to his case. For example, if the State tested hair samples and any results matched Mr. Dixon or Mr. Holton, then clearly that evidence would be relevant and exculpatory to Mr. Taylor. Likewise, if evidence that was not previously tested was now tested, and excluded Mr. Taylor, then that evidence is exculpatory and must be disclosed. At a minimum, due process requires that the information be disclosed.

The State suggests though Dixon's affidavit can be read to be in conflict with Taylor's commission of the crime, it does not prove or provide an alternate explanation for the evidence presented against Taylor at his trial (AB 13). Not necessarily true. It is not unlikely that the evidence at both Murray and Taylor's trials established burglary and theft. However, the

murder of Ms. Vest, via Dixon's affidavit, can be shown as having been done by another at some time after a burglary. That alone establishes a conflict with the State's theory of the case that Murray and Taylor committed the murder to the exclusion of anyone else. In additions, retesting of the DNA with more modern testing procedures may well support Dixon's theory. Which is exactly why an evidentiary hearing is required. In *Hildwin v. State*, 1413 So. 3d 1178 (2014) this court found:

Based on the fact that this case rested on circumstantial evidence that relied on now-entirely discredited and unreliable scientific evidence, which now identifies Haverty as the donor of the biological material found on items at the crime scene, the newly discovered evidence identifying the donor of the DNA left on these items changes the entire character of the case originally presented to the jury, particularly in light of the fact that additional evidence discovered in postconviction proceedings casts further doubt on Hildwin's guilt. In reviewing the evidence in this case, we conclude that the cumulative effect of the newly discovered evidence weakens the case against Hildwin to such an extent that it gives rise to a reasonable doubt as to his culpability.

**CONCLUSION**

In light of the foregoing arguments, this Court must Reverse the trial court's ruling and order that an evidentiary hearing be conducted.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service to jennifer.donahue@myfloridalegal.com Assistant Attorney General, Office of the Attorney General, The Capitol, Tallahassee, FL 32399-1050, on this 26th day of June, 2018.

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the type used in this brief is Courier New 12 point.

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