

**IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC20-1863**

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**GLEN EDWARD ROGERS,  
Appellant,**

**v.**

**STATE OF FLORIDA,  
Appellee.**

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**ON APPEAL FROM THE CIRCUIT COURT OF THE THIRTEENTH  
JUDICIAL CIRCUIT, IN AND FOR HILLSBOROUGH COUNTY,  
FLORIDA  
Lower Tribunal No. 291995CF01531400AHC**

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**REPLY BRIEF OF THE APPELLANT**

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## **PRELIMINARY STATEMENT**

References to the current record on appeal pertaining to this narrow issue are in the form (Sup. R. 123). Glen Rogers is referred to as “Appellant” or “Mr. Rogers.” References to the State’s Answer Brief are in the form (AB at 123). All other abbreviations are self-explanatory and clear.

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## **REPLY TO ARGUMENT AND CITATIONS OF AUTHORITY**

**THE CIRCUIT COURT ERRED BY FAILING TO CONDUCT AN EVIDENTIARY HEARING AND IN DENYING MR. ROGERS'S CLAIM OF NEWLY DISCOVERED EVIDENCE OF CHILDHOOD SEXUAL ABUSE. IN DENYING THE CLAIM WITHOUT AN EVIDENTIARY HEARING, THE CIRCUIT COURT ERRED IN VIOLATION OF CLEARLY ESTABLISHED FLORIDA LAW. THE ERROR ALSO VIOLATED THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. THE NEWLY DISCOVERED EVIDENCE WOULD PROBABLY YIELD A LESS SEVERE SENTENCE.**

The lower court failed to follow this Court's precedent regarding holding evidentiary hearings for claims of newly discovered evidence. Thus, there is an incomplete appellate record before this Court regarding the merits of this issue. This Court should remand and issue an order for the trial court to conduct an evidentiary hearing. A trial court may summarily deny a newly discovered evidence motion without an evidentiary hearing "*only if* 'the motion, files, and records in the case conclusively show that the movant is entitled to no relief.'" *McLin v. State*, 827 So. 2d 948, 954 (Fla. 2002) (internal citations omitted) (emphasis added).

"In evaluating the legal sufficiency of a motion based on newly discovered evidence, the court must accept the allegations as true for

the purpose of determining whether the alleged facts, if true, would ‘render the judgment vulnerable to collateral attack.’” *Nordelo v. State*, 93 So. 3d 178, 184 (Fla. 2012) (internal citations omitted). The Court must then engage in a two-step process. “[T]he court must first determine whether the motion is facially sufficient, i.e., whether it sets out a cognizable claim for relief based upon the legal and factual grounds asserted.” *Spera v. State*, 971 So. 2d 754, 758 (Fla. 2007) (internal quotations and citations omitted). Next, if “the trial court deems the motion (or the particular claims within it) facially sufficient” the Court must “review the record for evidence refuting the claim.” *Id.* at 758 (internal citations omitted). Unless the record “conclusively” refutes the claim, an evidentiary hearing is required. *McLin*, 827 So. 2d at 955.

This Court has held that evidentiary hearings are typically required for newly discovered evidence claims. *See Nordelo*, 93 So. 3d at 185; *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2009); *Jones v. State*, 591 So. 2d 911, 916 (Fla. 1991) (“On the face of the pleadings, we cannot determine whether some of the evidence can properly be said to be newly discovered. Moreover, we cannot fully evaluate the quality of the evidence which demonstrably meets the definition of newly

discovered evidence. Therefore, we believe it necessary to have an evidentiary hearing on the claims that are based upon newly discovered evidence.”). Denial of a newly discovered evidence claim on the merits, without an evidentiary hearing, is only permitted if: (1) the factual allegations presented in the postconviction motion are “conclusively refuted” by the record or otherwise “inherently incredible,” *Davis*, 26 So. 3d at 526; *Peede v. State*, 748 So.2d 253, 257 (Fla.1999); or (2) even if true, those facts are “obviously immaterial to the verdict and sentence.” *Nordelo*, 93 So. 3d at 184; *Davis*, 26 So. 3d at 526.

It was improper to summarily deny Appellant’s successive motion based on the opinion that he is the “primary source” of the newly discovered evidence. (AB at 16). As articulated in the initial brief for the basis to Appellant’s claims for relief, Mr. Rogers previously denied being sexually abused in the past, until repressed memories were uncovered when preparing for clemency proceedings during the fall of 2019. The uncovering of Mr. Rogers’s repressed memories is analogous to a witness recantation. Recanted testimony cannot be “discovered” until the witness *chooses* to recant. *Davis*, 26 So. 3d at 528; *Burns v. State*, 858 So. 2d 1229, 1230 (Fla. 1st DCA

2003) (“Even though the appellant knew at trial that the codefendant was lying, the appellant could not have gotten the codefendant to admit that he was lying earlier, and thus the recantation is newly discovered evidence that could not have been obtained earlier with due diligence.”). Appellant could not *choose* to recant, because of the nature of how traumatic amnesia is triggered by child sexual abuse. The issue pertaining to “due diligence” is the same in a recanting witness, as it is with Appellant’s repressed memories: The information is patently undiscoverable.

Regarding traumatic amnesia, and the need for the delayed discovery doctrine to postpone the accrual of the cause of tort action for sufferers of childhood sexual abuse, this Court in *Hearndon v. Graham*, 767 So. 2d 1179, 1181 (Fla. 2000) held as follows:

Reasons in favor of application of the doctrine in the case of childhood sexual abuse are as follows. First, it is widely recognized that the shock and confusion resultant from childhood molestation, often coupled with authoritative adult demands and threats for secrecy, may lead a child to deny or suppress such abuse from his or her consciousness. *See Ault*, 637 N.E.2d at 872 (citing *Evans*, 265 Cal. Rptr. at 606, 608). Second, the doctrine is well established when applied, for example, in cases involving breach of implied warranty or medical malpractice; it would seem patently unfair to deny its use to victims of a uniquely sinister form of abuse. Accordingly, application

of the delayed discovery doctrine to childhood sexual abuse claims is fair given the nature of the alleged tortious conduct and its effect on victims, and is consistent with our application of the doctrine to tort cases generally; thus, we hold that the doctrine is applicable to childhood sexual abuse cases.

*Id.* at 1186 (footnotes omitted). This Court has never stated that *Hearndon* is inapplicable in capital postconviction proceedings. The lower court's refusal to follow *Hearndon* in the context of providing access to the courts to present mitigation, violates Mr. Rogers's due process rights. Also, Mr. Rogers's Eighth Amendment rights are being violated as he is being condemned to death, without the opportunity for a jury to know the unique and horrific mitigating circumstances that explain Appellant's convictions. Though the Appellant's jury heard evidence in aggravation and *some* mitigation, evidence of just how mitigated the circumstances were, did not reach the factfinders.

This suppression of mitigating evidence violates fairness, equity, due process, proportionality, and the Eighth Amendment, leading to an arbitrary and inconsistent application of the irreversible and most severe penalty of death. *See Furman v. Georgia*, 408 U.S. 238 (1972). The State's reliance on *R.R. v. New Life Community Church of CMA, Inc.*, 303 So. 3d 916, 924-25 (Fla. 2020) is misplaced.

Contrary to the State's assertions, this Court's decision in *R.R.* does not necessarily limit *Hearndon* as being "only applicable in cases involving an intentional tort brought against the alleged perpetrator of the abuse." (AB at 18). *R.R.*, like *Hearndon*, is a case about a civil cause of action. This Court in *R.R.* was tasked with deciding issues pertaining to "separation of powers and the proper role of courts in applying statutes of limitations." *R.R.*, So. 3d at 918. This Court has never analyzed *Hearndon* in the context of Appellant's claims of newly discovered mitigating evidence of childhood sexual abuse. Importantly, before this Court can make such a determination this Court will need a complete evidentiary record.

If this Court remands for an evidentiary hearing, expert testimony from University of South Florida associate criminology professor, Dr. Bryanna Fox and renowned psychiatrist, Dr. Michael Maher, will testify about how the evil, consistent, and varied sexual abuse Mr. Rogers experienced as a child, manifested itself into traumatic amnesia. The lower court was in no position to decide on the validity of *Hearndon* in Appellant's case without evaluating testimony from experts, and Mr. Rogers himself, if he chooses to testify. The public policy considerations for supporting adults who

suffered traumatic sexual abuse in *Hearndon*, are sound, compassionate, and based on the science of how the human brain functions. Those factors are even more important in the realm of capital punishment. We are quite literally dealing with life and death. The State urges this Court—again, without the benefit of an evidentiary record—to opine that adults seeking monetary damages pursuant to *Hearndon*, are more worthy of relief than capital defendants endeavoring to show mitigating circumstances that would support a sentence less severe than death. Irrespective of the fact that Mr. Rogers has had a separate penalty phase proceeding in both Florida and California that detailed some abusive aspects of his childhood (AB at 19), those proceedings never mentioned a solitary word about the sexual abuse Appellant suffered, because his memories were repressed due to his traumatic amnesia.

Mr. Rogers's traumatic amnesia also explains why the information about the abuse could not have been obtained from family members, even with due diligence. Mr. Rogers previously denied being sexually abused, thus there was nothing to follow up on to discover during earlier stages of Appellant's proceedings. On page 21 of the State's Answer Brief, the State quotes from the lower court

order (Sup. R. 208-09) in support of their assertions that Mr. Rogers's brothers Clay, Gary, and Craig could have allegedly been asked about the sexual abuse allegations at an earlier date in time, with due diligence. However, without the benefit of an evidentiary hearing, there is no basis to support such opinions. The record before this Court does not detail when Gary or Craig first recalled information about Appellant's sexual abuse, nor when they would have been willing to testify about such matters. That information is absent because the trial court refused to hold an evidentiary hearing.

On pages 21-22 in the Answer Brief, the State focuses on the moneymaking ventures some engaged in to exploit Mr. Rogers's tragic story, in the form of a documentary film and two books. Regarding the documentary, of which Clay Rogers was the star of the film, Glen Rogers did not collaborate in the making of the film and never corroborated any of the details. In fact, the central thesis of the documentary alleges that Appellant was the true murderer of Nicole Brown Simpson and Ronald Goldman. Clay has never testified in any of Appellant's prior proceedings because he has always made himself unavailable; on the run, avoiding cops and courthouses. Clay was never previously willing to assist in mitigation investigations on

Appellant's behalf prior to shortly before his death in March of 2020. Similarly, it is distraction for the State to mention books written by an author who has not been listed as a defense witness, who wrote about details that have not been alleged, and whose publications occurred while Appellant was suffering from traumatic amnesia.

Beginning on page 23 of their Answer Brief, the State concedes that the lower court never reached the second prong for analyzing a claim for newly discovered evidence. Appellant maintains that in this case, the newly discovered evidence "would probably yield a less severe sentence." *Walton v. State*, 246 So. 3d 246, 249 (Fla. 2018) (quoting *Swafford v. State*, 125 So. 3d 760, 767 (Fla. 2013)). In opining that any new hypothetical penalty phase proceeding would include additional "aggravation," the State demonstrates misplaced focus on Mr. Rogers's conviction and death sentence in California. *See People v. Rogers*, 304 P. 3d 124 (Cal. 2013). Now is not the proper juncture to even litigate the admissibility of such evidence. The State's focus once again puts the proverbial "cart before the horse," as the issue before this Court is the error of the lower court in failing to conduct an evidentiary hearing to provide evidentiary support, before any legitimate analysis of Appellant's newly discovered

evidence can be made.

Also, any new penalty phase proceeding would require the need for only one solitary juror to vote for life without the possibility of parole; “a less severe sentence.” Mr. Rogers is constitutionally entitled to a full holistic view of all available mitigating evidence to provide the proper “narrowing” function for “individualized sentencing” for any capital defendant. *See Lockett v. Ohio*, 438 U.S. 586, 608 (1978). Moreover, regardless of how any proposed statutory aggravators are weighed, Florida law never *compels* nor *requires* a jury to support a death sentence. A jury in Florida is permitted to consider mercy.

In considering mercy, a jury would finally, for the first time, hear details about the depraved and pervasive sexual abuse Mr. Rogers experienced as a child. In recent years, the media has reported extensively on the sex trafficking of children. In the time since Mr. Rogers’s trials, there has been a greater awareness and understanding among the American public about the devastation wrought by sexual abuse. Institutions such as the Catholic Church and the Boy Scouts of America, among other shamed entities, have paid out countless sums of money in damages to the surviving

victims. The substance of the abuse allegations, often, have derived from the uncovering of repressed memories, which is based on medical science. Appellant's trauma is now more understandable than ever before.

Speaking of institutions, no jury has been apprised about how the government, entrusted with correcting, and helping young juvenile offenders, instead allowed Appellant to be victimized. Factfinders were never aware that Appellant was repeatedly abused by staff at the Training Institution of Central Ohio ("TICO"). Dr. Clemens Bartollas was a social worker and cottage director at TICO during the early 1970s. Dr. Bartollas is an expert in criminology and submitted a report as a proposed expert on Appellant's behalf. (Sup. R. 173-77). At TICO, government staff used tax dollars to abuse and exploit children. Most notoriously, Percy L. Jackson, a staff correctional officer, would rape Appellant on the facility grounds, in addition to signing the child out to victimize him in Jackson's own personal bedroom at home. Mr. Rogers recalls all the horrific details and is now capable of telling his story. As Dr. Bartollas opined: "There is no way the state of Ohio did not fail this youth (Glen), and this certainly should contribute to a mitigation of sentence." (Sup. R.

177).

Mr. Rogers never had a chance for a productive life in free society. No jury has ever heard how Mr. Rogers was repeatedly sexually abused, by so many people, in such various toxic ways. Mr. Rogers spent a lot of time in a neighborhood brothel as a small child, and he was repeatedly raped by a female adult neighbor. That lady predator forever tainted Mr. Rogers's memories of a first "sexual experience."

Notorious local pedophile, Robert Liddil, obsessively hounded young Mr. Rogers until Appellant was in the man's stable of child victims, and Liddil threatened Appellant to keep him from seeking help. Nobody helped young Glen Rogers, not even the older brother he most looked up to, Clay. No, Clay further victimized Appellant, introducing him to Vanessa Auer and Carla Taggert, who raped him and further sexualized him for the benefit of local area child pornographers like a man known as "Bear."

As Appellant's older brother Craig is willing to testify to, "Hamilton, Ohio was infested with child predators." Two more of such predators who violated Appellant, include a famous local newspaper reporter who once lived in a big house on the corner of Park Avenue

and Eaton Road, as well as man who drove a fancy convertible, known as Paul Lee Sedowski. Mr. Rogers was continuously exploited in his hometown and is a surviving victim of child sex trafficking.

Mr. Rogers's death sentence is unreliable. He sits on death row because his jury was unaware of the full extent of the mitigating circumstances that explained his behavior. The lower court erred, contrary to this Court's precedent, by summarily denying his pleading. Mr. Rogers has timely filed a facially sufficient claim of newly discovered evidence. At this point, the trial court must conduct an evidentiary hearing to weigh the evidence and issue thorough findings based on the evidence submitted. A new penalty phase proceeding would "probably yield a sentence less severe than death," because at least one juror would deem a life as devastatingly tragic as Glen Edward Rogers's to be worthy of mercy.

### **CONCLUSION AND RELIEF SOUGHT**

The lower court erred in denying Appellant's claim of newly discovered evidence, without first conducting an evidentiary hearing to properly evaluate and weigh the evidence. This Court should remand with an order for the circuit court to hold an evidentiary hearing consistent with the law. Relief is proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the Reply Brief has been furnished via electronic transmission to Senior Assistant Attorney General Stephen Ake, [stephen.ake@myfloridalegal.com](mailto:stephen.ake@myfloridalegal.com), and [CapApp@myfloridalegal.com](mailto:CapApp@myfloridalegal.com); and by U.S. Mail to Glen Rogers, DOC #124400, Union Correctional Institution, P.O. Box 1000, Raiford, Florida 32083, on this 15th day of March 2021.

/s/ Ali A. Shakoor

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**CERTIFICATE OF COMPLIANCE**

I **hereby certify** that the foregoing Reply Brief was generated in Bookman Old Style 14-point font, pursuant to Fla. R. App. P. 9.045.

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