

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-1787
LOWER COURT CASE NO. 1991-CF-1505

STEVEN EDWARD STEIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

AMENDED INITIAL BRIEF OF APPELLANT

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REQUEST FOR ORAL ARGUMENT

Mr. Stein respectfully requests oral argument pursuant to Fla. R. App. P. 9.320, and submits that permitting argument would be consistent with this Court's precedent in other appeals in this procedural posture. See, e.g., *Smith v. State*, 75 So. 3d 205 (Fla. 2011) (holding oral argument on successive postconviction motion); *Rivera v. State*, 995 So. 2d 191 (Fla. 2008) (same); *Johnson v. State*, 44 So. 3d 51 (Fla. 2010) (same).

STATEMENT OF THE CASE AND FACTS¹

I. PROCEDURAL HISTORY

On June 20, 1991, Mr. Stein was convicted of first-degree murder, armed robbery, and armed burglary (R. 317-21). On the same day, the jury recommended death by a vote of 10-2, and the trial court sentenced Mr. Stein to death on July 23, 1991 (R. 354-68). On direct appeal, this Court affirmed Mr.

¹ Citations in this brief are as follows: References to the direct appeal record of Mr. Stein's trial are designated as "R. ___". "T. ___" refers to the trial transcript. The direct appeal record and trial transcript for Mr. Stein's codefendant are referenced as "CR. ___" and "CT. ___", respectively. References to the record of Mr. Stein's initial postconviction proceedings are designated as "PCR Vol. [#] [page number]". References to the 4902-page record filed in preparation for this appeal of the order denying Mr. Stein's third successive postconviction motion are designated as "PCR4 ___". All other references are self-explanatory or otherwise explained herewith.

Stein's convictions and sentence. *Stein v. State*, 632 So. 2d 1361 (Fla. 1994). Certiorari was denied on October 3, 1994. *Stein v. Florida*, 513 U.S. 834 (1994).

On November 15, 1995, Mr. Stein filed a motion for postconviction relief in the circuit court, and twice amended. Following an evidentiary hearing, relief was denied on May 2, 2006, which this Court affirmed on September 25, 2008. *Stein v. State*, 995 So. 2d 329 (Fla. 2008), *reh'g denied* November 19, 2008.

On November 30, 2009, Mr. Stein filed a federal petition for writ of habeas corpus in the United States District Court for the Middle District of Florida. *Stein v. Secretary, Fla. Dept. of Corrs.*, Case No. 3:09-cv-1162-MMH-PDB (M.D. Fla), Doc. 1. That petition is currently pending.

On October 22, 2010, Mr. Stein filed a successive motion for postconviction relief based upon *Porter v. McCollum*, 558 U.S. 30 (2009). On April 26, 2012, this Court affirmed the circuit court's June 1, 2011, denial of relief. *Stein v. State*, 91 So. 3d 784 (2012). Certiorari was denied by the United States Supreme Court on November 26, 2012. *Stein v. Florida*, 133 S. Ct. 661 (2012).

On April 12, 2016, Mr. Stein filed a petition for writ of habeas corpus in this Court, concerning *Hurst v. Florida*, 577 U.S. 92 (2016). This Court denied the petition on March 3, 2017. *Stein v. Jones*, Florida Supreme Court Case No. SC16-621 (Order, March 3, 2017).

Mr. Stein filed a second successive motion for postconviction relief based

on the interplay between the decisions in *Hurst v. Florida*, *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), and *Mosely v. State*, 209 So. 3d 1248 (Fla. 2016) (PCR3 1-42). The circuit court denied the motion and this Court affirmed. *Stein v. State*, 237 So. 3d 919 (Fla. 2018). Certiorari was denied on October 1, 2018. *Stein v. Florida*, 139 S. Ct. 191 (2018).

Mr. Stein filed a third successive motion for postconviction relief on November 24, 2021 (PCR4 1-23), which was amended on March 29, 2022 (PCR4 53-97). Without holding a case management hearing, the circuit court summarily denied relief on October 12, 2022 (PCR4 3899-4857). Mr. Stein moved for rehearing on October 27, 2022, arguing that, as this Court held in *Huff v. State*, 622 So. 2d 982, 983 (Fla. 1993), the circuit court's denial of postconviction relief without first holding a case management conference pursuant to Fla. R. Crim. P. 3.851(f)(5)(B) violated due process (PCR4 4858-61). Rehearing was denied on November 7, 2022 (PCR4 4862). This appeal follows.

II. MR. STEIN'S TRIAL

This Court's 1994 direct appeal opinion laid out the underlying facts of the crime as presented at the guilt phase of Mr. Stein's trial:

Stein, Marc Christmas, and Kyle White were roommates. Stein was employed as a cook at a Lem Turner Road Pizza Hut in Jacksonville, Florida. Christmas was unemployed, but was a previous employee of an Edgewood Avenue Pizza Hut in Jacksonville, Florida...On the day of the murders, Christmas, Stein, Stein's girlfriend, and White were home together. About

9:30 p.m. Stein and Christmas left, taking with them Stein's .22 caliber rifle. They stated that they were going to see Christmas' father about selling him the rifle. They returned home around 11:30 to 11:45 p.m.

The next morning, Dennis Saunders and Bobby Hood were found shot to death at the Edgewood Avenue Pizza Hut and the sum of \$980 was missing from the restaurant. The victims were shift supervisors of the restaurant and their bodies were found in the men's restroom. Bullet fragments and cartridge casings were recovered from the restroom area. Hood had suffered five gunshot wounds – four to the head and one to the chest. The medical examiner testified that Saunders was sitting on the floor at the time the shots began and, given the position of the bullet wounds, that he was moving around during the shooting.

Ronald Burroughs was an employee of the Edgewood Avenue Pizza Hut. He testified that on the night of the murders, he left the restaurant at 11:15 p.m. When he left, Hood and Saunders were still inside the restaurant and only two customers remained at the restaurant. Burroughs later identified those two customers as Stein and Christmas. Additionally, an unpaid guest check on a table in the restaurant contained a fingerprint belonging to Christmas. Additional testimony revealed that three expended .22 caliber casings were found at the residence of Stein and Christmas. A ballistics expert testified that the casings found at the scene and the casings found at the residence were fired from the same firearm. Additionally, Christmas's father testified that Stein and Christmas did not come to his house on the night of the murders.

Stein v. State, 632 So. 2d 1361, 1363 (Fla. 1994).

Following his arrest, in response to police questioning, Mr. Stein stated that the shooting of Saunders and Hood occurred when the "robbery went bad" (PCR4 632, 644, 720, 963, 1264, 1278, 1308, 1343). The defense argued at trial that "The robbery went bad means that Stein didn't want to

have anything to do with the deaths of these people.” (PCR4 1344); *see also id.* at 1346 (“[W]hen you use your common sense on applying what the confession means by the robbery went bad, I think it shows several things and I think I can argue that Mr. Stein...did not want these people killed”).

The State presented an alternative narrative, through Mr. Stein’s roommate, Ralph (Kyle) White.

White testified that a week before the crimes, he had an “unusual conversation” with Mr. Stein and Christmas in the trailer where the three lived (T. 597, 600, 609). White claimed he overheard Christmas comment: “[W]e need to keep it to ourselves, we can’t trust him” (T. 609). White said that he asked Christmas what was going on and Christmas asked him about the alarm system at the Pizza Hut on Lem Turner (T. 609-10). They were discussing ways to commit a robbery.

White testified that while discussing the alarm system, Mr. Stein brought up the Pizza Hut in Edgewood (T. 610). The discussion moved to killing the Pizza Hut manager at the bank when he was making his deposit (T. 611, 614). In raising this idea, Christmas used the word “hit”, meaning “to kill him, eliminate him” (T. 611). White said that he cautioned against the idea, saying there was too great a chance of being caught (T. 615). Christmas then mentioned the Pizza Hut in Edgewood because it did not

have an alarm system, but Mr. Stein did not believe they could remain in that Pizza Hut for the time needed for the safe to open (T. 611, 616).

White related that the conversation turned again to Christmas suggesting that they “take out” the manager on his way to the bank (T. 616). White claimed he told them that “you don’t have to ... kill them” because the manager would give them the money without any resistance, but that Christmas and Mr. Stein did not want any witnesses (T. 616-17).

White testified that Christmas asked to use White’s motorcycle to follow the manager for a week in order to determine the best place for the robbery (T. 617), at which point “I realized it was getting way out of hand and this was becoming more serious[.]” (T. 617). White said he told Mr. Stein and Christmas that they could not use his motorcycle and he did not want to know about it or ever find out that they did it, then he left the room (T. 617).

White recounted that on the night of the crimes, Mr. Stein and Christmas left the trailer around 9:15 or 9:30 p.m., saying they were going to sell Mr. Stein’s rifle to Christmas’ dad (T. 618-19). They left with Mr. Stein’s Marlin .22 rifle (T. 620). They returned just before midnight and went to the Pizza Hut on Lem Turner with White, Christine Moss, and her son (T. 623). The Pizza Hut was closed and Mr. Stein was not needed to clean the ovens, so the group went to the gas station to purchase beer, snacks, and

cigarettes, then went back to the trailer (T. 624). Throughout this timeframe, White said Mr. Stein and Christmas did not appear intoxicated (T. 624).

In the days following Mr. Stein's arrest, White contacted law enforcement and turned over keys to the Pizza Hut that he found in Christmas' room and three .22 caliber long expended cartridges that had been fired from the front porch of the trailer on New Year's Eve (T. 628). He, Mr. Stein, and Christmas had all fired the weapon that day. He said he found the cartridges on the porch (T. 629). The bullets were used to link Mr. Stein and his Marlin .22 rifle to the crimes. The jury heard that the expended cartridges White turned over matched those from the crime scene and "were all fired by a single firearm and fired in the same firearm" (T. 701-02). Mr. Stein's .22 Marlin had not been recovered at the time he went to trial.²

The State relied on White's testimony in closing argument, to argue that Mr. Stein planned the homicide (T. 761). The State told the jury:

Steven Stein and Marc Christmas planned the robbery together. You recall the testimony of Kyle White that about a week or so before the killing, before the robbery and the murders he had a conversation, a very unusual conversation with Stein and

² In July 1991, after Mr. Stein's trial, Kimberly Brinson provided the State with information about the whereabouts of the Marlin .22 rifle. She had obtained the information from Christmas, who told her to use it to negotiate a plea agreement to a lesser sentence on her own criminal charges relating to conspiracy to have her husband killed (CT. 1052-54). FDLE Analyst David Warniment testified at Christmas' trial that the cartridge casings found at the crime scene had been fired from the recovered Marlin .22 (CT. 1104).

Christmas wherein they planned to rob a Pizza Hut Restaurant and wherein they specifically planned to kill any witness to the robbery. That, ladies and gentlemen, is evidence of Stein's premeditated intent that the victims be killed. It's also evidence that he knew what was going to happen because he and Marc Christmas were acting as partners in this, they were conspiring together.

Now, Kyle White used the phrase hit. They talked about hitting the manager on the way to the bank. They talked about hitting employees, and he told you what that meant was they intended to kill him. Even after Kyle White said to them that is not necessary, hey, guys that is not necessary, I used to work at that Pizza Hut. You don't need to kill them, you don't need to kill them because the policy of Pizza Hut is that the managers and the employees give the money over. They don't resist, they give the money over and they keep their mouths shut and that is the policy, and they knew that. Steven Stein knew that, he knew that there was not going to be any resistance before he went in there and he decided and Christmas decided to kill the witnesses strictly to eliminate them as witnesses. That is evidence of premeditation. That is evidence that the robbery just didn't get out of hand, and that's not what happened. When one says the robbery went bad it didn't get out of hand. That was something that was an intended consequence of their plan to kill the two victims.

(T. 775-76). The jury convicted Mr. Stein of premeditated and felony first-degree murder (T. 841-42).

At Mr. Stein's penalty phase, the State presented testimony of the arresting officer, Detective Carl Thorwart, who told the jury that Stein possessed a loaded .38 caliber revolver on his person at the time of his arrest (T. 853). Thorwart also testified that Christmas has previously been convicted of grand theft and burglary, but no crimes of violence (T. 853-54).

In mitigation, Mr. Stein presented evidence about his background. Mr. Stein's adoptive sister, Sandy, testified that she and Mr. Stein were both adopted. Mr. Stein was two months old at the time of his adoption. The siblings had a good relationship when they were young. Mr. Stein was 22 years old when he moved away from the family; he dropped out of school and later obtained his GED; and he went to automotive mechanical trade school for one year (T. 856-61). Mr. Stein's girlfriend, Christine Moss, testified that Mr. Stein was like a father figure to her son during the time they were dating (T. 863).

The State argued in aggravation that the victims were "executed" and the homicides were committed with reckless disregard for human life (T. 873, 876). The State argued five statutory aggravating circumstances: 1) that Mr. Stein was previously convicted of another capital offense, relying on the contemporaneous convictions for the deaths of Saunders and Hood to support this aggravator and stating that the existence of two victims demonstrated that Mr. Stein had a violent and vicious character (T. 879-81); 2) the crime was committed in the course of a robbery (T. 881); 3) the crime was committed in or to avoid arrest; 4) the crime was especially heinous, atrocious, and cruel (HAC) (T. 882-83); and 5) the crimes were committed in a cold, calculated, and premeditated manner (CCP) (T. 888-90).

In urging the jury to vote for death, and in arguing the existence of two of the aggravators, the State relied heavily on White's testimony. Regarding the avoid arrest aggravator, the State argued:

That was the whole motive behind executing those two young men. The defendant a week or two before the murder while talking to Kyle White, Kyle White tried to talk this defendant out of committing murder but the defendant wouldn't listen. We can't leave any witnesses, and it almost worked.

(T. 881-82). The State also argued that aggravator was "very weighty" and "cries out for the justification of the death penalty in this case" (T. 882).

Regarding the cold, calculated, and premeditated aggravating factor, the State argued:

One week before, one or two weeks before the murders you heard Kyle White testify that the defendant and his partner were planning these murders, planning the robbery. They ignored any advice to the extent that it would be unnecessary to kill.

(T. 888). Again, the State told the jury that aggravator "calls out for the death penalty" (T. 891).

Conversely, the defense argued that Stein's statement that the robbery went bad showed his lack of intent to kill (PCR4 1449-50).

After hearing argument, the jury recommended a death sentence for both of the murders by a vote of ten to two. The trial court sentenced Mr. Stein to death, finding all of the aggravators advanced by the State and one statutory mitigator that Mr. Stein had no significant history of prior criminal

activity. *Stein*, 632 So. 2d at 1367. The trial court relied on White's testimony in finding that the murders were committed for the purpose of avoiding or preventing a lawful arrest (T. 934, 938), and that the murders were committed in a cold, calculated, and premeditated manner (T. 940).

III. RECENTLY DISCOVERED EVIDENCE THAT WHITE TESTIFIED AGAINST STEIN FOR THE PURPOSE OF AVOIDING PROSECUTION HIMSELF

During the course of Mr. Stein's federal habeas corpus proceedings, he undertook an investigation into mental health evidence that could have been used at his capital penalty phase but was not. See *Martinez v. Ryan*, 566 U.S. 1 (2012). Mr. Stein's investigator sought to interview individuals who had contact with Mr. Stein in the months leading up to the crimes, and may have information related to his mental state.

Sandra Sidas was one such individual. Sidas dated Kyle White and became engaged to him in the early 1990s. Sidas met Mr. Stein while she was living in Phoenix with White in 1990. Later that year, Sidas, White, and Stein moved to Jacksonville and resided in a trailer together along with Sidas and White's daughter. Sidas had another child with White at the end of 1990.

White was extremely violent toward Sidas; he physically and sexually abused her, and mentally tormented her. She was so terrified of him that she took one of his guns – a .22 pistol – in order to protect herself. When White

found out she had the gun, he flew into a rage and burned all of her clothes. Shortly thereafter, Sidas moved out of the trailer with her children and resided with her stepfather.

During the investigation into the crimes at issue, the only mention of Sidas came from White, when he referenced her as his fiancée to law enforcement. Law enforcement did not interview Sidas, but she recalls that, months after the crimes, she was contacted by someone whom she believed worked for the Office of the State Attorney and asked about White. Sidas provided her opinion of the relationship between White and Stein, and the phone call ended. That was the last she heard from anyone about the case.³

Based on Sidas' contact with Mr. Stein during the months preceding the crime, Mr. Stein's federal investigator met with Sidas to ascertain whether she may have relevant information regarding Mr. Stein's mental health leading up to the crimes. Sidas provided information concerning her observations of Mr. Stein. Incidental to this information, Sidas also mentioned the following information:

Within a few weeks of Mr. Stein's arrest, while Sidas was living with her stepfather, White called Sidas. He did not sound like his usual self; he seemed nervous and as though something was wrong. White told Sidas not

³ This contact with Sidas was not disclosed to Mr. Stein or his defense team.

to come by the trailer he was living in. He told her that he was in serious trouble and had made or was in the process of making a deal to assist the State. He described the deal as: he would provide inculpatory information and evidence against Mr. Stein and Christmas, and in exchange he would not be charged with any crime. White revealed that he had already provided information about the location of weapons used in the crimes.

IV. ADDITIONAL RELEVANT FACTS FROM PRIOR PROCEEDINGS

On direct appeal, this Court struck the HAC aggravator but found the error harmless and upheld Mr. Stein's death sentence. *Stein*, 632 So. 2d at 1367.

Following Mr. Stein's conviction and death sentence, his co-defendant, Marc Christmas, proceeded to trial and was found guilty as charged. Subsequent to Christmas' penalty phase, his jury recommended a life sentence as to the two counts of first-degree murder (CT. 1558). At Christmas' sentencing hearing, the trial court found the jury's recommendation of life unreasonable (CT. 1626). In reaching this conclusion, the trial court held that virtually no reasonable person could differ on the appropriateness of the death penalty, and that to follow the recommendation of the jury would result in an unwarranted disparity in the sentences of the two co-defendants:

The Court finds that under the circumstances, the jury's recommendation of life imprisonment is unreasonable. Marc Anthony Christmas planned the Pizza Hut robbery with his co-defendant. He initiated the plan to eliminate the witnesses, the witnesses would know Christmas and not Stein, and Christmas held a gun on the victims in the bathroom as they were shot by Stein.

Further, the co-defendant, Steven Stein, was sentenced to death for these murders. Based on the totality of the circumstances in this case, virtually no reasonable person could differ on the appropriateness of the death penalty for Marc Anthony Christmas, *and following the recommendation of the jury would result in an unwarranted disparity in sentences.*

(CR. 557) (emphasis added).

At Mr. Stein's Rule 3.851 evidentiary hearing, additional mitigation was introduced concerning his background.

Mr. Stein's sister, Sandy Griffin, elaborated at the postconviction hearing about the happy day when she and her parents drove to the orphanage to bring Steven⁴ home (PCR Vol III 106). Sandy was the first of the family to hold him. *Id.* Their parents waited thirteen years to have children, losing nine biological babies, before adopting Sandy and then later Steven. *Id.* at 106-07. The Steins were older when they adopted Sandy, and much older when they adopted Steven. *Id.* at 106.

⁴ For consistency with postconviction witness testimony, Mr. Stein will be referred to as Steven for the remainder of this section.

The Stein family lived in a small house in Maywood, New Jersey (PCR Vol. III 107). Sandy simply adored her brother, and he had a loving relationship with their parents. *Id.* Every year, they took a special family vacation. *Id.*

In 1977, the family moved to Phoenix after Mrs. Stein fell into ill health and her doctor recommended a move to Arizona to relieve her arthritis (PCR Vol. III 107-08). Although Mrs. Stein's arthritis was relieved, she suffered from other illnesses. *Id.* at 109. The move was very hard on Sandy and Steven's father, who became unemployed. *Id.* at 111. Money became very tight and financial pressures created stress in the home.

Sandy married at 18 and moved away for two years when her husband was stationed in Guam. *Id.* at 112-13. Steven mailed her letters and pictures all the time, which was great because they could not afford to use the phone. *Id.* at 113. After Sandy returned, she divorced, remarried, and had a baby. *Id.* at 114. Steven would come over to her house, they would play board games, and she entrusted her son to Steven. *Id.*

When Steven was approximately sixteen, he was in a horrific automobile accident in which a passenger died and he was hospitalized with severe injuries. *Id.* at 115, 128. Sandy recalled seeing him in the hospital, seeming heartbroken, and with his jaw wired shut. *Id.* at 115-16.

Meanwhile, their parents' health continued to deteriorate, with their mother developing diabetes and renal failure (necessitating dialysis) and their father developing emphysema. *Id.* at 116. The Stein parents were sick at the time of Steven's trial. *Id.* at 119.

Donna Nolz testified that she had known Steven for many years from grade school in Phoenix. *Id.* at 133. She recalled his kind, laid-back, and peaceful personality, and that despite being regularly teased and called "albino" due to his pale appearance, he was not the type of boy who picked fights. *Id.* at 134, 136-37. He was not popular, but was not disliked. *Id.* at 137. He was always sick and did not attend school regularly. *Id.* at 134-35.

Phillip (Doug) Vacha testified that he met Steven in grade school. *Id.* at 162. Steven always had some kind of health issues and was "kind of out of the picture on a lot of stuff[.]" *Id.* at 165. They became close after he visited Steven in the hospital after his car accident. *Id.* at 162. Doug felt bad because not many people were visiting Steven, and didn't want him to feel isolated. *Id.* at 164-65. After that, they spent a lot of time talking and hanging out, doing some drinking and drugs, and a lot of typical stupid teenager type stuff. *Id.* Steven was highly intelligent and they shared many of the same interests, such as music and reading. *Id.* at 165.

Michael Roinestad, Steven's good friend from high school (PCR Vol. IV 209-10), and his mother, Shari Roinestad (PCR Vol. III 185-186), testified about their close relationship with Steven. Michael testified that Steven was personable, interested in others, and connected with people well, but was paradoxically very guarded with himself and remained at a distance, as if he had an emotional wall that only Michael could breach (PCR Vol. IV 212, 217-18). Michael was often surprised by the unlikely people Steven would engage in conversation, and Steven would do anything to help someone with any problem they had. *Id.* at 217.

The Roinestads testified that there was genuine love between Steven and his parents, but that his father was not really a father figure. *Id.* at 219-220. Like Michael, Steven seemed like a "fatherless boy[]" who was "restless and always on the go", "like [he] couldn't sit still" (PCR Vol. III 187). He seemed hypercharged, lacking in a masculine influence, and as though he was looking for a father figure. *Id.* at 187-88. He spent a lot of time at the Roinestad house, and would sit up late and talk with Shari, who had trouble sleeping. *Id.* at 186. He was "deep" for his age, interested in politics and poetry, and had really good thoughts and opinions. *Id.* He wrote "depressing", "hauntingly sad" songs that were "about canyons and crying", *id.* at 187, and "it was just tears[.]" *Id.* at 198.

Regarding Steven's fatal car accident, Michael explained that it was his former girlfriend, Diane, who was killed (PCR Vol. IV 212). Both Steven and Diane were passengers. *Id.* at 214-15. Diane was not yet Steven's girlfriend, but they were "working on that". *Id.* at 215. Steven had "a ton of injuries" and "was messed up for a long time after that accident". *Id.* at 216. His jaw was shattered on one side, and his eyes seemed to have darkened from a light blue to a deep purple. *Id.* He had used marijuana and alcohol in years prior to the accident, *id.* at 225, but his drug use worsened when he was given painkillers in the hospital. He started "jonesing really bad for those nurses to come in and give him the Demerol". *Id.* at 217. After that, he got involved in snorting crystal meth, and began doing so heavily. *Id.* at 227.

After Steven's car accident, Shari saw Steven in the hospital and noted that he seemed to start self-destructing after that. *Id.* at 198. He appeared to have posttraumatic stress, telling Shari he kept seeing Diane fly through the windshield over and over again. *Id.* at 190. Shari heard that he "just started really losing it and that he was doing drugs kind of to stop the scene from playing over and over in his mind . . ." (PCR Vol. IV 207).

Shanda Elaine Mann testified that she met Steven at 15 through a mutual friend (PCR Vol. III 145-46). He had been injured very badly in a car

accident, and was bedridden with his jaw wired shut and a broken collarbone. *Id.* He had scars and severe pain for the entire time she knew him. *Id.* at 153.

Shanda admired Steven's intelligence, recklessness, and kindness toward her, and soon fell madly in love with him. *Id.* at 147. She basically moved into his house for about a year; his parents were there but did not pay attention to what Steven and Shanda did. *Id.* at 147-48.

Steven and Shandra married, and shortly after, Shanda discovered she was pregnant. *Id.* at 148-49. She told Steven she was going to give the baby up for adoption, and Steven became very upset because he wanted to keep the baby. *Id.* at 148. He told Shanda of the pain he had suffered due to his own adoption. *Id.*

Despite Steven's continued resistance, seventeen-year-old Shanda decided to give the baby up for adoption. *Id.* at 149-50. Knowing Steven was against the idea, Shanda gave him no choice, moving to another state and giving the baby up for adoption. *Id.* He was devastated, "[b]ecause as a child of adoption he felt that he had been lonely, that he and his parents had no bond, that he had been hurt by the whole process and he didn't want to do that to anybody else[.]" *Id.* at 152. Shandra and Steven stopped talking, and ultimately divorced. *Id.* at 151-52.

Doug testified that he joined the Navy after high school, and would see Steven every time he went home on leave. *Id.* at 169. During these visits, he noticed Steven developing an unhealthy lifestyle. *Id.* at 172. Steven had started hanging around with an individual who was doing a lot of powder drugs and shooting them up into his veins. *Id.* at 172-73. Steven seemed to have drifted into the use of harder drugs and Doug believed they had a negative effect on him. *Id.* at 174.

SUMMARY OF ARGUMENT

As in the lower court, Mr. Stein's arguments are pleaded alternatively.

ARGUMENT I: Mr. Stein presented a claim that the State withheld material exculpatory evidence regarding Kyle White's motive for testifying against Mr. Stein – to avoid prosecution himself. This withholding violated due process under the Fourteenth Amendment and Mr. Stein's rights under the Fifth, Sixth, and Eighth Amendments, and undermines confidence in the outcome of his convictions and death sentences. The circuit court erred in summarily denying Mr. Stein's claim without holding an evidentiary hearing or case management conference because his claim cannot conclusively be refuted on the face of the record.

ARGUMENT II: Mr. Stein presented newly discovered evidence related to Kyle White's motivation for testifying against Mr. Stein. Mr. Stein was diligent

in presenting this information, because although Ms. Sidas was cursorily named in a police report, there was no indication that she possessed relevant information undermining White's testimony against Mr. Stein. Because White's testimony was critical to establishing two aggravators used to justify Mr. Stein's death sentences, the new evidence of White's motives and expected benefit for his testimony (not being prosecuted), combined with all of the compelling mitigation, would probably result in an acquittal of first-degree premeditated murder and/or a life sentence.

STANDARD OF REVIEW

Under Florida law, "a postconviction defendant is entitled to an evidentiary hearing unless the motion and record conclusively show that the defendant is entitled to no relief." *Gaskin v. State*, 737 So. 2d 509, 516 (Fla. 1999). *Accord Patton v. State*, 784 So. 2d 380, 386 (Fla. 2000); *Arbelaez v. State*, 775 So. 2d 909, 914-15 (Fla. 2000). The rule is the same with regard to successive postconviction motions, 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). Factual allegations as to the merits of a constitutional claim as well as to issues of diligence must be presumed 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).

Because the circuit court summarily denied relief without an evidentiary hearing, this Court must accept Mr. Stein’s factual allegations as true to the extent they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court “review[s] the trial court’s application of the law to the facts *de novo*.” *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court’s decision whether to grant an evidentiary hearing is likewise subject to *de novo* review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN SUMMARILY DENYING MR. STEIN’S CLAIM REGARDING THE STATE’S WITHHOLDING OF MATERIAL EXCULPATORY EVIDENCE.

A. Background and Ruling Below

The State is obligated to disclose evidence or information in its possession that is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963). This requirement applies to impeachment evidence as well as other exculpatory evidence. *United States v. Bagley*, 473 U.S. 667 (1985). Impeachment evidence that must be disclosed includes any evidence that goes to the reliability or credibility of a witness, *Giglio v. United States*, 405

U.S. 150, 154 (1972), and impeachment presentable through cross-examination challenging the “thoroughness and even good faith of the [police] investigation. *Kyles v. Whitley*, 514 U.S. 437, 446 (1995). When defense counsel is prevented from exposing “facts from which jurors, as the sole triers of facts and credibility, could appropriately draw inferences relating to the reliability of the witness,” a defendant is denied the right to effective cross examination. *Davis v. Alaska*, 415 U.S. 308, 316 (1974).

Relief is warranted if the undisclosed information is material, which means it creates a reasonable probability that the outcome of the guilt and/or capital sentencing trial would have been different. This standard is met and reversal required once the reviewing court concludes there exists a “reasonable probability that had the [unpresented] evidence been disclosed to the defense, the result of the proceeding would have been different.” *Bagley*, 473 U.S. at 680. “The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Kyles v. Whitley*, 514 U.S. at 434; *Strickler v. Greene*, 527 U.S. 263, 290 (1999). The materiality inquiry is not a “sufficiency of the evidence” test, and the burden for establishing materiality

is less than a preponderance. *Williams v. Taylor*, 529 U.S. 362 (2000); *Kyles*, 514 U.S. at 434.

The circuit court denied relief, claiming that Sidas' testimony did not constitute sufficient evidence of a *Brady* violation (PCR4 3901). Further, the circuit court found that because Mr. Stein knew Sidas and "had every incentive to reach out to [her]", he "cannot allege that the State withheld evidence" that would impeach White because it was "equally known to both parties". *Id.* at 3902-03. Finally, the circuit court found that because Stein committed the robbery leading to Hook and Saunders' deaths, even if Sidas' testimony "would have completely undermined White's credibility...[it] would not have been material under *Brady*." *Id.* at 3902.

B. The Circuit Court Erred by Concluding That Sidas' Statement Did Not Establish a *Brady* Violation Without First Holding a Hearing

Mr. Stein has presented a prima facie case that the State suppressed evidence of a deal with White. Sidas' statement, and Mr. Stein's allegations, cannot be conclusively rebutted by the record. In denying relief, the lower court relied on its finding that "[T]here is a significant leap between a hearsay statement where White told Sidas he had made or wanted to make a deal with the State and Stein's allegation that the State 'made an agreement with White where he would avoid all prosecution in exchange for his assistance

in Stein’s case.” (PCR4 3901). But what the lower court classifies as a “leap” is in reality a factual dispute, and thus appropriately addressed at an evidentiary hearing. And, the lower court not only failed to hold an evidentiary hearing, but also refused—over both parties’ urging—to hold even a *Huff* hearing to allow argument regarding the necessity of a hearing. (See PCR4 125) (State arguing that “to avoid an issue on appeal”, the circuit court should conduct a *Huff* hearing prior to summary denial); *id.* at 4859 (defense motion for rehearing arguing that the due process requirement of holding a *Huff* hearing “has been extended to successive 3.851 proceedings through the plain language of rule 3.851(f)(5)(B)”). In light of Mr. Stein’s allegations, which cannot be conclusively rebutted by the record, this Court should remand for *Huff* and evidentiary hearings.

C. The Circuit Court Erred in Finding That the Undisclosed Evidence Was Equally Known to Both Parties

The circuit court bizarrely contends that the evidence regarding White’s motivation to testify against Mr. Stein as part of a deal to avoid prosecution himself was “equally known to both parties” because Mr. Stein knew Sidas. (PCR4 3902-03). However, the unrebutted evidence presented by Mr. Stein makes clear that at no time during or since Mr. Stein’s prosecution did the State reveal that it had made an agreement with White where he would avoid prosecution in exchange for his assistance in Mr. Stein’s case. Nor did the

State reveal that White expected any benefit in exchange for his testimony against Mr. Stein. The State's sole mention of Sidas in pretrial discovery was a police report naming her as White's fiancée. At no time during or since Mr. Stein's prosecution did the State reveal it had contacted Sidas regarding Mr. Stein's case. She was never listed as a witness by the State, and no one, including White, ever indicated that she had any relevant information related to Mr. Stein's case. There was no indication whatsoever that Sidas would have relevant exculpatory evidence related to White's testimony.

Moreover, precedent from this Court and the United States Supreme Court is clear that the prosecution has a duty to disclose favorable evidence to the defense, regardless of defense counsel's actions. *See, e.g., Floyd v. State*, 902 So. 2d 775, 777 (Fla. 2005) (citing *Bagley*, 473 U.S. at 667); *Young v. State*, 739 So. 2d 553 (Fla. 1999) (even where counsel has an obligation to exercise diligence in obtaining pretrial discovery, "[t]he ultimate test in backward-looking [*Brady-Bagley*] postconviction analysis is whether information which the State possessed and did not reveal...is of such a nature and weight that confidence in the outcome of the trial is undermined"); *Strickler*, 527 U.S. at 280 ("the duty to disclose such evidence is applicable even though there has been no request by the accused") (citing *United States v. Agurs*, 427 U.S. 97, 107 (1976)).

In other words, “*Brady* places an affirmative duty upon the state to reveal any ‘material’ evidence in its possession that would tend to exculpate a defendant.” *Breedlove v. Moore*, 279 F.3d 952, 961 (11th Cir. 2002) (citing *Brady*, 373 U.S. at 866-88) (emphasis added). This affirmative duty is not obviated by defense counsel’s theoretical ability to have spoken with Sidas. This is especially true considering defense counsel not only had no reason to believe Sidas would have known that White’s testimony was motivated by a plan to avoid prosecution himself via a deal with the State, but had no reason to know such a deal existed or was in the works at all.

The cases cited by the lower court as justification for finding that the parties had equal knowledge of the exculpatory evidence are inapposite. In *Johnson v. State*, 921 So. 2d 490 (Fla. 2005), the issue the undisclosed witnesses would have had information regarding was the defendant’s own voluntariness in accompanying an officer to the police station. In other words, the defendant would have himself been present and known that the three witnesses may possess exculpatory information. This is completely distinguishable from Mr. Stein’s case, where he had no idea White was in the process of making a deal with the State, let alone speaking to Sidas about it. *Maharaj v. State*, the case cited in *Johnson*, simply states that “a *Brady* claim cannot stand if a defendant knew of the evidence allegedly

withheld or had possession of it,” simply because the evidence then necessarily could not be deemed to have been withheld from the defendant. 778 So. 2d 944, 954 (Fla. 2000). In fact, *Maharaj* actually supports Mr. Stein’s claim by explaining that “the ‘due diligence’ requirement is absent” from the *Brady* test. *Id.*

D. The Circuit Court Erred in Finding the Undisclosed Evidence Immaterial

The Circuit Court’s finding that there could be no reasonable probability of a different outcome in Mr. Stein’s case because “[he] committed the robbery” associated with Hood and Saunders’ deaths is myopic and fails to conduct a meaningful materiality inquiry.

This Court must consider the impact of this evidence at *each phase* of Mr. Stein’s trial. See, e.g., *Cone v. Bell*, 556 U.S. 449, 476 (2009) (remanding case after lower court evaluated materiality of *Brady* claim with respect to guilt phase but failed to consider impact on penalty phase); *Kyles*, 514 U.S. 419, 442-54 (evaluating *Brady* prejudice by considering all possible impacts of suppressed impeachment evidence); *Bagley*, 473 U.S. at 683 (instructing lower courts to consider “any adverse effect” that undisclosed evidence “might have had on the preparation or presentation of the defendant’s case”). In other words, even if the previously undisclosed evidence would not have altered Mr. Stein’s guilt-phase outcome or his *eligibility* for a death sentence,

it is still material if there is a reasonable likelihood that, had it been disclosed, Mr. Stein would not have actually *received* a death sentence.

Upon arrest, when questioned, Mr. Stein indicated that the crime was a robbery “gone bad”—a much more sympathetic circumstance than the State’s contention that the murders were planned well in advance. In advancing its version of events, the State relied on White’s testimony to establish the premeditation theory of first-degree murder; the cold, calculated, and premeditated aggravating circumstance; and the aggravating circumstance that the murders were committed for the purpose of avoiding arrest. This testimony concerning the alleged plan and motivation for shooting the victims is undermined by White’s disclosure to Sidas.

Obviously, White’s credibility was a material issue. His testimony as to the alleged conversation regarding the circumstances of the crime was central to the issue of premeditation, what aggravators could be established, and whether Mr. Stein’s statement that the robbery went badly was credible. Thus, it was critical that information about what White expected to receive in exchange for his testimony be disclosed to Stein’s trial counsel. But it was not disclosed.

White’s recently disclosed statements undermine Mr. Stein’s convictions and the aggravators used to sentence him to death. In *Napue v.*

Illinois, 360 U.S. 264, 269 (1959), the United States Supreme Court held that “the jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it us upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant’s life or liberty may depend[.]”. See also *Banks v. Dretke*, 540 U.S. 668, 701 (2004). Had the jury heard White’s true motivation for testifying and expected benefit for the testimony – avoiding prosecution himself – it is significantly more likely that Mr. Stein would not have been convicted of first-degree premeditated murder, that the jury would not have recommended death, and that the trial judge would not have sentenced Mr. Stein to death.

Furthermore, the impact of White’s newly disclosed statements must be evaluated cumulatively with all of the previously presented evidence that contradicted the State’s theory of premeditation and diluted the aggravation. Specifically, as to the impact of the statements in relation to Mr. Stein’s sentences of death, the circuit court was required to consider not only all of the previously introduced mitigation, but also the fact that on direct appeal, this Court struck the HAC aggravator. *Stein*, 632 So. 2d at 1367. HAC is one of the most serious, or weightiest, aggravators. See *Larkins v. State*, 739 So. 2d 90, 95 (Fla. 1999).

Mr. Stein’s “punishment must be tailored to his personal responsibility and moral guilt.” *Enmund v. Florida*, 458 U.S. 782, 801 (1982). In light of the HAC aggravator being stricken, had information regarding White’s true motivations and the expected benefit from his testimony been disclosed, only two aggravators would have applied (the contemporaneous murders of Hood and Saunders, and that the murders were committed in the course of a robbery). This would have drastically changed the balance of aggravation and mitigation in Mr. Stein’s case, and given the trial court and jury a more accurate picture of “the character and record of the individual [defendant]” before them. *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). The State’s failure to disclose this information therefore deprived Mr. Stein of “the type of individualized consideration...required by the Eighth and Fourteenth Amendments in capital cases”. *Eddings v. Oklahoma*, 455 U.S. 104, 105 (1982) (quoting *Lockett v. Ohio*, 438 U.S. 586, 606 (1978)).

And, this Court must also consider the impact of White’s statement in relation to the disparate nature of Mr. Stein’s sentence as compared to the life sentence received by Christmas. Christmas’ trial court held that virtually no reasonable person could differ on the appropriateness of the death penalty as applied to the two co-defendants, and that to give one Christmas

life while Mr. Stein received death would result in an unwarranted disparity in the sentences (CT. 557).

In assessing the cumulative value of the evidence and circumstances in Mr. Stein's case, there can be no doubt that White's recently disclosed statements about his motivation to implicate Mr. Stein in a premeditated double homicide would have made it significantly more likely that the jury would have recommended life, and that the trial court would have been compelled to sentence Mr. Stein to life imprisonment. Relief is warranted.

II. THE CIRCUIT COURT ERRED IN DENYING MR. STEIN'S CLAIM REGARDING THE NEWLY DISCOVERED EVIDENCE THAT THE TESTIMONY OF KYLE WHITE, A CRITICAL STATE WITNESS, WAS MOTIVATED BY WHITE'S BELIEF THAT TESTIFYING AGAINST MR. STEIN WOULD PREVENT WHITE FROM BEING PROSECUTED IN THE SAME CASE.

Should this Court determine that Mr. Stein has not established a *Brady* violation, then this Court should find that the recently disclosed statements (that Mr. White was motivated to testify against Mr. Stein by a desire to avoid prosecution and that he expected such a benefit in exchange for his testimony inculcating Mr. Stein in first-degree premeditated murder) constitute newly discovered evidence.

A successive motion for postconviction relief based on newly discovered evidence must be filed within one year of discovery of the new claim. *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008). And, this Court

has held that two substantive requirements must be met in order to set aside a conviction or sentence on account of newly discovered evidence. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991).

First, the evidence in question “must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence.” *Long v. State*, 183 So. 3d 342, 345 (Fla. 2016) (quoting *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008)); see also *Hallman v. State*, 371 So. 2d 482, 485 (Fla. 1979).

Second, the new evidence must be of such nature that it would probably produce an acquittal on retrial or, in the context of sentencing, would probably result in a life sentence rather than the death penalty. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (*Jones I*); see also *Brown v. State*, 304 So. 3d 243, 273 (Fla. 2020) (quoting *Swafford v. State*, 125 So. 3d 760, 767 (Fla. 2013)). This second prong is satisfied if the newly discovered evidence “weakens the case against [the defendant] so as to give rise to a reasonable doubt about his culpability.” *Johnston v. State*, 27 So. 3d 11, 18-19 (Fla. 2010).

If there is dispute regarding whether evidence is newly discovered, or about the quality of the newly discovered evidence, an evidentiary hearing is

necessary. *Hildwin v. State*, 141 So. 3d at 1184; see also *Maharaj*, 684 So. 2d at 728 (factual allegations as to the merits of a constitutional claim, as well as to issues of diligence, must be presumed true); *Card*, 652 So. 2d at 346 (in successive postconviction motions, allegations of previous unavailability of new facts, as well as diligence of the movant, warrant evidentiary development if disputed or a procedural bar does not “appear[] on the face of the pleadings.”).

A. The Circuit Court Erred in Finding the Claim Was Not Diligently Pursued

In summarily denying Mr. Stein’s claim on diligence grounds, the circuit court simply stated that it “ha[d] already found that Stein failed to use due diligence” when discussing the *Brady* claim (PCR4 3903).⁵

Additionally, the standard used by the circuit court—that because Mr. Stein knew White would be a key witness at his trial and personally knew Sidas, he could have learned of her statements and therefore was not diligent—is overly onerous and contravenes this Court’s guidance. See, e.g., *Waterhouse v. State*, 82 So. 3d 84, 103 (Fla. 2012) (“[T]o hold that [counsel] must investigate every aspect of a police report—even where it appears that such an investigation would be fruitless—is inconsistent with [prior cases].”).

⁵ The circuit court failed to consider that “due diligence” is, as a matter of law, absent from a *Brady* inquiry. *Maharaj*, 778 So. 2d at 954.

“Due diligence” does not require a litigant “to exhaust every imaginable option, but rather to make reasonable efforts.” *Aron v. United States*, 291 F.3d 708, 712 (11th Cir. 2002); see also *Waterhouse*, 82 So. 3d at 104 (“[R]equiring [counsel] to verify every detail and contact every witness in a police report—even where the police report indicates that the witness has no useful information—would place an . . . onerous burden on [counsel], with little chance of discovering helpful or useful information.”).

The appropriate standard is not whether Mr. Stein’s defense team theoretically *could* have previously spoken with Sidas about any matter, but whether they would have had reason to believe she had information relevant to this claim.

Mr. Stein had no reason to believe that speaking with Sidas would be relevant to impeaching White’s testimony with evidence that he had or was attempting to make a deal with the State by which he would testify in exchange for avoiding prosecution himself. There was no indication anywhere in pretrial or post-trial discovery that White was concerned about being prosecuted related to these crimes. There was no indication that he expected a benefit from, or had entered into an agreement related to, his testimony against Mr. Stein.

Regarding Sidas, the sole mention of her in discovery was cursory—a police report stated that she was White’s fiancée. At no time during or since Mr. Stein’s prosecution did the State reveal it had contacted Sidas regarding Mr. Stein’s case. Sidas was never listed as a witness by the State, and no one, including White, ever indicated that she had any exculpatory or relevant information. Thus, as to exculpatory evidence of White’s motive to testify against Mr. Stein in order to avoid prosecution himself in this case, there was no indication whatsoever that Sidas would have relevant information. Thus, the information provided by Sidas was “unknown by the trial court, by the party, [and] by [defense] counsel at the time of trial” and it could not have been previously known by Mr. Stein or his counsel “by the use of diligence”. *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998).

B. The Circuit Court Erred in Finding No Likelihood of a Different Outcome

The circuit court’s rested its denial related to the second *Jones* prong solely on the analysis it conducted with regard to the *Brady* claim: that because evidence “overwhelmingly established that Stein committed the robbery” leading to the murders, the new evidence would have made no difference in the outcome (PCR4 3902-03). And, as with the *Brady* claim, the circuit court’s ruling ignores the fact that even if the new evidence would not have altered Mr. Stein’s guilt-phase outcome or his *eligibility* for a death sentence, it nevertheless

warrants relief if there is a reasonable likelihood that it would impact whether Mr. Stein *actually received* a death sentence.

Mr. Stein meets that prong. The recent discovery of White's statements to Sidas concerning his motivation to provide inculpatory evidence against Mr. Stein weakens the case against Mr. Stein, altering the balance of aggravators and mitigators such that on a retrial with the benefit of this new evidence, he would not receive a sentence of death.

1. The Newly Discovered Evidence Weakens the State's Case Against Mr. Stein

As the State's closing argument demonstrates, the State relied heavily on White's testimony to establish two separate aggravators in urging the jury to recommend, and the judge to sentence, Mr. Stein to death. Thus, if the jury was aware of White's motives and the benefit he received – not being prosecuted – Mr. Stein could have impeached White's testimony and shown that the State had not established the CCP or avoiding arrest aggravators beyond a reasonable doubt. And, the jury would have credited Stein's statement that the crime was a robbery gone bad rather than a premeditated execution of two individuals as the State posited.

2. The Newly Discovered Evidence, Considered in Tandem with All Other Admissible Evidence, Significantly Alters the Balance of Aggravation and Mitigation in Mr. Stein's Case

In determining whether newly discovered evidence compels a new trial or sentencing proceeding, the reviewing 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 trial.” *Jones I*, 591 So. 2d at 916. Further, under the expanded guidance of *Jones*, 709 So. 2d at 526 (*Jones II*), the reviewing court “must consider the effect of the newly discovered evidence, in addition to *all of the admissible evidence that could be introduced at a new trial*, and conduct a cumulative analysis of all the evidence so that there is a ‘total picture’ of the case and ‘all the circumstances of the case.’” *Hildwin v. State*, 141 So. 3d 1178, 1187-88 (Fla. 2014) (quoting *Swafford*, 125 So. 3d at 775-76, and *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999)).

Importantly, in attempting to argue against the likelihood of acquittal of first-degree murder, or the likelihood of a sentence less than death in light of the new evidence, the State itself argued that a court considering a claim of newly discovered evidence is required to consider “admissible evidence that could be introduced at any new trial” in Mr. Stein’s case. (PCR4 119 n.4); *see also id.* (citing *Green*, 975 So. 2d at 1100-01, for the proposition that the lower court was required to consider “all admissible evidence and evaluat[e] whether a new trial is warranted”); *id.*, (citing *Bogle v. State*, 288 So. 3d 1065, 1069 (Fla. 2019), and

Duckett v. State, 231 So. 3d 393, 399 (Fla. 2017), for the proposition that a court evaluating the second prong of *Jones* must evaluate the importance of the new evidence “in the broader context of any admissible evidence that could be introduced at a new trial”).

In Mr. Stein’s case, the other admissible evidence is significant, and bolsters Mr. Stein’s argument that the presentation of the new evidence—that White’s testimony was motivated by his belief that inculcating Mr. Stein in first-degree premeditated murder would prevent White from himself being prosecuted in that case—would result in a lesser sentence. As detailed above, the other admissible evidence includes the striking of the HAC aggravator, the trial court’s finding that a life sentence for Christmas and death sentence for Mr. Stein would result in unwarranted disparity among the co-defendants’ sentences, and the mitigation evidence established at Mr. Stein’s postconviction evidentiary hearing.

Mr. Stein submits that the newly discovered evidence, evaluated in light of all circumstances in his case, would probably produce an acquittal of first-degree premeditated murder and/or a life sentence upon retrial. Relief is warranted.

CONCLUSION

Based upon his arguments, Mr. Stein respectfully requests that this Court vacate his first-degree murder convictions and remand for a new trial; vacate his death sentence and remand for a new penalty phase; or remand this case to the lower courts for a *Huff* hearing and subsequent evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing pleading has been furnished by electronic service to all counsel of record on this 26th day of April 2023.

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this Amended Initial Brief of Appellant is Arial 14-point Font, and complies with the font, spacing, and page requirements under Fla. R. App. P. 9.210(a)(2)(D) and 9.045(b).

/s/ Dawn B. Macready
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