

IN THE SUPREME COURT OF FLORIDA

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

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STEVEN EDWARD STEIN,

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

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INITIAL BRIEF OF APPELLANT

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Dawn B. Macready  
Florida Bar No. 542611  
Drew A. Sena  
Florida Bar No. 1023218  
CCRC-North  
1004 DeSoto Park Drive  
Tallahassee, FL 32301  
(850) 487-0922  
Dawn.Macready@ccrc-north.org  
Drew.Sena@ccrc-north.org

*Counsel for Appellant*

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**STRICKEN**

## **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 FACTS**<sup>1</sup>

### **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.

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<sup>1</sup> 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 Hook 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.<sup>2</sup>

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

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<sup>2</sup> 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.<sup>3</sup>

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

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<sup>3</sup> 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 Steven<sup>4</sup> 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.

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<sup>4</sup> 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.

Additionally, further mitigation and other helpful evidence has been discovered during the course of Mr. Stein's federal habeas petition, all of which would be admissible upon a retrial.<sup>5</sup>

### **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

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<sup>5</sup> The additional evidence will be discussed in further detail below, *infra* Argument II, as this Court's precedent requires its consideration in evaluating claims of newly discovered evidence. *See, e.g., Hildwin v. State*, 141 So. 3d 1178, 1187-88 (Fla. 2014) (quoting *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013), and *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999)).

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).<sup>6</sup>

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].”). “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.”).

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<sup>6</sup> The circuit court failed to take into account that “due diligence” is, as a matter of law, absent from a *Brady* inquiry. *Maharaj*, 778 So. 2d at 954.

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. Additionally, the other admissible evidence includes the following evidence discovered in the course of Mr. Stein’s federal proceedings, and appended to this brief.<sup>7</sup>

*Traumatic Exposures Prior to Steven’s Birth*<sup>8</sup>

Steven’s birth mother, Jan Newhoff, was adopted by her maternal uncle, John Newhoff, and his wife, Ruth Newhoff. She had one adoptive sister, John and Ruth’s biological child, Jill Newhoff. Jan’s early life involved constant arguments and fights between her adoptive parents, mostly instigated by Ruth. The marriage was filled with violence, including Ruth attempting to stab John. Although John wished to keep the family together and reconcile with Ruth, Ruth’s continued assaults led to their eventual divorce in the 1960s when Jan was ten or eleven. Ruth received full parental rights over Jan and Jill, with the girls being allowed to visit John on Saturdays. (App. 96).

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<sup>7</sup> These citations will be referenced as “App. [page number]”.

<sup>8</sup> Consistent with the witness statements underlying this section, Mr. Stein will be referred to as “Steven”.

Ruth was a domineering mother. She “raised hell” if Jan broke any rules, and used shame and physical threats to dissuade Jan from doing things Ruth did not like. As a way to apologize afterward, Ruth would buy items for Jan. Shortly after the divorce, Ruth began bringing boyfriends home. When Jan was approximately eleven, Robert Whitehurst entered the picture as Ruth’s live-in boyfriend. Robert claimed to have a military background and was largely built at approximately 5’10” and 250 pounds. As soon as he moved in, Robert made Jan uncomfortable with his attentions. (App. 97).

It did not take long for the abuse to begin. One day, Ruth told Jan to ride with Robert while he collected money that was owed to him. Instead of collecting the money, Robert drove to a liquor store and purchased bottles of whiskey and peach-flavored brandy. He drank the whiskey and coaxed Jan into drinking the brandy. A preteen curious about alcohol, Jan quickly became tipsy. Robert drove to a part of town unfamiliar to Jan and initiated sex. When Jan refused, Robert forced her into a bar filled with men she had never met, and quietly told her that if she did not allow him to have sex with her, he would sell her to these men as a sex object. Young Jan believed Robert and returned to the car with him, where he proceeded to rape her (App. 97-98).

For years after that, Robert continued to rape Jan. Ruth had a part-time job and was often gone from the home for hours at a time. If the weather was unfavorable, rainy or cold, Robert stayed home. If Robert was home, he forced Jan to have sex with him. Whenever she tried to resist, Robert threatened that Jan's refusal would result in Robert breaking the arms of Ruth or Jill. Again, with Robert's size and physical intimidations, Jan believed him. The rapes occurred so frequently they almost became normal. School was Jan's only escape. She felt shame and helplessness, not knowing how to make the abuse stop (App. 98).

Eventually, Jan worked up the courage to tell Ruth about Robert's attacks. Ruth immediately dismissed Jan as a liar, claiming she was just trying to steal Robert for herself. Jan was devastated, and descended into hopelessness. She regularly drank alcohol – usually vodka mixed with sweet drinks, but whatever was available to her from Ruth's collection of light and dark liquors. Drinking was the only way Jan could think to cope with Robert's abuse and Ruth's refusal to intervene. Nearly every week, Jan drank multiple shots to the point of blacking out and waking up the following day. She did not stop until she realized in the fall of 1967 – months along – that she was pregnant by Robert (App. 98-99).

Still in the process of physical adolescent development, Jan had been pregnant for approximately a trimester without knowing it. For the first two or three months of her pregnancy, she had been drinking weekly to the point of blackouts. But, with her belly continuing to grow, Jan could no longer attribute her irregularity to youth or morning sickness to hangovers (App. 98-99).

Jan's first instinct was to hide her condition from Ruth. Her life already felt hopeless; how much worse might it get if Ruth knew she was pregnant? To Jan in the 1960s, there seemed nowhere for an unmarried, pregnant Methodist girl to turn for help. One day in October or November of 1967, Jan's schoolteacher assigned a freewriting exercise. Seeing no other outlet, Jan wrote about a young girl who became pregnant after a sexual encounter. The following day, she was called into a school administrative office where her teacher, principal, and school psychologist confronted her about the assignment. Jan was initially reluctant to disclose her pregnancy, but eventually did. When the school insisted that Ruth would be notified about Jan's pregnancy, Jan again summoned up her courage and told Ruth everything (App. 99).

Without hesitation, Ruth informed Jan that the child must be aborted. Rather than accept that Robert's predations had caused Jan's pregnancy, Ruth made wild accusations that Jan had seduced her cousin's husband or

her uncle. Ruth shamed Jan, and ostracized her from the rest of her family. She asked Robert – Jan’s rapist – to transport her to an abortion facility. In November of 1967, Robert drove Jan into the city but did not take her to see a doctor. Instead, he made her wait in the car while he went into an unfamiliar building. When he returned, he gave Jan two pills and claimed they would end the pregnancy. Feeling broken and without agency, Jan took the pills and Robert brought her home. Within a day, Jan was spotting blood (App. 99-100).

Somehow, Ruth and Robert’s efforts to terminate Jan’s pregnancy failed. When they reapproached Jan, her confidence was bolstered by the fact that her child had survived their attempts. She refused to go through with another abortion process. She felt love for her unborn child, and wanted to give it the love she had not had growing up (App. 100).

Eventually, Ruth realized Jan would not change her mind. Ruth changed her tactics and demanded that Jan give the child up for adoption. When Jan resisted, Ruth said that if Jan kept the child, she would be thrown out of the house, without financial support, and would have to live in squalor. Ruth informed Jan that she was not Ruth’s biological daughter, and claimed that Jan had turned out well for herself having been raised in a stable home. The combination of threats, compliments, and disclosure of her own adoption

overwhelmed Jan. She felt like everything was surreal, and she had no choice in what was happening. She gave in to Ruth's pressure to give up her child (App. 100).

In December of 1967, Ruth was still concealing the news of Jan's pregnancy from Jan's father and the rest of their community. Ruth, focused more on her own desire to avoid social stigma than on her daughter's well-being, took Jan to the Salvation Army's Door of Hope maternity home in Jersey City, New Jersey. The home purported to house unwed pregnant adolescents and facilitate adoptions for their children. Ruth instructed Jan to lie about the child's father, and refused to let her be interviewed privately. Jan did as Ruth asked, but slipped in an act of defiance by agreeing when asked if her child could contact her once he became an adult. Until Jan's placement at Door of Hope in January of 1968, she had still not seen a doctor for prenatal care (App. 100-101, 103).

As much as Jan dreaded her life in Ruth's home, Door of Hope offered no solace. She was one of the younger girls there. Every Sunday, she was forced to attend church services in which the girls were repeatedly told by the pastor that they were sinners for having sex and bearing children out of wedlock. They were told their actions were irredeemable and there was nothing they could do to receive God's forgiveness. The woman in charge of

the home drank copiously, and Jan was exposed to heavy secondhand smoke (App. 101-02).

Although the girls were provided three meals a day, the servings were so small that Jan constantly felt hungry. The cook was a sexual predator, and many of the girls had sex with him in exchange for a more substantial portion of food. If any one of the girls violated the home rules, food was withheld from all of them as punishment and deterrence – they would not receive potatoes, rice, or bread for a week. Jan was underweight throughout her entire pregnancy. A nurse attempted to help her reach a healthier weight by slipping her eggnog and a cookie during the evening, but Jan's regular food was so often withheld as punishment that the nightly supplements did nothing to help her gain weight (App. 101).

In early March of 1968, Jan went into labor. She was transferred from Door of Hope to the nearby Margaret Hague Maternity Hospital, where her contractions lasted for more than half the day. When it was finally time to deliver the baby, Jan refused. She had grown deeply attached to her unborn child, and knew as soon as he was delivered, he would be taken from her. Desperate to prolong her time with her baby, Jan tried to prevent the birth and keep the child inside her. The obstetrician ordered two nurses to stand on each side of her and to repeatedly push on each side of her stomach.

When Jan continued to work against these efforts, the doctor slapped her across the face and said she had no choice and the baby would come out whether she wanted or not. An ether mask was placed over Jan's face and she drifted in and out of consciousness. Her next memory was of hearing "8:13 PM" and her son had been born. Jan named him David Scott<sup>9</sup> – and never saw him again (App. 102-03).

Jan was quickly transferred from the hospital back to the maternity home, and then back to Ruth's house to reenter school. Shortly after she returned to Ruth's, she received a call from the adoption agency seeking information that might explain health complications her son was exhibiting. Ruth grabbed the phone from Jan and shouted demands that they never be contacted again. Jan was so horrified that she ran away for days before eventually returning home to protect her sister, Jill (App. 103-04).

Jan was continually raped by Robert until she fled the home at seventeen by marrying a twenty-three year old man (App. 104).

### *Steven's Life Before Kyle White*

At the time of Steven's birth, his caretakers knew little about his family medical history or prenatal exposures. Children's Aid and Family Services of

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<sup>9</sup> The child born as David Scott was renamed Steven upon his adoption by the Stein family later in 1968.

New Jersey knew that Jan's pregnancy had been discovered after a concerned teacher reported Jan's description of a "torrid mating scene" during a school assignment. The circumstances surrounding Jan's pregnancy and the subsequent withholding of information regarding the child's birth father were "disturbing" and, in the experience of employees at Children's Aid and Family Services, consistent with sexual abuse (App. 27-29; 141-43).

Steven was born at twenty inches long and weighing six pounds, eleven ounces. Unlike typical newborns, his head circumference was smaller than his chest circumference. He remained hospitalized for a week due to physiologic jaundice, then was discharged to foster care. During Steven's first evaluation after his foster care placement, his foster mother reported that Steven was vomiting his bottle feeds. He had not grown and was diagnosed with pyloric stenosis, a condition in which the stomach opening becomes blocked and food cannot pass from the stomach to the intestine, causing forceful vomiting and depleting the infant of vital nutrition. Three weeks after Steven's birth, he had only gained five and a half ounces in weight despite growing half an inch (App. 28-29, 144).

By mid-April, Steven was frail, malnourished, and irritable. He was not adjusting well to a home environment, and could not be comforted. He spent

so much energy crying, he was exhausted. He did not react well to stimuli, and lacked proper social responses. Upon medical recommendations, Steven was placed with a different foster family toward the end of April. He continued to vomit, and his medications were adjusted to help him keep food down (App. 28-29, 144).

A week after Steven's placement with the new foster family, his condition seemed to be improving. Then, in May of 1968, Steven was adopted into the Stein family. While records from Children's Aid and Family Services of New Jersey indicate that Steven's adoption was an idyllic "special day", this means that Steven – at barely two months old – had already endured multiple removals from primary caretakers. And, his health complications were so severe that until he was one year of age he could not digest food unless he was being held (App. 28-29, 144).

Once adopted, Steven lived in Maywood, New Jersey, with adoptive parents Stan and Estella Stein and his older sister, Sandra (Sandy) Griffin. The Steins were very open about the fact that they were raising adoptive children. Prior to adopting, Estella had been pregnant several times, but consistently miscarried in the third trimester. In Steven's early years, his parents were outwardly warm. His mom was loving and kind, and his father used to give flowers to children in the neighborhood when they needed

cheering up. However, these demeanors soon changed when Estella's health rapidly declined (App. 29-30, 144, 147-49).

Estella was diagnosed with lupus and diabetes, which turned her into a "zombie" and diminished her ability to be affectionate with her children. She dropped Steven as a toddler, and he landed on his head. Steven was hit hard in the head by a baseball, but did not receive medical care. He suffered a football-related head injury while playing safety without a helmet – again, his parents didn't take him for medical care. Stan and Estella became homebodies with few friends; those they did have quickly noticed dysfunction developing within the family. They were no longer the same people. Stan became sloppy, overweight, and depressed. He always looked like he was in a bad mood. Estella became more and more zoned out. Everything seemed to stop. In the 1970s, Estella's health became so concerning that the family relocated to Arizona in hopes of easing her arthritis (App. 30, 150).

Prior to the move, adults who knew the Steins observed that Steven "was not being raised right" by his parents, who either laughed off or ignored emerging risky behaviors. Steven displayed a fear of abandonment, crying for days when his father had to go on a work trip to San Francisco, because he was so afraid his father would never come back. He was always worried about people leaving him, and craved reassurance (App. 30-31, 148-51).

Once in Arizona, the passive parenting worsened. By this point, Sandy, had moved far away and was often out of touch with the other Steins. Amidst this, Steven's desire to fit in increased in intensity.

Although typically easygoing and amiable toward others, Steven was teased for having an "Albino" appearance. A schoolteacher even compared him to Cyrano de Bergerac, saying that Stein was "so ugly". He ditched classes, and on many days, he was not present at school at all. He missed almost an entire school year in 7<sup>th</sup> or 8<sup>th</sup> grade. When Steven was at school, he was regularly in the dean's office or detention on account of truancy. It was the school's practice to notify parents when their children were absent; yet, the Steins failed to intervene regarding Steven's attendance (App. 31, 149-50).

The Stein's permissiveness became apparent to children as well as adults. Steven's friends noticed that his parents seemed to allow him to do "anything". They let him have the run of the house, giving him no responsibility or discipline. Not only did Steven have no chores or curfew, his parents didn't even seem to pay attention to him. Stan and Estella seemed completely detached from him. Once Steven's friends realized his parents held no responsibility over him, the Steins' house became a hotspot for drinking and drugs. Now teens, Steven and his peers would sit outside in

front of a window – in full view of Stan and Estella – and ingest anything from alcohol and marijuana to cigarettes, acid strips, and cocaine. Stan and Estella were aware of the drug use, but had become shells of parents due to Estella’s illness and Stan’s depression over Estella’s illness. They just kept watching TV and did not engage with the kids (App. 31-32, 148-49).

As Steven proceeded through adolescence, he was loyal, goofy, and aloof. He was initially put in gifted classes due to his intelligence, but then kicked out of them due to his hyperactivity and impulsiveness. On other occasions, though, he would be so depressed he didn’t want to do anything. He refused invitations from friends to go out and play. He did not develop hobbies, and seemed to have no interests or aspirations. Rather than developing a sense of self, Steven assumed the personalities and interests of whomever he was hanging around. He was a follower who would do whatever his friends asked of him without question. No matter what the group wanted to do, Steven was the first to say yes and find ways to execute the ideas of others. Steven was proud and did not speak openly about personal issues or emotions, but his friends noted his standoffishness toward his parents. Yet, he seemed hungry for the security of a parent, and developed a close relationship with his best friend’s mother, Shari Roinestad (App. 31-32, 151).

As a teenager, Steven smoked cigarettes on a daily basis, taking every opportunity to smoke: before school, in between classes, when he ditched classes, and after school. He drank regularly on both weekdays and weekends. He made it a point to always have a cooler full of ice and beer nearby, and his drink of choice was Jack Daniels. Steven smoked marijuana to maintain a buzz throughout the day, smoking an average of six or seven blunts a day, or one ounce. Sometimes he used acid and cocaine, or would empty the contents of a bunch of pills (Quaaludes, prescription pain pills, and anti-anxiety pills) onto a desk at school and snort them. Pills were popular and easily accessible at Steven's school, and several of his classmates sold them. Friends saw Steven with a handful of pills, which he would combine with alcohol and act strangely afterward. When he came down from the "high" he would pretend nothing had happened (App. 32, 145-46).

At seventeen, Steven was involved in a series of car accidents. One of these occurred in May of 1985, while Steven was a passenger in his best friend Michael Roinestad's car. A horse trailer swerved in front of them, and they were hit by another car. They were taken to the hospital for emergency treatment. Steven's demeanor changed notably after the accident, becoming less cautious and "throwing any caution he had before to the wind". Then,

only a month after Steven's automotive injury, everything worsened (App. 33-34, 55, 119, 146-47).

In June of 1985, Steven invited his friend, Diana Faulkner, with whom he had a budding romance, to go tubing with him on a local river. Diana understood Steven's moods, and knew how to lift him up when he was feeling down. That day, Steven planned to tell her how much he liked her. Steven's friend Robert was driving, and lost control of the car, causing it to flip. Steven lost consciousness, and when he woke up his head was in the windshield and Diana was dead. Steven continued to lapse in and out of consciousness, in a delirious state. Several cars drove by without responding, until finally a group of bikers stopped to assist the children. Steven was gravely injured, sustaining wounds to his collarbone and shoulder. His jaw was broken in three places, and had to be wired shut for weeks. His eye color changed from light blue to purple, and there was observable damage to his legs, ribs, and back. He was in severe pain and received large quantities of prescription opioids. Injections of pain medication left holes in his legs. He was given virtually unlimited amounts of Demerol, and developed a physical dependency (App. 33-34, 55, 119, 146-47).

Worse than the physical injuries were the mental effects. Friends recall that the accident left Steven "haunted" and "mentally wrecked". He blamed

himself for Diana's death, believing he could have somehow prevented it. He had nightmares well into his 20s. In his dreams, he would be in a field with Diana and suddenly a partition would appear between them. She would be surrounded by glass and bleeding, screaming, but Steven could not get to her. He developed survivor's guilt which never dissipated, and began to believe he was experiencing paranormal activity from Diana's spirit. He started to believe she was following him from another realm, in such forms as a Get Well balloon or the hood of his car. Stan remained cold, telling Steven that "boys don't cry" and to carry his own weight (App. 34, 147).

During Steven's hospitalization, his friend and former girlfriend, Suzanne, introduced him to Shanda Johnson. Both Suzanne and Shanda had been friends with Diana. Shanda visited him regularly in the hospital and nearly every day for the eight weeks of home convalescence once he was discharged, and eventually moved into Steven's parents' house (App. 34, 147).

At this time, Steven was taking several bottles of medication to treat his pain, in addition to smoking several joints of marijuana daily. Steven struggled to endure the lingering physical pain from his accident, and the combination of pills and marijuana helped to alleviate it. And, drugs and alcohol were the only things that seemed to calm Steven's acute feelings of

guilt over Diana's death. However, when Steven was intoxicated, he was also more open about his feelings, saying he wished he had died instead of Diana (App. 34-35).

Steven mainly kept to his room, avoiding contact with his aged and ill parents. Stan was often angry with Steven, who was devastated by troubles with his parents. When they would argue, Steven retreated into himself. He felt he had no place with his family, and his adoption was a sore subject. He felt alone, and blamed himself for the emotional distance with his parents. There was no attachment between them, but Steven felt obligated to love them (App. 35, 148).

Steven dropped out of high school around 1985, preferring isolated study and obtaining a GED. He received settlement money from litigation regarding the car accident, but quickly blew through it while at home recuperating from his injuries. He bought a red Camaro that had been his dream car, but barely spent any time driving it. He mostly drove it around the neighborhood, recklessly slamming on the accelerator to go 30mph over the speed limit. He crashed it twice soon after purchasing it, so it was constantly in the shop for repairs. Eventually, Steven became unable to drive due to his numerous speeding tickets and the wrecked condition of the car. He sold the Camaro to a biker in the neighborhood nicknamed "Lightning" in exchange

for an estimated three months' worth of cocaine and possibly methamphetamine (App. 35, 119, 144).

At this point, most of Steven's peer relationships fell apart. While Steven's friends grew up and found fulfilling careers or built families, Steven remained stuck. He seemed to have no calling in life. As he and his friends saw less and less of each other, Steven resented the growing emotional distance but continued to withdraw. When Steven's friends did see him, he seemed increasingly lifeless, unhappy, and pessimistic. He spent nearly every day with Lightning and other bikers, trusting them because bikers had been the first responders after the fatal car accident (App. 35-36).

Lightning was a known drug dealer, and Steven's primary source of cocaine and meth. Steven's drug use worsened during this time, and friends saw him using a needle and spoon to shoot up drugs. Although Steven's decline was obvious, his parents never attempted to intervene. As had become their habit, Stan and Estella simply ignored the situation (App. 36-38).

As Steven spent more time with Lightning, he drank more heavily. Steven and Lightning would each drink a twelve-pack of beer, and share a bottle of bourbon. Lightning's house reeked of cigarette smoke and was filled with empty beer cans. Steven would sometimes swallow some of his pain

pills while drinking, and he and Lightning shared marijuana joints. Steven would stammer his words and was unable to walk afterward. Shanda had to help him home. Though Steven attempted to shield Shanda from his use of harder drugs so as not to disappoint her, she suspected it. Lightning would invite Steven into the house alone for a few minutes, and Steven would emerge wiping his nose and acting energetic and erratic – very different than when he was drunk (App. 36-38).

Steven became severely depressed. His constant partying with Lightning, alcohol and drug use, and financial dependency took a toll on him. Stan and Estella could no longer ignore what was happening. Once again, they did not attempt to intervene, but instead made it clear they did not want him around, and told him to leave their house (App. 37, 156).

Around the same time, Shanda's parents demanded that Steven marry Shanda or break off their relationship. Shanda's parents told Steven that if he wished to remain with her, he needed to man up, get a job, and provide insurance. Without hesitation but also without a plan, Steven proposed to Shanda. To bring in money, Steven worked as a residential painter. He came home most days with his clothes, face, and hands covered in white paint. He worked a second job at a gas station to make ends meet while Shanda stayed home (App. 37, 136, 146, 154).

In addition to working two jobs, Steven entered trade school at the Phoenix Institute of Technology, studying mechanical work on automobile engines. Despite Steven's efforts, he and Shanda were destitute, barely scraping by. Their housing situation was unstable, moving in with a friend of Steven's from the trade school and then disappearing a few weeks later. Shanda's parents paid for them to move into a rental home, and Steven's sister Sandy occasionally gave them money. Steven, though, was financially reckless. Over time, he spent less time at school and more with Lightning. The bikers came over to Steven's place whether they were invited or not, bringing alcohol and drugs and encouraging Steven to spend less time on his future and more on his addiction. Shanda realized they only cared about partying and excess, but Steven could not see that they were using him (App. 37-38, 154).

After a round of antibiotics nullified her birth control, Shanda unexpectedly became pregnant. The additional strain of their disagreement over what to do was a tipping point. When Shanda gave up the child, Steven believed he had nothing to live for, no future, and no one who cared about him. Unable to escape these feelings, his substance use worsened. He appeared suicidal (App. 38, 57-58, 135-36, 153-54).

As Steven's mental state deteriorated, his physical appearance changed. He got tattoos and shaved off his characteristic long hair. He lacked motivation for anything outside of drugs. He was hungover every morning and used cocaine and meth so heavily that he could no longer hide it from Shanda. He used needles to shoot up (App. 38).

By now, Lightning and his group were over every night. Steven and Shanda's rental house was gradually torn apart. Lightning and the others defaced and punched holes in the walls and destroyed the furniture. They talked about tearing down the walls. When Shanda's parents visited and saw the damage, they promptly kicked Shanda and Steven out. At an emotional and financial breaking point, Shanda moved back in with her parents – effectively ending their marriage. Steven was left homeless (App. 38, 123, 150, 154-55).

In desperation, Steven followed a woman he had met at a party, Heidi, and an acquaintance of hers named Dale, who invited him to Wisconsin. He felt like Heidi was unhealthy, but did not know what else to do to avoid sleeping on the street. On the way, in Missouri, Heidi had a medical emergency involving her appendix. When Steven suggested she go to the hospital, Heidi admitted the police were looking for her. Steven insisted she go to the hospital, and the police indeed showed up for Heidi (App. 39).

Dale agreed to take Steven to Illinois, to stay with his former girlfriend and Diana's friend, Suzanne. However, Suzanne turned out to be involved with cocaine dealers. Steven told her she needed to get out of the trade, even though he couldn't conquer his own addiction. He didn't want to be part of her downfall. Steven and Dale continued to Wisconsin, but as soon as they got there, Dale's parents took him to rehab and Steven was left alone in an unfamiliar city with less than \$100. When he returned to Arizona soon after, he was detached and disconnected from life. He looked awful, covered in tattoos, exhausted, and clenching his teeth as he did when high. He said Suzanne had told him about a job in Wisconsin. While Steven refused to talk about the specifics of what had happened, his friends pieced together that something traumatic had happened (App. 39, 145).

Steven continued to spiral, smoking meth for three days straight with Lightning. He began hallucinating, seeing people on the street who were not there. He was desperate for a change but seemed completely lost and stuck. He wound up homeless again, sleeping on park benches but being unable to rest because he was constantly under threat of attack on the street. The recent deinstitutionalization movement meant an influx of mentally ill individuals on the streets around Steven. He was hypervigilant and wracked with self-loathing, not able to comprehend that he had gone from having a

wife, home, job, and car to being “in the gutter”. It had been so easy to become homeless, but was so hard to get out of it. He survived on food from the local dumpsters, and was crushingly lonely. His depression felt paralyzing (App. 39, 145).

Steven remained transient until meeting Kyle White through another acquaintance (App. 40).

*Life with Kyle White and Steven’s Further Decline*

Kyle White had a dominant personality. He was arrogant and felt superior to anyone and everyone around him. He was bright and naturally charismatic, but enjoyed playing mind games and pushing people’s buttons to get into their heads. He was highly manipulative, doing whatever it took to get what he wanted or mess with someone’s psyche. He had a way with words to keep others unbalanced, and liked to use them to make people feel like they were less than him and that everything he said was right and what others said was wrong. When mind games did not work, he threatened physical violence (App. 40-41).

Kyle was unable to keep a job due to his personality. He could not handle being in a position where he had a supervisor. He always had to be in charge, and always had to have the upper hand. He couldn’t tolerate

someone giving him orders. He had previously been kicked out of the Army for an altercation with a superior officer while stationed in Korea (App. 41).

Kyle was physically, psychologically, and sexually abusive towards his wife, Sandra. When Sandra tried to report him or leave, Kyle used the police to his advantage – one time when Sandra left him, Kyle found out where she lived, called the police in their area telling them Sandra was dead and being kept hidden in the apartment. He became increasingly sadistic, threatening Sandra and telling her he had taken three life insurance policies out on her. The insinuation was that he could kill her and collect money for her (App. 41-42).

When Kyle and Sandra were living in Arizona, Kyle made a point of finding homeless or otherwise marginalized and vulnerable individuals off the street and bringing them to live with them. He would even pick up hitchhikers and have them come to stay. He refused to explain why he was recruiting people, but he seemed to be doing something with them. He would keep them around for days or weeks at a time, and then have them disappear (App. 42).

Kyle brought Steven home in 1990. Unlike Kyle's other recruits, he kept Steven around. Kyle was focused on Steven due to his Aryan appearance

and because he had been adopted by Jewish parents. Steven was kind, but had odd mannerisms and seemed off-kilter (App. 42).

Kyle was an outspoken racist towards anyone non-white. He kept a set of books that included a Bible, as well as Nazi and Satanic literature. He made racially derogatory remarks and used offensive labels to describe non-white people. He tried to indoctrinate everyone he picked up off the street, saying they had to choose sides: “the whites” versus everyone else. He told them they needed to do something as a white race to “combat colored people” and that they could not “interbreed” with other races (App. 43).

Kyle made fun of Steven, and goaded others into affirming the taunting. He liked to show he could control him, ordering him around. Whatever he commanded of Steven, Steven would comply. Kyle was trying to start a group with himself as the leader. He bragged that he had led biker gangs in the past, knowing that would influence Steven, who had an affinity for bikers. Steven jumped to do anything Kyle wanted, feeling he owed Kyle for getting him off of the streets (App. 43).

About six weeks after Steven had come home with Kyle, Kyle decided to move everyone to a trailer in Jacksonville that was owned by Kyle’s uncle. They had little furniture – a couple mattresses and a couch. He spent the money Steven had given him out of a sense of obligation on half a dozen

guns, including pistols, rifles, and boxes of ammunition. He stored the guns in a side bedroom, and kept the ammunition out in the open inside the house (App. 43).

After the birth of Sandra and Kyle's son, Christian, in late 1990, Kyle's abuse went rampant. He forced Sandra to strip naked and used cigarettes to burn her inner thighs, leaving marks. He raped her while keeping a pistol to her head. Sandra finally took one of the guns from Kyle's weapon supply to protect herself, but Kyle found it and took it back. He said it was a .22 caliber. Desperate, Sandra escaped with the children to her stepfather's home – also in Jacksonville (App. 44).

Kyle took yet another short-lived job as a manager at a nearby Pizza Hut, but again was unable to keep the job. Steven, who worked as a cook at the Pizza Hut, was the most consistently employed but made very little money. What money he had went toward food, water, heat, and other necessities for everyone living in the trailer. Steven was so desperate for money to support Kyle and Kyle's family that he pawned items (App. 44).

Soon, Steven found himself supporting Kyle's newest recruit, Marc Christmas, who had been on probation work release for several months, but struggled to maintain employment. Steven and Marc quickly bonded. They were both deeply depressed and turned to substance abuse to escape from

their emotions. They both wanted to make lives for themselves and felt they would be a burden to their loved ones if they asked for help. They were both outcasts and didn't see a point to anything. They felt they had no future and were exhausted by the sheer effort of getting by each and every day. The biggest difference between them was that Marc had a past violent history, whereas Steven did not and was the complete opposite – he did everything he could to avoid violent situations (App. 44-45).

Kyle appeared to resent that Steven had connected with someone other than him. Kyle had again been fired from Pizza Hut and often argued with Steven and Marc about who would pay for what. He demanded that Steven and Marc come up with money for him, even though no one except Steven was working. Kyle became increasingly agitated but handled it differently with Steven and Marc. He was more aggressive with Steven, constantly complaining, using him for money, and threatening that he would kick Steven out to go back on the streets (App. 45).

Amidst all the stress he put Steven under, Kyle also introduced Steven to Christina Moss. Steven and Christina “clicked instantly” and talked all night. The following day, Steven took Christina to McDonald's, showing his affection by splurging to purchase the “big breakfast” menu item for her. They began a relationship, although the other men in the trailer were put off by

Christina's appearance and thought Steven "could have done better". Steven didn't care about that – he genuinely liked Christina (App. 45-46).

Steven was desperate to impress Christina, who was in a rebellious phase and drawn to his biker-like appearance and tattoos. Steven accentuated his toughness to fit into her rebellion. He said little about his background, other than that he was adopted, had trouble fitting in with his family, did not feel like he belonged, and often fought with his father due to opposing personalities. He refused to describe the experience of being homeless; only that he had been until moving in with Kyle. He was gentle to Christina's son, Tyler. He cared for Tyler as though he was Steven's own son, always playing with him and making him smile or laugh. He bought shoes and diapers, and took photos in which they looked like a family (App. 45-47).

Around others, Steven acted like a tough guy and a braggart – but he was consistently struggling. He was addicted to cigarettes and marijuana. He did not have enough money to afford them, but Christina purchased them for him. He was paranoid, especially after smoking marijuana. He developed conspiracy theories, and believed he was being persecuted. Despite being unable to afford basic necessities, Steven was so dependent on alcohol that he needed to drink daily to maintain a buzz. He was so desperate to make

ends meet while being a slave to his addictions, he resorted to bringing leftover pizza from his job to feed everyone (App. 47).

Kyle's behavior kept worsening. He kept boasting how much smarter he was than Steven and Marc. He did everything he could to put Steven down and show his superiority. On top of Steven being the sole provider for the group, Kyle forced him to clean the trailer, care for Kyle's children when they were around, and go retrieve food. Steven began trying to push back, but was worn down by Kyle. Marc had an easier time ignoring him, because Kyle wasn't as fixated on Marc (App. 47).

Kyle was more knowledgeable about guns than Steven, which made it easier for him to assert his "superiority". Kyle stockpiled bullets that he hollowed out himself. Steven became increasingly paranoid and unsettled by Kyle's behavior. When Steven and Christina would sit down in public places, he insisted on facing the entrance and told Christina that if he told her to get down, she needed to get down immediately (App. 48).

Kyle became increasingly threatening about putting Steven and Marc back on the streets. Kyle began to lead discussions of committing robberies, and said in every conversation that no witnesses could be left. He suggested several places, but decided on Pizza Hut. Kyle untruthfully disavowed his participation and lead in planning the crimes when he was questioned by

police, making it seem as though he became privy to Steven and Marc's conversation about committing a robbery by happenstance (App. 48).

The day after the crimes, Kyle took significant cash from Marc. Then, when Steven and Marc were arrested, Kyle stood and screamed "that's them, that's them!" while pointing his finger. Kyle had never before seemed so eager to please anyone as he was to please the police. Kyle never faced any consequences related to the crimes (App. 48).

Leading up to the trial, Steven was increasingly paranoid. He consistently thought his attorney was in on a conspiracy against him with the state attorney and judge. He believed he was entirely alone and everyone was against him. He seemed more and more isolated. He wanted to take the fall for everything, hoping it would help Marc to avoid punishment. Marc has always believed that Steven did not deserve a worse punishment for a crime Steven was no more culpable for (App. 48-49).

#### *Steven's Mental Health*

In 1995, Dr. Barry Crown conducted an evaluation of Steven, which indicated a neurological impairment attributable to brain damage. Dr. Crown opined that the source of the brain damage may have been the result of prenatal, perinatal, or early childhood conditions, including the possibility of

a genetic mutation injury. Steven's abstract reasoning abilities were akin to an eleven-year-old child, despite his chronological age of 27 (App. 118, 124).

In 2021, after further testing and record review, Dr. Crown expanded upon his original opinions, concluding that Steven likely experienced Fetal Alcohol Syndrome, which over time became Fetal Alcohol Effects. Consistent with neurological impairments, variations in Steven's school achievements indicate particular struggles in abstraction and reasoning details, as opposed to strengths in memory and recall. Dr. Crown also concluded that Steven likely had undiagnosed concussions as a result of his automobile accidents, as well as a possible frontal orbital injury (App. 119).

Dr. Crown concluded that Steven suffers from a "Cognitive Disorder: Not Otherwise Specified ("NOS") and Diffuse Brain Injury with resulting neurocognitive disorder due to multiple etiologies." These conditions are due to a combination of brain damaging situations including his biological mother's consumption of alcohol while pregnant, Steven's malnutrition as an infant, Steven's use of a combination of drugs as a child and adolescent, and numerous traumatic head injuries during a crucial neurocognitive developmental period. In other words, these insults and injuries to the brain happened while Steven's brain was still developing (App. 122, 125).

Steven's neuropsychological testing results demonstrate significant brain damage affecting his general reasoning, judgment, language-based critical thinking, and memory functions. This predated Steven's offense, which took place prior to age 25, when Steven's brain was not yet fully developed. Indeed, Steven's brain development was likely delayed due to the multiple brain traumas he endured *in utero* and throughout childhood and adolescence. Dr. Crown opined that at the time of the crime for which Steven stands sentenced to death, his brain was significantly impaired and he was suffering from severe cognitive deficits (App. 50-52).

Dr. Yenys Castillo, who also evaluated Steven in 2021, concluded that he meets the diagnostic criteria for Bipolar II Disorder, Post-Traumatic Stress Disorder, and Substance Use Disorder. These conditions are correlated with impairments in executive function, such as attention and concentration. They cause alterations in cognition, mood, arousal, and reactivity, including: negative thoughts which progress to ongoing and often distorted beliefs, which are strong enough to create distortions regarding how one views himself in the world and diminished interest in other activities in the world; difficulty concentrating; difficulty experiencing positive emotions at all; estrangement or detachment from other people; sleep disturbances; substance abuse; avoidance; irritability; angry outbursts; reckless and self-

destructive behavior. These conditions, in tandem, would have had an exponential impact on Steven's functioning (App. 58-61, 154-57).

In addition to the diagnoses Dr. Castillo has been able to provide to a reasonable degree of clinical certainty, Dr. Castillo found indicators of Neurocognitive Disorder that corroborates Dr. Crown's diagnosis of Cognitive Disorder Not Otherwise Specified. Further, there are indicators that Steven suffers from Fetal Alcohol Spectrum Disorder (FASD), a group of conditions that can occur as a result of prenatal alcohol exposure. Steven exhibits red flags of FASD due to his mother's alcohol usage during the first trimester of her pregnancy. FASD is correlated with behavioral issues, learning deficits, hyperactivity, impaired attention, learning difficulties, and poor reasoning and judgment (App. 61, 154-57).

In spite of Steven's deficits, he has thrived in the structured prison setting, and is functioning at a much higher level than he was in prior years. In fact, whereas Steven's ability to reason abstractly at 27 years old was that of an eleven year old, he now tests in the 75<sup>th</sup> percentile – high average reasoning ability. This improvement is consistent with the brain damage diagnosis, as a primary therapeutic recommendation for individuals with brain damage is a structured environment and routine (52, 124).

This progress amidst impairment is significant. At the time of Steven's crime and trial, his brain was not operating in the same manner as a mature adult. Thus, his participation in a capitally-charged crime is less indicative of a lifelong predisposition to violence than if his brain had already been fully developed at that time. By virtue of the continued development of Steven's brain and the structure of the carceral setting, Steven has matured, changed, and become less vulnerable to external stressors. He has become a responsible and trusted adult (App. 50-52).

### **C. Conclusion**

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,

/s/ Dawn B. Macready

Dawn B. Macready

Florida Bar No. 542611

Drew A. Sena

Florida Bar No. 1023218

CCRC-North

1004 DeSoto Park Drive

Tallahassee, FL 32301

(850) 487-0922

Dawn.Macready@ccrc-north.org

Drew.Sena@ccrc-north.org

*Counsel for Appellant*

**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 4th day of April 2023.

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/s/ Dawn B. Macready

Dawn B. Macready