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In the Supreme Court of Florida

ERNEST D. SUGGS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO.: SC2024-0660
LT. NO.: 1990-CF-00338

CAPITAL CASE

ON APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT,
IN AND FOR WALTON COUNTY, FLORIDA

ANSWER BRIEF ON THE MERITS

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RESPONSE TO REQUEST FOR ORAL ARGUMENT[1]

Oral argument in this case is unnecessary and would not offer a material benefit for proper disposition of the issues before this Court. Appellant has offered no reason for this Court to depart from its practice of dispensing with oral argument in successive capital postconviction appeals. *See* Florida Supreme Court Manual of Operating Procedures, II.A.3.(a) ("appeals from successive motions from denials of postconviction relief which are treated in the same manner as a discretionary review case in which review is granted without oral argument"). Setting oral argument will only serve to further delay this 1992 capital postconviction case.

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[1] Appellant Ernest D. Suggs is referred to as "Appellant" or "Suggs." The State of Florida is referred to as "State" or "Appellee." Appellant's Initial Brief is cited as "IB," followed by page number(s). The corrected record on appeal is cited as "CR," followed by page number(s). The direct appeal record (Case No. 80,340) is referred to as DAR, followed by volume and page number(s). The record on appeal from Appellant's 1997 initial postconviction motion to vacate judgment and sentence, amended in 2001 (Case No. SC03-1330), is cited as "PCR", followed page number(s). The companion Supplemental Record on Appeal in Case No. SC2003-1330 is cited as "SPCR," followed by page number(s) and postconviction evidentiary hearing transcript is cited as "PCR-EH," followed by page number(s).

INTRODUCTION AND STATEMENT OF RELATED CASE

This is an appeal of a summary denial of Appellant's third successive postconviction motion in a capital case on claims of newly discovered evidence, *Brady v. Maryland*, 373 U.S. 83 (1963), and a due process violation. The claims raised are untimely under Florida Rule of Criminal Procedure 3.851 ("Rule 3.851"), legally insufficient under controlling precedent, and/or procedurally barred. Because *all* of the claims are meritless as a matter of law, the postconviction court properly declined to conduct an evidentiary hearing.

This Court also has before it, contemporaneous review of the postconviction trial court's order denying Appellant's fourth successive Rule 3.851 postconviction motion in Ernest D. Suggs v. State of Florida, Case No. SC2024-0702. *See* CR 1093-1525; 1538, 1544. At issue in SC2024-0702 are claim of newly discovered evidence, *Brady*, *Giglio v. United States*, 405 U.S. 150 (1972), and *Massiah v. United States,* 377 U.S. 201 (1964). Simultaneous briefing in SC2024-0702 and the instant case was ordered and utilize identical records on appeal.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

I. Statement of Facts

In July 1992, Appellant was convicted of the 1990 first-degree murder, kidnapping, and robbery of Pauline Casey. The facts about the murder and trial were set forth on direct appeal in *Suggs v. State,* 644 So.2d 64, 65–66 (Fla.1994) and summarized as follows:

On the evening of August 6, 1990, Ms. Casey went missing from the Walton County bar where she worked. The bar was found abandoned, the door was open, cash was missing from the bar register, and the victim's car, purse, and keys were found inside. *Suggs*, 644 So.2d at 65. Ms. Casey's neighbor, Ray Hamilton, was in the bar the night she was murdered. DAR Vol. XVI, 2788. Mr. Hamilton confirmed he, Ms. Casey, and Suggs were the only three in the bar before she disappeared; he saw her playing pool with Suggs; and saw Suggs's Jeep in the parking lot when he left. *Suggs*, 644 So.2d at 65; DAR Vol. XVI, 2791-94, 2797-99.

Police issued a BOLO based on Suggs's physical description and vehicle, later stopped Suggs, and conducted a consent search of Suggs's vehicle and home. *Suggs*, 644 So.2d at 65. The search of Suggs's home recovered approximately $170.00 in small cash

denominations, found wet in his bathroom sink. *Id.* Police obtained Suggs's car tire impressions which were similar to tire tracks found on a dirt road a few miles from the bar and close to where Ms. Casey's body was found. *Id.* Ms. Casey was found 25 feet off of a dirt road and was stabbed in the neck and back and died from blood loss. *Id.*

Trial and physical evidence linking Suggs to Ms. Casey's murder and supporting the conviction included: 1) Ms. Casey's fingerprints and palmprint found inside and outside of Suggs's vehicle. Specifically, two fingerprints were found on the exterior passenger window and one palmprint was found on the inside passenger door handle (PCR Vol. I, 346); 2) one of three known keys to the bar and a beer glass similar to those used at the bar were found in the bay behind Suggs's home; 3) serology testing confirmed a bloodstain on Suggs's shirt matched Ms. Casey's blood and excluded Suggs; 4) Ms. Casey's neighbor positively identified Suggs as the last person seen with her on the night of the murder; and 5) testimony from two of Suggs's cellmates that he murdered Ms. Casey. *Suggs*, 644 So.2d at 65-66, 69.

In his defense, Suggs claimed he was framed and asserted explanations for each of the foregoing facts that linked him to the

murder. *Id.* at 66. A jury convicted Suggs of first-degree murder, kidnapping, and robbery of Ms. Casey. *Id.*

Suggs's cellmate Wallace Byars ("Byars") testified at the penalty phase that Suggs told him he took Ms. Casey out of the bar at knife-point and murdered her because he did not want to leave a witness. *Suggs*, 644 So.2d at 66, 69. The State entered into evidence a book taken from Suggs's house, *Deal the First Deadly Blow*, to show Suggs's premeditation and plan to kill Ms. Casey. *Id.*

The State also introduced evidence of Suggs's 1979 first-degree murder and attempted murder convictions and his parole at the time of the murder in that case. *Suggs*, 644 So.2d at 66. In support, inmate James Taylor ("Taylor") testified that Suggs told him of his Alabama murder and attempted murder convictions and did not expect to be convicted for Ms. Casey's murder. *Suggs v. McNeil*, 609 F.3d 1218, 1220 (11th Cir. 2010). Taylor further testified that Suggs did not want to leave a witness, was "stupid" in the Alabama case, but not in Ms. Casey's murder "because he didn't leave a damn witness, 'I almost [took] her damn head off.'" *Id.*; *see also Suggs*, 644 So.2d at 66.

Suggs presented non-statutory mitigation evidence that he

came from a good family; was a normal, happy child; and was a very hard worker. *Suggs*, 644 So.2d at 66. He requested the penalty phase jury to consider three statutory mitigating factors. The jury recommended a death sentence by a seven-to-five vote, and the trial court sentenced Suggs to death having found seven aggravating factors[2] and three facts in mitigation[3]. *Id.*

Direct Appeal

Suggs raised eight issues on direct appeal.[4] This Court rejected

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[2] (1) Suggs murdered Ms. Casey while under sentence of imprisonment; (2) he was previously convicted of a capital felony and a felony involving the use or threat of violence; (3) he murdered Ms. Casey while engaged in commission of a kidnapping; (4) he committed the murder to avoid or prevent a lawful arrest by eliminating a witness; (5) he committed the capital felony for pecuniary gain; (6) the murder was especially heinous, atrocious, or cruel; and (7) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. *Suggs*, 644 So.2d at n.1.

[3] (1) Suggs's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired due to drinking at the time of the incident; (2) he came from a good family; and (3) was a hard worker. *Suggs*, 644 So.2d at 66.

[4] (1) trial court erred allowing judge not on the witness list to testify without a hearing per *Richardson v. State,* 246 So.2d 771 (Fla. 1971); (2) trial court erred allowing evidence improperly seized at Suggs's home after illegal detention and police obtained invalid consent; (3) trial court erred denying Suggs's motion for a mistrial based on the prosecutor's statement suggesting Suggs had previously been in jail;

Suggs's arguments and affirmed his conviction and death sentence. *Suggs*, 644 So.2d at 67-70, *cert. denied*, *Suggs v. Florida*, 514 U.S. 1083 (1995).

II. Postconviction Procedural History

The postconviction procedural history in this case spans decades, since 1997. Some of Suggs's claims raised, denied by the postconviction courts, and reviewed on appeal directly relate to Appellant's newly discovered evidence, *Brady*, and due process claims/issues before this Court.

A. 1997 Initial Postconviction Motion.

In 1997, Suggs filed an initial Florida Rule of Criminal Procedure 3.850 postconviction motion to vacate judgment and sentence, amended in 1998 and 2001, and raised 21 total claims. *Suggs v. State*, 923 So.2d 419, 425 (Fla. 2005). The postconviction

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(4) prosecution tactics denied Suggs a fair trial; (5) Suggs's kidnapping conviction was based on insufficient evidence; (6) trial court erred allowing Ms. Casey's neighbor Ray Hamilton's identification of Suggs; (7) trial court erred admitting into evidence the book *Deal the First Deadly Blow;* and (8) trial court erred allowing evidence and jury instructions on certain aggravating factors. *Suggs*, 923 So.2d at n.3.

court held *Huff*[5] hearings and summarily denied most of the claims. The remaining seven claims were denied following the 2003 evidentiary hearing. *Id.*

Suggs appealed, raised 28 issues[6], and sought relief through a

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[5] *Huff v. State*, 622 So.2d 982 (Fla. 1993).

[6] (1) the State knowingly violated *Giglio*, presenting false and misleading evidence by inmates Taylor and Byers, who testified that Suggs confessed to the murder; (2) defense counsel was ineffective for failing to allege a *Massiah v. United States,* 377 U.S. 201 (1964) violation based on the State's use of informants; (3) the State withheld exculpatory evidence concerning the time of death; (4) ineffective assistance of counsel ("IAC") waiving Suggs's right to a *Richardson* hearing after the State failed to notify the defense Judge Lindsey would be called as a witness; (5) IAC for failing to move for a mistrial when two jurors became ill during the medical examiner's testimony; (6) IAC for failing to address the victim's fingerprints on Suggs's vehicle; (7) IAC for failing to investigate Steve Casey and Raymond Hamilton's testimony; (8) IAC for regarding the jury's request to read back Casey and Hamilton's testimony; (9) - (13) IAC for failing to object to prosecutor's improper conduct during closing statements; (14) IAC for failing move for mistrial when the prosecutor told the jury that Suggs had previously been in jail; (15) defense counsel was cumulatively ineffective during the guilt phase; (16) IAC during the penalty phase for failing to offer evidence of mental health mitigation and good incarceration record; (17) IAC for failing to object to unconstitutional jury instructions; (18) newly discovered evidence that Alex Wells confessed to the murder; (19) IAC for failing to ensure Suggs's presence at critical stages of his trial; (20) right to conflict-free counsel was violated; (21) defense counsel improperly waived Suggs's constitutional rights; (22) Suggs's right to be free from unreasonable search and seizure was violated, IAC for failing to challenge the search warrant issued to search Suggs' home and vehicle; (23) Suggs is innocent of the death penalty; (24) Suggs's due

petition for writ of habeas corpus. *Suggs*, 923 So.2d at 425, 442. This Court affirmed the circuit court's denial of Suggs's initial postconviction claims and denied habeas relief. *Id.* at 442.

One 1997 initial postconviction claim denied below and affirmed on appeal is relevant to the instant discussion on Suggs's newly discovered evidence claim. In 1997, Suggs raised a newly discovered evidence claim that Alex Wells confessed to Ms. Casey's murder to fellow inmate George Broxson. *Suggs*, 923 So.2d at 437. The *Suggs* Court found "no basis upon which to find that the postconviction court erred" denying the newly discovered evidence claim. *Id.* at 438. As addressed, *infra* at Issues 1 and 2, Alex Wells is Mark Riebe's half-brother, who Suggs's now claims confessed to Ms. Casey's murder as newly discovered evidence. Alex Wells is also Patsy Wells's son, whose declaration Suggs presents to support Riebe's confession.

B. 2006 Federal Habeas Petition.

Suggs filed his federal habeas petition in Suggs v. McNeill, No.

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process rights were denied when he was prohibited from interviewing jurors; (25) Florida's death penalty statute is unconstitutional; (26) death by electrocution or lethal injection is cruel and unusual punishment; (27) Suggs is insane to be executed; and (28) the postconviction court failed to conduct a cumulative error analysis. *Suggs*, 923 So.2d at n. 5.

3:06-cv-111 (N.D. Fla.) (Doc #60); *Suggs*, 609 F.3d at 1227. The District Court denied all of Suggs's claims but granted a limited certificate of appealability to the Eleventh Circuit Court of Appeals regarding ineffectiveness of penalty phase trial counsel. *Id.* The Eleventh Circuit affirmed the District Court. *Id.* at 1233.

C. 2015 First Successive Postconviction Motion.

Suggs filed his first successive postconviction motion on October 27, 2015, raising five claims of newly discovered evidence and related *Brady* violations.[7] *Suggs v. State*, 238 So.3d 699, 702-03 (Fla. 2017). The postconviction court summarily denied all of the claims. *Id.* at 702.

Summary denial of Suggs's first successive postconviction motion was affirmed on appeal and the Court found no evidence was suppressed, the newly discovered evidence was "clearly not material,"

[7] Newly discovered evidence/*Brady* claims: (1) the victim's husband sexually abused the victim's daughter, whom Suggs argued at trial, may have committed the murder; (2) activities and statements of law enforcement officers involved in the search of the bay; (3) recent statements by Suggs's sentencing judge; (4) involvement in Suggs's case of FBI analyst Michael Malone, whose work has been discredited in other cases; and (5) Florida Department of Law Enforcement's investigation of the Walton County Sheriff's Office misconduct and prosecutor in a contemporaneous case, during the time Suggs was being investigated. *Suggs*, 238 So.3d at 703.

and was not exculpatory. *Suggs*, 238 So.3d at 707. This Court also found the cumulative effects of the additional evidence did not give rise to reasonable probability that had the evidence been disclosed, the trial result would have been different or confidence in the verdict undermined. *Id.*

D. 2017 Second Successive Postconviction Motion.

Suggs's January 2017 second successive postconviction motion sought relief under *Hurst v. Florida*, 577 U.S. 92 (2016). The circuit court denied the postconviction motion, which was affirmed on appeal in light of *Hitchcock v. State*, 226 So.3d 216 (Fla. 2017). *See Suggs v. State*, 234 So.3d 546 (Fla. 2018).

E. 2018 Third Successive Postconviction.

Suggs filed his third successive postconviction motion on November 2, 2018 and raised three claims (CR 54-104):

Claim I: Newly discovered evidence of Mark Riebe, an inmate in the custody of the Florida Department of Corrections ("DOC"), confessed to his mother Patsy Wells, Randy Sheheane, and Randy Ray Chapman, that he killed Ms. Casey, not Suggs. CR 59-60. In

support, Suggs offered declarations of these individuals.[8] CR 1329-34.

Claim II: The State violated *Brady* and suppressed Riebe's confessions regarding Ms. Casey's murder, claiming the statements are exculpatory and suppression resulted in prejudice because Suggs has maintained his innocence. CR 69, 71.

Claim III: The Florida Supreme Court violated Sugg's due process rights when it impermissibly considered non-record evidence and counsel's arguments in its decision affirming denial of his first successive postconviction motion in *Suggs v. State*, 238 So.3d 699 (Fla. 2017). CR 73, 75.

The State answered on December 13, 2022, and argued the claims be denied because: Claim I on newly discovered evidence was untimely and did not meet the two-pronged test adopted in *Jones v. State*, 709 So.2d 512, 521 (Fla. 1998). The claim was not brought within one year of the date the information was discoverable through

[8] Two of the declarations are notarized (Wells and Sheheane) and all three state "the facts set forth are true and correct" to the best of the declarant's knowledge. However, on their face, the declarations are not under oath or made under penalties of perjury.

due diligence and would not probably produce an acquittal at retrial. CR 881-87; Claim II was untimely and Suggs did not establish *Brady's* requirements that the newly discovered evidence was favorable, had been suppressed, and had a reasonable probability of a different outcome at trial. CR 887-89; and Claim III's purported due process violation by the Court was not properly raised in circuit court and procedurally barred. CR 889-90.

The postconviction court held *Huff* hearing on February 2, 2023, which addressed both Suggs's third and fourth successive postconviction motions and the need for an evidentiary hearing. CR 896-926. Regarding the 2018 third successive Rule 3.851 motion, both sides argued the merits of the three claims. CR 918-925. However, postconviction counsel made no additional mention of or argument in support of the need for an evidentiary hearing, beyond their written motion.

The circuit court summarily denied Suggs's third successive postconviction motion on February 13, 2024 (CR 930-1083) finding: Claim I was "facially and/or legally insufficient" because Suggs failed to satisfy *Jones*'s two-prong test for newly discovered evidence where it was untimely, the information did not weaken the case against him,

and would probably not result in acquittal on retrial. CR 933-35; Claim II's *Brady* claim regarding Riebe's statements was untimely and Suggs did not meet his burden to comply with *Brady*'s requirements. CR 936-38; and Claim III regarding a due process violation by the Court in *Suggs v. State*, 238 So.3d 699 (Fla. 2017) was not properly raised in the circuit court. Further the claim was procedurally barred as the *Suggs* Court rejected the same claim upon Suggs's motion for rehearing. *See Suggs v. State*, 2018 WL 1285546 (Fla. March 13, 2018). Suggs moved the trial court for rehearing of the order, which was denied. CR 1091-92. Suggs now appeals that order.

F. 2022 Fourth Successive Postconviction.

On May 16, 2022, Suggs filed his fourth successive motion for postconviction relief, raising another newly discovered evidence claim and violations under *Brady*, *Giglio*, and *Massiah*. CR 113-531 (Motion and Appendix). These claims were predicated on Suggs's newly discovered evidence comprised of 1) Taylor's recanted trial testimony, stating he testified falsely and acted as a state agent; 2) former WCSO deputy Timothy Crenshaw's statement that WCSO used informants; and 3) deposition testimony from a former Florida

inmate Jake Ozio, taken in an unrelated capital case again Gary Whitton. CR 136-37. Following the joint February 2023 *Huff* hearing, the postconviction court summarily denied the fourth successive postconviction motion on April 3, 2024 as untimely under *Jones*, procedurally barred, and meritless as a matter of law. CR 1093-1525 (Order and Appendix). Suggs contemporaneously appealed this order in case number SC2024-0702.

SUMMARY OF ARGUMENT

ISSUE I

The postconviction court properly denied Suggs's successive postconviction newly discovered evidence claim that Mark Riebe, an inmate in Florida Department of Corrections custody, confessed to his mother and two former inmates that he killed Ms. Casey. Summary denial was based on findings that the alleged confessions did not constitute newly discovered evidence under *Jones v. State*, 709 So.2d 512 (Fla. 1998). Suggs failed to establish 1) that the claim was timely and filed within one year of discovery of the information through due diligence; and 2) the information would result in a probable acquittal because Riebe's confessions to third-parties would be inadmissible hearsay evidence and did not weaken the case against him.

ISSUE II

The postconviction court properly denied Suggs's related *Brady* claim that the State withheld information regarding Riebe's confessions. Suggs failed to establish that the claim was timely and did not meet his burdens required by *Brady*. Further, the trial

court's finding that *Brady* does not apply to evidence or information that came into existence *after* a conviction and sentence, which the state could not have known, is correct.

ISSUE III

The postconviction court properly denied Suggs's due process violation claim that the Florida Supreme Court considered materials outside of the state appellate record when it affirmed denial of Suggs's 2015 first successive postconviction motion *Brady* claim in *Suggs v. State*, 238 So.3d 699 (Fla. 2017). A claim to review actions or decisions by the Florida Supreme Court was not properly raised in circuit court. Moreover, the claim was procedurally barred because Suggs raised this issue in his motion for rehearing of this Court's 2017 opinion and was denied.

STANDARD OF REVIEW

Because a postconviction court's decision whether to grant an evidentiary hearing on a Rule 3.851 motion is based upon Because a postconviction court's decision whether to grant an evidentiary hearing on a Rule 3.851 motion is based upon the written materials before the court, its ruling is tantamount to a pure question of law and is reviewed *de novo*. *Jimenez v. State*, 265 So.3d 462, 480 (Fla. 2018) (affirming summary denial of postconviction *Brady* and *Giglio* clams where both were procedurally barred and without merit (quoting *Marek v. State*, 8 So.3d 1123, 1127 (Fla. 2009)). To determine whether an evidentiary hearing is required, the postconviction court may look to the entire record. *Henyard v. State*, 992 So.2d 120, 125 (Fla. 2008).

Summary Denial of Successive Postconviction Claims

Successive postconviction claims brought under Florida Rule of Criminal Procedure 3.851(f)(5)(B) ("Rule 3.851") may be summarily denied "[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief." *Dillbeck v. State*, 357 So.3d 94, 98 (Fla. 2023) (affirming summary denial of successive newly discovered evidence claim as untimely and procedurally barred

when the defendant's attorneys could have discovered the underlying witnesses and their testimony decades ago). Summary denial is also proper if the postconviction court finds the claims are not legally sufficient, positively refuted by the record, untimely, not retroactive, procedurally barred, not cognizable, or meritless as a matter of law. *Johnson v. State*, 135 So.3d 1002, 1013 (Fla. 2014); *Dillbeck*, 357 So.3d at 100-02; and *Zack v. State*, 371 So.3d 335, 344 (Fla. 2023); *Jimenez*, 265 So.3d at 480; *Hutchinson v. State*, 343 So.3d 50, 53 (Fla. 2022) (affirming the summary denial of a successive postconviction claim of newly discovered evidence as being "legally insufficient" because the claim did not meet the legal test of *Jones*, 709 So.2d at 521); *Valentine v. State*, 339 So.3d 311, 313 (Fla. 2022) (stating a postconviction court may summarily deny a claim that is legally insufficient citing *McDonald v. State*, 296 So.3d 382, 383 n.2 (Fla. 2020)); *Morris v. State*, 317 So.3d 1054, 1071 (Fla. 2021) (affirming the summary denial of a successive postconviction *Brady* claim, as being "legally insufficient" because the claim did not meet the legal test to establish a *Brady* violation); *Mann v. State*, 112 So.3d 1158, 1162 (Fla. 2013) (affirming the summary denial of a

postconviction claim that was a purely legal claim which was meritless under the controlling precedent).

In reviewing summary denial of a postconviction motion, this Court accepts the defendant's allegations as true "to the extent that they are not conclusively refuted by the record." *Jimenez*, 265 So.3d at 480 (citation omitted). However, mere conclusory allegations are insufficient to establish a prima facia case based on a legally valid claim. *Johnson v. State*, 104 So.3d 1010, 1027 (Fla. 2012) (quoting *Franqui v. State*, 59 So.3d 82, 96 (Fla. 2011)).

Evidentiary Hearing

Evidentiary hearings are held to establish the historical facts and to resolve factual disputes. *Truehill v. State*, 358 So.3d 1167, 1186 (Fla. 2022) (affirming the summary denial of a postconviction claim where the defendant failed "to assert what factual dispute would be resolved at an evidentiary hearing"); *Rogers v. State*, 327 So.3d 784, 787 (Fla. 2021) (stating that a postconviction court should hold an evidentiary hearing whenever the movant makes "a facially sufficient claim that requires a factual determination" quoting *Pardo v. State*, 108 So.3d 558, 560 (Fla. 2012). Suggs fails to identify any factual disputes regarding any of the claims. It is also proper for a

postconviction court to refuse to conduct an evidentiary hearing where the legal basis for the claim was not established. *Rogers*, 327 So.3d at 787 (requiring a "a facially sufficient claim" be made for an evidentiary hearing).

While this Court must accept Suggs's allegations as true to the extent they are not refuted by the record, mere conclusory and speculative allegations do not warrant an evidentiary hearing. *Long v. State*, 271 So.3d 938, 942 (citing *Anderson v. State*, 220 So.3d 1133, 1142 (Fla. 2017)); *see also LeCroy*, 727 So.2d at 238.

ARGUMENT

ISSUE I

Whether the Postconviction Court Properly Denied Appellant's Newly Discovered Evidence Claim Regarding Mark Riebe's Confessions to Pauline Casey's Murder? [Restated]

Suggs newly discovered evidence claim is actually three individual claims predicated on DOC inmate Mark Riebe confession to Ms. Casey's murder. The claim is based on alleged confessions to 1) his mother, Patsy Wells; 2) former inmate Randy Sheheane; and 3) former inmate Randy Chapman. IB 16-18. The information was provided through Suggs's federal postconviction counsel and defense investigator who spoke with these individuals and obtained their written declarations. Id.; CR 100-04.

The postconviction court properly denied this claim as legally insufficient as Suggs's third successive Rule 3.851 motion, filed on November 2, 2018, was untimely on its face. CR 1284. The court determined Suggs did not satisfy the two-pronged test for newly discovered evidence adopted in *Jones v. State*, 709 So.2d 512, 521 (Fla. 1998). Id. Suggs did not establish the claim was timely and did not show that the purported newly discovered evidence would

probably produce an acquittal or reduced sentence. CR 931-35; *Jones*, 709 So.2d at 521.

Suggs's successive motion would be considered timely if the claims fell within one of the narrow exceptions to Rule 3.851, including a newly discovered evidence claim pursuant to Rule 3.851(d)(2)(A). To obtain relief on newly discovered evidence as an exception to Rule 3.851(d)(2), two requirements must be met.

First, the information must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that the defendant or his trial counsel could not have known of it through diligence. *Calhoun v. State*, 376 So.3d 583, 585-86 (Fla. 2023) (citing *Jones*, 709 So.2d at 526); s*ee also Dailey v. State*, 329 So.3d 1280, 1286 (Fla. 2021). It is incumbent upon a capital defendant to establish the postconviction claim's timeliness. *Mungin v. State*, 320 So.3d 624, 626 (Fla. 2020).

Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial, where the case against Suggs is weakened and gives rise to reasonable doubt as to his culpability. *Calhoun*, 376 So.3d at 585-86 (citing *Jones*, 709 So.2d at 526); *Williamson v. State,* 961 So.2d 229, 234 (Fla. 2007).

To reach this conclusion and warrant a new trial, the postconviction court must "conduct a cumulative analysis of all the evidence" and assess "the 'total picture' of the case and all its circumstances." *Calhoun*, 376 So.3d at 586; *Hildwin v. State*, 141 So.3d 1178, 1184 (Fla. 2014). The trial court must also consider all newly discovered evidence which would be admissible at trial as relevant, evaluate the weight of both the newly discovered evidence and that which was introduced at trial. *See Wyatt v. State*, 78 So.3d 512, 523 (Fla. 2011). However, no cumulative review of newly discovered evidence is required if the postconviction court determines the evidence upon which the claims are based is untimely or inadmissible. *Dailey,* 329 So. 3d at 1288 ("The trial court was correct that any alleged newly discovered evidence must be admissible not only to satisfy the newly discovered evidence standard and constitute newly discovered evidence under the law but also to warrant a cumulative review of the evidence."); *Dailey v. State,* 279 So. 3d 1208, 1216 (Fla. 2019) (holding that since the newly discovered evidence claims were either correctly rejected as untimely or based on inadmissible evidence, no cumulative analysis was required).

A. The Newly Discovered Evidence Claim is Untimely.

The postconviction court properly summarily denied Suggs's 2018 third successive postconviction newly discovered evidence claim as untimely. CR 931-35. The trial court found that Suggs did not explain *when* his postconviction counsel learned of the alleged confessions or when the information became discoverable through due diligence. CR 934. The court observed, Suggs did not "clearly identify the dates on which Mark Riebe made his alleged confessions" to multiple persons; the declarations did not include information explaining when or how the confessions were heard; when interviews or conversations were had with defense investigators or Florida Department of Law Enforcement ("FDLE"); and Suggs did not explain when postconviction counsel learned of the confessions. CR 931-35.

Suggs argues that the trial court's finding that he did not clearly identify dates when Riebe made the confessions identified in the declarations, "misunderstands the defendant's claim." IB 23. Just because the affidavits were executed one year prior to the 2018 third successive postconviction motion being filed does not render the claim timely under *Jones*.

Suggs argues that the operative date to determine timeliness of his newly discovered evidence claim is November 3, 2017, the date that "defense investigators spoke with Patsy Wells." IB 16, 23; CR 60. This 2017 date is merely speculative and cannot be the operative date because 1) it is offered without corroboration or support; and 2) the actual operative date or timeframe should at least in 1997 when Ms. Wells's son Alex Wells confessed to Ms. Casey's murder, prompting Suggs's 1997 postconviction claim. Reasonable due diligence by postconviction counsel should have included efforts to identify and interview persons with knowledge at that time. This would necessarily include Ms. Wells regarding her son Alex and even Riebe himself. There is no indication that any follow-up or interviews took place.

Further, Suggs has not demonstrated that Riebe's confession *could not have been discovered* through due diligence as far back as 1997. *See Dailey*, 329 So.3d at 1287-88; *see also Damren v. State*, ___ So.3d ___ 2024 WL 5968167, 48 Fla. L. Weekley S173 (Fla. September 14, 2023) (affirming summary denial of successive newly discovered evidence claim as untimely "without credible offering the date on which his claims were discoverable."); *Sparre v. State*, ___

So.3d ___, ___, 2024 WL 2967406, 49 Fla. L. Weekly S153 (Fla. June 13, 2024) (concluding the successive postconviction was untimely because the PSI was filed in the trial court years earlier and rejecting the date the investigator actual spoke with probation officer who wrote the PSI, reasoning that counsel could have interviewed the PSI's author years earlier); *see also Whitton v. State*, 161 So.3d 314, 323 (Fla. 2014).

Ms. Wells's October 21, 2018 declaration failed to reference the November 3, 2017, date or even refer to any conversation with defense investigators. CR 100. Instead, Ms. Wells's declaration merely states, "I told FDLE agents Dennis Haley and Ray Dyal about the statements Mark made about killing Pauline Casey." *Id.* Ms. Wells then states, "Mark told me that a man named Ernest Suggs was implicated in her murder, but that Mark was the one who actually killed her." *Id.* However, in what appears to be a contradiction in the last paragraph, Ms. Wells states, "[u]ntil recently, I was not aware Ernest Suggs was on death row for the murder of Pauline Casey." *Id.*

Randy Sheheane's October 8, 2018, declaration solely speaks to a statement Riebe purportedly made to him while incarcerated "in

the mid-1990s at Okaloosa County Jail. CR 102. Mr. Sheheane stated, Riebe talked to him "about murders he committed. . . the murders of many women – not just Donna Callahan." *Id.* Riebe told Mr. Sheane that he "murdered a woman from Destin or Santa Rosa Beach area. . . and had an argument with his brother, Alex Wells, about where to dump her body." *Id.* Riebe also told Mr. Sheheane that "her body was dumped off a dirt road off Highway 98 in Walton County, and that is where her body was discovered" and he provided this information to FDLE investigators. *Id.* No dates are included.

Finally, Randy Chapman's declaration is equally unpersuasive. CR 104. Mr. Chapman stated FDLE interviewed him "about Mark Riebe numerous times." *Id.* No date or timeframe was provided. He then states he spoke with "FDLE about a murder Mark Riebe confessed to involving a bartender in Walton County Florida." *Id.* Again, no other information was given, no date, no timeframe when any interview took place, or any details of the incident about which he spoke.

Suggs asserts that "previous counsel" requested and received records from FDLE regarding Alex Wells, Riebe, and Patsy Wells, but it "was never turned over to defense counsel." IB 17. This statement

arguably defeats Suggs's argument that the purported newly discovered evidence "could not have been discovered earlier through due diligence." IB 24, 26. This statement admits that at some time in the past, the defense had knowledge of Riebe and Patsy Wells, for which due diligence by postconviction counsel was required to pursue what they knew.

Suggs also blames unknown prior counsel for alleged failure to obtain records. IB 26. Without any support, he alleges that FDLE failed "to disclose all the witnesses it interviewed in connection with its investigation of Mark Riebe." *Id.* In doing so, postconviction counsel further dilutes its required due diligence claiming it "cannot reasonably be expected to speak to every person that is developed as a result of investigative efforts." IB 27. Suggs gives no indication or allege that he sought to compel production pursuant to Rule 3.851 or 3.852.

He cites for example, *State v. Huggins*, 788 So.2d 238, 243 (Fla. 2001), which concludes that due diligence does not require defense counsel to investigate "hundreds of leads." *Id.* (further citations omitted). In Suggs's case, due diligence did not involve "hundreds of leads," but only a few, which in fact were considered in his prior

postconviction efforts. Such an excuse for his lack of due diligence is illogical and weak and further supports the finding that Suggs's newly discovered evidence claim is untimely. *See Kormondy v. State*, 154 So.3d 341, 350-52 (Fla. 2015) (affirming summary denial of post-death warrant successive postconviction motion claim of newly discovered evidence based on inmate's affidavit that Kormondy did not kill the victim, which was inadmissible hearsay). The fact that these "leads" were allegedly not pursued, supports a finding of a gross lack of due diligence.

Moreover, Suggs refers to his 2007 amended 28 U.S.C §2254 Petition for Writ of Habeas Corpus where he "began requesting records." IB 43. It is instructive to whether Riebe's alleged confessions were discoverable through due diligence. *Cf. Kormondy*, 154 So.3d at 351-52 (noting the United States District Court denied Kormondy's federal habeas actual innocence claim because he did not kill the victim).

A closer look at Suggs's §2254 Petition supports the trial court's findings that the newly discovered evidence is untimely. In federal petition, Suggs raised an actual innocence claim that others murdered Ms. Casey and offered Alex Wells's confession and "new

incriminating evidence regarding" the victim's husband. *See* Suggs v. McNeill, Case No 3:06-cv-0011 (N.D. Fla.) (Doc. #60) at 22-26. Suggs also stated, "[i]n November of 2006, Riebe agreed to be interviewed by counsel's investigator" and during the interview stated he had cooperated with law enforcement and spoke about his brother's crimes. Id. at 74.

Suggs's federal habeas counsel then indicated, "[n]o effort has been made to learn from Riebe information regarding the homicide of Pauline Casey." Doc 60 at 74, n. 69. This statement shows that Suggs's counsel was definitively aware of Riebe and could have pursued additional investigation.

This Court has rejected similar newly discovered evidence claims as untimely. For example, in *Mungin*, the capital defendant presented a sheriff's deputy's recantation of trial testimony about incriminating evidence, who also signed an affidavit in support. *Mungin*, 320 So.3d at 624-26. Although this claim was addressed on the merits at an evidentiary hearing and denied on that basis, the *Mungin* Court's analysis focused on timeliness. *Id.* at 626, n.4. The Court held the claim was untimely and procedurally barred because Mungin filed the motion nearly 20 years after his judgment and

sentence become final and the witness was known to the defense since trial. *Id. See also Dillbeck*, 357 So.3d at 101 (affirming denial of newly discovered evidence claim as untimely because it was "decades late")

It is clear that neither Sugg's state postconviction counsel nor federal habeas counsel made any effort to investigate persons or information known decades prior which could have led to discovery of Riebe's "confession," had it been true. Counsel collectively failed to do so even though it was plainly an option, unequivocally the lack of due diligence. Hence, the trial court properly found that the newly discovered claim was untimely and properly summarily denied, and no relief is warranted.

B. The Evidence Would Not Likely Produce an Acquittal.

Even if the claim was timely, the postconviction court properly found that Suggs's newly discovered evidence claim fails because the proffered third-party statements constituted in admissible hearsay and therefore, not likely produce an acquittal under *Jones*. CR 934.

Suggs is required to demonstrate that the alleged facts of evidence support admissibility as non-hearsay or as an exception to the hearsay rule. *See Kokal v. State,* 901 So.2d 766, 775-76 (Fla.

2005); *Williamson*, 961 So.2d at 234 (affirmed denial of newly discovered evidence claim based on affidavit containing inadmissible hearsay, not within an exception); *Lambrix v. State,* 39 So.3d 260, 273 (Fla. 2010) (affirmed exclusion of defendant's postconviction expert and lay evidence).

First, Suggs make no reference, mention, or suggestion that Riebe was available to testify, despite the fact that he is currently incarcerated in Florida.[9] Assuming he is available, it further establishes the declarations are inadmissible hearsay.

Suggs cites *Chambers v. Mississippi*, 410 U.S. 284 (1973) to overcome the hearsay issue. IB 28. *Chambers* permitted hearsay evidence of a confession based on four distinct factors: (1) the confession was made spontaneously to a close acquaintance shortly after the murder occurred; (2) the confession was corroborated by some other evidence in the case; (3) the confession was self-incriminatory and unquestionably against interest; and (4) if there was any question as to the truthfulness of the statements, the declarant was available for cross-examination. *See Id.* at 300-01;

[9] If Riebe confessed to Ms. Casey's murder, it would be self-incriminatory and against his interest.

Bearden v. State, 161 So.3d 1257, 1264 (Fla. 2015); and *Sims v. State*, 754 So.2d 657, n.6 (Fla. 2000).

The *Jones* Court recognized that *Chambers* was limited to the specific facts and circumstances in that case. *See Jones,* 709 So.2d at 524-25. *Chambers/Jones* unequivocally do not extend to Riebe's confession in the declarations Suggs provided because 1) he did not establish that Riebe's confession was spontaneously made shortly after the murder and it is not known when it took place; 2) there is no evidence in Suggs's case that corroborates Riebe's confession, including anything that places him in the bar or at the murder scene; and 3) he did not offer that Riebe was willing and available for cross-examination, evidenced by the failure to include a written declaration like the three others. Any confession to a crime would be self-incriminating and against interest.

Again, there is no corroborating information in this case to corroborate Riebe's confession. The declarations and Riebe's alleged statement do not tangibly point to any fact that he killed Ms. Casey. Nor does the allegedly new information diminish or mitigate Suggs's culpability and the evidence presented against him at trial.

Although Ms. Wells's declaration recounts the first time Riebe

purportedly told her about taking Ms. Casey to a dirt road and murdering her, it included no details. CR 100. She provided generalized occasions when she spoke with Riebe, i.e. when he was incarcerated in various corrections facilities, is insufficient. However, no other details were included to undermine the case against Suggs.

Mr. Sheheane's statement contains no information from Riebe specific to Ms. Casey's murder such as date, timeframe, facts or circumstances, and certainly not her identity. Nor does it contain any information exculpating Suggs from the murder or diluting the trial evidence presented supporting the jury's guilty verdict and ultimate death sentence. Finally, Mr. Chapman's declaration fails to give any information or details about the murder, pointing to Riebe and away from Suggs. There is nothing in these statements or in the trial record 1) placing Riebe at the bar where Ms. Casey worked and was last seen with Suggs; 2) near Suggs's house where physical evidence was recovered; or 3) at the scene of Ms. Casey's murder.

Appellee also distinguishes *Aguirre-Jarquin v. State*, 202 So.3d 785 (Fla. 2016), cited by Suggs. *See* IB 28-29. The newly discovered evidence in *Aguirre-Jarquin* warranting a new trial was derived from 1) additional DNA testing placing another person at the scene, who

happened to live with the victims; and 2) this same person's confessions to third-parties that she murdered the victims. *Id.* at 791-92. The DNA evidence qualified as newly discovered evidence, standing alone and, the third party-confessions were deemed admissible because they met all of *Chambers*'s requirements, overcoming the hearsay rule. *Id.* at 793-94. However, unlike the facts in *Aguirre-Jarquin* and as discussed above, there are no facts or other supporting information in the record before this Court to determine that Suggs satisfied all of *Chambers*'s requirements.

This Court has held, "regardless of whether the 'evidence meets the threshold requirement by qualifying as newly discovered, no relief is warranted' unless the evidence would be admissible at trial." *Dailey*, 279 So.3d at 1213 (quoting *Sims*, 754 So.2d at 660) (finding affidavits in support of newly discovered evidence claim admitted at evidentiary hearing in lieu of live testimony and containing third-party statements constituted inadmissible double hearsay, not subject to an exception).

In a case factually and procedurally similar to Suggs's, this Court affirmed summary denial of successive postconviction motion in *Reed v. State*, 116 So.3d 260 (Fla. 2013). In *Reed*, the capital

defendant filed a successive postconviction motion based on newly discovered evidence based on affidavits from two inmates stating a deceased inmate (Kirkland) confessed to the murder. *Reed*, 116 So.3d at 263. The trial court summarily denied the newly discovered evidence claim as time-barred under Rule 3.851(d)(2)(A) based on the time between the affidavits' dates and the date of filing. *Id.* at 264.

The *Reed* Court affirmed summary denial and addressed *Jones*'s second prong stating, "even taking Reed's assertions as true, Reed failed to establish the second prong that the newly discovered evidence would probably produce an acquittal or less sever sentence on retrial." *Reed*, 116 So.3d at 265. The Court reasoned, the inmates' affidavits stated Kirkland's confession "to murdering an old white woman in Jacksonville in February of 1986, do not implicate Kirkland in the murder for which Reed was convicted." *Id.* It further found that the affidavits were insufficient and did not provide "specific names, places, or dates . . . in order to link Kirkland's confession to the murder." *Id.* More importantly, none of the information negated ample trial evidence implicating Reed in the murder. *Id.; see also Clark v. State,* 35 So.3d 880, 891 (Fla. 2010) (affirming the postconviction court's finding that capital defendant

"failed to establish that evidence would have been admissible at trial and the testimony was not of such nature that it would probably produce an acquittal for the Defendant on retrial, especially in light of implicating a third party).

As the *Sims* Court observed, "[e]ven if *Chambers* applies, Sims did not provide sufficient corroborating evidence. Further, the statements were first made in 1981, almost four years after the crime occurred, and Baldree is unavailable for cross-examination because he died in 1981. Thus, the statements are not admissible under *Chambers*." *Sims*, 754 So.2d at n.6.

The same is true in Suggs's case, who is even farther from the required threshold. Suggs never mentions or suggests that Riebe is unavailable to testify under oath about the alleged confession. Nor did Suggs obtain a sworn declaration from Riebe to support the 2018 third successive postconviction motion claim. Unlike the would-be confessors in *Reed* and *Hererra*, Riebe is not deceased, but is an inmate in the DOC's custody, at the Blackwater River Correctional Facility, Santa Rosa County, Florida.

Suggs relies on inadmissible hearsay statements, which the trial court rejected to establish timeliness or a different sentencing

outcome. Suggs's failure to include any statement of Riebe's availability, much less including an affidavit confessing to Ms. Casey's murder is not a technical oversight. It is a lack of proof.

In addition to *Chambers*, Suggs asserts Riebe's statements in the third-party declarations would be admissible as statements against interest, under the §90.804(2)(c), Florida Statute. IB 29. Riebe's statement would not be admissible under this exception to the hearsay rule as the trial court found. The sole reason to offer these statements is for their truth. However, Suggs has not shown that Riebe is unavailable, a requirement for his statements to be admitted as statements against interest. *See Reynolds v. State*, 934 So.2d 1128, 1142 (Fla. 2006).

The trial court determined Suggs did not establish Riebe was unavailable, which is evident in his Rule 3.851 motion and counsel's arguments at the *Huff* hearing. CR 934. This determination will not be disturbed unless abuse of discretion is clear. *Reynolds*, 934 So.2d at 1142. Again, as evidenced by the record before this Court, Suggs made no mention as to Riebe's availability, despite his current status in DOC custody.

The declarations and Riebe's confession are not relevant to

Suggs's guilt or innocence because they do not tend to prove or disprove a material fact. *See Daily*, 329 So.3d at 1285-86; *Davis v. State*, 26 So.3d 519, 529 (Fla. 2009) (affirming summary denial of successive postconviction claim of newly discovered evidence because the evidence "did not produce a probability that the verdict or sentence would change based on this Court's prior precedent and the evidence presented during the original trial").

In other words, the hearsay statements that Reibe confessed to murdering Ms. Casey do not disprove or negate the evidence presented at trial proving beyond a reasonable doubt that Suggs committed the murder. The declarations do not individually nor collectively weaken the case presented against Suggs and do not give rise to reasonable doubt as to his culpability.

The trial court correctly ruled that even if the newly discovered evidence claim was timely, Suggs failed to satisfy *Jones*'s second prong. CR 934-35. The newly discovered was not of such nature that it would probably produce an acquittal on retrial, does not weaken the case against Suggs, or give rise to reasonable doubt as to his culpability. *Calhoun*, 376 So.3d at 585-86 (citing *Jones*, 709 So.2d at 526). The trial court's conclusion that Suggs was not

entitled to relief was based on a "cumulative analysis of all the evidence" and assessed "the 'total picture' of the case and all its circumstances." *Calhoun*, 376 So.3d at 586 (quoting *Hildwin*, 141 So.3d at 1184); *see also* CR 934-35; Rule 3.851(f)(5)(B).

As in *Reed*, the declarations Suggs offered are insufficient in a number of ways, including failing to include substantive or meaningful information to negate the evidence against him, showing culpability for Ms. Casey's murder. Nor do the declarations get over the hurdles of being inadmissible hearsay and inadequate to show probable acquittal or reduced sentence based on the newly discovered evidence. Hence, summary denial of a newly discovered evidence claim is not error where the capital defendant cannot establish that the evidence is "of such a nature that it would probably produce an acquittal or yield a less severe sentence" and is admissible at retrial. *Daily*, 329 So.3d at 1285.

Suggs also suggests that the general information in Mr. Sheheane's declaration regarding Highway 98 was definitive proof Riebe was speaking about Ms. Casey. *See* CR 102. This is not the case. During the *Huff* hearing, the trial court deftly pointed out Riebe's history of giving murder confessions and the unpersuasive

nature of the Highway 98 reference in the following exchange with postconviction counsel:

> THE COURT: Let me interrupt you for a second. Hasn't Mr. Riebe made a lot of claims about a lot of murders and killings that he done that have been unsubstantiated?
>
> MS. MACREADY: That is true, Your Honor. But I'm getting to the specific point that's relevant to this case. He specifically said that he after murdering this woman he dumped her body off a dirt road off of Highway 98 in Walton County and that's where her body is found. Now if you will remember - -

CR 922. The trial court interjected,

> THE COURT: Hold on for just a second. U.S. Highway 98 runs from the east side of Walton County to the west side of Walton County, so 30 or 40 miles. It goes through the entire county. Are you familiar with the geography here?
>
> MS. MACREADY: I am, Your Honor. I've driven by there. . . . on Highway 98. But this is where Ms. Casey's body was discovered at this location during this same time period and to my knowledge – I mean, I'm sure you'll correct me if I'm wrong, but to my knowledge there weren't any other bodies of women that were murdered in this same manner discovered off this road during this same time period --
>
> . . . .
>
> THE COURT: Hold on for a second. The lady that Riebe is in prison for was abducted from a convenience store on Highway 98 obviously in another county but the same highway and then they found her years later up in north Walton County. However, no one would have known -- that body could have been moved and could have been dumped close to 98 where she was abducted, correct?

> MS. MACREADY: I'm sorry, I'm not following, Your Honor. I was talking about Ms. Casey's body was found off of Highway 98.
>
> THE COURT: But Riebe didn't say Casey per se. He just said a woman that he had murdered, right?
>
> MS. MACREADY: Yes, Your Honor, yes.
>
> THE COURT: And that's what I'm saying. The lady that he's in prison for came from a convenient store on U.S. 98 albeit it was I think in Okaloosa or Santa Rosa County, but United States Highway 98 it runs all the way through these counties: Walton, Okaloosa, Santa Rosa, Escambia County, all into Alabama. Okay. Go ahead. I'm sorry, I didn't mean to interrupt you.

CR 922-24. At that point, postconviction counsel was speculative at best, regarding Riebe's "confession" and the purported newly discovered evidence. Counsel cautiously advised the trial court, "Mr. Riebe *seems to have* details about that *could be relevant* or *seem to be related* to Ms. Casey's murder." CR 924. (emphasis added).

Surely, had this claim been based upon actual newly discovered evidence, counsel would have argued far more definitively. Instead, Suggs's postconviction counsel merely opined, "I feel like that's something that needs to be explored." *Id.* Counsel's need to explore information does not rise to the level of newly discovered evidence allegedly secured or confidence in the argument.

Further, the net impact of information about "Highway 98" is analogous to that rejected in *Reed*, where the affiant generically spoke of a third-party's confession to "killing an old white woman." Because of Reibe and his half-brother's history of killing women in the general area that Ms. Casey was killed, there is no evidence or other information supporting the proposition that Riebe murdered Ms. Casey.

Any testimony from Ms. Wells, Mr. Sheheane, or Mr. Chapman is not of such probative value to undermine the full and fair jury conviction, death sentence, and this Court's subsequent reviews and affirmances. Suggs's guilt phase jury already rejected numerous aspects of his innocence defense, including that he was framed and evidence was planted; the dollar bills seized from his home were paid to him by his parents for non-existent dock work; the bills were wet because he fell in the water while working on the dock at night; the tire tracks found were not unique to his vehicle; underbrush on his vehicle did not match that found at the crime scene; no hairs or fibers belonging to the victim were found in his vehicle; the victims fingerprints found in his vehicle could have been placed there prior to the murder; and two others, including the victim's husband could

have killer her. *Suggs*, 644 So.2d at 66. *See Hitchcock v. State,* 991 So.2d 337, 349–51 (Fla. 2008) (finding that the circuit court did not err in denying a newly discovered evidence postconviction claim based on a third party's alleged confession and the evidence presented was unlikely to change the verdict where the jury had already rejected the same defense theory);

On the contrary, the evidence presented at trial supporting the jury's guilt finding and subsequent death sentence remain untouched. The declarations or Riebe's alleged confession do not undermine the conviction and will not change the proven facts that: 1) Ms. Casey's palmprints were found inside Suggs's vehicle and inside the passenger door handle, and her fingerprints found on the exterior passenger window; 2) one of the three known keys to the bar and a beer glass similar to those used at the bar were found in the bay behind Suggs's home; 3) serology testing confirmed a bloodstain on Suggs's shirt matched Ms. Casey's blood and excluded Suggs; and 4) Suggs was positively identified and seen with Ms. Casey on the night of the murder by her neighbor.

Suggs's newly discovered evidence claim is yet another attempt to relitigate his murder conviction or raise an actual innocence claim,

which he has unsuccessfully attempted in state and federal court since 1990. The allegation that Riebe confessed to the killing is no more than Suggs's recycled newly discovered evidence claim, akin to that previously raised in his initial state postconviction motion and federal habeas petition asserting that Alex Wells confessed to the murder. *See Suggs*, 923 So.2d at 437.[10]

Throughout his Initial Brief, Suggs speaks to FDLE's investigation into multiple murders and Riebe and Wells for a number of years. He also speaks to state and federal postconviction counsel's efforts to obtain discovery materials from FDLE but obtained none to support the newly discovered evidence claim.

These unintended admissions show that Suggs's counsel did not engage in adequate due diligence and pursue legal means to obtain or compel production of the records he vehemently alleges have been withheld. Suggs has been aware of Riebe's existence for decades and could have discovered the evidence he claims has been withheld through due diligence. *See Dailey*, 329 So.3d at 1287-88;

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[10] In 1998, Suggs claimed that Riebe's half-brother, Alex Wells, confessed to another inmate (Broxson) that he killed Ms. Casey. *Id.* The claim was denied following an evidentiary hearing, where both Wells and Broxson testified. *See Suggs*, 923 So.2d at 437.

Herrera v. Collins, 506 U.S. 390, 417–18 (1993) (observing, where the affidavits exonerating the defendant were given over eight years after petitioner's capital murder trial, that "[n]o satisfactory explanation has been given as to why the affiants waited until the 11th hour—and, indeed, until after the alleged perpetrator of the murders himself was dead—to make their statements"). Moreover, Suggs cannot transform an untimely claim into a timely claim simply by attaching new declarations to his motion. *See Downs v. State*, 160 So.3d 894 (Fla. 2014) (affirming summary denial of newly discovered evidence claim as untimely, based on inadmissible hearsay, and failed to establish evidence was of such a nature that it would probably produce an acquittal on retrial).

Finally, significant evidence of Suggs's guilt was admitted at trial, and he failed to point to any admissible evidence supporting the claim that Riebe killed Ms. Casey. *See Dailey*, 329 So.3d at 1287 (affirming trial court's conclusion that third-party declaration claiming responsibility for the murder and that the capital defendant "had nothing to do with" it). Therefore, where Suggs's failed to satisfy *Jones*'s two-prong test for newly discovered evidence and failed to show the trial court erred in denying the claim, no relief is warranted.

ISSUE II

Whether the Postconviction Court Properly Denied Appellant's *Brady v. Maryland*, 373 U.S. 83 (1963) Claim Regarding Newly Discovered Evidence? [Restated]

Suggs alleges that the trial court erred by summarily denying his *Brady* claim which is intertwined with the foregoing newly discovered evidence claim regarding Reibe's confessions. IB 37. The postconviction court denied the claim as untimely, Suggs did not show that the State suppressed Riebe's statement, and that he failed to demonstrate materiality. CR 937-38.

Under *Brady*, Suggs must establish that 1) the claimed evidence was favorable, either exculpatory or impeaching; 2) the State willfully or inadvertently suppressed the evidence; and 3) because the evidence was material, Suggs was prejudiced. *See Sweet v. State*, 293 So.3d 448, 451 (Fla. 2020); *Brady*, 373 U.S. at 87.

As discussed in Issue 1, *supra*, the trial court did not err denying the claim without an evidentiary hearing because the *Brady* claim was untimely, as the newly discovered evidence claim on which it was based, was untimely. CR 937. The trial court relied in part on *In re Bolin*, 811 F.3d 403 (11th Cir. 2016) and *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009), finding

that Suggs's argument was "contrary to binding legal authority" and that "*Brady* does not apply in the post-conviction context." CR 937-38.

Suggs's argument is deficient as he misunderstands and misapplies *Brady* as explained in *Bolin* and *Osborne*. A *Brady* claim may be brought in a Rule 3.851 postconviction motion, but that tenant does not apply to this case, as Suggs argues. *See* IB 41-42.

Under *Bolin* and *Osborne*, the State's *Brady* obligation applies to evidence or information that existed at the time of, or contemporaneously with, the trial proceedings. *Brady* does not apply to evidence or information that *came into existence after* conviction and sentence become final, because the state could not have known of the information or evidence, as it did not exist. Additionally, *Osborne* notes that *Medina v. California*, 505 U.S. 437 (1992) governs in state postconviction proceedings, not *Brady*. *See Osborne*, 557 U.S. 69-70; s*ee also Downs v. Sec'y, Fla. Dep't of Corr.*, 738 F.3d 240, 258-59 (11th Cir. 2013); *cf. Gosciminski v. State*, 262 So.3d 47 (Fla. 2018) (observing, the *Osborne* Court held, a state prisoner has no substantive due process right postconviction access state's evidence to seek DNA testing which might prove innocence).

Suggs does not acknowledge *Osborne* in his briefing, but outright admits that Riebe's confessions "were not made until after Suggs' trial." IB 24, 42. This statement defeats his *Brady* claim.

Suggs cites *Duckett v. State*, 918 So.2d 224 (Fla. 2005) regarding timeliness, which is actually contrary to his arguments and further supports summary denial of the *Brady* claim. The *Duckett* Court affirmed denial of a *Brady* claim because favorable evidence did not exist until after defendant's trial and the defendant failed "to establish that the State 'either willfully or inadvertently' suppressed the information." *Duckett*, 918 So.2d at 235. *See also Wyatt v. State*, 71 So.3d 86, 103 (Fla. 2011) (affirming trial court's denial of postconviction *Brady* claim where defendant did not satisfy the second prong because the document and information in question did not exist "until well after" trial).

Suggs argues the claim was timely based on the date that Patsy Wells purported spoke with defense investigators. IB 39. With no supporting evidence or affidavit, Suggs asserts that Ms. Wells spoke with the defense team on November 3, 2018, and claims that this is the "earliest date" which he could have learned of Riebe's confession. *Id.* He also alleges that FDLE failed to disclose "witnesses" Randy

Sheheane and Randy Chapman, with no timeframe for reference. *Id.*

Suggs gave no date or time frame for the trial court to consider when FDLE or the state learned of information regarding Reibe's alleged confession. There was no information to corroborate whether Riebe confessed before or contemporaneously with the 1990 trial.[11] Therefore, it is entirely reasonable to conclude that Riebe's confession occurred *well-after* Suggs's trial and no *Brady* violation could have occurred, rendering this claim untimely. Accordingly, this supports *Brady*'s second prong that the State willfully suppressed the alleged statements or information.

Even if this claim was timely and Suggs showed the State willfully suppressed the information, the claim still fails as the information was not material. The undisclosed evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Guzman v. State*, 868 So. 2d 498, 506 (Fla. 2003) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985). A reasonable

[11] Moreover, Suggs suggests that a law enforcement agency's investigations into other cases or other persons of interest also somehow trigger *Brady* obligations.

probability is one that is sufficient to undermine confidence in the outcome. *Id.*

As discussed above, the statements offered as newly discovered evidence and which underly the *Brady* claim exclusively related to a third-party's alleged confession to Ms. Casey's murder. They do not supersede the trial evidence or undermine Suggs's culpability for murdering Ms. Casey.

ISSUE III

Whether the Postconviction Court Properly Denied Appellant's Due Process Claim that the Florida Supreme Court Considered Material Outside the Record? [Restated]

Suggs alleges that this Court violated his due process rights by considering "evidence outside the record," in its decision affirming summary denial of his first successive postconviction motion in *Suggs v. State*, 238 So.3d 699 (Fla. 2017). IB 51; CR 74. He argues the *Suggs* Court "conducted its own research" into scientific matters related to the *Brady* claim, the search of the bay behind Suggs's home, and a "waterline" on his shorts. IB 48; CR 73-77. Suggs raised this due process claim as Claim III in his 2018 third successive postconviction motion. CR 73-77.

The trial court denied Suggs's due process claim as improperly

raised in the circuit court and also ruled that the claim was procedurally barred. CR 938-39. The trial court correctly ruled it had no appellate jurisdiction to review actions taken by the Florida Supreme Court and that its jurisdiction is limited by Art. V., §5, Florida Constitution and §26.012, Florida Statutes. Hence, summary denial of this claim was correct, and any further challenge is meritless. CR 938-39.

Trial courts are bound by decisions and controlling precedents of the Florida Supreme Court. *See State v. Lott*, 286 So.2d 565, 566 (Fla. 1973) and *Hoffman v. Jones*, 280 So.2d 431,433 (Fla. 1973); *cf. Pardo v. State*, 596 So.2d 665, 666-67 (Fla. 1992). Suggs does not address the jurisdictional prohibition and this Court should affirm the claim's denial as a matter of law on this basis alone.

The trial court's summary denial was correct, finding the claim was procedurally barred. Following this Court's 2017 *Suggs* opinion, cited above, Suggs moved for rehearing on the due process/non-record material issue and argued he was "denied the opportunity to confront the nonrecord evidence and refute it." *See* Appellant's Motion for Rehearing, Case No. SC16-576, November 22, 2017. This Court was aware of the due process claim and denied rehearing on

March 13, 2018. This procedural history is also an absolute reason to affirm the trial court's denial of this claim. *See Owen v. State*, 364 So.3d 1017, 1025 (Fla. 2023). Again, Suggs failed to address the procedural history of this case in his briefing.

To the extent that Suggs is attempting to improperly resurrect a prior postconviction claim and re-raise the same substantive *Brady* violation in this appeal regarding the search of the bay behind his home and waterline on his shorts, the trial court was correct summarily denying the claim. *See* IB 48-51. Claims raised and rejected in prior proceedings are procedurally barred from being subsequently relitigated in a successive postconviction motion by the law-of-the-case doctrine.

The law-of-the-case doctrine precludes re-raising the same claim previously raised on appeal and is "the long-established principle that the questions of law decided on appeal to a court of ultimate resort must govern the case in the same court and the trial court, through all subsequent stages of the proceedings." *State v. Okafor*, 306 So.3d 930, 934 (Fla. 2020). The law-of-the-case doctrine applies regardless of whether the claim is a variation of a prior claim or whether a party employs different arguments when re-raising the

same claim. *Sireci v. State*, 773 So.2d 34, 40-41 (Fla. 2000) (finding claims procedurally barred and observing that even if a defendant uses a different argument to relitigate the same issue, the claim remains procedurally barred); *Mills v. State*, 684 So.2d 801, 805 (Fla. 1996) (concluding a claim was barred as merely a variation of another prior postconviction claim). The doctrine applies to this latest version of the claim and Suggs's attempt to re-litigate and argue the claim's merits to this Court, is both improper and meritless.

The postconviction court denied the 2018 third postconviction motion claim finding that Suggs "may not use the instant motion to raise a claim that has already been litigated in a previous rule 3.851 proceeding," citing *Hendrix v. State*, 136 So.3d 1122, 1125 (Fla. 2014). CR 1344. The *Hendrix* Court held that "claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." *Id.*

This reasoning is correct, yet Suggs asserts the trial court's ruling is in error and attempts to distinguish *Hendrix* from his case. IB 48. He argues that in *Hendrix*, this Court held that prior Rule 3.851 claims cannot be re-raised is successive postconviction motions. *Id.* This general recitation of the law is accurate. Suggs

purported distinction is that this claim is subject to a decision on appeal, and not previously contained in a prior postconviction motion. *Hendrix* refers to "prior postconviction proceedings," which arguably include appellate proceedings. *See Hendrix*, 136 So.3d at 1125. Suggs's argument may be a distinction without a difference because it does no more than relate back to the fact that the due process claim was improperly brought in circuit court and is otherwise procedurally barred.

Because this Court rejected Suggs's argument regarding its reliance on non-record information in his prior motion for rehearing, no further discussion of this Court's actions is required. Moreover, Suggs did not pursue available procedural remedies upon denial of rehearing, such as submitting a petition for writ of certiorari to the United States Supreme Court.[12] Hence, this issue is defeated as a matter of law and the State prays this Court must find summary denial of the claim was correct and deny relief.

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[12] Appellee notes, Suggs's 2018 petition for writ of certiorari to the United States Supreme Court, Case No. 18-5359, referenced in the trial court's order denying this claim (CR 939), was filed on July 25, 2018, addressed *Hurst* and *Caldwell v. Mississippi*, 472 U.S. 320 (1985), and not the due process claim.

CONCLUSION

Appellee, the State of Florida, respectfully requests this Court affirm the trial court's denial of Appellant's November 2, 2018 Successive Motion to Vacate Judgement and Sentence.

Respectfully submitted,

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CERTIFICATE OF FONT AND WORD LIMIT COMPLIANCE

I HEREBY CERTIFY that this document complies with the typeface requirements of Fla. R. App. P. 9.045 because this document has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14-point Bookman Old Style and is 11,137 words.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Appellee, the State of Florida's Answer Brief on the Merits has been electronically filed with the Clerk of the Court via the e-filing portal system to: **DAWN B. MACREADY**, Chief Assistant, Capital Collateral Regional Counsel-North, 1004 DeSoto Park Drive, Tallahassee, Florida 32301, **Dawn.Macready@ccrc-north.org**, on this 6th day of August 2024**.**

/s/ Janine D. Robinson
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