

IN THE SUPREME COURT OF FLORIDA

Case No. SC24-0660
Lower Court Case No. 1990-CF-338

ERNEST D. SUGGS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

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

APPELLANT'S INITIAL BRIEF

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REQUEST FOR ORAL ARGUMENT

Suggs has been sentenced to death. The resolution of this appeal will determine whether he lives or dies. This Court has allowed oral argument in other capital cases in a similar posture. A full opportunity to air the issues through oral argument would be appropriate in this case, given the seriousness of the claims and the stakes involved. Suggs respectfully requests this Court grant oral argument.

STATEMENT OF THE CASE

The Circuit Court for the First Judicial Circuit in and for Walton County, Florida, entered the judgments of conviction and sentence at issue. Suggs was indicted on August 22, 1990, by a Walton County grand jury for (1) the first-degree murder of Pauline Casey; (2) robbery; and (3) kidnapping. (R. 11).¹ Suggs was found guilty on all

¹ The following symbols are used to designate references to the record: “R. ___” refers to the transcript of the trial proceedings and the record on direct appeal; “PCR1., Vol. ___, ___” refers to the postconviction record on appeal for SC03-1330; “PCR1Supp. ___” refers to the first supplemental record for SC03-1330; “PCR2. ___” refers to the postconviction record on appeal for SC16-576; “PCR3. ___” refers to the postconviction record on appeal for SC17-1225; “PCR4. ___” refers to the postconviction record on appeal for SC24-0660; SC24-0702. All other references are self-explanatory.

three counts on June 8, 1992. (R. 1719-21). After the penalty phase, the jury recommended a death sentence by a 7-5 vote. (R. 1756). The trial court sentenced Suggs to death on July 15, 1992. (R. 1844-51). His conviction and sentence were affirmed on direct appeal. *Suggs v. State*, 644 So. 2d 64 (Fla. 1994). Certiorari was thereafter denied by the United States Supreme Court. *Suggs v. Florida*, 514 U.S. 1083 (1995).

On January 24, 1997, Suggs filed his initial Motion to Vacate Convictions and Sentences with Special Request for Leave to Amend and for Evidentiary Hearing pursuant to Fla. R. Crim. P. 3.850. (PCR1Supp. 1-123). An Amended Motion to Vacate was filed on March 2, 1998. (PCR1Supp. 124-239). On August 31, 2001, Suggs filed a Second Amended Motion to Vacate Convictions and Sentences. (PCR1. 1-154). After an evidentiary hearing, the circuit court denied relief. This Court affirmed the denial and denied Suggs' petition for habeas corpus relief. *Suggs v. State*, 923 So. 2d 419 (Fla. 2005).

On October 27, 2015, Suggs filed a Successive Motion to Vacate Judgement and Sentence with Special Request for Leave to Amend Pursuant to Rule 3.851. (PCR2. 116-200). The circuit court summarily denied Suggs' claims and this Court affirmed. *Suggs v.*

State, 238 So. 3d 699 (Fla. 2017), cert. denied, *Suggs v. Florida*, 139 S. Ct. 324 (2018).

Based on the decisions in *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), Suggs filed a petition for habeas corpus relief with this Court and a motion for postconviction relief in the circuit court. (PCR3. 1-45). The petition and appeal of the circuit court's denial were ultimately denied by this Court. *Suggs v. State*, 234 So. 3d 546 (Fla. 2018), cert. denied, *Suggs v. Florida*, 139 S. Ct. 127 (2018).

On November 2, 2018, Suggs filed a Successive Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend. (PCR4. 54-104). A *Huff* hearing was held on February 2, 2023. On February 13, 2024, the circuit court denied all claims. (PCR4. 930-1083). This appeal timely follows.

Additionally, on May 16, 2022, Suggs filed a Successive Motion to Vacate Judgment and Sentence under Fla. R. Crim. P. 3.851. (PCR4. 113-531). A *Huff* hearing was held by the circuit court on February 2, 2023. The circuit court issued its order denying all claims on April 3, 2024. (PCR4. 1091-1525). The denial of this

successive motion is the subject of an appeal in case SC24-0702 currently pending before this Court.

STATEMENT OF THE FACTS RELEVANT TO THIS APPEAL

I. Trial and Prior Postconviction Proceedings

The State's case at trial against Suggs relied entirely on circumstantial evidence. The victim, Pauline Casey, went missing on the evening of August 6, 1990. According to State witness Ray Hamilton, Suggs was the last person at the Teddy Bear Bar with her before it was discovered after 11:00 p.m. that she was missing. (R. 2223). Based on Hamilton's statements, police put out a BOLO for Suggs and arrested him at about 4:50 a.m. on August 7, 1990. (R. 2684-85). Pauline Casey's body was found several hours later off a dirt road on U.S. Highway 98. (R. 2332-35). Despite the brutality of the murder, in which the victim's body was violently stabbed and dragged (R. 3374-76) and the thick, nearly impenetrable brush that the body was found in (R. 3005) Suggs had no scratches or injuries, and no blood was found on or in his vehicle. (R. 3010, 3331).

The State's case at trial was not particularly strong. Only minimal physical evidence connected Suggs to Pauline Casey: one single "stain" on the shirt Suggs was wearing when arrested that

contained an enzyme type that was consistent with the victim and 90% of the Caucasian population, but was the basis of an extensive dispute at trial as to whether the source of the stain was human blood or other bodily fluid (R. 3164-67, 3189, 4012-13);² and two of her fingerprints found on the exterior of Suggs' vehicle and a partial palm print of hers that was found on the interior passenger door handle of his jeep. (R. 3360).³ Law enforcement did not find any evidence that tied Suggs to the scene of the crime except a tire track which had "similar" characteristics to the tires on Suggs' jeep but could have been made by another vehicle. (R. 3283, 3288, 3302,

² In addition to the fact that the State could not prove that the stain belonged to the victim and the extensive dispute regarding whether the stain was even blood, the integrity of the State's testing was heavily impeached at trial, given that Suggs was still wearing the shirt for several hours after he was arrested (R. 874, 2830), it was improperly stored for over a week (R. 3083-84, 3106-07), and there were several "red flags" in the test results that "should [not] have happened," according to the defense expert who previously worked for FDLE, (R. 4012-13, 4030, 4032-33, 4058).

³ Suggs was a friend of Ms. Casey, who referred to him as her "friend from Alabama." (R. 3672-73). She had been helping him find a job and had been seen out with him at a different bar previously, likely explaining why her prints were on the car in a place consistent with someone opening and shutting the passenger door. (R. 2816-17, 3360, 3366).

3305-06).⁴ Investigators conducted a search of Suggs' parents' house and found \$176 in wet bills in a sink. However, Suggs' mother testified that his parents had given him \$250 for painting the roof and two \$50 checks for his birthday, one of which Suggs had cashed. (R. 3914-16). Suggs explained to investigators that the money got wet when he fell into the bay working on the dock. (R. 2756). A dive team conducted a search of the bay behind Suggs' parents' home in the days after his arrest and recovered a beer glass similar to those used at the Teddy Bear Bar, and a key that fit into one of the locks at the bar. (R. 2872, 2999). This evidence was bolstered by the jailhouse snitch testimony.

The State's theory was that Suggs used a knife, but it was unable to recover the murder weapon. The State had evidence that

⁴ Whether the tire track could have even come from Suggs' jeep was heavily disputed at trial, given that there were no "individual" characteristics found in the tracks that matched the tires on his jeep (R. 3288) only the back two tires matched the tracks at the scene and there was no overlap in the tracks which should have been present because the frame of the truck was "warped." (R. 4111-26). Additionally, law enforcement collected blue paint scrapings from branches at the scene which could not have come from Suggs' green jeep (R. 4101), vegetation caught in the undercarriage of his jeep could not be matched to the vegetation at the scene (R. 3133-34), and investigators did not find any blood in or on his jeep despite the substantial amount of blood at the scene (R. 3010, 3331).

Suggs' was in the Teddy Bear Bar with the victim the night she died, but lacked evidence that Suggs committed the crime. To shore up its case, the State presented the testimony of two jailhouse snitches: Wallace Byars and James Taylor.

According to police reports, Byars and Taylor each came forward to law enforcement with knowledge of Suggs' confessions one day before the State brought the case to a grand jury. Byars was facing 15-17 years in prison after shooting at a sheriff substation and holding the substation under siege for four hours. Byars was then found incompetent by a judge in July. While awaiting transport to the state hospital, Byars gave the statement claiming that Suggs had confessed. Byars testified that he was not promised anything in exchange for his testimony. (R. 3404-05; PCR4. 497-502). However, on March 6, 1991, Byars entered into a plea agreement with the State that called for a three-year sentence to be served in Walton County Jail ("WCJ"), "if sheriff agrees." (R. 3490). Sheriff Quinn McMillian wrote a letter to the judge asking that Byars be allowed to serve a sentence of three years in WCJ and agreeing there would be no probation after incarceration. McMillian wrote the letter knowing that Byars had made a statement. (R. 3751-52, 3754).

Taylor was a "professional jailhouse informant" who was being held in WCJ in August 1990 because he was a witness for the prosecution in an unrelated case. (R. 4780). Taylor worked as an informant for DEA, Customs, FDLE, and the Walton County Sheriff's Office. (R. 3576, 3602). Taylor admitted he was an "informant" for the government and worked drug cases while he was in prison. (R. 3604). Taylor was scheduled for a violation of probation proceeding for August 24, 1990, before coming forward to law enforcement officers with Suggs' alleged statement. (R. 3434, 3539, 3580; PCR4. 489-95). Following his statement to law enforcement officers, Taylor's probation was extended three years. (R. 3580, 3609). At the August 24 hearing in Taylor's case, the prosecutor stated that, at the request of the Sheriff's Department, Taylor was "restored to probation." (PCR4. 504-11).

Suggs had been placed in a cell with Byars and Taylor. According to Byars, Suggs told him that he had killed Pauline Casey and it was "over a robbery, and -- there was another intention there that he was going to rape her." (R. 1270, 1272, 1276, 3399, 3407). Byars also claimed that Suggs said that he stabbed her and "damn near cut her head off" and drug her body off to the side of a dirt road.

(R. 3400). According to Taylor, Suggs said that he felt law enforcement was bluffing about finding a key and a glass in the bay behind his house because the key would have been aluminum or brass and a magnet would not pick it up or the glass. (R. 3537). Suggs also allegedly said that because Pauline Casey was dead there was no one to testify against him. Suggs allegedly said that because there was no witness or weapon he felt he could beat this case. (R. 3538). Suggs also allegedly told him that he had "damn near taken her head off." (R. 3539).

Additionally, at Suggs' trial, Taylor testified to an entirely new detail about the murder weapon that he had not previously mentioned. (R. 3536-37). Taylor also never mentioned that detail in either of the two pretrial depositions he gave. (R. 723-766, 1680-1718). Taylor was also impeached for not including the "taken her head off" line in his original statement. (R. 3588). The State relied heavily upon the snitches in their closing argument, including the fact that Suggs had apparently thrown the murder weapon in a "canal." (R. 4374, 4388, 4407-11, 4501-02, 4504, 4507-08).

During postconviction, Suggs presented evidence that Taylor admitted to an investigator working on Suggs' case that his trial

testimony was fabricated in exchange for preferential treatment from Sheriff McMillian. (PCR1., Vol. 9, 103). However, Taylor himself refused to testify or sign a statement. (PCR1., Vol. 9, 108-09). Suggs presented the testimony of George Broxson, a WCJ inmate, to whom Byars had also admitted his trial testimony was fabricated. (PCR1. Vol. 9., 49). Broxson also testified that Taylor was a known confidential informant in WCJ, who received special privileges. (PCR1., Vol. 9, 44-49).⁵

Early in their investigation, law enforcement homed in on Suggs as their only suspect to the exclusion of two other obvious suspects: Steve Casey and Ray Hamilton. Both Casey and Hamilton were prime suspects, but once the victim's body was found, the investigation into those two stopped. (R. 2765). The officers candidly testified that seeking evidence that someone else may have had a motive or opportunity, or otherwise might have committed this crime, was "not real high on the list of priorities of the department." (R. 2727-28). There were no attempts made to search Casey or Hamilton, their

⁵ Newly discovered information further discrediting the trial testimony of Taylor and Byars and the entire investigation is the subject of another appeal currently pending before this court. See SC24-0702.

homes, seize their clothing, check their vehicles for evidence, or to check for unexplained bank deposits or sudden income even though both had personal relationships with the victim and there were no signs of a struggle inside the bar. (R. 2759, 2761, 3008).

Steve Casey, the victim's husband, gave the alibi that he was home alone on the night of the murder after selling his truck earlier in the evening; but Casey insisted he could neither remember to whom he sold the truck nor how much money he received for it. (R. 3682-83). The State produced his telephone records at the trial, which showed that he received a phone call around 9:30 p.m. from the victim and Hamilton that lasted around 10 minutes. (R. 2684). Casey testified that he went to sleep after the call. (R. 3686). There was no one to verify his activities from then until midnight, when Casey stated that he told Hamilton that he was going to the bar because he had gotten a call that his wife was missing. (R. 3686). After trial, it came to light that Casey had actually sold the car previous day. (PCR1., Vol. 9, 140-42).⁶ At the time of the murder,

⁶ Trial counsel testified during postconviction that the investigator who discovered this hole in Casey's alibi was not hired until after the jury returned the guilty verdict. (PCR1., Vol. 9, 142).

Pauline was working two jobs while Steve was out of work. (R. 3669-72). A few days after the murder, Casey requested the victim's certified military records to file for life insurance. Casey collected \$50,000 from the army and bought a Harley Davidson, traded the victim's car in for a truck for himself and made a down payment on a lot on the bay. (R. 3692-93). Casey never told law enforcement about the life insurance policy. (R. 3693-94).

Ray Hamilton, who previously dated the victim, lived in a mobile home on the property behind Steve and the victim's home. (R. 2790). He testified at trial that he arrived at the Teddy Bear Bar around 8:30 or 9:00 p.m., (R. 2788), talked on the phone with Steve Casey around 9:45 p.m., and left the bar ten minutes after the call. Suggs and the victim were the only two remaining in the bar. Hamilton testified that he left to go to Winn Dixie before it closed at 10:00 p.m., but he did not make it on time. (R. 2798). Instead, he went to a Dominos and got a pizza, which he ate at home alone before falling asleep. In an ostensible attempt to support his alibi, he gave the detectives working the case a "portion" of a pizza box, which did not have a date or time stamp or any other confirmation of his alibi. (R. 2800, 3070).

Detectives accepted the partial pizza box without independently verifying Hamilton's alibi. (R. 3072).⁷

Evidence presented both at and after trial has raised serious questions about the search of the bay. Suggs was arrested early on August 7, 1990. (R. 2718). The next day, the law enforcement called the dive team to search the water behind his parents' house. (R. 2861-62). Late in the day on August 8, a diver found the beer glass in two feet of water. (R. 2872, 2886). The next day, the key was found in four feet of water. (R. 2874-75, 2979). Prior to the search, Suggs' arrest had received substantial publicity and the Sheriff held a press conference early on August 7. The press was being kept advised of the progress of the investigation. (R. 3100-03). There was no security posted at the home before the search began. (R. 2701). The house and the location of the dive were clearly visible from the bridge causeway. (R. 2711, 2978). The house was easily identifiable as the

⁷ During the jury's guilt phase deliberation, the jury requested the transcripts of the depositions and trial testimonies of Casey and Hamilton. (R. 4536). However, the jury was not provided with the depositions because they were not in evidence and their trial testimonies were not provided due to a logistical issue. (R. 4548).

Suggs' residence given that the name 'Suggs' was visible in two different locations. (R. 2700).⁸

Additionally, Suggs raised a postconviction claim in 2015 based on statements by Wyatt Henderson, the lead dive team member. Henderson disclosed, for the first time, that on the second day of the search, Captain Brad Trusty directed the dive team to search a different area based on a "visible waterline" on Suggs' pants, indicating that the dive team should search further out in the bay than they otherwise would have. It was during this search that the key to the bar was discovered. No law enforcement report, statement, or testimony has ever mentioned this "waterline" in Suggs' shorts. Nor did law enforcement ever produce a photograph of the shorts Suggs was wearing the night of the murder indicating a "visible waterline." Further, investigator Steve Sunday included in a report that he received a key from the owner of the Teddy Bear Bar on August 8 for the purpose of showing it to the dive team. However,

⁸ By the morning after the crime, Steve Casey knew that Suggs had been arrested and that he had been working on his parents' home on the bay. (R. 3687). At trial, investigators acknowledged that if someone wanted to try to tie Suggs to the crime, they could have left a key in the water behind Suggs' house. (R. 2714).

Henderson stated that the dive team was never shown a key before recovering one the next day from the bay.⁹

In the years after Suggs' trial, FDLE initiated a large-scale investigation of suspected Walton County serial killers Alex Wells and Mark Riebe. While both men, who are brothers, were convicted for their roles in the murder of Donna Callahan, Mr. Riebe continued to be of interest to FDLE. After Pauline Casey was found murdered, law enforcement immediately suspected that she was the victim of a serial killer. In particular, law enforcement looked at the similarities between the Casey murder and the murders of Callahan and Rhonda Taylor, which had both occurred within the previous year. In fact, following Suggs' arrest in connection with this case, he was a suspect in the Callahan and Taylor cases.¹⁰ However, after it became clear

⁹ The Florida Supreme Court denied relief, finding that this evidence was not material. *Suggs*, 238 So. 3d at 706. However, this Court is still required to consider this evidence when conducting cumulative materiality analysis of the claims raised in this motion. *See Swafford v. State*, 125 So. 3d 760, 776 (Fla. 2013).

¹⁰ Callahan disappeared a year before Casey on August 6, 1989. Like Casey, Callahan disappeared from the place she worked alone around 11 p.m. No sign of a struggle was present in either case. Both businesses were found open and unlocked after the victims disappeared and each victim's car was left in the parking lot.

that Suggs could not have committed those murders, he was dropped as a suspect. Wells and Riebe were both convicted of the murder of Callahan and remain suspects in the Taylor murder as well as the disappearances of several other women in the Florida panhandle.

II. Newly Discovered Confession of Mark Riebe

Working in conjunction with Suggs' federal postconviction counsel, the ongoing investigation into this case has revealed newly discovered evidence that Mark Riebe confessed, on several occasions and to several people, to the murder of Pauline Casey. (PCR4. 100-04).

On November 3, 2017, defense investigators spoke with Patsy Wells. Wells is the mother of William "Alex" Wells and Mark Allen Riebe, individuals who are incarcerated for the Santa Rosa County murder of Donna Callahan. Patsy Wells told investigators that her

Exactly one month before on July 6, 1990, Taylor disappeared. She was found dead the next day inside a car parked in Fort Walton Beach. Like Casey, she had been cut and stabbed. Dr. Edmund Kielman, the deputy medical examiner who examined both bodies, indicated that the killings looked similar enough to be related. Neither body bore any sign of a struggle. The stab wounds were above the breast line and below the chin. There were no signs of a sexual assault on either body. However, the stabbings were both "mad-dog affairs."

son, Mark Riebe, had confessed to her on at least two occasions that he had committed the murder of Pauline Casey -- not Ernest Suggs. (PCR4. 100). The first time Mark Riebe confessed to killing Pauline Casey was when he was initially incarcerated for the murder of Donna Callahan. Riebe told Wells that he took Pauline Casey to a dirt road and killed her there. He further told his mother that Suggs was implicated in Casey's murder, but that it was he, Riebe, who had actually killed Casey. The second time Riebe confessed to Wells was while he was incarcerated at Union Correctional Institution. Riebe again insisted that he had murdered Pauline Casey and that Ernest Suggs had not. She was also not aware that Suggs was on death row for the murder of Pauline Casey. (PCR4. 100). Lastly, Wells stated that she had previously provided this information to the Florida Department of Law Enforcement ("FDLE"). Although Suggs' previous counsel requested and received records from FDLE concerning both Alex Wells and Mark Riebe, Patsy Wells' statement to FDLE has never been turned over to defense counsel.

Subsequently, Suggs' federal postconviction team spoke with an individual named Randy Sheheane. Sheheane told the investigators that he had previously been incarcerated at the Okaloosa County

Jail. During his incarceration, he was in the same pod as Mark Riebe and had shared a cell with Riebe for some time as well. Mark Riebe spoke to Sheheane about the murders he had committed. (PCR4. 102). Riebe told Sheheane about Riebe's involvement in the murders of multiple women—not just the murder of Donna Callahan. Riebe told Sheheane that he murdered a woman from the Destin or Santa Rosa Beach area. Riebe said that after killing her, he had an argument with his brother, Alex Wells, about where to dump her body. Riebe told Sheheane that the woman's body was dumped off a dirt road off of Highway 98 in Walton County and that this is where her body was discovered. Pauline Casey's body was discovered at the location Sheheane said Mark Riebe described. Sheheane told Suggs' federal postconviction team that he had previously provided this information to FDLE. (PCR4. 102). Sheheane's statements to FDLE have never been disclosed to Suggs' defense counsel.

Suggs' federal postconviction investigator also spoke to Randy Chapman. Chapman specifically said that Mark Riebe had confessed to him about killing a female bartender in Walton County, Florida. (PCR4. 104). At the time of her murder, Pauline Casey was bartending at Teddy Bear Bar in Walton County, Florida. Chapman also said he

provided this information to FDLE investigators. (PCR4. 104). Chapman's statements to FDLE have never been disclosed to Suggs' defense counsel.

SUMMARY OF ARGUMENT

ISSUE 1: The circuit court erred in summarily denying Suggs' newly discovered evidence claim. Mark Riebe confessed to multiple people, including his mother, that he murdered Pauline Casey. This information could not have been discovered earlier through the use of due diligence. FDLE failed to disclose any of these witnesses pursuant to discovery requests. Riebe's confession gives rise to a reasonable doubt as to Suggs' culpability.

ISSUE 2: The circuit court erred in summarily denying Suggs' *Brady* claim. The State has a continuing duty to disclose exculpatory evidence. This suppressed information regarding Mark Riebe's confessions to the murder of Pauline Casey substantially undermines confidence in the verdict.

ISSUE 3: The circuit court erred in summarily denying Suggs' due process claim regarding the consideration of evidence outside the record by this Court that compromised his prior appeal. This evidence had not been argued previously by either Suggs or the State,

nor had any of the research been previously provided to this Court by either party.

ARGUMENT

For the reasons set forth below, Suggs' convictions and death sentence are in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution, and the circuit court erred in summarily denying Suggs' claims for relief.

ISSUE 1: The circuit court erred in summarily denying Suggs' claim of newly discovered evidence of Mark Riebe's multiple confessions to the murder of Pauline Casey.

Determining whether the trial court erred in denying an evidentiary hearing on a successive rule 3.851 motion is a question of law subject to *de novo* review. *Darling v. State*, 45 So.3d 444, 447 (Fla. 2010). Furthermore, in reviewing the circuit court's denial of postconviction relief, this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record. *See Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000).

With regard to newly discovered evidence claims, this Court has previously held:

To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements. First, the evidence 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. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. See *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*).

Hildwin v. State, 141 So. 3d 1178, 1184 (Fla. 2014). The *Jones* standard is also applicable where the issue is whether a life or death sentence should have been imposed. *Scott v. Dugger*, 604 So. 2d 465, 468 (Fla. 1992).

Further, this requires a court to consider "all newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*). This Court must "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 ... a postconviction court must even consider testimony that was previously excluded as procedurally barred or presented in another postconviction proceeding in determining if there is a probability of an acquittal." *Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 2014)(internal citations omitted). See

also Lightbourne v. State, 742 So. 2d 238, 247 (Fla. 1999) (In this case the trial court concluded that [a witness’s] recanted testimony would not probably produce a different result on retrial. In making this determination, the trial court did not consider [another witness’s] testimony, which it had concluded was procedurally barred, and did not consider [the testimony of the witness who recanted] from a prior proceeding. *The trial court cannot consider each piece of evidence in a vacuum, but must look at the total picture of all the evidence when making its decision.*”) (emphasis added).

A. Suggs’ newly discovered evidence claim is timely.

In denying relief, the circuit court found this claim to be facially and/or legally insufficient and held that Suggs failed to establish the timeliness of his newly discovered evidence claim. (PCR4. 934). This finding is erroneous.

Rule 3.851(d) requires that motions for postconviction relief must be filed within one year after the judgment and sentence become final, unless “the facts on which the claim is predicated were unknown to the movant or the movant’s attorney and could not have been ascertained by the exercise of due diligence.” Fla. R. Crim. P. 3.851(d)(2).

The circuit court stated that “[t]he defendant does not explain when the defendant’s postconviction counsel learned of the confessions.” (PCR4. 934). However, contrary to this finding, Suggs clearly stated in his postconviction motion that defense investigators spoke with Patsy Wells, the mother of Mark Riebe, on November 3, 2017, and learned of Mark Riebe’s confession to the murder of Pauline Casey at that time. (PCR4. 60). Suggs also clearly alleged that he spoke with Randy Sheheane and Randy Chapman “subsequently” to his conversation with Ms. Wells. (PCR4. 102, 104). Since Suggs filed his successive postconviction motion within one year from the date he spoke with Ms. Wells, his motion was timely.

Additionally, the circuit court found that “[t]he defendant does not clearly identify the dates on which Mark Riebe made his alleged confessions to the named individuals.” (PCR4. 934). This finding misunderstands the defendant’s claim. The newly discovered evidence is the statements made by the named individuals to defense investigators, which took place following the interview with Patsy Wells on November 3, 2017. The critical date for purposes of newly discovered evidence is on or after November 3, 2017, when defense investigators learned of the confessions by Riebe to Patsy Wells and

other individuals. The triggering dates are *not* the dates on which Mark Riebe made his confessions to his mother or the other two witnesses.

Suggs stated as much in his postconviction motion when he indicated the date that investigators spoke with Patsy Wells as November 3, 2017, and in the next paragraph stated: “Subsequently, Mr. Suggs’ federal counsel team spoke with an individual named Randy Sheheane.” (PCR4. 60-61). The federal investigator’s interview with Randy Chapman was mentioned in the very next paragraph, indicating that it was also subsequent to the meeting with Patsy Wells on November 3, 2017.

Since the confessions by Mark Riebe were not made until after Suggs’ trial, they were necessarily “unknown to [Suggs] or [Suggs’] attorney and could not have been ascertained by the exercise of due diligence.” *See Fla. R. Crim. P. 3.851(d)(2)*. Accordingly, Suggs’ postconviction motion was timely filed on November 2, 2018, which was within one year of November 3, 2017, the earliest date by which the confessions by Mark Riebe were discovered by defense counsel.

B. Mark Riebe's statements concerning the murder of Pauline Casey are newly discovered evidence and could not have been discovered through due diligence.

The circuit court held that “the defendant does not demonstrate that he filed the instant motion within one year of when the confessions became discoverable through due diligence.” (PCR4. 934).

“In order to be considered newly discovered evidence, the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of due diligence.” *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (internal quotations omitted).

Mark Riebe's statements concerning the death of Pauline Casey to Patsy Wells, Randy Sheheane, and Randy Chapman were not previously known to the trial court, defense counsel, or Suggs. None of the above individuals were witnesses in Suggs' case, nor were they, at the time, known by the court, defense counsel, or Suggs to be related to Pauline Casey or the Walton County Sheriff's Office's investigation of Casey's murder. Indeed, witnesses indicate that some of the statements made by Mark Riebe occurred *after* Suggs'

conviction, meaning that it would have been impossible for the defense to discover at the time of trial. Claims of newly discovered evidence that could not have been discovered at the time of trial specifically because the evidence did not exist at the time of trial have been held to meet the first prong of the *Jones* standard. *See, e.g., Scott v. Dugger*, 604 So. 2d 465, 468 (Fla. 1992) (“In the instant case, we find that both requirements [to set aside a conviction based on newly discovered evidence] have been met and relief is appropriate. Robinson’s life sentence was not imposed until after Scott’s direct appeal was completed. Thus, this fact could neither be known nor discovered at the time that this Court reviewed Scott’s death sentence.”).

Further, Mark Riebe’s confessions could not have been discovered prior to now through the use of due diligence. Suggs’ previous counsel had requested and received records from FDLE concerning both Alex Wells’ and Mark Riebe’s cases. FDLE failed to disclose any statements made by Patsy Wells, Randy Sheheane, or Randy Chapman regarding Riebe’s confession to this crime. FDLE’s failure to disclose all the witnesses it interviewed in connection with its investigation of Mark Riebe as well as the statements that were

conveyed to FDLE thwarted Suggs' ability to discover both these witnesses and their relevant information prior to now. Postconviction counsel cannot reasonably be expected to speak to every person that is developed as a result of investigative efforts, particularly in the case of suppressed information by law enforcement. *See, e.g. Waterhouse v. State*, 82 So. 3d 84, 103 (Fla. 2012) (“[T]o hold that collateral counsel must investigate every aspect of a police report—even where it appears that such investigation would be fruitless—is inconsistent with a prior case where we held, in the context of an alleged *Brady* violation, that due diligence by trial counsel was satisfied even though the witness who provided the impeaching evidence had been named in a police document that was provided to defense counsel.”); *State v. Huggins*, 788 So. 2d 238, 243 (Fla. 2001) (holding that due diligence does not require defense counsel to investigate hundreds of leads provided by the police, including those leads which “did not reveal that further investigation would produce useful results”).

C. Mark Riebe’s statements concerning the murder of Pauline Casey create a reasonable doubt as to Suggs’ guilt and would likely produce an acquittal at a retrial.

The circuit court also held that even if this claim was timely, Suggs failed to satisfy the second prong of the *Jones* test -- that this

evidence is of such a nature that it would probably produce an acquittal on retrial. (PCR4. 934-35).

In making this finding, the court held that (1) Mark Riebe's confessions would be inadmissible hearsay evidence at trial; and (2) the evidence does not weaken the case against the defendant so as to give rise to a reasonable doubt as to his culpability. (PCR4. 935). Both of these findings were in error.

First, while admissibility is a consideration in the context of a newly discovered evidence analysis, Riebe's multiple confessions to killing Pauline Casey, which exonerate Suggs, are third-party admissions of guilt and cannot be excluded under the rules of evidence. In *Chambers v. Mississippi*, the United States Supreme Court held that "where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice." 410 U.S. 284, 302 (1973); *see also Holmes v. South Carolina*, 547 U.S. 319 (2006); *Aguirre-Jardin v. State*, 202 So. 3d 785, 792-93 (Fla. 2016).

In *Holmes*, the defendant sought to introduce evidence that another man, Jimmy White, committed the crime. 547 U.S. at 323. The defendant also sought to introduce the testimony of several

witnesses that White had either acknowledged the defendant was “innocent” or had actually admitted to committing the crime. *Id.* The trial court excluded this testimony under the state’s rules of evidence. *Id.* The United States Supreme Court reversed, holding that the state’s rules of evidence violated the “criminal defendant’s right to have ‘a meaningful opportunity to present a complete defense.’” *Id.* at 331 (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). The Florida Supreme Court has explicitly recognized this line of cases, holding that the Florida evidence code cannot be used to bar evidence of third-party guilt. *See, e.g., Bearden v. State*, 161 So. 3d 1257 (Fla. 2015) and *Aguirre-Jarquin v. State*, 202 So. 3d 785 (Fla. 2016). This Court also held that third-party confessions are “properly considered in analyzing the cumulative effect of the newly discovered evidence.” *Aguirre-Jarquin*, 202 So. 3d at 794.

Further, at an evidentiary hearing where Suggs can further support this newly discovered evidence claim -- and present additional evidence from the witnesses who heard Mark Riebe confess -- Mark Riebe's statements as alleged in this motion, though hearsay, would be admissible as statements against interest under Fla. Stat. 90.804(2)(c). Riebe has not been charged with the murder

of Pauline Casey and the State could choose to do so. If the State does pursue charges against Riebe, it could seek the death penalty. Thus, Riebe's statements are against his interest.

Second, the circuit court's finding that the newly discovered evidence does not weaken the case against the defendant so as to give rise to a reasonable doubt as to his culpability was based upon:

(1) the victim's palm print found inside the defendant's vehicle, (2) the victim's fingerprints discovered on the outside of defendant's vehicle, (3) human blood found on the defendant's shirt that was consistent with the victim's blood, (4) tire tracks consistent with tracks similar to ones made by the defendant's vehicle which were located mere feet from the victim's body, (5) the defendant was the last person seen with the victim before she went missing, and (6) the victim was discovered in bloody clothing only hours after she disappeared.

(PCR4. 935).

This reasoning fails to acknowledge that this was an entirely circumstantial case with no direct physical evidence. First, although Casey's fingerprints were recovered from Suggs' vehicle, specifically, two fingerprints on the exterior of the vehicle and a partial palm print on the interior passenger door handle of the vehicle. (R. 3360), this fails to consider the evidence that Suggs and Pauline Casey were friends. Casey, who referred to him as her "friend from Alabama." (R.

3672-73). She had been helping him find a job and had been seen out with him at a different bar previously, likely explaining why her prints were on the car in a place consistent with someone opening and shutting the passenger door. (R. 2816-17, 3360, 3366). This is not evidence that Suggs committed the murder.

Second, the circuit court also noted “human blood found on the defendant’s shirt that was consistent with the victim’s blood.” (PCR4. 935). There was only one "stain" on the shirt Suggs was wearing when he was arrested, and the source of that stain was a highly contested matter. At trial, there was an extensive dispute as to whether it was actually human blood or some other bodily fluid. (R. 3164-67; 4012-42). FDLE also found that there was no presence of blood on the shorts, shoes, and watch that Suggs was wearing when he was arrested, nor was there any blood or hair matching Casey found in Suggs’ vehicle, which the State claimed he used to kidnap her from the bar. (R. 3010; 3172; 3331; 3857). Further, Suggs had no visible scratches or injuries on him despite the brutality of the murder as well as the thick and nearly impenetrable brush where her body was found off a dirt road. (R. 2332-35; 3005; 3010; 3331; 3374-76).

Suggs' vehicle and home were searched in the early morning hours following Casey's disappearance, but no murder weapon was ever recovered. A search of Choctawhatchee Bay behind Suggs' home occurred in the days after Suggs' arrest. Only a pilsner-style beer glass similar to those used at Teddy Bear Bar (R. 2872) and a key that fit into one of the locks at the bar (R. 2999) were found in the bay.

The State's entire case rested on the testimony of two jailhouse informants whose credibility has since been completely destroyed. See initial brief filed in SC24-0702. Lastly, the jury only convicted Suggs after a lengthy deliberation (R. 1719) and recommended death by a bare majority of 7-to-5. (R. 4728). Thus, had the jury known about Riebe's confessions, it would have acquitted him, or at the very least, would have recommended a life sentence.

Furthermore, in only considering evidence presented at trial by the State, the circuit court has failed to conduct a cumulative analysis as required by *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998). The *Jones* standard requires that, in considering the effect of the newly discovered evidence, the postconviction court must consider *all* of the admissible evidence that could be introduced at a

new trial. *Id.* A newly discovered evidence analysis requires a postconviction court to consider the newly discovered evidence in the context of both that which was presented at trial as well as that which was developed in postconviction.

Notably, in the years after Suggs was convicted of the murder of Pauline Casey, FDLE initiated a large scale investigation of suspected Walton County serial killers Alex Wells and Mark Riebe. (PCR1. 18-23). Initially, this investigation focused on Alex Wells, but it expanded to include Mark Riebe seemingly only after Wells was indicted for the murder of Donna Callahan. While both men were convicted for their roles in Callahan's murder, Riebe continued to be of interest to FDLE. He subsequently confessed to between 13 and 40 murders. FDLE investigator Dennis Haley continues to give public interviews concerning Mark Riebe's confessions and characterizing him as a serial killer.¹¹

¹¹ See, e.g., "A Killer Beside Me: Dennis Haley", To Catch A Killer: Inside the Chase, available at <https://www.investigationdiscovery.com/tv-shows/to-catch-a-killer-inside-the-chase/full-episodes/a-killer-besideme-dennis-haley> (last visited Oct. 31, 2018).

At a retrial, Suggs would be able to present credible evidence that Mark Riebe confessed to Pauline Casey's murder to three separate people, including his own mother. This information would call further into question the scant circumstantial evidence against Suggs and would likely produce an acquittal.

D. Conclusion

The circuit court erred in denying Suggs an evidentiary hearing on this newly discovered evidence of Mark Riebe's statements concerning the murder of Pauline Casey.

Factual allegations in support of a postconviction motion for relief under Fla. R. Crim. P. Rule 3.851 that are sufficient to state a prima facie claim of newly discovered evidence entitle a defendant to an evidentiary hearing. *See, e.g., McLin v. State*, 827 So. 2d 948 (Fla. 2002) (“[O]n the basis of the allegations of [the defendant]’s motion in this case, an evidentiary hearing was required in order to resolve the credibility determination as to the truthfulness of Saldana’s affidavit.”); *Keen v. State*, 855 So. 2d 117 (Fla. 2d DCA 2003) (“In his motion, Keen alleged that the State’s main witness recanted his testimony inculcating Keen for first-degree murder. . . . Keen is not required to provide [a notarized] statement; he must only provide a

brief statement of facts in support of the motion.”). This is also true in the context of newly discovered evidence of statements of another that call into question a defendant’s culpability. *See, e.g., Roundtree v. State*, 884 So. 2d 322, 323 (Fla. 2d DCA 2004) (holding that the defendant’s allegations that his codefendant admitted the defendant had no role in the robbery and that the codefendant had not testified on the defendant’s behalf because he had been coerced by the State were sufficient to state a prima facie claim of newly discovered evidence).

Importantly, Fla. R. Crim. P. Rule 3.851 does not require a defendant to submit affidavits in support of their factual allegations. *See Valle v. State*, 705 So. 2d 1331 (Fla.1997) (discussing in the context of Fla. R. Crim. P. Rule 3.850); *Smith v. State*, 837 So. 2d 1185 (Fla. 4th DCA 2003) (same). However, while evidentiary hearing determinations are made on a case-by-case basis, when a defendant does include supporting affidavits, it strengthens the need for an evidentiary hearing. *See, e.g., Johnson v. Singletary*, 647 So. 2d 106, 110 (Fla. 1994) (“[Evidentiary hearing] rulings must be made on a case-by-case basis. In making our decision today, we are influenced by the fact that there is not just one but several affidavits which refer

to Pruitt’s having confessed on more than one occasion.”).

Additionally, post-trial confessions by another individual to a murder for which a defendant is convicted can entitle a defendant to an evidentiary hearing on the matter, and is especially justified when there are multiple individuals reporting such a confession. *See, e.g., Brantley v. State*, 912 So. 2d 342, 342–43 (Fla. 3d DCA 2005) (remanding for an evidentiary hearing based on the affidavit of a codefendant which stated the defendant was not present and was not involved in the shooting); *State v. Gomez*, 363 So. 2d 624, 626-28 (Fla. 3d DCA 1978) (treating as newly discovered evidence the post-trial affidavit of a codefendant confessing to having committed the robbery without the defendant’s assistance); *see also Aguirre-Jarquin*, 202 So. 3d at 792-93 (reversing postconviction court’s denial of newly discovered evidence claim including the posttrial confession of another after an evidentiary hearing and vacating conviction and sentence).

In this case, Suggs has established a prima facie claim of newly discovered evidence, which he is entitled to develop at an evidentiary hearing. “[W]here there is conflicting evidence of the defendant’s guilt, it is necessary for the trial court to evaluate the weight of the

newly discovered evidence and the evidence which was introduced at the trial to determine whether the new evidence would probably have resulted in an acquittal. . . . Often, this analysis will require an evidentiary hearing.” *Kendrick v. State*, 708 So. 2d 1011, 1012 (Fla. 4th DCA 1998); *see also Poff v. State*, 41 So. 3d 1062, 1064 (Fla. 3rd DCA 2010). This Court should reverse the circuit court and remand this case for an evidentiary hearing.

ISSUE 2: The circuit court erred in summarily denying Suggs’ claim that his rights were violated when the State suppressed Mark Riebe’s confessions in violation of *Brady v. Maryland*.

Determining whether the trial court erred in denying an evidentiary hearing on a successive rule 3.851 motion is a question of law subject to *de novo* review. *Darling*, 45 So. 3d at 447. Furthermore, in reviewing the circuit court’s denial of postconviction relief, this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record. *See Freeman*, 761 So. 2d at 1061.

A criminal defendant has a due process right to information that is favorable and material to the issues at trial. *Brady v. Maryland*, 373 U.S. 83, 86 (1963). Florida courts have held that such a violation is established when "(1) the evidence was either exculpatory or

impeaching; (2) the evidence was willfully or inadvertently suppressed by the State; and (3) because the evidence was material, the defendant was prejudiced." *Davis v. State*, 136 So. 3d 1169, 1184 (Fla. 2014). This obligation of the prosecution extends to law enforcement, and other agencies closely aligned with the prosecution. See, e.g., *Strickler v. Greene*, 527 U.S. 263, 280-81 (1999) ("[T]he rule encompasses evidence known only to police investigators and not to the prosecutor.") (internal quotation omitted).

Relief is warranted if the undisclosed information creates a reasonable probability of a different result. *United States v. Bagley*, 473 U.S. 667, 678 (1985). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

A. Suggs' *Brady* claim is timely.

Rule 3.851(d)(2)(A) permits a motion to vacate judgment and sentence to be filed more than one year after the judgment and sentence become final if "the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence."

In this case, the circuit court held that Suggs failed to demonstrate that this claim is timely, specifically, that Suggs failed

to “identify the date on which FDLE, or the State of Florida, learned of Mark Riebe’s alleged confessions.” (PCR4. 937). This finding is erroneous and a fundamental misunderstanding of the law. The triggering date is not when the State or its investigators learned of the exculpatory information, but when *Suggs* could have found this information.

As detailed *supra*, *Suggs*’ postconviction motion was timely filed on November 2, 2018, which was within one year of November 3, 2017, the date defense investigators spoke to Patsy Wells and the earliest date by which the confessions by Mark Riebe were discovered by defense counsel. Neither *Suggs* nor his counsel could have discovered Riebe’s confession to Patsy Wells, Randy Sheheane, or Randy Chapman before that time because of FDLE’s failure to disclose these witnesses and their statements. Again, *Suggs* requested, and the State failed to disclose, this information. As argued in ISSUE 1, this thwarted *Suggs*’ ability to discover both these witnesses and their relevant information prior to now.

As with the newly discovered evidence claim, the circuit court also held that with respect to *Suggs*’ *Brady* claim, Mark Riebe’s statements are inadmissible hearsay. (PCR4. 937). However, as

argued in ISSUE 1, Mark Riebe's statements would be admissible as statements against interest, Fla. Stat. 90.804(2)(c), and under *Chambers v. Mississippi*, 410 U.S. 284 (1973), as third-party admissions of guilt. *See also Bearden v. State*, 161 So. 3d 1257, 1264 (Fla. 2015) ("[I]n *Chambers*, the United States Supreme Court concluded that the exclusion of hearsay regarding a third party's confessions to a crime violated the defendant's constitutional right to due process-the [S]tate's rules of evidence notwithstanding.").

The circuit court further held that even if timely, Suggs failed to meet any of the requirements of *Brady* and stated that: (1) Suggs failed to prove these statements were suppressed by the State; and (2) Suggs failed to demonstrate the materiality of these statements. (PCR4. 937-38).

B. Mark Riebe's statements about the murder of Pauline Casey are exculpatory to Suggs.

Mark Riebe's statements concerning the murder of Pauline Casey are exculpatory to Suggs. Suggs has always maintained his innocence of this crime, and the exculpatory nature of another individual confessing to this crime is self-evident.

C. FDLE suppressed information concerning Mark Riebe's statements about the murder of Pauline Casey.

The circuit court held that *Brady* does not apply to Mark Riebe's confessions because these statements were made after Suggs was convicted and cites to *In re Bolin*, 811 F. 3d 403 (11th Cir. 2016). (PCR4. 938).

While recognizing that case, it stands that when police or prosecutors conceal exculpatory or impeaching material in the State's possession, it is "incumbent on the State to set the record straight." *Banks v. Dretke*, 540 U.S. 668, 675 (2004).

A rule declaring prosecutor may hide, defendant must seek, is not tenable in a system constitutionally bound to accord defendants due process. Ordinarily, we presume that public officials have properly discharged their official duties. ... Courts, litigants, and juries properly anticipate that obligations [to refrain from improper methods to secure a conviction] ... plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.

Id. at 696. (internal quotations omitted).

Under federal and Florida law, the duty to disclose such evidence to a criminal defendant does not end at trial. *See, e.g., Thompson v. Calderon*, 151 F.3d 918, 935 n. 12 (9th Cir. 1998) (Reinhardt, J., concurring and dissenting) ("The *Brady* duty is an ongoing one, and continued to bind the prosecution throughout

Thompson's habeas proceedings."); *High v. Head*, 209 F.3d 1257, 1265 n.8 (11th Cir. 2000) ("The State's duty to disclose exculpatory material is ongoing."); *Duckett v. State*, 918 So. 2d 224, 239 (Fla. 2005) ("Nevertheless, *Duckett* claims that the State is under a continuing duty throughout all proceedings to comply with *Brady*. This duty extends to postconviction proceedings [T]his is a correct statement of the law.") (internal citations omitted); *see also Imbler v. Pachtman*, 424 U.S. 409, 427 n. 25 (1976) ("At trial this duty is enforced by the requirements of due process, but after a conviction the prosecutor also is bound by the ethics of his office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction."); *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987); *State v. Huggins*, 788 So. 2d 238, 244-45 (Fla. 2001) (Pariente, J., concurring) (explaining that the prosecutor's obligation to disclose exculpatory evidence is due to the prosecutor's "unique" role).

The State of Florida has an obligation to disclose exculpatory evidence to criminal defendants, and this duty creates an obligation on behalf of the State to discover such information in the possession of law enforcement agencies. *See Kyles v. Whitley*, 514 U.S. 419, 437

(1995). This duty to discover and disclose includes, for example, police investigation of substantially similar crimes in the same area that a defendant is charged with or statements by confidential informants implicating others in the crime the defendant is charged with. *See, e.g., Rogers v. State*, 782 So. 2d 373 (Fla. 2001).

For many years, both FDLE and the State of Florida have been on notice that Suggs sought information related to Alex Wells and Mark Riebe, two alleged serial killers. Suggs began requesting records about the incarceration and investigation of both individuals when he was in state postconviction, and Suggs sought a court order for disclosure of such records in his federal postconviction litigation. *See, e.g., Order Granting Leave to Request Discovery, Suggs v. McNeil*, No. 3:06-cv-111-RH, ECF No. 31 (N.D. Fla. Jan. 25, 2007) (granting leave for discovery of FDLE records concerning Alex Wells); *Id.* at ECF No. 50 (Aug. 14, 2007) (granting leave for discovery of FDLE records concerning Mark Riebe). After disclosure of the records that FDLE deemed not exempted in 2007, federal postconviction counsel again sought updated records from FDLE in 2017. None of the disclosed records by FDLE contain the relevant and exculpatory information that is the basis of the instant motion, and there is no

reason that Suggs should have known such information existed—quite the opposite is true, as Suggs reasonably relied on FDLE’s investigative documents, which omitted any such information. It has since been discovered that FDLE was provided information from at least three sources to whom Riebe confessed to the murder for which Suggs was convicted, and FDLE had an obligation to provide Suggs this information under its continuing duties to disclose such critically exculpatory information. FDLE’s failure to do so meets the suppression prong of *Brady*.

D. Mark Riebe’s statements are material and their suppression prejudiced Suggs.

The Supreme Court has emphasized that prejudice is measured by determining “whether ‘the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.’” *Strickler v. Greene*, 527 U.S. 263, 290 (1999) (quoting *Kyles v. Whitley*, 514 U.S. 419, 435 (1995)). In effect, this means that “there is a reasonable probability that had the information been disclosed to the defendant, the result of the proceeding would have been different.” *Young v. State*, 739 So. 2d 553, 559 (Fla. 1999). In making this assessment, a reviewing court

must consider all of the evidence, including any new evidence developed since the trial and any evidence that was excluded as procedurally barred in postconviction. *Swafford v. State*, 125 So. 3d 760, 776-78 (Fla. 2013).

As discussed previously, Suggs has always maintained his innocence of the murder of Pauline Casey, and the State's case against him relied entirely on circumstantial evidence. Evidence developed in postconviction indicates not only that Suggs' conviction was problematic in a number of ways, *see, e.g.*, state postconviction revelation that the medical examiner placed Pauline Casey's time of death when Suggs was in police custody (PCR1. Vol. 9, 112-18), postconviction testimony that critical jailhouse snitch James Taylor was given special privileges and concealed by an alias by the Walton County Jail (PCR1. Vol. 9, 102-03), etc., but also revealed the decade-long or more FDLE investigation into Alex Wells and Mark Riebe. At the time that FDLE received information from the affiants whose statements are attached, FDLE believed that Riebe was a serial killer and Riebe had likely already been convicted for his role in a murder that was substantially similar to Pauline Casey's murder, a year to

the day earlier.¹² In light of the new information concerning Riebe, the circumstantial case against Suggs, and the information developed in state and federal postconviction in Suggs' case, a retrial of Suggs, where the defense is aware of the previously suppressed statements of Mark Riebe, would likely produce a different result. Thus, these statements are clearly material within the meaning of *Brady* and progeny.

E. Conclusion

The circuit court erred in denying Suggs an evidentiary hearing on his *Brady* claim involving Mark Riebe's statements concerning the murder of Pauline Casey.

“Generally, a defendant is entitled to an evidentiary hearing on a rule 3.850 motion unless (1) the motion, files, and records in the case conclusively show that the movant is entitled to no relief or (2) the motion or particular claim is legally insufficient.” *Franqui v. State*, 59 So. 3d 82, 95-96 (Fla. 2011) (citing *Freeman v. State*, 761 So. 2d

¹² As prior postconviction motions have made clear, the murders of Donna Callahan and Pauline Casey were so substantially similar that Suggs was initially investigated for both—until law enforcement discovered he was incarcerated in Alabama when Donna Callahan was murdered.

1055, 1061 (Fla. 2000)). Suggs is entitled to an evidentiary hearing on the foregoing factual predicate. Three witnesses have clearly and demonstrably alleged that FDLE was provided the information Suggs now presents. Suggs is entitled to develop, through witness testimony and an evidentiary hearing, information relevant to this claim, including, for example, FDLE's knowledge and suppression of these statements by Riebe.

ISSUE 3: The circuit court erred in summarily denying Suggs' claim that his due process rights were violated when the Florida Supreme Court considered evidence outside the record.

Determining whether the trial court erred in denying an evidentiary hearing on a successive rule 3.851 motion is a question of law subject to *de novo* review. *Darling*, 45 So.3d at 447. Furthermore, in reviewing the circuit court's denial of postconviction relief, this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record. *See Freeman*, 761 So. 2d at 1061.

In denying relief, the circuit court found that this claim was not properly raised in a rule 3.851 motion before the trial court. (PCR4. 939). The court further held that this claim was procedurally barred and "the defendant may not use the instant motion to raise a claim

that has already been litigated in a previous rule 3.851 proceeding.” *Id.* In so holding, the circuit court relied on *Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014)(Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion.). This holding is erroneous, as *Hendrix* can be distinguished. In *Hendrix*, this Court held that claims previously raised in a prior rule 3.851 motion, cannot be re-raised in a subsequent rule 3.851 motion. Whereas, here, the claim is that this Court ruled on an appeal of a prior 3.851 motion based on information that was neither presented nor argued by either party, thereby denying Suggs of due process.

A. Suggs' 2015 successive postconviction motion alleged *Brady* violations.

On October 27, 2015, Suggs filed a Successive Motion to Vacate, which included a claim for *Brady* evidence concerning the search of the bay and the apparent existence of a waterline on Suggs' shorts following his arrest. This information was disclosed to postconviction counsel for the first time by Wyatt Henderson, former Walton County Sheriff's Office (WCSO) lead dive team member. The motion alleged that this information was favorable to Suggs because it identified for

the first time a rationale as to why the dive team was instructed to search to a particular depth further out in the bay, a rationale which had never previously been disclosed to the defense.

Further, this information was inconsistent with what was given to the defense at the time of trial. There is no mention of this waterline on Suggs' pants in any of the police reports, statements, or depositions, nor was it ever mentioned at trial or any time thereafter, until now. The only mention of Suggs' appearance and clothing at the time of his arrest was noted in Steve Sunday's police report: "Mr. Suggs was wearing a light colored pull over shirt, black shorts with yellow stripe, sandals, and had brownish hair rolled in a ponytail." Officer Sunday also testified at trial that Suggs was wearing shorts at the time he was arrested and that Ray Hamilton had described Suggs as wearing shorts earlier in the evening as well. (R. 2708-09). No photos were taken of the shorts to indicate that any such visible waterline ever existed or even whether Suggs' shorts were wet at the time of his arrest.

Suggs argued in his postconviction motion that Captain Trusty's statement to the divers (Henderson included) that he saw a waterline on Suggs' shorts was material because it identified for the

first time that divers were instructed to search to a certain depth, where they eventually found alleged inculpatory evidence against Suggs. Captain Trusty's statement of a waterline was never mentioned in the police reports, and the waterline was never photographed. Thus, Suggs argued, this information would have constituted *Brady* information because it was inconsistent with the statements and testimony of law enforcement concerning the search of the bay and such inconsistency called into question the validity of search itself.

Suggs' successive motion to vacate was summarily denied by the circuit court without an evidentiary hearing. He filed a timely appeal. In its 2017 decision, this Court said the following as to this issue:

With respect to the water stain, **Suggs suggests that this statement** (attributed by Henderson to Trusty) **could not be true** (and, therefore, could not have been used to impeach Trusty), **either because a water stain could not be seen on black fabric or because a water line would not have reached the fabric of shorts.** The first inference cannot form a basis for relief because it is too speculative. Seawater contains salts and "other substances, including dissolved inorganic and organic materials" and particulates, Fred T. Mackenzie, et al., *Seawater*, Encyc. Britannica, <http://www.britannica.com/science/seawater> (last visited October 30, 2017), and salt dissolved in water

crystallizes and remains behind as the hydrogen dioxide evaporates, see N oushine Shahidzadeh et al., *Salt stains from evaporating droplets*, Scientific Reports (2015), http://www.nature.com/articles/srep_10335 (last visited October 30, 2017) (studying stain patterns left through this commonly observed phenomenon). Further, depending on the composition of the bay water at the relevant location and time, it is possible that other solids would also remain after evaporation of the hydrogen dioxide, and either salt or other solids could be visible on dark fabric.

Suggs v. State, 238 So. 3d 699, 705 (Fla. 2017).

B. This Court impermissibly considered evidence outside the record and arguments not made by Suggs' counsel or the State.

First, with regard to this Court's findings, the Court stated: Suggs suggested that Captain Trusty's statement about the waterline could not be true "either because a water stain could not be seen on black fabric or because a waterline would not have reached the fabric of shorts." *Id.* Suggs did not make those arguments in his motion to vacate or his appellate briefs, and the State also did not make those arguments in its pleadings.

Second, this Court then took those arguments which were not put forth by Suggs or the State and used them to conduct its own scientific research into whether a water stain could be seen on black fabric. The references to online articles on the Encyclopedia

Britannica and Nature websites were not previously cited by either Suggs or the State. The last time the Court indicated that those websites were visited was on October 30, 2017. This date was after briefing was completed by both parties and just prior to the issuance of the Court's decision on November 9, 2017. It is clear that this Court conducted its own research into these scientific matters, for which it is not an expert and had no evidentiary record on which to rely.

C. Suggs' due process rights were violated by this extra-record research and consideration, and his appeal was compromised as a result.

1. Due process requires courts to only consider evidence that a defendant has an opportunity to rebut.

Florida courts have long discouraged the judiciary and fact-finders from considering evidence not established in the record of a case. *See, e.g., Edelstein v. Roskin*, 356 So. 2d 38, 39 (Fla. DCA 1978) (holding that judges "must not act on special or independent facts which were not received in evidence"); *Snook v. Firestone Tire & Rubber Co.*, 485 So. 2d 496 (Fla. DCA 22 Page 076 1986) ("In reaching a verdict, [the fact-finder] must not act on special or independent facts which were not received in evidence."); *Krawczuk v. State*, 92

So. 3d 195, 202 (Fla. 2002) (explaining that judges are "strongly discourage[d]" from researching factual matters before them as "[t]here is no reason apparent" for a judge to rely upon the results of personal research "outside of open court"). When a court relies on information that is unknown to the defendant and the defendant has no opportunity to question that information, "[t]he risk that some of the information ... may be erroneous, or may be misinterpreted, by the ... judge, is manifest." *Gardner v. Florida*, 430 U.S. 349, 359 (1977). As the United States Supreme Court has explained:

[T]he judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impression of what had occurred ... and his judgement was based in part on this impression, the accuracy of which could not be tested by adequate cross-examination.

In re Murchison, 349 U.S. 133, 138 (1955).

This longstanding maxim is not simply to reduce the chance of misinterpretation or confusion, but also directly implicates a criminal defendant's fundamental trial and due process rights to notice, the ability to confront evidence against them, and fairly rebut evidence against them. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 266-72 (1970) (holding that procedural due process requires timely and

adequate notice, the opportunity to confront adverse witnesses, and the opportunity to present evidence in rebuttal); *see also Grannis v. Ordean*, 234 U.S. 385 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard.").

These trial rights are especially true in capital cases. As the United States Supreme Court explained in *Gardner*, "debate between adversaries is often essential to the truth-seeking function of trials [and] requires us also to recognize the importance of giving counsel an opportunity to comment on facts which may influence the sentencing decision in capital cases." 430 U.S. at 360.

If a court intends to "use any information not presented in open court as a factual basis" for a ruling, the court must "afford the defendant an opportunity to rebut it." *Porter v. State*, 400 So. 2d 5, 7 (Fla. 1981). When a defendant does not have such an opportunity, reversible error occurs. *See, e.g., Marcelin v. Denny's Rest.*, 648 So. 2d 834, 835 (Fla. DCA 1995) (reversing where the judge's opinion relied on personal out-of-court observations of a party).

2. Suggs was deprived of notice of evidence against him and the opportunity to rebut that evidence.

Rather than remanding to the circuit court for an evidentiary hearing, this Court erroneously relied on undisclosed information that Suggs did not have an opportunity to confront or explain. This Court's actions deprived Suggs of due process and a full, fair, and reliable hearing. Not only did Suggs not have the opportunity to rebut this Court's misunderstanding of his arguments, but he also did not have an opportunity to refute any such scientific studies that this Court researched online and used to support their conclusions. This purportedly scientific information was never challenged for validity or applicability to the present circumstances or claims.

CONCLUSION AND RELIEF SOUGHT

Suggs respectfully requests this Honorable Court reverse the circuit court's summary denial of his claims and remand for an evidentiary hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service to all counsel of record, on this 15th day of July, 2024.

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CERTIFICATE OF COMPLIANCE

This is to certify that the Initial Brief of Appellant was generated in Bookman Old Style 14-point font, pursuant to Fla. R. App. P. 9.100 and 9.210, and does not exceed 75 pages.

/s/ Dawn B. Macready
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