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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 REPLY BRIEF

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PRELIMINARY STATEMENT

This proceeding involves Suggs's appeal of the circuit court's denial of his Successive Motion to Vacate Judgment and Sentence under Florida Rule of Criminal Procedure 3.851. The State has filed its response to Suggs's initial brief, and this reply follows. This reply will address only the most salient points argued by the State. Suggs relies upon his initial brief in reply to any argument or authority argued by the State that is not specifically addressed in this reply.

ARGUMENT IN REPLY[1]

<u>REPLY TO ISSUE 1</u>: 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.

In its Answer Brief (hereinafter "AB"), the State asserts that for purposes of timeliness, the 2017 date – the date that defense investigators spoke with Patsy Wells – "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 [be] in 1997 when Ms. Wells's son Alex Wells confessed to Ms. Casey's murder, prompting Suggs's 1997 postconviction claim." (AB. 26). First, this date is not speculative. Suggs clearly states in his successive rule 3.851 motion that "[o]n November 3, 2017, defense investigators spoke with Patsy Wells." (PCR4. 60). Patsy Wells is also listed as a witness, pursuant to Fla.

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[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.

R. Crim. P. 3.851(e)(2)(C), to support this claim and corroborate this is date. (PCR4. 59, FN 10). Second, it is illogical that 1997 should be the operative date for when Suggs discovered that Riebe had confessed to murdering Ms. Casey. In 1997, Suggs filed his initial motion for postconviction relief. Among his claims in this initial motion was a newly discovered evidence claim that Alex Wells murdered Pauline Casey. At that point in time, there was no indication that Mark Riebe had confessed to killing Ms. Casey. This claim in no way implicates Mark Riebe, and therefore, cannot be used as the triggering date for *this* newly discovered evidence claim.

Individually, the State asserts that each declaration fails to include the relevant dates. (AB. 27-28). "Ms. Wells's October 21, 2018, declaration failed to reference the November 3, 2017, date or even refer to any conversation with defense investigators." (AB. 27). There is no requirement that a declaration contain this date. There is not even a requirement stating that Suggs must attach an affidavit or declaration to his rule 3.851 motion. See Fla. R. Crim. P. 3.851. The information relative to the date that defense investigators first spoke to Ms. Wells is contained within Suggs's successive rule 3.851 motion. Had Suggs been granted an evidentiary hearing on this

claim, defense investigators as well as Patsy Wells could have testified to this date.

The State also alleges that no dates are included in Randy Sheheane's October 8, 2018, declaration, and that his declaration "solely speaks to a statement Riebe purportedly made to him while incarcerated 'in the mid-1990s at Okaloosa County Jail.'" (AB. 27-28). For purposes of timeliness, Suggs's successive rule 3.851 motion states that defense investigators spoke with Patsy Wells on November 3, 2017, and then "[s]ubsequently spoke to Randy Sheheane." (PCR4. 60-61). If Mr. Sheheane's declaration was signed on October 8, 2018, and investigators spoke with Ms. Wells on November 3, 2017, we can surmise that investigators first spoke with Mr. Sheheane some time between these two dates. Again, had Suggs been granted an evidentiary hearing on his claims, Mr. Sheheane and the defense investigator could have testified to the dates. In addition, for purposes of due diligence, even though Riebe made admissions to Mr. Sheheane when they were incarcerated in the mid-1990's, there was no way for Suggs to discover this information at that time even through due diligence.

As to Randy Chapman's declaration, the State asserts that Mr. Chapman stated that FDLE interviewed him numerous times about Mark Riebe, but no date or timeframe was provided. (AB. 28). Mr. Chapman's declaration is dated October 29, 2018. (PCR4. 104). It is also clear from Suggs's successive rule 3.851 motion that defense investigators spoke to Mr. Chapman at some point after speaking to Patsy Wells. (PCR4. 60-62). It is important to note that Mr. Chapman indicated that he gave this information about Riebe to FDLE investigators. (PCR4. 62). It is this information, as well as statements made to FDLE by Patsy Wells and Randy Sheheane, that has never been turned over to defense counsel. Had FDLE turned over these files, Suggs would be able to give more specific dates as to when Riebe confessed to Mr. Chapman. However, that would still not be the operative date for purposes of this newly discovered evidence claim. As stated previously, the operative date for timeliness of this claim is when defense investigators spoke to Patsy Wells on November 3, 2017. Suggs filed his successive rule 3.851 motion within one year of that date, thereby making it timely filed. See Fla. R. Crim. P. 3.851(d).

The State argues that this newly discovered evidence could have been discovered earlier through due diligence since at some point in the past, the defense became aware of Mark Riebe and Patsy Wells. (AB. 29). However, the State fails to consider that the defense became aware of Mark Riebe in the past in the context of Suggs's 1997 claim that Alex Wells confessed to killing Pauline Casey. The State points to Suggs's § 2254 Petition, wherein Suggs alleged that Alex Wells confessed to the murder or Pauline Casey, to somehow support its argument that defense investigators should have pursued Mark Riebe as a suspect. (AB. 30). Again, there was no indication at that time that Mark Riebe had confessed to Ms. Casey's murder.

The State claims that "[w]ithout any support, [Suggs] alleges that FDLE failed to disclose all the witnesses it interviewed in connection with its investigation of Mark Riebe." (AB. 29). This is not accurate. It is clear that the defense does not have all of the records from FDLE because Patsy Wells, Randy Sheheane, and Randy Chapman all said they gave statements to FDLE investigators, yet the defense, despite requesting these records, has never received them.

The State asserts that even if this claim was timely, it would not produce an acquittal under *Jones* because the third-party statements

constitute inadmissible hearsay. (AB. 32). The State further argues that Suggs makes no mention as to whether Riebe is available to testify, despite the fact that he is currently incarcerated in the Florida Department of Corrections. (AB. 33). The State agrees that "[a]ny confession to a crime would be self-incriminating and against interest." (AB. 34). Precisely. If Riebe were to invoke his Fifth Amendment right and not testify against his own interest, he would then be deemed unavailable. This would allow Patsy Wells, Randy Sheheane, and Randy Chapman to testify that Riebe confessed to the murder of Pauline Casey and this testimony would be admissible as statements against interest under Fla. Stat. 90.804(2)(c).

Finally, the State argues that "[t]he 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." (AB. 40). "In other words, the hearsay statements that Riebe 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 or collectively weaken the case presented against Suggs and do not give rise to reasonable

doubt as to his culpability." (AB. 40). This is not the cumulative analysis that is required. *Swafford*, 125 So. 3d at 776.

Courts are required 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). Such a cumulative analysis of the evidence in this case would include the following:

Ms. Casey's palmprints and fingerprints were found on Suggs's vehicle. However, Suggs was a friend of Ms. Casey. She 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).

The day after Suggs was arrested, law enforcement called the dive team to search the water behind his parents' house. (R. 2718; 2861-62). A diver found the beer glass in two feet of water. (R. 2872, 2886). The following 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 the morning of his arrest. (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 Suggs' residence given that the name 'Suggs' was visible in two different locations. (R. 2700). Wyatt Henderson, the lead dive team member. Henderson disclosed in postconviction that on the second day of the search, Captain Brad Trusty directed the dive team to search a different area further out in the bay. It was during this search that the key to the bar was discovered. Further, investigator Steve Sunday included in a report that he received a key from the owner of the Teddy Bear Bar the day following Suggs's arrest for the purpose of

showing it to the dive team. However, Henderson stated that the dive team was never shown a key before recovering one the next day from the bay.

The single "stain" on the shirt Suggs was wearing when arrested contained an enzyme type that was consistent with the victim and 90% of the Caucasian population. It was also disputed at trial whether the source of the stain was human blood or other bodily fluid (R. 3164-67, 3189, 4012-13). Additionally, the integrity of the State's serology 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).

Ray Hamilton testified at trial that Suggs was the last person seen with Ms. Casey at the bar before she went missing. Hamilton, who previously dated the victim, lived in a mobile home on the property behind their home. (R. 2790). He testified at trial that when he left the bar, Suggs and the victim were the only two remaining in the bar. (R. 2788). 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 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).

Steve Casey, the victim's husband, gave the alibi that he was home alone 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, who were both at the bar, 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). At the time of the

murder, 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).

Ms. Casey's body was found 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). 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, as there were no "individual" characteristics found in the tracks that matched the tires on his jeep. (R. 3283, 3288, 3302, 3305-06). 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). Notably, in postconviction it was revealed that the medical examiner placed Ms. Casey's time of death when Suggs was in police custody (PCR1. Vol. 9, 112-18).

When investigators conducted a search of Suggs's parents' house, they 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).

James Taylor and Wallace Byars were jailhouse informants who testified at trial that Suggs confessed to the murder of Ms. Casey. Taylor has since recanted his original trial testimony. Taylor, Broxson (a former Walton County Jail inmate), and Crenshaw (a former Walton County Jail deputy) have stated that the WCSO used state agents in this case – Taylor and Byars – and fed them information about the case including a supposed confession by Suggs. These revelations about police misconduct at WCSO cast a shadow on the entire investigation.

Furthermore, 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. However, after it became clear 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. Suggs previously brought forth a postconviction claim that Alex Wells confessed to the murder of Pauline Casey. And now, there is 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. Under a cumulative analysis, Suggs has established that this evidence has weakened the case against him so as to give rise to a reasonable doubt as to his culpability." *Jones*, 709 So. 2d at 526.

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 26th day of August, 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 25 pages.

/s/ Dawn B. Macready
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