

# In the Supreme Court of Florida

ERNEST D. SUGGS,

*Appellant,*

v.

STATE OF FLORIDA,

*Appellee.*

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CASE NO.: SC2024-0702

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<sup>1</sup>

Oral argument in this case is unnecessary and would not offer a material benefit to the proper disposition of the issues before this Court. Appellant provides 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 I.O.P, 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 further delay this capital postconviction case.

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<sup>1</sup> 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 fourth successive postconviction motion in a capital case raising claims of violations of *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), *Massiah v. United States*, 377 U.S. 201 (1964), and newly discovered evidence. 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.

Appellee draws this Court’s attention to the facts that support Appellant’s Issue 1 – the *Brady* claim; Issue 2 – the *Giglio* claim; and Issue 3 – the *Massiah* claim are the same facts supporting Issue 4 – newly discovered evidence. *See e.g., Sheppard v. State*, 338 So.3d 803, 828 (Fla. 2022). Therefore, just as the postconviction court did in its order summarily denying the claims, Appellee urges this Court to first review the threshold newly discovered evidence issue, discussion, and analysis in Issue IV, *infra*, for further understanding

of Issues I, II, and III and to avoid the necessity of redundant or repetitive argument.

This Court also has before it, contemporaneous review of the postconviction court's order denying Appellant's third successive Rule 3.851 postconviction motion in *Suggs v. State*, Case No. SC2024-0660. See CR 930-1083; 1526, 1533-34. At issue are a newly discovered evidence and *Brady* claim, as well as a due process claim regarding this Court's earlier decision in *Suggs v. State*, 238 So.3d 699 (Fla. 2017). Simultaneous briefing in case SC2024-0660 and this case was ordered and utilize identical records on appeal.

## STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

### I. Statement of the 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 are 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; Ms. Casey and Suggs were the only ones in the bar when he left; and he 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 on the exterior passenger window and one palmprint was 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 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 that Suggs's premeditation and plan to kill Ms. Casey. *Id.*

The State introduced evidence of Suggs's 1979 first-degree

murder and attempted murder convictions and parole at the time of the murder in that case. *Suggs*, 644 So.2d at 66. 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: Suggs 1) murdered Ms. Casey while under sentence of imprisonment; (2) was previously convicted of a capital felony and a felony involving the use or threat of violence; (3) murdered her while engaged in commission of a kidnapping; (4) committed the murder to avoid or prevent a lawful arrest by

eliminating a witness; (5) committed the capital felony for pecuniary gain; (6) murdered Ms. Casey in an especially heinous, atrocious, or cruel manner; and (7) committed the murder in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. *Suggs*, 644 So.2d at n.1. and three facts in mitigation. *Id.* The trial court also found three facts in mitigation: (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.

## Direct Appeal

Suggs raised eight issues on direct appeal.<sup>2</sup> All were rejected and Suggs's conviction and death sentence were affirmed. *Suggs*, 644 So.2d 64, 67-70 (Fla. 1994), *cert. denied*, *Suggs v. Florida*, 514 U.S. 1083 (1995).

### II. Postconviction Procedural History

The procedural history in this case spans decades, since 1997. Some of Sugg's prior claims raised, denied the postconviction court, and reviewed on appeal directly relate to Appellant's newly discovered evidence, *Brady*, *Giglio*, and *Massiah* issues before this Court.

#### A. 1997 Initial Postconviction Motion.

In 1997, Suggs filed an initial Florida Rule of Criminal

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<sup>2</sup> (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; (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.

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 court held *Huff*<sup>3</sup> 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<sup>4</sup>, and sought relief through a

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<sup>3</sup> *Huff v. State*, 622 So.2d 982 (Fla. 1993).

<sup>4</sup> (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 to 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

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.

Two of Suggs’s 1997 initial Rule 3.851 postconviction claims which were denied and rejected on appeal, and which are relevant to this instant appeal before this Court are the *Giglio* and *Massiah* claims, previously raised as Claims V and VI, respectively. PCR 23-33. Both the claims were premised on the allegation that Walton County Sheriff’s Office (“WCSO”) employees conspired with Taylor and Byars “to fabricate a confession by Suggs.” *Suggs*, 923 So.2d at 427. They are summarized as:

Claim V alleged a *Giglio* violation that Suggs’s conviction was obtained by the State’s use of false testimony by various State

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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 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.

witnesses, including Taylor and Byars, resulting in an unreliable verdict. PCR 23. Suggs based the claim on Taylor's admission to a defense investigator that he and Byars lied at trial, were placed in Suggs's cell "for the express purpose" of obtaining his admission to Ms. Casey's murder, and that a third inmate knew of the fabricated testimony. *Id.* at 24; *Suggs*, 923 So.2d at 426. The postconviction court denied relief finding, Suggs presented no evidence to support the *Giglio* allegation. *Suggs*, 923 So.2d at 427. The *Suggs* Court affirmed the postconviction court's denial. *Id.* at 442.

In initial postconviction motion Claim VI, Suggs alleged his conviction was based on Taylor and Byars's testimony and information obtained as informants and state agents, violating *Massiah*. PCR 27-33. However, this claim was raised as an ineffective assistance of counsel allegation. *Id.* at 32. Suggs claimed his constitutional right to counsel was violated and inmates Taylor and Byars were intentionally placed in his cell to obtain incriminating statements from him. *Suggs*, 923 So.2d at 427. At the 2003 evidentiary hearing, George Broxson ("Broxson"), a WSCO inmate from 1990-1992 serving a life sentence testified that Taylor was an informant and former WSCO deputy Timothy Crenshaw ("Dep.

Crenshaw”) would give Taylor anything he wanted. PCR EH 44-45, 48. Broxson testified that Byars stated he would testify against Suggs so he would not have to go to prison. PCR 49. Taylor refused to testify at the evidentiary hearing or provide a written statement regarding his changed story. *Suggs*, 923 So.2d at 427; PCR EH 103, 108-09.

The *Suggs* Court affirmed denial of these claims, finding Broxson’s statements were hearsay statements by Taylor and Byers. *Suggs*, 923 So.2d at 427. On December 2, 2005, Suggs moved for rehearing in part on the *Massiah*/ineffective assistance of counsel issue asserting the *Suggs* Court overlooked the facts of the case and mischaracterized inmate Broxson and defense investigator Shockley’s testimony. See Supreme Court of Florida Docket, Motion for Rehearing at 1-2. The Motion admitted, prior defense counsel “knew James Taylor was a confidential informant” and failed to investigate him. *Id.* The motion for rehearing was denied on February 22, 2006, in Case No. SC03-1330.

Suggs resurrected these claims in his fourth successive postconviction motion, addressed here in Issues II and III. As he did in 1997, Suggs predicates the claim on the newly discovered evidence

addressed in Issue IV, *infra*.

B. 2006 Federal Habeas Petition.

Suggs filed his federal habeas petition in *Suggs v. McNeil*, Case No 3:06-cv-0011 (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.<sup>5</sup> *Suggs*, 238 So.3d at 702-03. The postconviction court summarily denied all of the claims. *Id.* at 702.

Summary denial of Suggs's first successive postconviction

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<sup>5</sup> Newly discovered evidence/*Brady* claims: (1) the victim's husband sexually abused the victim's daughter, whom Suggs argued 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 WCSO misconduct and prosecutor in a contemporaneous case, during the time Suggs was being investigated. *Suggs*, 238 So.3d at 703.

motion was affirmed on appeal and the Court found no evidence was suppressed, the newly discovered evidence was “clearly not material,” and was not exculpatory. *Suggs*, 238 So.3d at 707. The *Suggs* 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 2017 second successive postconviction motion sought relief under *Hurst v. Florida*, 577 U.S. 92 (2016). The circuit court denied relief and was affirmed 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 Motion.

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

Claim I: Newly discovered evidence that Mark Riebe, an inmate in the custody of the Florida Department of Corrections (“DOC”), confessed to his mother Patsy Wells, Randy Sheheane, and Randy Chapman that he killed Ms. Casey, not *Suggs*. CR 59-60. In support, *Suggs* offered three declarations of these individuals. 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 Suggs's due process rights when it impermissibly considered non-record evidence and counsel's arguments in affirming denial of his first successive postconviction motion, *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 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 alleged due

process violation by the Court was not properly raised in a Rule 3.851 motion and procedurally barred. CR 889-90.

The postconviction court held a *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. 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, did not weaken the case against him, and would probably 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 a Rule 3.851 postconviction motion.

Further, the due process 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 contemporaneously appeals in SC2024-0660.

F. 2022 Fourth Successive Postconviction Motion.

On May 16, 2022, Suggs filed his fourth successive motion for postconviction relief and raised violations under *Brady*, *Giglio*, *Massiah*, and a newly discovered evidence claim. CR 113-531 (Motion and Appendix). Suggs's *Brady*, *Giglio*, and *Massiah* claims were predicated on the alleged newly discovered evidence, summarized as follows:

Claim 1: The State violated *Brady*, suppressing favorable and material evidence of: 1) 2021 deposition testimony of former inmate Jake Ozio ("Ozio") in the unrelated capital prosecution of Gary Whitton; 2) information that Taylor recently recanted his trial testimony, testified falsely, and he and Byars acted as state agents to elicit incriminating statements from Suggs; and 3) an alleged 2022 statement by Dep. Crenshaw to an unknown defense investigator working on Suggs's federal habeas case that he was aware WCSO used informants and saw Taylor and Byars taken from their cells to an administration building. CR 125-30.

Suggs claimed Ozio, Taylor, and Crenshaw's newly discovered information would shed "light on the State's use of false testimony and state agents" to convict him and was important impeachment

evidence for trial witnesses Taylor and Byars. *Id.* The newly discovered evidence is raised in Sugg's Initial Brief Issue 4, where he also demands a new trial, addressed in the State's Answer Brief at Issue IV, *infra.* IB 52.

Claim 2: The State violated *Giglio* by presenting Taylor and Byars's false or misleading testimony at Suggs's trial, that there was no deal in exchange for their testimony inculcating Suggs and they did not act as state agents. CR 130-33. This claim is predominantly based on Taylor and Crenshaw's statements as alleged newly discovered evidence. Secondly, Suggs's attempts to connect Ozio's testimony in Whitton's capital case to impeach Taylor's trial testimony regarding the murder weapon used to murder Ms. Casey. CR 131-32.

Claim 3: The State violated *Massiah* and created a situation where Taylor and Byars were used as state agents to elicit information from Suggs regarding Ms. Casey's murder without the benefit of counsel. CR 133-36. This claim is also based on Taylor and Crenshaw's alleged newly discovered evidence that Taylor and Byars acted as state agents to intentionally elicit inculpatory statements from Suggs. *Id.*

Claim 4: Suggs is entitled to a new trial based on newly discovered evidence of 1) Ozio's 2021 deposition testimony taken in Whitton's capital case, which bolsters his claims that Taylor and Byars testified falsely and 2) Taylor's 2021 recantation to an unknown investigator working for his federal habeas counsel that he and Byars testified falsely about Sugg's admissions and acted as state agents; and 3) Dep. Crenshaw's 2022 statement to the unidentified federal investigator that WCSO used informants and he saw Taylor and Byars taken from their cells on occasion. CR 136-37. Suggs's submitted this claim was timely, the information raised "reasonable doubt" to his culpability for Ms. Casey's murder, and would probably produce an acquittal on a retrial. CR 137.

The State answered on June 25, 2022. CR 536-60. However, on July 8, 2022, Suggs moved to stay the state court postconviction proceedings and requested the court to take judicial notice of an unrelated federal district court petition for writ of habeas corpus in *Whitton v. Secy, Dep't of Corr.*, No. 4: 15-cv-200-RH (N.D. Fla.). CR 563-580. Suggs filed a supplemental appendix in support of his 2022 postconviction motion comprised of the federal district court

evidentiary hearing transcript in Whitton's case and a declaration from retired WCSO investigator Rick Sutton. CR 581-867.

The *Huff* hearing was held on February 2, 2023 and both the State and Suggs argued the merits of the claims, in depth. CR 896-918. Postconviction counsel made no additional mention of or argument in support of the need for an evidentiary hearing, beyond their written motion. It summarily denied the 2022 fourth successive postconviction motion in a detailed order and supporting Appendix. CR 1093-1108 (Order), CR 1109-1525 (Appendix, Attachments 1-6).<sup>6</sup>

In sum, the trial summarily denied the successive claims as follows: 1) all claims were unauthorized by Rule 3.851(d)(1)-(2), (e)(2); 2) all claims were untimely and based on the unsuccessful newly discovered evidence claim; 3) *Brady* and *Giglio*'s elements were not satisfied; 4) the *Massiah* claim was procedurally barred; and 5) the claims were meritless as a matter of law because the claimed evidence was not material, did not weaken the case against Suggs,

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<sup>6</sup> The postconviction court appears to have structured its Order based on analysis of Suggs's newly discovered evidence claim, which underlies all of the other successive claims. For example, the Order's Claim I, analyzes Suggs's newly discovered evidence claim raised in the Rule 3.851 motion as Claim 4. CR 136, 1096. And, Suggs's *Brady* Claim 1, is addressed in the Order as Claim II. CR 129, 1098.

did not create a reasonable probability of a different outcome on retrial, or give rise to reasonable doubt of Sugg's culpability. CR 1093-1107. Suggs now appeals.

## SUMMARY OF ARGUMENT

### ISSUE I

The postconviction court properly denied Suggs's successive *Brady* claim that the State failed to disclose information predicated on alleged newly discovered evidence from Jake Ozio, James Taylor, and former WCSO deputy Timothy Crenshaw. Summary denial was based on the court's findings that the alleged confessions or statements 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) that the information was favorable, willfully suppressed by the State, and he was prejudiced because the information was material. Moreover, the newly discovered evidence underlying the *Brady* claim did not weaken the case against Suggs and was insufficient to undermine the confidence of the jury's verdict.

### ISSUE II

The postconviction court properly denied Suggs's *Giglio* claim that the State presented Taylor and Byars's false trial testimony that

Sugg's confessed to Ms. Casey's murder and no benefits were received from their testimony. Summary denial was again based on the finding that Ozio, Taylor, and Crenshaw's statements presented as newly discovered evidence were untimely under *Jones* and were known or discoverable through due diligence for many years. Denial was also proper because there was no reasonable likelihood that the testimony would have affected the jury's verdict. Additionally, the State maintains the *Giglio* claim was also procedurally barred.

### ISSUE III

The postconviction court properly denied Suggs's successive *Massiah* claim that trial witnesses Taylor and Byars were used as state agents to elicit incriminating statements from Suggs, depriving him of his Sixth and Fourteenth Amendment rights. This claim is untimely and procedurally barred as it was previously raised in a postconviction motion, denied after the 2003 evidentiary hearing, and affirmed on appeal. Alternatively, even if the claim was not untimely and procedurally barred, any *Massiah* error below was harmless beyond a reasonable doubt because there is no reasonable

possibility of a different verdict given the trial evidence supporting Suggs's guilt.

#### ISSUE IV

The postconviction court properly denied Suggs's successive newly discovered evidence claim regarding Ozio's statements or testimony in an unrelated case, and information from Taylor and Dep. Crenshaw given to an unknown defense investigator. Suggs failed to satisfy *Jones* two-prong test that 1) 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.

## STANDARD OF REVIEW

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*, 265 So.3d at 480 (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 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 v. State*, 265 So.3d 462, 480 (Fla. 2018) (affirming summary denial of postconviction *Brady* and *Giglio* claims where both were procedurally barred and without merit); *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 facie 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 “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 (Fla. 2019) (citing *Anderson v. State*, 220 So.3d 1133, 1142 (Fla. 2017)); *see also LeCroy v. Dugger*, 727 So.2d 236, 238 (Fla. 1998) (“[S]peculation and conjecture about what . . . letters and notes and opinions and cryptic references may suggest is not sufficient to warrant an evidentiary hearing, much less relief,” quoting trial court’s order).

## ARGUMENT

### ISSUE I

Whether the Postconviction Court Properly Denied Appellant's *Brady v. Maryland*, 373 U.S. 83 (1963) Claim that the State Suppressed Testimony of Jake Ozio, James Taylor, and Timothy Crenshaw? [Restated]

Suggs appeals the postconviction court's summary denial of his *Brady* claim that the State intentionally suppressed favorable and material exculpatory and "critical impeachment evidence." IB 30-38. This claim is essential brought in three independent parts and predicated on alleged newly discovered evidence attributed to 1) Ozio's 2021 deposition testimony that he testified falsely in an entirely unrelated capital case against Gary Whitton; 2) Taylor's alleged new recantation of his trial testimony regarding work as a state agent and inculpatory statements made about Suggs; and 3) a statement allegedly made by Dep. Crenshaw regarding WCSO's use of inmates as informants, including Taylor and Byars. IB 28, 34.

The alleged newly discovered evidence is discussed in detail in Issue IV, *infra*, but Suggs argues the *Brady* material would impeach the State's entire investigation, "shine a light on the State's use of false testimony" to convict him, and create reasonable doubt as to

his culpability. *Id.*

The postconviction court correctly denied the *Brady* claim as facially and/or legally insufficient finding it was untimely because it was based on newly discovered evidence of Ozio, Taylor, and Crenshaw's information and statements. CR 1099. As discussed in Issue IV, *infra*, Ozio, Taylor, and Crenshaw's information did not constitute newly discovered evidence as it was untimely and would not probably result in an acquittal.

Summary denial was also based on Suggs's failure to state a claim and meet *Brady*'s requirements. CR 1098-1101. Under *Brady*, due process requires the State, upon request, to disclose evidence that is favorable to a defendant. *Brady*, 373 U.S. at 87. This principle extends to both impeachment and exculpatory evidence. *See United States v. Bagley*, 473 U.S. 667, 676 (1985).

A *Brady* claim requires Suggs to establish 1) the evidence was favorable, either exculpatory or impeaching; 2) the State willfully or inadvertently suppressed the evidence; and 3) because the evidence was material, he was prejudiced. *See Brady*, 373 U.S. at 87; *Sweet v. State*, 293 So. 3d 448, 451 (Fla. 2020). The claim must also be timely and raised in a Rule 3.851 motion no later than one year from

the date the information was discoverable. *See Mungin v. State*, 320 So.3d 624, 625-26, n. 3-4 (Fla. 2020) (holding a successive Rule 3.851 *Brady* claim was untimely because the underlying facts were discoverable more than a year before the claim was filed).

Determining whether a *Brady* violation occurred is subject to independent appellate review. *See Davis v. State*, 928 So. 2d 1089, 1113 (Fla. 2005). This Court must defer to the postconviction court's factual findings to the extent they are supported by competent substantial evidence, but reviews application of the law *de novo*. *Lightbourne v. State*, 841 So.2d 431, 437 (Fla. 2003). Suggs failed to satisfy *Brady's* requirements and failed to show the postconviction court's summary denial was in error.

An evidentiary hearing on this claim was not automatic and not required as demonstrated by the *Huff* hearing and the record available to the postconviction court. *See Henyard*, 992 So.2d at 126. At the *Huff* hearing, counsel presented arguments of purely legal claims. CR 1093. Because there were no disputed facts at issue, the postconviction court determined an evidentiary hearing was not warranted. CR 1095, 1097. It found the motion, files and records in the case conclusively showed that Suggs was not entitled to relief.

*Id.* Even on *de novo* review, Suggs's motion was properly denied without an evidentiary hearing and no relief is warranted.

A. Suggs's *Brady* Claim was Untimely.

The postconviction court summarily denied Suggs's *Brady* claim as untimely because it was predicated on alleged newly discovered evidence of statements made by Ozio, Taylor, and Crenshaw. CR 1098-99. The court found that Suggs did not demonstrate the claim was timely because 1) Ozio's 2021 deposition testimony in Whitton's case could have been discovered as early as 2000; 2) Taylor's information was known for many years; and 3) Crenshaw's information was discoverable and known in 2003. CR 1099. The State details the untimely and immaterial nature of this information as newly discovered evidence *infra* at Issue IV, but summarizes its arguments:

Ozio:

Any alleged *Brady* material in Ozio's 2021 deposition in Gary Whitton's capital case was untimely, despite Suggs's contention that 2021 was the operative year to have brought a timely claim. IB 31-32; CR 140-269. He asserts it was obvious that Ozio's testimony could not have been discovered until he gave it. *Id.* However, Ozio's

2021 testimony in Whitton’s case was *predated* by his 2000 affidavit containing the same information Suggs now claims is impeachment evidence. *See* CR 293-95. As the postconviction court found, Ozio’s information was discoverable by the defense nearly 25 years ago. CR 1099. Moreover, Suggs’s postconviction counsel would have ready access to Ozio’s affidavit because Whitton was also represented in postconviction by Capital Collateral Regional Counsel – North.

Taylor:

Taylor’s alleged recantations have been known to Suggs’s since at least 1997, when he filed his initial Rule 3.851 motion. PCR 23-24; CR 1099. *See also* Issue IV, *infra*. Suggs informed the postconviction court and argues to this Court that Taylor is now willing to testify for unknown reasons. This representation does not come from Taylor in any verifiable or credible form. It is merely an unsupported assertion by Suggs.

Even the postconviction court found, Suggs’s jury “likely concluded that Wallace Byars and James Taylor were not credible because they were merely attempting to obtain more favorable sentences for their own offenses.” CR 1106. Moreover, Suggs’s trial counsel Mr. Robert Kimmel testified that Byars and Taylor did not

win the case for the State and he did not “think the jury was impressed with Mr. Taylor.” PCR EH 200. Therefore, any claim based on Taylor’s information, which has never been corroborated by valid testimony or affidavits, is untimely where the information was known or could have been discovered through due diligence of counsel decades ago.

Crenshaw:

Like Taylor, Dep. Crenshaw’s information regarding WCSO alleged practice of using informants and general information that Taylor and Byars were taken from their cells on occasion was also known to Suggs’s defense team decades ago, since 2003. CR 1099. At the 2003 evidentiary hearing on Suggs’s initial 1997 Rule 3.851 motion, inmate Broxson testified that Taylor was an informant and Dep. Crenshaw would give Taylor anything he wanted. PCR EH 44-45, 48.

It was incumbent on postconviction counsel to exercise due diligence at least by 2003, to investigate and interview Crenshaw to obtain the information supposedly recently provided. Instead of engaging in diligence then, Suggs proffers Crenshaw’s statements now, without corroboration or support. This was not done, showing

the underlying claim was untimely and not raised within one year of the date the evidence could have been discovered.

B. Suggs Failed to Satisfy *Brady's* Requirements.

Suggs argued that Ozio, Taylor, and Crenshaw's information was favorable as "quintessential impeachment evidence," intentionally suppressed, and material so as to undermine the jury's verdict. IB 34 et. seq. He conflates the information's impact that it would "certainly shine a light" on the alleged use of state agents Taylor and Byars's false trial testimony. *Id.* As the postconviction court correctly ruled, even if the *Brady* claim was timely, Suggs still failed to meet all three prongs to obtain relief. CR 1099-1101.

As to *Brady's* first prong, in the State's answer to Suggs's Rule 3.851 motion, it acknowledged that Taylor and Crenshaw's information was defense favorable. CR 544. The postconviction court's order did not address *Brady's* favorable prong related to Taylor and Crenshaw. However, Suggs still fails to establish that the State intentionally suppressed alleged evidence or the evidence was material, resulting in a different outcome of his case.

Ozio:

Suggs suggests that Ozio's deposition in Whitton's unrelated

capital case is favorable, shows misconduct at WCSO, and that information is viable impeachment evidence in his own case. CR 544; IB 34. Ozio's deposition testimony and 2000 affidavit are not favorable because the information is unrelated to Suggs's case. It is not exculpatory and is not valid impeachment evidence because it did not include any information related to prosecutorial or law enforcement misconduct allegations in Suggs's case. Hence, Ozio's admission of false testimony in Whitton's case is not relevant to Suggs's case, much less favorable as impeachment or exculpatory evidence. See CR 1099. Suggs merely offered speculation and conclusory allegations that Ozio's testimony was favorable and no automatic presumption should be made. Suggs therefore failed to meet prong one of *Brady*, make a prima facie case for a valid claim, or justify an evidentiary hearing. See *Johnson*, 104 So.3d at 1027; *Long*, 271 So.3d at 942.

Second, Suggs failed to present *any* evidence or argument to establish that the State possessed or intentionally suppressed the information. *Brady* requires the State to disclose material information within its possession or control that is favorable to the defense. *Davis v. State*, 136 So. 3d 1169, 1184 (Fla. 2014). Suggs

failed to allege that the State was in possession of any of the information, much less suppressed it and takes a leap in argument and logic that it occurred. His sole reference to the State's alleged suppression is his assertion that Taylor, Ozio, and Crenshaw's information was "never disclosed to defense counsel." IB 31.

Moreover, the detailed facts presented to establish the claim's untimeliness in Issue IV, *infra*, bolster the failure of *Brady's* suppression prong because either trial counsel or postconviction counsel had knowledge of the information Suggs claims was withheld. For example, Taylor was extensively cross examined and impeached at trial. And, according to defense counsel's 2003 evidentiary hearing testimony on Suggs's initial postconviction motion 1) "thorough depositions were taken of Taylor and Byars and "all the people surrounding them"<sup>7</sup>; and 2) he had evidence Taylor "was a snitch" in other cases and assisted the DEA. PCR EH 200, 223. Hence, the defense was in possession of a great deal of information decades ago, Suggs now alleges was suppressed.

Finally, Suggs failed to meet *Brady's* materiality prong.

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<sup>7</sup> Taylor was deposed by prior defense counsel on May 23, 1991. DAR Vol. XXI, 3609-10.

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 *Bagley*, 473 U.S. at 682). A reasonable probability is one that is sufficient to undermine confidence in the outcome of the whole case. *Id.*; *Lightbourne*, 841 So.2d at 437.

The postconviction court denied the claim finding even if the claim was timely and the purported evidence favorable, Suggs did not establish Taylor, Ozio, or Crenshaw’s information was material. CR 1100-01. As to Ozio, again, his deposition testimony was not relevant to Suggs’s case and does not go to prove a material fact. It is merely Suggs’s speculation and conjecture that Ozio’s allegations of misconduct in Whitton’s capital case apply to his own. There is no reasonable or logical basis to find that Ozio’s statements could or would undermine the confidence in the jury’s verdict. CR 1100.

Taylor’s information and recantation have been known and litigated since 1997. SPCR 21; PCR 24. Even so, Taylor’s latest recantation and information is not material in light of the general and inherent unreliability of recantations and his extensive criminal history, as determined by the postconviction court. CR 1100.

Moreover, Taylor's 2021-2022 information is little different than that offered in 1997-2001, when he originally came forward. And even then, Suggs offered it with no corroboration or a hint of reliability.

The sole difference now is Suggs's speculative and unsupported assertion that Taylor would testify at an evidentiary hearing, after refusing to do so over 20 years ago. Yet, Suggs gives no explanation why it has taken two decades or what efforts were made to obtain Taylor's alleged cooperation to come forward a second time.

Nonetheless, any proposed testimony that Taylor gave false trial testimony against Suggs or acted as a state agent is not material under *Brady*. Taking away Taylor and Byars's testimony that Suggs admitted to Ms. Casey's murder as inculpatory evidence, does not make it exculpatory. In other words, Suggs failed to describe how Taylor's information was material to his actual guilt or punishment. *See Sweet*, 293 So.3d at 452.

Crenshaw's information is farther removed from being material than Taylor. The sum and substance of Crenshaw's proffered information was little more than general commentary that WCSO used informants and he saw Taylor and Byars taken from their cells on occasion. IB 34-35. Even if this information could or would have

impeached Taylor or Byars at trial, it is still of no material consequence and would not have altered the verdict.

Collectively, Taylor, Ozio, or Crenshaw's alleged newly discovered evidence/*Brady* information was and is immaterial to Suggs's guilt, as pointed out by the postconviction court. CR 1100. Nothing undermines, negates, or contradicts the trial evidence presented that 1) Ms. Casey's palmprints were found inside Suggs's vehicle and inside the passenger door handle; 2) her fingerprints were found on the exterior passenger window; 3) one of only 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; 4) serology testing confirmed that a bloodstain on Suggs's shirt matched Ms. Casey's blood, excluding his own; and 5) Suggs was identified by Ms. Casey's neighbor as the last person seen with her on the night of the murder. *Suggs*, 644 So.2d at 65-66, 69; PCR Vol. I, 346. Suggs's claim is defeated and meritless because of the trial evidence against him, his failure to show actual materiality of any or all of the proposed newly discovered evidence underlying the claim, and failure to show a reasonable probability of a different outcome.

## ISSUE II

Whether the Postconviction Court Properly Denied Appellant's *Giglio v. United States*, 405 U.S. 150 (1972) Claim That the State Presented False Trial Testimony of James Taylor and Wallace Byars? [Restated]

Suggs alleges the State violated *Giglio* by presenting inmates Taylor and Byars's false trial testimony. IB 39-41. He also asserts that WCSO Sheriff McMillian testified falsely in the January 2003 postconviction evidentiary hearing. IB 41. As with the *Brady* claim, Suggs's support for his *Giglio* claim is based on alleged newly discovered evidence of Ozio, Taylor, and Crenshaw's statements, *supra*. IB 39. He argues that the postconviction court improperly denied the claim as untimely because the information was previously known or discoverable, and not an exception to Rule 3.851. *Id.* at 39; CR 1101.

Under *Giglio*, Suggs is required to establish that 1) the prosecutor presented false testimony; 2) the prosecutor knew the testimony was false; and 3) the false evidence was material. *Suggs*, 923 So. 2d at 426; *Mungin v. State*, 141 So. 3d 138, 145 (Fla. 2013); *Davis*, 26 So.3d 519, 532 (Fla. 2009) (citing *Guzman v. State*, 941 So.2d 1045, 1050-51 (Fla. 2006)). If Suggs satisfies the first two

prongs, the court considers whether the evidence is material by determining “if there is any reasonable possibility that it could have affected the jury's verdict.” *Tompkins v. State*, 994 So. 2d 1072, 1091 (Fla. 2008). The burden switches to the state, which must “prove that the false testimony was not material by demonstrating it was harmless beyond a reasonable doubt.” *Id.* (quoting *Rhodes v. State*, 986 So.2d 501, 509 (Fla. 2008)).

The postconviction court denied the claim as untimely and in the alternative, Suggs did not show the evidence was false, that the prosecutor knew it was false, and that the evidence was material. CR 1102-04. Regarding timeliness, Appellee incorporates by reference and re-asserts its arguments regarding Ozio, Taylor, and Crenshaw’s information. Taylor and Crenshaw’s information is no more than unsupported allegations lodged by Suggs for years. Suggs disingenuously states, Taylor and Crenshaw “have now come forward” to refute Taylor and Byars’s trial testimony and Sheriff McMillian’s postconviction testimony. IB 41. The record plainly shows Taylor came forward with his recantation the first time decades ago. Regarding Crenshaw, Suggs has not established when he learned of the information or when it was provided, other than

unsupported representations that an unidentified investigator spoke with him.

Even if it was accepted that Taylor and Byars's testimony was false, Suggs still failed to establish *Giglio's* other elements. He abjectly failed to demonstrate that the State knew that Taylor or Byars's testimony was false or that the testimony was material. See *Davis*, 26 So.3d at 532; CR 1103.

Suggs offered no evidence or support to make this showing, other than his own representations in the claim itself. Despite Sugg's arguments, nothing contained in the alleged newly discovered evidence from Taylor, Ozio, or Crenshaw meets this burden. For example, as the postconviction court observed, neither Crenshaw, nor Ozio had personal knowledge of Suggs's case in order to refute Taylor or Byars's testimony and the information is "too speculative to that the prosecutor was aware of false testimony." CR 1103.

Moreover, even taking Taylor's information as true, it does not demonstrate the State knew his testimony was false. Suggs's has had over 20 years to prove that the State intentionally and knowingly presented false trial testimony. The best Suggs could do is craft an argument, based on conjecture and speculation.

Even with a more defense-friendly *Giglio* materiality prong, Suggs failed to show that the Taylor and Byars’s testimony was material. *See Guzman*, 868 So.2d at 507; *Dailey v. State*, 279 So.3d 1208, 1217 (Fla. 2019). As discussed in Issue I *supra* on the *Brady* claim, their individual or collective testimony did not give rise to a reasonable likelihood that the false testimony affected the jury’s judgement and Suggs’s conviction. *Guzman*, 868 So.2d at 506. Reasonable probability is one that is “a probability sufficient to undermine the confidence of the outcome” of Suggs’s case. *Martin v. State*, 331 So.3d 778, 808 (Fla. 2020) (quoting *Guzman*, 868 So.2d at 506).

The trial evidence alone was sufficient to convict Suggs of Ms. Casey’s murder. Moreover, Suggs’s own trial counsel testified that Taylor or Byars did not secure the conviction and Taylor was not liked by the jury. Given these facts, the information Suggs now offers is not material.

Finally, the postconviction court denied the *Giglio* claim as untimely and failing to satisfy the elements, but did not consider this claim to be procedurally barred. The State submits a procedural bar applies as it is nearly indistinguishable from that Suggs raised in his

1997 initial postconviction motion, denied by the trial court following an evidentiary hearing, and rejected on appeal. *See Hendrix v. State*, 136 So.3d 1122, 1125 (Fla. 2014) (holding, “claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion.”); *Cole v. State*, 131 So.3d 787 (Fla. 2013) (affirmed summary denial of successive claim that was “nearly indistinguishable” from current claim, as procedurally barred); and *Pardo*, 108 So.3d at 567 (finding successive postconviction claim was procedurally barred where defendant failed to offer new evidence not presented in initial motion which was previously denied).

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 reraising 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 reraising the same claim. *Sireci v. State*, 773 So.2d 34, 40-41 (Fla. 2000) (finding claims to be 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 where it was 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.

Suggs's 1997 initial postconviction motion Claim IV generally alleged that his verdict was unreliable and procured through the use of perjured testimony, without formally citing *Giglio*. SPCR 21. He stated, "by way of example . . . informant James Taylor has now admitted that he committed perjury" at Suggs's trial. *Id.* Suggs amended the postconviction motion in 2001 and re-stated the foregoing as Claim V that "[j]ail-house informant James Taylor has now admitted that he committed perjury" and lied at trial. PCR 24. Again, Suggs did not refer to *Giglio*, but argued that Taylor's

recantation as a material witness was entitled to an evidentiary hearing. *Id.* at 26. The claim that the State presented the two jail house informants Taylor and Byars's false testimony was addressed in the 2003 evidentiary hearing and denied. PCR 335.

The *Giglio* claim was raised on appeal and rejected. *See Suggs*, 923 So.2d at 426. The *Suggs* Court analyzed the *Giglio* claim in conjunction with the *Massiah* claim addressed in Issue III, *infra*. Both claims relied on the same set of operative facts. The Court observed and held,

Suggs premises both the *Giglio* claim and the *Massiah* claim on the factual allegation that Walton County Sheriff's Department employees conspired with Byars and Taylor to fabricate a confession by Suggs in order to secure a conviction. The postconviction court found that the trial record and the evidence presented at the evidentiary hearing provided no support for this allegation. Suggs now argues that the postconviction court ignored the various pieces of evidence he presented at the evidentiary hearing that proved the alleged scheme, including the testimony of George Broxson and Gerald Shockley.

....

Thus, the sum of the testimony in support of Suggs' claims of a *Giglio* violation and of ineffective assistance of counsel based on a *Massiah* violation was (1) the hearsay testimony of Broxson and Shockley as to what Byars and Taylor allegedly said to each of them; and (2) the assumptions made by Broxson about the conduct of the

Sheriff's Department employees. There was no testimony by either Byars or Taylor, or factual evidence in support of these claims.

We do not find that the postconviction court erred in finding that the evidence presented was insufficient to support Suggs' allegation that the confessions were fabricated. Additionally, we do not find that the postconviction court erred in finding insufficient evidence to support the claim that Byars and Taylor were state agents who were placed in Suggs' cell in violation of *Massiah* as part of an "overt scheme" to obtain incriminating statements from Suggs. *See Lightbourne v. State*, 438 So.2d 380, 386 (Fla.1983) (holding that a *Massiah* claim requires proof of an "overt scheme" in which the State takes part to obtain incriminating statements).

*Id.* at 427.

Suggs did not present a material change between the *Giglio* issue rejected in 2005 the current issue before this Court. Other than the repeated assertions that Taylor recanted his testimony and generic information obtained from Crenshaw, the claims are the same. Therefore, the claim should be denied as procedurally barred.

### ISSUE III

Whether the Postconviction Court Properly Denied Appellant's *Massiah v. United States*, 377 U.S. 201 (1964) Claim that State Agents Were Used to Elicit Incriminating Statements, Violating the Right to Counsel? [Restated]

Suggs improperly resurrects the *Massiah* claim previously raised, alleging that the State used Taylor and Byars as state agents to elicit incriminating statements from him, violating his right to counsel. IB 45, 48-49. The claim is predicated on Ozio's deposition testimony, Taylor's alleged recantation, and Crenshaw's alleged information, which could not be known until the statements were given. IB 47.

The trial court was correct summarily denying the claim as untimely and procedurally barred because the record is clear that Suggs previously raised this claim, it was denied, and ultimately rejected on appeal. CR 1104-05; *Suggs*, 923 So.2d at 426-28. Moreover, the postconviction court conducted a harmless error analysis and determined that there was no reasonable probability Taylor or Byars's trial testimony affected the verdict. CR 1105-06.

Suggs's current *Massiah* claim is nearly indistinguishable from that he raised in his 1997 initial postconviction motion, except it was

previously brought as an ineffective assistance of counsel claim. PCR 27-33. The claim is based on information known to Suggs since his 1992 trial alleging that Taylor was an informant and received benefits not afforded to other inmates. SPCR 23-24, Claim V. During his initial postconviction proceedings, Suggs argued that the State did not disclose Taylor and Byars as witnesses until 1991, prior to the 1992 trial. *Id.* at 26-27. Suggs amended the postconviction motion and restated the claim in 2001. PCR 27-33. Following the 2003 evidentiary hearing, the postconviction court denied the claim, which was affirmed on appeal. *Suggs*, 923 So.2d at 425-28.

Relitigating this untimely and procedurally barred claim is arguably an abuse of limited judicial resources. *See Moore v. State*, 820 So.2d 199, 205 (Fla. 2002). Suggs has re-packaged claims based on the same or similar operative facts known and raised decades ago. Therefore, because Suggs may not use a successive postconviction motion to re-litigate a previous Rule 3.851 proceeding, it is procedurally barred, summary denial was correct, and no relief is warranted. *See Hendrix*, 136 So.3d at 1125; *See Cole*, 131 So.3d at 787; *Pardo*, 108 So.3d at 567; and *Mills*, 684 So.2d at 805.

#### ISSUE IV

Whether the Postconviction Court Properly Denied Appellant's Newly Discovered Evidence Claim Regarding Jake Ozio, James Taylor, and Timothy Crenshaw's Statements? [Restated]

Suggs effectively raises three newly discovered evidence claims based on statements or information from 1) Jake Ozio's 2021 deposition testimony that he testified falsely in an entirely unrelated capital case against Gary Whitton; 2) James Taylor's alleged new recantation of his trial testimony regarding work as a state agent and inculpatory statements made about Suggs; and 3) a statement allegedly made by Dep. Crenshaw regarding WCSO's use of inmates as informants, including Taylor and Byars. IB 53. Suggs predicated the *Brady*, *Giglio*, and *Massiah* claims addressed in Issues I, II, and III respectively, *supra*, on this alleged newly discovered evidence. *Id.* He argues that in the event this Court affirms the postconviction court's summary denial of the *Brady*, *Giglio*, and *Massiah* claims, it must separately analyze the newly discovered evidence. *Id.*

To obtain relief on newly discovered evidence as an exception to Rule 3.851(d)(2), the law is well-established that 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); see also *Dailey v. State*, 329 So.3d 1280, 1286 (Fla. 2021) (affirming denial of newly discovered evidence claim that impeachment evidence could have been discovered by due diligence where documents were proffered at time of trial and no explanation was given why they were not discovered). It is incumbent upon a capital defendant to establish the postconviction claim's timeliness. *Mungin*, 320 So.3d 624-26.

Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial, where a defendant's case 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); *Walton v. State*, 246 So.3d 246, 249 (Fla. 2018). To reach this conclusion, 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, then evaluate the weight of both that which was introduced at trial and the newly discovered evidence. *See Wyatt v. State*, 78 So.3d 512, 523 (Fla. 2011); *Walton*, 246 So.3d at 249-50.

Suggs alleges that the information provided by Ozio, Taylor, and Crenshaw 1) serves as impeachment evidence against Taylor and Byars trial testimony; 2) supports his claim that Taylor and Byars were state agents used to secure his conviction; and 3) and creates reasonable doubt as to his culpability for Ms. Casey's murder. IB 28-29, 34-37, 54. The postconviction court's summary denial of each segment of Suggs's newly discovered evidence claim was proper and the alleged new evidence was 1) untimely, either actually known or should have been known through counsel's due diligence; and 2) irrelevant or not material to Suggs's culpability for the murder or to support an acquittal on re-trial.

A. The Newly Discovered Evidence Claim is Untimely.

Suggs's fourth successive Rule 3.851 motion filed on May 16, 2022 is untimely on its face. CR 113-138. It would be considered timely if a claim fell within one of the narrow exceptions, including a newly discovered evidence claim pursuant to Rule 3.851(d)(2)(A).

As demonstrated below, Ozio, Taylor, and Crenshaw's

information was either known or could have been known through counsel's due diligence and this impeachment evidence does not give rise to reasonable doubt as to Suggs's culpability for Ms. Casey's murder. *See Mungin*, 320 So.3d at 624-26 (affirming denial of newly discovered evidence claims based on sheriff's deputy's recantation of trial testimony in an affidavit as 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); and *Dillbeck*, 357 So.3d at 101 (affirming denial of newly discovered evidence claim as untimely because it was "decades late").

Jake Ozio:

Suggs crafted a newly discovered evidence postconviction claim to support a fact of an alleged *Brady*, *Giglio*, and *Massiah* violations that Ozio, a trial witness in the unrelated capital case against Gary Whitton in 1992, was intertwined in his case regarding the use of informants in the Walton County jail. CR 120, 123-25, 129; IB 13-14, 30, 54. Suggs argues that "Ozio came forward in 2021" and deposed in Whitton's federal habeas proceedings regarding WCSO's use of informants and that he testified falsely in the 1992 trial in exchange for favorable treatment. IB 22-26, 54; CR 140-44. He

further argues that Ozio's deposition testimony could not have been discovered until he gave it. IB 54.

Suggs abjectly failed to acknowledge in his postconviction motion or in briefing to this Court that Ozio's allegedly new information was either known or readily available to him more than 20 years ago. On November 19, 2000, Ozio executed an affidavit recanting his 1992 trial testimony, that he testified falsely about Whitton. CR 293-95; *see also Whitton v. State*, 161 So.3d 314, 323-24 (Fla. 2014). Ozio acknowledged the 2020 affidavit at the May 17, 2021 deposition in Whitton's federal habeas case, which is what Suggs now uses as the operative date to establish timeliness. CR 140, 144-45. Any assertion by Suggs that Ozio's 2000 affidavit was not known or discoverable through due diligence is hollow as Whitton was represented in state postconviction proceedings by Capital Collateral Regional Counsel – North. It is therefore clear and unequivocal that the newly discovered evidence claim regarding Ozio is untimely and fails under *Jones*.

James Taylor:

Through postconviction counsel's unsupported proffer, Suggs claims Taylor made "recent" 2022 statements to an unidentified

federal investigator working on his case, that he and Byars were state agents, deliberately put in Suggs's cell to gather information, thus violating *Massiah*, Issue III, *supra*. CR 127; IB 13, 26-27. Suggs argues that the State used Taylor and Byars's testimony to obtain his conviction and he "can now demonstrate" this through Taylor and Crenshaw's statements that the State violated his right to counsel, and Taylor's recanted testimony could not have been discovered until he chose to recant. IB 49, 54. This argument is frivolous and based on that logic, Suggs could raise claims indefinitely.

Suggs has known of Taylor's recantations regarding his status as an informant for law enforcement for decades. *See, Dailey*, 329 So.3d at 1287-88. He made the same claim and arguments in his 1997 initial Rule 3.850 postconviction motion, restating in more detail in his Second Amended motion filed in August 2001. Suggs's claim regarding Taylor's statement does not meet the first prong for newly discovered evidence as it does not provide new information which has not already been considered or addressed. *See Merck v. State*, 124 So. 3d 785, 802 (Fla. 2013).

Twenty-seven years ago in 1997, Suggs raised claims and factual allegations that the State's use of Taylor and Byars's perjured

testimony, WCSO's history of using informants, Taylor was a "professional informant" acting as a state agent to support the *Massiah* claim. SPCR 21-30. In 2001's amended postconviction motion Suggs asserted that "[j]ail-house informant James Taylor *has now admitted* that he committed perjury" at trial. PCR 24. (emphasis added). Suggs 2001 motion went on to state that Taylor "admitted that he and Wally Byars were placed" in Suggs's cell "for the express purpose of obtaining an admission from Mr. Suggs admitting to the killing of Pauline Casey; and that he and Byars were provided with information about Ms. Casey's murder to fabricate a statement. *Id.*

During the 2003 evidentiary hearing, evidentiary hearing inmate Broxson testified that Taylor was an informant and Deputy Crenshaw would give Taylor anything he wanted. PCR EH 44-45, 48. Postconviction defense investigator Shockley testified he interviewed Taylor in 1996 who admitted that he and Byers fabricated Suggs's inculpatory statements and that the WSCO sheriff encouraged him to get the statement. PCR EH 91-92, 102-04. He also stated Taylor refused to provide a written statement or testify. *Id.* at 108-09. Suggs readily admits these facts. IB 18-19.

Suggs also presented testimony of Gerald Shockley, an

investigator for Suggs's prior postconviction team, that he interviewed Taylor in an Alabama county jail in 1996.<sup>8</sup> *Suggs*, 923 So.2d at 426-27; PCR EH 94, 102. Taylor told investigator Shockley that he and Byars fabricated the admission by Suggs that he murdered Ms. Casey, because they "wanted preferential treatment." *Id.*; PCR EH 108-111. Suggs also presented former inmate Broxson's testimony that Taylor was a known confidential informant and fellow inmate Alex Wells confessed to Ms. Casey's murder. PCR EH 37-44.

History has repeated itself as Suggs's current speculative statement that "Taylor has is now come forward and confirmed," he is willing to testify at an evidentiary hearing regarding his recanted statements. IB 54. In 1997 and 2001, postconviction counsel announced that Taylor "has now admitted that he committed perjury" and testified falsely. SPCR 21; PCR 24. In other words, Suggs offered Taylor's revelations, 23 years apart.

The substantive information from 2001 purportedly obtained from Taylor in 2022 is no different from that known by Suggs's

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<sup>8</sup> Shockley was a retired Federal Bureau of Investigation special agent, later employed as an investigator for Suggs's postconviction team. PCR EH 94.

counsel and obtained in 2001. The only difference between the arguments currently made and those made 25 years ago is that current postconviction counsel represented that Taylor has come forward and is now willing to testify in support of Suggs's fourth successive Rule 3.851 motion. CR 128 at n. 18, 133-34 at n. 19. 24.

Moreover, Suggs provided no explanation, reasonable or otherwise, to explain why he was unable to obtain the same recantation Taylor gave nearly 25 years ago. *See Duckett v. State*, 148 So.3d 1163, 1170 (Fla. 2014) (affirming summary denial of newly discovered evidence claim where capital defendant failed to plead the reason that affidavits of recanted testimony were not previously available); *Morris*, 317 So.3d at 1063-64 (rejecting newly discovered evidence claim because capital defendant offered no evidence or explanation why witness was not contacted by counsel). It is inexplicable that Suggs has not reached out to Taylor or Crenshaw, given that this very issue has been litigated in postconviction for so long. If he did, he does not explain why he waited so long to bring the claim.

Unlike *Duckett*, Suggs has not even obtained an affidavit from Taylor or Crenshaw. To be clear, Suggs has still failed to provide a

written statement from Taylor recanting his testimony or stating his willingness to testify. Suggs gives no support, reasonable or otherwise, for his highly speculative assertion that despite coming forward in the past and refusing to testify or give a written statement, Taylor is willing to do so now. He gives no date, or timeframe of when Taylor made his “recent” statement. The sole rationale Suggs gave the postconviction court, and now, this Court, is that he “diligently attempted to present” Taylor’s testimony, but he refused. IB 32-33, 54. Suggs give nothing more. These record facts unequivocally show that the newly discovered evidence claim regarding Taylor is untimely.

Although the postconviction court’s order denying the claim used 2005 as the reference point finding Taylor’s newly discovered evidence is untimely, the foregoing clearly proves it was prior. CR 1097. Suggs cannot transform an untimely claim into a timely claim simply by re-asserting allegations made years before. *Cf. 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). Hence, Suggs failed

to meet his burden under Jones and failed to establish that this newly discovered evidence was timely.

Timothy Crenshaw:

Suggs claims newly discovered evidence was obtained from former WCSO deputy Crenshaw, who came forward “within the last year.” IB 33, 54. Like Taylor, Suggs asserts Crenshaw made statements to an unknown “federal investigator working on Suggs’ case” in 2022 and those statements “bolster” Taylor and Ozio’s accounts and shed light on false trial testimony used to convict him. IB 27-28, 34, 54; CR 128-29.

The extent of Crenshaw’s alleged information was 1) he was aware of WCSO’s practice of putting inmates in cells to obtain information, in exchange for reduced sentences and falsifying logs; and 2) he had knowledge of Taylor and Byars taken from their cells and taken to an administration building. IB 35. He further claims Crenshaw’s statement impeaches Sheriff McMillian’s 2003 postconviction evidentiary hearing testimony that neither Taylor, nor Byars were working as state agents in Suggs’s case. IB 48. However, Suggs failed to establish timeliness of Crenshaw’s information.

As the postconviction court currently determined, Suggs could

have discovered Crenshaw's information decades before and at least by 2003. CR 1097. Both Suggs's trial and postconviction counsel were well aware of law enforcement's use of informants. As stated above, inmate Broxson testified at the 2003 evidentiary hearing Crenshaw would give Taylor anything he wanted. PCR EH 44-45, 48. Because counsel was intimately aware of Taylor, Byars, and Crenshaw, more information could have been discovered and developed from Crenshaw, through a modicum of due diligence. In fact, trial counsel conducted numerous depositions, including WCSO personnel, Taylor, and Byars. *See, e.g.*, DAR Vol. II 361-386; Vol. IV 693-727, 728-766. Waiting for someone to come forward when counsel has advanced knowledge of the substance, without investigating or reaching out to Crenshaw falls woefully short of the exercise of due diligence.

Suggs knew Crenshaw worked at the facility while Taylor and Byars were there through the information proffered. IB 35. However, other than an unsupported assertion that Crenshaw spoke with an unidentified defense investigator in 2022, there is no other information to establish timeliness, while ignoring Broxson's 2003 testimony, rending this portion of the newly discovered evidence

claim untimely.

B. The Information Would Not Likely Produce an Acquittal on Retrial.

The postconviction court did not reach *Jones*'s second prong to deny the newly discovered evidence claim. Instead, the trial court engaged in a materiality analysis of Ozio, Taylor, or Crenshaw's information in denying the *Brady*, *Giglio*, and *Massiah* claims. Appellee nonetheless argues that even if timely, Suggs still failed to establish that any of the information was of a nature to probably produce an acquittal on retrial, it weakens the case against him, and gives rise to reasonable doubt as to his culpability. *See Calhoun*, 376 So.3d at 585-86 (citing *Jones*, 709 So.2d at 526). Looking at the cumulative effect of all the evidence and total picture, especially in light of his prior postconviction issues raised over two decades, Suggs failed to meet his burden.

Ozio:

Despite Suggs's lengthy discussion of Ozio's history with Whitton's case, he failed to show how the 2000 affidavit or 2021 deposition testimony would be favorable and weaken the case against him. CR 1099. The State maintains that anything regarding the

Whitton case is not relevant or material to Suggs's case. Any argument that Suggs was unaware of Broxson or Whitton or had no knowledge of this information through due diligence is disingenuous. Suggs's trial counsel was fully aware of both cases, as their trial schedules were discussed in May 1991. See DAR Vol. XXIX 4784.

Regardless, Ozio's statements do not relate to Suggs case at all. Suggs engages in legal gymnastics to form a basis for a new trial on Ozio's sworn statement that he testified falsely at Whitton's trial is proof of misconduct. Importantly, the *Whitton* Court rejected the *Giglio* claim finding that no evidence was presented that Ozio's false testimony was properly denied, holding that recantations are highly unreliable. *Whitton*, 161 So.3d at 324. It bears noting that Suggs has never presented proposed newly discovered evidence as sworn depositions or statements made under oath and under penalties of perjury. It follows that, if Ozio's statements were not newly discovered evidence in the case to which they directly related, it is illogical to find relevancy in Suggs's case.

James Taylor:

Taylor's resurrected recantation of his trial testimony is not only untimely as newly discovered evidence, but it fails to show probable

acquittal or mitigate the case against Suggs, thus failing to meet *Jones's* second prong. Suggs asserts that the case against him “was a house of cards which relied extensively” on Taylor’s testimony. IB 55. He then merely points to what the State did not prove, instead of what it did prove to support his guilt of first-degree murder. *Id.*

When offered as newly discovered evidence, recantations are generally considered to be “exceedingly unreliable.” *Spann v. State*, 91 So.3d 812, 816 (Fla. 2012); *State v. Spaziano*, 692 So.2d 174, 176 (Fla. 1997). Recantation by a prosecution witness does not necessarily entitle Suggs to a new trial and it is the trial court's responsibility to “examine all of the circumstances of the case.” *Spann*, 91 So.3d at 816 (quoting *Armstrong v. State*, 642 So.2d 730, 735 (Fla. 1994)). A new trial may be granted only if it appears that Taylor’s changed testimony would result in a probable different verdict. *Id.*

Even accepting Suggs’s arguments that 1) Taylor and Byars’s trial testimony was fabricated and 2) Taylor worked as a state agent, he has failed to show that alleged newly discovered evidence “was of such a nature that it would probably produce an acquittal on re-trial.” *See Mungin*, 141 So. 3d at 141 (quoting *Jones*, 709 So. 2d at

521). The State again directs the Court to the trial evidence linking Suggs to Ms. Casey's murder and supporting his conviction and death sentence.

Contrary to Suggs's characterization, neither Taylor nor Byars's testimony was the cornerstone of the State's case. Importantly, Suggs's trial counsel's 2003 evidentiary hearing testimony squarely refutes the 20-year hindsight. Mr. Kimmel testified that Byars and Taylor did not win the case for the State." PCR EH 200. In fact, Mr. Kimmel stated that, he did not "think the jury was impressed with Mr. Taylor." *Id.* Instead, Ms. Casey's fingerprint and palmprint evidence in Sugg's vehicle was the key factor. *Id.* at 200-02. The defense had no evidence that the fingerprints were on the vehicle "for any legitimate reason," in order to rebut the State. *Id.*

Additionally, Mr. Kimmel stated, 1) "thorough depositions were taken of Taylor and Byars and "all the people surrounding them"; 2) he had evidence Taylor "was a snitch" in other cases and assisted the DEA; and 3) Taylor and Byars were deposed by the defense and were thoroughly cross-examined at trial. *Id.* at 200, 223.

Nothing offered by Suggs as newly discovered evidence impacts the State's case against him or would change the verdict. Further,

even if a re-trial took place, that Taylor or Byars would testify is mere speculation and without that testimony, the State maintains the verdict would not change because Suggs's culpability would not be undermined.

Crenshaw:

Finally, the newly discovered evidence claim based on Crenshaw's information fails *Jones's* second prong as Suggs has not shown it would undermine his conviction and death sentence. Again, the postconviction court applied its substantive analysis in the *Brady*, *Giglio*, and *Massiah* claims.

Denying Suggs's *Brady* claim, the trial court determined Crenshaw's general information does not specifically relate to Suggs and would not have changed the outcome of Suggs's case. CR 1100. Crenshaw's information is, at best, impeachment evidence to Sheriff McMillian's 2003 evidentiary hearing testimony that neither Taylor nor Bryars were state agents, detailed above.

Crenshaw's information is only *potential* impeachment evidence at best, is of limited value, falls very short of probable acquittal, and does not weaken the case against Suggs, giving rise to a reasonable doubt to his culpability. *See Sheppard*, 338 So.3d at 827 (citing

*Marek*, 14 So.3d 985, 990 (Fla. 2009)). The information attributed to Crenshaw is general and tangential, that informants were used in the jail. IB 27-28. He provided no specific information regarding Suggs's case and only observed that Taylor and Byars would be taken from their cells on occasion was made without personal or direct knowledge of why or of what happens. *Id.* The net effect is defeat of Suggs's claim as Crenshaw's very benign information fails to support Suggs's contention that Taylor and Byars were state agents or of such a nature to result in an acquittal.

Even a cumulative analysis of Suggs's proposed newly discovered evidence shows his flawed analysis, based on the premises that Taylor and Byars's testimony "casts doubt on the entirety of the State's case," "the State's case against Suggs was a house of cards which relied extensively upon jailhouse snitch testimony," this is the reason for his conviction and death sentence. *See, e.g.*, IB 45, 55.<sup>9</sup> In doing so, Suggs ignores the evidence presented at trial and the years that evidence of his guilt has been

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<sup>9</sup> In the related appeal, *Suggs v. State*, SC24-0660, Suggs stated, "[t]he State's entire case rested on the testimony of two jailhouse informants whose credibility has since been completely destroyed." SC24-0660, IB 32.

reviewed and affirmed. This effort is no more than repackaged and recycled claims and ineffective postconviction strategies.

Suggs conflates the importance of Taylor's trial testimony in light of the other evidence presented at trial and argues the State and trial court relied "heavily" and "extensively" on "the snitches" to secure his first-degree murder conviction and death sentence. IB 18, 55. Suggs attempts to negate the trial evidence, referring to it as a "house of cards," which this Court has considered and rejected in various challenges over decades. *See* IB 52, 55.

In so doing, he seeks relief and a new trial for not only the newly discovered evidence claim, but also for the *Brady* and *Massiah* claims based on his argument that Ozio, Taylor, and Crenshaw's information is critical and quintessential impeachment evidence. IB 28, 34-37, 48, 52, and 55. However, impeachment evidence and evidence that is cumulative to trial evidence are usually not grounds for a new trial. *See Davis*, 26 So.3d at 526; *Pagan v. State*, 29 So.3d 938, 953 (Fla. 2009).

Suggs's collective argument to prove the State's case was a house of cards and the information impeaches Taylor and Byars's trial testimony to probably result in his acquittal hinges on 1) Taylor's

purported *new* recantation of his trial testimony and alleged willingness to testify, *new* admission to testifying falsely, and he acted as a state agent; 2) Crenshaw's purported general statement that WCSO used informants to gather evidence from other inmate defendants to impeach Taylor and Sheriff McMillian's 2003 postconviction evidentiary hearing testimony; and 3) Ozio's deposition in an unrelated capital case to ostensibly prove that misconduct occurred in Suggs case.

The State has demonstrated that the information Suggs offered from Taylor, Ozio, or Crenshaw does not individually or collectively negate the trial evidence against him, does not raise a reasonable doubt as to his culpability for Ms. Casey's murder, or show probable acquittal or reduced sentence based on the newly discovered evidence. Suggs presented most of the alleged newly discovered evidence to the postconviction court and now this Court, as if it happened in the last few years and not the last couple of decades.

As indicated above, even Suggs trial counsel testified in 2003 that the guilty verdict was not secured because of Taylor's testimony. Suggs offers Ozio and Crenshaw's information to impeach or otherwise undermine Taylor's 1997 and 2001 alleged recantations or

admissions, as well as that made more than 20 year later, that he and Byars gave false testimony. Because Suggs has not shown that Taylor's recantations would not alter the jury's verdict and therefore is not newly discovered evidence, it follows that Ozio and Crenshaw's information also fails to meet *Jones's* standard.

Nothing Suggs has presented diminishes or supplants the trial evidence linking Suggs to Ms. Casey's murder and supporting the conviction and death sentence including 1) Ms. Casey's palmprints found inside Suggs's vehicle and inside the passenger door handle; 2) her fingerprints found on the exterior passenger window 3) 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; 4) serology confirmation that a bloodstain on Suggs's shirt matched Ms. Casey's blood, excluding his own; and 5) Suggs was identified and the last one seen with Ms. Casey on the night of the murder by her neighbor. *Suggs*, 644 So.2d at 65-66, 69; PCR Vol. I, 346.

With the exception of Ozio's affidavit and deposition testimony, Suggs provided no affidavits or other corroboration for his claims to establish either timeliness or materiality under *Jones*. Instead, taking the record as a whole, the newly discovered evidence claim is

rendered meritless, summary denial was proper, and no relief is warranted.

CONCLUSION

Appellee, the State of Florida, respectfully requests this Court affirm the trial court's summary denial of Appellant's May 16, 2022 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 13,747 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 6<sup>th</sup> day of August 2024.

/s/ Janine D. Robinson  
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