IN THE SUPREME COURT OF FLORIDA

Case No. SC24-0702
Lower Court Case No. 1990-CF-338

ERNEST D. SUGGS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

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

APPELLANT'S INITIAL BRIEF

DAWN B. MACREADY
Chief Assistant CCRC-North
Florida Bar No. 0542611
Dawn.Macready@ccrc-north.org

OFFICE OF THE CAPITAL COLLATERAL
REGIONAL COUNSEL-NORTH
1004 DeSoto Park Drive
Tallahassee, Florida 32301

COUNSEL FOR APPELLANT

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REQUEST FOR ORAL ARGUMENT

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

STATEMENT OF THE CASE

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

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

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

On January 24, 1997, Suggs filed his initial Motion to Vacate Convictions and Sentences with Special Request for Leave to Amend and for Evidentiary Hearing pursuant to Fla. R. Crim. P. 3.850. (PCR1Supp. 1-123). An Amended Motion to Vacate was filed on March 2, 1998. (PCR1Supp. 124-239). On August 31, 2001, Suggs filed a Second Amended Motion to Vacate Convictions and Sentences. (PCR1., Vol. 1, 1-154). After an evidentiary hearing, the circuit court denied relief. (PCR1., Vol. 1, 334-47). This Court affirmed the denial and denied Suggs' petition for habeas corpus relief. *Suggs v. State*, 923 So. 2d 419 (Fla. 2005).

On October 27, 2015, Suggs filed a Successive Motion to Vacate Judgement and Sentence with Special Request for Leave to Amend Pursuant to Rule 3.851. (PCR2. 116-200). The circuit court

summarily denied Suggs' claims and this Court affirmed. *Suggs v. State*, 238 So. 3d 699 (Fla. 2017), cert. denied, *Suggs v. Florida*, 139 S. Ct. 324 (2018).

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

On November 2, 2018, Suggs filed a Successive Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend. (PCR4. 54-104). A *Huff* hearing was held on February 2, 2023. On February 13, 2024, the circuit court denied all claims. (PCR4. 930-1083). The denial of this successive motion is the subject of an appeal in case SC24-0660 currently pending before this Court.

On May 16, 2022, Suggs filed a Successive Motion to Vacate Judgment and Sentence under Fla. R. Crim. P. 3.851. (PCR4. 113-531). A *Huff* hearing was held by the circuit court on February 2,

2023. The circuit court issued its order denying all claims on April 3, 2024. (PCR4. 1091-1525). This appeal timely follows.

STATEMENT OF THE FACTS

I. The case against Suggs was weak and has eroded over time.

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

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

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

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

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

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

Law enforcement immediately homed in on Suggs as their only suspect to the exclusion of two other obvious suspects: Steve Casey

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

and Ray Hamilton. Both Casey and Hamilton were prime suspects, but once the victim's body was found the investigation into those two stopped. (R. 2765). The officers candidly testified that seeking evidence that someone else may have had a motive or opportunity, or otherwise might have committed this crime was "not real high on the list of priorities of the department." (R. 2727-28). There were no attempts made to search Casey or Hamilton, their homes, seize their clothing, check their vehicles for evidence, or to check for unexplained bank deposits or sudden income even though both had personal relationships with the victim and there were no signs of a struggle inside the bar. (R. 2759, 2761, 3008).

Steve Casey, the victim's husband, gave the alibi that he was home alone 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).[5] 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).

Ray Hamilton, who previously dated the victim, lived in a mobile home on the property behind their home. (R. 2790). He testified at trial that he arrived at the Teddy Bear Bar around 8:30 or 9:00 p.m., (R. 2788), talked on the phone with Steve Casey around 9:45 p.m., and left the bar ten minutes after the call. Suggs and the victim were the only two remaining in the bar. Hamilton testified that he left to

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

go to Winn Dixie before it closed at 10:00 p.m., but he did not make it on time. (R. 2798). Instead, he went to a Dominos and got a pizza, which he ate at home alone before falling asleep. In an ostensible attempt to support his alibi, he gave the detectives working the case a "portion" of a pizza box, which did not have a date or time stamp or any other confirmation of his alibi. (R. 2800, 3070). Detectives accepted the partial pizza box without independently verifying Hamilton's alibi. (R. 3072).[6]

Evidence presented both at and after trial has raised serious questions about the search of the bay. Suggs was arrested early on August 7, 1990. (R. 2718). The next day, the law enforcement called the dive team to search the water behind his parents' house. (R. 2861-62). Late in the day on August 8, a diver found the beer glass in two feet of water. (R. 2872, 2886). The next day, the key was found in four feet of water. (R. 2874-75, 2979). Prior to the search, Suggs' arrest had received substantial publicity and the Sheriff held a press

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

conference early on August 7. The press was being kept advised of the progress of the investigation. (R. 3100-03). There was no security posted at the home before the search began. (R. 2701). The house and the location of the dive were clearly visible from the bridge causeway. (R. 2711, 2978). The house was easily identifiable as the Suggs' residence given that the name 'Suggs' was visible in two different locations. (R. 2700).[7]

Additionally, Suggs raised a postconviction claim in 2015 based on statements by Wyatt Henderson, the lead dive team member. Henderson disclosed, for the first time, that on the second day of the search, Captain Brad Trusty directed the dive team to search a different area based on a "visible waterline" on Suggs' pants, indicating that the dive team should search further out in the bay than they otherwise would have. It was during this search that the key to the bar was discovered. No law enforcement report, statement, or testimony has ever mentioned this "waterline" in Suggs' shorts.

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

Nor did law enforcement ever produce a photograph of the shorts Suggs was wearing the night of the murder indicating a "visible waterline." Further, investigator Steve Sunday included in a report that he received a key from the owner of the Teddy Bear Bar on August 8 for the purpose of showing it to the dive team. However, Henderson stated that the dive team was never shown a key before recovering one the next day from the bay.[8]

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,

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

following Suggs' arrest in connection with this case, he was a suspect in the Callahan and Taylor cases.[9] 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.

Mark Riebe has since confessed to murdering Pauline Casey. In 2017, Mark Riebe's own mother, Patsy Wells, executed an affidavit stating that Riebe had confessed to her on at least two occasions that he murdered Pauline Casey. Riebe told his mother he took Pauline Casey to a dirt road and killed her there. Additionally, Riebe confessed to a fellow inmate, Randy Sheheane, that he killed a

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

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

woman and had an argument with Wells about where to dump her body. Riebe told Sheheane that they dumped the woman's body off a dirt road off Highway 98 in Walton County, where Pauline Casey's body was discovered.[10] Riebe confessed to Randy Chapman that he killed a female bartender in Walton County, Florida. These confessions formed the basis of claims raised in the successive 3.851 motion denied by the circuit court and currently the subject of an appeal in case SC24-0660 before this Court.

II. The intertwined use of jailhouse snitches at the trials of Suggs and Gary Whitton.

The claims in this motion are based on the recent statement of James Taylor, who confirmed that he was a state agent who was put in Suggs' cell to gather information to be used against him, and the deposition testimony of Jake Ozio, who was a jailhouse snitch at the capital murder trial of Gary Whitton. During a 2021 deposition, Ozio explained that he was told by Walton County officials what to say-and what not to say-at the Whitton trial. In particular, he was told

[10] Wells called his probation officer on August 5, 1990 to report that he was in Walton County.

not to mention details that had been testified to by Taylor at Suggs' trial the previous month.

A. The use of jailhouse snitches at Suggs' trial.

Suggs went to trial on May 28, 1992. The case was prosecuted by Assistant State Attorney Clayton Adkinson. The State's theory was that Suggs used a knife, but it was unable to recover the murder weapon. The State had evidence that Suggs' was in the Teddy Bear Bar with the victim the night she died, but lacked evidence that Suggs committed the crime. To shore up its case, the State presented the testimony of two jailhouse snitches: Wallace Byars and James Taylor.

According to police reports, Byars and Taylor each came forward to law enforcement with knowledge of Suggs' confessions one day before the State brought the case to a grand jury. Byars was facing 15-17 years in prison after shooting at a sheriff substation and holding the substation under siege for four hours. Byars was then found incompetent by a judge in July. While awaiting transport to the state hospital, Byars gave the statement claiming that Suggs had confessed. Byars testified that he was not promised anything in exchange for his testimony. (R. 3404-05; PCR4. 497-502). However, on March 6, 1991, Byars entered into a plea agreement with the State

that called for a three-year sentence to be served in Walton County Jail ("WCJ"), "if sheriff agrees." (R. 3490). Sheriff Quinn McMillian wrote a letter to the judge asking that Byars be allowed to serve a sentence of three years in WCJ and agreeing there would be no probation after incarceration. McMillian wrote the letter knowing that Byars had made a statement. (R. 3751-52, 3754).

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

Suggs had been placed in a cell with Byars and Taylor. According to Byars, Suggs told him that he had killed Pauline Casey and it was "over a robbery, and -- there was another intention there that he was going to rape her." (R. 1270, 1272, 1276, 3399, 3407). Byars also claimed that Suggs said that he stabbed her and "damn near cut her head off' and drug her body off to the side of a dirt road. (R. 3400). According to Taylor, Suggs said that he felt law enforcement was bluffing about finding a key and a glass in the bay behind his house because the key would have been aluminum or brass and a magnet would not pick it up or the glass. (R. 3537). Suggs also allegedly said that because Pauline Casey was dead there was no one to testify against him. Suggs allegedly said that because there was no witness or weapon he felt he could beat this case. (R. 3538). Suggs also allegedly told him that he had "damn near taken her head off." (R. 3539).

Additionally, at Suggs' trial, Taylor testified to an entirely new detail about the murder weapon that he had not previously mentioned:

> ADKINSON: At that point, what did he say to you about whether or not they would find a weapon here in this case?

TAYLOR: He said they did not have a weapon and would not find one.
ADKINSON: Okay. Did he ever make a statement to you concerning what he did with the weapon that he used in this case?
TAYLOR: Yes, sir.
ADKINSON: What did he say he did with it?
TAYLOR: **He said he threw it in, in the canal while he was crossing the bridge.**
ADKINSON: Okay. Did you ever have an occasion to discuss with the defendant any other physical evidence that they might have on him in this case?
TAYLOR: Yes, sir.
ADKINSON: What items were those that you discussed?
TAYLOR: We discussed the items of the key and the glass that was found behind his parents' home, or cabin.

(R. 3536-37) (emphasis added). On cross, Taylor was then impeached for not having previously disclosed this alleged detail regarding throwing the knife in a "canal:"

KIMMEL: Okay. And lastly, isn't it accurate to say that in the statement you made August 21st to the police officers that you made no reference, with regard to Suggs and Mrs. Casey, to him throwing the knife in the canal while crossing the bridge?
TAYLOR: I don't think I made that statement at that time. We had not had that conversation.
KIMMEL: Okay. But it's your testimony today that that's what he said.
TAYLOR: Yes, sir.

(R. 3588-89). Taylor also never mentioned that detail in either of the two pretrial depositions he gave. (R. 723-766, 1680-1718). Taylor was also impeached for not including the "taken her head off" line in his original statement. (R. 3588). The State relied heavily upon the snitches in their closing argument, including the fact that Suggs had apparently thrown the murder weapon in a "canal." (R. 4374, 4388, 4407-11, 4501-02, 4504, 4507-08).

Taylor testified during the penalty phase. (R. 4624). The trial court relied upon the snitch testimony in sentencing Suggs to death. (R. 1846-47) ("[T]he Court agrees with the Defendant's statement to his cellmates that he nearly cut [the victim's] head off."). Notably, despite the existence of seven aggravators, the jury recommended death by a bare minimum vote of 7 -5.

During postconviction, Suggs presented evidence that Taylor admitted to an investigator working on Suggs' case that his trial testimony was fabricated in exchange for preferential treatment from Sheriff McMillian. (PCR1., Vol. 9, 103). However, Taylor himself refused to testify or sign a statement. (PCR1., Vol. 9, 108-09). Suggs presented the testimony of George Broxson, a WCJ inmate, to whom Byars had also admitted his trial testimony was fabricated. (PCR1.

Vol. 9., 49). Broxson also testified that Taylor was a known confidential informant in WCJ, who received special privileges. (PCR1., Vol. 9, 44-49). In rebuttal, the State presented McMillian who testified that there was no practice to use informants to gather information from inmates in WCJ and that he did not use Taylor or Byars as state agents in this case. (PCR1., Vol. 9, 178-79).

B. The use of jailhouse snitches at Whitton's trial.

Gary Whitton went to trial in Walton County on July 29, 1992. Whitton was tried by the same prosecutor as Suggs: Clayton Adkinson. Whitton was convicted of first-degree murder and robbery and sentenced to death. Like Suggs' case, the State's theory was that the murder weapon was a knife, but was again unable to recover the knife used in the crime. Although the State had evidence that Whitton was at the motel where the victim was later found dead, the State again lacked evidence that Whitton committed the crime. Thus, to shore up its case, the State presented the testimony of two jailhouse snitches: Jake Ozio and Kenneth 'Satan' McCollough.

According to the taped statements disclosed to Whitton's trial counsel, Ozio came forward on April 17, 1992 with a confession allegedly made by Whitton that Ozio overheard Whitton made to

Satan. (PCR4. 309-321). Ozio had been arrested in March in Walton County while on a Spring break trip and placed in WCJ. Ozio then came forward with Whitton's alleged confession while on a trip with Walton County Sheriff deputies to locate items stolen by Ozio. The next day, Adkinson and McMillian then took a helicopter to the prison where Satan was being housed and met with Satan for approximately four to five hours between lunch and 4:45 p.m., before turning the tape recorder on and having Satan make a taped statement implicating Whitton for the first time. (PCR4. 384-89; 391-416). During his pretrial deposition, Satan confirmed that he had previously been an informant for law enforcement in Walton County multiple times before. (PCR4. 433-34). Satan also disclosed that he had a personal relationship with the mother of Adkinson and she frequently visited Satan in the jail with the permission of Sheriff McMillian. (PCR4. 427).

Neither snitch mentioned anything about a murder weapon in their original taped statements. However, during a May 5, 1992 pretrial deposition, Ozio stated, for the first and only time, that Whitton mentioned the murder weapon in his confessional conversation with Satan:

BISHOP: Were you ever able to understand anything else that was said after that?

OZIO: I caught bits and pieces of the conversation after that, about where the clothes were located, about **something about where the knife was--there was a knife involved--about where the knife was.**

BISHOP: Do you remember where that was?

OZIO: **Pensacola. There's supposed to be some kind of ravine or canal not too far from his parents' house.**

BISHOP: From his parents' home?

OZIO: If I'm not mistaken. Like I said, the conversation was muffled. I really didn't get any detail on that, so I couldn't swear to any of that. Like I said, what I heard, I heard, but that was, more or less, kind of muffled.

(PCR4. 338-39) (emphasis added). At trial, Ozio was not asked about Whitton's apparent statement regarding the murder weapon, despite the fact that the State had been unable to locate a knife in the Whitton case. (PCR4. 356-82). Likewise, Satan made no mention of a murder weapon at trial. (PCR4. 442-64).

During postconviction, Whitton presented the testimony of Billy Key. (PCR4. 466-87). Key was an inmate in WCJ during the time of Suggs' trial. After Whitton's trial, Satan attempted to come clean that he lied at Whitton's trial.[11] Satan received help in reaching out to

[11] Satan was unable to do so under oath as he died in 2000 while Whitton's direct appeal was still pending.

Whitton's attorneys from Key, who worked as a clerk in the prison law library. Satan told Key that he had made a deal with the State in exchange for his testimony. Because Satan had not actually known anything about the Whitton case, Adkinson "told him everything to say." (PCR4. 469).

III. The newly discovered evidence of Jake Ozio's 2021 deposition testimony.

On May 17, 2021, Jake Ozio testified during a deposition in the Whitton case. (PCR4. 140-307).[12] A key witness against Whitton, Ozio, admitted to testifying falsely at the State's behest about overhearing Whitton confess to murder and lying to the jury at his trial about the favorable treatment he received in exchange. After agreeing to testify against Whitton, Ozio's favorable treatment included reduced charges and prompt release from jail.

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[12] Ozio later testified at an evidentiary hearing held on September 27, 2022, in *Whitton v. Sec'y, Dep't of Corr.*, 4:15-cv-200-RH (N.D. Fla.), (PCR4. 606-710), wherein Federal District Court Judge Robert Hinkle stated: "It does sound to me like a *Brady* violation if Ozio said there is a knife and they threw it in the canal behind the parents' house, or whatever the details are, and it turns out that's not related to this -- it just couldn't be true … That would be *Brady*. … [O]nce the State knew about it you had an obligation to turn it over." (PCR4. 829, 836).

Ozio stated during the deposition that in 1992, he was arrested in Walton County while on a Spring break trip and placed in WCJ. (PCR4. 147-48). Walton County Sheriff deputies took Ozio out of the jail several times. (PCR4. 151-52). During the first trip, officers brought up Whitton's case and led Ozio to believe that the only way he could avoid a prison sentence was to become a witness against Whitton. (PCR4. 153-54). They suggested that Ozio could say he "overheard" Whitton confess. (PCR4. 154). They "were very good as far as leading .... anyone with half a brain could follow what they were laying down." (PCR4. 155). One of the two officers involved was Deputy Brad Trusty, who was featured heavily in Suggs' case. (PCR4. 152, 154, 209). After agreeing to testify, Ozio was released from jail and allowed to return home to Texas. (PCR4. 165-66).

Ozio returned to Walton County to testify at the Whitton trial in July 1992. The night before his testimony, a representative of the State who Ozio did not know prepared him in his hotel room. (PCR4. 173-75). Although Ozio did not recall their name while testifying during the deposition, in the hallway after the deposition, Ozio was shown a portrait the Walton County Sheriff maintains of Quinn

McMillian on its website.[13] Ozio unequivocally confirmed that Sheriff McMillian was the person who coached his testimony the night before the Whitton trial.

In the hotel room that night, McMillian told Ozio "specifically you need to say this, say it this way, you need to use this word, this date." (PCR4. 173). In particular, McMillian did not want Ozio to repeat the line from his deposition about overhearing Whitton discuss "a knife that was located in a ravine or a canal behind his parents' house in Pensacola." (PCR4. 174-75, 267). Although McMillian told him not to lie about the knife, he should not mention it unless specifically asked:

GUNN:	In your deposition, you stated that you overheard Mr. Whitton discussing something about a knife that was located in a ravine or a canal behind his parents' house in Pensacola. Do you remember prosecutors discussing with you whether to repeat that testimony at trial?
OZIO:	They weren't wanting me to bring that up. It wasn't a situation where it was relevant. Initially it was, but when I got back to Florida, that was off the table. They didn't want that discussed or brought up.

* * *

[13] Available at: https://waltonso.org/history/.

OZIO: … There was a lot of talk on -- on a lot of technical stuff. The main thing was trying to get the dates right. There were certain dates that I needed to remember and then it was just a grilling on the dates. And then, like I said, the situation taking out the knife and then not bringing that up unless I was asked about it, but not to lie about it if I was asked about it. So it was a -- it was a weird situation.

* * *

KENNETT: Okay. He told you don't lie about the knife. Well, if they ask about the knife, you have to testify truthfully about it, don't lie about it; is that what he said?

OZIO: Downplay it, more or less. He didn't want me alluding to it at all unless I was backed into a comer behind it, because it was already on my original paperwork, I believe, so it wasn't a situation where I could take back the fact that I said it, but it wasn't an avenue that they wanted to proceed with as far as how they were going to go with their testimony.

KENNETT: Okay. But whoever that was told you not to lie about it?

OZIO: Told me not to lie about the knife situation. Now, as far as the rest of the things he told me, they were all lies.

(PCR4. 173-75, 192-93). Ozio was unaware that Whitton's parents lived in New York, not Florida. (PCR4. 175). Ozio also stated that Satan had been the one who had mentioned "a knife and about where

it was located behind someone's mother's house in a ravine or a canal," not Whitton. (PCR4. 202).[14]

IV. The newly discovered evidence of James Taylor's 2022 statement.

In 2022, a federal investigator working on Suggs' case spoke with James Taylor. Taylor confirmed that he was in fact a state agent. Taylor knew, given his extensive work as an informant for both federal and Walton County officials, that when he was housed in a cell with other inmates, he knew that he was to gather information from these inmates to report back to the deputies or agents. He was housed in a cell with Suggs for exactly this purpose. While in a cell with Suggs, Taylor was pulled out of the cell that he shared with Ernest Suggs two or three times over a period of a few weeks to report back to the deputies what Ernest Suggs told him about his case. He was pulled out by Deputy Rick Sutton and Sheriff McMillian and his federal handlers were also present. The Sheriff and his deputies would tell Taylor what they knew or suspected happened with the

[14] Ozio was arrested and placed in WCJ on April 4, 1992, and Satan was transferred out of WCJ to NFRC on April 6, 1992. (PCR4. 414). Satan then made this statement during this three-day window when Suggs was housed elsewhere in WCJ.

Ernest Suggs case, like certain case facts and Taylor would attempt to use that information to get statements out of Suggs. Taylor would also report statements to Clayton Adkinson. Adkinson also had Suggs' cell raided multiple times to find potential incriminating statements Suggs had written. Taylor also disclosed information about Byars: During one of the pretrial preparation sessions, Adkinson told Byars, "I don't give a shit what he [Ernest Suggs] said. You are going to say this."

V. The newly discovered evidence of Deputy Timothy Crenshaw's 2022 statement.

In 2022, a federal investigator working on Suggs' case spoke with Timothy Crenshaw. Crenshaw, who is now retired, worked for WCSO in WCJ during the time Suggs was held there before being transferred to the role of courtroom deputy. Crenshaw was personally aware of the misconduct going on in WCJ and would be able to bolster the accounts of Ozio and Taylor. Crenshaw was aware that Hayward Thomas, a lieutenant in WCJ, and Tommy Mitchell, a jail administrator, would put inmates into jail cells for the purpose of getting information in exchange for lighter sentences. WCJ administrators did this at the direction of Sheriff McMillian and

prosecutor Adkinson. Crenshaw was also personally aware of jail inmate logs being falsified. Additionally, Crenshaw personally witnessed Taylor and Byars being taken from their cells multiple times into an administrative building of the jail. These meetings would not have been for legal visits, because those took place in another area of the jail.

SUMMARY OF ARGUMENT

ISSUE 1**:** The circuit court erred in summarily denying Suggs' *Brady* claim. The testimony from Ozio, Taylor, and Crenshaw is critical impeachment evidence that was suppressed by the State. This testimony would have impeached not only the testimony of the jailhouse snitches -- Byars and Taylor -- at Suggs' trial, but the entire investigation. This evidence creates a reasonable doubt as to Suggs' culpability.

ISSUE 2: The circuit court erred in summarily denying Suggs' *Giglio/Napue* claim. The State presented false and misleading testimony of Byars and Taylor and failed to correct this testimony. New evidence from Ozio, Taylor, and Crenshaw establishes that the State fed crucial details to witnesses in order to secure convictions. This casts further doubt on the testimony given by Byars at Taylor at

Suggs' trial. This violation is not harmless beyond a reasonable doubt.

ISSUE 3: The circuit court erred in summarily denying Suggs' *Massiah* claim. This claim is not procedurally barred as it was not previously ruled on its merits. Only now that witnesses have come forward is Suggs able to prove that the prosecution used Byars and Taylor as state agents to unconstitutionally secure a conviction against Suggs.

ISSUE 4: The circuit court erred in summarily denying Suggs' newly discovered evidence claim. Suggs could not have discovered the evidence from Ozio, Taylor,and Crenshaw earlier through due diligence, as these witnesses have only now come forward. A cumulative analysis including this new evidence as well as all evidence presented at trial and uncovered in postconviction establishes a reasonable doubt as to Suggs culpability.

ARGUMENT

For the reasons set forth below, Suggs' convictions and death sentence are in violation of the Sixth and Fourteenth Amendments to the United States Constitution and corresponding provisions of the

Florida Constitution, and the circuit court erred in summarily denying Suggs' claims for relief.

ISSUE 1: The circuit court erred in summarily denying Suggs' claim that the State violated his rights under the Fourteenth Amendment by suppressing favorable, material evidence.

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

The State is obligated to disclose evidence or information in its possession that is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963). This requirement applies to both exculpatory and impeachment evidence. *United States v. Bagley*, 473 U.S. 667 (1985). Relief is warranted if the undisclosed information creates a reasonable probability of a different result. *Id.* at 680. "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its

absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

A. Suggs' *Brady* claim is timely.

In denying relief, the circuit court found that Suggs failed to demonstrate the timeliness of this claim, and therefore, his *Brady* claim does not qualify under an exception to rule 3.851's filing deadline. (PCR4. 1099). The court found that the testimony of Timothy Crenshaw, James Taylor, and Jake Ozio could have all been discovered previously through the use of due diligence. *Id.* This finding was error.

This ruling by the court fails to consider that the information revealed by Ozio, Taylor, and Crenshaw was suppressed by the State, as it was never disclosed to defense counsel. In fact, the court does not even address the suppression issue in its order. When police or prosecutors conceal exculpatory or impeaching material in the State's possession, it is "incumbent on the State to set the record straight." *Banks v. Dretke*, 540 U.S. 668, 676 (2004). With respect to any information only known by investigators, it is imputed to the State. *See Kyles*, 514 U.S. at 437.

As to Ozio's deposition testimony, Suggs' obviously could not discover that testimony until Ozio made it. *See Davis v. State,* 26 So. 3d 519, 528 (Fla. 2009)("Regardless of the time span from the time of trial to the discovery of the new testimony, recanted testimony cannot be 'discovered' until the witness *chooses* to recant."); *Burns v. State*, 858 So. 2d 1229, 1230 (Fla. 1st DCA 2003) ("Even though the appellant knew at trial that the codefendant was lying, the appellant could not have gotten the codefendant to admit that he was lying earlier, and thus the recantation … could not have been obtained earlier with due diligence."). Ozio gave a deposition statement on May 17, 2021, which included the *Brady* material at issue here. Suggs filed his successive postconviction motion within a year from that date. Given that Ozio was not a witness in Suggs' case, there was no indication that Ozio had information relevant to Suggs' case. There is no due diligence requirement to pursue witnesses in unrelated cases until and unless information reveals itself showing a connection.

Moreover, there has never been any previous indication that the jailhouse snitch testimony at the Suggs and Whitton trials was intertwined until Ozio came forward in 2021. As to Taylor, Suggs has

diligently attempted to present his testimony previously, but Taylor refused. *Suggs*, 923 So. 2d at 428. However, Taylor has now come forward and confirmed that at an evidentiary hearing he would testify to the statements contained herein. Recanted testimony cannot be "discovered" until the witness chooses to recant, regardless of the time span. *Davis v. State*, 26 So. 3d 519, 528 (Fla. 2009).

The same is true of the statement from Crenshaw who only came forward within the last year. Suggs was entitled to rely on the integrity of State officials involved in the investigation of his case and the accuracy of their prepared reports and testimony. He should not (and is not) be required to behave as if the prosecuting attorney and investigators cannot be trusted. *See Banks v. Dretke*, 540 U.S. 668, 696 (2004) (holding the State's argument that "'the prosecution can lie and conceal and the prisoner still has the burden to … discover the evidence,' so long as the 'potential existence' of a prosecutorial misconduct claim might have been detected. A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process.") (internal citations omitted).

B. The suppressed information is favorable.

The circuit court found that even if this claim is timely, Suggs failed to show that Jake Ozio's testimony is favorable because it involves misconduct in a different case. (PCR4. 1099-1100). This was error.

The State is obligated to disclose evidence or information in its possession that is favorable to the defense, which includes both exculpatory and impeachment evidence. *See Brady*, 373 U.S. 83, *Bagley*, 473 U.S. 667.

The statements from Ozio, Taylor, and Crenshaw are favorable because they would certainly shine a light on the State's use of false testimony and state agents to convict Suggs. This is quintessential impeachment evidence. *See Davis v. Alaska*, 415 U.S. 308, 316 (1974). Specifically, Ozio's testimony would have established that he testified falsely at the behest of Sheriff McMillian, illuminating the lengths to which the State would go to secure a conviction in a murder case.

The circuit court failed to address favorability at all in regard to the testimonies of Taylor and Crenshaw, both of which are indeed favorable. Taylor has admitted that he was purposely placed in a cell

with Suggs at the direction of Sheriff McMillian in order to extract a confession, and when that didn't work, he was told exactly what to say. Crenshaw has admitted to being aware of the common practice at the WCJ of putting inmates into cells with other inmates to obtain information in exchange for a reduction in their own sentences, as well as the practice of falsifying inmate logs at the jail. Crenshaw is aware that this was done at the direction of Sheriff McMillian and prosecutor Adkinson. Finally, Crenshaw has knowledge of both Byars and Taylor being taken out of their cells multiple times into an administration building at the jail during this time period.

C. The suppressed information is material.

The circuit court found that Suggs failed to establish materiality, finding that Jake Ozio's testimony is not relevant to Suggs' case and would not be sufficient to undermine confidence in the jury's verdict. (PCR4. 1100). The court further found that testimony by Taylor and Crenshaw would not have changed the outcome either, because Crenshaw's testimony was too general and Taylor's testimony would be unreliable in light of his recantations and criminal history. *Id.* These findings were error.

To meet the materiality prong, the defendant must demonstrate a reasonable probability that had the suppressed evidence been disclosed, the jury would have reached a different verdict or recommended a life sentence. *See Strickler,* 527 U.S. at 289. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *See Strickler,* 527 U.S. at 290; The remedy of a new trial for a *Brady* violation is only available when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict [and sentence]." *Strickler,* 527 U.S. at 290 (quoting *Kyles v. Whitley,* 514 U.S. 419, 435 (1995)).

The circuit court's finding failed to consider that the materiality of suppressed evidence must be considered "collectively, not item-by item." *Kyles*, 514 U.S. at 436. The State's case against Suggs "resemble[d] a house of cards, built on the jury crediting" jailhouse snitch testimony. *Wearry v. Cain*, 577 U.S. 385, 392 (2016). The testimonies of Ozio, Taylor, and Crenshaw demonstrate that Taylor and Byars were state agents; Taylor's trial testimony, particularly as it relates to the "knife in the canal," was false; and the prosecutor told Byars to lie. Armed with the new evidence, Suggs would have

been able to impeach both the snitches and the prosecution, and investigation of this case as a whole. *See Kyles*, 514 U.S. at 445 (evidence can be material for impeaching a witness and attacking the "thoroughness and … good faith" of the investigation). This is crucial, especially given that there was no physical evidence linking him to the crime, the case was built entirely on circumstantial evidence.

Moreover, this evidence is entirely consonant with Suggs' trial strategy of attacking the investigation and prosecution of this case. Besides the snitches, the State produced minimal evidence tying Suggs to the crime. Most of the evidence they did produce -- the "stain," the tire tracks, and the key and glass in the bay -- does not withstand scrutiny. Other evidence -- the victim's fingerprints on Suggs' car, the money in the sink -- is easily explained. Indeed, the State recognized that without the aid of jailhouse snitch testimony, the other evidence was not enough to take to the grand jury. There are large gaps in the State's case, including the dearth of evidence tying Suggs or his jeep to the bloody crime scene and law enforcement's failure to investigate two obvious alternative suspects -- Casey and Hamilton -- with flimsy alibis and clear motives and the serial killer who has confessed to murdering Pauline Casey.

Accordingly, confidence in the verdict is undermined. Finally, as to the penalty phase, given the bare minimum jury recommendation of 7-5, there is a reasonable probability that the suppressed evidence would tip the scale towards life in light of the reliance upon snitch testimony during the penalty phase.

ISSUE 2: The circuit court erred in summarily denying Suggs' claim that the State violated his rights under the Fourteenth Amendment by presenting and/or failing to correct false testimony.

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

The State violates the Fourteenth Amendment when it presents false or misleading evidence to a trial court. *Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959). Implied misrepresentations, even if "technically correct," state the same due process violation. *See Alcorta v. Texas*, 355 U.S. 28, 31 (1957). Even

if the State does not solicit false testimony, the State cannot "allow[] it to go uncorrected when it appears." *Napue*, 360 U.S. at 269. It is a violation if the prosecutor knew or should have known the testimony was false or misleading. *United States v. Agurs*, 427 U.S. 97, 103 (1976). The State must show that the violation was harmless beyond a reasonable doubt. *Guzman v. State*, 941 So. 2d 1045, 1050-51 (Fla. 2006).

A. Suggs' *Giglio/Napue* claim is timely.

The circuit court found that Suggs was not entitled to relief because he failed to demonstrate that this claim is timely. (PCR4. 1102). The court found that the testimony of Ozio, Taylor, and Crenshaw was previously known or discoverable and therefore, this claim does not qualify under an exception to rule 3.851's filing deadline. *Id*. These findings were error.

Additionally, as argued *supra* at 32, this information could not have been discovered earlier with due diligence. Suggs' could not have discovered Ozio's deposition testimony until Ozio gave that testimony. *See Davis,* 26 So. 3d at 528 ("Regardless of the time span from the time of trial to the discovery of the new testimony, recanted testimony cannot be 'discovered' until the witness *chooses* to

recant."); *Burns v. State*, 858 So. 2d 1229, 1230 (Fla. 1st DCA 2003) ("Even though the appellant knew at trial that the codefendant was lying, the appellant could not have gotten the codefendant to admit that he was lying earlier, and thus the recantation … could not have been obtained earlier with due diligence.").

Likewise, Suggs also could not have discovered James Taylor's testimony earlier with due diligence. There has never been any previous indication that the jailhouse snitch testimony at the Suggs and Whitton trials was intertwined until Ozio came forward in 2021. Suggs has diligently attempted to present Taylor's testimony previously, but Taylor refused. *Suggs*, 923 So. 2d at 428. However, Taylor has now come forward and confirmed that at an evidentiary hearing he would testify to the statements contained herein. The same is true of the statement from Crenshaw who only came forward within the last year.

B. The testimony is false and the State knew it was false.

The circuit court found that even if the claim is timely, Suggs failed to establish that the testimony is false and that the prosecutor knew the testimony was false. (PCR4. 1103). This finding was erroneous.

First, both jailhouse informants who testified against Suggs -- Byars and Taylor -- committed perjury at his trial. They testified that there was (1) no deal between them and the State or (2) no connection between their testimony and any benefits they received. (R. 3404-05, 3539, 3575-76, 3585). Second, in postconviction, Sheriff McMillian falsely testified that they did not use informants in WCJ and Byars and Taylor were not used as agents in this case.

Taylor and Crenshaw have now come forward refuting the prior testimony of all three. Taylor has admitted that he was a state agent, was purposely placed in Suggs' jail cell to extract a confession, was fed information about Suggs' case from Sheriff McMillian, and was told by the prosecutor to testify to certain facts regardless of whether or not Suggs actually said the. It is irrelevant that the State did not make an explicit deal with Taylor before turning him into a state agent, particularly because he was an experienced jailhouse informant, and thus knew exactly what investigators wanted from him -- confessions from Suggs -- and that he could expect a benefit in return for those confessions. *Cf Wearry*, 577 U.S. at 385 ("[E]ven though the State had made no binding promises, a witness' attempt to obtain a deal before testifying was material because the jury 'might

well have concluded that [the witness] had fabricated testimony in order to curry the [prosecution's] favor"'). Moreover, Taylor did receive a benefit in the form of a probation recommendation from the Sheriff. Finally, Taylor's 2022 statement is bolstered by Crenshaw's statement and previous testimony presented by Suggs.

Second, Taylor testified that Suggs told him that he threw a knife into a "canal." Ozio's deposition testimony now shows that this testimony was false. Even before Ozio came forward the testimony was suspect, given that Taylor never disclosed it before trial. Ozio, meanwhile, used a nearly identical sentence less than a month before Suggs' trial. When Ozio returned to testify at the Whitton trial, he was explicitly told not to mention it. Curiously, Ozio stated in 2021 that the statement was actually originally made by Satan -- another frequent informant in Walton County who Adkinson "told … everything to say." (PCR4. 469).

Adkinson knew, or should have known, that the testimony was false. Both Taylor and Crenshaw named Adkinson as being involved in perpetuating the false testimony at issue here. Even if Adkinson was somehow not personally aware, "whether the nondisclosure was the result of negligence or design, it is the responsibility of the

prosecutor." *Giglio*, 405 U.S. at 154. As an initial matter, because law enforcement knew or should have known the testimony was false, that knowledge is imputed to the State. *See Guzman v. Secy, Dep 't of Corr.*, 663 F .3d 1336, 1349 (11th Cir. 2011). Separately, Adkinson knew or should have known. Taylor has made clear that Adkinson was involved in the law enforcement-state agent relationship and even directed raids of Suggs' cell based off information gleaned from Taylor. Adkinson told Byars during pretrial preparation "I don't give a shit what he [Ernest Suggs] said. You are going to say this." Moreover, Adkinson prosecuted the cases against both Suggs and Whitton. Therefore, he had at the very least constructive knowledge of the falsity of the "knife in the canal" testimony. *See Agurs*, 427 U.S. at 103 ("If evidence highly probative of innocence is in [the prosecutor's] file, he should be presumed to recognize its significance even if has actually overlooked it.").

In fairness, the State did exercise its duty to correct false testimony -- but only before the Whitton trial, in secret, and unconstitutionally. *Alcorta,* 355 U.S. at 31-32 (misrepresentation by State's witness at trial violated due process when "the prosecutor had told him he should not volunteer [the] information ... but if

specifically asked about it to answer truthfully"). During preparation the night before Whitton's trial, Ozio was explicitly told by Sheriff McMillian not to mention "the knife in the canal," which, by that point, Taylor had mentioned at Suggs' trial. Although the corrupt origins of this statement are not exactly clear, both Taylor and Satan (who Ozio testified he overheard making the comment) were being fed information by law enforcement officers, including McMillian and Adkinson. Notably, no jailhouse snitch, including Ozio or Taylor, came forward with the statement until May 1992.

C. The statements are material.

The court further found that the statements were not material and would not have affected the judgment of the jury. (PCR4. 1103). The court reasoned that "[t]he jury likely concluded that Wallace Byars and James Taylor were merely attempting to obtain more favorable sentences for their own unrelated offenses, and therefore, they lacked any credibility." *Id.* However, this is contrary to the testimony that jurors heard at trial. Both testified that there was no deal between them and the State, and that there was no connection between their testimony and any benefits they received. (R. 3404-05, 3539, 3575-76, 3585).

As argued above, this false testimony casts supreme doubt on the testimony given by Byars and Taylor in Suggs' case. Indeed, it casts doubt on the entirety of the State's case given that it was used to plug a major gap: the inability to recover the murder weapon. The State, in making its case during both the guilt and penalty phases, relied upon this false testimony and cannot prove it was harmless beyond a reasonable doubt.

ISSUE 3: The circuit court erred in summarily denying Suggs' claim that the State violated his rights under the Sixth and Fourteenth Amendments by eliciting statements through state agents.

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

The State violates a defendant's Sixth Amendment right to counsel "by intentionally creating a situation likely to induce [a

defendant] to make incriminating statements without the assistance of counsel." *United States v. Henry*, 447 U.S. 264, 274-75 (1980); *Massiah v. United States*, 377 U.S. 201 (1964). "Accordingly, the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent." *Maine v. Moulton*, 474 U.S. 159, 176 (1985). This occurs when the State uses a jailhouse informant as a state agent to deliberately elicit information from a defendant. *Johnson v. State*, 135 So. 3d 1002, 1026 (Fla. 2014). "Statements deliberately elicited [in violation of this right] . . . are rendered inadmissible and cannot be used against the defendant at trial." *Rolling v. State*, 695 So. 2d 278, 290 (Fla. 1997). The State has the burden to prove beyond a reasonable doubt that the inadmissible testimony did not contribute to the verdict. *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986).

A. Suggs' *Massiah* claim is timely and not procedurally barred.

In denying relief, the circuit court found that this claim was not timely and references its findings as to timeliness announced in the previous ISSUES *supra*. Additionally, the circuit court found this

claim to be procedurally barred, as it was previously litigated in postconviction. (PCR4. 1104-05).

As to timeliness, and as already argued *supra* at 32, this information could not have been discovered earlier with due diligence. Suggs' could not have discovered Ozio's deposition testimony until Ozio gave that testimony. *See Davis,* 26 So. 3d at 528 ("Regardless of the time span from the time of trial to the discovery of the new testimony, recanted testimony cannot be 'discovered' until the witness *chooses* to recant."); *Burns v. State*, 858 So. 2d 1229, 1230 (Fla. 1st DCA 2003) ("Even though the appellant knew at trial that the codefendant was lying, the appellant could not have gotten the codefendant to admit that he was lying earlier, and thus the recantation … could not have been obtained earlier with due diligence."). Suggs also could not have discovered James Taylor's testimony earlier with due diligence, as there was never any previous indication that the jailhouse snitch testimony at the Suggs and Whitton trials was intertwined until Ozio came forward in 2021. Suggs has diligently attempted to present Taylor's testimony previously, but Taylor refused. *Suggs*, 923 So. 2d at 428. Taylor has now come forward, as has Crenshaw.

As to the procedural bar, Suggs previously raised a claim that his trial counsel was ineffective for failing to raise a *Massiah* claim pretrial. *Suggs*, 923 So. 2d at 427. This Court denied that claim because, at that time, no evidence existed to support that claim. *Id.* at 428 (relying on Sheriff's McMillan's testimony that he did not instruct Byars or Taylor to extract or manufacture a confession).

Since 2005, new evidence has come to light – through the testimony of Taylor and Crenshaw – that proves Byars and Taylor were working as State agents, and which impeaches the testimony of Sheriff McMillian. Suggs cannot be faulted because the State chose to hide information, and then present false testimony, regarding this claim.

B. This violation is not harmless beyond a reasonable doubt.

The court further found that based on the harmless error analysis, there is not a reasonable probability that the testimony of Wallace Byars and James Taylor contributed to the verdict. (PCR4. 1105). In making this finding, the court relied on the "substantial and overwhelming" evidence of Suggs' guilt and lack of credibility of Byars and Taylor. (PCR4. 1105-06). This finding is erroneous, as it

fails to consider the circumstantial nature of the case and the lack of physical evidence tying Suggs to the murder.

Suggs was arrested and placed in custody in the WCJ on August 7, 1990. The very next day, Suggs exercised his right to counsel and the trial court entered an order appointing an attorney to represent him. (R. 1, 4). Adversarial judicial criminal proceedings had thus been initiated. *See United States v. Gouveia*, 467 U.S. 180, 188 (1984). As investigators testified, law enforcement had by then entirely stopped investigating any other suspects (R. 2727-28, 2765) and had "committed itself to prosecute" Suggs, who found "himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law." *Gouveia*, 467 U.S. at 189. Therefore, by this point the right to counsel had "attached and been asserted" and the State was obligated to honor it. *Moulton*, 474 U.S. at 170.

As Suggs can now demonstrate through the statements of Taylor and Crenshaw, the State violated Suggs' right to counsel and used Taylor and Byars as state agents to deliberately elicit information from him. Taylor, a "professional jailhouse snitch," knew that he was expected to elicit information from Suggs once he was

housed in a cell with him. Over the period they were housed together, Taylor repeatedly met with law enforcement officers investigating the case to brief them on any Suggs' statements and so they could direct his questioning to Suggs based on facts they knew or suspected about the case. Of course, Taylor was rewarded for his work. Taylor's taped statement -- made one day before Suggs' case went to a grand jury -- came just a few days before Taylor received a favorable recommendation from the Sheriff's department at his probation hearing. (R. 3434, 3539, 3580). Taylor's 2022 statement is corroborated by Crenshaw, who had knowledge of the WCJ practice of using informants as state agents -- specifically, by placing certain inmates into cells for the purpose of getting information at the direction of Sheriff McMillian and prosecutor Adkinson.

While Taylor and Byars were acting as state agents, the State endeavored to hide their identities from Suggs and Suggs' counsel. Even though they were housed in Suggs' cell and recorded taped statements on August 21, the State did not disclose their identities as witnesses until January of the next year. In fact, the State went so far to conceal their identities that Taylor was kept in jail under the alias 'Loxley.' (PCR1., Vol. 9, 179-80). After the August 21 statements

to law enforcement, Byars and Taylor were returned to Suggs' cell in order to obtain additional statements. (R. 3586). Taylor testified at trial to multiple alleged statements from Suggs that were not contained in the August 21 taped statement because Suggs apparently made them while they were still housed together over the next several months. *Id.* In the State's Answer to Demand for Discovery filed on September 18, 1990, neither were listed as witnesses. The defense was advised that there were no confidential informants and the existence of alleged statements from Suggs was kept hidden. It was not until January 17, 1991, that the State listed Byars and Taylor as witnesses.

It is not Suggs' burden to show direct proof of the State's knowledge or intentional disregard of his right to counsel. "Direct proof of the State's knowledge [that it is circumventing the Sixth Amendment] will seldom be available to the accused." *Moulton*, 474 U.S. at 176. Thus, a defendant need only show that the State "must have known" that the state agent would "likely" secure incriminating information. *Id.* at 176 (citing *Henry*, 447 U.S. at 271). Here, it is clear that the State "must have known"—law enforcement put a known confidential informant into his cell pursuant to WCJ officials'

practice of doing so; repeatedly extracted Taylor and, according to Crenshaw, Byars, to brief them on Suggs' statements; fed Taylor information about Suggs' case to garner more information; and, raided Suggs' cell to find legal documents based on tips from Taylor, all the while hiding the identity of their state agents for months.

The trial testimony of Taylor and Byars should have been suppressed because they were state agents and Suggs is entitled to a new trial because the State cannot prove the violation was harmless beyond a reasonable doubt in either the guilt or penalty phase. As shown above, the State's case was a house of cards that could not stand without the inadmissible testimony.

ISSUE 4: The circuit court erred in summarily denying Suggs' claim that he is entitled to a new trial based on the newly discovered evidence.

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

by the record. *See Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000).

Even if this Court does not find that the statements of Ozio, Taylor, and Crenshaw establish a violation of Suggs' constitutional rights, this Court must separately analyze the newly discovered evidence under the *Jones* test. *See Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999). To obtain relief based on new evidence, Suggs must show that, "the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence." *Walton v. State*, 246 So. 3d 246, 249 (Fla. 2018). Suggs must also show the evidence to be material, which requires that "the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial." *Jones*, 591 So. 2d at 915. Evidence satisfies the second prong if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Jones*, 709 So. 2d at 526. A defendant is entitled to a new sentencing proceeding if "evidence would probably yield a less severe sentence" at a new penalty phase trial. *Walton*, 246 So. 3d at 249.

In denying relief, the circuit court held that this claim is facially and/or legally insufficient and that Suggs failed to establish the timeliness of his newly discovered evidence claims. (PCR4. 1097).

A. Suggs' newly discovered evidence claim is timely.

This claim is timely. Recanted testimony cannot be "discovered" until the witness chooses to recant, regardless of the time span. *Davis,* 26 So. 3d at 528. As to Ozio's deposition testimony, Suggs' obviously could not discover that testimony until Ozio made it. Moreover, there has never been any previous indication that the jailhouse snitch testimony at the Suggs and Whitton trials was intertwined until Ozio came forward in 2021. As to Taylor, Suggs has diligently attempted to present his testimony previously, but Taylor refused. *Suggs*, 923 So. 2d at 428. However, Taylor has now come forward and confirmed that at an evidentiary hearing he would testify to the statements contained herein. The same is true of the statement from Crenshaw who only came forward within the last year. Therefore, the first step of the *Jones* test is satisfied.

B. This newly discovered evidence gives rise to a reasonable doubt as to Suggs' culpability.

This newly discovered evidence gives rise to a reasonable doubt as to Suggs' culpability with respect to both his conviction and his sentence. When considering the materiality of the statements, this Court must conduct a cumulative analysis of the case that includes the "total picture" of all evidence in the case that Suggs could present at a new trial, including anything previously presented regardless of whether that evidence was procedurally defaulted or otherwise barred. *Swafford*, 125 So. 3d at 776. As demonstrated above, the State's case against Suggs was a house of cards which relied extensively upon jailhouse snitch testimony. The State never recovered a murder weapon; almost all of the bare minimal evidence linking Suggs to the victim or the crime scene was either heavily disputed at trial or in previous postconviction proceedings; the investigation in this case was either grossly negligent or done in bad faith, including the failure to investigate obvious suspects like Casey and Hamilton, who had flimsy alibis and obvious motives, or Riebe, who has now confessed to murdering Pauline Casey. Finally, Ozio, Taylor, and Crenshaw have now come forward establishing how the

State unconstitutionally used the testimony of state agents, and proving it used false testimony to shore up the case against Suggs. Taken together, when compared to the lack of evidence that Suggs committed the crime for which he has been sentenced to death, Suggs has shown that the jury would have acquitted, or at the very least, voted for a life sentence.

CONCLUSION AND RELIEF SOUGHT

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

CERTIFICATE OF SERVICE

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

/s/ Dawn B. Macready
Dawn B. Macready
Chief Assistant CCRC-North
Florida Bar No. 0542611
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Dawn.Macready@ccrc-north.org

COUNSEL FOR APPELLANT

CERTIFICATE OF COMPLIANCE

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

/s/ Dawn B. Macready
Dawn B. Macready