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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 REPLY BRIEF

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PRELIMINARY STATEMENT

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

ARGUMENT IN REPLY[1]

REPLY TO 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.

The State asserts, in its Answer Brief (hereinafter "AB"), that Suggs's *Brady* claim, predicated on newly discovered evidence from Ozio, Taylor, and Crenshaw, is untimely. (AB. 32). The State claims that Ozio's 2021 testimony in Whitton's case was predated by his 2000 affidavit containing the same evidence. (AB. 33). This is inaccurate. The affidavit contains no information about a knife being found in the canal behind Whitton's parents' house, nor does it contain information that Sheriff McMillian coached him the night before his testimony in Whitton's trial and told him not to mention anything about the knife found in the canal. (PCR4. 293-95). The first time this information was mentioned was during Ozio's 2021

[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.

deposition in Whitton's case. (PCR4. 140-307). Prior to that time, there was no indication that Ozio had any information that was relevant to Suggs's case. Suggs's successive rule 3.851 motion was filed within one year of that date, and is therefore, timely. *See* Fla. R. Crim. P. 3.851.

The State argues that Taylor's recantations have been known to Suggs since at least 1997. (AB. 33). However, as stated in Suggs's initial brief, as well as in his successive rule 3.851 motion, only now is Taylor willing to come forward and testify at an evidentiary hearing as to his recantation. Likewise, the State argues that Crenshaw's information regarding WCSO's practice of using informants in the jail and specific information about Byars and Taylor being used as informants, has been known to Suggs since an evidentiary hearing in 2003, wherein inmate Broxson testified that Taylor was an informant and that Crenshaw gave Taylor anything he wanted. (AB. 34). Notably, Crenshaw did not testify at the 2003 evidentiary hearing. It was not until now that Ozio, Taylor, and Crenshaw chose to come forward, reveal this information, and testify at an evidentiary hearing (had one been granted). *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.").

Next, the State argues that Suggs failed to present any evidence or argument to establish that the State possessed or intentionally suppressed information, claiming "[h]is sole reference to the State's alleged suppression is his assertion that Taylor, Ozio, and Crenshaw's information was never disclosed to defense counsel." (AB. 36). However, law enforcement was certainly aware of this information, therefore, knowledge is imputed to the prosecution. 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. The State also argues that information regarding Taylor was not suppressed

because his deposition was taken prior to trial, he was extensively cross-examined at trial, and it was known that Taylor was a snitch in other cases. (AB. 37). Simply stated, having information that Taylor was a snitch in *other cases* is not the same as Taylor admitting that he lied about Suggs confessing to him about the murder of Ms. Casey in *this case*.

Lastly, the State argues that Suggs failed to establish that Taylor, Ozio, or Crenshaw's information was material, and that "[t]aking away Taylor and Byars's testimony that Suggs admitted to Ms. Casey's murder as inculpatory evidence, does not make it exculpatory." (AB. 38-39). This argument fails to take into account that there was minimal evidence linking Suggs to the crime and the case against him was built entirely on circumstantial evidence. Moreover, the materiality of suppressed evidence must be considered "collectively, not item-by item." *Kyles*, 514 U.S. at 436. 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. This information would have allowed Suggs 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).

The evidence against Suggs was weak, had it not been for these supposed confessions that Suggs made to Taylor and Byars, there would not have been enough evidence to convict. Taking away Taylor and Byars's testimony that Suggs confessed to them certainly puts the whole case in such a different light as to undermine confidence in the verdict. *See Strickler,* 527 U.S. at 290 (quoting *Kyles v. Whitley,* 514 U.S. 419, 435 (1995)).

REPLY TO 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.

The State argues that 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 for the prosecutor to have been aware that it was false testimony. (AB. 43).

It is a violation of Suggs's rights under the Fourteenth Amendment if the prosecutor *knew or should have known* the

testimony was false or misleading. *See United States v. Agurs*, 427 U.S. 97, 103 (1976) (emphasis added).

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."). 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. Moreover, 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).

Testimony by Taylor and Crenshaw would refute the prior testimony of Taylor, Byars, and Sheriff McMillian. 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 them.

Ozio's testimony would further support the argument that law enforcement fed information about the case to inmates and concocted a confession to bolster their otherwise weak case against Suggs.

The State argues that Suggs failed to show that Taylor and Byars testimony was material, asserting that even without the testimony of Taylor and Byars, the evidence at trial was sufficient to convict Suggs. (AB. 44). In support of this argument, the State quotes the circuit court and Suggs's trial counsel who claimed that "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" (AB. 33), and "Taylor and Byars did not secure the conviction and Taylor was not liked by the jury." (AB. 44). This is mere speculation and wholly unsupported. There have been no interviews with jurors, nor have any jurors come forward to confirm that they would have convicted Suggs even without the testimony of Taylor and Byars. Additionally, jurors heard testimony that there was, in fact, no deal with the State in exchange for their testimony. (R. 3404-05, 3539, 3575-76, 3585). This refutes the State's argument that jurors likely thought Taylor and Byars were

not credible because they were only attempting to obtain more favorable sentences for themselves. Given the lack of evidence connecting Suggs with the murder, it is unlikely that the State would have been able to convict him without the testimony of Taylor and Byars. The State relied upon this false testimony in both the guilt and penalty phases of Suggs's trial, and cannot prove that it was harmless beyond a reasonable doubt.

Lastly, the State asks this Court to find that this claim is procedurally barred. (AB. 44). The State concedes that the circuit court did not find it to be procedurally barred, but does not mention that this is the first time it has made this argument, as it was not included in the State's written response to Suggs's successive rule 3.851 motion. For that reason, this Court should find that this argument has been waived. *See State v. Dougan*, 202 So. 3d 363, 378 (Fla. 2016) quoting *Franqui v. State*, 965 So. 2d 22, 32 (Fla. 2007) (rejecting arguments raised for the first time on appeal to this Court as procedurally barred).

REPLY TO 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.

The State argues that this newly discovered evidence claim is untimely and could have been discovered earlier through due diligence. (AB. 53). As to Ozio, the State asserts that this information was known to Suggs more than 20 years ago by way of an affidavit Ozio executed in the Whitton case. (AB. 55). However, as stated *supra*, this affidavit does not contain any information about a knife being found in the canal behind Whitton's parents' house, nor does it contain information that Sheriff McMillian coached him the night before his testimony in Whitton's trial and told him not to mention anything about the knife found in the canal. (PCR4. 293-95). The first time this information was mentioned was during Ozio's 2021 deposition in Whitton's case. (PCR4. 140-307). Before that time, there was no indication that Ozio had information relevant to Suggs's case.

As to Taylor, the State argues that has known about Taylor's recantations for decades, and that Suggs made the same claim and arguments in his 1997 initial postconviction motion. (AB. 56). However, the State acknowledges that at the evidentiary hearing of this 1997 motion, Taylor refused to testify. (AB. 57). The State further claims that Suggs failed to give the date or timeframe as to when Taylor gave this most recent statement, and has "failed to provide a

written statement from Taylor recanting his testimony or stating his willingness to testify." (AB. 59-60). This is not accurate. Suggs's successive postconviction motion clearly states that "[i]n 2022, a federal investigator working on Suggs's case spoke with James Taylor." (PCR4. 127). The motion was filed on May 16, 2022, not only making it timely because it was filed within one year of Taylor's statement, but also indicating the timeframe in which he spoke to the federal investigator on Suggs's case. Additionally, pursuant to Fla. R. Crim. P. 3.851(e)(2)(C), Suggs listed the witnesses he would call in support of his claims, including an investigator from the Federal Defender's Office in Tallahassee. (PCR4. 128-29, FN 18). Furthermore, under Fla. R. Crim. P. 3.851, a written statement recanting one's testimony is not required. *See Valle v. State*, 705 So. 2d 1331 (Fla. 1997); *Smith v. State*, 837 So. 2d 1185 (Fla. 4th DCA 2003).

As to Crenshaw, the State argues that Suggs could have discovered Crenshaw's information decades before and at least by the 2003 evidentiary hearing when Broxson testified that Taylor was an informant and Crenshaw would give him anything he wanted. (AB. 62). "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." (AB. 62). Again, it was not until now that Crenshaw chose to come forward, reveal this information, and testify. *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.").

The State argues that Suggs has failed to establish that any of this information is of a nature to probably produce an acquittal on retrial, weaken the case against him, or give rise to a reasonable doubt as to his culpability. (AB. 63). The State asserts that in "looking at the cumulative effect of all the evidence and total picture … Suggs failed to meet this burden." (AB. 63).

The State maintains that anything regarding the Whitton case is not relevant or material to Suggs's case. (AB. 63-64). Additionally,

the State claims that "[a]ny 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." (AB. 64). First, Suggs never claimed that he was unaware of Broxson. Broxson testified at the 2003 evidentiary hearing. Second, because Suggs's trial counsel may have heard the name Whitton when discussing trial schedules, does not mean that Suggs or his counsel was aware at that time that the cases were intertwined in such a way. Ozio's testimony is relevant and material in that it establishes a pattern of misconduct within the WCSO at the time of Suggs's trial. More specifically, his testimony shows that Sheriff McMillian was feeding jailhouse witnesses information and telling them what to say at trial. Notably, Suggs had two jailhouse witnesses testify against him at trial about a supposed confession he made to them regarding the murder of Ms. Casey. These jailhouse witnesses were at the Walton County Jail the same time as Ozio, which establishes that this practice of feeding jailhouse witnesses information was going on while Suggs, Taylor, Byars, and Ozio were all at the Walton County Jail together.

The State argues that newly discovered evidence of Taylor's recantation also fails to meet the second prong of *Jones*. (AB. 64-65). Although the State concedes that it is the circuit court's responsibility to examine all the circumstances of the case, the State again asserts that "neither Taylor nor Byars's testimony was the cornerstone of the State's case." (AB. 66). However, without the testimony of Taylor and Byars, the State's case was circumstantial and there was very little evidence linking Suggs to the murder. When examining all the circumstances of the case, it is clear that the State did not have a strong case against Suggs.

The State claims that the newly discovered evidence based on Crenshaw's information also fails the second prong of *Jones*. (AB. 67). This underestimates Crenshaw's information. He is former law enforcement and was working at the Walton County Jail when Sheriff McMillian and prosecutor Adkinson were utilizing jailhouse informants to shore up their capital cases. While Taylor may have some credibility issues due to his prior convictions and work as an informant, Crenshaw does not have such issues. Moreover, Crenshaw's information offers supports and corroboration to Taylor's recantation.

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.

The State claims that nothing Suggs has presented diminishes or supplants the trial evidence linking Suggs to Ms. Casey's murder 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 three known keys to 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.

(AB. 71). This recounting of the evidence at trial falls short of the cumulative analysis that is required for a newly discovered evidence claim. *Swafford*, 125 So. 3d at 776. Suggs will address each of these pieces of evidence below, as well as evidence that was not presented at trial that, when considered cumulatively, gives rise to a reasonable doubt as to Suggs's culpability. *See Jones*, 709 So. 2d at 526.

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

The day after Suggs was arrested, law enforcement called the dive team to search the water behind his parents' house. (R. 2718; 2861-62). A diver found the beer glass in two feet of water. (R. 2872, 2886). The following day, the key was found in four feet of water. (R. 2874-75, 2979). Prior to the search, Suggs' arrest had received substantial publicity and the Sheriff held a press conference early on the morning of his arrest. (R. 3100-03). There was no security posted at the home before the search began. (R. 2701). The house and the location of the dive were clearly visible from the bridge causeway. (R. 2711, 2978). The house was easily identifiable as the Suggs' residence given that the name 'Suggs' was visible in two different locations. (R. 2700). Wyatt Henderson, the lead dive team member. Henderson disclosed in postconviction that on the second day of the

search, Captain Brad Trusty directed the dive team to search a different area further out in the bay. It was during this search that the key to the bar was discovered. Further, investigator Steve Sunday included in a report that he received a key from the owner of the Teddy Bear Bar the day following Suggs's arrest for the purpose of showing it to the dive team. However, Henderson stated that the dive team was never shown a key before recovering one the next day from the bay.

To argue that a bloodstain on Suggs's shirt matched Ms. Casey's blood, is misleading. A single "stain" on the shirt Suggs was wearing when arrested contained an enzyme type that was consistent with the victim and 90% of the Caucasian population. It was also disputed at trial whether the source of the stain was human blood or other bodily fluid (R. 3164-67, 3189, 4012-13). Additionally, the integrity of the State's serology testing was heavily impeached at trial, given that Suggs was still wearing the shirt for several hours after he was arrested (R. 874, 2830), it was improperly stored for over a week (R. 3083-84, 3106-07), and there were several "red flags" in the test results that "should [not] have happened," according to the defense

expert who previously worked for FDLE, (R. 4012-13, 4030, 4032-33, 4058).

The State's argument that Suggs was the last person seen with Ms. Casey at the bar before she went missing, fails to take into account the source of that information. 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 when he left the bar, Suggs and the victim were the only two remaining in the bar. (R. 2788). Hamilton testified that he left to go to Winn Dixie before it closed at 10:00 p.m., but he did not make it on time. (R. 2798). Instead, he went to a Dominos and got a pizza, which he ate at home alone before falling asleep. In an attempt to support his alibi, he gave the detectives working the case a "portion" of a pizza box, which did not have a date or time stamp or any other confirmation of his alibi. (R. 2800, 3070). Detectives accepted the partial pizza box without independently verifying Hamilton's alibi. (R. 3072).

Steve Casey, the victim's husband, gave the alibi that he was home alone the night of the murder after selling his truck earlier in the evening; but Casey insisted he could neither remember to whom he sold the truck nor how much money he received for it. (R. 3682-

83). The State produced his telephone records at the trial, which showed that he received a phone call around 9:30 p.m. from the victim and Hamilton, who were both at the bar, that lasted around 10 minutes. (R. 2684). Casey testified that he went to sleep after the call. (R. 3686). There was no one to verify his activities from then until midnight when Casey stated that he told Hamilton that he was going to the bar because he had gotten a call that his wife was missing. (R. 3686). After trial, it came to light that Casey had actually sold the car previous day. (PCR1., Vol. 9, 140-42). At the time of the murder, Pauline was working two jobs while Steve was out of work. (R. 3669-72). A few days after the murder, Casey requested the victim's certified military records to file for life insurance. Casey collected $50,000 from the army and bought a Harley Davidson, traded the victim's car in for a truck for himself and made a down payment on a lot on the bay. (R. 3692-93). Casey never told law enforcement about the life insurance policy. (R. 3693-94).

Ms. Casey's body was found off a dirt road on U.S. Highway 98. (R. 2332-35). Despite the brutality of the murder, in which the victim's body was violently stabbed and dragged (R. 3374-76) and the thick, nearly impenetrable brush that the body was found in (R.

3005) Suggs had no scratches or injuries, and no blood was found on or in his vehicle. (R. 3010, 3331). Law enforcement did not find any evidence that tied Suggs to the scene of the crime except a tire track which had "similar" characteristics to the tires on Suggs' jeep but could have been made by another vehicle, as there were no "individual" characteristics found in the tracks that matched the tires on his jeep. (R. 3283, 3288, 3302, 3305-06). Law enforcement collected blue paint scrapings from branches at the scene which could not have come from Suggs' green jeep (R. 4101). Vegetation caught in the undercarriage of his jeep could not be matched to the vegetation at the scene (R. 3133-34). Notably, in postconviction it was revealed that the medical examiner placed Ms. Casey's time of death when Suggs was in police custody (PCR1. Vol. 9, 112-18).

When investigators conducted a search of Suggs's parents' house, they found $176 in wet bills in a sink. However, Suggs' mother testified that his parents had given him $250 for painting the roof and two $50 checks for his birthday, one of which Suggs had cashed. (R. 3914-16). Suggs explained to investigators that the money got wet when he fell into the bay working on the dock. (R. 2756).

As it relates to the newly discovered evidence in this claim, at a new trial Suggs would be able to show that Taylor has since recanted his original trial testimony that Suggs confessed to murdering Ms. Casey. Suggs would also be able to show through the testimony of Taylor, Crenshaw, and Broxson that the WCSO used state agents in this case – Taylor and Byars – and fed them information about the case including a supposed confession by Suggs. Although Byars is now deceased, should the State seek to introduce his prior testimony at a new trial, Suggs would be able to establish that he did, in fact, receive favorable treatment from the State in exchange for his false testimony against Suggs. These revelations about police misconduct at WCSO cast a shadow on the entire investigation. When taken together with all of the evidence that could be presented at a new trial, Suggs has indeed established that this evidence has weakened the case against him so as to give rise to a reasonable doubt as to his culpability." *Jones*, 709 So. 2d at 526.

CONCLUSION AND RELIEF SOUGHT

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service to all counsel of record, on this 26th day of August, 2024.

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CERTIFICATE OF COMPLIANCE

This is to certify that the Initial Brief of Appellant was generated in Bookman Old Style 14-point font, pursuant to Fla. R. App. P. 9.100 and 9.210, and does not exceed 25 pages.

/s/ Dawn B. Macready
Dawn B. Macready