IN THE SUPREME COURT OF FLORIDA

Case No. SC24-1128
Lower Court Case No. 1992-CF-13193

TONEY DERON DAVIS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

ALICE COPEK
Assistant CCRC-North
Florida Bar No. 25475

NIDA IMTIAZ
Assistant CCRC-North
Florida Bar No. 1044323

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

COUNSEL FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules and Statutes

ARGUMENT IN REPLY

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

While Mr. Davis relies upon his argument in his Initial Brief ("IB"), filed November 1, 2024, he has provided further clarification herein.

The State argued in its Answer Brief ("Answer" or "AB") that it provided Mr. Davis with the autopsy report at the time of trial, and that "a new expert" finding that C.C. had pre-admission pneumonia "does not show a *Brady* violation." (AB at 10, 12).

First, the State's emphasis that Mr. Davis did not raise this claim until "some 30-years later" is irrelevant in the context of a *Brady v. Maryland*, 373 U.S. 833 (1963), claim. (AB at 15-16, 18). *Brady* itself has no specific timeliness requirement in which *Brady* evidence must be discovered. This Court previously stated, that "the 'due diligence' requirement is absent from the Supreme Court's most recent formulation of the *Brady* test," *Floyd v. State*, 18 So. 3d 432, 451 (Fla. 2009) (internal citations omitted). However, *Floyd* also held that in Florida there is "no *Brady* violation [1] where the information is *equally* accessible to the defense and the prosecution, or [2] where

the defense either [a] *had* the information or [b] could have obtained it through the exercise of *reasonable* diligence." *Floyd v. State*, 18 So. 3d 432, 451 (Fla. 2009) (internal citations omitted) (emphasis added).

Mr. Davis, before instant counsel amended the postconviction motion which was filed in this instant appeal, had filed a Reply to State's Response to Successive Motion for Postconviction Relief, on September 11, 2023. (PCR3. 93-105). The State moved to strike the reply, but the circuit court did not rule on the motion. (PCR3. 118-21). In that reply, Mr. Davis asserted the following facts, which show that the slides were not *equally* accessible to Mr. Davis:

> Mr. Davis has attempted to obtain access to the slides for several years and as soon as Dr. Ophoven opined that the testimony by the State's experts was significantly flawed. During the postconviction proceedings, the State erected financial obstacles and difficulties for Mr. Davis to obtain access to the slides. Then, in 2018, Mr. Davis requested a federal court to permit him discovery in the form of directing the Medical Examiner to provide the slides without expending what appeared to be an exorbitant fee. The State opposed that effort.

(PCR3. 95). Mr. Davis sought to review the slides as soon Dr. Ophoven alerted to him concerns about the State's expert testimony, and in his efforts to have an expert review the slides, Mr. Davis was hampered by the State. Therefore, the slides were not equally

accessible to the defense, and in accord with *Floyd*, a suppression under *Brady* occurred when Mr. Davis was unable to access the information within the slides.

Floyd also considered there to be no *Brady* suppression when the defense had the information or reasonably could have sought it. *Floyd v. State*, 18 So. 3d 432, 451 (Fla. 2009) ("evidence is not suppressed where the defendant was aware of the information"). *Floyd* provided examples of this in *Tompkins v. State*, 872 So. 2d 230 (Fla. 2003), where "no suppression [was found] where defense was given illegible copy of police report because defense knew about report and could have requested a legible copy"; and in *Provenzano v. State*, 616 So. 2d 428 (Fla. 1993), where there was "no *Brady* violation where defendant could have obtained his jail records from jail officials and could have reviewed the notes of the State expert witness if he had requested them." *Id.*

Mr. Davis' case is markedly different from *Tompkins* and *Provenzano*. First, *Tompkins* and *Provenzano* consider jail and police records (non-physical evidence) that the defendant could have requested and reviewed for accurate information. Mr. Davis had received the autopsy report pre-trial, which listed pneumonia, but

not copies of the slides themselves. At the pre-trial deposition of medical examiner Dr. Floro, trial counsel did inquire into pneumonia and whether C.C. had pneumonia pre- or post-admission to the hospital. (PCR. 1250). Mr. Davis was informed that the pneumonia occurred *post*-admission. (PCR. 1250).[1] At that point, Mr. Davis *had* requested and received information from the State. This distinguishes Mr. Davis' case from *Tompkins* and *Provezano*, where the defendants in those cases failed to do so.[2] Additionally, Mr. Davis received *inaccurate* information, further distinguishing those cases

---

[1] Even at trial, Dr. Floro testified in front of the jury that he did not "see any evidence of lung disease" when conducting the autopsy. (T. 842). The State's narrative that C.C. did not have pneumonia until after she was in the hospital or any lung disease at all is contradictory in itself.

[2] *Floyd* itself considered that a witness' prior recorded statement to police was not suppressed because the defendant had knowledge of the tape containing the statement and could have requested the tape. *Floyd*, 18 So. 3d at 451 (Fla. 2009). While similar in the sense that Mr. Davis knew that microscopic slides of the lungs were taken, *Floyd* does not consider whether trial counsel had inquired about the information itself (the statement in *Floyd*, or the pneumonia here). Nor does *Floyd* consider whether information reported by the State in response to an inquiry was accurate or inaccurate. *Id.* at 450-51. The prior recorded statement in *Floyd* was found to be encompassed by the disclosed statement. *Id.* at 450. Here, however, the information in question cannot be said to be encompassed by Dr. Floro's testimony—either C.C. had pneumonia pre-admission or she had it post-admission. Mr. Davis' case is unmistakably different to *Floyd*.

and supporting that, under *Floyd*, Mr. Davis did, in fact, not have the *Brady* information that the slides would show that the pneumonia was pre-admission. Therefore, Mr. Davis had sought, in a reasonably diligent manner, to discover whether the pneumonia was pre- or post-admission.

Furthermore, in postconviction, Mr. Davis had no reasonable basis to think the slides contained any exculpatory information until his expert alerted him to Dr. Floro's faulty testimony. When Mr. Davis sought to review the slides, he was prevented from reviewing them due to the obstacles put in place by State, as described in his reply to the State's answer to the postconviction motion.

The State also argued that "an expert's interpretation of … information is not new evidence" and that finding a favorable expert is "irrelevant unless [the defense] can establish a reasonable likelihood that a similar expert could have been found at the pertinent time…" (AB at 16) (citing *Elledge v. Dugger*, 823 F.2d 1439, 1446 (11th Cir. 1987)). Here, there are multiple points to address. First, this immediate issue in reply is on Mr. Davis' *Brady* claim. The State's description of "new evidence" is irrelevant here, as evidence raised under *Brady* does not need to be "new," according to *Brady*'s

three-prong test. The State seems to be inputting the standard for newly discovered evidence into this claim. Second, this portion of *Elledge* is discussed in the context of an analysis of *Strickland*'s[3] prejudice prong for ineffective assistance of counsel (IAC). Again, this instant issue concerns the circuit court's denial of Mr. Davis' *Brady* claim—not an IAC claim. Third, Mr. Davis maintains that he would be able to establish such a reasonable likelihood of a similar expert finding pre-admission pneumonia if given the opportunity at the pertinent time at an evidentiary hearing. There exists nothing in the circuit court's order denying relief that suggests such a likelihood could not be established and, thus, should be summarily denied.

The State also argued that Mr. Davis waived this *Brady* claim because he had "waited" to have the slides examined and failed to seek testing pre-trial. (AB at 16, 18) (referencing *Peek v. State*, 395 So. 2d 492, 495 (Fla. 1980)). The claim in *Peek* considered physical evidence that was tested by the State but was lost before the defense could conduct any testing. *Id. Peek* does not explain when such a right may be waived, but that when the defendant does not "move the

[3] *Strickland v. Washington*, 466 U.S. 668 (1984).

trial court to inspect or test" the physical evidence, he "cannot now claim entitlement to a right which in the first instance he chose to forego." *Id*. *Peek* therefore seems to stand for the assertion that a defendant may not wait until evidence is lost to raise *due process* claims on the ability to test the evidence. *Peek* however does not discuss whether waiting to re-test physical evidence affects a defendant's ability to raise *Brady* claims when exculpatory information comes out from the retesting. This is particularly true when trial counsel questioned the State's expert regarding the physical evidence and was affirmatively advised, under oath, that the physical evidence was not exculpatory.

The State's last argument regarding the *Brady* claim both considered the relevant standard regarding materiality but applied it partially. The State asserted that C.C. having pneumonia does not "undercut" the testimony of rescue and medical personnel while C.C. was admitted to the hospital (AB at 18-20). The "cumulative materiality analysis" required under *Kyles v. Whitley*, 514 U.S. 419 (1995), was designed to provide a framework for determining how reliable the outcome of the trial was when information favorable to the defendant was not included in the trial.

The question to be answered is how damaged was the defendant by the exclusion of the favorable evidence from, not just the trial proceeding, but also from the defense's preparation for the trial and the choices that an informed defense counsel made at trial. Further, as the Supreme Court explained:

> [T]he question is not whether the State would have had a case to go to the jury if it had disclosed the favorable evidence, but whether we can be confident that the jury's verdict would have been the same. Confidence that it would have been cannot survive a recap of the suppressed evidence and its significance for the prosecution.

Kyles, 514 U.S. at 453; *see also Wickham v. State*, 124 So. 3d 841, 851 (Fla. 2013), *as revised on reh'g* (Oct. 17, 2013).

Here, the State was arguing materiality but failed to engage with all of the evidence that came out at trial or could have come out at trial if this information was not suppressed. In a pre-trial deposition, C.C.'s mother Gwen Cunningham testified that she left C.C. with Mr. Davis and told him she planned to return within thirty minutes. (PCR. 753). Neighbor Ronald Gordon testified at trial that Mr. Davis was with him from approximately 12:30-12:50p.m. (T. 873-74). And because the jury rejected Mr. Davis' testimony that he left C.C. in the care of Thomas Moore and Moore denied being alone with C.C. at

trial, there is no evidence of what C.C. was doing in the twenty-minute period she was outside the care of Mr. Davis. The hospital records showed that C.C. was in full cardiac arrest when Rescue arrived on scene (PCR3. 309), and C.C.'s mother testified in a pretrial deposition that she suffered through periods of cardiac arrest throughout her life and that her heart would stop beating (PCR. 749-50).

The *Brady* information of pre-admission pneumonia challenges the cause of death that the State asserted at trial, and additional evidence from the time of trial shows that pre-admission pneumonia was an alternative cause of death that the jury could have considered if the State had disclosed it. Furthermore, evidence developed in postconviction clearly undermines the State's narrative and would have provided a sound and valid defense if the suppressed information was disclosed. (IB at 11-20). Yet, this evidence was never disclosed to trial counsel and never heard by the jury.

Mr. Davis would not be convicted, much less sentenced to death, if granted the opportunity to prove this claim. If granted an evidentiary hearing, Mr. Davis will establish that the *Brady* evidence was suppressed by the State and was favorable and material. *See*

Brady v. Maryland, 373 U.S. 83 (1963); *United States v. Bagley*, 473 U.S. 667 (1985). (IB at 21-27). Confidence is undermined in the outcome of Mr. Davis' conviction and sentence and an evidentiary hearing is needed to factually develop this claim.

ISSUE 2: The circuit court erred in summarily denying Mr. Davis' claim (2) that newly discovered evidence establishes that C.C. suffered from pneumonia prior to being admitted to the hospital, disproving the State's theory of the case, including the cause of death.

While Mr. Davis relies upon his argument in his Initial Brief, he has provided further clarification herein.

In its Answer, the State argued that the underlying claim was untimely, procedurally barred, and did not meet the standard for relief under the newly discovered evidence standard. (AB at 10). Mr. Davis has previously demonstrated why this claim is timely, colorable, and fits into the newly discovered evidence standard set by *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998) and *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991). (IB at 27-40).

Regarding timeliness, the State emphasizes that Mr. Davis brought this claim "25-years after [his] case became final" and four years after Dr. Arden examined the medical examiner's file. (RB at

22). The State's arguments as to timeliness are similar to its arguments as to the first prong of *Jones*.

Mr. Davis sought to have Dr. Arden review this case when Mr. Davis was first alerted to Dr. Floro's autopsy and medical findings being inaccurate. Dr. Arden was initially tasked with looking at the cause of death, and he determined that the subdural hemorrhage that Dr. Floro identified at trial as the cause of death was not scientifically possible. (PCR3. 237-40). Dr. Arden was able to determine that the subdural hemorrhage was too small to be the lethal mechanism that caused C.C.'s death because the volume only amounted to 6-8 cubic centimeters. (PCR3. 238). Because Mr. Davis has resolutely maintained his innocence and because this alternate cause of death was improbable, Dr. Arden was further retained to determine the actual cause of death.

However, Dr. Arden was unable to review the slides when he was initially retained in 2019. Mr. Davis had "attempted to obtain access to the slides for several years" but "[d]uring the postconviction proceedings, the State erected financial obstacles and difficulties for Mr. Davis to obtain access to the slides." (PCR3. 95). It was only after Dr. Arden was able to review the slides that, for the first time in this

case, the information contained in the slides obtained during C.C.'s autopsy was revealed to Mr. Davis. It was only then that, contrary to what Dr. Floro testified to and the State repeatedly argued, that Mr. Davis learned that the slides of C.C.'s lungs revealed that "the exuberant, acute inflammatory exudate contained some macrophages, which are inflammatory cells that increase in the subacute phase, *which is consistent with the pneumonia having* ***predated, and contributed to, the respiratory distress*** *reported in association with the collapse and admission to the hospital*." (PCR3. 136) (emphasis added).

Therefore, Mr. Davis was diligent in trying to obtain and review the slides. Prior to Dr. Arden reviewing the slides, there was no inclination that the slides contained any materially relevant information until examined. Furthermore, the State's timeliness argument fails to consider its own wrongdoing in prohibiting Mr. Davis access to these slides.[4] As stated in his Initial Brief and in Issue

[4] If there are questions as to the State's conduct in allowing or disallowing Mr. Davis to review these slides, an evidentiary hearing on these claims would serve an additional purpose in demonstrating how and why Mr. Davis was prevented from reviewing the slides and raising these claims earlier.

I, *supra*, Mr. Davis raised this claim as soon as the information in the slides became available to him.

The State also argued, regarding timeliness and diligence, that Mr. Davis "has not shown that some medical doctor/forensic expert or Dr. Arden could not have reviewed earlier the slides referenced in the 1992 Autopsy Report" and mentions two other experts Mr. Davis had retained. (AB at 27, 29). As mentioned, *supra*, Mr. Davis had no reasonable basis to think that the slides contained exculpatory information until his expert reviewed the medical findings and determined that Dr. Floro's reported cause of death was not possible. This statement also runs afoul of the State's roadblocks that hindered Mr. Davis' examination of the slides. Once Dr. Arden was able to review the slides, Mr. Davis timely filed his successive postconviction motion.

The circuit court and the State propose that the applicable standard here be that, "[t]he Defendant must show that their expert could not have 'discovered' the victim's pneumonia through due diligence." (RB at 24) (citing PCR3. 320). The newly discovered evidence standard states that, "the evidence must have not been known by the trial court, and it must appear that the defendant or

his counsel could not have known of it by the use of diligence." *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (cleaned up).

As stated in the Initial Brief, the *information* within the slides constitutes the newly discovered evidence. Until the information of pre-admission pneumonia was known, Mr. Davis would not have been able to raise a claim of newly discovered evidence. His trial counsel did inquire at the pre-trial deposition of Dr. Floro whether the pneumonia listed in the autopsy report was pre- or post-admission. (PCR. 1250). Dr. Floro testified under oath that the pneumonia was pre-admission and that the lethal mechanism was the subdural hemorrhage. (PCR. 1250; T. 839-40). When Mr. Davis' expert alerted him to the fact that the cause of death purported by Dr. Floro was not medically sound, Mr. Davis sought to have his expert review the slides but was hampered by the State.

The State also argued that this claim should be procedurally barred because Mr. Davis had previously challenged the cause of death. (AB at 26-28). The State cites to a postconviction order filed on February 17, 2017. However, the State was referring to the circuit court's citation to *Davis v. State*, 42 Fla. L. Weekly S235, 2017 WL 656307 (Fla. Feb. 17, 2017). (PCR3. 320-321). Within that opinion,

this Court found that Mr. Davis' claim that challenged the cause of death—newly discovered evidence of the faulty science of Shaken Baby Syndrome—was "procedurally barred because it did not meet any of the three exceptions … under Florida Rule of Criminal Procedure 3.851." *Davis v. State*, 2017 WL 656307 at *1 (Fla. Feb. 17, 2017). This Court did not say that this claim was barred due to its nature of challenging the cause of death, but simply that it did not qualify as newly discovered evidence. That is not the case here.

Dr. Arden's reexamination of the slides show that C.C. had pre-hospital admission pneumonia which, combined with the other evidence that has come out in postconviction, "would probably produce an acquittal on retrial … or yield a less severe sentence." *Walton v. State*, 246 So. 3d 246, 249 (Fla. 2018). Mr. Davis has raised a valid newly discovered evidence claim.

The State again argued that Mr. Davis was not diligent in raising this claim, specifically that "every new review of evidence" would lead to more newly discovered evidence claims that would lend there to be "no finality in postconviction litigation." (AB at 28-29). Mr. Davis is not putting forth that every review of the physical evidence in a case prompts further litigation, but that a review of newly discovered

scientific evidence that substantially undermines the very basis for the judgment and sentence requires an evidentiary hearing in order for there to be factual development. In Mr. Davis' case, this necessity is of even more importance when the physical evidence at issue could be at risk of being degraded, tampered with, or lost.

The State again cited to *Elledge v. Dugger*, 823 F.2d 1439 (11th Cir. 1987), and a litany of other cases, some of which are correctly listed as applying to IAC claims, not newly discovered evidence claims. However, the most similar case would be *Swafford v. State*, 125 So. 3d 760 (Fla. 2013), where the medical examiner incorrectly testified to the presence of acid phosphate in the swabs tested by FDLE. *Id.* at 766. When FDLE retested the swabs twenty year later, no acid phosphate was found, and "the postconviction court found that the negative AP *results from the retesting of the swabs qualifies as newly discovered evidence*." *Id.* at 766-68 (emphasis added). This Court found "that the postconviction court's factual findings are supported by competent, substantial evidence and that it correctly applied the law to those facts in ruling that [the defendant] satisfied the first prong" of *Jones*." *Id.* at 768.

Here, Mr. Davis' reexamination of the slides is akin to the retesting of the swabs in *Swafford*. The retesting of the physical evidence in *Swafford* occurred twenty years after the original testing by FDLE, while the reexamination of the slides occurred as soon as Mr. Davis was alerted to the possibility of exculpatory information within them. Mr. Davis faced obstacles in having Dr. Arden review slides, but he still raised this claim in compliance with the time requirement of Florida Rule of Criminal Procedure 3.851. The information revealed by the review of the physical evidence in both cases shows that faulty expert medical testimony was presented at trial and considered by the factfinder. The nature of the information was also definitive and could have been construed only as one way or another, e.g., the presence or absence of acid phosphate in *Swafford*, or pre- or post-admission pneumonia here. Additionally, the information in both cases was exculpatory and should have been presented in front of the factfinder. The newly discovered evidence here is similar to that in *Swafford*, and it qualifies as newly discovered evidence under *Jones*.

As to the second prong of newly discovered evidence, the State argued that the evidence of pre-admission pneumonia would not

have weakened the State's case. (AB at 29-40). First, the State excluded the context of Dr. Arden's opinion when Dr. Arden was evaluating the onset of the pneumonia:

> *Although* the pneumonia could have developed during the one day in the hospital when the child was comatose on the ventilator, the exuberant, acute inflammatory exudate contained some macrophages, which are inflammatory cells that increase in the subacute phase, which is *consistent with the pneumonia having predated, and contributed to, the respiratory distress reported in association with the collapse and admission to the hospital*.

(PCR3. 136) (emphasis added) (see AB at 29). Also, the diagnosis of pre-admission pneumonia does not ignore the head injuries suffered by C.C. and, at an evidentiary hearing and new trial, would be explained by the evidence introduced in postconviction. (AB at 30-32). For example, there are multiple instances in the trial record which mention or refer to Mr. Davis dropping C.C. in the shower in his attempt to revitalize her. (T. 666-67, 724-26, 765, 845-48, 913-20, 934-35, 938). Dr. Ophoven's report is clear that drops from a short fall can cause fatal injuries. (PCR3. 155-84). Additionally, the medical intervention from C.C.'s admission to the hospital was invasive and required an intercranial pressure monitor to be inserted into her skull. (PCR3. 209). Prior to her admission, C.C. was in

cardiac arrest, which her mother Gwen Cunningham had stated she herself would periodically go into. (PCR3. 209, 212). Upon arrival to the home, Rescue had to start CPR and intubate C.C. (PCR. 209).

The State repeatedly referred to the blood found in the home and "exuding" from C.C.'s vagina. (AB at 32). However, there is no indication in the record that C.C. was bleeding from a wound in her genital area prior to admission. Dr. Hariton's report indicates that C.C. could have been injured from the insertion of the Foley catheter into her urethra as a result of medical intervention. (PCR3. 234). However, no laceration-like wound was ever found in regards to C.C.'s hymen or vaginal canal, and statements from Rescue indicate that they did not look closely at her genitals, nor was a genital injury found pre- or post-mortem. (PCR3. 225-28).[5] Furthermore, Mr. Davis has previously challenged the blood found on his clothes and has stated that the blood on his shorts came from Gwendolyn Cunningham, who had the same blood type as C.C. and had sexual intercourse with Mr. Davis that morning. (T. 510, 813-16).

[5] Dr. Hariton specifically related the hemorrhages found in the genital region as attributable to the "nurse holding labia open to facilitate the placing of the Foley catheter." (PCR3. 234).

Some of blood droplets found around the home were attributable to Ms. Cunningham and to one of her other children. Additionally, the circuit court and the State, in questioning the blood droplets, ignore testimony that Mr. Davis accidentally dropped C.C. in the shower. (T. 723-24; 920). The blood could be explained from that accidental drop, which Dr. Ophoven's report has shown could be the cause of serious injuries. Additionally, there was a twenty-minute period where C.C. was alone in the home with her actions unaccounted for. The State had argued at trial that C.C. was being physically abused and relied on the testimony of neighbor Janet Cotton to support that theory. Since then, Ms. Cotton has recanted her testimony regarding the noises she heard on the day C.C. was in cardiac arrest and admitted to the hospital. At a new trial, the State will not be allowed to rely on Ms. Cotton's timeline of events, and there would be a twenty-minute period where C.C.'s actions were unaccounted for. C.C.'s mother had also previously noted that C.C. would scratch herself, and the autopsy report noted that C.C. had small scars on her face by her eyes and nose. (PCR3. 82, 355-56, 358).

Mr. Davis has already provided this Court with additional facts developed in postconviction that rebut or undercut the facts the State relies on in its Answer. (IB at 30-40). For brevity, Mr. Davis made additional clarifications herein, but relies on his Initial Brief and the facts incorporated from Issue 1.

The State reviewed the evidence that came out at trial and in postconviction in isolation and failed to analyze what effect each piece of evidence, together with the presentation of C.C.'s pre-admission pneumonia, would have in front of a jury. The evidence would paint a picture of C.C. as a sick child in a home that was not taken care of, left alone for a period of time in which she developed cardiac arrest, an affliction that her mother had a history of suffering from, and that C.C. fell into respiratory distress as a result of contracting pneumonia as a two-year old child.

This claim requires factual determinations, and in order to properly assess the claim, an evidentiary hearing was required in order for the circuit court to analyze the newly discovered evidence of pre-admission pneumonia cumulatively with facts that would be admissible at a retrial. Mr. Davis requests this Court remand his case for an evidentiary hearing in order for the circuit court to analyze the

claim with the facts alleged in his postconviction motion, as well as the evidence developed in his prior postconviction proceedings that support his innocence.

CONCLUSION AND RELIEF SOUGHT

Mr. Davis 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 by electronic service to Leslie Campbell, Assistant Attorney General, (capapp@myfloridalegal.com; Leslie.Campbell@myfloridalegal.com), and Sheila Loizos, Assistant State Attorney (SLoizos@coj.net), on this date, December 3, 2024.

/s/ Alice Copek

_____

ALICE COPEK
Asst. CCRC – North
Florida Bar Number 25475
1004 DeSoto Park Drive
Tallahassee, FL 32301
850-487-0922 x. 129
Alice.Copek@ccrc-north.org

CERTIFICATE OF COMPLIANCE

This is to certify that the Reply Brief of Appellant was generated in Bookman Old, 14-point font and is at or under 25 pages, excluding certificates, pursuant to Fla. R. App. P. 9.100 and 9.210.

/s/ Alice Copek

_____

ALICE COPEK
Asst. CCRC – North
Florida Bar Number 25475