IN THE SUPREME COURT OF FLORIDA

CASE NO. SC 13-2092

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR SEMINOLE COUNTY, STATE OF FLORIDA

APPELLANT'S SUPPLEMENTAL BRIEF

Maria E. DeLiberato
Assistant CCRC
Florida Bar No. 664251
Julissa R. Fontan
Assistant CCRC
Florida Bar No. 32744
CAPITAL COLLATERAL REGIONAL COUNSEL
3801 Corporex Park Drive, Ste 210
Tampa, FL 33619
(813) 740-3544
deliberato@ccmr.state.fl.us
fontan@ccmr.state.fl.us

Marie-Louise Samuels Parmer
Florida Bar No. 0005584
THE SAMUELS PARMER LAW FIRM
P.O. Box 18988
Tampa, FL 33679
(813) 732-3321
marie@samuelsparmerlaw.com

Kevin C. Newsom
Lindsey C Boney IV
Ashley B. Burkett
BRADLEY ARANT BOULT CUMMINGS LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203-2119
(205) 521-8000
knewsom@babc.com
lboney@babc.com
aburkett@babc.com
Admitted Pro Hac Vice

Nina Morrison
INNOCENCE PROJECT
40 Worth Street, Suite 701
New York, NY 10013
(212) 364-5340
nmorrison@innocenceproject.org
Admitted Pro Hac Vice

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PRELIMINARY STATEMENT

This appeal returns to the Court following relinquishment proceedings in the Circuit Court of Seminole County to consider new evidence that Clemente Javier Aguirre-Jarquin is innocent of the murders of Cheryl Williams and Carol Bareis, for which he has been condemned to death. At the relinquishment evidentiary hearing in the circuit court, three witnesses who have no connection to Aguirre testified that the victims' daughter/granddaughter, Samantha Williams, has admitted on three separate occasions that she "killed [her] mother and grandmother."

* * *

Even before this Court relinquished jurisdiction, Aguirre already could point to an array of newly discovered evidence that sufficiently "weakens the case against [him] so as to give rise to a reasonable doubt as to his culpability" and the need for a new trial. *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998). New, unchallenged forensic evidence shows, for example, that Aguirre's clothes could not have been worn by the person who stabbed the victims to death. *See* Initial Br. 33–38. DNA results from previously untested bloodstains taken from the crime scene reveal ***none*** of Aguirre's DNA, and show Samantha Williams's DNA within inches of the victims' blood in ***eight*** high-traffic locations throughout the scene. *See id.* at 23–25. Other new evidence strongly suggests that Samantha is the true killer—evidence ranging from records about Samantha's life, her history of mental illness, and a

troubled relationship with her mother, to testimony that she told a friend, while pantomiming a stabbing motion, that "demons in her head" caused her to kill her mother and grandmother. *See id.* at 25–33. Those facts, even standing alone, "change[] the entire character of the case" and form a post-conviction record that more clearly demands retrial than either of the recent cases in which this Court has vacated the convictions and sentences of other capital defendants. *Hildwin v. State*, 141 So. 3d 1178, 1193 (Fla. 2014) (holding that new DNA results identifying a third party—and excluding the defendant—demanded a new trial); *see also Swafford v. State*, 125 So. 3d 760, 762, 778 (Fla. 2013) (holding that new forensic evidence demanded a new trial); Initial Br. 43–60; Reply Br. 3–20.

But the newest chilling revelations about Samantha cement the conclusion that at a retrial of Aguirre, the jury would "probably [reach] an acquittal." *Jones*, 709 So. 2d at 514. At the relinquishment hearing, two of Samantha's former neighbors and another witness testified unequivocally that, on three separate occasions—all during the time in which DNA testing was underway to determine the killer's identity—Samantha told them that she had "killed [her] grandmother and her mother." Indeed, everyone agrees that these witnesses "heard Samantha Williams admit to committing the murders." SR2:436.[1]

[1] Citations to the record follow the form used in the earlier briefing—*i.e.*, "R[#]" refers to the volume number within the post-conviction record on appeal, and

With these new, uncontested admissions, Aguirre—who, since his arrest, has consistently maintained his innocence—can now point to ***seven*** instances in which Samantha Williams has either flatly admitted or otherwise intimated that she committed these crimes. Those admissions alone would lead any reasonable jury to question Aguirre's guilt, even independent of the new forensic evidence or the new DNA results that reveal Samantha's blood—and *not a drop* of Aguirre's—at the crime scene. Of course, Aguirre indisputably does not bear the burden to prove that Samantha committed these murders, but all of this new evidence taken together is more than enough to create reasonable doubt as to Aguirre's guilt, particularly in a "circumstantial evidence case" like this one. *Aguirre-Jarquin v. State*, 9 So. 3d 593, 606 (Fla. 2009); *see also, e.g.*, *Hodgkins v. State*, __ So. 3d __, No. SC13-1004 (Fla. June 18, 2015) (reversing conviction and death sentence on direct appeal, and remanding for entry of judgment of acquittal based on insufficient evidence, even though evidence showed defendant's DNA under the victim's fingernails).

For the reasons explained below and in detail in Aguirre's earlier briefs in this appeal, this Court should vacate Aguirre's convictions and sentences, and remand for a new trial.[2]

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numbers that follow colons in the record citations are page references. Accordingly, "SR2:436" refers to page 436 of volume 2 of the supplemental record on appeal.

[2] As directed by the Court's supplemental briefing order, this brief is limited to the issues arising out of the relinquishment proceedings. But, to be clear, Aguirre is due

RELINQUISHMENT-PROCEEDING FACTS

I. PROCEDURAL BACKGROUND

The circuit court has held three evidentiary hearings related to Aguirre's post-conviction motions. The first, held in March 2012, dealt with issues related to Aguirre's ineffective assistance of counsel during the penalty phase of his trial. The second took place in May 2013. That hearing spanned seven full court days and dealt with issues related to the guilt phase of Aguirre's trial, as well as his innocence claim, which Aguirre raised in an amended motion after DNA results came back showing the absence of his DNA at the crime scene and the presence of Samantha Williams's DNA instead.

The May 2013 hearing was lengthy: 25 witnesses testified, and the parties introduced 179 exhibits. On the afternoon of May 13, 2013—the hearing's first day—a woman named Marianne Laravuso called the Tampa offices of Aguirre's post-conviction counsel, Capital Collateral Regional Counsel-Middle Region ("CCRC") saying that she had information regarding the case. SR1:155 ¶ 5. Aguirre's legal team was in court, but the CCRC secretary relayed the message. *Id.* The CCRC investigator assigned to Aguirre's case, Pollyanna Mailhot, also was at the evidentiary hearing, but she returned Laravuso's call later that week. *Id.* ¶¶ 4, 8.

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a new trial for other reasons already explained in the earlier briefing, including that he received ineffective assistance of counsel from his appointed trial lawyers. *See* Initial Br. 61–100; Reply Br. 20–35.

It was then that she learned for the first time that Samantha Williams told Laravuso, along with Laravuso's daughter, Christine Laravuso, and boyfriend, Michael Bowman, that she had killed Cheryl Williams and Carol Bareis. *Id.* ¶¶ 7–10, 12. Mailhot also spoke to Christine and Bowman by phone later that week (*id.* ¶ 11), but neither she nor Aguirre's counsel was able to formally interview any of the witnesses before the evidentiary hearing ended on May 21, 2013.[3]

After the circuit court denied Aguirre's Third Amended Motion for a new trial and Aguirre appealed to this Court, Aguirre's counsel met with the Laravusos and Bowman to investigate their claims. SR3:531. Those witnesses later provided affidavits stating that Samantha Williams admitted to them that she had "killed her mother and grandmother." SR1:48–49, 55–56, 58–59. On May 13, 2014, Aguirre filed a successive motion pursuant to Rule 3.851 based on these affidavits, and the State conceded the need for an evidentiary hearing. SR1:120. Aguirre then moved this Court to relinquish jurisdiction to allow the circuit court to hear testimony from the new witnesses. The Court granted the motion, and the circuit court held its third evidentiary hearing on May 22, 2015.

[3] Because some of the relevant individuals share last names—*e.g.*, Cheryl and Samantha Williams, Marianne and Christine Laravuso—we refer to these individuals by their first names for the sake of clarity.

II. THE MAY 22, 2015 EVIDENTIARY HEARING

At the May 2015 hearing, the Laravusos and Bowman—none of whom had ever met Aguirre or the victims—testified regarding three separate occasions in which Samantha Williams unambiguously admitted to them that she killed her mother and grandmother.

A. Testimony of Christine Laravuso

Christine Laravuso was one of Samantha's former neighbors on Vagabond Way, located in an area known as "Mobile Manor," where the murders occurred. She testified that on Friday morning, March 23, 2012, she was "barbequing" with some of her neighbors on Vagabond, just a few houses away from where Samantha was living at the time. Shortly after Christine arrived at the barbeque, Samantha approached the group and stopped to talk. SR3:521. Samantha later attempted to drink directly from a liquor bottle, but Christine stopped her from doing so. SR3:524. Christine testified that this interaction prompted Samantha to tell her—in no uncertain terms—that she had "killed [her] grandmother and mother":

> She – that's when she started yelling. She's like nobody likes me, I can't even come over here, nobody likes me, she doesn't know I'm evil and I'm crazy and, that's when everybody else was like, what's wrong with her; and she just started yelling how she was crazy, nobody likes her and then she – like her entire demeanor changed completely from what it was before, and that's when she *stated that she had killed her grandmother and her mother*. And she walked off – I don't know what she was saying as she walked off, I couldn't really say, but she walked off yelling and screaming and mumble jumbling . . . .

SR3:525 (emphasis added). Christine plainly understood Samantha say that she had killed Carol Bareis and Cheryl Williams. She confirmed that Samantha's "exact words" were, "I'm crazy, I'm evil, and I killed my grandmother and my mother." SR3:526. And Christine believed that the stunning admission was true because Samantha had a "very serious" demeanor when she said it. *Id*. The State did not object to any of Christine's testimony about Samantha's statements.

The circuit court examined Christine and asked whether Samantha's statement may have been Samantha merely blaming herself for failing to prevent the murders, or whether she in fact had admitted to killing them herself. Christine unequivocally reaffirmed that it was the latter:

> THE COURT: [Y]ou said she said I killed my grandma and mother. Did she actually say I killed my grandma and mother or did she say it was my fault my grandmother and mother were killed? Or *what were her exact words*?
>
> MS. C. LARAVUSO: Her exact words, I killed my mother and grandmother.

SR3:548 (emphasis added).

A few hours after Samantha left the barbeque, Seminole County Sheriff's Office Deputy Marlene Freebern arrested Samantha for disorderly intoxication. Deputy Freebern testified that she had been dispatched to Vagabond Way on the morning of March 23, 2012, because Samantha had been accused of throwing a cooler and a wooden plaque at her residence, causing a broken window. Deputy

Freebern also was investigating allegations that Samantha had been violent toward her disabled father's caretaker. SR3:503–05. Christine testified that, although she witnessed the arrest, she did not tell Deputy Freebern about Samantha's statement because she had been afraid of Samantha and believed that Samantha would be released quickly. SR3:529–30. Christine did explain, however, that if Deputy Freebern had approached with questions, she would have reported Samantha's statement. SR3:531.

B. Testimony of Marianne Laravuso and Michael Bowman

Another of Samantha's former neighbors, Marianne Laravuso, and her boyfriend, Michael Bowman, testified regarding two separate instances in which Samantha stated that she killed her mother and grandmother.

1. On a weekend in July 2012, Marianne and Bowman were preparing to camp out in the front yard at Marianne's Vagabond Way residence. SR3:558, 584. They had started a campfire and were sitting on the tailgate of a truck parked in the driveway when Samantha approached and asked whether she could stay and have a beer. SR3:584–86. Bowman quickly agreed. *Id.*; SR3:559–60. Marianne knew Samantha from the neighborhood and would have preferred that she not join them, but Marianne did not object strongly because she "give[s] everybody the benefit of the doubt." SR3:596.

About an hour after Samantha arrived, Marianne asked her to leave. Marianne and Bowman both testified that, at that point, Samantha got upset. Samantha told them that she "wasn't afraid" of them and then abruptly stated—clearly and in these "exact words"—"I killed my mom and grandma." SR3:558–59.[4] The admission "shocked" Marianne and Bowman; they both believed that Samantha meant what she said. SR3:589; *see also* SR3:563. At that point, it became "time for her to go." SR3:589. Marianne again asked her to leave, and this time, Samantha left. *Id.*

A few hours later, after Marianne and Bowman were in their tent for the night, Samantha came back by the house. She was standing by the fire, carrying a duffel bag, and this time, she appeared to Marianne to have been drinking heavily. SR3:590–91. Marianne immediately told her to leave, and at that point, Samantha got "[v]ery nasty, mean, and again, she repeated herself, she said I'm not afraid of nobody, I'm not afraid of you, I killed my mom and grandma." SR3:590.[5] Samantha then left and did not return.

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[4] *See also* SR3:576 (Michael Bowman) ("Q. When Samantha made those statements, what did she say about her mother and grandmother, what were her exact words about that? A. She said she killed her mother and her grandmother. Q. And she used the word killed? A. Ye[s].").

[5] *See also* SR3:562 (Michael Bowman) ("Q. Okay. And the second time what happened when you told her to leave? When Marianne told her to leave. A. She said I'm not afraid of you, I killed my mother and my grandmother . . . .").

2. A few months later, Marianne exited her house and saw Samantha standing in her yard. When she confronted Samantha and asked her to leave, Samantha responded, "I'm not afraid of you guys . . . I killed my mom, I killed my grandmother." SR3:591–92. Marianne testified that she believed that what Samantha was saying was true and that it seemed to her to be a "threat," like Samantha was "giving [her] a warning or something." SR3:592.

Marianne never called the police about either of these incidents because she feared that coming forward could have placed her and her family in danger. SR3:592–93. Now, she testified, she and her family have moved away from Vagabond Way and no longer are faced with the possibility of daily interaction with Samantha. *Id*.

* * *

So, in sum, all three witnesses testified that on three separate occasions, Samantha Williams told them that she had killed her mother and her grandmother. The witnesses were unequivocal that those were Samantha's "exact words" and that they believed that she meant it.

C. Testimony of Pollyanna Mailhot

The circuit court also heard brief testimony as to the timeliness of Aguirre's successive motion. Pollyanna Mailhot, the CCRC investigator on Aguirre's legal team, testified pursuant to an agreement between Aguirre and the State, in which the

State stipulated that Aguirre's legal team did not become aware of these three witnesses or the facts underlying their testimony until the week of May 13, 2013. SR2:346. After a few questions, the State objected to Mailhot's testimony as irrelevant and clarified that it was "not attacking diligence, we're attacking timeliness" and explained that its argument was "they knew about [these witnesses] during the [May 2013] hearing and they did not present it." SR3:616; *see also* SR3:613–14. Because all agreed that Aguirre's legal team acted diligently and filed the successive motion within one year of discovering these witnesses, the court concluded that Mailhot's testimony was unnecessary. SR3:620; *see also* SR2:436.

III. THE STATE'S LATE-FILED WRITTEN CLOSING ARGUMENT RAISES NEW ARGUMENTS

The circuit court ordered the parties to simultaneously file written closing arguments (SR3:625), but the State filed its closing the morning after receiving Aguirre's. In its late-filed written closing, the State argued for the first time (i) that Aguirre engaged in an "abuse of procedure" by "failing to raise this claim"—*i.e.*, identify the three new witnesses—"while Aguirre's original motion for postconviction relief was pending" (SR2:383–87),[6] and (ii) that Samantha's "third-party confessions would not even be admissible under Florida law if Aguirre was

[6] *See also id.* at SR2:393–94 ("Aguirre's Initial Motion constitutes an abuse of procedure warranting dismissal, particularly where Aguirre was aware of these confessions while testimony in support of his Initial Motion was still being heard.").

granted a new trial" (SR2:390–93). The State also requested, in light of the fact that Samantha "could possibly continue making false confessions about her mother's and grandmother's deaths in the future," that the circuit court "caution Aguirre" that it would "summarily deny any further successive motions based solely on the discovery of any other *generic or non-specific* confessions made by Williams." SR2:386–87; *see also* SR2:394. Aguirre sought—but the court denied—leave to file a reply to these new arguments. SR2:397–402.

IV. THE CIRCUIT COURT DENIES RELIEF

The circuit court denied Aguirre's successive motion on the basis of several alternative holdings. It first denied relief on procedural grounds, holding that Aguirre had engaged in an "abuse of process" by not filing his successive 3.851 motion during the pendency of the May 2013 evidentiary hearing, even though Aguirre indisputably filed within a year of learning of the new evidence. *See* SR2:436–39. The circuit court also held that Samantha's new admissions would be inadmissible hearsay at a new trial (SR2:439–44), and that they "are not likely to produce an acquittal" on retrial in any event (SR2:444). Notably, the court did *not* find that the witnesses lacked credibility, nor did it conclude that Samantha did not make these statements; indeed, the court's merits ruling rested chiefly on its own interpretation of what Samantha may have meant. SR2:444 ("Samantha Williams' statements are more likely attempts to frighten individuals who had upset her than

true confessions to the crimes."). Aguirre timely filed his notice of appeal, and the case returned to this Court.

SUMMARY OF THE ARGUMENT

Each of the circuit court's three bases for denying Aguirre's successive 3.851 motion fails to withstand scrutiny. ***First***, Samantha's new admissions—coupled with all the other evidence developed on post-conviction review—provide more than enough evidence for a jury "to reasonabl[y] doubt . . . [Aguirre's] culpability." *Hildwin*, 141 So. 3d at 1185. The court usurped a retrial jury's role by holding otherwise. ***Second***, the State has waived any argument that the new witnesses' testimony would be inadmissible hearsay, but the new admissions are admissible under *Chambers v. Mississippi*, 410 U.S. 284 (1973), in any event. ***Third***, the court misapplied the law by crediting the State's new (and waived) argument that Aguirre engaged in an "abuse of process," even though all agree that Aguirre filed his successive motion within the one-year limitations period after discovering the new witnesses.

This Court should vacate Aguirre's convictions and sentences, and remand for a new trial.

ARGUMENT

I. SAMANTHA'S NEW ADMISSIONS, COUPLED WITH ALL OF THE OTHER NEWLY DISCOVERED EVIDENCE, CREATES REASONABLE DOUBT ABOUT AGUIRRE'S GUILT.

This Court should set aside Aguirre's conviction because the newly discovered evidence in this case meets both of the *Jones* requirements for a new trial. The State concedes that all of the post-conviction evidence is "newly discovered." *Jones*, 709 So. 2d at 521; *see* SR2:439 ("[T]he State conceded that the evidence was newly discovered."); *cf.* Reply Br. 3. The only question is whether Samantha's three chilling new admissions that she "killed [her] mother and grandmother"—particularly when considered with all of the other newly discovered evidence, including (i) new forensic evidence, (ii) the DNA results, (iii) Samantha's previous admissions, and (iv) the newly discovered details about her life—call into serious question the reliability of Aguirre's conviction and so "weaken[] the case against" Aguirre that a new jury would have "reasonable doubt as to his culpability." *Hildwin*, 141 So. 3d at 1181 (internal quotation marks omitted); *see also Jones*, 709 So. 2d at 521 (requiring court to "consider all newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered evidence and the evidence which was introduced at trial"); *Swafford*, 125 So. 3d at 778. In light of all of the newly discovered evidence in this case, and this Court's recent decisions in *Hildwin* and *Swafford*, that answer is unmistakably yes.

Although Aguirre had made a sufficient showing to meet the *Jones* standard even before the relinquishment proceedings, now the evidence is overwhelming:

- Samantha now has ***admitted unequivocally, on five separate occasions,*** that she killed her mother and grandmother:
  - New testimony from Samantha's former neighbors reveals that Samantha told them unequivocally, ***in three separate instances***, that she "killed [her] mother and grandmother." *See supra*.
  - Twice in 2010, Samantha told her friend Nichole Casey that "the demons in her head . . . [m]ade her kill" her mother and grandmother. Samantha was crying and making "a stabbing motion towards her chest" while she made one of those statements. *See* Initial Br. 27–28.
- New DNA test results from 150 previously untested bloodstains show ***none*** of Aguirre's DNA at the crime scene. *See id.* at 23–25.
- New, unrebutted forensic expert testimony guts the State's trial theory that the bloodstains on Aguirre's shorts were caused "through motion" and that Aguirre could not have moved the victims' bodies, as he testified. *See id.* at 33–38.
- Other evidence developed on post-conviction review strongly points toward Samantha Williams as a viable alternative suspect:
  - The DNA results reveal Samantha's blood in ***eight*** high-traffic locations at the crime scene, within inches of the victims' blood. *See id.* at 23–25.
  - New evidence reveals a potential motive for Samantha to kill her mother. *See id.* at 25–33.
  - In the years immediately after the murders, Samantha twice intimated that she had killed her mother and grandmother, saying that she was "responsible" for their deaths and that they "died from me." *See id.* at 28–29.

Samantha's most recent admissions are significant because they cannot reasonably be interpreted "as expressions of survivor's guilt," as the circuit court previously (and erroneously) read Samantha's earlier statements. R12:2221; *see also* Initial Br. 57–59. In each instance, Samantha's neighbors heard her state unequivocally and unambiguously that she had "killed [her] mother and grandmother," and they unquestionably believed her because she appeared "very serious" when she said it.

All of this evidence makes Aguirre's claim to a new trial even more compelling than in *Hildwin* and *Swafford*. In *Hildwin*, this Court held that "newly discovered evidence that identifies the donor of DNA left at the crime scene"—*i.e.*, someone other than the defendant—"compels that a new trial be granted." *Hildwin*, 141 So. 3d at 1180. There, as here, the "uncontradicted" new DNA results tended to exculpate the defendant and inculpate a third person who lived with the victim. *Id.* at 1188. The Court found that DNA evidence "significant" enough to allow a jury "to decide between two suspicious people." *Id.* at 1192. The Court reached that conclusion despite the presence of other thorny evidence—*i.e.*, that the defendant had a motive, had confessed to the crime, and had stolen from the victims (*see id.* at 1191–92)—the likes of which would not be present at Aguirre's retrial.

On post-conviction review in *Swafford*, the defendant, like Aguirre here, based his claims on both new, exculpatory forensic evidence, as well as new

testimonial evidence that pointed toward "another viable suspect," about whose potential culpability the "jury [had] never heard." 125 So. 3d at 762. This Court granted relief, holding that the new forensic tests showing the absence of seminal fluid in the victim, together with "the evidence as to the new suspect," "completely change[d] the character" of the State's evidence and warranted a new trial. *Id.* at 768, 778. Aguirre has that and more. In *Swafford*, only the testimonial evidence pointed to a new suspect—the forensic evidence tended only to exculpate the defendant, not to inculpate another. Here, *both* new forensic *and* testimonial evidence tend to incriminate someone else. And the new testimonial evidence is much more telling here: Samantha Williams was a critical witness for the State at trial, but Aguirre's jury did not know that she was mentally unstable, that she had a history of violence toward her mother, that her blood was at the crime scene, or that she now has flatly admitted numerous times that she, in fact, committed these crimes.

The new evidentiary picture is particularly compelling given that the State's case against Aguirre was purely "circumstantial." *Aguirre-Jarquin*, 9 So. 3d at 606. As explained in the initial brief (*see* Initial Br. 6, 50–52), Aguirre need not prove in this appeal that his conviction was based on insufficient evidence, but the fact that the State had only a circumstantial case against Aguirre is significant because the State will now be able to give a new jury "nothing stronger than a suspicion" from which to infer Aguirre's guilt. *Ballard v. State*, 923 So. 2d 475, 482 (Fla. 2006).

Samantha's three new admissions drive that point home, as does this Court's recent direct-appeal decision in *Hodgkins v. State*, __ So. 3d __, No. SC13-1004 (Fla. June 18, 2015), which post-dates the earlier briefing in this appeal. In *Hodgkins*, this Court reversed a conviction and death sentence in a case in which the evidence at trial showed that the defendant had lied about his last contact with the victim and "his DNA was detected within scrapings collected from [the victim's] left fingernail." *Hodgkins*, slip op. at 12. That evidence was insufficient for conviction because it left "unrefuted the possibility that [the defendant] was merely one of the last persons to make contact with [the victim] but the only one to leave detectable forensic evidence." *Id.* at 18. In light of *Hodgkins*, as well as the recent *Dausch* decision, it would be exceedingly difficult for the State to show on retrial that the facts in this case are "inconsistent with [Aguirre's] innocence" and to prove "to a reasonable and moral certainty that [Aguirre] and no one else committed the offense charged." *Dausch v. State*, 141 So. 3d 513, 517 (Fla. 2014); *see also Ballard*, 923 So. 2d at 486 (evidence must exclude "all other inferences" than guilt); Initial Br. 50–52. Because the State's already-tenuous theory has been so seriously undercut—and because there is no credible evidence that is inconsistent with Aguirre's innocence—an acquittal is at least "probable" under the *Jones* standard.

Despite this compelling new evidence and indisputably credible testimony of the most recent witnesses to Samantha's admissions, the circuit court again

erroneously concluded that the new evidence is "not likely to produce an acquittal." SR2:444. Both of the court's justifications for that holding fail.

1. Just as with Samantha's previous admissions, the circuit court improperly usurped the jury's role and discounted Samantha's new admissions as "more likely attempts to frighten individuals who had upset her than true confessions to the crimes." *Id.*; *see also* R12:2221 (concluding that Samantha's previous admissions "can more readily be interpreted as expressions of survivor's guilt"); *cf.* Reply Br. 17–18. It is quintessentially a jury's role to resolve "[q]uestions surrounding the materiality of the evidence and the weight to be given such evidence." *Hildwin*, 141 So. 3d at 1187. Samantha Williams has said numerous times that she killed her mother and grandmother; the Laravusos believed her, the State postulates that there is another explanation, and Samantha "would presumably be available to testify at a new trial" and have her credibility tested. SR2:443. A jury should be given the chance to hear all of that evidence and weigh the parties' competing interpretations of Samantha's statements.[7]

[7] Samantha's statements would be admissible as statements against interest, even if she is available to testify on retrial. *See Bearden v. State*, 161 So. 3d 1257, 1265–66 (Fla. 2015) ("'[A] trial judge may be required to admit a third-party confession under constitutional principles [*i.e.*, *Chambers v. Mississippi*, 410 U.S. 284 (1973)], even if it does not qualify as a declaration against penal interest under [Fla. Stat. § 90.804(2)(c)].'" (quoting *Curtis v. State*, 876 So. 2d 13, 20–21 (Fla. 1st DCA 2004))); *see also infra* Part II.

2. The circuit court fell back onto its reasoning that Samantha has a "solid alibi" (R12:2175, 2181), and concluded that "none of the evidence presented at the prior evidentiary hearing provided a more detailed alibi than presented at the Defendant's trial." SR2:444. First, to the extent that the court was criticizing Aguirre's alibi, that is a red herring. The State never proved at trial an exact time of death, and Aguirre has always maintained that he found the victims' bodies. *See* Initial Br. 10–11, 17–19. Moreover, to be clear, at this stage Aguirre need only point to new evidence that is so significant that it would cause a new jury to harbor "reasonable doubt as to his culpability," *Hildwin*, 141 So. 3d at 1181, and he has certainly done that. But, as explained before (*see* Initial Br. 53–55), there is not competent, substantial evidence to support a finding that Samantha had a "solid alibi"—indeed, the record shows only minimal evidence that might plausibly qualify as an alibi—and a jury must decide whether the "alibi" evidence trumps Aguirre's new forensic, DNA, and testimonial evidence in any event.[8]

[8] Samantha's boyfriend, Mark Van Sandt, is the only witness who has corroborated Samantha's story that she was asleep at Van Sandt's parents' house during the murders. Setting aside the fact that Van Sandt has an obvious interest in protecting Samantha—and the fact that he and Samantha have told inconsistent stories—Van Sandt has admitted that he was "dead to the world" asleep during most of the night before the victims' bodies were discovered and that Samantha had previously snuck out at night without his knowledge. *See* Initial Br. 54–55.

* * *

Based on all of the evidence that is now available, there is but one conclusion: a new jury would "probably [reach] an acquittal on retrial." *Jones*, 709 So. 2d at 514. Because Aguirre's new evidence so "completely changes the character" of the State's circumstantial-evidence case against him, *Swafford*, 125 So. 3d at 778, this Court should vacate Aguirre's convictions and sentences, and remand for a new trial.

II. SAMANTHA WILLIAMS'S NEW ADMISSIONS WOULD BE ADMISSIBLE EVIDENCE IN A NEW TRIAL.

The circuit court alternatively held that Samantha's new admissions would be inadmissible at a retrial, even though the State never objected to the Laravusos or Bowman testifying about those statements. In any event, under *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973), a defendant has a right to present evidence of a third party's admissions of guilt if those statements are made under circumstances providing "persuasive assurances of trustworthiness." Samantha's most recent admissions meet that standard, and due process requires their admission as evidence at a new trial.

A. The State Has Waived Any Objection To The Admissibility Of These Statements.

This Court need not even reach the question of admissibility because the State conceded the need for an evidentiary hearing and did not make a contemporaneous hearsay objection at the May 2015 hearing. The State waited until its written closing

argument to say anything about hearsay with regard to the relevant testimony, but that was too late. *See, e.g.*, *Rodriguez v. State*, 919 So. 2d 1252, 1286 (Fla. 2005) ("In order to preserve an issue regarding the admissibility of evidence, a defendant must make a contemporaneous objection when the evidence is admitted.").

B. Samantha Williams's Newest Admissions Are Admissible Under *Chambers* And Its Progeny.

Waiver aside, the circuit court erred by concluding that Samantha's newest admissions would be inadmissible hearsay at retrial. Under *Chambers*, criminal defendants may introduce third-party admissions of guilt that bear "persuasive assurances of trustworthiness"—even if that evidence would otherwise be excluded as hearsay—when their exclusion would deny "the defendant a trial in accordance with due process standards." *Jones*, 709 So. 2d at 525; *see also Bearden*, 161 So. 3d at 1265 n.3 ("*Chambers* does not necessarily establish an immutable checklist of four requirements. Instead, the primary consideration in determining admissibility is whether the statement bears sufficient indicia of reliability." (internal quotation marks omitted)).

The circuit court offered five justifications for excluding Samantha's statements, but it fundamentally misapplied the *Chambers* standard, particularly in light of this Court's recent decision in *Bearden*, which the circuit court failed to cite.[9]

[9] Indeed, the circuit court relied on the now-overturned decision of the Second District Court of Appeal in *Bearden*, 62 So. 3d 656. *See* SR2:443.

1. The circuit court discounted Samantha's statements because she made them "eight years after the murders" (SR2:443), but *Chambers* embodies no rigid temporal requirement. *See, e.g.*, *Bearden*, 161 So. 3d at 1265 n.3. *Chambers* requires "persuasive assurances of trustworthiness," and the timing of Samantha's new admissions to witnesses with no connection to Aguirre certainly provides that—she made these statements in spring and summer 2012, when DNA collection and testing were underway to determine the killer's identity. *See* R3:552–58; R7:1216–40; R11:1925–77; R29:3231.

2. The circuit court also discounted Samantha's statements because she made them to individuals who were "no more than nodding acquaintances" and not "close to" her. SR2:443; *see also* SR3:546–47 (trying to clarify that Christine Laravuso "never hung out with Samantha"). It seems that the court would require a close personal friendship between the declarant and witness, but *Chambers* requires no such relationship, as evidenced by *Bearden*. In *Bearden*, this Court held that a third party's out-of-court confession was admissible under *Chambers* through a witness who knew the declarant's *family* and had an "off and on" "dating relationship with [the declarant]'s *cousin*." *Bearden*, 161 So. 3d at 1261 (emphasis added). Here, the Laravusos were Samantha's neighbors—Christine testified that she knew Samantha "well" (SR3:513–14), and Marianne testified that Samantha "lived a couple of doors down from me," and that she had encountered Samantha a "few

times" around the neighborhood (SR3:583). Those are sufficient relationships to make the testimony reliable, which is the *Chambers* touchstone. They are at least as close as the relationship between the *Bearden* declarant and witness, who merely had an "off and on" dating relationship with the declarant's cousin.[10]

3. The circuit court—relying on the now-overturned decision of the Second District Court of Appeals in *Bearden*—concluded that the statements lacked reliability because the "the only evidence offered to corroborate Samantha Williams' alleged confession is the presence of her DNA in her home." SR2:443; *see also* R12:2221 ("The only evidence offered to corroborate [Samantha's] alleged confession was her DNA . . . ."). That reasoning clearly fails under this Court's decision in *Bearden*. There, the court of appeals initially had concluded that a third-party confession was inadmissible because "there [was] nothing *other than* [the defendant]'s self-serving statements to the detectives before his arrest" to corroborate the new testimony. *Bearden*, 161 So. 2d at 1266. But this Court reversed, reasoning that *Chambers* merely requires "some other evidence" to corroborate the statement. *Id.* That is the case here. Even the circuit court recognized that there is "some other evidence" to corroborate Samantha's new

[10] This Court decided *Bearden* in April 2015, after Aguirre filed his previous briefs in this appeal. *Bearden* is entirely consistent with Aguirre's previous arguments about admissibility under *Chambers*, which addressed the State's hearsay objection to other admissions by Samantha, and indeed makes those arguments all the more compelling. *See* Initial Br. 56–59.

admissions—her DNA was found in eight crime-scene bloodstains, inches away from the victims' blood. *See* SR2:443. If a defendant's own "self-serving" statement was enough to corroborate a third-party confession in *Bearden*, then the DNA evidence more than satisfies the corroboration requirement here.

4. Although the circuit court acknowledged that Samantha's admissions "were self-incriminatory," the court discounted that fact because the statements were not "detailed or specific." SR2:443. That analysis ignores, of course, that Samantha stated unequivocally that she "killed" her "mother and grandmother." And it also again ignores this Court's reaffirmation in *Bearden* that *Chambers* lacks a hard-and-fast specificity requirement. *See* 161 So. 3d at 1265 n.3. In fact, the statements at issue in *Bearden* were not particularly detailed—the declarant told the witness that his cousin had "gotten into a confrontation," "had an argument," and "stabbed the guy," and that he "was with his cousin when he did it." *Id.* at 1261. Those statements were admissible notwithstanding the trial court's observation that "any person in Polk County . . . could have surmised that information by reading the extensive press coverage on th[e] case." *Id.* at 1263, 1267–68. Samantha's statement that she killed two specific people—her mother and grandmother—is unquestionably against her interest and is plenty specific under *Chambers*.[11]

[11] One additional note about *Bearden* in light of the fact that it issued after Aguirre filed his previous briefs in this appeal. *See supra* n.10. Nichole Casey previously testified that Samantha admitted to her that "demons in her head" had "[m]ade her

5. Finally, the circuit court concluded that Samantha's admissions "lack trustworthiness" because they were made "after [Samantha was] cut off from alcohol, being told to leave or both," and "*appear to be* attempts by an unstable woman to frighten those who upset and reject her." SR2:443 (emphasis added). That also was error. The court made no adverse credibility finding as to these three new witnesses. If there is some question about whether Samantha "meant what she said," that is for a jury to decide. A jury must gauge whether third-party admissions "appear to be" truthful or whether they "appear to be" something else. *See Hildwin*, 141 So. 3d at 1187 ("Questions surrounding the materiality of the evidence and the weight to be given such evidence are for the jury.").

* * *

Samantha Williams's admissions—specifically, that she "killed [her] mother and grandmother"—satisfy the reliability standard under *Chambers v. Mississippi* and its progeny, and due process requires their admission on retrial.

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kill her mom . . . [a]nd her grandmother," and, on another occasion—while pantomiming "a stabbing motion towards her chest"—that "demons had made her . . . hurt her mom." Initial Br. 27–28. In its previous order denying Aguirre's Third Amended Motion, the circuit court discounted that testimony as "unclear" and "lack[ing] any specificity, detail, or corroboration." R12:2220–22. That ruling cannot stand after *Bearden*.

III. THE CIRCUIT COURT ERRED IN CONCLUDING THAT AGUIRRE'S SUCCESSIVE MOTION CONSTITUTES AN "ABUSE OF PROCESS."

The circuit court also adopted the State's argument that Aguirre engaged in an "abuse of process" (or "abuse of procedure") because his successive motion "could have been addressed during his original Rule 3.851 proceedings"—*i.e.*, during the May 2013 evidentiary hearing—even though the successive motion was "technically" timely filed. SR2:439; SR2:383–87. Neither the court nor the State has identified any prejudice that resulted from Aguirre filing his motion within the requisite one-year time limit, and there was none. The court's "abuse-of-process" ruling effectively rewrites the clear language of the one-year rule by artificially shortening Aguirre's time to file, even though the State waived this argument by not raising it before or at the evidentiary hearing.

A. As A Matter Of Law, Aguirre Did Not "Abuse Process" By Not Amending His Motion During The May 2013 Evidentiary Hearing.

There is no legal basis to support the circuit court's abuse-of-process holding. Most problematically, the court relied on a version of Florida Rule of Criminal Procedure 3.851(e)(2) that was not yet in existence when Aguirre's counsel first learned of these new witnesses in May 2013. The "abuse of procedure" language that is now in the rule became effective January 1, 2015. *See* SR2:437 (quoting version of FLA. R. CRIM. P. 3.851(e)(2) that "was amended effective January 1, 2015"); *see also In re Amendments*, 148 So. 3d 1171, 1182–83 (Fla. 2014). At the

time of the May 2013 evidentiary hearing, the rules contained no provision for "abuse of procedure" or "abuse of process." Accordingly, amended Rule 3.851(e)(2) cannot apply here to create an obligation on Aguirre's counsel at a time before the amendment came into effect.

Seemingly recognizing that inconsistency, the court attempted to show that the 2015 amendment merely "served to formalize and consolidate existing Florida Supreme Court jurisprudence" (SR2:437), but none of the decisions that the court cited is on point. Several stand for the unexceptional proposition that a successive motion must be based on newly discovered evidence. *See Moore v. State*, 820 So. 2d 199, 205–06 (Fla. 2002) (affirming decision to strike third amended motion because it contained no new claims or factual allegations); *Pope v. State*, 702 So. 2d 221, 223 (Fla. 1997) (affirming denial of successive motion because it did not allege "new or previously unknown evidence"); *Foster v State*, 614 So. 2d 455, 459 (Fla. 1992) (finding abuse of process where successive motion "failed to demonstrate or even allege that the facts could not have been known to him at the time of his earlier motions"). Still others involved the denial of successive motions based upon evidence that was either available to the defendant at the time of his trial, *see Lambrix v. State*, 124 So. 3d 890, 901–02 (Fla. 2013), or that became available more than a decade before the successive motion was filed, *see Ziegler v. State*, 632 So. 2d 48, 51 (Fla. 1993).

None of those decisions applies here. All agree (i) that these witnesses are "newly discovered," (ii) that Aguirre did not know—indeed, that he could not have known—about these witnesses until May 13, 2013, and (iii) that Aguirre filed his successive motion within the one-year time limit. SR3:619–20; *see also Clark v. State*, 35 So. 3d 880, 892 (Fla. 2010). Aguirre therefore did not abuse process by failing to raise this new evidence in his earlier motions or at the May 2013 hearing. *See Foster*, 614 So. 2d at 458 (explaining that a movant overcomes abuse of process by "alleg[ing] that the grounds asserted were not known and could not have been known to him *at the time of the earlier motion*" (emphasis in original)); *Moore*, 820 So. 2d at 205 (abuse of process applies "if there is no reason for failing to raise the issues *in the previous motion*" (emphasis added)).

Indeed, the Florida Rules of Criminal Procedure actually *forbade* Aguirre from amending his motion during the May 2013 hearing. Then-current Rule 3.851(f)(4) required defendants to file any amendments to post-conviction motions at least "30 days prior to the evidentiary hearing." FLA. R. CRIM. P. 3.851(f)(4) (2013); *see also, e.g., Doorbal v. State*, 983 So. 2d 464, 484 (Fla. 2008) (affirming denial of motion to amend filed 27 days before evidentiary hearing).[12] This Court's

[12] The circuit court tried to brush this rule aside, reasoning in a footnote that had Aguirre sought to amend his motion during the hearing, the court would have allowed it. *See* SR2:438 n.8 ("[D]enying the amendment pursuant to Rule 3.851(f)(4) would not have served the interests of justice or judicial economy.").

decision in *Lukehart v. State*, 70 So. 3d 503 (Fla. 2011), makes this very point. There, the circuit court had denied the defendant's motion to amend his pending post-conviction motion to include evidence that "did not surface until the evidentiary hearing." *Lukehart*, 70 So. 3d at 514. This Court affirmed and explained that the newly discovered evidence "may be properly raised in a successive motion for postconviction relief." *Id.* at 514–15. Just so here—the identity and possible testimony of these three new witnesses "did not surface until the evidentiary hearing," which, under the rules of criminal procedure, was too late for Aguirre to amend his motion.

In any event, the current one-year limitations period appropriately balances counsel's justified and legitimate interest in conducting a full investigation of potentially useful, newly discovered evidence before offering it in a signed pleading, with the need to have the evidence presented and evaluated by a court in a timely manner. *See In re Amendments*, 148 So. 3d at 1174–75 (declining to shorten the one-year limitations period for newly discovered evidence in light of the resources required for investigation). To adopt the circuit court's holding that Aguirre was required to accelerate his investigation and presentation of the evidence over and

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That *post-hoc* reasoning is disingenuous—Rule 3.851(f)(4) is non-discretionary and unequivocal.

above the clearly established limitations period would rewrite the rules and impose an exception that has never been recognized by this Court.

B. The State Has Waived Any Abuse-of-Process Argument.

Even setting aside the court's legal error, the State has waived any abuse-of-process argument. The State waited until its (late-filed) written closing argument to assert this theory, even though it had ample opportunity to assert it either in its response to the successive motion, or, at the very latest, at the case management conference. *See* FLA. R. CRIM. P. 3.851(f)(5)(B) ("At the Case Management Conference, the trial court shall also determine whether an evidentiary hearing should be held and hear argument on any purely legal claims not based on disputed facts.").

Despite the circuit court's conclusion to the contrary (SR2:436–37 & n.5), the State never raised an "abuse of process" or "abuse of procedure" challenge before or during the hearing. Instead, the State merely intimated at the hearing that "the Defense is untimely in their claim" because Aguirre's counsel did not notify the court of these witnesses during the May 2013 hearing. SR3:603; *see also* SR3:615 ("We're not attacking diligence, we're attacking strictly timeliness."). That argument in no way suggests the need to show "good cause," as the court purported to require from Aguirre. SR2:438–39. Indeed, on the State's articulation of its "timeliness" theory, all agreed at the May 2015 hearing that testimony from

Aguirre's investigator, Pollyanna Mailhot—who first contacted the new witnesses—was unnecessary. SR3:615–20.

Because the State waited until its written closing argument to raise an abuse-of-process theory—and even that filing was late—it should not be permitted to raise it now, especially given that Aguirre was not allowed a reply. *Cf. Arbelaez v. Crews*, 43 F. Supp. 3d 1271 (S.D. Fla. 2014) (holding that the State waived timeliness argument as to habeas petition by failing to object at an earlier opportunity).

CONCLUSION

This case presents compelling new evidence that Aguirre's jury never heard before convicting him and sentencing him to death. That new evidence so significantly "weakens the case against" Aguirre that it would cause a new jury to harbor "reasonable doubt as to his culpability." *Hildwin*, 141 So. 3d at 1181. For the reasons explained above, and those explained in the earlier briefing, this Court should vacate Aguirre's convictions and sentences, and remand for a new trial.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Brief of Appellant has been electronically filed with the Clerk of the Florida Supreme Court, and electronically served upon James Riecks, Assistant Attorney General, on the 21st day of October, 2015.

/s MARIA E. DELIBERATO
Maria E. DeLiberato
Assistant CCRC
Florida Bar No. 664251

/s JULISSA R. FONTAN
Julissa R. Fontan
Assistant CCRC
Florida Bar No. 32744
CAPITAL COLLATERAL REGIONAL COUNSEL
3801 Corporex Park Drive, Ste 210
Tampa, FL 33619
(813) 740-3544
deliberato@ccmr.state.fl.us
fontan@ccmr.state.fl.us

/s MARIE-LOUISE SAMUELS PARMER
Marie-Louise Samuels Parmer
Florida Bar No. 0005584
THE SAMUELS PARMER LAW FIRM
P.O. Box 18988
Tampa, FL 33679
(813) 732-3321
marie@samuelsparmerlaw.com

/s LINDSEY C BONEY IV
Lindsey C Boney IV
Admitted Pro Hac Vice
Ashley B. Burkett
Admitted Pro Hac Vice
Kevin C. Newsom
Pending Pro Hac Vice Admission
BRADLEY ARANT BOULT CUMMINGS LLP
1819 Fifth Avenue North
Birmingham, Alabama 35203-2119
(205) 521-8000
knewsom@babc.com
lboney@babc.com
aburkett@babc.com

/s NINA MORRISON
Nina Morrison
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
(212) 364-5340
nmorrison@innocenceproject.org
Admitted Pro Hac Vice

CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Appellant's Supplemental Brief, was generated in Times New Roman 14 point font, pursuant to Fla. R. App. P. 9.100 and 9.210**.**

/s/MARIA E. DELIBERATO
Maria E. DeLiberato
Florida Bar No.664251
Assistant CCRC
CAPITAL COLLATERAL REGIONAL
COUNSEL-MIDDLE
3801 Corporex Park Dr., Suite 210
Tampa, Florida 33619
813-740-3544
813-740-3554 (Facsimile)