IN THE SUPREME COURT OF FLORIDA

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC13-2092

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

SUPPLEMENTAL ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

This brief will refer to Appellant as such, Defendant, or by proper name, e.g., "Aguirre." Appellee, the State of Florida, was the prosecution below; the brief will refer to Appellee as such, the prosecution, or the State. Unless the contrary is indicated, bold-typeface emphasis is supplied; cases cited in the text of this brief and not within quotations are italicized; other emphases are contained within the original quotations.

PROCEDURAL HISTORY

Aguirre was initially arrested in regard to the instant case on June 17, 2004, for tampering with evidence related to the murders of Cheryl Williams and Carol Bareis. (DAR, V1, R1-2).[1] On June 2[illegible], 2004, the State formally charged Aguirre with Williams' and Bareis' murders. (DAR, V1, R11-12). Aguirre was indicted on the murder charges on July 15, 2004 (DAR, V1, R20-21) and the State later filed an additional charge against Aguirre for burglary of a dwelling with assault or battery. (DAR, SR, V1, R881). The trial court consolidated the burglary charge with the two murder charges on December 1, 2005 (DAR, V1, R200; DAR, SR, V1, R882, 883), and tried Aguirre's case from February 20th to February 28th of

[1] Cites to the direct appeal record are : "DAR, V_, R_" and "DAR, SR, V_, R_" for the supplemental record. Cites to the postconviction record are "V_, R_" and "SR, V_, R_."

2006. (DAR, V6-13, R1-1597). The jury found Aguirre guilty on both counts of first-degree murder and of one count of burglary with an assault or battery. (DAR, V2, R288-290). The trial court held penalty phase proceedings on March 9-10, 2006 (DAR, V14-16, R1-412) and the jury recommended a death sentence for the murder of Cheryl Williams by a vote of seven to five (7-5) and for the murder of Carol Bareis by a vote of nine to three (9-3) (DAR, V2, R318-19). The trial court held Aguirre's *Spencer*[2] hearing on June 1, 2006 (DAR, V18, R775-873) and the Honorable Judge Eaton imposed death sentences for each murder on June 30, 2006. (DAR, V3, R409-432; DAR, V18, R874-880). This Court affirmed Aguirre's convictions and sentences on direct appeal. *Aguirre-Jarquin v. State*, 9 So. 3d 593 (Fla. 2009).

Aguirre filed a Motion to Vacate Judgments of Conviction and Sentence pursuant to Fla. R. Crim. P. 3.851 on February 9, 2011, in which he raised eight claims. (V1, R1-70). The State filed its response on March 25, 2011. (V1, R95-200). Aguirre filed an amended postconviction motion on August 15, 2011, and also filed a Motion pursuant to Rule 3.853 requesting additional DNA Testing in conjunction with the amended motion. (V2, R358-403; 404-434). On September 30, 2011, the trial court held a case management conference. (V28, R3010-96).

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[2] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

The trial court ordered Aguirre's claim regarding DNA testing (Claim I(a)) would be addressed in conjunction with Aguirre's Rule 3.853 motion. (V2, R486-99). On February 22, 2012, the court ordered that Aguirre's postconviction evidentiary hearing be bifurcated to allow additional time for the completion of DNA testing. (V3, R600-01). The trial court held the first portion of Aguirre's evidentiary hearing, which addressed claims unrelated to DNA testing, on March 19-23, 2012.

On June 29, 2012, Aguirre filed a second amended postconviction motion, wherein he expanded upon the factual allegations originally raised in Claim I(a). (V7, R1259-1307). On January 16, 2013, Aguirre filed a third amended motion, in which he further expanded the factual allegations in Claim I(a) and added a sub-claim (b) to Claim VI regarding allegations related to a failure to disclose 2010 Baker Act records and police reports of Samantha Williams. Aguirre's third amended motion also added new claims: Claim VIII alleging newly discovered DNA evidence of Samantha Williams at the crime scene and incriminating post-trial statements made by Samantha Williams; and Claim IX alleging constitutional violations related to the sentencing of an innocent man to death. Aguirre also amended his previous motion by re-labeling his original Claim VIII as Claim X. (V8, R1346-1412).

The trial court held the second portion of Aguirre's bifurcated evidentiary hearing on May 13-21, 2013. At this hearing, the parties presented evidence pertaining to Claims I(a), I(c), II(c), and the new Claim VIII. Aguirre also

presented arguments as to Claim VI(b). Aguirre presented fifteen lay witnesses and three expert witnesses. The State presented six lay witnesses and two expert witnesses.

On August 28, 2013, the trial court denied Aguirre's amended Rule 3.851 motion. On August 29, 2013, the State filed a Motion to Clarify the trial court's order regarding a scrivener's error and on September 11, 2013, Aguirre filed a Motion for Rehearing. On September 18, 2013, the trial court issued an order denying Aguirre's motion for rehearing and correcting scrivener's errors.

Aguirre filed a Notice of Appeal of the trial court's denial of his Rule 3.851 motion on October 21, 2013 and filed his Initial Brief with this Court on July 7, 2014. The State filed its Answer Brief on September 15, 2014, and Aguirre filed his Reply Brief on October 2[illegible] 2014. However, while the instant appeal was pending, Aguirre filed another successive motion for postconviction relief with the trial court on May 13, 2014, which was based upon allegedly newly discovered evidence of incriminating statements made by Samantha Williams. On May 22, 2014, Aguirre filed a motion to relinquish jurisdiction before this Court and the State filed a response thereto. On October 28, 2014, this Court granted Aguirre's Motion to Relinquish Jurisdiction and directed the trial court to conduct a hearing regarding Aguirre's pending successive postconviction motion. The trial court conducted an evidentiary hearing regarding said motion on May 22, 2015. The trial court denied Aguirre's successive postconviction motion on July 17, 2015.

Aguirre filed a Supplemental Initial Brief incorporating argument regarding the successive postconviction claims litigated pursuant to this Court's relinquishment order on October 21, 2015. The State's Answer to Aguirre's Supplemental Initial Brief follows.

STATEMENT OF THE FACTS

The Murders, Trial, and Sentencing Proceedings.

This Court summarized the factual and procedural history of this case as they existed prior to postconviction proceedings as follows:

> I. FACTUAL AND PROCEDURAL BACKGROUND
>
> Aguirre was born in Honduras in 1980 and came to the United States in March of 2003. After arriving in Florida, Aguirre moved to 117 Vagabond Way, Seminole County. He lived there with two roommates until he was arrested for the murders at issue here.
>
> At the time of the murders, Aguirre worked at a restaurant as a dishwasher and a prep cook. One of his duties was washing the knives. At one point, all three of the men who lived at 117 Vagabond Way worked at the same restaurant.
>
> The victims, Cheryl Williams and Carol Bareis, lived next door to Aguirre. Carol was Cheryl's mother. Cheryl's daughter, Samantha Williams, lived with her mother and grandmother. Carol was a stroke victim, partially paralyzed, and spent most of her time in a wheelchair.
>
> Aguirre was an acquaintance of his neighbors and occasionally visited with them socially. Samantha testified that several months before the murders she awoke at 2 a.m., and Aguirre was standing over her bed. She screamed at him and forcefully told him to leave. Samantha escorted Aguirre out the front door and locked the door behind him. The next day she reiterated that he was not to enter their residence at night without permission.

On the night of June 16, 2004, Mark Van Sandt, who was in a relationship with Samantha, went to 121 Vagabond Way to visit Samantha. He arrived at the residence around 7:30 p.m. and stayed until approximately 11:30 p.m. Samantha decided to leave with Mark and stay at his parents' house that night. When Samantha and Mark left the residence at 121 Vagabond Way, both Cheryl and Carol were inside and alive.

Samantha was scheduled to work the next day, so Mark agreed to go back to her house and pick up her work clothes. Mark left his house around 8:45 a.m. on June 17, 2004, and drove to 121 Vagabond Way. When Mark arrived at 121 Vagabond Way, he went to the front door, which was almost always left unlocked, and attempted to open the door. However, he was unable to fully open the door because Cheryl Williams' body was blocking the entryway. Mark squeezed his way through the door and called 911.

Deputy Pensa of the Seminole County Sheriff's Department was the first law enforcement officer to arrive. Deputy Pensa forcibly entered through the back door. Subsequently, two other officers, Bates and Miller, arrived at the scene. Pensa and Bates noticed blood on the floor. The officers located Cheryl's body, which blocked the front door. Thereafter, deputy Pensa found Carol lying dead on the floor in the living room. She was lying face down in a pool of blood next to her wheelchair.

One of the crime scene analysts found a ten-inch chef's knife while searching the property. The knife was found between Aguirre's residence and the victims' residence. The knife was the same make and model used at Aguirre's place of employment. After speaking with the head chef at the restaurant where Aguirre worked, law enforcement officers determined that a ten-inch chef's knife was missing from the restaurant.FN2

> FN2. Aguirre's roommates also stated that the knife was similar to one that had been at their residence, which was also missing. Samantha Williams testified that her family did not own a knife of that type.

At approximately 11 a.m. on June 17, deputies knocked on the door of 117 Vagabond Way and asked Aguirre and his two roommates if they

knew anything about what happened next door. Aguirre told the officers he did not know there was a problem next door. Later that same day, Aguirre approached law enforcement officers and told them that he had information about what occurred next door. He told the officers that he went into the home and saw that Cheryl was dead. However, at this point, Aguirre told them that he only knew of Cheryl's death. After Aguirre's conversations with police, he was arrested for tampering with evidence from a crime scene. Subsequently, Aguirre was indicted for murder.

During the course of the trial, various law enforcement personnel, physicians, and experts testified to the evidence at the crime scene and the victims' wounds. Cheryl had been stabbed 139 times. She had severe wounds to her lungs and leg, one of which severed her femoral artery. She also had numerous defensive wounds on her hands and feet that indicated an extremely violent struggle for her life. She was stabbed in the arms, legs, back, hands, feet, and chest. One stab wound to her left lung was considered fatal. There was an extensive amount of evidence in the area of the house where Cheryl was found, including a great deal of blood on the floor, walls, and door in the area of Cheryl's body.

Carol suffered two stab wounds. The fatal stab wound went directly into her chest and severed her left ventricle, and the other stab wound was to her back. FN3 The medical examiner testified that the stab wound to the heart would have led to an instantaneous drop in her blood pressure, which would have caused her to lose consciousness in no more than twenty seconds. It was the medical examiner's opinion that the fatal wound to Carol was delivered while she was in the wheelchair, which caused her to fall out and led to her facial abrasions.

> FN3. The medical examiner testified that the second wound had all the indications of being a postmortem wound.

All of the stab wounds sustained by Cheryl and Carol were consistent with being caused by the chef's knife found between the victims' residence and Aguirre’s residence. The knife contained Cheryl's blood on the handle and Carol's blood on the blade, indicating that Cheryl was killed first.

A crime scene analyst testified that there were 67 bloody shoe impressions found inside the victims' residence. Of the 64 impressions that were comparable, all 64 were consistent with the footwear of Aguirre. The soles of his shoes contained Cheryl's blood. Law enforcement officers obtained a search warrant for the property at 117 Vagabond Street and retrieved the bag of clothes. Aguirre's underwear, socks, T-shirt, and shorts contained Cheryl's blood. Further, Aguirre's T-shirt, shorts, and underwear contained Carol's blood and DNA.

A Florida Department of Law Enforcement (FDLE) bloodstain pattern analyst also examined Aguirre's clothing. Aguirre's shorts had contact stains on both the front and back. The back of his shorts also had bloodstains that were not contact stains but arrived on his shorts through some type of motion, either impact spatter or cast off. His socks had contact stains as well as spots that were "consistent with dropped blood."

According to Aguirre's testimony during the guilt phase, he had the day before the murders off from work so he began drinking early. He and his friends continued to drink throughout the day and night.FN4 Aguirre returned back to 117 Vagabond Way at approximately 5 a.m. on the morning of the murders.

> FN4. Dr. Dale, Aguirre's psychologist, testified during the penalty phase that Aguirre admitted to obtaining and using powder cocaine the day before the murders.

Aguirre stated that he watched television and then got up to look for beer. There was no beer in his trailer so he walked next door. He attempted to go inside, but Cheryl's body was blocking the door. However, he managed to make it inside, and he lifted Cheryl's body on to his lap and tried to revive her. He realized she was dead so he put her back on the floor where he found her. Aguirre then walked toward the living room where Carol spent the majority of her time and found her dead as well. While in the house, Aguirre noticed the murder weapon sitting on a box near where Cheryl was lying. He stated that he feared the killer was still inside the house; therefore, he picked up the knife and screamed, "Is anybody here?" There was no

reply. He then walked to Samantha's room. She was not there, but her room had been ransacked.

Thereafter, Aguirre ran outside towards his residence and tossed the knife into the grass. He then stripped off all his clothes, placed them in a plastic bag, set the bag on top of his shed, and bathed. Aguirre initially planned to burn the clothes. He explained that he did not call police and report the murders because he was an illegal immigrant and afraid of deportation.

The jury convicted Aguirre on two counts of first-degree murder and one count of burglary with an assault or battery. Following the penalty phase, the jury recommended the death sentence for the murder of Cheryl Williams by a vote of seven to five. The jury recommended the death sentence for the murder of Carol Bareis by a vote of nine to three. After the *Spencer*FN5 hearing, Judge O. H. Eaton, Jr. sentenced Aguirre to two death sentences, finding the aggravators outweighed the mitigators.FN6

FN5. *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

FN6. For the murder of Cheryl Williams, Judge Eaton found the following aggravators: (1) the defendant was previously convicted of another capital felony (moderate weight); (2) the capital felony was committed while the defendant was engaged in the commission of a burglary (moderate, but less than great weight); (3) the capital felony was especially heinous, atrocious, or cruel (great weight). For the murder of Carol Bareis, Judge Eaton found the following aggravators: (1) the defendant was previously convicted of another capital felony (great weight); (2) the capital felony was committed while the defendant was engaged in the commission of a burglary (moderate, but less than great weight); (3) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest (great weight); (4) the capital felony was especially heinous, atrocious, or cruel (great weight); (5) the victim of the capital felony was particularly vulnerable due to advanced age or disability (great weight).

The following mitigating circumstances were found: (1) under the influence of extreme mental or emotional disturbance (moderate weight); (2) substantially impaired ability to appreciate the criminality of his conduct (moderate weight); (3) age (24) (little weight); (4) long

> term substance abuse problem (moderate weight); (5) dysfunctional family setting (little weight); (6) childhood abuse (little weight); (7) poor performance in school (little weight); (8) brain damage from substance abuse (moderate weight).

Aguirre-Jarquin v. State, 9 So. 3d 593, 598-600 (Fla. 2009).

Aguirre's First Postconviction Evidentiary Hearing.

The State's Answer Brief filed with this Court on September 15, 2014, summarized the testimony and evidence that was presented at Aguirre's postconviction evidentiary hearings held on March 19-23, 2012 and May 13-21, 2013. The State incorporates said summary by reference herein.

Postconviction Evidentiary Hearing Held During Relinquishment.

The following summarizes the testimony and evidence presented during the evidentiary hearing held on May 22, 2015, which this cause was relinquished to the trial court for further hearing regarding facts alleged in Aguirre's successive motion for postconviction relief.

Marlene Freebern

Marlene Freebern ("Freeburn") was working as a patrol officer with the Seminole County Sheriff's Office on March 23, 2012, when she came into contact with Williams while investigating a domestic disturbance. (SR, V3, R500). Freebern found Williams to be upset, crying and intoxicated. Williams was upset because she believed her brother was taking advantage of her father and taking her father's money. (SR, V3, R501). Williams was yelling "everything you could think

of" and at some point Williams said that Freebern couldn't "understand what [Williams] was going through, because [Williams] was at fault for her mother's passing." (SR, V3, R502-03). Freebern responded to the area due to a call made to police alleging that Williams threw a cooler and a wood plaque. (SR, V3, R504). Freebern ultimately arrested Williams for disorderly intoxication. (SR, V3, R501).

Christine Laravuso

Christine Laravuso ("Christine") has lived at 136 Vagabond Way with her mother, Marianne Laravuso. (SR, V3, R509). Christine knows Williams from the neighborhood; Williams lived a few places down from her. (SR, V3, R514). Christine described their relationship as originally being cordial; about a dozen or so interactions, saying hello but not full conversations. Christine testified about an instance one morning when Williams walked up and joined Christine and a small group of her friends who were in a driveway area near her home on Vagabond Way. (SR, V3, R521). Williams walked up with a can of beer in her hand and joined Christine and her friends who were hanging out, drinking and getting ready for a barbeque for the day. (SR, V3, R523). Christine testified that Williams' demeanor was a little off and her friends felt uncomfortable. (SR, V3, R524).

A confrontation developed between Christine and Williams when Williams reached into a cooler, grabbed a bottle of liquor and attempted to drink directly from the bottle *Id*. Christine stopped Williams and told Williams "you just don't drink out of somebody's bottle." *Id*. Someone in the group had already asked

Christine to have Williams leave and once Williams tried to drink from the liquor bottle, Christine scolded her and told her "Sam, I think it's time for you to, you know, leave." (SR, V3, R525). In response, Williams became angry and started yelling "nobody likes me, I can't even come over here, nobody likes me, she doesn't know I'm evil and I'm crazy." *Id*. Christine testified "her entire demeanor changed completely from what it was before, and that's when she stated that she had killed her mother and her grandmother." *Id.* Williams then "walked off yelling and screaming and mumble jumbling, all kinds of stuff towards me, calling me names and everything." *Id.* Christine testified that Williams threatened her on another occasion; however, Christine agreed during cross examination that Williams appears to use threatening words to upset Christine when Christine has upset Williams. (SR, V3, R539, 542).

Michael Bowman

Michael Bowman ("Bowman") is Marianne Laravuso's boyfriend and they have been dating for about four years. (SR, V3, R558). Bowman testified about an incident that occurred in July of 2012 when he was camping at Marianne's house. Bowman and Marianne set up a campsite near Marianne driveway area during the early evening hours. (SR, V3, R559). Williams approached Bowman and Marianne and was a little upset and said that "the neighbors think she's crazy" and "nobody will give her a chance." (SR, V3, R560). Bowman shared one or two beers with Williams. *Id*. Subsequently, Marianne cut Williams off from drinking anymore

alcohol, Williams got vulgar, and Bowman asked Williams to leave. Williams then told Bowman and Marianne that she was not scared of them and that she had killed her mother and her grandmother. (SR, V3, R566, 568-69).

Marianne Laravuso

Marianne Laravuso ("Marianne") is Christine's mother. (SR, V3, R580). Marianne lived on Vagabond Way in Williams' neighborhood. Marianne testified that she had a few encounters with Williams wherein Williams made statements about killing her mother and grandmother. (SR, V3, R583). The first incident occurred when she was camping in her yard with Bowman. Williams approached Marianne and Bowman and asked if she could hang out. (SR, V3, R586). Bowman did not know Williams so he said yes. (SR, V3, R587). Marianne poked Bowman when he agreed to let Williams hang out because she didn't want Williams hanging out and drinking the beers. *Id.* After the couple shared a beer with Williams, Williams saw a bottle of Captain Morgan's rum and attempted to drink directly from the bottle. *Id.* Marianne stopped Williams and told her "don't put your lips on that" and Williams "kind of got a little mad about that." (SR, V3, R587-88). Marianne went into the house and got a shot glass and gave Williams a shot from the Captain Morgan's bottle. (SR, V3, R588).

Williams drank the shot of rum and when she asked for another shot, Marianne believed "that was enough" and asked Williams "about leaving" and Williams got upset. *Id*. Williams started telling the couple that "everybody don't like her,"

"everybody thinks she's crazy," and "nobody gives her a chance." (SR, V3, R598). Then Williams "just come out and said… I'm not afraid of nobody, I killed my mom and grandma." *Id*. Williams made this statement after being cut off from drinking any more alcohol but before she was directly told to leave. (SR, V3, R600).

Williams left after being told to leave but returned to the area in which the couple was camping later that evening. (SR, V3, R590). Marianne stuck her head out of the tent when she heard something and found Williams nearby with a duffle bag in her hand. *Id*. Marianne told Williams "you got to leave, I already told you you have to leave, you can't come back." *Id*. Williams responded "I'm not afraid of nobody, I'm not afraid of you, I killed my mom and grandma." Marianne testified to another incident that occurred a couple of months later when Williams appeared in Marianne's front yard mumbling things. (SR, V3,R591). Marianne, accompanied by her daughter Brittany, told Williams she was not allowed in the yard and Williams responded, "I am not afraid of you guys…I killed my mom, I killed my grandmother." (SR, V3, R591-92).

Pollyanna Mailhot

Pollyanna Mailhot ("Mailhot") is a CCRC investigator assigned to Aguirre's legal team. Mailhot briefly testified regarding the timeline as to when the defense became aware of the witnesses to Williams' statements in relation to when Aguirre's successive postconviction motion was ultimately filed. (SR2, V2, R346).

After brief testimony, the State objected to Mailhot's testimony as irrelevant because the State did not contest the fact that the defense had filed its successive motion within one year of discovery of Williams' statements but contended that the claim constituted an abuse of process because the defense knew about this evidence when Aguirre's case was before the trial court during the May 2013 evidentiary hearing yet failed to raise it. (SR, V3, R616); *see also* SR, V3, R613–14. In light of the parties' agreement regarding the timeline of the defense's discovery of the evidence and the filing date of its successive postconviction motion, the trial court agreed that Mailhot's testimony was unnecessary. SR, V3, R620; *see also* SR, V2, R436.

Order Denying Successive Postconviction Motion to Vacate.

The circuit court denied Aguirre's successive motion on multiple grounds. Procedurally, the trial court found 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. *See* SR, V2, R436-39. The circuit court also found that Samantha's new admissions would be inadmissible hearsay if sought to be introduced at a new trial (SR, V2, R439-44), but even if they were admissible, Samantha's statements were "not likely to produce an acquittal" upon retrial. The trial court found that Williams' statements were more likely attempts to frighten individuals who had upset her than true confessions to the crimes. (SR, V2, R444).

SUMMARY OF THE ARGUMENT

Claim I. Samantha's confessions to the instant murders were nothing more than a series of vague and erratic statements made by a mentally disturbed woman who tragically lost her mother and grandmother to a violent double homicide. The circumstances under which each confession was made demonstrate that Samantha's confessions bear no assurances of trustworthiness, and Samantha's alibi was investigated by law enforcement and supported by the evidence while the evidence of Aguirre's guilt was overwhelming. Aguirre's new forensic and DNA evidence also fails to give rise to a reasonable doubt as to his culpability in light of the overwhelming evidence of his guilt, and the case law Aguirre cites in support of his claim to the contrary is clearly distinguishable. The court below properly denied Aguirre's successive motion for postconviction relief on the merits and this Court should affirm.

Claim II. Samantha's statements utterly fail to meet the requirements for the admission of third party confessions under *Chambers* or *Jones* and would therefore be inadmissible even if Aguirre was granted a new trial because they lack any assurance of trustworthiness. Samantha's confessions were made years after the murders were committed and were made at times when she was intoxicated, felt disrespected, was receiving mental health treatment while in a highly emotional state, or a combination of the above. Samantha's confessions also lack any specificity whatsoever about the details of the murders and they cannot be

corroborated. The only evidence that could possibly corroborate Samantha's confessions is the unremarkable fact that evidence of small amounts of Samantha's blood was found at the murder scene, which happened to be the home where Samantha resided, but highly credible evidence established that Samantha could not have been at the scene of the murder at the time the murders were committed. Further, Aguirre's claim that the State waived any objection to the admissibility of Samantha's statements if Aguirre was granted a new trial is misguided and lacks legal support.

Claim III. The circuit court's finding that Aguirre committed an abuse of process by failing to raise his successive claim regarding Samantha's third party confessions during the pendency of his initial Rule 3.851 proceedings despite having learned about these witnesses prior to the evidentiary hearing was proper and wholly consistent with this Court's policy against raising postconviction claims in a piecemeal fashion. Further, even if this finding was error, it created no prejudice to Aguirre because the circuit court nevertheless addressed Aguirre's successive claims on the merits. Aguirre's waiver argument with regard to this point also lacks any factual or legal support. Aguirre admits the State contended at the evidentiary hearing that Aguirre's successive motion was untimely because Aguirre's counsel did not notify the court of his new witnesses during the May 2013 hearing and such clearly demonstrates that the State put Aguirre on notice that it intended to challenge the procedural sufficiency of Aguirre's successive

motion. This Court should affirm the lower court's finding that Aguirre's successive motion constituted an abuse of process.

ARGUMENT

I. NEITHER SAMANTHA'S CONFESSIONS TO THE INSTANT MURDERS NOR AGUIRRE'S NEW FORENSIC EVIDENCE CREATES ANY DOUBT AS TO AGUIRRE'S GUILT.

In order to obtain a new trial based on newly discovered evidence, Aguirre must prove: "(1) the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence; and (2) the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial." *Reed v. State*, 116 So. 3d 260, 264 (Fla. 2013), *citing Jones v. State (Jones II)*, 709 So. 2d 512, 521 (Fla. 1998). "Newly discovered evidence satisfies the second prong of the *Jones II* test if it 'weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.'" *Reed*, 116 So. 3d at 264, *citing Gore v. State*, 91 So. 3d 769, 774 (Fla. 2012). Further, this Court has held, "as long as the court's findings are supported by competent, substantial evidence, a reviewing court will not "substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court." *Blanco*, 702 So.

2d 1250, 1252 (Fla.1997) (quoting *Demps v. State*, 462 So. 2d 1074, 1075 (Fla. 1984)).

In light of Samantha's unstable mental state, confidence in Aguirre's conviction cannot be undermined by the vague and unsubstantiated confessions Samantha has made, or may make in the future, regardless of how well documented any such statement may be. In fact, the only confession Samantha could make that would create any doubt as to Aguirre's culpability for the instant murders would be a detailed confession that explains **how** Samantha could have committed this bloody double homicide without leaving any evidence behind that is consistent with her guilt. As the trial court noted when denying Aguirre's first motion for postconviction relief:

> According to the defense's theory, Samantha Williams would have had to sneak out of Mark Van Sandt's parents' home in the early morning hours, take Mark's vehicle undetected prior to his parents or he waking, drive to the scene, commit the murders, drive back, shower, immaculately clean his white bathroom, get rid of her clothes and towels, and get back into bed, again undetected, all before 6:30 a.m.

(V12, R2238-39). Ultimately, Samantha's confessions create no doubt as to Aguirre's guilt because Samantha's vague and erratic confessions cannot be corroborated, because highly credible evidence discovered during law enforcement's murder investigation established Samantha's alibi and eliminated her as a suspect, and because the evidence of Aguirre's guilt is overwhelming.

While Aguirre points to the following incriminating statements Samantha made years after the instant murders occurred in support of his claim that Samantha committed the murders, the nature of these statements and the circumstances surrounding actually serve to demonstrate the fragile mental state Samantha experienced after the murders of her mother and grandmother:

- In 2010, after a day of heavy drinking, Williams set fire to a blanket in her house. After authorities arrived, neighborhood resident and friend of Williams', Nicole Carey, heard her say, "The demons made me do it." Casey also testified that six months later Williams said, "The demons made her do it," while making a stabbing motion towards her (Williams') chest. *See Initial Brief* at 27-8 (V22, R1984);

- In December 2007, Williams was arrested (and thereafter Baker Acted) and video from the police patrol car showed her clearly upset and barely coherent. Williams stated repeatedly, "They died for me…my mother died for me…could you understand that" and "I'm sorry." She also asked the officer if it was her fault and said that they were murdered because of her and it was her fault. Williams also stated, "I wish you were dead three years ago," and repeatedly said "I wish you were dead." The trial court noted it was unclear who "you" is. (V12, R2220);

- In 2008, after being Baker Acted, Williams beat her head against a concrete wall and stated, "I am responsible for my mom dying…it's all my fault…I want to die…I don't have anything to live for." (V12, R2220) (See also *Supplemental Initial Brief* at 15).

While it is noteworthy that these statements did not directly claim responsibility for committing the instant murders, Aguirre did ultimately present testimonial evidence that supports his allegation that Samantha also told people in her neighborhood that she killed her mother and grandmother. However, in each instance where Samantha specifically claimed to have committed the instant

murders, Samantha was upset because the witnesses to her confessions had just cut her off from drinking and/or asked her to leave a group activity. This evidence clearly supports the trial court's finding that Samantha's specific confessions to the instant murders were nothing more than "attempts by an unstable woman to frighten those who upset and reject her." (SR, V2, R443). In support, the trial court's order points to the conflicts that arose in each instance where Samantha specifically claimed to have killed her mother and grandmother as follows:

- Initially, things were cordial, but then there was a confrontation between Samantha Williams and Christine Laravuso. (T.35-36). Samantha Williams went to drink straight from Christine Laravuso's bottle of liquor. (T.[illegible]). Christine Laravuso told Samantha Williams that she could not drink straight from someone else's bottle, at which point, Samantha Williams became irate and Christine Laravuso told her to leave. *(*T.36-37). In response, Samantha Williams began to yell that no one liked her, that she was crazy and evil, and that she killed her mother and grandmother. (T.37-38);

- Michael Bowman and Marianne Laravuso testified regarding an incident that occurred in July of 2012 when Mr. Bowman and Marianne Laravuso were camping out on her property in Mobile Manor. (T.70, 96-97). . .Samantha Williams asked for a beer and Michael Bowman gave her one. (T.72, 99). Marianne Laravuso testified that Samantha Williams went to take a sip straight from a bottle of liquor, but Marianne Laravuso stopped Samantha Williams from doing so. (T.71, 99). Marianne Laravuso then got a shot glass and gave Samantha Williams a shot. (T.100). When Samantha Williams asked for a second shot, Marianne Laravuso refused to give her another shot and eventually asked Samantha Williams to leave. (T.100, 111-12). After being cut off but prior to being asked to leave, Samantha Williams got upset and said that she was not afraid of them and that she killed her mother and grandmother. (T.73, 76-78, 100, 111-12);

- Marianne Laravuso also testified regarding another incident that occurred a few months later. (T. 103). She heard a noise in her yard and went outside to discover Samantha Williams in the yard. (T. 103). Marianne Laravuso told Samantha Williams that she was not allowed in the yard. (T. 103). Samantha Williams responded by saying that she was not afraid of them (Marianne Laravuso's daughter Brittany was also present) and that she killed her mom and grandma. (T. 103-04). Marianne Laravuso testified that she believed that Samantha Williams meant this as a threat. (T. 104).

(SR, V2, R441-43).

When considered in context, Samantha's non-incriminating statements which accompanied her murder confessions such as "I'm evil, I'm crazy" and "I'm not afraid of you" in addition to Marianne Laravuso's testimony that she believed Samantha intended to be threatening when saying that she killed her mom and grandma further supports the trial court's finding that these confessions were merely attempts by an unstable woman to frighten those who upset and reject her. Ultimately, the trial court correctly recognized that the question with regard to these third party confessions was not whether Samantha "meant" what she said, but whether there was any truth behind what Samantha said.

Aguirre's new forensic and DNA evidence also fails to give rise to a reasonable doubt as to his culpability in light of the compelling evidence admitted during

Aguirre's guilt phase,[3] and the cases Aguirre cites in support of his claim to the contrary are clearly distinguishable. With regard to the weight of the evidence against Aguirre, this Court has found:

> Aguirre admitted to going inside the victims' home, and the circumstantial evidence is clear that he did not have consent to enter. Further, Aguirre admitted to being warned on several occasions not to enter the home without an invitation. He also admitted to handling the murder weapon, which the evidence indicated was missing from his place of employment. **There is also voluminous forensic evidence linking him to the murders.** Aguirre's clothes were found in a bag on the roof of his home and were covered in the victims' blood. His shorts contained blood stains that were not contact stains and could have only arrived through motion. The murder weapon is the same make and model of a knife missing from his place of employment. Bloody footprints found inside the home match his shoes, and the blood of one of the victims was found on the soles of his shoes.

Aguirre-Jarquin v. State, 9 So. 3d 593, 599 (Fla. 2009). (emphasis added).

More specifically with regard to the footprint evidence, "[a] crime scene analyst testified that there were 67 bloody shoe impressions found inside the victims' residence. Of the 64 impressions that were comparable, all 64 were consistent with the footwear of Aguirre." *Aguirre-Jarquin v. State*, 9 So. 3d at 599. These facts are

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[3] Aguirre's claim that "the State's case against him is purely circumstantial" is clearly erroneous and his citation to this Court's opinion in support of such is equally misguided. *Supplemental Initial Brief* at 17 (citing *Aguirre-Jarquin*, 9 So. 3d at 606). Aguirre cites to this Court's opinion regarding the sufficiency of his burglary conviction, which was based in part upon circumstantial evidence that Aguirre did not have consent to enter the victims' residence on the night of the murders. However, this Court did not opine that the murder convictions were based solely upon circumstantial evidence as such is clearly not the case.

utterly fatal to Aguirre's postconviction claims because: 1) a very bloody double homicide by knifing creates a situation where bloody footprints would be produced by the perpetrator during and after the killings; 2) 95.5% of the 67 bloody footprints found were linked to Aguirre, while the remaining prints could not be linked to anyone due to the comparison quality of the print; and 3) not a single bloody footprint found could be linked to Samantha or any other suspect other than Aguirre. Assuming *arguendo* that Aguirre's story about discovering the victims' bodies after the murders was true, it would be unexplainable as to how the real killer would have been able to stab the victims nearly seventy times combined without leaving any of his or her own bloody footprints at the crime scene or without having cleaned up the crime scene.

Aguirre relies upon this Court's opinion in *Hildwin v. State,* 141 So. 3d 1178, 1181-83 (Fla. 2014) in support of his claim. However, unlike *Hildwin,* Aguirre's postconviction evidence does not discredit the voluminous forensic evidence the State submitted against Aguirre at trial. The following summary of the facts in *Hildwin* demonstrates how easily distinguishable *Hildwin* is from the instant case:

> Appellant was arrested after cashing a check purportedly written to him by one Vronzettie Cox, a forty-two-year-old woman whose body had been found in the trunk of her car, which was hidden in dense woods in Hernando County. Death was due to strangulation; she also had been raped. . . *A pair of semen-encrusted women's underpants was found on a laundry bag in her car, as was a sweat-stained wash rag. Analysis showed the semen and sweat came from nonsecretor. . .* In the guilt phase of Hildwin's trial, the State introduced two items found at the crime scene: a pair of women's underwear and a white

> washcloth. The women's underwear was found inside blue jean shorts that matched a description of the clothing in which the victim was last seen, with the washcloth discovered nearby. Both items were found in the backseat of the victim's vehicle at the very top of a bag of dirty laundry, and the victim's naked body was in the trunk of that vehicle. The State presented evidence showing that a serological analysis determined that semen from the underwear and saliva from the washcloth came from a nonsecretor and that Hildwin, a white male, was a nonsecretor, a subgroup of the population that encompassed only eleven percent of the total male population. The victim's boyfriend, Haverty, on the other hand, was a secretor.
>
> Thus, the State was able to argue at Hildwin's trial that scientific evidence showed that the biological material was inconsistent with having been left by Haverty and was consistent with having been left by Hildwin. However, the evidence was not of such a nature that it positively identified the donor of the biological material.
>
> During prior postconviction proceedings, new DNA testing conducted on the biological material left on the underwear and washcloth excluded Hildwin as the source of the semen and saliva. Hildwin asserted that he was entitled to a new trial based on that new evidence. In 2006, this Court determined by a four-to-three vote that, although this was "significant new evidence, it did not entitle Hildwin to a new trial. *Hildwin II*, 951 So.2d at 789.
>
> Hildwin then filed an all-writs petition, seeking to have the unidentified DNA profile compared to the profiles in CODIS (the FBI-maintained DNA combined databank) and the Florida statewide DNA databank for the purpose of identifying the source of the DNA and potentially obtaining proof of Hildwin's actual innocence. . . After the DNA profile obtained from the underwear and washcloth were uploaded to the system, the search results revealed that the DNA matched Haverty, the victim's boyfriend. . .the person that Hildwin alleged committed the crime.

Hildwin v. State, 141 So. 3d 1178, 1181 - 83 (Fla. 2014) (emphasis in original).

The discovery of new evidence of Samantha's blood found in various locations in Samantha's own home is a far cry from the drastic change in forensic evidence that

was newly discovered in Hildwin's circumstantial murder case. As this Court opined:

> Based on the fact that this case rested on circumstantial evidence that relied on now-entirely discredited and unreliable scientific evidence, which now identifies Haverty as the donor of the biological material found on items at the crime scene, the newly discovered evidence identifying the donor of the DNA left on these items changes the entire character of the case originally presented to the jury.

Hildwin v. State, 141 So. 3d 1178, 1193 (Fla. 2014).

Swafford, another case cited by Aguirre, is also easily distinguishable from the instant case due to the strength of the State's evidence and the fact that forensic evidence discovered during Swafford's post-conviction proceedings, like *Hildwin*, directly discredited forensic evidence submitted during trial. As this Court explained:

> Specifically, as set forth in his motion for postconviction relief, Swafford alleged and subsequently proved that at the time of trial in 1985, the Florida Department of Law Enforcement (FDLE)
>
> > tested the vaginal and anal swabs of the victim and got a positive result for acid phosphatase, a substance characteristically found in seminal fluid. Semen could not be conclusively identified because no spermatozoa were found. The State argued that this circumstantial evidence corroborated that Mr. Swafford had sexually assaulted and murdered the victim.... However, in 2005, FDLE's testing indicates the opposite—that no acid phosphatase was found and no semen was identified.
> >
> > **The acid phosphatase (AP) evidence was the linchpin of the State's case that a sexual battery occurred, especially because the victim was found fully clothed and the medical examiner relied on the now-**

> **discredited FDLE testing that AP was present in order to conclude that the victim was sexually battered.**
>
> Further, this newly discovered evidence also significantly impacts the first-degree murder conviction, since the State built its case on the sexual battery as the motive for the murder and then relied on a statement made by Swafford two months after the murder to demonstrate Swafford's guilt. **Without the evidence that a sexual battery occurred, all that remains linking Swafford to the murder are two lone pieces of evidence:** (1) that Swafford was seen with a gun at the location where the murder weapon was later discovered; and (2) that Swafford may have been driving by the location in Daytona Beach where the victim was abducted on the day of the Daytona 500 race, at a time when thousands of visitors had traveled to Daytona Beach for the event.

Swafford v. State, 125 So. 3d 760, 762 (Fla. 2013) (emphasis added). Aguirre's postconviction evidence presents nothing remotely akin to the discreditation of linchpin evidence involved in *Swafford*.

Aguirre's reliance upon *Hodgkins v. State*, 175 So. 3d 741, 747 (Fla. 2015), *reh'g denied* (Sept. 24, 2015), in support of his claim that "it would be exceedingly difficult for the State to show on retrial that the facts in this case are "inconsistent with [Aguirre's] innocence"[4] is also misguided because the weight of the evidence involved in *Hodgkins* is clearly distinguishable. In fact, this Court's descriptions of the evidence involved in the two cases illustrate this point. While this Court characterized just the forensic evidence against Aguirre as "voluminous," its

[4] *See Supplemental Initial Brief* at 23.

following description of the weight of the all of the evidence against *Hodgkins* was quite the opposite:

> [T]he State's entire circumstantial case encompassed the following evidence: (1) statements from Hodgkins wherein he lied to detectives about his last time seeing and engaging in sexual intercourse with Lodge; (2) medical testimony explaining the manner of death, including manual strangulation followed by sharp-force injuries; (3) Lodge's cleaning habits at home and at work, including washing her hands and nails for three minutes each time; (4) observations of Lodge's cleaning and handling raw foods at Frank's Café on Monday, Tuesday, and Wednesday the week of her death; (5) DNA material found underneath Lodge's fingernails matching Hodgkins' DNA; and (6) expert testimony that the DNA material was robust when collected, it would have significantly degraded since the Monday before Lodge's death, and based on Lodge's hygienic activities and factors likely to degrade DNA material, the foreign DNA found underneath Lodge's fingernails on that Thursday would not have been "under there for one, two, or three days[.]"

Hodgkins v. State, 175 So. 3d 741, 747 (Fla. 2015), *reh'g denied* (Sept. 24, 2015).

Aguirre concludes this claim by making sweeping allegations of circuit court error without providing any legal authority on point in support. First, Aguirre claims "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.'" *Supplemental Initial Brief* at 24. Aguirre also takes exception with the circuit court's reliance upon Samantha's "solid alibi" in denying his Successive Motion. *Id*. at 25. Aguirre cites one case in support of these arguments, contending: "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." However the very same case Aguirre cites further instructs that:

> [b]ased on the standard set forth in *Jones II*, 709 So.2d at 526, the postconviction court **must** consider the effect of the newly discovered evidence, in addition to all of the admissible evidence that could be introduced at a new trial, and conduct a cumulative analysis of all the evidence so that there is a "total picture" of the case and "all the circumstances of the case." *Swafford*, 125 So.3d at 776 (quoting *Lightbourne*, 742 So.2d at 247).

Hildwin v. State, 141 So. 3d 1178, 1187-88 (Fla. 2014) (emphasis added). Clearly, the court below was properly considering the effect of Aguirre's newly discovered evidence in light of the evidence that could be introduced at a new trial when making its findings about Samantha's alibi and the circumstances of Samantha's statements that she killed her mom and grandma. Ultimately, the circuit court properly denied Aguirre's Successive Motion on the merits and this Court should affirm.

II. SAMANTHA'S CONFESSIONS LACK SUBSTANTIAL ASSURANCES OF TRUSTWORTHINESS AND WOULD THEREFORE NOT BE ADMISSIBLE EVEN IF AGUIRRE WAS GRANTED A NEW TRIAL.

Samantha's confessions lack detail, corroboration, and spontaneity and under the circumstances under which they were made, they ultimately lack any indicia of trustworthiness. Accordingly, her confessions would not be admissible even if Aguirre was granted a new trial. Aguirre's following argument contends that the trustworthiness of Samantha's confession should be considered supported by the

witnesses' opinions as to the "seriousness" with which Samantha made her statements:

> 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.

Supplemental Initial Brief at 16. This contention misses the point.

At the outset, the trial court found that Samantha made these statements to frighten people who had offended her and, as argued *supra*, the evidence supports this finding. Logically, Samantha could only accomplish her goal of frightening others if she appeared to be serious when she made these statements, so any evaluation of the "seriousness" with which Samantha made her statements would be senseless. Fortunately, the United States Supreme Court in *Chambers v. Mississippi*, 410 U.S. 284 (1973) recognized this when deciding the circumstances under which criminal defendants may admit third party confessions. The Supreme Court held that criminal defendants may only admit third party confessions that bear substantial assurances of trustworthiness, and to determine the trustworthiness of a third-party confession, courts should look at the spontaneity of the statement

(when it was made in relation to the murder and to whom it was said),[5] corroboration by other evidence, the incriminating nature of the statement, and the availability of the declarant to be cross-examined. *Jones v. State*, 709 So. 2d 512, 524 (Fla. 1998) (applying *Chambers*, 410 U.S. at 300). Furthermore, this Court held in *Jones* that third-party admissions are also inadmissible when they lack specificity. *Id*.

Samantha's statements utterly fail to meet the spontaneity requirement for the admission of third party confessions under *Chambers* or *Jones*. All of Samantha's confessions were made years after the murders were committed and they were made when she was either intoxicated, felt disrespected, was receiving mental health treatment while in a highly emotional state, or a when she was experiencing a combination of these circumstances. When considered in their totality, it is clear that Samantha's statements were either expressions of survivor's remorse uttered by a woman who suffers from chronic mental health issues and has experienced a horrific family tragedy as a result of Aguirre's crimes or, as noted *supra*, were attempts to relay the false impression that she has murdered people and is therefore

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[5] For instance, in *Jones*, the Florida Supreme Court found testimony about a third-party confession inadmissible when the statements were made only after the defendant had been sentenced to death and in some instances the witnesses waited anywhere from four years to over a decade to report the information. 709 So. 2d 512, 525 (Fla. 1998).

capable of murder uttered for the purpose of upsetting and intimidating people who offended her. Furthermore, aside from identifying the murder victims, Samantha's confessions lack any specificity whatsoever about the details of the murders. These kind of generic confessions are a far cry from the third party confessions that bear substantial assurances of trustworthiness envisioned in *Chambers* and *Jones*.

Most notably, Samantha's confessions also lack any significant corroboration. The only scintilla of evidence that could possibly corroborate Samantha's statements is the unremarkable fact that evidence of small amounts of Samantha's blood was found in the house where Samantha resided. However, significant credible evidence established that Samantha could not have been at the scene of the murder at the time the murders were committed. As the circuit court noted when denying Aguirre's motion for postconviction relief:

> Samantha Williams testified at trial and at hearing that she left her house the night before and spent the night at Mark Van Sandt's home where he resided with her parents. This alibi evidence is supported by the credible testimony of Mark Van Sandt. The testimony demonstrated that Mark Van Sandt left the Williams' house with Samantha after the argument with her mother on June 16, 2004, at approximately 11:30 p.m. when Cheryl Williams and Carol Bareis were both alive. They both ultimately arrived at his parents' house in Northridge and went to sleep in his room between 12 or 12:30 a.m. (T2. 1033). When Mark Van Sandt awoke at approximately 3:30 a.m. to 4:00 a.m. to use the restroom and the next morning, at 6:30 a.m. she was there. *See* Def.'s Ex. 98 and (T2. 1033-34) When he woke up the next morning, he had breakfast and spoke with his mother before he headed back to sleep. At 8:45.a.m, he woke up to go retrieve Samantha's work clothes out of the washer at Vagabond Way to dry them at his house. *See* Def.'s Ex. 98 (T2. 734). There were not any cuts or marks on her body or blood on her person,

> clothing, or sheets surrounding her. (T2. 1043-1044) There was not any evidence in the bathroom of her cleaning herself. (T2 1043) Although Samantha Williams could drive, she did not own a vehicle at the time. (T2. 1037, 1061) Mark Van Sandt drove her from the house the evening before the murders and his father drove her to the scene on the day of the murders. She never drove the truck he owned at the time that was 600 HP with a loud muffler and by all accounts, a loud vehicle. An individual would have to have experience with the throttle of his vehicle to even attempt to decrease its vast sound, which Samantha Williams did not have. Further, Mark Van Sandt never had to adjust his seat when he drove his truck the next morning. (T2. 1037-38, 1042-44). **There is not any evidence that contradicts her alibi to demonstrate she was anywhere other than the Van Sandt home at the time of the murders.**

(SR, V2, R443-44) (emphasis added).

Furthermore, Aguirre's argument that the State waived any objection to the admissibility of Samantha's statements if Aguirre was granted a new trial is clearly misplaced and lacking in legal support. Aguirre claims support for this contention from *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"), but this case clearly addresses the requirement of objecting to inadmissible evidence so that the issue can be raised before the trial court, ruled upon, and preserved for any appeal of that particular trial or hearing. Aguirre however presents no authority in support of his contention that a failure to object to potentially inadmissible evidence during a postconviction hearing constitutes a prohibition against objecting to the same evidence at a subsequent new trial, particularly where the purposes of the two

hearings - in this instance the evaluation of postconviction claims versus the determination of guilt - are so vastly different.

Aguirre's waiver argument is meritless and Samantha's incriminating statements lack spontaneity, specificity, and corroboration, and therefore utterly fail to bear any substantial assurances of trustworthiness. As such, none of Samantha's third-party confessions would be admissible at a retrial and this Court should accordingly deny Claim II.

III. THE CIRCUIT COURT DID NOT ERR IN CONCLUDING THAT AGUIRRE'S SUCCESSIVE MOTION CONSTITUTED AN ABUSE OF PROCESS.

Aguirre next takes exception with the circuit court's finding that Aguirre committed an abuse of process by failing to raise his successive claims regarding Samantha's third party confessions during the pendency of his initial Rule 3.851 proceedings despite having learned about these witnesses prior to the evidentiary hearing. This finding was proper and wholly consistent with this Court's policy against raising postconviction claims in a piecemeal fashion. Furthermore, even if this finding was error, it created no prejudice to Aguirre where the circuit court nevertheless addressed Aguirre's successive postconviction claims on the merits.

As legal support for its finding, the circuit court specifically recognized that *Fla.R.Crim.P.* 3.851(e)(2) was amended effective January 1, 2015, and noted that such "served to formalize and consolidate existing Florida Supreme Court jurisprudence regarding the treatment of successive motions in death penalty

cases." (SR, V2, R437). Accordingly, Aguirre's claim that "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" is utterly meritless. *See Supplemental Initial Brief* at 27. In fact, the circuit court's order relied upon this Court's repeatedly expressed policy against raising claims in a piecemeal fashion. As the circuit court explained:

> The claim in the Defendant's current motion is an extension of the claim raised in Claim VIII of his third amended motion. The Defendant has merely added additional witnesses and instances when Samantha Williams purportedly admitted committing the murders to the previously raised claim. While it is undisputed that the Defendant filed his successive motion within a year of learning of the witnesses and the State concedes these witnesses constituted newly discovered evidence, that does not mean the claim was properly raised in a successive motion. The defense was aware of these witnesses during the pendency of the Defendant's initial Rule 3.851 proceedings and failed to bring the matter to this Court's attention. The defense did not seek to amend Claim VIII to include these witnesses, nor did the defense seek additional time to further investigate these witness, even though three days of the hearing time still remained available... Rather the defense stood silent and permitted the May 2013 evidentiary hearing to terminate early. The Defendant is not entitled to hold in reserve a claim of which he is aware until after his initial motion is denied on its merits in order to get a second bite at the apple. The Florida Supreme Court has repeatedly expressed a policy against the raising of claims in a piecemeal fashion by the filing of successive claims. See *Lambrix v. State*, 124 So. 3d 890, 902 (Fla. 2013).

(SR, V2, R438).

Aguirre argues that Rule 3.851(f)(4), which was in effect at the time of his discovery of the evidence at issue, forbade him from notifying the court or State of his discovery of the evidence because said rule required defendants to file any

amendments to post-conviction motions at least 30 days prior to the evidentiary hearing. Aguirre also cites to *Lukehart v. State*, 70 So. 3d 503 (Fla. 2011), in support of this point. *Supplemental Initial Brief* at 29-30. However, there was no prohibition against Aguirre seeking a continuance of the evidentiary hearing in light of his discovery of additional witnesses that were directly relevant to claims being litigated during the pending evidentiary hearing, and there was also no prohibition against Aguirre simply notifying the State and the Court on the record of his discovery of his new witnesses. If Aguirre had notified the State and the court of such or moved to continue and the State refused to waive its right pursuant to Rule 3.851(f)(4) to thirty days notice and the court refused to continue the hearing, then Aguirre's ultimate course of action of filing a successive motion one year later would have been appropriate. But, it is highly likely that the State and the circuit court would have preferred to hear all of the evidence relevant to Aguirre's third party confession claim at one time, particularly in light of the extra resources required to litigate the same issue (albeit with different witnesses) over two separate hearings conducted years apart.

Furthermore, *Lukehart* is unpersuasive because Lukehart did not discover new witnesses prior to his evidentiary hearing that supported a claim that was scheduled to be heard at his upcoming evidentiary hearing. As this Court noted:

> Lukehart contend[ed] that the trial court erred in denying his motion [to amend pleadings] because information that serves as a basis for this claim did not surface until the evidentiary hearing…Pursuant to

> rule 3.850(f), evidence revealed **after the conclusion of an evidentiary hearing** is proper in a successive motion for postconviction relief, not in a motion to amend the initial motion for postconviction relief. In his 2007 motion, Lukehart requested that claim three in his motion for postconviction relief be amended to include the additional subclaims that defense counsel was ineffective for failing to (1) inform the trial court prior to trial that Lukehart was under the influence of prescribed medication, which altered his ability to remember accurately, (2) request that Lukehart's medication be withheld, and (3) request a continuance until such time as the effects of the medication wore off. Lukehart did not raise this claim in his initial or amended rule 3.850 motions.

Lukehart v. State, 70 So. 3d 503, 514-15 (Fla. 2011) (emphasis added). While this Court's holding in *Lukehart* stating that evidence revealed **after** the conclusion of an evidentiary hearing is proper in a successive motion for postconviction relief is instructive herein because Aguirre learned of the evidence at issue **before** the evidentiary hearing, this case is otherwise inapplicable to Aguirre because Lukehart sought to amend his pleadings to include three new claims while Aguirre merely needed to identify additional witnesses to support his third party confession claim that was already pending before the trial court.

Aguirre concludes this claim with another meritless waiver argument presented without any legal support. Aguirre admits the State "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. SR, V3, R603; *see also* SR, V3, R615" *Supplemental Initial Brief* at 31-32. While such was an incomplete recitation of the parties discussion regarding this issue, Aguirre's own scant

recitation is still enough to demonstrate that the State put the defense on notice that it intended to challenge the procedural sufficiency of Aguirre's successive motion, and the trial court's finding as to such was on point:

> Contrary to the Defendant's assertion that the State raised the issue of the motion being procedurally barred for the first time in its written closing argument, the State raised the matter at the evidentiary hearing. The court addressed the issue, when the parties discussed whether Pollyanna Mailhot's testimony was necessary. (T. 115-17, 125-32).

(SR, V2, R436-37).

Ultimately, the State had nothing to do with the defense's choice not to address the timeliness issue the State raised during Aguirre's evidentiary hearing and Aguirre's multiple references to the State's late-filed closing argument,[6] though not raised as a claim of error, add nothing to any of the claims Aguirre presents to this

[6] The State filed its closing argument the morning after the deadline set for simultaneous closings due to inadvertence. The defense raised this issue with the trial court and the trial court resolved it in favor of the State (SR, V2, R397-402). Aguirre did not raise this ruling as a claim of error herein, however, since Aguirre references the State's late-filing five times throughout his brief (pp. i, 11, 12, 31, and 32), the State is compelled to advise this Court that the State contacted defense counsel the morning after the deadline to assure counsel that the State's closing had been filed without reviewing Aguirre's closing argument beforehand. The State advised it could verify such by forwarding the defense an email that was sent to a colleague days before the defense filed its closing argument which contained an identical document to that which the State ultimately filed. The defense declined this offer, advised the State not to worry about it, and then filed a motion seeking remedies for such at the end of that same business day.

Court. This Court should affirm the trial court's finding that Aguirre's successive claim constituted an abuse of process.

CERTIFICATE OF SERVICE

I certify that on December 4th, 2016, I filed the foregoing pleading using the E-Portal system which will generate a notice of filing and electronically service the document on the following: Maria E. Deliberato, Assistant CCRC-Middle, deliberato@ccmr.state.fl.us; Julissa R. Fontan, Assistant CCRC-Middle; fontan@ccmr.state.fl.us, support@ccmr.state.fl.us; Capital Collateral Regional Counsel, 3801 Corporex Park Drive, Suite 210, Tampa, FL 33619-1136; Marie-Louise Samuel Parmer, Esquire, marie@samuelsparmerlaw.com; The Samuels Parmer Law Firm, P.O. Box 18988, Tampa, FL 33679; Lindsey C. Boney IV, Esquire, lboney@babc.com; Ashley B. Burnett, Esquire, aburkett@babc.com; Kevin C. Newsom, Esquire, knewsom@babc.com, Bradley Atrant Boult Cummings, LLP, 1819 Fifth Avenue North, Birmingham, AL 35203; Nina Morrison, Esquire, nmorrison@innocenceproject.org, Innocence Project, 400 Worth Street, Suite 701, New York, NY 10013.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14 point font.

Respectfully submitted and certified,

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