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 REPLY BRIEF

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PRELIMINARY STATEMENT

There is now no dispute that Samantha Williams has confessed to the murders for which Clemente Aguirre sits on death row. Indeed, the State concedes that, on three separate occasions, Samantha has made "specific confessions to the instant murders" by telling her neighbors, Christine and Marianne Laravuso, and Michael Bowman that she "killed [her] mother and grandmother." That alone should be enough to "give rise to reasonable doubt" as to the culpability of Aguirre, who has always maintained his innocence. *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998). But the Court need not decide this case on Samantha's confessions alone—her numerous, consistent confessions simply add to the vast array of newly discovered DNA, forensic, and testimonial evidence that more clearly demands relief than the record in either of this Court's recent decisions in *Hildwin v. State*, 141 So. 3d 1178 (Fla. 2014), and *Swafford v. State*, 125 So. 3d 760 (Fla. 2013).

The State seems content to completely ignore the new DNA evidence, which reveals none of Aguirre's DNA at the scene and squarely places Samantha there through bloodstains found within inches of the victims' blood. And it refuses to acknowledge the new (and unrebutted) forensic evidence that supports Aguirre's consistent story of how he found the victims and checked them for signs of life. The State instead offers speculative theories for why Samantha's confessions are not to be believed, but that sort of argument is quintessentially one for a jury to resolve.

See Hildwin, 141 So. 3d at 1187. Moreover, the State's recycled, untimely arguments that the confessions are inadmissible and should have been identified sooner similarly fail under this Court's recent precedents, which the State likewise ignores. *See, e.g.*, *Bearden v. State*, 161 So. 3d 1257 (Fla. 2015).

In light of the current evidentiary record, there can be no doubt that a new jury probably would acquit Aguirre. Due process demands that a new jury at least be given that opportunity.[1]

ARGUMENT

I. THE EVIDENCE DEVELOPED POST-CONVICTION—INCLUDING SAMANTHA WILLIAMS'S CONFESSIONS, DNA RESULTS, AND FORENSIC EVIDENCE—CREATES REASONABLE DOUBT ABOUT AGUIRRE'S GUILT.

Despite conceding that Samantha Williams has made numerous confessions to these crimes, the State attempts to preserve Aguirre's conviction by urging that Samantha—one of its key witnesses at Aguirre's trial—is not to be believed and, alternatively, that the evidence is one-sided against Aguirre. The Court should not be misled. The witnesses to Samantha's consistent confessions believed the confessions to be true, and no evidence supports the State's speculative theories.

[1] Aguirre also is due a new trial for other reasons, including that he received ineffective assistance of counsel from his appointed lawyers. *See* Supp. Br. 3 n.2. The ineffective-assistance-of-counsel claim, of course, requires only a showing that the new post-conviction evidence "undermine[s] confidence in the outcome" of Aguirre's trial. *Strickland v. Washington*, 466 U.S. 668, 694–95 (1984).

Moreover, the State entirely ignores the post-conviction evidence, which shows an absence of Aguirre's DNA at the crime scene, reveals Samantha's DNA in numerous locations within inches of the victims' blood, and provides unrebutted forensic testimony that the killer could not have worn Aguirre's clothes.

A. The State Cannot Explain Away Samantha's Admittedly "Specific Confessions" To These Murders.

The State contends that Samantha's "specific confessions to the instant murders" are inconsequential because they were somehow "vague" and made when Samantha was "in a fragile mental state" and "upset." Supp. Ans. Br. 18–19. These efforts to minimize the importance of the confessions must fail.

1. As an initial matter, the State is simply wrong that Samantha's confessions are "vague and erratic." *E.g.*, Supp. Ans. Br. 15. Samantha told the Laravusos and Bowman that she had "killed" two specific people—her "mother and grandmother"—both of whom she knew well, and both of whom had in fact been murdered. Each of those confessions is entirely consistent with the others; in fact, all of Samantha's confessions are nearly identical, and the State cannot point to any contradictory evidence. The State similarly discounts Samantha's prior admissions to her friend Nichole Casey that "demons in her head" caused her to "kill her mom . . . [a]nd grandmother" and that "demons had made her . . . hurt her mom" (*id.* at 18–19), but the State flatly ignores the fact that Samantha pantomimed a stabbing motion as she made one of those statements. *See* Supp. Br. 15, 25 n.11.

Samantha's multiple, consistent confessions provide sufficient context for a jury to assess their probative value. Indeed, they are far more probative and credible than the purported confessions in *Reed v. State*, 116 So. 3d 260 (Fla. 2013), which the State cites in passing. *Reed* involved affidavits submitted by two inmates who claimed that another inmate had confessed to murdering "an old white woman in Jacksonville." 116 So. 3d at 265. This Court held that evidence likely would not produce an acquittal because there was no "link" between the confession and the defendant's case: neither the witnesses nor the declarant provided "specific names, places, or dates" for the murder, and no other evidence connected the declarant to the crime. *Id.* Here, of course, Samantha has repeatedly confessed to killing these two victims, and her DNA was found in crime-scene bloodstains within inches of their blood. Moreover, in *Reed*, the Court found the inmate witnesses not credible. *See* 116 So. 3d at 265. Here, though, the State freely concedes that the testimony of the Laravusos and Bowman is credible—*i.e.*, that Samantha really did tell them that she "killed [her] mother and grandmother." *See, e.g.*, Supp. Ans. Br. at 20.[2]

Samantha's most recent confessions are neither "vague" nor "erratic," and a jury would have more than enough information to consider and assess their truth. *See also* Part II.B *infra*.

[2] The undisputed credibility of the Laravusos and Bowman also distinguishes the State's citation to *Blanco v. State*, 702 So. 2d 1250, 1252 (Fla. 1997), where this Court found testimony about a third party's confessions "not worthy of belief."

2. The State also attempts to explain away Samantha's confessions because she was in a "fragile mental state . . . after her mother and grandmother were murdered." Supp. Ans. Br. 18. That argument offends due process. It cannot be that a capital defendant is precluded from introducing a third-party confession simply because it is *possible* that the declarant may have been in a compromised mental state when she confessed. *Cf. Bearden*, 161 So. 3d at 1261 (ordering a new trial based on a confession by a known methamphetamine user). But the State's theory suffers from faulty logic in any event. Even if the State's ambiguous assertion about Samantha is true, it ignores, of course, the equally plausible explanation that she has been in a "fragile mental state" because she "killed [her] mother and grandmother." Moreover, Samantha may well have been in a "fragile mental state"—and more inclined to confess—because she surmised that she would soon be found out; she confessed to the Laravusos and Bowman in spring/summer 2012, when authorities were collecting her DNA for comparison with crime-scene bloodstains. *See* R3:552–58, R7:1216–40, R11:1925–77, R29:3231.

Critically, though, the State's argument has a more subtle but equally problematic implication: Samantha Williams was one of the State's key witnesses during Aguirre's trial. She was the only witness to testify that Aguirre had ever entered the family's home without permission, an element of the burglary charge

upon which Aguirre's felony-murder charge was predicated.[3] If, as the State now contends, Samantha's "fragile mental state" casts doubt on her confessions to these crimes, then it also casts doubt on her trial testimony, which Aguirre's deficient trial counsel never contested. *See* Initial Br. 25–33.

3. Similarly, the State uses faulty logic when it attempts to draw significance from its observation that each time Samantha has confessed, she "was upset because the witnesses to her confessions had cut her off from drinking or asked her to leave a group activity." Supp. Ans. Br. 19. Even if the State is correct, that does not make Samantha's confessions untrue. The State suggests that, in wanting to "frighten those who upset or reject her" (*id.*), Samantha may have decided to fabricate a murder confession. The State is purely speculating, of course—there is no evidentiary support for its fabrication theory. But the opposite inference is equally, if not more, plausible: Samantha wanted her neighbors to know that she was to be taken seriously, so she told them that she had killed two people who had lived on their street, and who the neighbors would know had in fact been murdered. *See* SR3:512–13, 593–94.

* * *

[3] Samantha has since admitted that she was prone to hallucination and blackouts, and that she was drinking and using drugs during the time of this alleged incident. R21:1754–56; *see also* Initial Br. 16–17 & nn.5–6.

Each of the State's theories for ignoring Samantha's statements—and the competing inferences that accompany those theories—simply highlights the abject unfairness of executing Aguirre on the current evidentiary record. There is no dispute that Samantha, on numerous occasions, has confessed that she "killed [her] mother and grandmother." The only question is whether her statements are true. At the least, a jury should be allowed to hear about these confessions; to test them against the record evidence, including the new DNA results, the new forensic evidence, and Samantha's newly discovered mental health records that illuminate her strained family relationships; and to determine what all of that evidence means with regard to Aguirre's guilt or innocence. *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.").

B. New DNA And Forensic Evidence, Which The State Ignores Completely, Tends Both To Exculpate Aguirre and To Inculpate Samantha.

Of course, Samantha's confessions are not the only new evidence that "give[s] rise to a reasonable doubt as to [Aguirre's] culpability." *Jones*, 709 So. 2d at 526. Far from it. As explained before, a wealth of newly discovered evidence—ranging from unrebutted forensic expert testimony to DNA results that show ***none*** of Aguirre's DNA at the crime scene—so significantly "weakens the case against" Aguirre that he would likely be acquitted in a new trial. *Id.* The State completely

ignores this evidence and argues that Samantha's confessions "create no doubt as to Aguirre's guilt" (1) because "highly credible evidence establishes Samantha's alibi and eliminates her as a suspect," and (2) because "the evidence of Aguirre's guilt is overwhelming." Supp. Ans. Br. 18. Both of those arguments fail.

1. The DNA evidence "corroborates" Samantha's confessions and undermines her alibi.

The evidentiary record flatly contradicts the State's assertion that Samantha's multiple confessions are undermined because "highly credible evidence establishes Samantha's alibi and eliminates her as a suspect." Supp. Ans. Br. 18; *see also id.* at 29–30; R12:2175, 2181 (characterizing Samantha's alibi as "solid"). Aguirre's burden is only to present new evidence that would allow a jury, for the first time, "to decide between two suspicious people," *Hildwin*, 141 So. 3d at 1192, and he has certainly done that.

a. The State's assertion that there is not "any evidence" that is "consistent with [Samantha's] guilt" (Supp. Ans. Br. 18) simply is not correct. In addition to the new evidence of a possible motive (*see* Initial Br. 31), Samantha's DNA was found in eight crime-scene bloodstains. The State, like the circuit court, tries to wave off the DNA evidence because it came from "Samantha's own home" (Supp. Ans. Br. 24; *see also* R12:2181–82), but the State offers no response to the fact that several of the bloodstains containing Samantha's DNA were found within inches of the victims' blood. *See* Initial Br. 24–25. What's more, the State fails to account

for the trial testimony of its crime-scene technician, Jackie Grossi, that she swabbed bloodstains that she thought would help identify the perpetrator. *See* Tr. 10:896–900. That testimony fits with Aguirre's new forensic evidence that Samantha's bloodstains were "fresh" and deposited at the same time as the victims' blood. R23:2141; *see also* Initial Br. 35.

b. The State also overstates Samantha's "alibi" evidence. At one point, the State contends that "'[t]here is not any evidence that contradicts her alibi to demonstrate she was anywhere other than the Van Sandt home at the time of the murder.'" Supp. Ans. Br. 30 (quoting R12:2168–69). Of course, the State must really mean no evidence *other than her DNA in crime-scene bloodstains*. Nonetheless, far from "establish[ing] Samantha's alibi," the record shows only minimal evidence that might plausibly qualify as an alibi. *See* Initial Br. 53–55; Supp. Br. 20. Tellingly, the State cites only testimony from Mark Van Sandt because he is the only witness who has corroborated Samantha's story that she was asleep at Van Sandt's parents' house during the murders. That testimony can hardly be considered "highly credible." Setting aside the fact that, as Samantha's then-boyfriend, he had an obvious interest in protecting Samantha—not to mention 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.[4]

c. Moreover, the State mischaracterizes even the scant evidentiary support for Samantha's alibi. For example, the State expresses incredulity that Samantha could commit these crimes and then return to Van Sandt's parents' home and "'immaculately clean [the] white bathroom'" without detection. Supp. Ans. Br. 18 (quoting R12:2167–68); *see also id.* at 30. That is a strawman. To be clear, neither Aguirre nor the State has ever posited that the killer "cleaned up" outside the crime scene. At trial, the State argued in closing that the killer cleaned up in the southeast bathroom, where investigators found a blood-stained towel, bloodstains on the door, and drops of blood on the floor. *See* Tr.13:1526 (State's closing); *see also* Tr.10:864–65 (testimony of crime-scene investigator Jackie Grossi). We now know (although Aguirre's jury didn't) that four of the blood swabs taken from that bathroom—one from the door and three from the middle of the floor, within inches of Cheryl's blood—contained Samantha's DNA. R10:1881, 1883, 1885, 1887;

[4] Aguirre's trial counsel did not cross-examine Van Sandt or, for that matter, investigate him in any way. R24:2378. Aguirre's trial counsel subpoenaed Van Sandt for deposition, but when Van Sandt failed to show—even though he was on probation at the time—trial counsel made no effort to compel his appearance, nor did they try to contact him to arrange an interview. R19:1378–80; R24:2219. We now know—although Aguirre's jury did not—that the deposition notice was served on Samantha, who never told Van Sandt about it. R22:1927.

R11:1978; *see also* Initial Br. 24–25 (explaining DNA evidence).[5] Thus, the State's own trial theory, combined with the new DNA evidence, points to Samantha as a viable suspect. The State also mischaracterizes the fact that there were no "cuts or marks" on Samantha. Supp. Ans. Br. 30. That merely begs the question—unlike Aguirre and Van Sandt, Samantha was never examined for any injuries. R23:2197. But, most fundamentally, the State's contention ignores the fact that there is now scientific evidence that Samantha injured herself: when investigators arrived at the scene, Samantha's blood was present in sufficient quantities to be swabbed and later identified through DNA testing.

2. New DNA and forensic evidence casts reasonable doubt on Aguirre's conviction.

Finally, the State contends that "the evidence of Aguirre's guilt is overwhelming" (Supp. Ans. Br. 18), but that contention fails entirely to account for any of the post-conviction evidence. Most notably, as in *Hildwin* and *Swafford*, the fact that ***none*** of Aguirre's DNA was found at the crime scene is highly significant. That is particularly so given that these crimes involved an "extremely violent" struggle with a common kitchen knife. TR12:1365; *see also* Reply Br. 6.

[5] None of the blood swabs contained Aguirre's DNA, of course. And although the State argued that Aguirre's footprints were "going into the bathroom" (Tr.13:1526), that is inconsistent with the evidence. *See* Tr.11:1029 ("last footwear impressions that we could observe were in the southwest or south hallway"); *id.* at 1079 (no mention of footprints in the southeast bathroom).

But Aguirre also has presented new, unrebutted forensic evidence that turns upside-down the State's contention—and this Court's previous conclusion, which was based on the direct-review evidentiary record—that there is "'voluminous forensic evidence linking [Aguirre] to the murders.'" Supp. Ans. Br. 21 (quoting *Aguirre-Jarquin v. State*, 9 So. 3d 593, 609 (Fla. 2009)); *see also* Initial Br. 33–38 (summarizing post-conviction forensic evidence). Two reputable forensic experts have now undermined the very "linchpin" of the State's trial evidence. *Swafford*, 125 So. 3d at 769 (granting new trial based on forensic test results despite evidence linking defendant to the murder weapon and indicating that he had made incriminating statements).

One of Aguirre's experts, Barie Goetz—a 35-year veteran of bloodstain analysis and former analyst and director of the forensic laboratory for the Colorado Bureau of Investigation—testified unequivocally (and without contradiction from the State) that Aguirre's blood-stained clothes could not have been worn by the killer. Most critically, Goetz testified that Aguirre's clothes were stained by direct contact with the victims, ***not*** "through motion," as the State originally asserted at trial. R20:606, 609; *see also* Initial Br. 13–14, 34.[6] Goetz also rebutted the State's

[6] In its earlier briefing, the State agreed that its bloodstain expert acknowledged at trial "that he could not say one way or the other" whether Aguirre's shorts showed projected blood. Resp. Br. 70. That concession undermines its own trial theory and renders Goetz's testimony all the more significant. *See* Reply Br. 8–9.

trial arguments about the shoeprint evidence by explaining that the shoeprints were very clear transfers that are wholly "consistent with [Aguirre's] testimony" that he deliberately walked around the crime scene after the blood had time to pool around the victims, rather than smeared footprints caused by hurried or frantic movement in a violent struggle. R20:1516–17. The State has never disputed the correctness of Goetz's analysis.[7]

Aguirre's other expert, Dr. Daniel Spitz—the chief medical examiner for Macomb County, Michigan—presented evidence that the bloodstain patterns on Cheryl Williams's body were consistent with Aguirre's explanation of how he found and briefly moved her body to check for signs of life. The State's witness, Dr. Thomas Beaver, testified at trial and in post-conviction that Cheryl's body had not been moved before investigators arrived at the scene. TR12:1398; R19:1276. Spitz powerfully rebutted that theory by showing that, in fact, there was "another ring" of blood on Cheryl's body—which is exactly what Beaver had testified he would expect to see if the body had been moved and then placed back down on the floor,

[7] The State's earlier briefing discounted the significance of Goetz's shoeprint testimony because, the State said, it is "contradicted by the evidence" that no *other* shoeprints were found at the crime scene. Resp. Br. 73. As already explained, although the presence of additional shoeprints in a smeared pattern might strengthen Aguirre's innocence claim, their absence is hardly dispositive. *See* Initial Br. 81–82; Reply Br. 10–11. The real killer might have left the scene before the blood had sufficient time to pool, or might not have been wearing shoes at all—for instance, it is undisputed that Mark Van Sandt was barefoot when he discovered the bodies and that examiners did not find his footprints at the scene. TR11:1111–12.

as Aguirre originally testified he did. TR12:1297, 1307–08; R9:1626. Spitz also noted two "well-defined blood drips which are parallel to one another on the lower portion of [Cheryl's] back," which evidenced movement of the body "prior to the medical examiner's office arriving on the scene." R19:1310–11. The State cannot explain away the double ring or the two blood lines down Cheryl's back. *See* Initial Br. 37–38; Reply Br. 11–13.

In light of Aguirre's new forensic evidence, the State can do no more than place Aguirre inside the victims' home, but Aguirre has admitted that fact for nearly twelve years. Indeed, the post-conviction record powerfully corroborates Aguirre's account of how he found the victims. This Court has vacated convictions based on similar evidence, even under a far-more-demanding standard than the newly-discovered-evidence test applicable here. *See* Initial Br. 50–52.[8]

C. *Hildwin* And *Swafford* Are Directly On-Point And Require Relief.

All of this evidence creates a post-conviction record that squares nearly precisely with the evidence in *Hildwin* and *Swafford*, *see, e.g.*, Initial Br. 44–50; Supp. Br. 14–17, and the State's efforts to distinguish those decisions must fail.

1. The State argues that Aguirre's case is a "far cry" from *Hildwin* and *Swafford* because, there, the new evidence "directly discredited forensic evidence

[8] Goetz's and Spitz's powerful new testimony not only corroborates Aguirre's insistence that he found the victims' bodies after they were already dead but also highlights trial counsel's ineffectiveness. *See* Initial Br. 78–83.

submitted during trial." Supp. Ans. Br. 22, 24; *see also id.* at 24 (arguing that Hildwin's new DNA evidence marked a "drastic change in [the] forensic evidence").[9] But that is *precisely* what Aguirre's new evidence does here. The absence of Aguirre's DNA at the bloody crime scene "discredits" the suggestion that he killed the victims after a "violent struggle." *Aguirre-Jarquin*, 9 So. 3d at 606. New, unrebutted forensic 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. And the fact that Samantha's DNA was found within inches of the victims' blood throughout the crime scene—particularly in four separate samples taken from the southeast bathroom, where the State argued at trial that the killer would have "cleaned up"—significantly discredits the State's physical evidence presented at trial.

2. What's more, Aguirre actually has more affirmative exculpatory evidence than existed in either *Hildwin* or *Swafford*. *See* Supp. Br. 16–17. In

[9] In truth, the State's new characterization of *Hildwin* is a "far cry" from its own arguments in that very case. The State argued in *Hildwin* that the DNA evidence was "insignificant" and that "nothing is different now except for the addition of the name of the victim's boyfriend as the source of the DNA." State's Br. at 11, 19, *Hildwin v. State*, No. SC12-2101 (Fla. Apr. 16, 2013); *see also id.* at 11 ("[N]othing of significance has changed."); *id.* (arguing that the DNA evidence "is insignificant[] and does nothing to challenge any of the uncontroverted evidence of Hildwin's guilt"); *id.* (arguing that there is "unrebutted and unchallenged evidence of Hildwin's guilt"); *id.* at 12 ("Now that the source of the DNA has been identified as the victim's boyfriend (with whom she lived), the DNA evidence becomes irrelevant for any purpose. It does not help Hildwin at all.").

Hildwin, the DNA evidence rebutted serology evidence that had been presented at trial even though the case wasn't tried as a rape case. And *Hildwin* had other challenging evidence—*i.e.*, that the defendant had a motive, had confessed to the crime, and had stolen from the victims (*see Hildwin*, 141 So. 3d at 1191–92)—the likes of which would not be present at Aguirre's retrial. In *Swafford*, only the testimonial evidence pointed to a new suspect—*i.e.*, the new forensic evidence tended only to exculpate the defendant, not to inculpate another. Here, *both* new forensic *and* testimonial evidence tend both to exculpate Aguirre *and* to incriminate someone else. And Aguirre's new testimonial evidence is much more telling: Samantha Williams was a critical witness for the State at trial, but Aguirre's jury did not know that she had a history of violence toward her mother, that her blood was at the crime scene, or that she now has indisputably confessed to these crimes on numerous occasions.

3. But even more fundamentally, the State's efforts to distinguish *Hildwin* and *Swafford* simply miss the point. The relevant question is not whether (or to what extent) the evidence developed post-conviction necessarily "discredits" the evidence that was presented at trial. Instead, the relevant question is whether the new evidence would "give rise to a reasonable doubt as to [Aguirre's] culpability" on retrial. *Jones*, 709 So. 2d at 526. *Hildwin* and *Swafford* at least stand for the proposition that the *Jones* standard is met—and the defendant's conviction and sentence must

be vacated—when new, previously untested DNA evidence excludes the defendant and other credible evidence (including, but not limited to, new DNA evidence) points to an alternative suspect.

* * *

Samantha's multiple confessions to these crimes—as probative and compelling as they are—need not be taken in isolation. The State completely ignores the post-conviction evidentiary record, which sufficiently "weakens the case against [Aguirre] so as to give rise to a reasonable doubt as to his culpability" and the need for a new trial. *Hildwin*, 141 So. 3d at 1181 (internal quotation marks omitted).

II. SAMANTHA'S MOST RECENT CONFESSIONS WOULD BE ADMISSIBLE IN A NEW TRIAL.

Alternatively, the State contends that Samantha's confessions would not be admissible in a new trial (*see* Supp. Ans. Br. 27–31), which of course ignores the Supreme Court's decision in *Chambers* and this Court's recent *Bearden* decision.

A. The State Has Waived Its Hearsay Objection.

The State does not contest that it agreed to an evidentiary hearing and that it waited until its written closing argument to assert that the testimony of the Laravusos and Bowman constituted inadmissible hearsay. The State's only argument appears to be that it was not required to raise a contemporaneous objection (*see* Supp. Ans. Br. 31), but it cites no authority for that proposition. To the contrary, "[i]t is well established Florida law that an objection must be specific and contemporaneous in

order to preserve that argument for appeal." *Gonzalez v. State*, 142 So. 3d 1171, 1175 (Fla. 3d DCA 2014). Of course, one of the key purposes of that rule is to prevent one party from sitting silently by in order to gain a "tactical advantage." *F.B. v. State*, 852 So. 2d 226, 229 (Fla. 2003). The State's decision to hold its hearsay argument in reserve until its written closing—to which Aguirre was not allowed a reply—deprived Aguirre of the ability to respond in the circuit court. The State's belated objection via its written closing is thus waived.

B. Samantha's Newest Confessions Are Admissible Under *Chambers*.

In any event, due process requires that Samantha's confessions, which bear "persuasive assurances of trustworthiness," be admissible in a new trial. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).

1. As explained above, the State's assertion that Samantha's confessions "lack any specificity" is disingenuous in light of its own characterization of her statements as "*specific confessions to the instant murders*." Supp. Ans. Br. 19 (emphasis added). The State has cited to no authority holding that an unequivocal confession to "killing" a certain, identified victim is not sufficiently specific; indeed, the Supreme Court required the admission of a similar statement in *Chambers*. *See Chambers*, 410 U.S. at 292 (holding third party's statement that he "shot him"—referring to a certain police officer—admissible). Moreover, in *Bearden*, this Court held a third-party confession was admissible notwithstanding the fact that it was not

particularly detailed. *See* 161 So. 3d at 1263, 1267–68 (confession that declarant's cousin "stabbed" a "gay guy" after a confrontation and that he "was with his cousin when he did it" held admissible under *Chambers*). In light of those precedents, Samantha's statement that she "killed" two named people is plenty specific. *See also Curtis v. State*, 876 So. 2d 13, 22 (Fla. 1st DCA 2004) ("Nor was the statement one that merely implied that Butler was guilty. Butler categorically stated that he was the one who shot Mrs. Stephens.").

2. The State also argues that Samantha's statements lack "spontaneity," but that argument both misinterprets controlling law and misstates the facts of this case. The State notes that "[a]ll of Samantha's confessions were made years after the murders," but *Chambers* does not embody a rigid temporal requirement. *See, e.g.*, *Bearden*, 161 So. 3d at 1265 n.3. The State also discounts Samantha's confessions because, the State says, they "were made when she was either intoxicated, felt disrespected, was receiving mental health treatment while in a highly emotional state, or when she was experiencing a combination of these circumstances." Supp. Ans. Br. at 29. That is a gross misstatement of the record: the witnesses testified either that Samantha *did not* appear intoxicated (SR3:522–23; SR3:588–89; SR3:574–78), or that they could not tell whether she was intoxicated (SR3:577). Moreover, there is nothing at all to suggest how Samantha "felt" or that she was "receiving mental health treatment" when she made these confessions. All

that is required under *Chambers* is "sufficient assurances of reliability," and Samantha's most recent confessions, which were made in spring/summer 2012—when DNA collection and testing were underway to determine the identity of the person who had killed Samantha's mother and grandmother—certainly satisfy that requirement. *See, e.g.*, *Curtis*, 876 So. 2d at 21 (crediting, under *Chambers*, statement "made without any compulsion and without any apparent motive to lie").[10]

3. The State's argument that Samantha's confessions lack sufficient "corroboration" because there is no evidence other than Samantha's blood at the crime scene (Supp. Ans. Br. 27–29) must also fail under *Bearden*. In *Bearden*, this Court made clear that only "*some other evidence*" is needed to corroborate a confession. *Bearden*, 161 So. 2d at 1266 (emphasis added); *see also id.* (confession of Ray Brown was sufficiently corroborated by defendant's own self-serving statement that Brown committed the crime, even though other evidence contradicted that statement). If, as in *Bearden*, a defendant's own self-serving statement can provide sufficient corroboration for a third-party confession, then surely the presence of the third party's blood at the scene of a stabbing—within inches of the victims' blood—is sufficient corroboration. Moreover, just as in *Chambers*, "the sheer number of independent confessions provide[s] additional corroboration for

[10] Samantha's prior admissions also satisfy this standard, including her statement in 2007 that her mother and grandmother "died from me." Initial Br. 26–30, 56–59.

each." *Chambers*, 410 U.S. at 300 (involving three separate confessions to three different people). Not only did Samantha specifically confess three times to the Laravusos and Bowman, she also previously admitted to her friend Nichole Casey that "demons in her head" had "[m]ade her kill her mom . . . [a]nd grandmother," and on a separate occasion—while pantomiming "a stabbing motion towards her chest"—that "demons had made her . . . hurt her mom." *See* Initial Br. 27–28. The "sheer number" of consistent confessions, along with the presence of Samantha's blood at the scene, provides more than enough corroboration for her confessions.

4. The State also attempts to call the truthfulness of Samantha's confessions into question by characterizing them as attempts to frighten the Laravusos and Bowman. Of course, as explained in Part I.A above, there are equally plausible explanations for her statements. But more importantly, where Samantha has made numerous, consistent confessions to different people—all of which are corroborated by the presence of her blood at the crime scene—such lingering questions about her intent in making the confessions are for a jury to decide. Just as in *Chambers*, to the extent there is "any question about the truthfulness of the extrajudicial statements," Samantha presumably will be available to testify, and her "demeanor and responses [can be] weighed by the jury." *Chambers*, 410 U.S. at 301; *cf. also*, *e.g.*, *Leighty v. State*, 981 So. 2d 484, 493 (Fla. 4th DCA 2008)

(deferring to admissibility where declarant is available for cross-examination). It is not for the State or the circuit court to substitute its own judgments for that of a jury.

III. AGUIRRE'S SUCCESSIVE MOTION DID NOT "ABUSE PROCESS."

Finally, the State maintains that Aguirre's successive motion constitutes an "abuse of process"—even though it was timely under controlling law—because, in the State's view, Aguirre should have "raise[d] his successive claims regarding Samantha's third-party confessions during the pendency of his initial Rule 3.851 proceedings" in May 2013. Supp. Ans. Br. 31. That argument (in addition to being raised too late) seeks to overturn settled Florida law, even though the State can articulate no prejudice that resulted to it from Aguirre's successive motion.

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

The State's response notably does not refute that the circuit court's abuse-of-process ruling effectively rewrites the well-settled rule allowing defendants one year to file a successive motion after the discovery of new evidence. *See* Supp. Br. 27–31. What's more, the State (like the circuit court) fails to cite any decision that even remotely suggests that Aguirre should be faulted for not attempting to present these witnesses during the May 2013 hearing. All agree that Aguirre's counsel learned of these new witnesses once the May 2013 hearing was already underway, and it cannot be disputed that the hearing was complex and that everyone—both the parties and the court—worked around the clock to ensure its timely completion.

Despite those undisputed facts, the State nonetheless contends that Aguirre's counsel somehow should have conducted an investigation into the claims of the new witnesses and been prepared to "notif[y] the State and circuit court" about them, all before the conclusion of the hearing. Supp. Ans. Br. 33. Of course, requiring counsel to investigate potential evidence within days of its discovery—all while in the middle of a complex and contentious evidentiary hearing—is unreasonable, which is precisely why defendants are given one year in which to bring successive motions based on new evidence. *See In re Amendments*, 148 So.3d 1171, 1174–75 (Fla. 2014) (declining to shorten the one-year limitations period for newly discovered evidence in light of the resources required for investigation). So while the State argues that nothing prevented Aguirre's counsel from attempting to present these new witnesses during the May 2013 hearing even before investigating the statements (*see* Supp. Ans. Br. 33), it cannot point to any authority that *required* Aguirre's counsel to do so, either. And the State nowhere disputes that counsel had an affirmative obligation to conduct such an investigation before simply calling these new witnesses to testify.

The State further contends that *Lukehart v. State*, 70 So. 3d 503 (Fla. 2011) "is unpersuasive because Lukehart did not discover new witnesses or evidence prior to his evidentiary hearing." Supp. Ans. Br. 33. But neither did Aguirre. Just as in *Lukehart*, the new evidence came to light while the evidentiary hearing was ongoing.

See 70 So. 3d at 514. The State also asserts that *Lukehart* is distinguishable because the defendant there needed to add "new claims" whereas Aguirre "merely needed to list additional witnesses" (Supp. Ans. Br. 34), but that distinction is immaterial. Counsel still would have needed time to investigate the new witnesses, to determine both the veracity of their statements and their willingness to testify. The State has failed to offer any reason for shortening the well-settled one-year period in this case.

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

In any event, the State's argument is waived because the State waited until its written closing argument to assert it. The State now accuses Aguirre of providing an "incomplete" and "scant" recitation of the May 2015 evidentiary hearing at which the State failed to raise this argument (Supp. Ans. Br. 34–35), but—tellingly—the State cannot cite to any portion of the transcript where it asserted "abuse of process" or "abuse of procedure." Only in its written closing did the State change course from a "strictly timeliness" argument (SR3:603, 615) to asserting that Aguirre's motion constituted an "abuse of procedure." Of course, "timeliness" is a completely separate concept from "abuse of process" or "abuse of procedure," and all agree that Aguirre's motion was timely under the rules. The State should not be allowed to change course in its written closing—to which Aguirre was not allowed to reply—

especially when the State had ample opportunity to raise the issue either before or during the evidentiary hearing.[11]

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, and readily satisfies this Court's precedents for granting a new trial.

[11] Regarding the State's late-filed written closing argument, the State correctly notes that Aguirre has not raised the State's tardiness "as a claim of error" and thus there is no reason to discuss the issue. Supp. Ans. Br. 35 n.4. The State nonetheless provides a lengthy explanation of its lateness. In response, Aguirre simply notes that he never consented to the late filing in any way, and in fact, filed a *pro se* motion to strike the filing, which his counsel adopted. The trial court never ruled on that motion.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Supplemental Reply 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 7th day of January, 2016.

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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**.**

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