IN THE SUPREME COURT OF FLORIDA

CASE NO. SC17-1987

WILLIAM EARL SWEET,

Appellant,

v.

STATE OF FLORIDA,

Appellee

ON APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT FOR DUVAL COUNTY, STATE OF FLORIDA
Lower Tribunal No. 1991-CF-2899

REPLY BRIEF OF APPELLANT

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INTRODUCTION

The State portrays William Sweet as a prolific instigator of repetitive, frivolous challenges to his death sentence. The opposite is true. Mr. Sweet was convicted after a trial in which both the odds and our nation's constitutional protections abandoned him. Repeated witness recantations and new legal claims tell a different story - the story of an innocent man who has languished on death row seeking justice for nearly three decades.

Florida leads the nation in wrongful death row convictions, now officially acknowledged in twenty seven cases. Death Penalty Information Center, Innocence and the Death Penalty (hereinafter "DPIP"), Innocence Database (January 30, 2018) https://deathpenaltyinfo.org/innocence?inno_name=&exonerated=&state_innocenc e =8&race=All&dna=All&=Apply. "Despite the heavy burden that the prosecution must shoulder in capital cases, we cannot ignore the fact that in recent years a disturbing number of inmates on death row have been exonerated." *Atkins v. Virginia*, 536 U.S. 304, 320 (2002). Seventy four percent of the exonerated innocent in Florida have been people of color. DPIP, Innocence Database. Exoneration statistics show a higher incidence of error in capital cases than other criminal cases and a ratio of one exoneration for every five to seven executions. Jean Coleman Blackerby, Comment, *Life After Death Row: Preventing Wrongful Capital Convictions and Restoring*

Innocence After Exoneration, 56 Vand. L. Rev. 1179, 1185 (2003). Sixty-eight percent of capital convictions and appeals between 1973 and 1995 were found to have prejudicial error, the most common of which were incompetent defense lawyers, prosecutorial misconduct, and faulty jury instructions. James S. Liebman et al., *A Broken System: Error Rates in Capital Cases, 1973-1995*, i (2000). *See also* James S. Liebman et al., *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It* (2002); John H. Blume, *Twenty-Five Years of Death: A Report of the Cornell Dealt Penalty Project on the "Modern" Era of Capital Punishment in South Carolina*, 54 S.C. L. Rev. 285, 318 (2002). A 1998 study showed that in 96 percent of states where there have been reviews of race and the death penalty, there was a pattern of race-of-victim discrimination, race-of-defendant discrimination, or both. DPIP, (January 30, 2018) *https://deathpenaltyinfo.org/documents /FactSheet.pdf*.

Mr. Sweet's case is a catalogue of serious constitutional errors. He was represented by lawyers without any capital trial experience, one of whom was found ineffective in another capital case and one of whom was disbarred. R8/1469. PC9/1765. Attorney Adams suffered "health problems" throughout his representation. PC10/1777. Attorney Moore did not obtain school, mental health, medical, foster care, or juvenile justice records to find mitigation evidence or prepare

the presentation of any mitigation witnesses.[1] R8/1463-64. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Coleman v. State*, 64 So. 2d 1210 (Fla. 2011). Attorney Adams failed to request adequate funds for investigation. PC8/1439, 1441; PC9/1768. *See Hinton v. Alabama*, 134 S. Ct. 1081, 1088 (2014) (trial attorney's failure to request additional funding in order to replace an inadequate investigator constituted deficient performance under *Strickland v. Washington*). Post-conviction attorneys missed the filing deadline for federal habeas corpus review. *Sweet v. Sec'y, Dept. of Corr.*, 467 F. 3d 1131 (11th Cir. 2006). A general verdict of 10 to 2 was

[1] Moore testified he was completely unprepared for the mitigation phase of sentencing and never met the sole mitigation witness before he examined her:

> Q: And you did not prepare her to testify in any way, shape or form?
>
> A: I had never seen her.
>
> Q: Did you know what questions you were going to ask her?
>
> A: No.
>
> Q: How did you determine what questions to ask her?
>
> A: Played it by ear.
>
> Q: So you shot from the hip?
>
> A: Right.

R8/1463-64. Moore was subsequently disbarred.

sufficient for Judge Tygart to impose death because none of the modern Sixth Amendment jury guarantees for capital defendants were in place. *Hurst v. Florida*, 136 S. Ct. 616 (2016); *Hurst v. State*, 202 So. 3d 40 (2016). Compounding the risk that an innocent man might receive a death sentence, this Court never explicitly reviewed Mr. Sweet's sentence for proportionality on direct appeal.

I. The Combined Effect of the Post-Conviction Testimony of Cofer and Hansbury Eviscerates the State's Case and Would Probably Produce an Acquittal in a Future Retrial

Since trial, the only two adult identification witnesses, Marcene Cofer and Solomon Hansbury, have recanted. New evidence satisfies the second element of the *Jones* test if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998)*; Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 2014). To properly determine a claim that newly discovered evidence compels a new trial, the trial court must "consider all newly discovered evidence which would be admissible," and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Jones*, 709 So. 2d at 521; *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). In determining the impact of the newly discovered evidence, the court must conduct a **cumulative analysis of all the evidence from trial and prior post-conviction proceedings** 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 v. State*, 742 So. 2d 238, 247 (Fla. 1999)) (emphasis added). *See also Hildwin*, 141 So. 3d at 1184-85. A post-conviction court must also consider testimony that was previously excluded as procedurally barred in determining if there is a probability of an acquittal. *Id; see also Roberts v. State*, 840 So. 2d 962, 972 (Fla. 2002). The *Jones* test is satisfied when the quantum of all the evidence gives rise to a reasonable doubt as to culpability. *Hildwin*, 141 So. 3d at 1184-85. The quantum of evidence in Sweet's case provides reasonable doubt after reasonable doubt and the circuit court erred in upholding Mr. Sweet's wrongful conviction.

A. In a Case Based Solely on Circumstantial Evidence, the Recantation of the Only Adult Eyewitness and Victim is Powerful Proof of Actual Innocence

Neither the State nor the circuit court cite any physical evidence tying Mr. Sweet to the crime scene. The State's case was based solely on circumstantial evidence and eyewitness testimony at trial. *See Sweet v. State*, 624 So. 2d 1138, 1139 (Fla. 1993) (this Court affirmed Sweet's conviction without reference to any physical evidence or facts other than eyewitness accounts). The murder weapon was never recovered. There were no fingerprints, no hair, no blood, no DNA, nor any specific ballistics evidence that tied Sweet to Marcene Cofer's apartment in the early morning hours of June 27, 1990.

Ironically, the paucity of evidence used to convict Mr. Sweet has lengthened and complicated his exoneration. If the State had used any physical evidence, DNA or blood type could be used to prove Sweet's innocence. If a weapon had been recovered at the scene or in a search of Sweet's home, ballistics or fingerprint experts could re-review conclusions of the State's trial experts. If there had been *any* physical evidence of Sweet's guilt, blood, hair, bullets, guns–*any physical evidence at all*—it could be reexamined and reweighed against the testimony of recanting witnesses. But the dearth of evidence against Mr. Sweet is unique among death penalty cases. The recanting witnesses' statements should be given more weight under the *Jones* standard because Sweet was convicted on the testimony of Cofer, Hansbury, and Bryant alone and there was no physical evidence to support his conviction.

Jones requires that the circuit court "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Jones*, 709 So. 2d at 521; *Swafford*, 125 So. 3d at 775-76. The circuit court was silent about remaining evidence that could support Sweet's conviction. Thus, the circuit court could not have properly weighed the exculpatory evidence presented at the 2017 Hearing under the *Jones* standard.

The State contends that there is "ample evidence" to convict Sweet at a future retrial. Answer Brief of Appellee ("SAB") at 28. Yet, the only evidence the State

cites is the testimony of Sharon Bryant, who was twelve years old at the time of the crime. At trial, it was determined that Miss Bryant was given a suggestive lineup, which was suppressed. R3/653. Even the State cannot argue that such evidence would result in a unanimous jury verdict for death beyond a reasonable doubt. The State's concession that there is no physical evidence and merely a girl's testimony left to convict Sweet in a hypothetical retrial epitomizes the circuit court's mistaken evaluation of the total picture of the evidence against Mr. Sweet and the probability of acquittal.

The State mischaracterizes the applicability of *Armstrong* and *Spann*. SAB at 16. In *Armstrong v. State*, 642 So. 2d 730, 733-34 (Fla. 1994), the State introduced evidence of bullets, fingerprints, an eyewitness who saw the defendant with the murder weapon, and testimony of numerous eyewitnesses at trial. After trial, a female witness changed her testimony and admitted she had been biased in Armstrong's favor because Armstrong was the father of her twins. *Id*. at 735. This Court upheld the denial of a new trial because of the vast weight of other evidence against Armstrong made acquittal unlikely. Likewise in *Spann v. State*, 91 So. 3d 812, 822-26 (Fla. 2012), Spann's accomplice testified against him at trial and later recanted. This Court upheld a denial of a new trial because the recanted testimony contradicted the timeline of events established by numerous other witnesses and did not line up

with confirmed locations of the crimes at issue. Plenty of additional evidence supported Spann's conviction, including further incriminating testimony, stolen money recovered from Spann, and the third-party identification of Spann's car at several crime locations. *Id*.

In contrast to *Armstrong* and *Spann*, there was no evidence aside from eyewitness and jailhouse informant testimony used to convict Sweet at trial. Unlike *Armstrong*, there are no bullets, weapons or fingerprints. Unlike *Spann*, there is no timeline of events or stolen property recovered from a search of Sweet's home. *See infra* Section I.D. Because two of three witnesses providing identification evidence against Mr. Sweet have recanted, and the only remaining witness was twelve years old at the time of the crime, it is likely that all of the new evidence taken together would result in acquittal under *Jones*. *Spann* and *Armstrong* cannot be fairly applied in Mr. Sweet's case because both cases involved exponentially greater amounts physical evidence and many more witnesses with trustworthy testimony.

Armstrong is further distinguished from Mr. Sweet's case because the witness's recantation involved an issue of bias rather than an ultimate issue of guilt or innocence. In Mr. Sweet's case, recanting witness Marcene Cofer was not only the eyewitness but ***the victim*** of the 1990 shooting. After she was shot on June 27, Ms. Cofer was admitted to the hospital for four or five days, felt stress, and had

nightmares. T/530. Ms. Cofer suffered from a senseless, painful, traumatic, and despicable violent act. Recanting jailhouse informants may be stereotypical in death penalty jurisprudence, but recanting victim witnesses are exceptionally rare. Despite her serious wounds, Ms. Cofer does not "want Earl Sweet to die on death row and he wasn't the one that pulled that trigger." T/557.

Cofer's concern that she might have misidentified Sweet has haunted her since 1991. T/537 ("every time it [the conclusion that William Sweet didn't shoot] comes back up in my life . . . I kind of go back over it in my head . . . that's something that I feel that's true"). The depth of her conviction that Mr. Sweet was not the shooter goes far beyond the type of unreliable recantation on the limited issue of bias which the State references in *Armstrong*.

Mr. Sweet's case is much more like *Johnson v. Singletary*, 647 So. 2d 106, 110-111 (Fla. 1994). The possibility of factual innocence coupled with the basis of the State's case "almost entirely upon" one eyewitness warrants reversal. *Id*. The circuit court's legal errors are subject to *de novo* review and should be reversed by this Court. *King v. State*, 211 So. 3d 866, 880 (Fla. 2017). *See also Stephens v. State*, 748 So. 2d 1028, 1034 (Fla. 1999) (appellate court's obligation to independently review mixed questions of law and fact is one of constitutional magnitude).

B. The Only Other Adult Identification Witness Recanted During the Post-Conviction Proceedings

The circuit court failed to properly evaluate the testimony of Solomon Hansbury under the *Jones* standard. Mr. Hansbury was a two-time felon who received a sentence of probation on a serious escape charge in exchange for his fabricated testimony against Mr. Sweet at trial. R5/931-33. At trial, Mr. Hansbury testified about a jailhouse conversation during which Mr. Sweet purportedly confessed to the murder and explained he wished he had killed Ms. Cofer and the Bryants. R5/943. Mr. Hansbury recanted this testimony during the 1999 hearing on Mr. Sweet's First Motion for Post-Conviction Relief. PC10/1908-14. He explained that the truth was that, "Earl. . . never told me anything. . . when I met Earl in the holding cell. . . he was like, 'yeah, man, I just can't believe they came and got me talking about a murder for something I don't know nothing about.'" PC10/1910. Hansbury explained he lied about Sweet at trial because he had been in jail before and he understood how to manipulate prosecutors for his own benefit, "I had an escape charge and I knew all you have to do is go over there and say I want to testify on something I heard, bla bla [sic]." *Id*. This Court upheld a finding that Hansbury's post-conviction testimony was not credible noting that Hansbury's changed testimony did not sufficiently undermine the Court's confidence in the outcome of the case given other evidence introduced at

trial, including Ms. Cofer's eyewitness identification. *Sweet v. State*, 810 So. 2d 854, 867 (Fla. 2002) ("*Sweet II*").

When Hansbury's exonerating testimony is viewed in light Ms. Cofer's testimony that Sweet was not "the one that pulled the trigger" it should undermine the Court's confidence in the outcome of Mr. Sweet's case. T/558. The circuit court erred in its analysis under *Jones*, *Swafford*, and *Hildwin* because a new trial without testimony of Ms. Cofer and Mr. Hansbury leaves an incomplete picture of anything resembling guilt beyond a reasonable doubt. Without Ms. Cofer and Mr. Hansbury, the State would have to seek a unanimous death row conviction based on the testimony of Miss Bryant, who was twelve years old at the time of the crime and made her identification after seeing Mr. Sweet for a little more than one minute.

C. The State Mischaracterizes Cofer's Testimony as Dishonest

Ms. Cofer's eyewitness testimony was striking similar at the 2017 Hearing and the 1991 trial. In 1991, Cofer testified that the shooter had "a piece of clothing" covering his head. R2/517. She only "seen parts" of the shooter's face, including his, "forehead, eyes and nose." R2/541. In 2017, Cofer testified that she "didn't actually see the person that shot me, because they had something over they face." T/533. Cofer's identification testimony is unchanged in almost 30 years, but for the fact that she now concedes the portions of the face she saw belong to someone other than

William Sweet.

In its brief, the State mischaracterizes Cofer's testimony, stating that Cofer testified that a member of Sweet's family asked Ms. Cofer "to lie." SAB at 18. At the 2017 Hearing, Cofer testified, "I felt like she [Sweet's family member] was asking me to say something in her words, so that's what I meant. . .[a]s far as what happened, like I said before, the statement that she was getting at [that Sweet was wrongfully convicted], it was pretty much a true statement." T/545. This is not what the State represented in its Answer Brief. SAB at 8.

The State rails against Ms. Cofer's credibility, because she admits that she smokes marijuana, she worked at McDonalds, she has been convicted of crimes, or she had the temerity to smile at Mr. Sweet at the 2017 Hearing. Cofer admitted she was a marijuana smoker throughout her lifetime. R2/427. The fact that she admitted she had smoked marijuana before the 2017 Hearing was really no different than any of her prior testimony given under oath. Most importantly, at the time of the shooting and when she originally identified Mr. Sweet as the shooter, Ms. Cofer was found to have ***both*** cocaine and marijuana in her system. PC5/992. Regardless, the State conceded in pleadings that, "after nearly 27 years, [Ms. Cofer is] not sure who shot her" and found Ms. Cofer's testimony serious enough to require further investigation. T/299.

The more the State discredits Ms. Cofer's testimony, the more it undermines its own case. On retrial, if Ms. Cofer were called to testify against Mr. Sweet by the State, it would be the defense that would be in the position to cross examine her. More likely, the State would not call Ms. Cofer to testify in a hypothetical new trial and it would have to seek a unanimous capital conviction with no physical evidence and the testimony of a twelve year old girl who had less than one minute and seven seconds to make a witness identification.

The State cites *Haliym v. Mitchell*, 492 F. 3d 680, 705 (6th Cir. 2007) in support of the proposition that Ms. Cofer's 1991 testimony is more credible than her 2017 testimony because Sweet was an "acquaintance." In *Haliym*, the Sixth Circuit reversed the petitioner's sentence for ineffective assistance of counsel following *habeas corpus* review. The Sixth Circuit analyzes "heightened attention" when a victim's family member identified pictures in the context of a suggestive lineup claim. *Id*. Why *Haliym* might apply to Cofer's 1991 testimony to the exclusion of her 2017 testimony, if *Haliym* even stands for the proposition that unique "acquaintance" identification is evaluated by a different credibility standard, remains unanswered by the State. The fact that Cofer may have been able to recognize Sweet from a distance does little to bolster the credibility of her 1991 identification when she admitted that she only saw a part of the shooter's face.

Ms. Cofer understood her solemn duty to tell the truth on the witness stand both in the 1991 trial and the 2017 Hearing. "A mistake is when you -- When you identify something and you're not totally sure that that's what it is, but that's what you thought at the moment. A lie is just telling a complete lie and you knowing it's a lie. . . .[a]t that time, 30 years ago it was just a lot of stuff, a lot of trauma going on, you know. Everything just happened so fast, you know, and that's what it was." T/554-55. Ms. Cofer reiterated that, "if he wasn't the one that pulled the trigger, I don't want him to do time for something that – do death row for something he didn't do." T/558.

What motivates the victim of a crime to come forward with an exoneration after thirty years? The conclusion that Ms. Cofer "was on friendly terms with Defendant and had a vested interest in seeing Defendant's conviction overturned despite his culpability" was sheer speculation by the circuit court. T/427. Cofer has consistently testified under oath on three occasions over thirty years that she does not know Sweet. T/254; T/560, PC2/525. She could not have been more clear at the 2017 Hearing. "I been in the neighborhood for a long time, but I never knew him personally. I don't know him, I don't know him, I don't even know too much about him." T/560. There was no evidence presented to support the circuit court's suspicion that Cofer recanted because she befriended Sweet or somehow developed a "vested

interest" in his exoneration. Cofer explained the only "vested interest" she had was in clearing her conscience. For years, Cofer has worried that her erroneous 1991 testimony might result in the execution of an innocent man. T/563.

D. Sweet Had No Motive To Commit The Shooting As He Was Never Charged With The June 6, 1990 Robbery

The facts recited by the circuit court and the State include an allusion to Sweet's involvement in a robbery as a motive for shooting Cofer taken from this Court's opinion on direct appeal. *Sweet,* 624 So. 2d at 1139. In the hours between the crime and Sweet's arrest, the State theorized that Sweet attempted to shoot Cofer because she was planning to be a witness against him in a robbery that occurred a few weeks earlier ("the June 6 Robbery"). Cofer explained that on June 6, 1990, she was a cocaine dealer and three people knocked on her door. R2/530. When she opened it, they barged into her apartment and stole money, cocaine, and jewelry. R2/529. Cofer testified at trial that she knew two of the three people who robbed her, Vince and Funky Larry. R2/530. Cofer never testified that Sweet was involved in the June 6 Robbery even though she could have easily recognized Sweet from "the neighborhood." R3/562. This Court factually erred in referencing the recovery of Cofer's stolen jewelry as inculpatory evidence in *Sweet II* because ***Cofer's stolen jewelry was never introduced into evidence at Sweet's murder trial.*** *Sweet II,* 810 So. 2d at 870. There is nothing in the trial record to support a finding that Sweet

possessed Cofer's stolen jewelry. Nor was Mr. Sweet ever charged with the June 6 Robbery. Sweet had no motive for the crime for which he has served almost thirty years on death row.

II. Eric Wilridge's Testimony Meets the Standard of Newly Discovered Evidence

The State improperly argues that Eric's Wilridge's testimony does not meet the standard of newly discovered evidence. Newly discovered 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. *Hildwin*, 141 So. 3d at 1184; *Swafford*, 125 So. 3d at 775-76; *Jones*, 709 So. 2d at 521. A new evidence claim must be filed within the one year window provided by Florida Rule of Criminal Procedure 3.851.

The circuit court concluded that Wilridge's testimony met the requirements of newly discovered evidence and should have been considered, along with the cumulative analysis of all the evidence from trial and prior post-conviction proceedings so that there is a "total picture" of the case and "all the circumstances of the case." T/422*; Swafford*, 125 So. 3d at 776. *See also Hildwin*, 141 So. 3d at 1184-85. This necessarily compels the circuit court to consider testimony that was previously excluded as procedurally barred in determining if there is a probability of an acquittal. *Id. See also Roberts v. State*, 840 So. 2d 962, 972 (Fla. 2002). The

question of whether the *Jones* standard for a new trial is satisfied arises only after a thorough evaluation of the quantum of all the evidence. *Hildwin*, 141 So. 3d at 1184-85.

When the State argues that Wilridge's testimony was not new evidence – it is incorrect as a matter of fact and of law. Wilridge's testimony met the timeliness requirements of 3.851 and the first prong of *Jones*, which properly triggered the circuit court's obligation to weigh all of the evidence against the evidence at trial to determine if a new trial is required. During the 2017 Hearing, the State conceded that the 6th Motion based on the Wilridge Affidavit was timely and has waived claims of procedural default or time bar. T/504; *see Jimenez v. State*, 997 So. 2d 1056 (Fla. 2008), *as revised on denial of reh'g* (Sept. 29, 2008), *as revised on denial of reh'g* (Dec. 18, 2008). Mr. Sweet filed his Sixth Motion on October 28, 2016, exactly one year from the date attached to the Wilridge Affidavit. The State has already conceded both timeliness and that the first element of the *Jones* test was satisfied. The issue before this Court is the circuit court's failure to apply the second element of *Jones* and to properly weigh the quantum of evidence from trial through post-conviction which would make acquittal on retrial realistic.

III. The Trial Court Erred in Admitting State's Exhibit 1 and Overlooking Indices of Wilridge's Reliability

The records produced in State's Exhibit 1 do not conclusively establish anything and the circuit court's reliance on them is misplaced. Wilridge wrote an affidavit and sent it to Sweet's Attorney in 2015 because Sweet's case troubled his conscience. T/591. Wilridge realized that his testimony might affect his own post-conviction case and his family was pressuring him not to testify for Sweet. T/593. Yet, Wilridge testified despite the trial court's warning of risk of perjury charges and fear of government retaliation. T/563 (The Court to Wilridge, "If the State later determines that you testified. . .but. . . you were. . . in custody. . . you'll be facing perjury, and that is punishable by up to five years in prison.").

Wilridge's credibility is bolstered by the fact that his testimony was similar to testimony of Anthony McNish, and Jessie Gaskins -- Wilridge testified that the shooter was shorter and lighter-skinned than Sweet. Further, in *Johnson*, this Court accepted the rationale that an exonerating witness might be reluctant to come forward due to potential criminal liability. *Johnson*, 647 So. 2d at 110-111. This was true for both Cofer and Wilridge. R2/535; T/591 (Wilridge concedes that he never came forward with exculpatory information about Sweet in 1990 because, "I didn't want nothing to do with law enforcement back then"). The circuit court should not have discounted his credibility. Even if Wilridge's testimony is not considered credible,

his affidavit met the requirements of Rule 3.851 and properly triggered a full analysis of all evidence from conviction to the present that the State could use in a future retrial to convict Mr. Sweet beyond a reasonable doubt.

IV. The State Does Not Dispute that Sweet Was Denied Constitutional Rights that Protect the Innocent or Proper Proportionality Review

With so much newly discovered exonerating evidence, Mr. Sweet should be entitled to a review of both the appropriateness and the proportionality of his conviction and sentence, under both state and federal constitutional standards. The State did not dispute that Sweet never received an explicit proportionality review after his direct appeal. Nor did the State make any cogent argument for holding a man on death row based on the testimony of a twelve year old child. Neither the circuit court nor the State have argued there is any evidence left to support Sweet's conviction on retrial.

This Court has not hesitated to exonerate death row defendants upon a showing of newly discovered evidence. In *Hildwin* the Court reversed a conviction based on newly discovered DNA evidence that exonerated the defendant and supported the defense theory of an alternate suspect. *Hildwin*, 141 So. 3d 1180-83. Similarly, in *Swafford*, where scientific evidence debunked the prosecution's theory of sexual assault, a new trial was warranted. *Swafford*, 125 So. 2d at 762-63. What quantum of evidence is necessary to produce the probability of an acquittal when there was no

physical evidence introduced in the trial of a capital conviction?

There is no possibility of exculpatory DNA evidence in Sweet's case as there was no DNA evidence used to convict him. There can be no reanalysis of fingerprints or blood stains because no physical evidence implicating Mr. Sweet was recovered or admitted into evidence at trial. The recanting witnesses in Mr. Sweet's case have dramatic impact, far beyond the usual case, because Sweet was convicted on circumstantial evidence alone. Exactly as in *Swafford* and *Hildwin*, the quantum of evidence against Mr. Sweet would be both weak and circumstantial in a future retrial. *Id*. This is not surprising given that the quantum of evidence was weak and circumstantial when he was convicted and sentenced to death in 1991. If the circuit court had applied the correct legal standard, it would have reached the same conclusion.

CONCLUSION

It should be no surprise that the only witnesses available in the impoverished ghetto known as Springfield were involved with crime and illegal drugs. Having made its case upon a house of cards, the State cannot now complain that it is falling flat, while witness after witness recants. An innocent man would never have been convicted and sentenced to death without grave errors in trial and post-conviction proceedings, many caused by ineffective counsel. Over time, the truth has surfaced. There is a serious possibility that Mr. Sweet could

be acquitted on retrial, since the only remaining identification testimony available to the State is from a child who was twelve years old at the time of the shooting. This Court should reverse Sweet's conviction and death sentence in service of justice and all of the protections the constitution affords.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the REPLY BRIEF OF APPELLANT has been transmitted to this Court through the Florida Courts E-Filing Portal, which will send a notice of electronic filing to Lisa A. Hopkins, Assistant Attorney General, at capapp@myfloridalegal.com and Lisa.Hopkins@myfloridalegal.com, and mailed via United States Postal Service to William Earl Sweet, DOC #100063, Florida State Prison, P.O. Box 800, Raiford, Florida 32083 on this 8th day of February, 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify that a true copy of the foregoing Initial Brief of Appellant was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210 (a) (2).

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