Case No. SC2025-0708
Lower Court No. 1994-CF-0150

In the Supreme Court of Florida

ANTHONY FLOYD WAINWRIGHT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HAMILTON COUNTY, FLORIDA

DEATH WARRANT SIGNED
Execution Scheduled for May 15, 2025, at 6:00 p.m.

ANSWER BRIEF OF APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT[1]

This is an appeal from a summary denial of an eighth successive postconviction motion in an active warrant case. This Court does not normally conduct oral arguments in appeals of successive postconviction motions and there is no reason to do so in this particular case. Oral argument is unnecessary to the proper disposition of this appeal.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

The litigation in this case spans over 30 years.

Facts of the crime

Anthony Wainwright and co-perpetrator Richard Hamilton escaped from prison in Newport, North Carolina. They stole a green Cadillac and then burglarized a home, taking guns from the home, including a Winchester rifle and a Remington .22 rifle. They then drove to Florida in the stolen car. On April 27, 1994, in Lake City,

[1] Appellant, ANTHONY FLOYD WAINWRIGHT, is referred to as Appellant, defendant, movant, or by his proper name. The initial brief is referred to as "IB" and the record on appeal is referred to as "8th Succ. PC ROA," followed by the appropriate page number.

they decided to steal another car because the Cadillac was overheating. They drove to a Winn-Dixie parking lot and saw Carmen Gayheart, a young mother of two, loading her groceries into her blue Ford Bronco. Hamilton forced her into her own car at gunpoint and Wainwright followed in the Cadillac. They abandoned the Cadillac, after transferring the stolen guns and ammunition to the Bronco. They headed north on I-75 in the Bronco, but drove off the highway into a wooded area. They both raped the victim, then strangled and executed her by shooting her twice in the back of the head with the stolen .22 rifle. They were arrested the next day in Mississippi following a chase and shootout with a Mississippi State Trooper.

Procedural history in state court

The jury convicted Wainwright of first-degree murder, robbery, kidnapping, and sexual battery, as charged. *Wainwright v. State*, 704 So. 2d 511, 512 (Fla. 1997). Wainwright's mother was the sole witness presented by the defense at the penalty phase. The jury unanimously recommended a death sentence. *Id.* The trial court found six aggravating circumstances: (1) under sentence of imprisonment; (2) prior violent felony; (3) felony murder based on the robbery, kidnapping, and sexual battery; (4) committed to effect

escape; (5) the murder was especially heinous, atrocious or cruel (HAC); and (6) the murder was committed in a cold, calculated, and premeditated manner (CCP). *Id.* at 512, n.2. The trial court found no statutory mitigating circumstances, but found nonstatutory mitigation regarding his difficulties in school and adjustment problems. *Id.* at 512-13, n.3.

In the direct appeal to the Florida Supreme Court, Wainwright, represented by Steve Seliger, raised nine issues. *Wainwright v. State*, 704 So. 2d 511, 513, n.4 (Fla. 1997).[2] This Court found that Wainwright's statement admitting to raping the victim, which were made in the course of plea negotiations, were admissible. *Wainwright*, 704 So. 2d at 513. This Court also found no abuse of

[2] The nine issues were: (1) the trial court erred in admitting Wainwright's statements to the police; (2) the trial court erred in admitting the final three DNA loci; (3) the trial court erred by allowing the perpetrators' cases to be tried jointly with separate juries; (4) the trial court erred in admitting other crimes evidence; (5) the trial court erred by removing a juror on the tenth day of trial rather than granting a mistrial; (6) the trial court erred in admitting testimony that the victim routinely picked her kids up from preschool; (7) the trial court erred in overlooking the State's failure to establish the corpus delicti of sexual assault; (8) the trial court erred in admitting Wainwright's statement to police that he had AIDS; and (9) the trial court erred in imposing the mandatory minimum sentences for the noncapital offenses and by retaining jurisdiction over the life sentence.

discretion in admitting the State's additional DNA results which were disclosed after the trial had begun. *Id.* at 514-15. The Florida Supreme Court found corpus delicti for the sexual battery was proven. *Id.* at 515. The Court, however, struck the minimum mandatory sentences. *Id.* at 515-16. The Court denied issues 3, 4, 5, 6, and 8 without discussion. *Id.* at 516, n.9. This Court affirmed the convictions and concluded the death sentence was proportionate. *Id.* at 516.

Wainwright filed a petition for writ of certiorari in the United States Supreme Court which the Court denied on May 18, 1998. *Wainwright v. Florida*, 523 U.S. 1127 (1998) (No. 97-8324). So, Wainwright's convictions and sentences became final in May of 1998.

On May 14, 1999, Wainwright, represented by registry counsel Glenn Arnold, filed the initial postconviction motion raising 14 claims. *Wainwright v. State*, 896 So. 2d 695, 697, n.1 (Fla. 2004).[3]

[3] The 14 claims were: (1) trial counsel was ineffective regarding the admission of the additional DNA evidence; (2) trial counsel was ineffective regarding Wainwright's statements and admissions; (3) trial counsel was ineffective regarding evidence of Wainwright's out of state crimes; (4) trial counsel was ineffective regarding a microphone discovered in Wainwright's cell; (5) trial counsel was ineffective for failing to object to the penalty phase instructions on the aggravators; (6) trial counsel was ineffective for failing to object

The state postconviction court held an evidentiary hearing on five of the claims, specifically claims 4, 7, 10, 12, and 14, at which it was stipulated that initial defense counsel Africano was unable to testify due to his health. *Id.* at 697 & n.6. The state postconviction court then denied the initial postconviction motion.

On appeal to the Florida Supreme Court, Wainwright, now represented by registry counsel Joseph Hobson, raised eight issues. *Wainwright*, 896 So. 2d at 697. The Florida Supreme Court summarily rejected several of the claims of ineffectiveness and then focused on three claims of ineffectiveness. *Id.* at 698. This Court rejected the claim of ineffectiveness regarding the additional DNA results. *Id.* at 698-99. The Court also rejected the claim of Africano's

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to the prosecutor's arguments during the guilt and penalty phases; (7) trial counsel was ineffective for failing to maintain a proper attorney-client relationship, failing to ensure that Wainwright received adequate mental health evaluations and failing to investigate and present additional mitigating evidence; (8) trial counsel was ineffective for allowing the victim's family to testify at sentencing; (9) trial counsel was ineffective for failing to object to an alleged violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985); (10) initial defense counsel, Victor Africano, was ineffective in his pretrial representation of Wainwright; (11) trial counsel was ineffective for failing to be prepared for trial; (12) trial counsel was ineffective for introducing statements of the co-defendant; (13) trial counsel was ineffective regarding the alleged discovery violation; and (14) trial counsel's illness during trial rendered him ineffective.

ineffectiveness in relation to the plea negotiations because it assumed Wainwright would have passed the polygraph test when he refused to take the polygraph test after admitting to raping the victim. As the State Attorney testified at trial, the plea deal was that Wainwright had to establish that he was not the triggerman, but refused to take the polygraph test and therefore, the plea offer was revoked. *Id.* at 700-02. The Court additionally rejected the ineffectiveness claim regarding the introduction of other crimes evidence because trial counsel, in fact, filed a motion in limine, which was denied. The Court found the ineffectiveness claim regarding the microphone in the cell was procedurally barred because it was not raised in the direct appeal. This Court also rejected the ineffective claim concluding that defense counsel's introduction of co- defendant Hamilton's statement was a trial strategy. *Id.* at 703.

Wainwright also filed a state habeas petition in the Florida Supreme Court raising four issues. *Wainwright v. State*, 896 So. 2d 695, 703-04 (Fla. 2004) (SC2002-2021). This Court rejected issue two as improperly pled and issues three and four as procedurally barred. *Id.* at 703, n.7. The Court addressed *Ring v. Arizona*, 536 U.S. 584 (2002), noting that one of the aggravators was the prior violent felony

aggravator, which does not need to be found by a jury. *Id.* at 703-04 (citing numerous Florida Supreme Court cases).

Wainwright filed a petition for writ of certiorari in the United States Supreme Court which the Court denied on October 3, 2005. *Wainwright v. Florida*, 546 U.S. 878 (1998) (No. 05-5025).

On July 16, 2007, Wainwright, represented by registry counsel Hobson, filed his first successive 3.851 motion raising a claim of newly discovered evidence asserting that co-perpetrator Hamilton had stated that Wainwright was not involved in the sexual assault against the victim. *Wainwright v. State*, 2 So. 3d 948, 949 (Fla. 2008). The postconviction court summarily denied the successive motion. This Court affirmed, holding the co-perpetrator's statement would not likely produce an acquittal or result in a lesser sentence. *Id.* at 949-50. Wainwright did not seek certiorari review of that decision from the United States Supreme Court.

On May 26, 2009, Wainwright filed a pro se second successive postconviction motion raising three claims: (1) a claim of newly discovered evidence of how his low mental age, organic brain damage, and/or intellectual disability rendered him ineligible for the death penalty; (2) alternatively, the newly discovered evidence would

probably produce a lesser sentence at a new penalty phase; and (3) when considered together with the mitigation from his initial 3.851 postconviction motion, the new evidence rendered his death sentence unreliable. The state postconviction court summarily denied the motion.

The Florida Supreme Court affirmed the summary denial of the second successive postconviction motion because he failed to explain why the facts upon which Wainwright based his three claims were not previously known or discoverable via due diligence. *Wainwright v. State*, 43 So. 3d 45 (Fla. 2010).[4]

Wainwright did not seek certiorari review from the United States Supreme Court.

On August 6, 2010, Wainwright filed a pro se third successive postconviction motion raising seven claims: (1) lack of jurisdiction

[4] Wainwright has been evaluated at least six times over the years by various experts. Dr. Bender noted that there was IQ testing conducted in November of 1981, when Wainwright was ten years old, and he had a full-scale IQ of 85 on the WAIS-R. Wainwright was in learning disability classes and his IQ historically categorized as "low-average." Dr. Bender also found Wainwright's "thought processes were logical and linear and there was no evidence of any delusional thoughts. Dr. Price evaluated Wainwright in April 2019 and noted that his full-scale IQ in 1983 was 92, on the WISC-R. In November 1986, he had a full-scale IQ score of 87.

due to defects in his grand jury proceedings; (2) lack of jurisdiction due to deficiencies in the indictment; (3) lack of jurisdiction due to defects with the arraignment; (4) fundamental error in the premeditated murder jury instruction; (5) fundamental error in the felony murder instruction; (6) fundamental error occurred based on a violation of several trial rights due to indictment issues, confrontation issues in his inability to confront the grand jury, and deposition issues; and (7) fundamental error in giving the principal instruction. The trial court summarily denied the motion. The Florida Supreme Court then dismissed Wainwright's pro se notice of appeal as unauthorized. *Wainwright v. State*, 2011 WL 955603, 43 So. 3d 751 (Fla. 2011) (SC2011-0221) (unpublished).

On August 30, 2011, Wainwright filed a pro se fourth successive postconviction motion that sought to raise again the same issues in his third successive motion. The postconviction court summarily denied this motion and Wainwright did not appeal.

On September 20, 2013, Wainwright filed a pro se fifth successive postconviction motion raising four claims: (1) the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), by failing to provide disclosure to the

full DNA results prior to trial; (2) the late disclosure of the DNA deprived him a fair trial, as well as the ability to obtain experts to challenge the DNA; (3) juror misconduct in the failing to disclose that the juror was under active prosecution during the time of trial; and (4) the trial court's refusal to grant a mistrial upon learning the juror was being prosecuted by the same office prosecuting Wainwright constituted fundamental error. The court summarily denied the pro se motion. Wainwright did not appeal.

On April 6, 2015, Wainwright, represented by registry counsel Baya Harrison, filed a sixth successive postconviction motion raising four claims: (1) trial counsel was ineffective in failing to explain the plea agreement and prepare Wainwright for questioning by law enforcement and those failures constituted a manifest injustice; (2) the trial court committed fundamental error by permitting the State to utilize DNA evidence not disclosed until the trial started; (3) his death sentence violated the Sixth Amendment because the jury did not find an aggravating circumstance beyond reasonable doubt; and (4) Wainwright was denied a fair trial when a juror with pending criminal charges was permitted to serve until the tenth day of trial.

The State filed an answer. The postconviction court summarily denied the sixth successive motion.

The Florida Supreme Court affirmed. *Wainwright v. State*, 2017 WL 394509, at *1-2 (Fla. Jan. 30, 2017) (SC2015-2280).

Wainwright did not seek certiorari review in the United States Supreme Court.

On May 13, 2022, Wainwright, represented by registry counsel Baya Harrison, filed a seventh successive postconviction motion raising two claims: (1) newly discovered evidence of jury questions that were incorrectly answered by the trial court's principal instruction; and (2) the trial court committed fundamental error by considering extra-record evidence exclusively admitted in the co-perpetrator's trial while imposing a death sentence. The State filed an answer urging the motion be summarily denied. The postconviction court summarily denied the seventh successive motion.

Wainwright filed a pro se notice of appeal which was dismissed by the Florida Supreme Court. *Wainwright v. State*, 2022 WL 4282149, at *1 (Fla. Sept. 16, 2022) (SC2022-1187).

Procedural history in federal court

On March 29, 2005, Wainwright, represented by Joseph Hobson and Cameron P. Moyer, filed a § 2254 petition in the Middle District of Florida. *Wainwright v. McDonough*, 2006 WL 8449862, at *1, 3:05-cv-00276 (M.D Fla. Mar. 10, 2006). The petition raised 11 grounds.[5] The petition was six days late. *Wainwright v. Sec'y, Dep't of Corr.*, 537 F.3d 1282, 1284 (11th Cir. 2007). The Secretary moved

[5] The 11 grounds raised in the first petition were: (1) ineffectiveness of trial counsel for failing to exclude the additional DNA results; (2) ineffectiveness of trial counsel for the handling of the plea offer and allowing Wainwright to make statements regarding his involvement in the crimes as part of the plea negotiations that were later introduced at trial; (3) ineffectiveness of trial counsel for failing to move to exclude the evidence of other crimes and prevent the other crime from becoming a feature of the trial; (4) ineffectiveness of trial counsel for failing to move for a mistrial based on the placing of a microphone in the jail cell; (5) ineffectiveness of trial counsel at the penalty phase for failing to investigate mental mitigation including not retaining mental health experts; (6) a claim of ineffectiveness under *United States v. Cronic*, 466 U.S. 648 (1984), due, in part, to publicity; (7) the postconviction court improperly handled that claim of ineffectiveness of original trial counsel Africano regarding the negotiations of the plea offer; (8) the trial counsel improperly replaced a juror who did not appear on day ten of the trial who had pending charges with an alternate juror; (9) ineffectiveness of trial counsel for various appeal issues including jury instruction, prosecutorial comments and improper aggravating circumstances; (10) the admission of the testimony that the victim habitually picked up her children from daycare at the proper time violated the right to a fair trial; and (11) the joint trial of Wainwright and the co-perpetrator before separate juries violated the Sixth Amendment right to a fair trial.

to dismiss the petition as untimely under the AEDPA. (Doc.3). Wainwright filed an amended petition. (Doc.6). The Secretary renewed the motion to dismiss. On March 10, 2006, the federal district court dismissed the petition as untimely, rejecting a claim of equitable tolling. *Wainwright*, 2006 WL 8449862, at *3-*4; (Doc.29).

Wainwright appealed to the Eleventh Circuit. The Eleventh Circuit concluded that equitable tolling did not apply to excuse the untimeliness of the petition and affirmed the district court's dismissal of the habeas petition as untimely. *Wainwright*, 537 F.3d at 1287.

On June 22, 2018, the federal district court granted the Capital Habeas Unit of the Northen District of Florida's motion to be appointed as Wainwright's federal habeas counsel. (Doc.47).

Nearly one year after the appointment, on June 21, 2019, CHU-N filed a Rule 60(b)(6) motion to reopen the closed habeas case in the district court. (Doc.52). The motion to reopen the case that was closed over a decade ago, in 2006, asserted the district court should reconsider its prior ruling regarding equitable tolling because: (1) original federal habeas counsel Joseph Hobson had a conflict of interest because his missing AEDPA's deadline necessarily

implicated his own professional conduct, as established by *Christeson v. Roper*, 574 U.S. 373 (2015); and (2) Hobson had "perpetrated a fraud on the court" by arguing for equitable tolling based on the Florida Supreme Court mailing a copy of the order denying rehearing to the wrong address. (Doc.60 at 9 & n.7). Alternatively, Wainwright raised a gateway claim of actual innocence based on *McQuiggin v. Perkins*, 569 U.S. 383 (2013). The claim of innocence was premised on an affidavit, dated June 19, 2019, from DNA analyst Candy Zuleger criticizing the findings and testimony of the State's two DNA experts at trial. The motion to reopen also raised numerous new grounds for habeas relief that were not raised in the original habeas petition filed in 2005.

On July 18, 2019, the Secretary filed a response to the Rule 60(b) motion to reopen. (Doc.54 at 1-2, 9-11). The Secretary argued that the motion was actually an unauthorized successive habeas petition over which the district court lacked jurisdiction because it raised numerous new grounds that were not raised in the original habeas petition. The Secretary's response also contained a discussion of the untimeliness of the Rule 60(b)(6) motion to reopen. (Doc.54 at 1-2, 9-11). The district court denied Rule 60(b)(6) motion

to reopen, concluding that the motion to reopen was an unauthorized successive habeas petition over which it lacked jurisdiction. The district court also denied a certificate of appealability (COA). (Doc.60; 70).

On March 29, 2021, the Eleventh Circuit granted a COA. The Eleventh Circuit affirmed the district court's denial of the Rule 60(b)(6) motion to reopen and the denial of an evidentiary hearing on the issue of equitable tolling. *Wainwright v. Sec'y, Fla. Dep't of Corr.*, 2023 WL 4582786 (11th Cir. July 18, 2023) (unpublished).

On February 10, 2024, Wainwright, represented by CHU-N, filed a petition for a writ of certiorari in the United States Supreme Court raising two questions related to the Rule 60(b)(6) motion to reopen. On April 15, 2024, the United States Supreme Court denied review. *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024) (No. 23-6737).

Current warrant litigation

On May 9, 2025, Governor DeSantis signed a death warrant, scheduling Wainwright's execution for June 10, 2025, at 6:00 p.m.

On May 15, 2025, Wainwright, represented by lead state postconviction counsel, registry counsel Baya Harrison III, and *pro*

bono second-chair counsel, Terri Backhus, filed an amended eighth successive postconviction motion. (8th Succ. PC ROA at 181-205). The amended motion raised three claims: (1) a claim that the death sentence violated the Sixth Amendment right-to-a-jury trial relying on *Erlinger v. United States*, 602 U.S. 821 (2024); (2) a claim of newly discovered evidence of mitigation of neurodevelopmental effects due to Agent Orange; and (3) a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), regarding State's witness, Robert Allen Murphy, receiving probation in exchange for his testimony against Wainwright. The appendix included an expert report and an affidavit from Robert Allen Murphy dated May 13, 2025. *Id.* at 219-233; 239-241.

On May 16, 2025, the State filed an answer to the amended successive postconviction motion. (8th Succ. PC ROA at 335-361). The State asserted the first claim was procedurally barred and meritless as a matter of law under controlling United States Supreme Court and Florida Supreme Court precedent and therefore, should be summarily denied. *Id.* at 338-48. The State also asserted the second claim was untimely and meritless as a matter of law because it failed the second prong of the test for newly discovered evidence of

mitigation and therefore, should be summarily denied. *Id.* at 349-54. The State additionally asserted that the third claim was untimely and meritless as a matter of law both as to the newly discovered evidence aspect of the claim and as to the *Brady* aspect of the claim and therefore, should be summarily denied. *Id.* at 354-59. The State urged the postconviction court to summarily deny the amended eighth successive postconviction motion. *Id.* at 359.

A few hours later, on May 16, 2025, the postconviction court held a case management conference, commonly referred to as a *Huff* hearing,[6] to determine if an evidentiary hearing was necessary on any of the pending successive postconviction claims. (8th Succ. ROA at 409-440). The lower court heard oral arguments on the three claims with lead state postconviction counsel presenting arguments on the first *Erlinger* claim and pro bono second-chair counsel presenting argument on the second and third claims of newly discovered evidence. The postconviction court ruled, from the bench, that no evidentiary hearing was required. *Id.* at 435-36. The postconviction

[6] *Huff v. State*, 622 So.2d 982 (Fla. 1993).

court later entered a written order stating that no evidentiary hearing was required. (8th Succ. PC ROA at 362-63).

On May 20, 2025, the postconviction court issued a final ruling, summarily denying the amended eighth successive postconviction motion. (8th Succ. ROA at 441-460).

This appeal follows.

SUMMARY OF ARGUMENT

ISSUE I:

Wainwright asserts that his Sixth Amendment right to a jury trial was violated because the jury did not make the required factual findings for a death sentence, relying on *Erlinger v. United States*, 602 U.S. 821 (2024). The *Erlinger* issue is procedurally barred, not retroactive, and meritless under *McKinney v. Arizona*, 589 U.S. 139 (2020), and *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020). *Erlinger* does not apply to capital cases, as this Court recently held in *Ford v. State*, 402 So. 3d 973, 980 (Fla. 2025) ("*Erlinger* does not apply to this case"), *cert. denied*, *Ford v. Florida*, 145 S. Ct. 1161 (2025). It is *McKinney* and *Poole* that govern jury findings in capital cases, not *Erlinger*. In capital cases, under the Sixth Amendment, the jury must find, beyond a reasonable doubt, one aggravating factor. But the

requirement of the jury finding an aggravator was satisfied two ways in this case. First, Wainwright's jury found the felony murder aggravator in the guilt phase by convicting him of first-degree murder as well as robbery, kidnapping, and sexual battery. Second, under the *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), exception, Wainwright was eligible for the death sentence once his jury convicted him of first-degree murder. The Sixth Amendment right-to-a-jury-trial was satisfied in the guilt phase in this case. The postconviction court correctly found that the *Erlinger* claim was procedurally barred; that *Erlinger* is not retroactive, and that *Erlinger* does not govern capital cases. The postconviction court properly summarily denied relief on the *Erlinger* claim.

ISSUE II:

Wainwright asserts the postconviction court improperly summarily denied the claim of newly discovered evidence of mitigation of neurodevelopmental effects due to his father's exposure to Agent Orange during the Vietnam War, based on a study published in 2023. The claim of newly discovered evidence of mitigation was untimely. Any claim based on the 2023 study was required to be raised by 2024 to be timely under *Jimenez v. State*, 997 So. 2d 1056,

1064 (Fla. 2008). The claim is over a year late. Alternatively, the claim fails the test for newly discovered evidence of mitigation. The new mitigation would not result in a life sentence at a new penalty phase. The six aggravating factors found by the sentencing court included the prior violent felony aggravator; the especially heinous, atrocious or cruel (HAC) aggravator; and the cold, calculated, and premeditated (CCP) aggravator. Those three aggravators are considered by this Court to be three of the most "serious" aggravators. Those serious aggravators, as well as the facts of this crime, would outweigh the new mitigation of neurodevelopmental effects, which is not powerful mitigation. Wainwright would still be sentenced to death at any new penalty phase. The postconviction court properly summarily denied the untimely and meritless claim of newly discovered evidence of mitigation.

ISSUE III:

Wainwright also asserts a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), for not disclosing that a State's witness, Robert Allen Murphy, expected a benefit from his testimony. Wainwright points to the fact that Murphy was released on probation after he testified against Wainwright and

relies on a recent affidavit from Murphy. The claim of newly discovered evidence of a *Brady* violation is untimely. Any such *Brady* claim could have been raised decades ago in the initial postconviction motion. Furthermore, Wainwright's jury was aware from defense counsel's recross examination of Murphy that there was a possibility that Murphy could receive a sentence reduction in exchange for his testimony. So, any impeachment of Murphy would be cumulative only. Alternatively, there was no suppression of the impeachment, as required by *Brady*, because there was no formal or informal deal with the State regarding Murphy's testimony. Most critically, any additional impeachment of Murphy is not material to the conviction for first-degree murder in a case in which the defendant confessed to premediated murder to law enforcement and there is DNA evidence of felony murder. The proposed cumulative impeachment is simply "too little" and "too weak" under *Turner v. United States*, 582 U.S. 313, 326 (2017), to be material to the conviction for first-degree murder. The postconviction court properly summarily denied the claim of newly discovered evidence of a *Brady* violation.

ARGUMENT

ISSUE I

Whether the postconviction court properly summarily denied the claim that the death sentence was a violation of the Sixth Amendment right-to-a-jury trial under *Erlinger v. United States*, 602 U.S. 821 (2024)?

Wainwright asserts that his Sixth Amendment right to a jury trial was violated because the jury did not make the required factual findings for a death sentence, relying on *Erlinger v. United States*, 602 U.S. 821 (2024). IB at 26. The *Erlinger* issue is procedurally barred, not retroactive, and meritless under *McKinney v. Arizona*, 589 U.S. 139 (2020), and *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020). *Erlinger* does not apply to capital cases, as this Court recently held in *Ford v. State*, 402 So. 3d 973, 980 (Fla. 2025) ("*Erlinger* does not apply to this case"), *cert. denied*, *Ford v. Florida*, 145 S. Ct. 1161 (2025). It is *McKinney* and *Poole* that govern jury findings in capital cases, not *Erlinger*. In capital cases, under the Sixth Amendment, the jury must find, beyond a reasonable doubt, one aggravating factor. But the requirement of the jury finding an aggravator was satisfied two ways in this case. First, Wainwright's jury found the felony murder aggravator in the guilt phase by convicting him of first-degree

murder as well as robbery, kidnapping, and sexual battery. Second, under the *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), exception, Wainwright was eligible for the death sentence once his jury convicted him of first-degree murder. The Sixth Amendment right-to-a-jury-trial was satisfied in the guilt phase in this case. The postconviction court correctly found that the *Erlinger* claim was procedurally barred; that *Erlinger* is not retroactive, and that *Erlinger* does not govern capital cases. The postconviction court properly summarily denied relief on the *Erlinger* claim.

Summary denials of successive postconviction claims

A postconviction court should summarily deny any postconviction claim that is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B). A postconviction court may also appropriately summarily deny untimely or procedurally barred claims under the rule. *Rogers v. State*, 2025 WL 1341642, at *3 (Fla. May 8, 2025) (citing Fla. R. Crim. P. 3.851(e)(2)), *cert. denied*, *Rogers v. Florida*, 2025 WL 1387828 (U.S. May 14, 2025).

Additionally, a postconviction court should summarily deny any claim that is legally insufficient because it is meritless as a matter of

law. *Hutchinson v. State*, 2025 WL 1198037, at *3 (Fla. Apr. 25, 2025) (noting, in an active warrant case, the Florida Supreme Court affirms the summary denial of successive postconviction claims where the claims are untimely, procedurally barred, legally insufficient, or refuted by the record), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261217 (U.S. May 1, 2025) (No. 24-7087); *Zack v. State*, 371 So. 3d 335, 338 (Fla. 2023) (affirming the postconviction court summarily denying the claims as "untimely, procedurally barred, and meritless"), *cert. denied*, *Zack v. Florida*, 144 S.Ct. 274 (2023).

Claims that are not cognizable should also be summarily denied. *Doty v. State*, 403 So. 3d 209, 216 (Fla. 2025) (affirming the summary denial of an initial postconviction claim regarding relative culpability because such a claim is not cognizable). And claims that depend on caselaw that is not retroactively applicable to the defendant should be summarily denied. *Foster v. State*, 395 So. 3d 127 (Fla. 2024) (affirming the summary denial of an intellectual disability claim solely on non-retroactivity grounds, despite the lower court previously being ordered by the Florida Supreme Court to hold an evidentiary hearing on that claim), *cert. denied*, *Foster v. Florida*, 2025 WL 1151308 (U.S. Apr. 21, 2025). This is true because

conducting an evidentiary hearing in either scenario becomes a futile exercise, because regardless of what evidence is presented at the evidentiary hearing, the claim remains not cognizable or not retroactive. *Walls v. State*, 361 So. 3d 231, 232 (Fla. 2023) (affirming the denial of an intellectual disability claim, following an extensive evidentiary hearing, solely on non-retroactivity grounds), *cert. denied*, *Walls v. Florida*, 144 S. Ct. 174 (2023).

A postconviction court also should summarily deny any postconviction claim where there is "no issue of material fact to be determined." *Doty v. State*, 403 So. 3d 209, 214 (Fla. 2025). Courts do not hold evidentiary hearings on questions of law or on facts that are assumed for the sake of argument. This Court has repeatedly affirmed summary denials of successive postconviction motions filed in active warrant cases.[7]

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[7] *See, e.g.*, *Rogers v. State*, 2025 WL 1341642, at *6 (Fla. May 8, 2025), *cert. denied*, *Rogers v. Florida*, 2025 WL 1387828 (U.S. May 14, 2025); *Hutchinson v. State*, 2025 WL 1198037 (Fla. Apr. 25, 2025), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261217 (U.S. May 1, 2025); *Hutchinson v. State*, 2025 WL 1155717 (Fla. Apr. 25, 2025), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261215 (U.S. May 1, 2025); *Tanzi v. State*, 2025 WL 971568, at *1 (Fla. Apr. 1, 2025); *James v. State*, 2025 WL 798376 (Fla. Mar. 13, 2025), *cert. denied*, *James v. Florida*, 2025 WL 864460 (U.S. Mar. 20, 2025); *Ford v. State*, 2025 WL 428394 (Fla. Feb. 7, 2025), *cert. denied*, *Ford v.*

The postconviction court's ruling

The postconviction court summarily denied the Sixth Amendment right-to-a-jury-trial claim that relied on *Erlinger v. United States*, 602 U.S. 821 (2024). (8th Succ. PC ROA at 445-449). The lower court denied the *Erlinger* claim as procedurally barred, not retroactive, untimely, and meritless. *Id.* at 445.

The postconviction court noted that claims that are "simply a variation on previously raised claims are procedurally barred." (8th Succ. PC ROA at 446 citing *Rogers v. State*, 2025 WL 1341642, at *6 (Fla. May 8, 2025), *cert. denied*, *Rogers v. Florida*, 2025 WL 1387828 (U.S. May 14, 2025)). The lower court found the *Erlinger* claim to be procedurally barred concluding it was simply a "repackaged version" of Wainwright's previously-raised Sixth Amendment right-to-a-jury trial claim based on *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), which

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Florida, 2025 WL 467243 (U.S. Feb. 12, 2025); *Cole v. State*, 392 So.3d 1054, 1058 (Fla. 2024), *cert. denied*, *Cole v. Florida*, 145 S. Ct. 109 (2024); *Zack v. State*, 371 So.3d 335, 338 (Fla. 2023), *cert. denied*, *Zack v. Florida*, 144 S. Ct. 274 (2023); *Owen v. State*, 364 So.3d 1017, 1018 (Fla. 2023); *Barwick v. State*, 361 So.3d 785, 788 (Fla. 2023), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023); *Gaskin v. State*, 361 So.3d 300, 303 (Fla. 2023), *cert. denied*, *Gaskin v. Florida*, 143 S. Ct. 1102 (2023); *Dillbeck v. State*, 357 So.3d 94, 96 (Fla. 2023), *cert. denied*, *Dillbeck v. Florida*, 143 S. Ct. 856 (2023).

the Florida Supreme Court had rejected on non-retroactivity grounds. *Id.* at 445-446 (citing *Wainwright v. State*, 2017 WL 394509, *3 (Fla. Jan. 30, 2017) (No. SC15-2280) (citing *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016)). The lower court relied on this Court's recent decisions in *Ford v. State*, 402 So. 3d 973, 981 (Fla. 2025), and *Jackson v. State*, 335 So. 3d 88, 89, n.2 (Fla. 2022), finding a similar claim to be procedurally barred. *Id.* at 446. Thus, the *Erlinger* claim was "procedurally barred," according to the lower court. *Id.* at 446.

The postconviction court also concluded that "*Erlinger* does not apply retroactively to collateral postconviction cases." (8th Succ. PC ROA at 446-47 citing *Ford*, 402 So. 3d at 980-81 and *Tanzi v. State*, 2025 WL 971568, at *6 (Fla. Apr. 1, 2025) (noting "*Erlinger* was a direct appeal case, not a postconviction case . . ."), *cert. denied*, *Tanzi v. Dixon*, 2025 WL 1037494 (U.S. Apr. 8, 2025)).

On the merits, the postconviction court noted that under this Court's precedent, *Erlinger* did not apply to capital cases. (8th Succ. PC ROA at 446-47 (quoting *Ford*, 402 So. 3d at 980-81 and *Tanzi*, 2025 WL 971568, at *6)). The lower court determined that it was *McKinney v. Arizona*, 589 U.S. 139 (2020), and *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020), that govern fact-finding in capital cases. *Id.*

at 447-448. *McKinney* and *State v. Poole*, the lower court explained, explicitly hold which facts must be found by the jury to impose a death sentence. *Id.* at 447. Both cases are "capital-specific holdings, unlike *Erlinger*." *Id.* The lower court noted that "Wainwright became eligible for a death sentence upon the jury's unanimous verdict finding him guilty on the three felonies in addition to first degree murder at the guilt phase. *Id.* at 448.

The lower court also relied on this Court's recent decisions in both *Ford v. State*, 402 So. 3d 973 (Fla. 2025), and *Tanzi v. State*, 2025 WL 971568, at *5-*6 (Fla. Apr. 1, 2025). (8th Succ. PC ROA at 448-49). The postconviction court found that the *Erlinger* claim lacked merit because, as "in *Ford* and in *Tanzi*," *Erlinger* was "inapplicable." *Id.* at 449.

Preservation

To preserve an issue for appellate review, "the specific legal argument or ground upon which it is based must be presented to the trial court." *Cole v. State*, 392 So. 3d 1054, 1063 (Fla. 2024) (emphasis in original), *cert. denied*, *Cole v. Florida*, 145 S.Ct. 109 (2024); *Figueroa-Sanabria v. State*, 366 So. 3d 1035, 1049 (Fla. 2023) (explaining that to preserve an issue for appeal, the presentation in

the lower court "sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor," quoting section 924.051(1)(b), Florida Statute (2022), and observing the argument on appeal must be the same contention asserted below quoting *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982); *see also* § 924.051(1)(b), Fla. Stat. (2024). Furthermore, a party must obtain a ruling from the lower court to preserve the issue. *Ritchie v. State*, 344 So. 3d 369, 378 (Fla. 2022) (quoting *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)), *cert. denied*, *Ritchie v. Florida*, 143 S.Ct. 1005 (2023).

This issue was properly preserved. Wainwright raised the same claim in his successive postconviction motion filed in the lower court that he is raising on appeal and properly obtained a ruling from the lower court.

Standard of review

Because the postconviction court summarily denied the successive postconviction claim, the standard of review is de novo. As this Court has explained, a postconviction court's decision of whether to grant an evidentiary hearing on a postconviction claim is a pure question of law reviewed de novo. *Dillbeck v. State*, 357 So. 3d

94, 98 (Fla. 2023) (quoting *Bowles v. State*, 276 So. 3d 791, 794 (Fla. 2019)), *cert. denied*, *Dillbeck v. Florida*, 143 S.Ct. 856 (2023). Under de novo review, this Court decides for itself whether the claim was properly summarily denied without any deference due to the lower court.[8]

Additionally, the standard of review for a constitutional challenge is de novo. *Correll v. State*, 184 So. 3d 478, 487 (Fla. 2015) (noting, in a capital case, raising an as-applied Eighth Amendment challenge, the Court reviews "constitutional matters de novo.").

Procedural bar

The Sixth Amendment right to a jury claim is procedurally barred. *Ford v. State*, 402 So. 3d 973, 981 (Fla. 2025) (concluding that an *Erlinger* claim was procedurally barred because a right-to-a-jury trial claim was raised in prior successive postconviction motions); *Jackson v. State*, 335 So. 3d 88, 89, n.2 (Fla. 2022) (finding a similar claim to be procedurally barred because it was raised in a prior successive postconviction motion). Claims that are simply a

[8] Because the postconviction court summarily denied all three claims, the same de novo standard of review governs all three issues on appeal. In the interest of brevity, the State will not repeat the standard of review section for every issue.

variation on previously-raised claims are procedurally barred. *Rogers v. State*, 2025 WL 1341642, at *6 (Fla. May 8, 2025) (concluding the current claim was a "variation" of a prior claim and "is procedurally barred for that reason."), *cert. denied*, *Rogers v. Florida*, 2025 WL 1387828 (U.S. May 14, 2025).

Wainwright previously raised a Sixth Amendment right-to-a-jury claim regarding his death sentence in his counseled sixth successive postconviction motion. This Court affirmed the summary denial of the Sixth Amendment claim, concluding that *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), did not apply retroactively to him. *Wainwright v. State*, 2017 WL 394509, *3 (Fla. Jan. 30, 2017) (No. SC15-2280) (citing *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016)). As in *Ford*, this *Erlinger* claim is simply a variation of Wainwright's prior *Hurst* claim. And for that reason, the *Erlinger* claim is procedurally barred.

Not retroactive

As the postconviction court correctly ruled, *Erlinger* does not apply retroactively to cases that were final before it was decided in 2024. *Erlinger* does not apply retroactively to Wainwright because his death sentence was final in 1998.

This Court traditionally has held that new Sixth Amendment right-to-a-jury-trial cases are not retroactive under the state retroactivity test of *Witt v. State*, 387 So. 2d 922 (Fla. 1980). This Court, applying the state retroactivity test of *Witt*, held that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), was not retroactive in *Hughes v. State*, 901 So. 2d 837 (Fla. 2005). This Court, applying *Witt*, held that *Ring v. Arizona*, 536 U.S. 584 (2002), was not retroactive in *Johnson v. State*, 904 So. 2d 400 (Fla. 2005). And, this Court, applying *Witt*, also held that *Blakely v. Washington*, 542 U.S. 296 (2004), was not retroactive in *State v. Johnson*, 122 So. 3d 856 (Fla. 2013).

Under the same *Witt* analysis of *Hughes*, *Johnson*, and *State v. Johnson*, *Erlinger* would not be applied retroactively. *Erlinger* does not apply retroactively to Wainwright under a straight *Witt* analysis because his death sentence was final in May of 1998, which was decades before *Erlinger* was decided in 2024.

But, this Court, when determining the retroactivity of *Hurst v. Florida*, 577 U.S. 92 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), while applying *Witt*, created an unusual partial retroactivity formula. Under that partial retroactivity formula, capital cases that were not final on direct appeal before *Ring* was decided in 2002

received retroactive benefit of *Hurst* and often received a new penalty phase under *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016). But capital cases that were final on direct appeal before *Ring* was decided in 2002 did not receive benefit of *Hurst* under *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016), and did not receive a new penalty phase. The dividing line between *Mosley* and *Asay* was *Ring v. Arizona* which was decided in 2002. This Court chose that line because *Ring* was the first time that the United States Supreme Court applied its new *Apprendi* jurisprudence to capital cases. *See also Jackson v. State*, 335 So. 3d 88, 89 (Fla. 2022) (holding *Poole* did not apply retroactively to a defendant whose death sentence was final prior to *Ring* citing *Randolph v. State*, 320 So. 3d 629, 631 (Fla. 2021), and *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016)).

This Court's partial retroactivity formula, however, was quite unusual and unlikely to be repeated. *Hurst* is the only incidence of this Court creating a partial retroactivity formula instead of conducting a typical retroactivity analysis where dividing the line is the date of the decision under review.

But, even in the unlikely event of this Court again creating a partial retroactivity formula for *Erlinger*, the Court would draw the

dividing line at *Apprendi*, not back to *Almendarez–Torres v. United States*, 523 U.S. 224 (1998), as opposing counsel asserts. *Almendarez–Torres* was not part of the United States Supreme Court's new Sixth Amendment right-to-a-jury-trial jurisprudence which started with *Apprendi* itself. This Court drew the line at *Ring* in its partial retroactivity formula because *Ring* was part of the High Court's new Sixth Amendment jurisprudence. But *Almendarez–Torres* was not part of High Court's new Sixth Amendment jurisprudence. Indeed, the *Erlinger* Court criticized *Almendarez–Torres* as being inconsistent with *Apprendi* and its progeny. *Erlinger*, 602 U.S. at 837 (characterizing *Almendarez–Torres* as an "exceptional departure" from "historic practice" and as being "arguably" incorrectly decided). *Apprendi* would be the dividing line, not *Almendarez–Torres*.

Wainwright would not receive benefit of a partial retroactivity formula for *Erlinger* drawn at *Apprendi* because his sentence was final in May of 1998, years before *Apprendi* was decided in 2000, just as he did not receive retroactive benefit of *Hurst*. *Wainwright v. State*, 2017 WL 394509 (Fla. Jan. 30, 2017) (holding *Hurst* did not apply retroactively to Wainwright citing *Asay v. State*, 210 So. 3d 1, 22 (Fla.

2016)). Because Wainwright's sentence was final in May of 1998, which was years before *Apprendi* was decided, he would not receive retroactive benefit of *Erlinger*, just as he did not receive retroactive benefit of *Hurst*.

Erlinger would not be applied retroactively to Wainwright under either a typical retroactivity analysis or under a partial retroactivity formula.[9]

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[9] *Erlinger*, which is a procedural rule, is not retroactive under the federal retroactivity test of *Teague v. Lane*, 489 U.S. 288, 301 (1989), especially not in the wake of *Edwards v. Vannoy*, 593 U.S. 255 (2021), which eliminated the watershed procedural exception to *Teague*. *See Grant v. United States*, 2024 WL 4729193, at *2-*3 (M.D. Fla. Nov. 8, 2024) (concluding that *Erlinger* is not retroactive under *Teague*); *Stackhouse v. United States*, 2024 WL 5047342, at *8 (M.D. Fla. Dec. 9, 2024) (same); *Kaiser v. United States*, 2025 WL 315104, at *16 (W.D. Mich. Jan. 28, 2025) (same and collecting federal district court cases ruling that *Erlinger* is not retroactive under Teague); *Erlinger*, 602 U.S. at 859 n.3 (Kavanaugh, J., dissenting) (stating that for cases that are final, *Teague* will bar defendants from obtaining any relief based on *Erlinger* in collateral proceedings).

Several of the Justices of the Florida Supreme Court, past and present, have advocated the adoption of *Teague* as the state test for retroactivity in place of *Witt*. *Dettle v. State*, 395 So.3d 1054, 1062 (Fla. 2024) (Canady, J., concurring); *Dettle v. State*, 395 So.3d 1054, 1063 (Fla. 2024) (Sasso, J., concurring); *Windom v. State*, 886 So.2d 915, 935 (Fla. 2004) (Cantero, J., concurring).

In addition to the reasons given by these Justices, *Witt* is redundant. Florida courts end up having to perform both a *Teague* analysis and a *Witt* analysis to comply with *Danforth v. Minnesota*, 552 U.S. 264, 288 (2008), because *Teague* sets a floor for retroactivity. *Phillips v. State*, 299 So.3d 1013, 1021-22 (Fla. 2020)

Merits

It is *McKinney v. Arizona*, 589 U.S. 139 (2020), and *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020), that governs in capital cases. Both *McKinney* and *Poole* explicitly hold which facts must be found by the jury to impose a death sentence. They are both capital specific holdings, unlike *Erlinger*.

Erlinger

In *Erlinger v. United States*, 602 U.S. 821 (2024), the United States Supreme Court held that a jury must decide beyond a reasonable doubt that prior offenses were committed on separate occasions before a defendant can be subjected to an enhanced mandatory minimum sentence under the Armed Career Criminal Act. The Act provides for an enhanced sentence when a defendant has three or more prior convictions for qualifying offenses that were "committed on occasions different from one another." *Erlinger*, 602

(conducting both a *Witt* retroactivity analysis and a *Teague* retroactivity analysis); *Dettle*, 395 So.3d at 1057-61 (conducting both a *Witt* retroactivity analysis and a *Teague* retroactivity analysis). And the focus of the two retroactivity tests is quite different, requiring additional work by the Court. *Phillips*, 299 So.3d at 1022 (noting the substantive rule/procedural rule dichotomy under *Teague* in contrast to the three factors test of *Witt*). For the sake of judicial economy, if nothing else, this Court should adopt *Teague*.

U.S. at 825 (quoting 18 U.S.C. § 922(g)). The Court explained that virtually "any fact that increases the prescribed range of penalties to which a criminal defendant is exposed must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Id.* at 834. The Court explained that under the *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), exception, a judge may find the "fact of a prior conviction," but the judge is limited to the determination of the fact of the prior conviction and its elements and may not make any additional factual findings surrounding the prior conviction. *Erlinger*, 602 U.S. at 837-40. The Court noted that the case was as "nearly on all fours" with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), and concluded that whether the prior offenses "occurred on at least three separate occasions" is a factual issue that must be decided by a jury rather than a judge. The Court held that a jury must determine whether the prior convictions occurred on separate occasions before the enhancement can be imposed. *Id.* at 834-35. The Court stated that the defendant was entitled to have a jury resolve this issue "unanimously and beyond a reasonable doubt," but cautioned "we decide no more than that." *Id.* at 835.

McKinney* and *Poole

Erlinger was about what facts must be found by the jury to impose an enhanced sentence under the federal Armed Career Criminal Act. But both the United States Supreme Court and the Florida Supreme Court have explicitly determined exactly what fact must be found by the jury in a capital case to sentence a defendant to death. Both the nation's highest court and Florida's highest court have held that one aggravating factor must be found by the jury beyond a reasonable doubt under the Sixth Amendment to sentence a defendant to death. *McKinney v. Arizona*, 589 U.S. 139, 144 (2020) ("a jury must find the aggravating circumstance that makes the defendant death eligible" but a jury "is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision"); *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020) (holding a jury must unanimously "find the existence of a statutory aggravating circumstance beyond a reasonable doubt.").

Erlinger did not overrule *McKinney*. Indeed, the *Erlinger* Court did not cite *McKinney*, even in passing. *McKinney* and *Poole* control, not *Erlinger*. The only fact a jury must find in a capital case under

the Sixth Amendment is one aggravator, according to both the United States Supreme Court's and the Florida Supreme Court's directly on-point precedent.

And Wainwright's jury found one aggravator. Among the six aggravating factors found by the sentencing court in this case was the felony murder aggravator. But, as the lower court correctly concluded, Wainwright's jury also found the felony murder aggravator during the guilt phase by convicting Wainwright of robbery, kidnapping, and sexual battery, as well as murder. The Sixth Amendment requirement that the jury find at least one aggravating factor beyond a reasonable doubt was satisfied by the jury's unanimous verdict convicting Wainwright of these three felonies and first-degree murder in the guilt phase. Wainwright became eligible for a death sentence at that point. *McKinney* and *Poole* were satisfied before the penalty phase even started.

This Court has repeatedly rejected Sixth Amendment right-to-a-jury claims based on the jury convicting the capital defendant of other felonies in the guilt phase. *Poole*, 297 So. 3d at 508 (explaining that a jury's contemporaneous felony convictions "satisfied the requirement that a jury unanimously find a statutory aggravating

circumstance beyond a reasonable doubt"); *Boyd v. State*, 291 So. 3d 900, 901 (Fla. 2020); *Hilton v. State*, 326 So. 3d 640, 651 (Fla. 2021) (concluding there was no *Hurst* error based on the jury's kidnapping felony conviction). There was no violation of the Sixth Amendment right to a jury trial in Wainwright's death sentence.

Wainwright argues the jury's finding of the felony murder aggravator in the guilt phase is not sufficient because he was not specifically charged with felony murder and his jury did not return a special verdict explicitly convicting him of felony murder. IB at 46-48. But the jury did, in fact, make equivalent findings to the felony murder aggravator when it convicted him of first-degree murder as well as robbery, kidnapping and sexual battery. A Grand Jury's indictment is irrelevant to a petit jury's findings. And there is no rule that the Sixth Amendment requirement of jury's findings is only satisfied by a special verdict. That argument is form over substance. Wainwright cites no case from any court even hinting that special verdicts are required to satisfy the Sixth Amendment and this Court's caselaw is to the contrary.

This Court has rejected Sixth Amendment right-to-a-jury trial challenges based on prior violent felony convictions because such

convictions "amply satisfied the Sixth Amendment requirement that a jury unanimously find a statutory aggravating circumstance beyond a reasonable doubt." *Herard v. State*, 390 So. 3d 610, 623 (Fla. 2024) (quoting *Poole*, 297 So. 3d at 508), *cert. denied*, *Herard v. Florida*, 145 S. Ct. 1315 (2025). The jury found the felony murder aggravator in the guilt phase. Those jury findings are unassailed by *Erlinger*.

Alternatively, under the *Almendarez–Torres v. United States*, 523 U.S. 224 (1998), exception, the jury was only required to convict him of first-degree murder to make Wainwright eligible for the death penalty due to his prior conviction. Among the six aggravating factors found by the sentencing court in this case was the prior violent felony aggravator, based on a September 9, 1994, conviction in Lincoln County, Mississippi, for aggravated assault on a law enforcement officer.

While the United States Supreme Court criticized the *Almendarez–Torres* exception in *Erlinger*, that criticism is not valid if the prior conviction was the result of a guilty plea. Wainwright's Mississippi conviction for aggravated assault on a law enforcement officer was the result of a guilty plea. (DAR Vol. 28 at 3665).

Convictions that are a result of a guilty plea are exempt from the Sixth Amendment requirement of jury findings because the defendant waived his right to jury findings forever as part of the plea. Wainwright may not assert a right to a jury trial regarding a conviction that he waived any right to jury findings during his 1994 plea colloquy. There is no such concept as unwaiver by subsequent criminal conduct.

Moreover, the violence element of the prior violent felony aggravator, no doubt, was freely admitted by Wainwright during the plea colloquy to the aggravated assault. *Erlinger*, 602 U.S. at 834 (stating that any fact that increases the range of penalties "must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea.")) (emphasis added). Mississippi requires detailed factual basis as part of its plea colloquies. *Corley v. State*, 585 So. 2d 765 (Miss. 1991). Wainwright has not established that he did not admit to the violence element of the prior violent felony aggravator during the plea colloquy. Instead, he totally ignores the fact he entered a guilty plea to the prior conviction.

Even if *Erlinger* applied retroactively (which it does not), the prior violent felony aggravator is not subject to attack due to the

guilty plea. There was no violation of the right to a jury trial under the *Almendarez–Torres* exception.[10]

The Sixth Amendment right-to-a-jury trial was satisfied in two different ways in this case.

Ford* and *Tanzi

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[10] Additionally, any violation of the right-to-a-jury-trial would be harmless. This Court has held that violations of the Sixth Amendment right-to-a-jury-trial are subject to harmless error analysis including in capital cases. *Galindez v. State*, 955 So.2d 517 (Fla. 2007) (concluding that violations of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), were harmless citing *Washington v. Recuenco*, 548 U.S. 212 (2006), and *Neder v. United States*, 527 U.S. 1 (1999)); *Williams v. State*, 242 So.3d 280, 289 (Fla. 2018) (concluding that violations of *Alleyne v. United States*, 570 U.S. 99 (2013), are subject to harmless error analysis citing *Galindez* and *Neder*); *Brown v. State*, 304 So.3d 243, 277-78 (Fla. 2020) (concluding, in a capital case, that a violation of *Hurst v. Florida*, 577 U.S. 92 (2016), after *Poole*, is subject to harmless error analysis and that the jury's failure to find the felony murder aggravator was harmless).

Mississippi State Trooper John Leggett testified to the facts of the Mississippi conviction during the guilt phase in front of Wainwright's jury and sentencing judge. (DAR 2021-2075; 2025). Trooper Leggett testified that Hamilton shot at his patrol car at two different times during the chase that occurred after he attempted to stop Wainwright. After the Trooper trapped them in a dead end road, he got out of his patrol car and returned fire with his shotgun. Wainwright then attempted to drive into Trooper with the stolen Bronco. (DAR at 2034). Wainwright hit the patrol car and then hit a tree. He then fled on foot. Their conduct during the aggravated assault was violent based on the Trooper's testimony, so any error would be harmless.

This Court recently affirmed a summary denial, in an active warrant case, of a claim based on *Erlinger*. *Ford v. State*, 402 So. 3d 973, 979-81 (Fla. 2025), *cert. denied*, *Ford v. Florida*, 145 S. Ct. 1161 (2025). This Court noted that the *Erlinger* claim was actually a claim based on *Hurst v. Florida*, 577 U.S. 92 (2016). *Ford*, 402 So. 3d at 980. The *Ford* Court concluded that *Erlinger*, which "involved the federal Armed Career Criminal Act" did "not apply" to capital cases. *Id.* at 980. This Court distinguished *Erlinger*, which was a case about the jury findings necessary for the federal Armed Career Criminal Act, and therefore, did not provide any support for vacating a death sentence. *Id.* at 980-81.

The Florida Supreme Court also rejected an *Erlinger* challenge in another recent warrant case. *Tanzi v. State*, 2025 WL 971568, at *5-*6 (Fla. Apr. 1, 2025) (SC2025-0371), *cert. denied*, *Tanzi v. Dixon*, 2025 WL 1037494 (U.S. Apr. 8, 2025) (No. 24-6932). Tanzi argued in his state habeas petition that *Erlinger* mandated that the jury find the existence of sufficient aggravation and perform the weighing of aggravation against the mitigation. *Id.* at *5. He contended that an advisory jury was incapable of checking governmental power, so that even an unanimous recommendation of a death sentence by a jury is

not valid because they cannot substantively limit executive and judicial power. This Court again treated the *Erlinger* claim as a *Hurst* claim. The *Tanzi* Court relied on *Spaziano v. Florida*, 468 U.S. 447, 464-65 (1984), which held that the Eighth Amendment "does not require a jury's favorable recommendation before a death penalty can be imposed." *Id.* at *6. The *Tanzi* Court found the *Erlinger* habeas claim to be "both meritless and procedurally barred." *Id.*

Wainwright's reliance on the Fourth District case of *Jackson v. State*, 2025 WL 1119094 (Fla. 4th DCA Apr. 16, 2025), involving habitual felony offender sentencing, is misplaced. IB. at 29, 30, 34, 38, 39, 42, 43, 46, 47. At the sentencing in *Jackson*, the prosecutor sought to have the defendant sentenced as an habitual felony offender (HFO). *Jackson*, 2025 WL 1119094, at *2. The prosecutor introduced five certified judgments, which included the offenses and dates of conviction, as well as a Crime and Time Report from the Department of Corrections reflecting that Jackson had been released from prison on November 1, 2020, at the sentencing. *Id.* at *2. Jackson was sentenced as an HFO to 45 years in prison. On appeal, Jackson argued his HFO sentence violated *Erlinger*. *Id.* at *5. The Fourth District held that a jury should have determined all the facts,

other than the fact of conviction and the elements of the prior crimes, such as the timing of the offense with respect to the past qualifying felonies and the date of defendant's release from prison. *Id.* at *5-*6. The Fourth District, however, found the *Erlinger* error to be harmless.

Jackson was not a capital case. The Fourth District cannot overrule either the United States Supreme Court's decision in *McKinney* or this Court's decision in *Poole*, *Ford*, or *Tanzi*, and did not purport to do so in its *Jackson* decision. Again, *McKinney* and *Poole* govern fact finding in capital cases, not *Erlinger*.[11]

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[11] *Jackson* was a direct appeal case, so, retroactivity was not at issue under the pipeline doctrine. *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) (holding courts must apply judicial decisions "retroactively to all cases, state or federal, pending on direct review or not yet final."). As a matter of federal constitutional law, all courts must apply new decisions to all criminal cases pending in direct appeal, even if the new case was decided after the trial was over.

The constitutionally-mandated pipeline doctrine is yet another reason this Court should adopt *Teague*. *Teague* is the logical and historic companion of *Griffith*. Once the High Court mandated automatic pipeline retroactivity in *Griffith*, it made logical sense to narrow the cases that received benefit of retroactivity in the postconviction context which was the basis for the *Teague* decision that followed a couple of years later. Creation of the narrower test of *Teague* in the postconviction context was the direct result of adopting a much broader and automatic test of retroactivity for cases pending on direct appeal in *Griffith*.

Vast majority of states have adopted *Teague* either by caselaw or statute. *Windom*, 886 So.2d at 943 (Cantero, J., concurring) (noting, in 2005, that 28 state supreme courts had adopted *Teague*,

The *Erlinger* claim is procedurally barred, not retroactively applicable, and meritless under *McKinney*, *Poole*, *Ford*, and *Tanzi*. The postconviction court properly summarily denied relief on the *Erlinger* claim.

ISSUE II

Whether the postconviction court properly summarily denied the claim of newly discovered evidence of mitigation of neurodevelopmental effects due to Agent Orange?

Wainwright asserts the postconviction court improperly summarily denied the claim of newly discovered evidence of mitigation of neurodevelopmental effects due to his father's exposure to Agent Orange during the Vietnam War, based largely on a study published in 2023. IB at 50. The claim of newly discovered evidence of mitigation was untimely. Any claim based on the 2023 study was required to be raised by 2024 to be timely under *Jimenez v. State*,

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either in whole or in part); *Thiersaint v. Comm'r of Corr.*, 111 A.3d 829, 841 & n.11, 843 (Conn. 2015) (adopting *Teague* because it yields "consistent results" and noting that 33 other states have adopted *Teague*); *Bush v. State*, 428 S.W.3d 1, 19-20 (Tenn. 2014) (noting that the Tennessee legislature enacted the Post-Conviction Procedure Act, Tenn. Code Ann. § 40-30-122, abolished the prior state test for retroactivity and codified *Teague*).

997 So. 2d 1056, 1064 (Fla. 2008). The claim is over a year late. Alternatively, the claim fails the test for newly discovered evidence of mitigation. The new mitigation would not result in a life sentence at a new penalty phase. The six aggravating factors found by the sentencing court included the prior violent felony aggravator; the especially heinous, atrocious or cruel (HAC) aggravator; and the cold, calculated, and premeditated (CCP) aggravator. Those three aggravators are considered by this Court to be three of the most "serious" aggravators. Those serious aggravators, as well as the facts of this crime, would outweigh the new mitigation of neurodevelopmental effects, which is not powerful mitigation. Wainwright would still be sentenced to death at any new penalty phase. The postconviction court properly summarily denied the untimely and meritless claim of newly discovered evidence of mitigation.

The postconviction court's ruling

The postconviction court summarily denied the claim of newly discovered evidence of mitigation. (8th Succ. PC ROA at 449-454). The lower court denied the newly discovered evidence claim as untimely, procedurally barred, not valid newly discovered evidence,

waived by trial counsel's decision not to present mental mitigation at the penalty phase, and not likely to result in a life sentence.

The lower court found the claim of new mitigation to be procedurally barred because a similar claim was previously raised in the 2009 *pro se* second successive postconviction motion. (8th Succ. PC ROA at 450 citing *Wainwright v. State*, 43 So. 3d 45 (Fla 2010)). The lower court found the current claim of newly discovered evidence of mitigation to be essentially the same claim that Wainwright raised previously. *Id.* at 450-51 (citing *Jackson v. State*, 335 So. 3d 88, 89-90, n.2 (Fla. 2022); *Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014), and *Rogers v. State*, 2025 WL 1341642, at *6 (Fla. May 8, 2025) (agreeing that the current claim was "a variation" of a claim previously raised and concluding the claim was "procedurally barred for that reason"), *cert. denied*, *Rogers v. Florida*, 2025 WL 1387828 (U.S. May 14, 2025)).

The postconviction court additionally found the claim to be untimely. (7th Succ. PC ROA at 454). The lower court rejected restarting the clock for timely filing claims of newly discovered evidence based on newer studies, observing that if "every new study or publication could be invoked to restart the clock for filing a timely

successive rule 3.851 motion it would be at odds with the finality interests served by the rule." (8th Succ. PC ROA at 452) (quoting *Sliney v. State*, 362 So. 3d 186, 189 (Fla. 2023)).

The postconviction court also found the claim to have been waived by trial counsel's decision not to present mental mitigation at the penalty phase. (8th Succ. PC ROA at 453). Trial counsel thought that the mental mitigation, which would open the door to such diagnoses as conduct disorder, could "do more harm than good." (8th Succ. PC ROA at 453). The lower court stated Wainwright could not use newly discovered evidence of causation of his well-documented difficulties "to undo strategic decisions made long ago and at his own direction." (8th Succ. PC ROA at 453).

On the merits, the lower court noted that Wainwright acknowledged that he had long suffered from learning disabilities and a neurocognitive disorder but did not know the cause of those conditions and has now learned the cause of those conditions to be neurodevelopmental effects due to Agent Orange exposure. (8th Succ. PC ROA at 451-452). The postconviction court reasoned that the cause for those conditions did "not constitute newly discovered evidence." (8th Succ. PC ROA at 452). (citing *Hutchinson v. State*,

2025 WL 1155717, at *2 (Fla. Apr. 21, 2025) (holding "traumatic brain damage, neurocognitive impairment, and PTSD, regardless of their specific causation, are not new diagnosable conditions" where defendant knew his symptoms at or before trial). The lower court reasoned that therefore, Wainwright could not meet the first prong of "the evidence was unknown by the trial court, the party, or counsel at the time of trial" required to establish a claim of newly discovered evidence. (8th Succ. PC ROA at 452).

The postconviction court also concluded that the newly discovered mitigation of neurodevelopmental effects due to Agent Orange was not likely to result in a life sentence at any new penalty phase. (8th Succ. PC ROA at 453). The lower court noted the six aggravating factors found by the sentencing court included three of the "most serious aggravators set out in the statutory sentencing scheme" (8th Succ. PC ROA at 453). (quoting *Wood v. State*, 209 So. 3d 1217, 1228 (Fla. 2017), and *Craft v. State*, 312 So. 3d 45, 56 (Fla. 2020)).

The lower court noted, but did not address, the claim as an Eighth Amendment claim. (8th Succ. PC ROA at 449).

Preservation/not properly presented

The issue of newly discovered evidence of mitigation was properly preserved. Wainwright raised the same issue below that he is raising on appeal and properly obtained a ruling from the postconviction court. *Cole,* 392 So. 3d at 1063; *Figueroa-Sanabria*, 366 So. 3d at 1049; § 924.051(1)(b), Fla. Stat. (2024); *Ritchie*, 344 So. 3d at 378 (quoting *Rhodes*, 986 So. 2d at 513).

The claim that the Eighth Amendment mandates consideration of newly discovered mitigation, however, was not properly presented below. IB at 60. The Eighth Amendment claim was raised inside a state law claim regarding newly discovered evidence. It was not separately pled and sequentially numbered in violation of the rules of court. Fla. R. Crim. P. 3.851(e)(1) (providing that in initial postconviction motions in capital cases: "Each claim or subclaim shall be separately pled and shall be sequentially numbered beginning with claim number 1."); Fla. R. Crim. P. 3.851(e)(2)(A) (providing that in successive postconviction motions in capital cases, the motion shall follow "all of the pleading requirements of an initial motion under subdivision (e)(1)").

A federal constitutional claim may not be raised inside a state law claim. Such "Russian nesting doll" pleading is intentionally

designed to confuse the court, as it did in *Green v. Sec'y, Fla. Dep't of Corr.*, 28 F.4th 1089 (11th Cir. 2022), or to cause the court to overlook the claim entirely, as recently occurred in *Hutchinson v. State*, 2025 WL 1155717, at *3 (Fla. Apr. 21, 2025) (finding the same Eighth Amendment claim "was not properly presented below" because it pled inside another claim), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261215 (U.S. May 1, 2025).[12]

Second-chair state postconviction counsel Backhus and the Capital Habeas Unit of the Federal Public Defender's Office of the

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[12] In *Green v. Sec'y, Fla. Dep't of Corr.*, 28 F.4th 1089 (11th Cir. 2022), the Eleventh Circuit condemned CCRC-M's "deliberately ambiguous" pleadings filed in the Florida courts in a capital case, which resulted in the federal district court erroneously granting habeas relief, believing that a *Brady* claim had been exhausted in state court, when the particular *Brady* claim had actually never even been raised in state court, as required for exhaustion. The Eleventh Circuit noted that in federal court, new counsel employed the same type of "Russian nesting doll" pleading tactics that CCRC-M had used in state court.

The Eleventh Circuit explained that a "claim" consists of a particular legal theory based on a specific factual foundation. *Green*, 28 F.4th at 1135 (citing *Kelley v. Sec'y, Dep't of Corr.*, 377 F.3d 1317, 1344-45 (11th Cir. 2004)). The Eleventh Circuit warned the capital defense bar that it would "vigorously enforce both AEDPA and Rules 8 and 11" to require more straightforward pleading of habeas petitions in federal court. *Id.* at 1159. The Eleventh Circuit also urged Florida courts to require "more straightforward post-conviction pleadings" to prevent "the abuse of the post-conviction process in both state and federal courts." *Id.* at 1159.

Northern District of Florida (CHU-N), who are backing her, are not unaware of the pleading requirements of Rule 3.851. Both Terri Backhus and Linda McDermott, who is the Chief of CHU-N, practiced for decades in Florida capital postconviction cases before joining CHU-N. CHU-N, who was Hutchinson's federal habeas counsel and appeared as observers in the state court proceedings in the Hutchinson case are aware of this Court's recent decision in *Hutchinson* refusing to consider the exact same type of Eighth Amendment claim because it was improperly pled, yet second chair counsel pled the same claim in the same improper manner. They are playing games — Russian nestling doll games.

Furthermore, the Eighth Amendment claim consisted of two sentences in the amended successive motion that did not even use the phrase the "Eighth Amendment." (8th Succ. PC ROA at 202, ¶53). The State did not even recognize it as an Eighth Amendment claim and, for that reason, did not address it in its answer to the amended successive motion. It was only at the *Huff* hearing, that it became clear that there was an Eighth Amendment claim buried within the newly discovered evidence claim but at point it was too late for the State to respond in writing. *Sparre v. State*, 289 So. 3d 839, 849 (Fla.

2019) (holding an issue was not preserved because it was raised at a point that it was "too late for the State to respond").

The Eighth Amendment claim was not properly presented below and, for that reason, is not properly before this Court. This Court should explicitly explain to the capital bar that it will consider all claims raised in successive postconviction motions that are improperly pled to be forfeited. This Court should not address the Eighth Amendment issue except to hold that it was forfeited for failing to properly plead the claim below.

Because the Eighth Amendment claim was not properly presented below, it is forfeited on appeal.[13]

Untimely

[13] The Eighth Amendment claim is also meritless. This Court recently rejected a claim that the Eighth Amendment mandated consideration of newly discovered evidence of mitigation in *Hutchinson v. State*, 2025 WL 1198037 (Fla. Apr. 25, 2025), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261217 (U.S. May 1, 2025). The *Hutchinson* Court observed that no authority was cited for the principle that the Eighth Amendment provides a right to present mitigating evidence "at any time, regardless of its availability, regardless of the defendant's diligence in locating and presenting it, and regardless of its strength or force." *Id.* at *5. And this Court found the assertion that the Eighth Amendment right to present mitigation extended into the postconviction context to be "inconsistent" with this Court's precedent. *Id.* at 5, n.9 (citing cases).

The claim of newly discovered evidence of mitigation is untimely. Wainwright's expert relied on a study from January of 2023. (8th Succ. ROA at 230 Dr. Cassano's report Att. B at 11, n.16 citing Tran, Nghi Ngoc & Tai Pham-The, "*Neurodevelopmental Effects of Perinatal TCDD Exposure Differ from Those of Other PCDD/Fs in Vietnamese Children Living near the Former US Air Base in Da Nang, Vietnam,*" TOXICS 11, no. 2 (January 21, 2023)). Any claim of newly discovered evidence must be filed within one year of the date upon which the claim became discoverable through due diligence. *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008); *Sliney v. State*, 362 So. 3d 186, 189 (Fla. 2023) (concluding a claim of newly discovered evidence based on the publication of a new manual in 2021 was untimely, explaining that, while a new manual might provide additional support for the claim, the underlying scientific facts were available before 2021), *cert. denied*, *Sliney v. Florida*, 144 S. Ct. 501 (2023). The *Sliney* Court noted if every new study or publication could be invoked to restart the clock for timely filing successive postconviction claims under Rule 3.851, it "would be at odds with the finality interests served by the rule." *Id.* at 189.

Wainwright's argument that the claim is timely because, while the 2023 study started the formation of a consensus regarding the effects of Agent Orange exposure on neurodevelopment, the consensus is continuing to develop to this day and will continue to develop in the future. That argument is directly contrary to the reasoning of this Court in *Sliney*, as the postconviction court correctly noted. (8th Succ. PC ROA at 452). A capital defendant may not restart the clock for timely filing a claim of newly discovered evidence based on an ever-developing "consensus" because it would undermine finality.

A claim of newly discovered evidence based on a study published in January of 2023 had to be filed by January of 2024 to be considered timely filed under *Jimenez*. But this successive postconviction claim was not filed until May of 2025. The claim is over a year late. The claim of newly discovered evidence of mitigation related to Agent Orange is untimely.

Merits

Wainwright fails the test for newly discovered evidence of mitigation because the new mitigation of adverse

neurodevelopmental effects from Agent Orange would not result in a life sentence at any new penalty phase.

Newly discovered evidence of mitigation and *Jones*

To set aside a death sentence on the basis of newly discovered evidence of mitigation, a capital defendant must establish (1) the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence; and (2) the new evidence must be of such nature that it would probably result in a life sentence at a new penalty phase. *Damren v. State*, 397 So. 3d 607, 610 (Fla. 2023) (explaining that when a defendant seeks to vacate his death sentence rather than his conviction, the second prong of *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998), becomes that the newly discovered evidence would probably yield a less severe sentence"—*i.e.*, a life sentence—rather than an acquittal citing *Walton v. State*, 246 So. 3d 246, 249 (Fla. 2018); *Swafford v. State*, 125 So. 3d 760, 767 (Fla. 2013)), *cert. denied*, *Damren v. Florida*, 144 S. Ct. 1398 (2024). The defendant must establish both prongs of *Jones*. *Damren*, 397 So. 3d at 610 (Fla. 2023) (quoting *Hutchinson v.*

State, 343 So. 3d 50, 53 (Fla. 2022) ("To be facially sufficient, a claim of newly discovered evidence must meet the two-part *Jones* test.").

Additionally, when addressing the second prong of *Jones*, a court "is required to consider all newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Sheppard v. State*, 338 So. 3d 803, 825 (Fla. 2022). "This cumulative analysis must be conducted" so that the court has a "total picture of the case." *Sheppard*, 338 So. 3d at 825 (quoting *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999); *Jones*, 709 So. 2d at 521-22).

But a defendant may not resurrect evidence that was rejected by the courts previously and use that rejected evidence as part of a *Jones* cumulative analysis. IB at 57-59. Wainwright attempts to use Hamilton's statement that only he alone raped the victim, which was rejected by this Court in *Wainwright v. State*, 2 So. 3d 948, 952 (Fla. 2008). This Court rejected the claim of newly discovered evidence regarding Hamilton's statement on numerous grounds while noting the DNA evidence that Wainright raped the victim and concluded "given the totality of the evidence, Hamilton's statement would not

raise reasonable doubt about the convictions or undermine any of the six aggravators." Wainwright also improperly relies on a 2019 DNA report from a DNA analyst criticizing the DNA testing methods used by the State, which was rejected by the Eleventh Circuit in *Wainwright v. Sec'y, Fla. Dep't of Corr.*, 2023 WL 4582786, at *6 (11th Cir. July 18, 2023), *cert. denied*, *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024). The Eleventh Circuit rejected a gateway claim of actual innocence based on the 2019 DNA report because the report was only impeachment evidence "merely" pointing to "some ways" that the DNA testing "may have deviated from proper protocol or procedure" rather than being "new DNA testing" showing Wainwright was innocent of the rape. *Id.* at *6.[14] Neither Hamilton's statement nor the DNA report should be considered as part of any cumulative analysis under *Jones*. So, the postconviction court did not err by not considering either Hamilton's statement or the DNA report in any cumulative *Jones* analysis.

[14]This Court, of course, is not bound by the Eleventh Circuit's decision regarding the 2019 DNA report but it is certainly persuasive authority that the DNA evidence proving Wainwright raped the victim has never been "discredited." IB at 68.

This Court recently clarified the standard of proof for the second prong of *Jones*. *Damren*, 397 So. 3d at 611. The *Damren* Court explained the phrase "would probably" produce a life sentence means a "preponderance of the evidence" or "more likely than not." *Id.* at 611. It requires a showing of a probability "greater than fifty percent." *Id.*

The new mitigation of adverse neurodevelopmental effects from Agent Orange would not result in a life sentence at any new penalty phase. There is not an over fifty percent chance of this new mitigation outweighing the extensive aggravation in this case.

This is a case with six aggravators including the prior violent felony aggravator; the HAC aggravator; and the CCP aggravator. *Wainwright v. State*, 704 So. 2d 511, 512, n.2 (Fla. 1997) (listing the aggravators). These three aggravators are considered the most serious of aggravators individually, but in this case, all three of those serious aggravators are present. *Craft v. State*, 312 So. 3d 45, 56 (Fla. 2020) (referring to the aggravation in the case as "substantial" because of the presence of three of "the most serious and weighty aggravators in the capital sentencing scheme"—including the HAC, CCP, and prior-violent-felony aggravators citing *Bush v. State*, 295

So. 3d 179, 215 (Fla. 2020)); *Wood v. State*, 209 So. 3d 1217, 1229 (Fla. 2017) (stating "the CCP aggravating factor is one of the most serious aggravators set out in the statutory scheme" citing *Silvia v. State*, 60 So. 3d 959, 974 (Fla. 2011)).

And the facts of this case speak for themselves. Wainwright and Hamilton escaped from a North Carolina prison, stole a car, and then stole guns and drove to Florida. When the stolen car overheated, they spotted a young mother in the parking lot of a Winn-Dixie putting her groceries into her Bronco on her way to pick up her two children from daycare, after attending classes at community college that morning. But instead of just taking her car, they kidnapped her at gunpoint and both raped her. Wainwright and Hamilton agreed to kill her and then shot her twice in the back of the head. They then drove in the victim's car to Mississippi where they got into a shootout with a Mississippi State Trooper while fleeing from the Trooper who tried to pull them over.

In light of the numerous serious aggravators and the horrendous facts of the case, the presentation of new mitigation of adverse neurodevelopmental effects from Agent Orange would not

result in a life sentence at a new penalty phase. The aggravators and facts would greatly outweigh the new mitigation.

Recently, in *Hutchinson v. State*, 2025 WL 1155717, at *2-*3 (Fla. Apr. 21, 2025), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261215 (U.S. May 1, 2025), this Court rejected a claim of newly discovered evidence of mitigation of traumatic brain damage and neurocognitive impairment. This Court disagreed with the characterization of that mitigation as being "powerful" mitigation when compared to the aggravation. This Court found it was "highly unlikely" that the new mitigating evidence would lead to a life sentence. *Id.* at *3. Indeed, this Court concluded that the new mitigation "would only have a marginal effect at a new penalty phase." *Id.* at *3.

This Court's observation is equally true of this new mitigation. The Agent Orange mitigation is not powerful mitigation when compared to the aggravation and the facts of this case. As in *Hutchinson*, the new mitigation regarding Agent Orange "would only have a marginal effect at a new penalty phase." Wainwright's sentence would remain a death sentence regardless of the Agent Orange mitigation.

Wainright's reliance on *Porter v. McCollum*, 558 U.S. 30, 41 (2009); *Williams v. Taylor*, 529 U.S. 362, 395-98 (2000); *Rompilla v. Beard*, 545 U.S. 374, 378, 393 (2005); and *Wiggins v. Smith*, 539 U.S. 510, 515, 534–535 (2003), is misplaced. IB at 56, 60. Unlike *Porter*, *Williams*, and *Wiggins*, this is not an one aggravator case. *Thornell v. Jones*, 602 U.S. 154, 171 (2024) (distinguishing *Williams* and *Wiggins* as involving only one aggravator and *Porter* as involving only one death-worthy aggravator). Here, in contrast to *Porter*, *Williams*, and *Wiggins*, there are six aggravators and three of those aggravators are the most serious of aggravators. The United States Supreme Court in *Thornell* noted the "weighty aggravating circumstances" that were present and reversed the Ninth Circuit's finding of prejudice determining that it erred by downplaying "the serious aggravating factors" and overstating "the strength of mitigating evidence." *Jones*, 602 U.S. at 171-72. That observation applies equally to this claim of newly discovered evidence of mitigation. This case is akin to *Thornell*, not *Porter*, *Williams*, or *Wiggins*.

The newly discovered evidence of mitigation of neurodevelopmental effects due to Agent Orange is untimely and meritless under *Jones* and *Hutchinson*. The postconviction court

properly summarily denied the claim of newly discovered evidence of mitigation.

ISSUE III

Whether the postconviction court properly summarily denied the claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), regarding a State's witness receiving a benefit in exchange for his testimony?

Wainwright also asserts a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), for not disclosing that a State's witness, Robert Allen Murphy, expected a benefit from his testimony. IB at 63. Wainwright points to the fact that Murphy was released on probation after he testified against Wainwright and relies on a recent affidavit from Murphy. The claim of newly discovered evidence of a *Brady* violation is untimely. Any such *Brady* claim could have been raised decades ago in the initial postconviction motion. Furthermore, Wainwright's jury was aware from defense counsel's recross examination of Murphy that there was a possibility that Murphy could receive a sentence reduction in exchange for his testimony. So, any impeachment of Murphy would be cumulative only. Alternatively, there was no suppression of the impeachment, as required by *Brady,* because there was no formal or

informal deal with the State regarding Murphy's testimony. Most critically, any additional impeachment of Murphy is not material to the conviction for first-degree murder in a case in which the defendant confessed to premediated murder and there is DNA evidence of felony murder. The proposed cumulative impeachment is simply "too little" and "too weak" under *Turner v. United States*, 582 U.S. 313, 326 (2017), to be material to the conviction for first-degree murder. The postconviction court properly summarily denied the claim of newly discovered evidence of a *Brady* violation.

Trial testimony

The State presented the testimony of Robert Allen Murphy, who had been housed with Wainwright in the Taylor County Jail, shortly after the murder. (DAR Vol. 20 2702 handwritten page number). At the time of his testimony, Murphy was a DOC inmate serving a 12-year sentence. *Id.* at 2703. On direct examination, Murphy testified that he had "four or five" felony convictions. *Id.* He testified that he was an inmate in the Taylor County Jail in Perry, Florida in September of 1994. *Id.* He was in housed in confinement with Anthony Floyd Wainwright. *Id.* at 2705. While he had trouble identifying Wainwright at first, he then identified Wainwright at

counsel table as looking like Wainwright but he did not have any hair when he was in jail with Murphy. *Id*. at 2705-07; 2710-2711. Murphy testified that an inmate named Wainwright told him that he and Richard Hamilton escaped from jail or prison and came down to Florida. *Id*. at 2708. There was a woman at a store and they abducted her and her vehicle. *Id*. Wainwright told him that Hamilton had sex with the woman but that he did not. They took her naked out of the car after raping her. Wainwright told Murphy that he strangled her but she did not die, so he shot her twice in the back of the head. Wainwright told him that while he was strangling her, she was "kind of like a puppy when you hit a puppy in the head and it kind of shakes a little bit" which angered Wainwright and then he shot her in the back of the head. *Id*. at 2708. Wainwright told him they had a shoot-out with the Mississippi Highway Patrol and both ended up in the hospital because both of them got shot. *Id*. at 2709. Wainwright told him that when he woke up in the hospital Hamilton was on his way back to Florida on a plane with the police to show them where the body was. *Id*. at 2710. Wainwright was upset with Hamilton for showing the officers where the body was. Wainwright told him if Hamilton hadn't shown them where the body was or even if he had

just waited a little longer, the authorities would have never found the body because there were already parts of the body missing. *Id*. Wainwright knew that from the autopsy report of the victim, which he showed to Murphy.

On cross-examination, defense counsel established that Murphy currently had a motion for a modification of his sentence pending. *Id*. at 2711. Murphy explained that he was sentenced incorrectly. *Id*. at 2712. Defense counsel asked Murphy if the judge during the upcoming resentencing could take into account anything that Murphy has done since his prior sentencing which Murphy responded: "I guess so." *Id*. at 2712-13. Murphy guessed that with gain time he could have to serve "up to six or seven" years. *Id*. at 2714. Defense counsel asked Murphy how many times he had been convicted of a felony, pointing out that in his deposition he had stated that he had been convicted "eight or nine" times, not the four or five times Murphy had testified to in the direct examination. *Id*. at 2714-15. Murphy responded that he did not remember saying that in the deposition but he might have done so but also testified that he "did not know the exact number" of prior felony convictions he had. *Id*.

On redirect, the prosecutor, elected State Attorney Jerry Blair, asked Murphy if he had promised him anything in return for his testimony and Murphy responded: "no, sir." *Id.* at 2726. Murphy was asked if "anyone" had promised him "anything" in return for his testimony and Murphy responded: "no, sir." *Id.*

On recross, defense counsel asked Murphy if he knew of anything that would preclude his attorney at the modification hearing from bringing to the court's attention that he had testified for the State in this capital case and Murphy responded: "No." *Id.* at 2726.

The recent affidavit

Murphy, in his May 13, 2025, affidavit, states that he spoke with the Florida Department of Law Enforcement (FDLE) about what Wainwright told him about the murder, while they were housed together in the Taylor County Jail in 1994 and 1995. (8th Succ. PC ROA at 240 at ¶ 1-3). Murphy stated that he spoke with another inmate, Dennis Givens, who told Murphy that "he was receiving a benefit in exchange for his testimony" in the capital case. *Id.* at ¶ 4-

5.[15] Murphy called his father and told him to speak with his defense attorney handling the sentence modification to make sure he received a benefit in exchange for his testimony too. *Id.* at ¶ 6. Murphy states that his defense attorney assured him he would also receive a benefit in exchange for his testimony and his defense attorney told him that he had spoken with the State. *Id.* at ¶ 6.[16] He admits, however, that there was no formal deal with the prosecutor regarding leniency in exchange for his testimony but asserts that "everyone" knew that he would receive "something" in exchange for his testimony against Wainwright. *Id.* at 241 ¶ 6. Murphy avers that his sentence modification hearing "was pushed back" until after he testified

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[15] Murphy's affidavit states that Givens, at the time of the trial, was transported to the same county jail as him to testify against Wainwright. But Givens did not testify against Wainwright; Givens ultimately testified only against the co-perpetrator Richard Hamilton.

[16] Murphy never identifies the name of his defense attorney who handled his sentence modification hearing. Nor did Wainwright obtain an affidavit from that defense attorney about whether the lawyer had spoken with the State about a benefit in exchange for Murphy's testimony and the substance of that alleged conversation with the State. It is the defendant's burden to establish a *Brady* violation. *Martin v. State*, 311 So.3d 778, 808 (Fla. 2020); *United States v. Barroso*, 719 Fed. Appx. 936, 939 (11th Cir. 2018) (stating that the burden to establish a *Brady* violation lies with the defendant citing *United States v. Esquenazi*, 752 F.3d 912, 933 (11th Cir. 2014)).

against Wainwright. *Id.* at ¶ 7. At the modification hearing, the judge called the prosecutor on the phone who provided the judge with information about Murphy's testimony at Wainwright's trial. *Id.* at 7.

Wainwright mischaracterizes Murphy's recent statement as a "recantation." It certainly is not a recantation of Murphy's substantive trial testimony regarding Wainwright's statements to him in jail about his role in the murder, including Wainwright attempting to strangle the victim to death. While in his recent affidavit, Murphy refers to Wainwright's admissions to him in jail as "talking crazy," which were "not believable" to him, that is not a recantation. (8th Succ. PC ROA at 240 at ¶ 2-3). Murphy's personal opinion of Wainwright's account of the murder is not a recantation or even newly discovered "evidence." Personal opinions regarding another person's credibility are not admissible evidence. Indeed, the affidavit reaffirms his testimony that Wainwright, in fact, made those statements to him.

Wainwright also seems to be attempting to use Murphy's recent affidavit to attack the CCP and the HAC aggravators. (8th Succ. PC ROA at 204 at ¶ 57). But Murphy never recanted his trial testimony in his recent affidavit regarding Wainwright's statement about

attempting to strangle the victim other than to refer to Wainwright's admissions not being believable to him. (8th Succ. PC ROA at 240 at ¶ 2-3).

Murphy's statements in the recent affidavit are also not properly characterized as a recantation of his trial testimony regarding the possibility of his obtaining a benefit in exchange for his testimony in light of his recross examination testimony during the trial admitting that his attorney could inform the judge who was presiding over his sentence modification hearing that he had testified for the State in a high-profile capital case. (DAR Vol. 20 2712-13; 2726). The jury, in the end, knew there was a possibility of Murphy receiving a benefit from his trial testimony at his upcoming sentence modification hearing.

Wainwright presents no new evidence rebutting Murphy's substantive testimony. So, any claim of newly discovered evidence of a *Brady* violation is limited to the issue of Murphy receiving a benefit as a result of his testimony.[17]

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[17] Murphy's testimony was used, in part, to support the HAC aggravator, not the CCP aggravator. *Wainwright v. State*, 2 So.3d 948, 951-52 (Fla. 2008) (noting Wainwright strangled the victim, taking at least thirty seconds to render her unconscious and that the victim

The postconviction court's ruling

The postconviction court summarily denied the claim of newly discovered evidence of a *Brady* violation. (8th Succ. PC ROA at 454-460). The lower court summarily denied the claim on both on timeliness grounds and on the merits.

The postconviction court first noted, that after "careful review," Murphy's affidavit did not allege that the State ever offered him a benefit in exchange for his testimony. (8th Succ. PC ROA at 456). And the lower court noted that at a hearing on March 13, 1995, the State represented to the trial court that they had made no promises or deals with either Murphy or Givens. *Id.* at 457. The lower court also observed that during Murphy's trial testimony he acknowledged he

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resisted her death, causing Wainwright to describe her as "like a puppy" hit in the head). But even as to the HAC aggravator, the sentencing order relies on other factors and other testimony to support its finding of the HAC aggravator in addition to Murphy's testimony. *Cf. Pye v. Warden, Georgia Diagnostic Prison*, 50 F.4th 1025, 1035 (11th Cir. 2022) (en banc) (explaining that a state court's factual determination can still be a "reasonable" one even if it contains some errors, depending on the importance of those errors to the state court's ultimate determination). Wainwright's statements to Sheriff Reid about them being worried about the noise if they shot the victim with a gun, by implication, supports that they attempted to strangle the victim but were unsuccessful. The sentencing court's finding of the HAC aggravator remains valid, regardless of Murphy's personal opinion of Wainwright's confession to him.

had a motion pending for modification of his sentence. *Id.* The postconviction court found that there was "no indication or evidence to establish that the State ever offered him anything" and that both his trial testimony and recent affidavit were to the contrary. *Id.* at 458. The lower court concluded that Wainwright had "failed to establish that the State promised Murphy anything in exchange for his testimony". *Id.* at 459.

The postconviction court rejected the assertion that Wainwright could not have learned of this evidence until Murphy was willing to speak with the investigators in May of 2025 and was willing to sign an affidavit as being "without merit." (8th Succ. PC ROA at 457-58). The lower court noted the fact that Murphy's sentence was reduced to probation shortly after his testimony at Wainwright's trial, which was "a matter of public record." *Id.* at 458. The postconviction court basically concluded that the impeachment evidence was not new.

Additionally, she observed, Murphy admitted, in front of Wainwright's jury, during his testimony, that his attorney handling the sentencing modification case would be able to inform that judge during the modification hearing that Murphy had testified for the State in a capital case. (8th Succ. PC ROA at 458). She concluded that

Murphy's affidavit was "not different" from his trial testimony and basically changed nothing. *Id.*

The postconviction court concluded that Murphy's statements in his affidavit would not result in a life sentence noting the presence of the six aggravating factors. (8th Succ. PC ROA at 458). The lower court noted that among the six aggravators were three of the "most serious" aggravators "in the statutory sentencing scheme." *Id.* at 458 (quoting *Craft v. State*, 312 So. 3d 45, 56 (Fla. 2020); *Wood v. State*, 209 So. 3d 1217, 1229 (Fla. 2017)). The postconviction court concluded that the affidavit did not meet the standard necessary to establish newly discovered evidence. *Id.* (citing *Damren v. State*, 397 So. 3d 607, 610-11 (Fla. 2023)).

The postconviction court concluded that any impeachment of Murphy would not be material to the convictions. (8th Succ. PC ROA at 459). The lower court relied on this Court's recent decision in *Stein v. State*, 49 Fla. L. Weekly S235, 2024 WL 4231183, *3 (Fla. Sept. 19, 2024), which had concluded that impeachment of a State's witness with his expectation of not be charged with a crime in exchange for his testimony was not material under *Brady*, due to the strength of the State's case. *Id.* at 459. The lower court noted the State's case

against Wainwright was "strong" including both "scientific evidence and a confession." *Id.* at 459-460. The postconviction court concluded there was no *Brady* violation and therefore, denied relief. *Id.* at 460.

Preservation

The claim of newly discovered evidence of a *Brady* violation was properly preserved for appeal. Wainwright raised the same issue below as he is raising on appeal and properly obtained a ruling from the postconviction court. *Cole,* 392 So. 3d at 1063; *Figueroa-Sanabria*, 366 So. 3d at 1049; § 924.051(1)(b), Fla. Stat. (2024); *Ritchie*, 344 So. 3d at 378 (quoting *Rhodes*, 986 So. 2d at 513).

Untimely

The claim of newly discovered evidence of a *Brady* violation is untimely. Postconviction claims are statutorily required to be raised "at the first opportunity," not the last. *Ford v. State*, 402 So. 3d 973, 977 (Fla. 2025) (quoting the terms and conditions that govern criminal appeals and collateral review statute, Section 924.051(8), Florida Statutes. (2024), which provides "that all terms and conditions of direct appeal and collateral review be strictly enforced, including the application of procedural bars, to ensure that all claims

of error are raised and resolved at the first opportunity."), *cert. denied*, *Ford v. Florida*, 145 S. Ct. 1161 (2025).

It was clear from the trial testimony that Murphy had a motion for modification of sentence pending at the time of Wainwright's trial. And it was a matter of public record that Murphy was released on probation shortly after his testimony. Murphy's recent affidavit was not necessary to raise this claim. As the lower court observed, his recent affidavit really adds "nothing" to this claim. All of the information necessary for this claim to be raised was readily available to postconviction counsel decades ago. *Riechman v. State*, 966 So. 2d 298, 307 (Fla. 2007) (stating that there was no justification for not raising a similar claim "at an earlier time"). This claim should have been raised in the initial postconviction motion, not 20 years later in the warrant litigation. The claim is untimely.

Merits

Alternatively, the claim fails on the merits both as a claim of newly discovered evidence and as a claim of a violation of *Brady*. The additional impeachment of Murphy with his expectation would not result in an acquittal of first-degree murder or be material under *Brady*, in light of the strength of the State's case against Wainwright.

Newly discovered evidence and *Jones*

To set aside a conviction on the basis of newly discovered evidence, a defendant must establish (1) the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence; and (2) the new evidence must be of such nature that it would probably produce an acquittal on retrial. *Damren v. State*, 397 So. 3d 607, 610 (Fla. 2023) (quoting J*ones v. State*, 709 So. 2d 512, 521 (Fla. 1998)), *cert. denied*, *Damren v. Florida*, 144 S. Ct. 1398 (2024). The defendant must establish both prongs. *Damren*, 397 So. 3d at 610 (quoting *Hutchinson v. State*, 343 So. 3d 50, 53 (Fla. 2022) ("To be facially sufficient, a claim of newly discovered evidence must meet the two-part *Jones* test.").

Additionally, when addressing the second prong of *Jones*, a court "is required to consider all newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Sheppard v. State*, 338 So. 3d 803, 825 (Fla. 2022). "This cumulative analysis must be conducted" so that the court has a "total picture of the case." *Sheppard*, 338 So. 3d at 825 (quoting

Lightbourne v. State, 742 So. 2d 238, 247 (Fla. 1999); *Jones*, 709 So. 2d at 521-22).

But a defendant may not resurrect evidence that was rejected by the courts previously and use that rejected evidence as part of a *Jones* cumulative analysis. IB at 68. Wainwright attempts to use Hamilton's statement that only he alone raped the victim, which was rejected by this Court in *Wainwright v. State*, 2 So. 3d 948, 952 (Fla. 2008). This Court rejecting the claim of newly discovered evidence on numerous grounds while noting the DNA evidence that Wainright raped the victim and concluded "given the totality of the evidence, Hamilton's statement would not raise reasonable doubt about the convictions or undermine any of the six aggravators." And he also relies on a 2019 DNA report from a DNA analyst criticizing the DNA testing methods used by the State, which was rejected by the Eleventh Circuit in *Wainwright v. Sec'y, Fla. Dep't of Corr.*, 2023 WL 4582786, at *6 (11th Cir. July 18, 2023), *cert. denied*, *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024). The Eleventh Circuit rejected a gateway claim of actual innocence based on the 2019 DNA report because the report was only impeachment evidence "merely" pointing to "some ways" that the DNA testing "may have deviated from proper

protocol or procedure" rather than being "new DNA testing" showing Wainwright was innocent of the rape. *Id.* at *6.[18] Neither Hamilton's statement nor the DNA report should be considered as part of any cumulative analysis under *Jones*. So, the postconviction court did not err by not considering either Hamilton's statement or the DNA report in any cumulative *Jones* analysis.

This Court recently clarified the standard of proof for the second prong. *Damren*, 397 So. 3d at 611. The *Damren* Court explained the phrase "would probably" produce an acquittal means a "preponderance of the evidence" or "more likely than not." *Id.* at 611. It requires a showing of a probability "greater than fifty percent." *Id.*

Here, the jury was aware from trial counsel's recross of Murphy that he ultimately could receive a benefit from his testifying against Wainwright at his upcoming sentence modification hearing. (DAR Vol. 20 2712-13; 2726). So, any impeachment of Murphy would be merely cumulative impeachment.

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[18] This Court, of course, is not bound by the Eleventh Circuit's decision regarding the 2019 DNA report but it is certainly persuasive authority that the DNA evidence proving Wainwright raped the victim has never been "discredited." IB at 68.

Any additional impeachment of Murphy with his expectation of receiving a benefit in exchange for his testimony does not have a more than 50% chance of resulting in an acquittal of first-degree murder in a case with a confession and DNA evidence. Wainwright confessed to premeditated murder to Sheriff Reid in the presence of both a FDLE Special Agent and an Investigator with the Hamilton County Sherriff's Office, all of whom took notes. Wainwright told the Sheriff that they disposed of the victim's jewelry because they were planning on killing her. *Wainwright v. State*, 2 So. 3d 948, 951 (Fla. 2008) (finding there was sufficient evidence of premeditation, noting "Sheriff Reid testified that Wainwright told Reid that he and Hamilton threw the victim's jewelry out of the vehicle prior to the murder because they had already planned to kill her, and [they] didn't want any articles of jewelry to be found on her body."). And Wainwright's DNA matched the semen from the back of the victim's stolen Bronco at 1 in 6 billion Caucasians. (DAR Vol. 7 at 1027). At trial, Dr. Pollock testified that the probability of another person being the source of the sperm was approximately one in six billion. (DAR Vol. 23 at 3158-59). The DNA evidence establishes first-degree felony murder. And none of this evidence depends on Murphy's testimony.

Additionally, another inmate, Gary Gunter, testified that Wainwright also confessed to him. (DAR Vol.21 at 2736-76). Gunter testified that Wainwright was the actual triggerman. Gunter, who was dying of AIDS, testified that he expected to die in prison and did not want to leave prison because he believed he was better off in prison.

Wainwright fails the second prong of *Jones*. The claim of newly discovered evidence of impeachment regarding his first-degree murder conviction fails.[19]

Brady and cumulative impeachment

Nor would any additional impeachment of Murphy with his expectation of a benefit in exchange for his testimony be material to the conviction for first-degree murder under *Brady*.

To prevail on a *Brady* claim, a defendant must prove that (1) favorable evidence which is exculpatory or impeaching; (2) was suppressed by the State; and (3) because the evidence was material,

[19] This is a singular claim of newly discovered evidence of a *Brady* violation. It is not two separate claims and should not be treated as two different claims by this Court. The singular claim fails on *Jones* alone and should be denied on that basis alone. But, in an abundance of caution, the State will address the *Brady* aspect of the claim as well.

he was prejudiced. *Stein v. State*, 2024 WL 4231183, *2 (Fla. Sept. 19, 2024). This Court has explained that in assessing *Brady* materiality and ensuing prejudice, a court reviews "the net effect of the suppressed evidence and determine whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Sweet v. State*, 293 So. 3d 448, 451 (Fla. 2020) (rejecting a *Brady* claim based on impeachment). But "evidence that is 'too little, too weak, or too distant from the main evidentiary points to meet Brady's standards is not material." *Sweet*, 293 So. 3d at 451 (quoting *Turner v. United States*, 582 U.S. 313, 326 (2017)).

While a witness receiving a benefit from his testimony certainly counts as impeachment evidence under *Brady*, Wainwright's jury knew that it was possible that Murphy ultimately could receive a benefit in exchange for his testimony. The jury knew that, while there was no deal with the State regarding his trial testimony, it was a possibility that Murphy would receive a benefit at his upcoming sentence modification hearing. (DAR Vol. 20 2712-13; 2726). So, the impeachment of Murphy with his expectation would only amount to cumulative impeachment. There can be no violation of *Brady* from

failing to disclose information if the jury learns much the same information from cross-examination.

Alternatively, there was no suppression as required by *Brady*. The State did not fail to disclose a formal agreement with Murphy that he would receive probation in exchange for his testimony. Murphy admitted in his recent affidavit that there was no formal deal with the State regarding his testimony. Rather, Murphy's attorney told him that he could present the fact that Murphy had testified for the State in a capital case at his upcoming sentence modification hearing. His unidentified defense attorney assured him he would receive a benefit in exchange for his testimony and his attorney told him that he had spoken with the State (but the affidavit did not identify the name of the prosecutor or the details of that discussion). The State, of course, was not privy to those attorney/client discussions. The State has no obligation under *Brady* to disclose a witness' own expectations arising from discussions with his attorney. *State v. Absolu*, 13 N.W.3d 764, 773 (S.D. 2024) (explaining that a witness "might hope for, or even expect, favorable treatment in exchange" for their testimony "but that hope alone does not implicate *Brady*" citing *Moore-El v. Luebbers*, 446 F.3d 890, 900 (8th Cir.

2006)); *Moore-El v. Luebbers*, 446 F.3d 890, 900 (8th Cir. 2006) (stating "a nebulous expectation of help from the State is not *Brady* material"); *Knox v. Johnson*, 224 F.3d 470, 482 (5th Cir. 2000) (stating that a "nebulous expectation of help from the state is not *Brady* material"). A witness' uniliteral, nebulous expectation of a benefit for his testimony is not *Brady* information. There was no violation of the *Brady* obligation to disclose.

More critically, any cumulative impeachment of Murphy is not material to the conviction for first-degree murder. In *Stein v. State*, 2024 WL 4231183, *2 (Fla. Sept. 19, 2024), this Court held, in the alternative, that the proposed impeachment of one of the State's key witnesses with his expectation of not being charged with any crime in exchange for his testimony against the defendant was not material under *Brady*. *Stein*, 2024 WL 4231183, at *3. The *Stein* Court explained that impeaching the witness with his expectation would not put the case "in a different light" because the "State's case was strong," including a "confession to the robbery." *Id.* at *3.

The State's case in this case was even stronger. Wainwright and Hamilton were driving the victim's blue Bronco in Mississippi hundreds of miles from the victim's home in central Florida, the day

after her disappearance. And when a Mississippi State Trooper attempted to stop the Bronco, Wainwright, who was driving, sped off, while Hamilton started shooting at the Trooper. The Bronco crashed and both were arrested on the spot. All of which establishes the identity of the perpetrators and their conscience of guilt.

Furthermore, Wainwright confessed to premediated murder to Sheriff Reid. Wainwright told Sheriff Reid, in the presence of an FDLE Special Agent and a Hamilton County Sheriff's Investigator, all of whom took notes, that he and Hamilton, after a discussion, disposed of the victim's jewelry because they were planning on killing her, which establishes premediated murder. *Wainwright*, 2 So. 3d at 951. Additionally, Wainwright's DNA matched the semen from the back of the victim's stolen Bronco at 1 in 6 billion Caucasians. (DAR Vol. 7 at 1027). At trial, Dr. Pollock testified that the probability of another person being the source of the sperm was approximately one in six billion. (DAR Vol. 23 at 3158-59). The DNA evidence establishes the sexual battery and therefore, felony murder.

Any impeachment of Murphy pales in comparison to the sheer amount of evidence of Wainwright's guilt. As in *Stein*, any impeachment of Murphy with his expectation of a benefit in exchange

for his testimony would not put the case in a different light because the State's case was quite strong, including both Wainwright's confession to three law enforcement officers to premeditated murder and the DNA evidence of the sexual battery and therefore, of the felony murder. So, like *Stein*, this case involves a confession to the murder, but unlike *Stein*, this case also involves DNA evidence of the felony murder theory of first-degree murder.

The proposed cumulative impeachment of Murphy, in a case where the jury was aware that there was a possibility of his receiving benefit from his testimony, is simply "too little" and "too weak" to be material to these convictions. *Sweet*, 293 So. 3d at 451; *Turner*, 582 U.S. at 326. There was no violation of *Brady*. The postconviction court properly summarily denied the claim of newly discovered evidence of a violation of *Brady*.[20]

Accordingly, this Court should affirm the postconviction court's summary denial of the eighth successive postconviction motion.

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[20] The State declines to discuss Dennis Givens because he did not testify in front of Wainwright's jury. (8th Succ. PC ROA at 455, n.10). There can be no possible *Brady* violation regarding a witness who the jury never heard from. Wainwright certainly does not cite any case extending *Brady* to non-testifying individuals. IB at 65.

CONCLUSION

The State respectfully requests this Honorable Court affirm the postconviction court's summary denial of the eighth successive postconviction motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Baya Harrison III, , 736 Silver Lake Road, Monticello, FL 32344, **bayalaw@aol.com** and Terri Backhus, Backhus & Izakowitz, 13321 Lake George Lane, Tampa, Florida 33618, **terribackhus@gmail.com**; and the Florida Supreme Court, Kendall Canova, Capital Appeals Clerk, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org**.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style in compliance with Fla. R. App. P. 9.045(b), and that the word count is 8,458 words in compliance with Fla. R. App. P. 9.100(j).

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