

IN THE SUPREME COURT OF FLORIDA

ANTHONY FLOYD WAINWRIGHT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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Case No.: SC2025-708

L.T. No. 1994-150CF

CAPITAL CASE – DEATH WARRANT

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ON APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL  
CIRCUIT, HAMILTON COUNTY, FLORIDA,  
MELISSA OLIN, CHIEF JUDGE

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INITIAL BRIEF ON THE MERITS

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### Preliminary Statement

Appellant Anthony Floyd Wainwright was the defendant in the lower court proceedings. The State of Florida is the Appellee.

References to the postconviction record on appeal are designated "PCR," followed by the page number. References to the original trial record are designated "R," followed by the page number.

### Statement Regarding Oral Argument

Oral argument is not requested, and Appellant will defer to the Court on its necessity.

### Statement of the Case and Facts

Appellant Anthony Wainwright and co-defendant Richard Hamilton escaped from prison in North Carolina in 1994. They stole a car and guns and drove to Florida. On April 27, 1994, they kidnapped Carmen Gayheart from a grocery store parking lot, forced her into her vehicle, and drove her to a wooded area. After sexually assaulting her, they strangled her and shot her in the back of the head. They were arrested the next day in Mississippi (PCR. 59-60).

Wainwright was indicted for first-degree premeditated murder, kidnapping, robbery and sexual battery, and was found guilty as charged. The jury made a unanimous advisory recommendation of death. The trial

court found six aggravating circumstances: (1) under sentence, (2) prior violent felony, (3) felony murder based on the robbery, kidnapping and sexual battery, (4) avoid arrest, (5) HAC, and (6) CCP. There were no statutory mitigating circumstances but several non-statutory mitigating factors. The trial court sentenced Appellant to death (PCR. 60-61).

On appeal, Appellant raised nine issues unrelated to this appeal. This Court affirmed the convictions and sentence of death. *Wainwright v. State*, 704 So. 2d 511 (Fla. 1997), *cert. denied*, *Wainwright v. Florida*, 523 U.S. 1127 (1998) (PCR. 61-62).

Appellant filed an initial motion for postconviction relief on May 14, 1999, raising 14 claims unrelated to this appeal. The trial court conducted an evidentiary hearing and then denied the motion. This Court affirmed. *Wainwright v. State*, 896 So. 2d 695 (Fla. 2004) (PCR. 62-63).

Appellant also filed a petition for writ of habeas corpus in this Court, raising four claims. One claim was that his sentence violated *Ring v. Arizona*, 536 U.S. 584 (Fla. 2002). This Court denied the claim on the merits, reasoning that one of the aggravators was the prior violent felony aggravator, which does not need to be found by a jury. *Wainwright*, 896 So. 2d at 703-04. The Court rejected the other three claims as insufficiently

pled or procedurally barred. *Id* (PCR. 64). Certiorari to the United States Supreme Court was denied. *Wainwright v. Florida*, 546 U.S. 878 (1998).

Appellant filed a petition for writ of habeas corpus in federal district court on March 29, 2005, raising eleven grounds for relief. The petition was dismissed as untimely and affirmed on appeal. *Wainwright v. Sec'y, Dep't. of Corr.*, 537 F. 3d 1282 (11<sup>th</sup> Cir. 2007) (PCR. 69-70).

Appellant filed a successive motion for postconviction relief on July 16, 2007, asserting a claim of newly discovered evidence. The motion was summarily denied and affirmed on appeal. *Wainwright v. State*, 2 So. 3d 948 (Fla. 2008) (PCR. 64-65).

Appellant filed a second successive motion for postconviction relief in 2009, raising three claims based on evidence of brain damage and intellectual disability. The motion was denied and affirmed on appeal. *Wainwright v. State*, 43 So. 3d 45 (Fla. 2010) (PCR. 65).

Appellant filed a third successive motion pro se in 2010, raising seven claims of fundamental error and lack of jurisdiction. The motion was denied and the appeal dismissed as unauthorized. *Wainwright v. State*, 63 So. 3d 751 (Fla. 2011) (R. 66). Appellant filed a fourth successive motion pro se in 2011, raising the same claims. It was summarily denied (PCR. 66-67).

In 2013, Appellant filed a fifth successive motion pro se, raising four claims based on DNA evidence and juror misconduct. The motion was summarily denied (PCR. 67).

On April 6, 2015, represented by new registry counsel, Appellant filed a sixth successive motion for postconviction relief, raising four claims; (1) ineffective counsel for failing to explain plea agreement, (2) fundamental error by admitting late-disclosed DNA evidence, (3) denial of Sixth Amendment right to trial by jury because jury did not find an aggravating circumstance beyond a reasonable doubt, and (4) denial of fair trial because a juror with pending charges was allowed to serve until the tenth day of trial. The trial court summarily denied the motion and this Court affirmed. *Wainwright v. State*, 2017 WL 394509 (Fla. January 30, 2017) (PCR. 67-68).

In 2019, Appellant filed a Rule 60(b) motion to reopen the federal habeas case based on equitable tolling. The motion was denied and affirmed on appeal. *Wainwright v. Sec'y, Fla. Dep't of Corr.*, 2023 WL 4582786 (11<sup>th</sup> Cir. July 18, 2023) (PCR. 70-72). Review in the Supreme Court was denied. *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024) (PCR. 72).

Appellant filed a seventh successive motion in 2022, raising a newly discovered evidence claim and a claim of fundamental error in considering

extra-record evidence only admissible against the co-defendant during the joint trial. The trial court summarily denied the motion and this Court dismissed a pro se notice of appeal. *Wainwright v. State*, 2022 WL 4282149 (Fla. September 16, 2022) (R. 68).

On May 9, 2025, Governor DeSantis signed a death warrant for Appellant's execution on June 10, 2025 at 6:00 p.m. This Court entered an order directing that all proceedings in the trial court be concluded by May 20, 2025 at 12:00 p.m., with a notice of appeal due by 4:00 p.m. (PCR. 72).

On May 12, 2025, the State filed a Statement of the Facts of the Crime and Procedural History (PCR. 59). On May 14, Appellant filed an Eighth Successive Motion for Postconviction Relief (PCR. 96).

Terri Backus then filed a motion for substitution of counsel in order to present claims prepared by the Federal Defender's Office Capital Habeas Unit and a proposed motion for postconviction relief (PCR. 136, 267). The trial court held a hearing on the motion on May 15, 2025 (PCR. 368). Over registry counsel's objection, the trial court entered an order allowing Ms. Backus to appear as second-chair counsel, striking her motion for postconviction relief, and giving Appellant until 6:00 p.m. to file an amended motion for postconviction relief to combine the claims from both motions (PCR. 327).

Appellant then filed an Amended Eighth Motion for Postconviction Relief under Fla. R. Crim. P. 3.851, presenting registry counsel's original claim and second-chair counsel's two additional claims. These were: (1) The trial judge exceeded the scope of the prior record exception to the jury trial requirement in finding the prior violent felony aggravator, (2) newly discovered evidence of prenatal Agent Orange exposure, and (3) newly discovered evidence of recantation by state witness and Brady violation (PCR. 181-204).

The trial court conducted a Huff hearing on May 16, 2025 (PCR. 409), and entered an order directing that no evidentiary hearing would be held (PCR. 362).

The claims raised by second-chair counsel are factual in nature and based on newly discovered evidence set forth in the attachments to the amended Rule 3.851 motion and summarized as follows:

Issue II: Appellant's exposure to Agent Orange via his father's Vietnam War combat service:

*From conception, Anthony had a minimal chance of developing into a fully functioning adult....His low cognitive functioning impaired his ability to make independent and normative decisions regarding his behaviors. Anthony's condition is the result of his father's heroism in Vietnam, and a Nation that chose to turn a blind eye to the problems manifest in children like him.*

(PCR. 233) (Report of Dr. Cassano). New medical findings establish that appellant's neurobehavioral and cognitive impairments are attributable to his father Ken Wainwright's ("Ken") Agent Orange exposure. (PCR. 229).

Appellant was conceived approximately six months after Ken returned from a Vietnam War deployment to the region northeast of Saigon, amidst some of the combat's heaviest fighting and heaviest spraying of "rainbow herbicides[.]" (PCR. 225). Due to Ken's service there exists "[c]ompensable, irrefutable evidence" of his exposure to "the most potent dioxin manufactured" via Agent Orange ("TCDD"). (PCR. 221, 225, 237).

It is now understood that Ken's defoliant exposure had a lifelong impact on him. "Even as a tiny baby there was something 'off' about Anthony.... [H]e never stopped crying." (PCR. 237). In the first year of his life, he was in and out of the hospital with bronchitis and asthma. As a child, he displayed many of the ailments that were present in his father after his service and that are presumptively associated with Agent Orange exposure. (PCR. 237-38) (detailing tremors, speech difficulties, and dermatological problems).

Appellant increasingly displayed cognitive and emotional deficits. He was taken for mental and behavioral evaluations beginning at the age of six due to behavioral struggles, an inability to sit still, immaturity, and poor

impulse control. (PCR. 222). In fourth grade, he was placed in a classroom for students with learning disabilities. *Id.* At age 11, he was found to be “borderline mentally retarded” based on his intellectual and adaptive functioning. *Id.* He could not read. (PCR. 224). “In today’s lexicon, he would be considered to have an ‘intellectual disorder.’” (PCR. 222). His struggles grew more pronounced with age, and by 12 his developmental and neurological functioning was equivalent to a child four to five years younger. R. 223. He repeated a grade and was in remedial classes. (PCR. 222).

Continuing into his teens, Appellant suffered from impulsivity, excessive talking, a tendency to follow others, negative attention-seeking behaviors, enuresis, defiance, trauma symptoms, social and emotional impairment, poor academic performance, low self-esteem, detachment, substance dependence, despondence, continued tremors, and global intellectual and learning difficulties. (PCR. 223-25). Minimal therapeutic interventions were utilized, and those that were proved not only inadequate but affirmatively worsened his symptoms and behaviors. *Id.* His family was warned that without admission to a long-term treatment facility, he would likely end up in training school or prison, (PCR. 224), a prediction realized in 1987, when he was placed on probation for a nonviolent offense. *Id.* He

was “despondent[,]” “very depressed and almost catatonic[,]” and had visible tremors. *Id.*

A 2019 evaluation concluded that Appellant’s history was defined by cognitive impairment, below-average intellectual functioning, and immaturity. *Id.* He lagged behind peers in his ability to develop age-appropriate emotional skills and displayed depression, “hyperkinetic activity,” trauma symptoms, and social impairment. *Id.* The longstanding impairments impacted his ability to “formulate, crystalize, and express his thoughts and feelings.” (PCR. 224-25). While somewhat ameliorated by the structured prison environment, his impairments have never gone away.

In February 2025, during a conversation with his younger sister Krista, the appellant mentioned his worsening tremors. Krista reflected on her own medical ailments, which included breast cancer and alopecia after chemotherapy, an “acknowledged physical birth defect resulting from a veteran’s exposure.” (PCR. 228, 237). Ken died of esophageal cancer, presumably linked to his Agent Orange exposure (PCR. 221, 227). Prior to this, appellant had never known of his father’s exposure because the family did not discuss Ken Wainwright’s military experience until after his death—at which point Appellant was incarcerated.

Although certain medical conditions have been causally linked to

TCDD exposure, research regarding the neurobehavioral effects of TCDD on children of Vietnam Veterans has been vastly limited until now:

[T]here is an increasing body of literature indicating that children of Vietnam Veterans have a proportionally greater incidence of cognitive disorders and neurobehavioral disorders than the general population. In the 22 years that The Institute of Medicine (IOM) published its Reports on Veterans and Agent Orange, it never once investigated neurobehavior effects in offspring of Vietnam Veterans.... There is a reason for this that is not readily apparent to those not intimately involved in the process of developing these reports. While initially mandated by congress, each...report, [until] 2018, was produced under contract with the VA....A VA representative presents the “charge” to the committee, in which it directs...what it wishes to be investigated. The IOM is bound by this charge, and by contract, cannot exceed the authority given to it in the charge. Despite all the evidence over the years, VA never asked IOM to investigate it.

(PCR. 225-26). Research now shows that TCDD accumulates in fat tissue, affecting numerous aspects of cell metabolism and altering expression of several genes. (PCR. 226). Due to TCDD’s long half-life, levels in Ken Wainwright’s body were “great and persisted long after his son, Anthony, was conceived,” contributing to Ken’s ultimate cause of death. (PCR. 227). TCDD’s damage to genes means that second and third generational effects, especially a child’s neurocognitive effects, can be attributed to parental exposure. *Id.*

Though literature supports the link, the VA has done little to investigate it. In November 2023, a United States Senator held a hearing on a Children's Toxic Exposure Research law. (PCR. 227-28). A VA representative testified that if a connection was found between a parent's toxic exposure to TCDD during military service and a child's illness, the VA would be responsible for providing health care and compensation, which would greatly increase their budget. (PCR. 228). This suggests VA knowledge of the link. *Id.*

TCDD causes genomic instability, where genetic damage is observed several generations later in the progeny of exposed cells. *Id.* TCDD promotes transgenerational inheritance of disease via changes in the chemical structure of DNA. *Id.* This can happen from the male germline after fertilization, resulting in changes to the offspring's genome. *Id.*

TCDD exposure and parental PTSD have a complex interaction as contributing factors to cognitive and neurobehavioral effects in the children of Vietnam Veterans. *Id.* In comparing disabilities in children of Vietnam Veterans with those of non-veterans, researchers observed an emerging pattern of functional problems in the Veterans' children, including significant increases in all types of learning and attention disorders and emotional/behavioral disorders. *Id.* This is attributed to TCDD exposure. *Id.*

A study was conducted on the reproduction of Agent Orange-exposed women or the wives of soldiers exposed to dioxins. (PCR. 230). Less than 10% resulted in miscarriages and 14% in still or premature births. Of the successful births, 14 children died at an early age, and 66% of children developed a physical or mental disability. *Id.* Similarly, a recent 2023 study of Vietnamese children living near the previous Da Nang Airbase 40 years after the Vietnam War showed that perinatal exposure to TCDD impacts social, emotional, and cognitive functions, leading to sex-specific neurodevelopmental disorders. *Id.* By age eight, girls with high TCDD levels had ADHD-like behaviors and autism spectrum disorder, whereas boys had neurodevelopmental disorders and learning disabilities similar to those Appellant had by the time he was in 4th grade. *Id.*

The studies' conclusions now can be corroborated and extrapolated to children of American Vietnam Veterans. *Id.* At the end of the Vietnam War, the level of TCDD present in Vietnam Veterans was at least 35 times, and up to 1500 times, greater than that of the general population. *Id.* A child like Anthony, who was conceived only six months after his father returned from Vietnam, would have been affected by TCDD due to epimutations, or to direct exposure of TCDD during fertilization of the maternal gamete. *Id.* Children of Vietnam veterans with untreated PTSD

also exhibit more dysfunctional social and emotional behavior (PCR. 231).

Information on transgenerational effects of Agent Orange exposure is not readily accessible or widely known by the general medical community, let alone the public. Prior IOM reports did not address the neurobehavioral or cognitive effects of transgenerational exposure, and most clinicians review only those reports when seeking available information on the effects of Agent Orange. (PCR. 232). Further, the stringent requirements placed on the IOM for accepting research studies vastly limited the available information in these reports. *Id.* Modes of transmission to offspring were not established until the early 2020s, and publication of studies discussing this phenomenon did not even begin until 2023. *Id.* Thus, the ability to integrate discrete studies into a cogent medical—or legal—theory only recently became possible. *Id.*

Dr. Cassano concluded that many neurobehavioral and cognitive issues linked to exposure to TCDD manifested in appellant's from an early age, including learning disabilities, poor impulse control, and low social functioning. *Id.* This detrimentally affected appellant's development and strongly contributed to his cognitive and behavioral disorder. (PCR. 232-33). These effects—with their cause then unknown—were exacerbated by a lack of appropriate medical treatment and Anthony's subjection to harsh

behavioral modification settings like wilderness camp, training school, and detention, which only magnified his emotional and behavioral instability. *Id.*

Issue III: The State's suppression of evidence that it had provided benefits to a key witness at Mr. Wainwright's trial.

At Appellant's trial, the State presented testimony of jailhouse informant Robert Allen Murphy, who was then serving a 12-year prison sentence. (R. 2702-04). Murphy met Appellant in confinement at the jail. (R. 2705). Murphy testified that appellant told him he and Hamilton came to Florida after escaping jail or prison. (R. 2708). They abducted a woman at "some kind of store" and "went off into the woods." *Id.* Wainwright said he strangled the woman, but she wouldn't die, "kind of like when you hit a puppy in the head and it kind of shakes a little bit[.]" so he shot her in the head twice then dragged her off and left her. *Id.*

Murphy could not initially identify Wainwright in the courtroom. (R. 2705). But after his testimony, the State asked him to "specifically direct your attention to [defense] counsel table over there. Do you recognize anybody seated at that table right there?" (R. 2710). At that point, Murphy said a man sitting there "does look like Anthony Wainwright, but he didn't have any hair and he didn't have no mustache [when I talked to him]." *Id.*

On cross-examination, Murphy said that he had a pending

“modification of sentence” to lower his sentence, but he was “not necessarily” hoping to get a sentence reduction. (R. 2712-13). On redirect, Murphy said the State did not promise anything in exchange for his testimony. (R. 2726).

At Hamilton’s trial, the State presented testimony from Dennis Givens, another jailhouse informant who was housed with Appellant at the Taylor County Jail after bringing tobacco in. (R. 3375-77).

Givens testified that Wainwright claimed to have been the dominant actor in the murder. (R. 3385). He “took a scarf or shirt or something and wrapped it around her neck and tried to strangle her, and that didn’t work, so he said he punched her in the back of the head a few times.” (R. 3384). “I put a bullet in the gun, walked over there and I shot her in the back of the head [twice]. I kicked her to make sure she was dead, and I drug her off in some bushes and threw some bushes over her.” (R. 3385). Givens characterized Wainwright as a “lunatic” who would say things like “it is a good night for a homicide” or “I finally did it[.]” (R. 3387, 3392). He said Mr. Wainwright was “evil” and called himself a maniac. (R. 3392-93).

On May 13, 2025, Murphy admitted for the first time that, contrary to his trial testimony, he expected a sentencing benefit in exchange for testifying against Wainwright. He also disclosed that Dennis Givens

likewise expected a benefit in return for testifying against Wainwright (PCR. 240-241)

Murphy disclosed that while he was housed with Wainwright in confinement, Wainwright “was talking crazy about everything, including his case. What he was saying about his case was not believable to me, because it was so sensational and seemed more like he was trying to act tough.” (PCR. 240). When he informed law enforcement of Wainwright’s purportedly inculpatory statements, he told them, “I didn’t believe it all because it was so crazy. I remember asking them, ‘Would you even believe that?’” *Id.* But law enforcement apparently ignored this. Without any prior notice, Murphy was later transported from where he was serving his prison sentence to the county jail for the State’s aim of presenting testimony against Wainwright. *Id.* His hearing regarding a modification of his sentence, which had been scheduled prior to his testimony, was “pushed back until after my testimony in Wainwright’s case.” *Id.*

While at the county jail, Murphy and Givens met and “kept discussing the case and our testimony before we gave it.” *Id.* Givens “told [Murphy] that he was receiving a benefit in exchange for his testimony against Anthony.” *Id.* He specified what it was to Murphy, although Murphy no longer remembers what he said. *Id.* This prompted Murphy to seek a

benefit before testifying as well. He contacted his defense attorney, who spoke with the State about it. *Id.* Murphy's attorney assured him that he would receive a benefit in exchange for testifying. *Id.*

Then, when I met with the prosecutor prior to testifying, he said that he could not make a promise but the way he said it made it clear to me that I would get a benefit if I testified. He repeated that so much that it became annoying, and I found it unusual because everyone knew the elephant in the room. We all knew what was going on and that I would be receiving something in exchange for my testimony.

*Id.* And, just as he had been assured, Murphy's benefit was realized after his testimony against Mr. Wainwright. "At the [modification of sentence] hearing, the judge called the prosecutor on the phone and he provided information about my testimony. After the phone call, I was given a choice of doing time in prison or a lengthier probation. I chose the probation." *Id.*

On May 20, 2025, the trial court entered a final order summarily denying Appellant's Amended Eighth Motion for Postconviction Relief (hereinafter "motion" or "Rule 3.851 motion") (PCR. 441).

This appeal follows.

## Summary of Argument

As to Issue I, the Circuit Court erred in finding that Appellant's claim based on a change in the law is procedurally barred. This Court has held that a procedural bar cannot be used to prevent a litigant from requesting retroactive application of a new rule of law. The circuit court also misconstrued this Court's prior decisions in holding that the new decision relied on is not applicable to capital sentencing cases. The new decision by the U.S. Supreme Court meets the test for retroactive application. If applied, it renders Appellant's death sentence unconstitutional for lack of jury findings as to the elements of any aggravating circumstance.

As to Issue II, new evidence demonstrates that Appellant's lifelong cognitive and neurobehavioral deficits are attributable to prenatal Agent Orange exposure. His culpability is accordingly diminished such that his execution would violate the Eighth Amendment, and under cumulative review he would probably receive a life sentence on retrial.

As to Issue III, jailhouse informant Robert Allen Murphy was a critical State witness at Appellant's trial. The State suppressed favorable material evidence that Murphy and fellow jailhouse informant Dennis Givens expected benefits in return for their testimony regarding Mr. Wainwright.

## Standard of Review

Application of a procedural bar is reviewed on appeal under a *de novo* standard of review. *State v. McBride*, 848 So. 2d 287 (Fla. 2003). On review of a summary denial of a motion for postconviction relief, the movant's factual allegations are taken as true unless conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). A postconviction court's decision whether to grant an evidentiary hearing is reviewed *de novo*. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008). The trial court's application of the law to the facts is also reviewed *de novo*. *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008).

## Argument

### I. THE TRIAL COURT ERRED IN PROCEDURALLY BARRING CLAIM BASED ON NEW DECISION THAT CHANGES FLORIDA SENTENCING LAW

In claim one of his motion, Appellant asserted that his death sentence was imposed in violation of the Sixth Amendment right to trial by jury because the United States Supreme Court's decision in *Erlinger v. United States*, 602 U.S. 821, 144 S. Ct. 1840 (2024), invalidated the prior violent felony aggravating circumstance that was applied in his case (PCR. 182-84). The judge made findings of fact that exceeded the permitted scope of the prior record exception announced in *Almendarez-Torres v. United*

*States*, 523 U.S. 224, 118 S. Ct. 1219 (1998), which is limited to only the fact of a prior conviction and the elements of the offense. Any other findings required to invoke a statutory sentence enhancement must be submitted to a jury and found beyond a reasonable doubt. Appellant alleged that this constitutes a jurisprudential upheaval that should be applied retroactively (PCR. 189-90). The trial court denied the claim as procedurally barred, reasoning that *Erlinger* does not apply to capital sentencing proceedings and this is essentially a repackaged variant of prior claims (PCR. 445-449).

a. The *Erlinger* decision

The issue in *Erlinger* was whether the trial judge could impose an enhanced sentence under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924 (U.S.C.A.), without jury findings. *Erlinger*, 602 U.S. at 825. To sentence a defendant under the ACCA, the government had to prove that he had three prior convictions for violent felonies or serious drug offenses that were committed on different occasions. *Id.*

In the Court of Appeals, the government conceded that the “occasions ‘inquiry’ can require an examination of a ‘range’ of facts, including whether the defendant’s past offenses were ‘committed close in time,’ whether they were committed near to or far from one another, and whether the offenses were ‘similar or intertwined’ in purpose and

character.” Given the intensely factual nature of this inquiry and its potential impact on the sentence, the government admitted that the Sixth Amendment demands that a jury resolve it. *Id* at 828. The Seventh Circuit affirmed the sentence notwithstanding the government’s concession, and the Supreme Court granted the defendant’s petition for review. *Id*.

The Court emphasized that the jury trial right applies to virtually any fact that increases the prescribed range of penalties to which a criminal defendant is exposed. *Id* at 834. The Court acknowledged the *Almendarez-Torres* exception that allows judges to undertake the job of finding the fact of a prior conviction but characterized it as an “exceptional departure from historic practice,” *Id* at 837, and a “narrow exception” which the Court has expressly delimited in its reach in subsequent decisions. *Id* at 838. To the extent it remains law, it permits a judge to determine only what crime and what elements the defendant was convicted of, no more. *Id*.

To determine whether Erlinger’s prior convictions triggered the ACCA’s enhanced penalties, the judge had to do more than identify the previous convictions and the legal elements required to sustain them, which is more than *Almendarez-Torres* allows. *Id* at 838-39. The Court rejected the argument that a judge can delve into the underlying circumstances to establish the “means” or “manner” in which the crime was

committed, *Id* at 839-40, as this would require a “qualitative assessment about ‘the character and relationship’ of the offenses.” *Id* at 841. The Court then vacated the judgment of the Court of Appeals. *Id* at 849.

In April of 2025, a Florida appellate court applied *Erlinger* to a Florida sentencing enhancement statute for the first time. In *Jackson v. State*, 2025 WL 1119094 (Fla. 4<sup>th</sup> DCA April 16, 2025), the Court applied the rationale in *Erlinger* to § 775.084, *Fla. Stat.* (2024), and held that habitual offender enhancement requires findings as to the timing and sequential nature of the prior convictions that fall outside the prior record exception. Therefore, the Sixth Amendment requires that those findings be made by a jury.

b. Impact of *Erlinger* rule on Appellant’s sentence

In 2000, the United States Supreme Court held that other than the fact of a prior conviction, any fact that increases the punishment for a crime is an element that must be submitted to the jury and proven beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000). Two years later, the Court held that this rule applies to capital sentencing proceedings and requires a jury to find the existence of aggravating circumstances supporting the death penalty. *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002).

Appellant filed a *Ring* claim at the first opportunity in his initial petition

for writ of habeas corpus. This Court denied the claim on the merits because one of the aggravating circumstances was “that Wainwright had a prior violent felony conviction, a factor which under *Ring* and *Apprendi* need not be found by the jury.” *Wainwright v. State*, 896 So. 2d 695 (Fla. 2005).

Florida courts have relied on the *Almendarez-Torres* exception to hold that the right to trial by jury does not apply at all to recidivism statutes and is not implicated by the imposition of a harsher sentence or the death penalty if it is based on the fact of a prior conviction. See e.g. *West v. State*, 82 So. 3d 987 (Fla. 1<sup>st</sup> DCA 2011) (habitual offender statute); *St. Louis v. State*, 985 So. 2d 16 (Fla. 4<sup>th</sup> DCA 2008) (same); *Ryland v. State*, 360 So. 3d 784 (Fla. 3<sup>rd</sup> DCA 2023) (prison releasee reoffender statute); *Miller v. State*, 42 So. 3d 204 (Fla. 2010) (prior violent felony aggravator). No distinction was made between the fact of a prior conviction and the additional findings required by statute to justify the increase in punishment. That has now changed. Compare *St. Louis*, 985 So. 2d 16, decided before *Erlinger*, with *Jackson*, *supra*, decided after *Erlinger*. The holdings in those Fourth District cases are polar opposites on the same question of law.

The original sentencing order reflects that the judge made two findings in support of the prior violent felony aggravator in § 921.141(5)(d),

*Fla. Stat.* (1994): (1) that the defendant was previously convicted of aggravated assault on a law enforcement officer in Lincoln County, Mississippi in 1994, and (2) that the crime involved the use or threat of violence to the person (PCR. 213). The first finding pertains to the existence of a prior conviction and falls within the *Almendarez-Torres* exception. The second finding does not.

The federal statute at issue in *Erlinger* defined what constitutes a violent felony and provided a list of enumerated qualifying offenses. See 18 U.S.C. § 924(e)(2). Thus, the judge could determine whether the crime was violent as a matter of law based on the statutory definition and whether it was on the list of enumerated felonies. That is not the case in Florida.

Section 921.141 does not define what constitutes a “violent felony” for purposes of death penalty aggravation or provide an enumerated list of qualifying crimes. Compare § 775.082(9)(a) (listing felonies eligible for PRR sentencing); § 775.087(2) (listing felonies eligible for minimum mandatory sentence based on use of a firearm). Thus, whether a prior conviction involved the use or threat of violence for purposes of the death penalty is a question of fact, not a question of law, and must be submitted to the jury. See *Erlinger*, 602 U.S. at 839-840 (“In particular, a judge may not... decide what the defendant actually did, or the means or manner in which he

committed his offense in order to increase the punishment to which he might be exposed.”).

Although the use or threat of violence is an element of assault, this Court has limited application of the prior violent felony aggravator to life-threatening crimes that involve direct contact between the perpetrator and the victim; thus, even a robbery, which also has the use or threat of force as an element, doesn't necessarily qualify as a violent felony within the meaning of § 921.141. *Mahn v. State*, 714 So. 2d 391 (Fla. 1998). To determine whether a prior conviction meets the standard for a violent felony requires an examination of the facts and the evidence, which *Erlinger* says can only be performed by a jury.

As a result, every aggravating circumstance that was applied in this case requires at least one factual finding other than the existence of a prior conviction. This undercuts the basis for the Court's denial of Appellant's habeas petition in 2005.

The trial court offers several alternative bases for denying this claim. Appellant will address each one individually.

c. The trial court misconstrued Appellant's claim

First, the trial court's order described Appellant's claim as follows:

He avers that, pursuant to *Erlinger*, a jury must determine the existence of a prior conviction to enhance a sentence.

\* \* \*

He contends that, because *Erlinger* requires a jury to determine the existence of a prior conviction to enhance a sentence, which he avers did not occur in this case, *Erlinger* should be retroactively applied, his death sentence should be vacated, and he should be resentenced.

(PCR. 445) (underlining added).

This represents a misreading of both Appellant's motion and *Erlinger*. Appellant's claim is that a jury had to determine whether his prior conviction was violent. *Erlinger* held that a judge may determine the existence of a prior conviction, but a jury must determine any other facts necessary to increase the sentence, such as the timing of the conviction or the manner in which it was committed. This is an important distinction because the Court stated that its decision was "on all fours" with its prior rulings, and the *Almendarez-Torres* exception has never extended to any facts other than the existence of a prior conviction. *Erlinger*, 602 U.S. at 835.

Florida decisions interpreting *Almendarez-Torres* more broadly have therefore been incorrect since their rendition, resulting in a manifest injustice and necessitating a change in the law. This error predates *Ring*.

d. Whether the claim is procedurally barred irrespective of retroactivity:

The trial court ruled that this claim is procedurally barred because it is merely a “repackaged version” of his prior Sixth Amendment claims (PCR. 445). In so doing, the trial court did not engage in a *Witt* analysis to first determine whether *Erlinger* and *Jackson* are worthy of retroactive application.

Appellant’s prior claims were based on *Ring* and *Apprendi*. The instant claim is based on *Erlinger* and *Jackson*, specifically as they relate to the findings necessary to apply the prior violent felony aggravator, and if they warrant retroactive application to postconviction cases.

If a new rule of law is held not to apply retroactively, then a successive claim based on that new rule is procedurally barred. See *Cochran v. State*, 547 So. 2d 928 (Fla. 1989) (holding that claim was procedurally barred because asserted change in the law was only an evolutionary refinement, not a jurisprudential upheaval requiring retroactive application); *Francis v. Barton*, 581 So. 2d 583 (Fla. 1991). However, a procedural bar cannot be used to prevent a litigant from seeking retroactive application of the new law in the first place. *Geter v. State*, 115 So. 3d 385, 393 (Fla. 3<sup>rd</sup> DCA 2013) (citing *Riley v. Wainwright*, 517 So. 2d 656 (Fla. 1987)).

This is true because if the new rule of law is applied retroactively, that provides an exception to the procedural bar. See *State v. Brown*, 655 So. 2d 82, 84 (Fla. 1995) (change in law that applies retrospectively to pipeline cases provides exception to procedural bar); *Mills v. Dugger*, 574 So. 2d 63 (Fla. 1990) (recognizing that *Booth v. Maryland* applies retroactively to postconviction cases, but holding that defendant's claim was still barred because he failed to raise it at the first opportunity in habeas petition filed after new decision was announced).

Therefore, the decision of whether or not a new rule of law applies retroactively must be made before a claim seeking such retroactive application can be procedurally barred. Because the trial court barred the claim without making a retroactivity ruling first, this was error.

e. Whether *Erlinger* applies to capital sentencing proceedings:

In addition to the procedural bar, the trial court stated that “[i]t is now evident that the Florida Supreme Court has determined that *Erlinger* does not apply to capital cases such as Defendant Wainwright’s.” (PCR. 446). The court cited this Court’s prior rulings in *Ford v. State*, 402 So. 3d 973 (Fla. 2025), and *Tanzi v. State*, 2025 WL 971568 (Fla. April 1, 2025), both of which raised Sixth Amendment claims during warrant litigation (PCR.

446-449). However, these cases are distinguishable on their facts and are of no precedential value in deciding the instant claim.

This Court held that *Erlinger* did not apply to Ford's case because he didn't raise an *Erlinger* claim. He raised a *Hurst* claim and didn't even cite to *Erlinger* in the trial court. The Court described Ford's claim as follows:

*Erlinger* was not mentioned, and the unequivocal assertion that Ford was denied his right to a jury determination based on *Hurst* identified this as essentially a *Hurst* claim. On appeal, Ford modified the opening sentence to this claim so that it mentions *Erlinger*. It now reads: "The *Erlinger* ... decision is a reminder that Ford's death sentences are contrary to *Hurst v. Florida*, 577 U.S. 92 [136 S.Ct. 616, 193 L.Ed.2d 504] (2016)[,] and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016)." <sup>6</sup> But this change only confirms that this is a *Hurst* claim, as the allegation is that his sentences are contrary to *Hurst*, not *Erlinger*.

*Ford*, 402 So. 3d at 980.

The Court then concluded in *Ford* that "*Erlinger* does not apply to this case." *Id.* The Court did not hold that *Erlinger* never applies to a death penalty case or an aggravating circumstance.

It is true that the question presented in *Erlinger* was whether a federal court could impose an enhanced sentence under the ACCA without jury findings. *Id.* at 980-81. However, the decision was not based on an interpretation of 18 U.S.C. § 924. The statute did not dictate whether the

judge or the jury had to make the required finding that the defendant's prior convictions occurred on separate occasions. That was decided as a matter of constitutional law, and *Erlinger* cited to *Almendarez-Torres*, *Apprendi*, and *Ring*, Sixth Amendment cases that do apply to Florida's capital sentencing proceedings. Thus, the *Erlinger* rationale is applicable.

Finally, the specific issue that Ford raised was that his right to a unanimous jury was violated, *Id* at 980, whereas *Erlinger* concerns the need to have "jury findings regarding an element." *Id* at 981. That was another reason *Erlinger* did not apply to *Ford*. However, Appellant is challenging the failure to have a jury find as an element of the prior violent felony aggravator that his prior conviction for aggravated assault involved the use or threat of violence. Thus, *Ford* does not preclude Appellant from raising that claim.

The trial court's reliance on *Tanzi v. State* is also misplaced. Like Ford, *Tanzi* did not challenge the jury's failure to find an element of an aggravating circumstance. Instead, he argued that the jury was required to make findings as to the sufficiency of the aggravating and mitigating factors during the weighing process, and that an advisory jury is incapable of checking governmental power. *Tanzi, supra*, at \*5. This Court found that this was not an *Erlinger* claim. *Id* at \*6.

Neither Ford nor Tanzi challenged the lack of jury findings on an element of an aggravating circumstance based on a prior conviction. Neither had the benefit of *Jackson*, which applied *Erlinger* to a Florida sentence enhancement based on a prior conviction. Neither sought retroactive application of *Erlinger* for the purpose of raising a novel claim. Therefore, these cases are distinguishable and do not stand as a bar to relief in this case.

f. Whether Erlinger should have retroactive application to postconviction cases

A change in the law only applies retroactively to final cases if the change (1) emanates from the Florida Supreme Court or the United States Supreme Court, (2) is constitutional in nature, and (3) constitutes a development of fundamental significance. *Dettle v. State*, 395 So. 3d 1054, 1057-58 (Fla. 2024). In this case, the change originates with the U.S. Supreme Court's decision in *Erlinger*, which was premised on the Sixth Amendment right to trial by jury. Thus, the first two prongs are met.

A change of law is of fundamental significance when it (1) places beyond the authority of the state the power to regulate certain conduct or impose certain penalties, or (2) is of sufficient magnitude to necessitate retroactive application under the three-factor test in *Linkletter v. Walker*, 381 U.S. 618, 85 S. Ct. 1731 (1965), which was adopted in Florida in *Witt v.*

*State*, 387 So. 2d 922, 929 (1980). Those factors are (1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect retroactive application would have on the administration of justice.

*Dettle*, 395 So. 3d at 1058.

*Erlinger* places beyond the authority of the state the power to impose the death penalty or other enhanced sentence of imprisonment on a defendant who has not been found eligible for such penalty by a jury of his peers. As the majority stated in *Erlinger*, the Sixth Amendment right to trial by jury represents a fundamental reservation of power to the people, not only the defendant but also the citizenry charged with putting checks on government's use of authority to punish. *Erlinger*, 602 U.S. at 832.

*Erlinger's* holding that the *Almendarez-Torres* exception to the jury trial right does not extend to all factual findings in a recidivist statute invalidates prior decisions holding that there is no jury trial right as to any element of the prior violent felony aggravator, including a prior ruling in this case. To the extent *Erlinger* has already been applied in Florida, the impact on prior decisional law is immediately apparent, as the Fourth District's holdings in *Jackson v. State*, 2025 WL 1119094 (Fla. 4<sup>th</sup> DCA April 16, 2025), and *St. Louis v. State*, 985 So. 2d 16 (Fla. 4<sup>th</sup> DCA 2008),

concerning the role of the jury in habitual offender sentencing could not be more diametrically opposite.

Whereas the right to trial by jury previously played no role in application of a Florida recidivist statute such as the prior violent felony aggravator, now a jury must make all findings other than the fact of a prior conviction before the death penalty can be imposed. By curtailing a judge's ability to use the prior record exception to impose the death penalty without a jury, as occurred in this case, the *Erlinger* decision constitutes a development of fundamental significance in Florida.

This change in the law also satisfies the *Linkletter* test. The purpose of the new rule is to fully guarantee the Sixth Amendment right to trial by jury as to any fact that increases the punishment imposed for a criminal act. The historical significance of this right and its role in the formation of our nation is detailed at length in the *Erlinger* opinion.

In *Mosley v. State*, this Court held that the decisions in *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) warranted retroactive application and analyzed the first factor in the *Linkletter* test as follows:

The Supreme Court in Hurst [v. Florida] has now [also] made clear that the critical findings necessary for imposition of a sentence of death are the sole province of the jury. And because these findings

occupy a position on par with elements of a greater offense, we conclude that all these findings necessary for the imposition of a sentence of death must be made by the jury – as are all elements – unanimously. Hurst, 202 So. 3d at 57 (footnotes omitted).

Separate from the Federal Constitution, we explained in *Hurst* that “this Court, in interpreting the Florida Constitution and the rights afforded to persons within this State, may require more protection be afforded criminal defendants than that mandated by the federal Constitution.” Id. Finding that such heightened protection was significantly appropriate in this context, we stated: “This is especially true, we believe, in cases where, as here, Florida has a longstanding history requiring unanimous jury verdicts as to the elements of a crime.” Id. Under Florida’s independent constitutional right to a trial by jury, this Court concluded: “If death is to be imposed, unanimous jury sentencing recommendations, when made in conjunction with the other critical findings unanimously found by the jury, provide the highest degree of reliability in meeting these constitutional requirements in the capital sentencing process.” Id. at 60.

Thus, because Hurst v. Florida held our capital sentencing statute unconstitutional under the Sixth Amendment to the United States Constitution, and Hurst further emphasized the critical importance of a unanimous verdict within Florida’s independent constitutional right to trial by jury under article I, section 22, of the Florida Constitution, the purpose of these holdings weighs heavily in favor of retroactive application.

*Mosley v. State*, 209 So. 2d 1248, 1277-78 (Fla. 2016).

This rationale still applies. The purpose of *Erlinger* and *Jackson* is to uphold the same guarantee and prevent courts from circumventing the role of the jury in making all findings necessary for imposition of an increased sentence. The purpose of applying *Hurst* retroactively would be frustrated if *Erlinger*'s limitation on the prior record exception is not similarly applied.

In making *Hurst* retroactive to the date *Ring* was decided, *Mosley* acknowledged that Florida had misunderstood "Ring's application to Florida at that time." *Id* at 1276 (quoting *Asay v. State*, 210 So. 3d 1 (Fla. 2016)). To the extent Florida has misapplied the prior record exception in *Almendarez-Torres* to factual findings beyond its scope, a similar analysis is required to protect the fundamental right to trial by jury. Florida misunderstood the permissible scope of the prior record exception.

The second factor is the extent of reliance on the old rule. *Erlinger* makes clear that it has never been the rule that judges could find any fact other than the fact of a prior conviction if it constitutes an element of the offense that increases the punishment. The Florida decisions allowing a judge to find the prior violent felony aggravator without a jury based on *Almendarez-Torres* have never been valid, and there is no justification in relying on them.

*Mosley* recognized that because Florida's capital sentencing statute was unconstitutional since Ring in 2002, fairness strongly favored applying Hurst retroactively to that time. *Mosley*, 209 So. 3d at 1280. Similarly, because Florida has been misapplying the prior record exception since its inception, fairness strongly favors applying *Erlinger* and *Jackson* retroactively at least to the date *Almendarez-Torres* was decided in 1998, when this case was non-final.

The Supreme Court has hinted several times that *Almendarez-Torres* was wrongly decided anyway. See *Apprendi*, 530 U.S. at 489 (“[I]t is arguable that *Almendarez-Torres* was incorrectly decided); *Erlinger*, 602 U.S. at 850 (Thomas, J., concurring) (“I continue to adhere to my view that we should revisit *Almendarez-Torres* and correct the ‘error to which I succumbed’ by joining that decision). This further undercuts any reliance on the old rule or the expectation that rulings based on *Almendarez-Torres* were constitutionally sound.

In determining whether reliance on a prior rule governing the admissibility of victim impact evidence was entitled to deference under the rule of *stare decisis*, the Supreme Court offered the following analysis in deciding that it was not:

*Booth* and *Gathers* were decided by the narrowest of margins, over spirited dissents challenging the

basic underpinnings of those decisions. They have been questioned by Members of the Court in later decisions, and have defied consistent application by the lower courts.

*Payne v. Tennessee*, 501 U.S. 808, 829-30, 111 S. Ct. 2597 (1991).

*Almendarez-Torres* was a 5-4 decision, the narrowest of margins, with a spirited defense that questioned the basic underpinnings of the prior record exception. Justice Scalia invoked *In re Winship* and the beyond a reasonable doubt standard, and he described the majority's ruling as one from which "grave and doubtful constitutional questions arise...."

*Almendarez-Torres*, 523 U.S. at 249-50 (Scalia, J., dissenting). Therefore, this factor supports making *Erlinger* retroactive.

The third factor is the impact on the administration of justice. This also weighs in favor of applying *Erlinger* retroactively to cases on collateral review for two reasons. First, many of the people illegally sentenced to death between 2002 and 2016 have already been retried or otherwise obtained relief from their sentences under *Hurst*. Only those whose *Hurst* or *Ring* claims were denied because they had an aggravating circumstance based on a prior conviction, or who were sentenced to death between 1998 and 2002, would be affected. This would also result in more uniform application of the death penalty to all similarly situated defendants, a positive result.

Second, this Court acknowledged in *Mosley* that “fundamental fairness alone may require retroactive application of certain decisions involving the death penalty after the United States Supreme Court decides a case that changes our jurisprudence.” *Mosley*, 209 So. 3d at 1274-75 (citing *James v. State*, 615 So. 2d 668 (Fla. 1993)). Therefore, the Court could find that fundamental fairness requires making *Erlinger* retroactive only as to capital cases while leaving enhanced sentences imposed in final, non-capital cases intact.

As then-Judge Canady wrote in a dissenting opinion in 2004:

The Florida Supreme Court has repeatedly recognized that “death is different” and has imposed heightened requirements to ensure the fairness of proceedings that lead to the imposition of a sentence of death. [internal citations omitted]. The dynamics of a capital case and those of a noncapital case are different not just in degree, but in kind. A death penalty case, involving the ultimate penalty, invokes a host of pre- and post-trial procedures, as well as requirements for court and counsel, that do not exist in any other context.

*In re Commitment of Branch*, 890 So. 2d 322, 331 (Fla. 2004) (Canady, J., dissenting).

The notion that “death is different” has also been previously invoked in the context of deciding the applicability and retroactivity of *Ring*. See e.g. *Johnson v. State*, 904 So. 2d 400, 424 (Fla. 2005) (Anstead, J., concurring

in part and dissenting in part). Thus, there is precedent for treating death penalty cases differently, which in this case would significantly lessen the impact on the administration of justice.

Based on the foregoing, *Erlinger* should apply retroactively to capital postconviction cases in which the trial court applied an aggravating circumstance based on the fact of a prior conviction without a jury. Appellant should be allowed to avail himself of the benefit of the *Erlinger* and *Jackson* decisions and raise a claim that the court exceeded the proper scope of the prior record exception in finding facts necessary to apply the prior violent felony aggravator.

g. Whether Appellant's jury trial right is satisfied by the felony murder aggravator:

The trial court also adopted the State's alternative argument that Appellant's Sixth Amendment jury trial right was satisfied by the jury's verdicts of guilt for kidnapping, robbery and sexual battery (PCR. 448). In its response to the amended Rule 3.851 motion, the State pointed out that under *State v. Poole*, 297 So. 3d 487 (Fla. 2020), the jury only has to find the existence of one aggravating circumstance (PCR. 344). The State then made the following argument:

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 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.

(PCR. 344).

This was a tacit admission by the State that the jury did not make the findings required to apply the prior violent felony aggravator, a point that Appellant made during the Huff hearing (PCR. 416). In addition, the State's pivot to the so-called "felony murder aggravator" is misplaced and contrary to both *Erlinger* and Florida precedent.

Application of the felony murder aggravator required a finding that the capital murder was committed while the defendant was "engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit an enumerated felony. § 921.141(5)(d), *Fla. Stat.* (1994); *see also* § 782.04(1)(a) (defining felony murder as the killing of a human being while engaged in the perpetration or attempt to perpetrate an enumerated felony). However, the indictment only charged premeditated murder, not felony murder (See R. Vol. 1, p. 1-2).

As a result, the fact that the murder and other felonies were committed contemporaneously was not alleged. *Compare Jackson v. State*, 213 So. 3d 754, 784 (Fla. 2017) (holding that jury made necessary findings to support aggravating circumstance by returning guilty verdicts for felony

murder and the predicate felony); *Ellerbee v. State*, 87 So. 3d 730, 739, 747 (Fla. 2012) (conviction of murder and contemporaneous burglary with assault sufficient where defendant charged under felony murder theory).

The jury in this case was instructed on both the premeditated and felony-murder theories (PCR. 448). However, the jury returned a general verdict of guilty as charged (PCR. 519). This does not reveal which theory was the basis for conviction or constitute a finding that the murder was committed contemporaneously with the other felonies. There was also no special or interrogatory verdict making that required finding. *Compare Douglas v. State*, 878 So. 2d 1246, 1264 (Fla. 2004) (holding that jury's findings were sufficient to defeat *Ring* claim where jury returned special verdict finding that defendant committed first-degree murder during the commission or attempted commission of sexual battery).

The indictment also did not allege that the murder and the other felonies were contemporaneous, only that they were committed on the same day (R. Vol. 1, p. 1-2). "Should an 'indictment or accusation ... lack any particular fact which the laws ma[d]e essential to the punishment, it was treated as 'no accusation' at all." *Erlinger*, 602 U.S. at 831 (quoting *United States v. Haymond*, 588 U.S. 634 (2019)).

Although the evidence may have shown that the murder was in fact committed contemporaneously with the other felonies, that finding requires an examination of the facts and cannot be determined from the allegations in the indictment and the jury's verdicts alone. Allowing the trial judge to make that factual determination is precisely what *Erlinger* forbids. See *Id* at 834 (determining whether the crimes were "committed close in time" is a fact-laden task to be performed by the jury, not the court).

Therefore, the trial court's application of the felony murder aggravator does not render Appellant's sentence constitutional. Appellant challenged any reliance on the felony murder aggravator in his amended Rule 3.851 motion and in oral argument during the *Huff* hearing (PCR. 192-93, 416).

g. Conclusion

Appellant pled a facially sufficient claim that a new rule of law constitutes a sufficient jurisprudential upheaval to warrant retroactive application to final cases, which would render his sentence of death unconstitutional. The order denying this claim should therefore be reversed.

## II. THE CIRCUIT COURT ERRED IN SUMMARILY DENYING CLAIM OF NEWLY DISCOVERED EVIDENCE THAT APPELLANT'S NEUROBEHAVIORAL DEFICITS ARE ATTRIBUTABLE TO PRENATAL AGENT ORANGE EXPOSURE

“Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines,” *Porter v. McCollum*, 558 U.S. 30, 43 (2009) (per curiam). And in recognition of the bravery and sacrifice of those who served, Florida has vowed “to remain[] the most military- and veteran-friendly state in the nation.”<sup>1</sup> However, for Vietnam-era combat veterans who were exposed to Agent Orange, any laudatory promises are overshadowed by long-unrecognized damage caused to their greatest lasting legacies: their children.

Newly discovered evidence—based on medical developments that were willfully stunted and shielded from public awareness by the same systems tasked with caring for Veterans—establishes that Appellant was damaged in visible and invisible ways by his father’s Agent Orange exposure during combat in Vietnam. The trajectory of Appellant’s life was

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<sup>1</sup> See FLORIDA DEPARTMENT OF VETERANS’ AFFAIRS, *Governor Ron DeSantis Highlights Florida’s Commitment to Being the Most Veteran and Military Friendly State in the Nation* (Nov. 10, 2023), <https://floridavets.org/governor-ron-desantis-highlights-floridas-commitment-to-being-the-most-veteran-and-military-friendly-state-in-the-nation/>.

forever altered by a factor he could not control: poisonous exposure that did not just begin prior to his birth, but from the moment of his conception.

Because this highly mitigating evidence was previously unavailable, Appellant had no opportunity to present it during prior legal proceedings. Now, with his execution mere weeks away, he is finally able to do so. The circuit court wrongly denied this claim as being untimely, procedurally barred, and meritless. It is not, and this Court should reverse the circuit court's incorrect rulings and grant sentencing relief.

A. The circuit court's timeliness and procedural bar rulings are erroneous in light of the record below.

A successive postconviction motion based on newly discovered evidence must be filed within one year of discovery. *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008). The evidence "must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence." *Long v. State*, 183 So. 3d 342, 345 (Fla. 2016) (quoting *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008)). Appellant's factual allegations must be presumed true, and an evidentiary hearing is required if there is a dispute regarding the quality or newness of the evidence. *Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 2014).

At the outset, Appellant's claim is about prenatal Agent Orange

exposure, not mental age. Thus, the circuit court's procedural bar ruling related to his 2009 *pro se* filing is incorrect. No expert opinions or "newly available neuropsychological evidence" was presented in the 2009 motion. Unlike the cases cited by the circuit court, (PCR. 450-51), the facts of this claim have not previously been presented to the courts, nor could they have been because the present claim is based on evidence that did not exist at the time of the prior proceedings. No procedural bar applies.

As to timeliness, the evidence of Appellant's *in utero* exposure to Agent Orange was not known at the time of trial, much less its catastrophic effects. However, the circuit court ruled: "That the Defendant and defense counsel are only now learning the cause of [his cognitive and neurobehavioral] conditions does not constitute newly discovered evidence." (PCR. 452). This ruling is flawed for three reasons.

First, Appellant's case is distinguishable from the court's cited cases, (PCR. 452), where the claims were based on new research expanding upon the underlying principle of a pre-existing scientific consensus. *Cf.*, *e.g.*, *Barwick v. State*, 361 So. 3d 785, 791-93 (Fla. 2023) (*Roper*-extension argument based on new compilation of research supporting categorical exclusion for those under 21 instead of 18). Rather, this case presents *an entirely novel scientific consensus*: Agent Orange exposure

can be transmitted to the next generation at conception via parental DNA alterations, directly causing lifelong cognitive and neurobehavioral impairments. Thus, as Dr. Cassano's report makes clear, this scientific evidence was not previously available to Appellant. See, e.g., PCR. 232 (although limited scattered studies were discretely conducted regarding transgenerational exposure to Agent Orange, "the ability to integrate these various studies into a cogent medical treatise is only recently possible").

Second, the court overlooked the fact that Appellant had no reason to pursue a claim regarding the effects of Agent Orange exposure until he became aware that his father may have been exposed to it in the first place. That did not happen until this year, while Appellant was talking with his sister, Krista. Ken Wainwright's Vietnam deployment was not something the family discussed during his lifetime, and due to a lack of public awareness, his family had no reason to think Ken's exposure would be relevant to Appellant's development. It was only during a recent discussion of his worsening tremors after his father's death and in the wake of Krista's breast cancer diagnosis and atypical alopecia, both indicative of exposure, that Krista thought to mention the possibility of the father's exposure.

Third, even where there exists prior knowledge of a capital defendant's symptoms, knowledge of their cause can still constitute newly

discovered evidence. For instance, the United States Supreme Court explained in *Atkins v. Virginia* that symptoms of intellectual disability “may create an unwarranted impression of lack of remorse...[and] as a mitigating factor can be a two-edged sword.” 536 U.S. 304, 320-21 (2002). Thus, the cause of symptoms was pivotal to properly contextualizing them—so much so that a sweeping categorical protection was put in place for individuals whose otherwise potentially aggravating symptoms were caused by the mitigating condition of intellectual disability. *Id.* Similarly, in *Roper v. Simmons*, the Court recognized that that factors attributable to youth could be unfairly viewed as “aggravating rather than mitigating:”

An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where [the defendant’s] objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death.

543 U.S. 551, 572-73 (2005). The holdings in both cases were based on the emergence of a new consensus. Causation can be newly discovered.

The importance of contextualization also undercuts the circuit court’s finding that “[a]lleging a newly discovered causation of his well-documented difficulties cannot now allow Defendant to undo strategic defense decisions” not to introduce mental health information because defense

counsel believed it “would do more harm than good.” (PCR. 453). This misses a critical point. Had defense counsel had the new evidence to contextualize Appellant’s otherwise “two-edged” mental health presentation, counsel would have been able to see that the “benefits of its introduction” would “have outweighed the potential negative impacts.” *Id.*; see also *Atkins*, 536 U.S. at 320-21; *Sears v. Upton*, 561 U.S. 945, 951 (2010) (“Competent counsel should have been able to turn some of the adverse evidence into a positive—perhaps in support of a cognitive deficiency mitigation theory.”). Even though Ken Wainwright’s trial testimony was curtailed, there were other potential sources of information, and Appellant did not make a global waiver of mitigation.

B. The new evidence would probably produce a life sentence.

*Anthony’s condition is the result of his father’s heroism in Vietnam, and a Nation that chose to turn a blind eye to the problems manifest in children like him. This must be taken into consideration when assessing the appropriateness of the punishment to which he is sentenced. (PCR. 233).*

The circuit court’s ruling that the new evidence would not likely result in a lesser sentence because “the aggravators and facts present in this case would greatly outweigh any proposed mitigation[,]” (PCR. 454), is the byproduct of a flawed understanding of the standards governing this claim.

The contention that no mitigating evidence would result in a different

outcome due to the presence of multiple weighty aggravators is to ignore decades of seminal United States Supreme Court precedent. *See, e.g., Rompilla v. Beard*, 545 U.S. 374, 378 (2005) (prejudice even where murder involved torture and another felony, and jury assigned more weight to aggravators than any mitigators); *Wiggins v. Smith*, 539 U.S. 510, 553 n.4 (2003) (Scalia, J., dissenting) (prejudice found even where elderly female victim was drowned in her bathtub, sprayed with ant/roach killer, and had underwear removed); *Williams v. Taylor*, 529 U.S. 362, 418 (2000) (Rehnquist, C.J., dissenting) (prejudice found even where after murder the petitioner “savagely beat an elderly woman, stole two cars, set fire to a home, stabbed a man during a robbery, set fire to the city jail, and confessed to having strong urges to choke other inmates and to break a fellow prisoner’s jaw”); *Sears v. Upton*, 561 U.S. 945, 963-64 (2010) (Scalia, J., dissenting) (prejudice found even where petitioner kidnapped the victim, punched her in the face with brass knuckles, handcuffed her in a car, raped her, and stabbed her in the neck); *Andrus v. Texas*, 590 U.S. 806, 824 n.7 (2020) (criticizing dissent for “train[ing] its attention on the aggravating evidence actually presented at trial” during prejudice evaluation).

In addition, recent Florida capital trials resulted in jury

recommendations of life despite aggravated first-degree murders. See, e.g., *State v. Dourousseau*, 16-2003-CF-10182-A (Duval Co., Dec. 10, 2021) (where victim was sexually assaulted and strangled); *State v. McMillian*, 16-2009-CF-2002-A (Duval Co., Aug. 15, 2022) (defendant subsequently fled and engaged in police shootout); *State v. Wade*, 16-2005-CF-10263-B (Duval Co., June 16, 2022) (two elderly victims were buried alive); *State v. McClellan*, 2017-CF-379 (Lake Co., Nov. 20, 2023) (elderly victim was beaten with garden tools, repeatedly stabbed, thrown in a trunk and buried in a shallow grave); *State v. Bryan*, 21-CF-1409 (Seminole Co., June 28, 2024) (five aggravators were found and elderly victim was beaten, strangled, and dumped in a river); *State v. Lugo*, 1995-CF-17381 (Miami-Dade Co., Jan. 31, 2024) (two victims were abducted and dismembered).

Next, the circuit court used an incorrect standard of review. To obtain sentencing relief, newly discovered evidence must be such that it would probably result in a life sentence rather than death. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991); *Brown v. State*, 304 So. 3d 243, 273 (Fla. 2020). In making that determination, a reviewing court must not only compare the full quantum of admissible newly discovered evidence with the evidence introduced at trial, *Jones*, 591 So. 2d at 916, but also:

must consider the effect of the newly discovered evidence, in addition to all of the admissible

evidence that could be introduced at a new trial, and conduct a cumulative analysis of all the evidence so that there is a “total picture” of the case and “all the circumstances of the case.”

*Jones v. State*, 709 So. 2d 512, 516 (Fla. 1998); *Hildwin*, 141 So. 3d at 1187-88 (quoting *Swafford v. State*, 125 So. 3d, 760, 776 (Fla. 2013)). This includes evidence “previously excluded as procedurally barred or presented in another postconviction proceeding[.]” *Id.* at 1184. Again, any evidentiary dispute warrants an evidentiary hearing. *Id.*

The circuit court, however, refused to conduct this cumulative review:

Defendant’s speculative claim...rests on an assertion that this “evidence is of such a nature that it would probably result in a recommendation of life at retrial when considered with all other admissible evidence in the case, including that developed since the trial[.]”...To the extent “all other admissible evidence in the case” refers to arguments not contained in the amended petition (*i.e.*, those relating to witness Murphy), such arguments are now foreclosed[.]

(PCR. 454). This is contrary to this Court’s precedents regarding the standard of review for newly discovered evidence claims.

When this misapplication of the law is corrected and the proper review performed, the outcome is different. In addition to the profoundly mitigating information regarding the effects of Mr. Wainwright’s Agent Orange exposure and the undermining of the jailhouse informant testimony

used to secure aggravators against him, the “total picture” of his case is vastly different from what was presented at trial. Mr. Wainwright’s purported involvement in the victim’s sexual assault has been contradicted by DNA developments and a self-sworn statement from codefendant Hamilton that Hamilton alone assaulted the victim. And, the mitigating nature of mental health issues, trauma, and PTSD, as well as their effect on an individual’s development, is significantly more recognized now than in 1995. (PCR. 156, 202, 282). Upon cumulative review, Mr. Wainwright would probably receive a life sentence.

Throughout every stage of his appellate process, Mr. Wainwright’s mental health history was incomplete because there was never a satisfactory explanation for the global deficits in his functioning. Today, there is: The appellant’s cognitive and behavioral disorders clearly stem from his father’s combat experience in Vietnam. (PCR. 232-33). “This is not a case in which the new evidence ‘would barely have altered the sentencing profile[.]’” *Porter*, 558 U.S. at 43 (quoting *Strickland v. Washington*, 466 U.S. 668, 700 (1984)). Had the trial court and Mr. Wainwright’s jury been aware of the pervasive neurocognitive damage that took place before he even drew his first breath, they would have been “able to place [his] excruciating life history on the mitigating side of the scale.”

*Wiggins v. Smith*, 539 U.S. 510, 536 (2003). The balance of aggravators and mitigators would have been profoundly different. The new evidence “might not have made [Mr. Wainwright] any more likeable...but it might well have helped” his jury contextualize otherwise adverse facts, including the aggravating factors presented as well as any sensational inculpatory statements testified to by witnesses against him. *Sears*, 561 U.S. at 951. Ultimately, it would have helped his jury understand why, despite his role in the offenses, his moral culpability was diminished and he deserved mercy.

C. The new evidence demonstrates that Wainwright’s execution would violate the Eighth Amendment.

Finally, although the circuit court defines Mr. Wainwright’s claim as asserting that “newly discovered evidence establishes his execution would violate the Eighth Amendment,” (PCR. 449), its analysis overlooks the claim’s constitutional dimensions. See PCR. 450-54.

The Eighth Amendment applies with special force in capital cases. *Roper*, 543 U.S. at 568. The United States Supreme Court “insists upon confining the instances in which [death] can be imposed[,]” *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008), and “rationally distinguish[ing] between those individuals for whom death is an appropriate sanction and those for whom it is not.” *Spaziano v. Florida*, 468 U.S. 447, 460 (1984), *overruled on other grounds by Hurst*, 577 U.S. at 101; see also *Godfrey v.*

*Georgia*, 446 U.S. 420, 428, 433 (1980) (setting death sentence aside to avoid “arbitrary and capricious infliction of the death penalty” where case did not reflect “a consciousness materially more ‘depraved’ than that of any person guilty of murder.”). The death penalty is reserved not only for “a narrow category of the most serious crimes[,]” but must be further limited to those “whose extreme culpability makes them ‘the most deserving[.]’” *Roper*, 543 U.S. at 568 (citing *Atkins*, 536 U.S. at 319). Thus, a capital defendant’s “punishment must be tailored to [his] personal responsibility and moral guilt.” *Enmund v. Florida*, 458 U.S. 782, 800 (1982).

Over the years, the Court’s “narrowing jurisprudence, which seeks to ensure that only the most deserving of execution are put to death,” has enumerated classes of persons whose “lesser culpability” merits a lesser penalty. *Atkins*, 536 U.S. at 314-15, 319 (exempting individuals with intellectual disability from execution); *Roper*, 543 U.S. at 571 (“[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”). In addition, the Supreme Court has repeatedly mandated individualized sentencing that evaluates a particular defendant’s culpability by “focus[ing] on ‘relevant facets of the character and record of the individual offender.’” *Enmund*, 458 U.S. at 798 (citing *Lockett v. Ohio*,

438 U.S. 586 (1978) and *Woodson v. North Carolina*, 428 U.S. 280 (1976)); *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 264 (2007) (sentencers faced with the “grave task of imposing a death sentence” must “decide whether death is an appropriate punishment for that individual in light of his personal history”); *Tennard v. Dretke*, 542 U.S. 274, 285-87 (2004) (a defendant need not “establish a nexus between [his] mental capacity and the crime” in order for such mitigating evidence to be considered).

Under Appellant’s circumstances, the penalty reserved for only the most culpable offenders would be disproportionate, excessive, and cruel. In *Porter*, the Supreme Court reaffirmed that “defendants who commit criminal acts that are attributable to a disadvantaged background...may be less culpable.” 558 U.S. at 41 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989)) (quotations omitted). In particular, wartime combat injuries are precisely the “kind of troubled history [the Court has] declared relevant to assessing a defendant’s moral culpability.” *Id.* (quoting *Wiggins*, 539 U.S. at 535). Although Appellant did not serve in the Vietnam War, he was catastrophically and immutably cognitively damaged by it. Unlike Veterans, who make knowing sacrifices for our country in the face of grave risks, he had no such choice. This does not diminish the mitigating force of *Porter*—it underscores it. Mercy is warranted here.

### III. THE CIRCUIT COURT ERRED IN DENYING BRADY CLAIM BASED ON STATE'S SUPPRESSION OF ROBERT MURPHY'S EXPECTED BENEFIT FOR TESTIFYING

The State is obligated to disclose material evidence or information in its possession that is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963). This requirement applies to both exculpatory and impeachment evidence. *United States v. Bagley*, 473 U.S. 667 (1985). But in this case, the State failed to uphold this obligation by suppressing favorable, material evidence that at least two jailhouse informants expected to receive benefits from the State in exchange for their testimony.

On May 13, 2025, Murphy admitted for the first time that, contrary to his trial testimony, he expected a sentencing benefit in exchange for testifying against Mr. Wainwright. He also disclosed that Dennis Givens, another jailhouse informant who inculpated Appellant, likewise expected a benefit. When Murphy met with the prosecutor:

[H]e said that he could not make me a promise, but . . . it [was] clear to me that I would get a benefit if I testified. . . . We all knew what was going on and that I would be receiving something in exchange for my testimony.

(PCR. 241). Murphy's benefit was realized after he testified against Appellant. "At the [modification of sentence] hearing, the judge called the prosecutor on the phone and he provided information about my testimony.

After the phone call, I was given a choice of doing time in prison or a lengthier probation. I chose the probation.” *Id.*

Regarding suppression, the circuit court found that Murphy’s affidavit failed to establish the existence of a deal because “Murphy attests the prosecutor repeatedly told him he could not promise [Murphy] anything in exchange for his testimony, or that the State suppressed evidence of such a promise.” (PCR. 459). But the circuit court overlooked the next part of Murphy’s statement: “[E]veryone knew the elephant in the room. We all knew . . . I would be receiving something in exchange for my testimony.” (PCR. 241). This demonstrates the existence of a reward, and clearly shows the State knew Murphy’s testimony was false when he stated he was “not necessarily” hoping for a reduced sentence. Evidence of the possibility of reward for Murphy was never disclosed to Appellant’s counsel and was therefore suppressed. *See Banks v. Dretke*, 540 U.S. 668, 676 (2004) (when police or prosecutors conceal impeaching material in the State’s possession, it is “incumbent on the State to set the record straight.”).

The circuit court’s order did not contest that the possibility of a reward would be favorable evidence. The suppressed evidence critically impeached the State’s case against Appellant, as it impacted the reliability

of both the jailhouse-informant testimony specifically, and the State's case for death as a whole. "Even if [Murphy's reward] were wholly irrelevant, . . . his willingness to lie about it to the jury was not. 'A lie is a lie, no matter what its subject.'" *Glossip v. Oklahoma*, 145 S. Ct. 612, 628 (2025).

As for Givens, although he did not testify before Wainwright's jury, evidence that he anticipated a reward in exchange for inculcating Wainwright would have further impeached Murphy, who was influenced by Givens' expectation of a benefit to himself seek a reward from the State in exchange for testifying. See PCR. 240 (admitting he and Givens repeatedly discussed their upcoming testimony and crediting Givens' expectation of a benefit for his own pursuit of a deal). The circuit court did not consider this in its order but only stated that Givens did not testify against Wainwright (PCR 455 n.10).

Finally, the suppressed evidence is material because it undermines not only the credibility of the jailhouse informant testimony against Wainwright, but also the reliability of the State's case for death generally. See *Bagley*, 473 U.S. at 676; *Kyles v. Whitley*, 514 U.S. 419, 445 (1995) (evidence can be material for impeaching a witness and attacking the "thoroughness and even the good faith of the investigation").

The State heavily relied on the jailhouse-informant testimony to

secure the convictions. See R. 3555-57 (detailing Murphy’s inculpatory statements not only for the purpose of establishing guilt but also to convince the jury not to believe any defensive statements attributed to him); R. 3579 (State attempting to bolster Murphy’s credibility). And in sentencing Appellant to death, the trial court relied on Murphy’s testimony to find the ‘HAC’ and ‘CCP’ aggravating factors (R. 1173). The court also relied on Murphy’s testimony to reject a statutory mitigator (R. 1174). The outsized role his testimony played in both convicting and sentencing Appellant renders it material.

The circuit court’s ruling was limited, finding “any impeachment of Murphy with his expectation [of a benefit] would not be material to the convictions under *Brady*.” (PCR. 459) (emphasis added). The court failed to address the impact of Murphy’s testimony on the penalty phase, where the trial court used it to find two aggravating factors and reject a statutory mitigator. See *Brady*, 373 U.S. at 87 (favorable material evidence can be related “either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.”).

The circuit court also found Murphy’s statement immaterial because “the State’s case . . . was strong, and included scientific evidence and a confession.” (PCR. 459-60). But this overstates the strength of the

evidence used to convict Appellant and ignores post-trial developments exposing its critical flaws. For example, his purported inculpatory statements only began while he was out with law enforcement without his attorney present (R. 2587, 2589). Prior to this, he had consistently stated “that he in no way touched [the victim] in any manner.” (R. 2589).

Appellant alternatively raised Murphy’s disclosure as a claim of newly discovered evidence. The circuit court denied the claim as untimely and meritless. (PCR 457-58). As to timeliness, the court found that it is a matter of public record that Murphy’s prison sentence was modified to probation soon after his testimony, and defense counsel knew he had a pending motion to modify his sentence.” (PCR. 458). But this misconstrues the issue. The significance of Murphy’s statement is not that he was released on probation after his testimony; rather, it demonstrates a nexus between his release and testifying against Appellant. At trial, when defense counsel asked whether any such nexus existed, both Murphy and the prosecutor denied it. (R. 181-82, 1059). Mr. Wainwright’s defense team diligently attempted to obtain this information through interviews with Murphy in the past, without success. If diligence is contested, a remand for an evidentiary hearing is required.

On the merits, the circuit court found that Murphy’s affidavit did not

differ from his trial testimony because “there is no indication or evidence to establish” the existence of a deal. (PCR. 458). Yet, the affidavit states precisely the opposite: “We all knew . . . that I would be receiving something in exchange for my testimony.” (PCR 241). The court also determined “this evidence” would not “more likely than not” produce a life sentence, citing the multiple aggravating factors. (PCR. 458).

By weighing Murphy’s affidavit alone against the aggravators, the court failed to conduct the cumulative review of *all* the evidence—including post-trial developments—required under *Jones*, 709 So. 2d at 526. When Murphy’s disclosure is viewed cumulatively with other evidentiary developments in the case, including discrediting the DNA evidence and Hamilton’s statement absolving Wainwright of sexual assault, it is probable that Appellant would receive a life sentence at a new trial. *Jones*, 591 So. 2d at 915.

### Conclusion

Based on the foregoing, Appellant requests that the order of the Circuit Court be REVERSED, and this cause REMANDED for further proceedings.

IT IS FURTHER REQUESTED that the Court enter a stay of execution to permit full consideration of Appellant's claims.

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### Designation of Email address

Appellant designates his email address as bayalaw@aol.com.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing document was furnished by electronic service to the Office of the Attorney General at [capapp@myfloridalegal.com](mailto:capapp@myfloridalegal.com), and to Assistant Attorneys General Charmaine Millsaps at [charmaine.millsaps@myfloridalegal.com](mailto:charmaine.millsaps@myfloridalegal.com), Janine Robinson at [janine.robinson@myfloridalegal.com](mailto:janine.robinson@myfloridalegal.com), and Jason Rodriguez at [jason.rodriguez@myfloridalegal.com](mailto:jason.rodriguez@myfloridalegal.com), on May 23, 2025.

*/s/ Baya Harrison*  
Baya Harrison, III

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I HEREBY CERTIFY that the foregoing document was prepared in 14-point Arial font and consists of 14,457 words.

*/s/ Baya Harrison*  
Baya Harrison, III