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IN THE SUPREME COURT OF FLORIDA

ANTHONY FLOYD WAINWRIGHT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No.: SC2025-708

L.T. No. 1994-150CF

CAPITAL CASE – DEATH WARRANT

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

REPLY BRIEF ON THE MERITS

FOR APPELLANT:

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Reply Argument

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

The State argues that *Erlinger v. United States,* 602 U.S. 821 (2024), does not meet the standard for retroactivity under *Witt v. State,* 387 So. 2d 922 (Fla. 1980), but fails to mention or apply the three-part test for retroactivity announced in *Witt* (AB p. 32-33). Instead, the State cites other federal court decisions that were analyzed for retroactivity under *Witt* with varying results and then asserts that any change in the law arising from *Erlinger* should therefore piggyback on those prior rulings (AB p. 33-34).

However, *Erlinger* is different in that it didn't announce a new rule of constitutional law applied to the states for the first time, but instead exposed how an existing rule of constitutional law, i.e. the *Almendarez-Torres* prior record exception to the jury trial requirement, has been misapplied in Florida to permit judicial fact-finding on matters other than the fact of a prior conviction, such as the timing or violent nature of the crime. Accordingly, any retroactivity analysis under *Witt* will be different, particularly as to reliance on the old rule, the second prong of the *Witt* test. The State's cases are not instructive on that point.

Alternatively, the State argues that *Witt* should be abandoned entirely and Florida law changed to conform to federal retroactivity standards under *Teague v. Lane,* 489 U.S. 288 (1989) (AB p. 35 n.9). This argument was not made in the trial court and is therefore waived. *See State v. Wells,* 539 So. 2d 464, 468 n.4 (Fla. 1989) (argument not raised in lower court is waived; *Plaisted v. State,* 46 So. 3d 148 (Fla. 5th DCA 2010) (same).

Furthermore, this Court has repeatedly rejected the State's invitations to recede from *Witt,* including just last year. *See Dettle v. State,* 395 So. 3d 1054 (Fla. 2024); *see also State v. Barnum,* 921 So. 2d 513 (Fla. 2005) (reaffirming *Witt), Figarola v. State,* 841 So. 2d 576, 577 (Fla. 4th DCA 2003) (citing *State v. Calloway,* 658 So. 2d 983 (Fla. 1995) and acknowledging that Florida is not bound to adopt *Teague* and continues to follow *Witt)).*

The State also claims that the *Witt* test is redundant (AB p. 35 n.9). This is incorrect. *Witt* affords greater protection and uniformity in application of the death penalty than the narrower *Teague* doctrine. This is vital in maintaining the constitutionality of capital punishment.

The State then asserts that if *Erlinger* is applied retroactively to correct prior misapplications of the prior record exception in Florida, it would not apply back to the date that exception was created in

Almendarez-Torres v. United States, 523 U.S. 224 (1998) (AB p. 33-34). That would be an absurd result that fails to address the constitutional error of allowing judges to engage in fact-finding that exceeds the proper scope of the *Almendarez-Torres* rule.

The State next argues that the jury found an aggravating factor when it convicted Appellant of the robbery, kidnapping and sexual battery during the guilt phase in addition to the murder (AB p. 39-40). That is wrong because the fact of conviction alone is insufficient. For the other felonies to establish the felony murder aggravating circumstance, they must have been committed contemporaneously with the murder or while in flight afterward. *See* § 921.141(5)(d), *Fla. Stat.* (1994). It is not enough that they were committed on the same day, which is all that was alleged in the indictment and all that can be read into the jury's verdicts.

Erlinger held that a judge is not allowed to determine when the crimes were committed, only that the defendant was convicted. Deciding when the crimes occurred based on the facts and evidence is for the jury. *Erlinger,* 602 U.S. at 834. The Court rejected the argument of *amicus* counsel that the *Almendarez-Torres* exception necessarily includes additional findings regarding when, where and how the offenses were committed. *Id* at 839. Florida has been allowing judges to do that. For that reason, the State's

reliance on pre-*Erlinger* decisions like *Boyd v. State,* 291 So. 3d 900 (Fla. 2020), and *Hilton v. State,* 326 So. 3d 640 (Fla. 2021), is misplaced.

The State also cites *Herard v. State,* 390 So. 3d 610 (Fla. 2024), in support of its argument that the prior violent felony aggravator satisfies the jury trial requirement (AB p. 41). However, *Herard* is distinguishable because the prior violent felony in that case was another first-degree murder. A prior conviction for a capital felony was and is automatically qualifying under § 941.141(5)(b) (1994) ("The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.") Thus, no jury finding that the crime involved the use or threat of violence was required in *Herard.*

The State argues in a footnote that the denial of the right to trial by jury is harmless because the prior aggravated assault in Mississippi was violent in nature (AB p. 43 n.10). The State cites the trial testimony of a Mississippi state trooper who said that co-defendant Hamilton shot at him, after which Wainwright drove the victim's stolen Bronco toward him and crashed into his patrol car after the trooper had gotten out of it. (AB p. 43 n.10). This argument fails for two reasons.

First, it is incongruous to suggest that a trial judge's improper dive into the evidence to make findings that should be made by the jury can be

cured on appeal by having an appellate court do the same thing. Allowing a court to decide what the defendant did and the nature of the prior offense, particularly on a cold record, is precisely what *Erlinger* forbids.

Second, the harmless error analysis fails on the merits. A reasonable jury could easily find that Wainwright's conduct did not warrant application of the prior violent felony aggravator on these facts. "[T]he finding of a prior violent felony conviction aggravator only attaches 'to life-threatening crimes in which the perpetrator comes in direct contact with a human victim.'" *Mahn v. State,* 714 So. 2d 391, 399 (Fla. 1998) (quoting *Lewis v. State*, 398 So.2d 432 (Fla.1981)). In the Mississippi case, there was no physical contact between Appellant and the victim in the cited testimony, nor was the trooper directly affected when Appellant struck his unoccupied vehicle.

The State then speculates that Appellant may have admitted that the Mississippi aggravated assault was violent when he entered his plea (AB p. 41-42). There is no record evidence to support this assertion, and the only thing that can be assumed from the plea is that Appellant admitted to the elements of the crime and was convicted. Those are the only findings that a judge is permitted to make:

> Under [the prior record] exception, a judge may "do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of."

Erlinger, 602 U.S. at 838 (quoting *Mathis v. United States*, 579 U.S. 500, 511–512, 136 S.Ct. 2243 (2016)). Whether the crime qualifies as a prior violent felony for purposes of the death penalty under *Mahn* still requires the same factual determination as it would if the conviction resulted from a trial.

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

At the outset, the State asserts that it "did not even recognize [this claim] as an Eighth Amendment claim" (AB at 54). However, well before its Rule 3.851 response was due, the State was on notice of this claim's constitutional dimensions. *See* PCR. 153-55 (detailing the Eighth Amendment implications of Appellant's claim); PCR. 202 (stating that the specifics of Appellant's prenatal Agent Orange exposure "lessens [his] culpability…and "remov[es] him from the narrow class of persons who should be put to death[;]" thus his execution "would be cruel and disproportionate."); PCR. 417 (defense counsel explicitly identifying the "Eighth Amendment prohibition against cruel or excessive punishment" as a separate basis for relief). *See also Davis v. State*, 26 So. 3d 519, 527, 528 (Fla. 2009) (trial court erred in finding Davis did not properly plead his

claim because he "attempted to cure any deficiencies through an oral presentation of information during the *Huff* hearing" and "the statements made during the *Huff* hearing in conjunction with the assertions in the motion established a prima facie case").

Indeed, even the State specifically argued about the claim's Eighth Amendment dimensions during the *Huff* hearing (PCR. 429). The State's assertion should not be given credence.

a. Timeliness

The State argues that this claim is not timely. However, Appellant alleged *two independent bases* for timeliness in his motion. The evidence regarding Appellant's prenatal Agent Orange exposure is not just newly discovered because it was not scientifically understood before. It is also new because until earlier this year, he did not know that his father had been exposed to Agent Orange, much less that he could have inherited the catastrophic effects. The State has not argued or suggested that Appellant should have known of his exposure sooner—thus, this alone is sufficient to warrant a finding of timeliness. If this Court is not prepared to make such a finding, however, it must consider all of the unrebutted factual allegations as true and in the light most favorable to Appellant, and remand this case

for an evidentiary hearing at which he can prove the newness of the evidence. *See Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 2014).

The State's timeliness arguments instead center around the new-scientific-understanding basis. But the State has misapplied *Sliney v. Florida*'s proposition that the clock for filing a successive Rule 3.851 motion is not restarted with "every new study or publication" regarding a scientific principle like brain development in juveniles because that "would be at odds with the finality interests served by the rule." 362 So. 3d 186, 189 (Fla. 2023). *See* AB at 56. In fact, *Sliney* supports rather than undercuts Appellant's timeliness argument. Just as a single study cannot constitute a basis for a new claim related to an already-established consensus, neither can a single study create an established scientific principle in the first place. To find otherwise would create the real jeopardy to "the finality interests served by the rule," *Sliney*, 362 So. 3d at 189, because it would require indigent capital litigants and their attorneys—so as not to miss the one-year deadline—to file unripe and ultimately frivolous claims based on nothing more than an isolated, potentially relevant study.

As Justice Sotomayor recently observed, "because science evolves slowly rather than in conclusive bursts, it can be hard to pinpoint when someone should have discovered [new scientific evidence] through the

exercise of reasonable diligence." *McCrory v. Alabama*, 144 S. Ct. 2483, 2486 (2024) (Sotomayor, J., respecting the denial of certiorari) (internal quotation marks omitted). Here, although a discrete study existed in 2023, "the ability to integrate [the limited] studies into a cogent medical treatise is only recently possible." PCR. 232 (Report of Dr. Cassano). And, even in denying this claim as untimely, the circuit court did not find that the 2023 study constituted a 'trigger date' for the claim. *See* PCR. 450-53. To the extent this Court is unwilling to make a finding of timeliness on the face of the record, an evidentiary hearing is required wherein Dr. Cassano can speak to when a reasonably diligent individual could have been expected to know that transgenerational exposure to Agent Orange can cause neurobehavioral impairments.

b. Probable life sentence

In arguing that Mr. Wainwright cannot show that he would probably receive a life sentence upon retrial, the State relies on incorrect standards of review. Although the State correctly cites *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) as the governing standard for newly discovered evidence claims, it misconstrues how the likelihood of a different result must be evaluated (AB at 58-59).

First, the State incorrectly claims that "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." (AB at 59). That contention is belied by this Court's holding in *Hildwin*, that in "determining the impact of the newly discovered evidence [the reviewing court] must 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.'" 141 So. 3d at 1184 (quoting *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999)). The *Hildwin* court explicitly stated that such a review includes evidence "that was previously excluded as procedurally barred or presented in another postconviction proceeding[.]" 141 So. 3d at 184 (citing *Lightbourne*, 742 So. 2d at 247, and *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013)). Given that there would likely be no need for a successive Rule 3.851 motion if the evidentiary presentation in prior proceedings had been successful, *Hildwin* specifically endorsed consideration of evidence rejected in previous proceedings. Further, the Court's caselaw makes clear that while evidence may not meet the probability-of-a-lesser sentence standard in isolation, when combined with additional evidence, the standard may be met. *Id*.

Further, with regard to the specific pieces of evidence for which the State seeks to bar consideration (*i.e.*, Hamilton's confession that exculpates Mr. Wainwright from sexual assault and new DNA analysis undermining its inculpatory value), prior courts have not "rejected" the credibility or reliability of that evidence. Nor does the State allege that such evidence would not be admissible were Appellant to be granted a retrial. Thus, contrary to the State's assertion (AB at 60), the postconviction court *did* err by not considering it.

Second, the State misapprehends the law regarding the mitigating effect of the new evidence in a case with multiple aggravating factors. Capital sentencing is not a simple numbers game, but rather a weighing process. *See Hurst v. Florida*, 577 U.S. 92 (2016); *see also* § 921.141, Fla. Stat. (describing Florida's statutory weighing process). And, it is also not dispositive that a particular aggravator is considered one of "the most serious" aggravators (AB at 64). As Appellant has already discussed in his Initial Brief, life sentences have routinely been obtained in the face of particularly aggravated cases (IB at 56-57). Notably, one of these cases was *Rompilla v. Beard*, 545 U.S. 374 (2005), to which the State cites but neglects to mention its multiple aggravators—including a significant history

of felony convictions and that the murder was committed by torture. *Id*. at 378.

The new evidence is not of "marginal effect[.]" (AB at 63). It is the only satisfactory explanation for Mr. Wainwright's lifelong struggles to function. And, it would have been critical to combatting the multiple "serious" aggravators the State describes (AB at 64). 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. *Sears v. Upton*, 561 U.S. 945, 951 (2010).

Relief is warranted on this claim.

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

a. This claim is timely under both *Brady* and *Jones*

"Regardless of the time span from the time of trial to the discovery of the new testimony, recanted testimony cannot be 'discovered' until the witness *chooses* to recant." *Davis*, 26 So. 3d at 528. Thus, evidence of Murphy and Given's expectations of benefits could not have been discovered until the State, or in this case, Murphy, *chose* to disclose it.

At trial, the only information that was elicited before the jury was that Murphy's lawyer filed a motion for modification of his sentence before

Appellant's trial on grounds that he was "sentenced incorrectly." (R. 2711-12). The jury was left with the impression that Murphy lacked any motivation for his testimony or that the State had held out the possibility of a reward.

After the trial, Murphy was resentenced to a probationary term, which is why Appellant's defense team made repeated, diligent attempts over several years to interview him. However, only on May 13, 2025, did Murphy disclose the relevant matters that would have impacted his credibility, including but not limited to: the fact that Murphy and Givens discussed Mr. Wainwright's case; Givens acknowledged that he expected a benefit for his cooperation with the State; Murphy told law enforcement that Mr. Wainwright's statements were so outlandish that he did not think they were credible; Murphy spoke to his attorney about receiving a benefit for his testimony; the prosecutor indicated the possibility of a reward to Murphy; and Murphy received a significant sentencing reduction after the prosecutor spoke on his behalf at his resentencing hearing (PCR. 240-41). None of these circumstances were disclosed to Appellant until Murphy's May 13, 2025 statement, though diligently pursued. This claim is timely under both *Brady* and *Jones*.

b. This claim is meritorious under the *Brady* standard because the State suppressed favorable evidence

The State argues that the claim is without merit because "there was no formal or informal deal with the State regarding Murphy's testimony." (AB at 65-66). This is incorrect. In *United States v. Bagley*, the Court noted that the mere "possibility" of Government witnesses receiving a reward gave them a personal stake in the outcome of the trial. 473 U.S. 667, 683 (1985). Moreover, "[t]he fact that the stake was not guaranteed through a promise or binding contract, but was expressly contingent on the Government's satisfaction with the end result, served only to strengthen any incentive to testify falsely in order to secure a conviction." *Id.* This is the situation Murphy's sworn affidavit reveals. The State was thus required to disclose the circumstances and information related to Murphy's conversation, which the defense could have used as impeachment. But the State did not disclose. That constitutes suppression of favorable evidence under *Brady*.

The State asserts that it was not "privy" to conversations between Murphy and his lawyer, and thus it had "no obligation under *Brady* to disclose a witness' own expectations arising from discussions with his attorney." (AB at 84). However, the State had knowledge that Murphy expected to receive a benefit from his testimony based on its own

interactions with Murphy and his attorney. *Brady*'s disclosure requirements pertain to information "within the State's possession or control," not an attorney representing a jailhouse informant rather than acting on behalf of the State. *Mordenti v. State*, 894 So. 2d 161, 168 (Fla. 2004).

The jury's knowledge that Murphy's own attorney could say at his sentence modification hearing "that he had testified for the State in a high-profile capital case[,]" (AB at 72), is a far cry from the jury knowing that Murphy expected a benefit from the State in exchange for his testimony—particularly where Murphy testified that he was "not necessarily" hoping to get a reduction (R. 2712-13). And, Murphy's defense attorney had no duty to inform Appellant of Murphy's realized sentencing benefit. Quite the opposite, this would have violated his duty of loyalty to Murphy by conceding that Murphy testified falsely at Appellant's trial. But it was "incumbent on the State to set the record straight." *Banks v. Dretke*, 540 U.S. 668, 676 (2004). None of the State's current arguments negate the fact that favorable information was not disclosed.

c. Evidence of the deals with Murphy and Givens is material

"*Brady v. Maryland* requires disclosure only of evidence that is both favorable to the accused and 'material either to guilt *or to punishment.*" *Bagley*, 473 U.S. at 674 (quoting *Brady v. Maryland*, 373 U.S. 83, 87

(1963)). Thus, the State's argument that "any additional impeachment of Murphy is not material to the conviction for first-degree murder in a case in which the defendant confessed to premeditated murder and there is DNA evidence of felony murder," (AB at 66), is flawed based on longstanding precedent. The materiality in this case goes to Appellant's *sentence*.

Further, the evidence of a possible reward does not constitute "cumulative" impeachment as to Murphy or Givens because the jury never knew of this evidence (AB at 83).

"The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). While the jury learned of Murphy's request to modify his sentence, it knew nothing about the details of that conversation or how he was led to expect a benefit for his testimony. The State did not disclose the conversation with Murphy despite its impeachment value; thus, Mr. Wainwright's jury was denied the ability to "draw inferences relating to the reliability of the witness," and Mr. Wainwright was denied the right to effective cross examination. *Davis v. Alaska*, 415 U.S. 308, 316 (1974). Had the jury known the details of the State's dealings with Murphy, this would not only have undermined

Murphy's credibility, but also undermined the jury's confidence in the State's entire case against Mr. Wainwright. *Kyles*, 514 U.S. at 435. "Even if [the details] were wholly irrelevant,…[Murphy's] 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).

d. In the alternative, this claim is meritorious under *Jones*

In the alternative, Appellant succeeds on the merits of a newly discovered evidence claim based on Murphy's affidavit. "The determination of whether [recanted] statements are true and meet the due diligence and probability prongs of [*Jones*] usually requires an evidentiary hearing to evaluate credibility unless the affidavit is inherently incredible or obviously immaterial to the verdict and sentence." *Davis*, 26 So. 3d at 526. Here, the circuit court never found that Murphy was not credible, nor does the State dispute Murphy's credibility. Rather the circuit court determined that the affidavit did not differ from Murphy's trial testimony. This is incorrect, for reasons previously stated. Murphy's trial testimony never revealed his motivation to testify *because* the State was giving Givens a sentencing benefit, and based upon his interaction with the prosecutor Murphy expected to receive one as well (PCR. 325). If this Court is not willing to accept the affidavit as true and in the light most favorable to Appellant, it

should remand for an evidentiary hearing. *Maharaj v. State*, 684 So. 2d 726, 728 (Fla. 1996).

Further, the State's argument that 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," (AB at 79), is incorrect. In evaluating a newly discovered evidence claim, "the trial court must consider all admissible newly discovered evidence and weigh the evidence together with that which was introduced during trial." *Rivera v. State*, 187 So. 3d 822, 840 (Fla. 2015) (emphasis added); *Swafford*, 125 So. 3d at 776. "This cumulative analysis must be conducted so that the trial court has a "total picture" of the case." *Lightbourne*, 742 So. 2d at 247; *see also Armstrong v. State*, 642 So. 2d 730, 735 (Fla. 1994).

It is of no significance to the *Jones* analysis that Hamilton's statement that he alone raped the victim and the Zuleger DNA report were previously rejected. In fact, the State rightly concedes that this court "is not bound by the Eleventh Circuit's decision regarding the 2019 DNA report" (AB at 80 n.18). Thus, the Circuit Court's analysis of this prong was erroneous as it failed to weigh what was presented at trial with Hamilton's statement confessing that he alone raped the victim, recent advancements in DNA analysis that call into question the DNA evidence presented at trial, and the

sentencing benefit Murphy and Givens were to receive in exchange for their testimony, all of which would have been admissible. When evidence of the State's providing Murphy with a possibility of a reward is viewed cumulatively, it is probable that Appellant would receive a life sentence at a new trial. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991). *See, e.g.*, *State v. Mills*, 788 So. 2d 249, 250 (Fla. 2001) (after two prior denials of postconviction relief, newly discovered evidence "considered in conjunction with the evidence at [the] trial and 3.850 proceedings, would have probably produced a different result at sentencing.").

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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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, and to Assistant Attorneys General Charmaine Millsaps at charmaine.millsaps@myfloridalegal.com, Janine Robinson at janine.robinson@myfloridalegal.com, and Jason Rodriguez at jason.rodriguez@myfloridalegal.com, on May 28, 2025.

/s/ Baya Harrison
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Certificate of Compliance

I HEREBY CERTIFY that the foregoing document was prepared in 14-point Arial font and consists of 4,766 words.

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