SC2025-0891
EXECUTION SCHEDULED FOR JULY 15, 2025, at 6:00 P.M.

In the Supreme Court of Florida

MICHAEL BERNARD BELL,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

On Appeal from the Fourth Judicial Circuit,
in and for Duval County, State of Florida
L.T No. 1994-CF-9776

INITIAL BRIEF OF APPELLANT

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REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action will determine whether Appellant lives or dies. This Court has not hesitated to allow argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument is appropriate in this case because of the seriousness of the claims at issue and the ultimate penalty that the State seeks to impose on Appellant.

STATEMENT REGARDING REFERENCES

References to the record are in the form [PCR #]. This record on appeal includes portions, but not all, of the original trial transcript. Trial transcript portions cited in this brief that are not included in the PCR record will be in the form [T #].

PROCEDURAL HISTORY

The Defendant, Michael Bell, was convicted of first-degree murder and was sentenced to death after a unanimous jury recommendation. *Bell v. State*, 699 So. 2d 674, 676 (Fla. 1997). The Florida Supreme Court affirmed the convictions and sentences. *Id.* at 679. The judgment and sentence became final upon denial of certiorari by the United States Supreme Court on February 23, 1998. *Bell v. Florida*, 522 U.S. 1123 (1998).

On direct appeal, Bell raised the following claims: (1) the trial court erred in failing to conduct proper inquiries under *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973), and *Faretta v. California*, 422 U.S. 806 (1975); (2) the trial court erred in finding as an aggravating circumstance that the murders were committed in a cold, calculated, and premeditated (CCP) manner; (3) the trial court erred in instructing the jury on the CCP aggravator; and (4) the trial court erred in failing to properly consider and find mitigating circumstances. *Bell v. State*, 699 So. 2d 674, 676 (Fla. 1997).

In 1998, Bell filed a pro se petition for federal habeas relief, prompting the District Court to appoint counsel, but that petition

was dismissed as untimely. *Bell v. Fla. Atty Gen.*, 461 F. App'x 843, 845-46 (11th Cir. 2012). Also in 1998, Bell filed a pro se motion to vacate his sentence which the trial court denied. *Id.* Once appointed, state post-conviction counsel filed a motion for post-conviction relief on June 1, 1999. One of Bell's claims was that trial counsel was ineffective because of inappropriate remarks and arguments he made during the closing argument. The trial court denied the motion, and the Florida Supreme Court affirmed. *Bell v. State*, 965 So. 2d 48, 54 (Fla. 2007).

In 2007, Bell filed another pro se petition for federal habeas relief. *Bell v. Fla. Atty Gen.*, No. 3:07-cv-00860-ODE (M.D. Fla. Sept. 10, 2007), ECF No. 1. The State filed a summary judgment motion contending that the petition was untimely, *id.* at ECF No. 13, which the District Court granted in 2009. Bell filed a pro se notice of appeal on the grant of the summary judgment motion, *Bell v. Fla. Atty Gen.*, No. 3:07-cv-00860 ODE, ECF No. 80, and the Eleventh Circuit granted the certificate of appealability but affirmed the District Court. *Id.*

In 2017, Bell filed a successive motion based on *Hurst v. Florida*,

136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The circuit court denied the motion and this Court affirmed. *Bell v. State*, 235 So. 3d 287 (Fla. 2018), *cert. denied* SC17-1045.

In 2018, Bell filed a successive motion asserting he was denied effective assistance of counsel under the Sixth Amendment when trial counsel violated his Fourteenth Amendments rights by advancing a theme of racial bias and prejudice to the jury and citing as support a recent Supreme Court of the United States case *Buck v. Davis*, 137 S.Ct. 759 (2017), which held that the injection of race into a trial by one's own lawyer is unconstitutional and likely more prejudicial than when done by the State. The circuit court denied the motion, and the Florida Supreme Court affirmed holding that (1) the motion was untimely because *Buck* did not establish a new right; and (2) because the Court previously addressed the arguments at issue and held that they did not warrant relief the motion was procedurally barred. *Bell v. State*, 284 So. 3d 400 (Fla. 2019), *cert. denied* SC18-1713.

On June 13, 2025, Governor Ron DeSantis signed a death warrant for Bell. His execution is scheduled for July 15, 2025.

On June 18, 2025, Bell filed a motion for postconviction relief

alleging that (1) there was newly discovered evidence that trial witnesses recanted their testimony which also revealed that the State had withheld *Brady* / *Giglio* information, (2) Bell's trial was irredeemably tainted with racial bias, (3) the time limits imposed on warrant litigation violated Bell's due process rights, and (4) Bell had been denied due process and effective assistance of counsel at every stage of his case making his execution a violation of both the Eighth and Fourteenth amendments.

Bell was granted an evidentiary hearing on Claim 1 which was held on June 23, 2025. Bell filed an amended Claim 1 asserting that other trial witnesses had revealed newly discovered evidence.

After an evidentiary hearing, the trial court denied Claim 1 and this appeal followed.

STATEMENT OF THE FACTS

I. Original Trial Testimony and Evidence

In June 1993, Theodore Wright killed Bell's brother, Lamar, in self-defense. Bell then killed Wright out of revenge. *Bell v. State*, 699 So. 2d 674, 675 (Fla. 1997). To carry out that plan, Bell, through his girlfriend, purchased a firearm and ammunition. *Id.*

On December 9, 1993, the night after he procured the rifle, Bell spotted Wright's car. Bell left the area and quickly returned with two friends and the now-loaded firearm. *Id.* After a short search, Bell saw the car again in the parking lot of a liquor lounge. Bell did not know that Wright had previously sold the car to Wright's half-brother, Jimmy West. *Id.* Bell waited in the parking lot until West left the lounge with Tamecka Smith and another female. As West and the two women got into the car, Bell approached them and shot West several times, who was sitting in the driver's seat. Bell then shot Smith multiple times. The second female ducked down and escaped injury. *Id.* After shooting West and Smith, Bell shot bullets toward the front of the liquor lounge, where about multiple people had been waiting to go inside. *Id.*

II. The Instant Postconviction Testimony and Evidence

The facts as developed at the evidentiary hearing will be heavily discussed in Issue II so they will not be repeated in full detail here.

On June 18th and 19th, 2025, two key trial witnesses – Henry Edwards and Charles Jones – recanted their trial testimony. [PCR 1227-29, 1232-35] Henry Edwards stated that that he never actually witnessed the shooting but instead was fed information about Bell by Detective Bolena and lied at Bell's trial in exchange for favorable treatment by police. [PCR 1227-29] Charles Jones stated that Bell never confessed to him, and he never saw Bell with the supposed murder weapon and that he lied at Bell's trial in exchange for help with his own criminal charges. [PCR 1232-35]

At the June 23, 2025, evidentiary hearing, after being advised by appointed attorneys that recanting may result in perjury charges, both Henry Edwards and Charles Jones invoked their Fifth Amendment right against self-incrimination and refused to answer questions about their recantations as well as questions about other topics like police and prosecutorial misconduct in the case.

Other witnesses from Bell's original trial testified as to newly discovered evidence: Paula Goins, Ericka Williams, Ned Pryor, and Dale George. Additionally, Tennie Martin, one of Bell's attorneys from the Capital Habeas Unit for the Federal Defender of the Middle District of Florida ("CHU-Middle") testified, as well as CHU-Middle investigator Colin Kelly, to established due diligence.

SUMMARY OF THE ARGUMENT

Issue I. The trial court erred in allowing recanting witnesses and other witnesses to plead the Fifth to relevant questions, including questions that had nothing to do with any potential criminal misconduct of their own.

Issue II. Evidentiary hearing evidence, including sworn affidavits, impeach the testimony of several key State witnesses during Mr. Bell's original trial. Had this newly discovered evidence been presented at trial, a jury could not have found Bell guilty beyond a reasonable doubt, much less imposed death.

Issue III. It was improper for the State to interfere with Bell's right to present witnesses and evidence by not offering recanting witnesses immunity from perjury especially in a case where there are credible allegations that the original trial testimony was coerced and untruthful. This Court should remand and require the State to offer such immunity.

Issue IV. The extremely compressed warrant litigation schedule handicapped counsel's ability to fully investigate and prepare for the evidentiary hearing and effectively appeal the trial court's errors.

STANDARDS OF REVIEW

"When the trial court rules on a newly discovered evidence claim after an evidentiary hearing, [this Court] review[s] the trial court's findings on questions of fact, the credibility of witnesses, and the weight of the evidence for competent, substantial evidence." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). The trial court's application of the law to the facts is reviewed de novo. *Id.* at 1100.

ARGUMENT

I. THE TRIAL COURT ERRED BY ALLOWING RECANTING WITNESSES AND OTHER WITNESSES TO IMPROPERLY INVOKE THE FIFTH AMENDMENT AND REFUSE TO TESTIFY ABOUT CRUCIAL MATTERS AT THE EVIDENTIARY HEARING IN VIOLATION OF BELL'S CONSTITUTIONAL CONFRONTATION RIGHTS

In order for the privilege against self-incrimination to apply, the testimony must convey incriminating information. *St. George v. State*, 564 So. 2d 152, 154 (Fla. 5th DCA 1990), citing *Fisher v. United States*, 425 U.S. 391 (1976). A witness is not permitted to invoke his right to silence in response to any question he does not want to answer. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951) ("The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself ... It is for the court to say whether his silence is justified and to require him to answer if 'it clearly appears to the court that he is mistaken.' ")

During the course of the evidentiary hearing a number of witnesses refused to answer numerous questions based on the Fifth Amendment, including Charles Edward, Henry Jones, Ericka Braclet (Williams), Ned Pryor, and Dale George.

The Court allowed the witnesses to take the Fifth on significant portions of their testimony. In many instances where the witnesses invoked the Fifth, it was on matters that would not in any way incriminate them nor subject them to possible perjury, such as:

Edwards took the Fifth regarding whether Detective Bolena ever threatened him, what he recalled about what the shooter was wearing, whether the shooter was wearing a mask, whether he got furloughs from jail arranged by Detective Bolena. [PCR 1442-66]

Jones took the Fifth regarding whether he knew Detective Bolena and whether he was ever threatened by or even visited in Duval County jail by Detective Bolena. [PCR 1424-42]

Pryor took the Fifth regarding whether he was released from jail as a result of his trial testimony. [PCR 1580-91]

George took the Fifth regarding whether he was subjected to police misconduct or threats and whether he was physically assaulted by Detective Bolena. [PCR 1593-1601]

Braclet (Williams) took the Fifth regarding whether she was subjected to any scare tactics by police investigating this case, whether the police threatening her with losing custody of her children

was her motivation for testifying at trial, and what other things police threatened her about. [PCR 1567-79]

Had the court required these witnesses to answer the questions, to which they improperly invoked Fifth Amendment privileges, Bell would have developed additional newly discovered evidence related to the police misconduct, prosecutorial misconduct, and trial witness impeachment information, and been better able to support Claim 1.

Additionally, the trial court in its order denying postconviction relief, faulted Bell many times for failing to prove his claims as to these witnesses but it was the trial court who improperly allowed the recanting witnesses and other witnesses to refuse to answer questions, even when the Fifth Amendment didn't apply.

II. BELL ESTABLISHED NEWLY DISCOVERED EVIDENCE AND ESTABLISHED THAT PROSECUTORS FAILED TO DISCLOSE EVIDENCE IN VIOLATION OF *BRADY V. MARYLAND* AND *GIGLIO V. UNITED STATES* DEPRIVING HIM OF DUE PROCESS AND A FAIR TRIAL

A. The trial court erred when it found due diligence had not been established by improperly imputing knowledge onto the Office of the Federal Defender for the Middle Region's Capital Habeas Unit

One of Bell's federal attorneys Tennie Martin testified that Bell's CHU-Middle attorneys did not become aware that Edwards and Jones had information about Bell's case until June 13, 2025, when CHU-North attorneys – who had spoken to Edwards and Jones about a separate and distinct case – alerted CHU-Middle of this possibility. [PCR2 1420]

The trial court erroneously put on Bell the burden to explain why the Federal Defender's Office for the Northern District of Florida's Capital Habeas Unit ("CHU-North") did not immediately contact Bell's attorneys who are employed by the Federal Defender's Office for the Middle District of Florida's Capital Habeas Unit ("CHU-Middle").

The Criminal Justice Act ("CJA") is codified at 18 U.S.C. § 3006A. The Act requires each federal district court to have a plan for furnishing representation to certain criminal defendants who cannot afford to obtain adequate representation. The Act created Capital Habeas Units, and allows each United States District Court to create its own plan for providing counsel to death-sentences inmates. Thus, the Federal Defenders' Office for the Middle District of Florida was created as part of the Middle District of Florida's CJA plan, and the Federal Defender Officer for the Northern District was created pursuant to the Northern District of Florida's CJA plan. These agencies do not share offices, attorneys, or investigators. And they do not share clients.

CHU-M was not required to periodically re-interview trial witnesses who gave unfavorable testimony during pretrial investigation, during the 1994 trial and penalty phase, and at a 2002 postconviction evidentiary hearing, to check for recantations without good cause to believe any existed. *See Waterhouse v. State*, 82 So. 3d 84, 104 (Fla. 2012) ("While pretrial resources are unquestionably limited, collateral counsel's resources are also not unlimited. Thus,

requiring collateral counsel to verify every detail and contact every witness in a police report—even where the police report indicates that the witness has no useful information—would place an equally onerous burden on collateral counsel, with little chance of discovering helpful or useful information."), citing *State v. Huggins*, 788 So. 2d 238, 243 (Fla. 2001) (holding that defense counsel was not required to investigate hundreds of leads provided by the police in order to satisfy due diligence.)

Since Edwards' and Jones' recantations were obtained by CHU-Middle investigators Colin Kelly and Christy Dickerson on June 16th and 18th of 2025 respectively [PCR 1477, 1485-86] – less than one week prior to the evidentiary hearing – and since the CHU-North investigation itself had only been going on for "the last couple of months" [PCR2 1420] Bell absolutely established that it had been less than one year since Edwards and Jones recanted. Thus, the trial court erred when it found that Bell failed to establish the first newly discovered evidence prong that his counsel did not know the information at trial and could not have discovered it by the use of diligence. *See Jones v. State*, 709 So. 2d 512 (Fla. 1998).

B. There is not competent substantial evidence to support the trial court's determination that Henry Edwards' denial of his recantation was more credible than CHU-Middle investigator Colin Kelly

When Edwards was challenged about his sworn affidavit recanting, in between taking the Fifth a number of times, he testified that he was confused as to who exactly the CHU-Middle Investigators were then claimed he thought they were interviewing him about Bell because they were "making movie or something." [PCR 1208]

Investigator Kelly of course, testified that that wasn't true and that the investigators introduced themselves, told him who they worked for, and showed him their business cards. [PCR 1475-81] Neither CHU-Middle investigator tricked Edwards into talking to them or told him what to say. Any suggestion that Edwards genuinely thought that he was helping two complete strangers write a movie script about Michael Bell is patently ridiculous.

There were also two witnesses that impeached Edwards' denial of the information in his recantation. Cathy Robertson [PCR 1602-05] and Glory Mitchell [PCR 1611-13] testified that around the time of Bell's trial, Edwards had a very close relationship with Bolena

(which is consistent with Edwards' sworn recantation and inconsistent with Edwards hearing testimony where he denied working with Bolena on an ongoing basis [PCR 1445]). Their relationship was so close that Bolena would let Edwards out of jail to visit Robertson (his wife at the time) for informal furlough visits (which is inconsistent with Edwards hearing testimony in that he took the Fifth on this point).

And the trial court even suggested to the defense at the hearing that he agreed that Edwards' claim that he lied in his sworn recantation was not credible, only to sandbag Mr. Bell by finding "Edwards' testimony that he did not know what was in the affidavit to be more credible than CHU Investigator Colin Kelly's testimony that the affidavit reflected statements made by Mr. Edwards" [PCR 1208] When the defense told the trial court that CHU-Middle investigator Christy Dickerson was going to be called to corroborate what investigator Colin Kelly said [PCR 1614-15] (because they interviewed the recanting witnesses together), the trial court said "I'm not real concerned about corroborating witnesses, and don't need somebody to tell me they saw something somebody else already told

me happened.". [PCR 1616] The defense then told the court if that was the case then investigator Dickerson's testimony wasn't necessary and wouldn't be presented, saying "I was leaning towards not calling Miss Dickerson 'cause don't think anybody thinks they were there making movie. So was just going to make that tactical decision with few minutes you're giving us," [PCR 1616] to which the trial court said "Okay." [PCR 1617]

This is another illustration – in addition to letting the witnesses abuse the Fifth amendment privilege – of a pattern in Mr. Bell's postconviction litigation of the trial court foreclosing opportunities for the defense to develop a record and then using the lack of record development to deny claims.

C. Newly discovered evidence regarding eyewitness Henry Edwards establishes *Brady* and *Giglio* violations

i. Edwards' Sworn Recantation

Henry Edwards disclosed on June 16, 2025, that he did not see the murders, he only heard them because he was inside the store when the shootings occurred. He also said that Detective William Bolena was aware Edwards did not see the shooting and told

Edwards what to testify to in exchange for favors, specifically furloughs from jail during his period of incarceration around the time of the murders. Edwards also stated that Detective Bolena pointed out Bell to Edwards in the photo lineup and that Bolena put him in a holding cell with an eyewitness so that Edwards could corroborate his "eyewitness" testimony with hers. Edwards also said that he felt threatened by Bolena [PCR 1227-29].

ii. Edwards' Trial Testimony that excluded any mention of police or prosecutorial misconduct, and excluded additional impeachment material

Edwards' trial testimony did not contain any mention of police misconduct. Instead he testified that there was no agreement between him and the State and that he had charges against him dropped the same day he spoke to Bolena about this case but that was because he was "innocent" [PCR 649]; that he got nothing in exchange for his testimony [PCR 650-51]; that Detective Bolena simply met him at the jail and asked him about the murders at which time Edwards told Bolena the same thing he eventually testified to at trial [PCR 650]. Edwards also testified at trial that he was standing outside at the corner of the building when he saw Bell put on a ski

mask then walk up to a yellow car and started shooting into the driver's side [PCR 643-45]; that he had no problem identifying Bell [PCR 642-43]; and that he had no doubt Bell was the triggerman [PCR 651].

iii. Edwards' completely incredible evidentiary hearing testimony denying the recantation and his admission at the evidentiary hearing that he could not have identified Bell

Throughout the hearing, Edwards approach was to say that he either didn't recall recanting [PCR 1445, 1459-60], claim that he was just going along with what the CHU-Middle investigators said [PCR 1447-48, 1457-58, 1464], pretend like he thought he was in a "movie" [PCR 1449], or plead the Fifth [PCR 1449-50, 1452-53, 1456, 1461-62].

Despite Edwards efforts to do anything but, he did slip up and tell the truth that he could not have identified Bell in 1994.:

Q Okay. Now, about the part with Mr. Bell, before this trial and before this case, did you even know Mr. Bell?
A Did I know him?
Q Yeah.
A No, I didn't know him.
Q Had you ever even seen him before?

A I might have seen him one time but I didn't – I didn't know him.
Q Okay. So you were standing at Moncrief Liquors. You claim you're outside today. mean, in the affidavit you said you were inside. But today, you're saying you're outside Moncrief Liquors and witnessed the shooting, correct?
A I take the Fifth. I take the Fifth. I plead the Fifth.

MR. NORGARD: I'd ask that he be instructed to answer that question.
THE COURT: I'm not instructing him to answer.

BY MR . NORGARD:

Q You have already —- although you're not answering it now, you've already said in your testimony that you were outside and witnessed the incident, right?
A Right.
Q Okay. You just told me that you didn't really know Michael Bell, right?
A Right.
Q Okay. You're saying you're telling the truth, that you saw the incident.
A Yes, I did.
Q How was the perpetrator dressed?
A I take the Fifth.

[PCR 1451-53]

The totality of this questioning where Edwards admits that he did not know Bell prior to the murders (which is consistent with his sworn recantation) then retreats and takes the Fifth when challenged on his identification of Bell at trial, combined with his 1994 trial

testimony that he had known Bell for six months and had seen him approximately 35 times and could easily identify him [T 306-07] establishes newly discovered evidence. The State prejudiced Bell by suppressing exculpatory or impeaching evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and knowingly presented material false testimony in violation of *Giglio v. United States*, 405 U.S. 150 (1972).

Ultimately, the kind of evidence established by the defense about Edwards – especially his admission that he couldn't have identified Bell – gives rise to a reasonable doubt as to Bell's guilt but also the sufficiency of the cold, calculated, and premeditated (CCP) aggravator, and the sufficiency of the great risk of death to many persons aggravator. Thus, the trial court erred when it found that Bell failed to establish the second newly discovered evidence prong that the newly discovered evidence would probably yield a less severe sentence. *See Jones v. State*, 709 So. 2d 512 (Fla. 1998); *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991).

D. Newly discovered evidence regarding Charles Jones establishes *Brady* and *Giglio* violations

i. Jones' Sworn Recantation

Jones disclosed on June 18, 2025, that he was approached by Detective Bolena in 1994 when he was in jail, that he knew Detective Bolena because he was in a relationship with Jones' sister, Bolena coerced him to testify against Bell by offering to help him with his charges, Detective Bolena and prosecutor George Bateh told him what to say at trial. Jones said that Bell never tried to sell him a gun and he never confessed to Jones about having shot anyone. Jones also disclosed that in 2002, while he was being detained for federal charges, he was brought back to Duval County jail to testify against Bell in a postconviction hearing. Bateh threatened him with more time if he were to change his testimony and tell the truth. He met with both Bolena and Bateh before pleading in his federal case and they both promised him they would get him a downward departure if he maintained his testimony against Bell. [PCR 1232-34]

ii. Jones' evidentiary hearing testimony admitting that his sworn recantation was the truth

The trial court found that "Jones did not recant and did not testify" [PCR 1209] That isn't accurate. At the hearing, Jones took the

stand and pleaded the Fifth to nearly every question he was asked. However, near the end of his testimony, Jones admitted that he signed his sworn recantation affidavit and that the contents were true:

> Q Okay. want you to look at this. I'm holding it up where you can see it. Let me know. affirm under the penalty for perjury that have read the foregoing and the facts contained therein and true. They are true.
>
> Did you —- you signed that, right?
>
> A Yes.

[PCR 1437]

So, unlike Edwards, Jones did not say that the contents of his sworn recantation were lies. He simply pleaded the Fifth about the contents of the affidavit as they were read aloud to him one by one but then ultimately admitted that his recantation was the truth. So, there is record evidence that Jones recanted. Pretty much the only thing that Jones testified to substantively was that he signed the affidavit – which contained a complete recantation of his trial testimony that Bell confessed to him and possessed the supposed murder weapon – under penalty of perjury and swore the facts contained therein were true.

iii. Jones' trial testimony that excluded any mention of police or prosecutorial misconduct, and excluded additional impeachment material

Jones' prior testimony at Bell's trial was that he had no agreement with the State for any benefit in exchange for his testimony [PCR 679-80]; he talked to Bolena about Bell but not in exchange for any favors [PCR 684]; he saw Bell trying to sell an assault weapon in December 1993 [PCR 681-82]; and that he heard Bell admit to killing West and Smith in January 1994 [PCR 682];

This newly discovered evidence was not known to trial counsel at the time of trial and Bell and his counsel could not have known this information by the use of diligence. This newly discovered evidence is favorable to the accused because it weakens the State's evidence, and because misconduct and a quid pro quo arrangement between a witness – who testified about Bell's confession to the murders and Bell's possession of a gun around the time of the murders – and police would have cast doubt on the rest of the police investigation and by association the State's case.

The State prejudiced Bell by suppressing exculpatory or impeaching evidence in violation of *Brady v. Maryland*, 373 U.S. 83

(1963), and knowingly presented material false testimony in violation of *Giglio v. United States*, 405 U.S. 150 (1972). This gives rise to a reasonable doubt as to Bell's guilt but also the sufficiency of the cold, calculated, and premeditated (CCP) aggravator. Thus, the trial court erred when it found that Bell failed to establish the second newly discovered evidence prong that the newly discovered evidence would probably yield a less severe sentence. *See Jones v. State*, 709 So. 2d 512 (Fla. 1998); *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991).

E. The trial court erred in ruling that the claims regarding the other remaining witnesses were procedurally barred as untimely

The trial court based his procedural bar finding on the fact that Bell had previously raised pro se claims of coercion in his 2002 postconviction proceedings so "[w]hatever precipitated [Bell] to consider coercion claims for some trial witnesses should also have led him to conduct due diligence on the other remaining witnesses". But the witnesses Bell did call at his 2002 postconviction hearing denied any police or prosecutorial misconduct so this was just more prior sworn testimony on which Bell and his attorneys could reasonably rely on as accurate until they were given a reason to doubt

that – which did not arise until after his death warrant was signed. *See Waterhouse v. State*, 82 So. 3d 84, 104 (Fla. 2012) (finding postconviction counsel is not required to re-contact every witness especially when it appears from the record that the witness does not have favorable information).

And regardless of whether the other witnesses are actually procedurally barred, the trial court still must consider them when evaluating the weight of the other newly discovered evidence (Edwards and Jones). Since the other witnesses are directly relevant to Bell's newly discovered evidence claim, they must be considered in determining whether a new trial would probably result in an acquittal, or whether a new penalty phased would probably result in a life sentence.

F. Ericka Braclet (formerly Williams)

At the hearing, Ericka Braclet pleaded the Fifth when asked about her statement to CHU-Middle investigators that Detective Bolena used "scare tactics" to get her to talk to him about Bell. [PCR 1158] She also pleaded the Fifth as to being threatened by Bolena with charged as an accessory and going to prison for ten years. [PCR

1576-77] Braclet said she did not recall reporting the gun as stolen or giving law enforcement incriminating information about Bell. [PCR 1569]

Braclet did recall and testify to some police misconduct and said that she was "petrified" to talk to police, and that when she went downtown to talk to the police about the case she was kept in an interrogation room for 12-14 hours, that two law enforcement officers screamed at her and threatened to take her children away. [PCR 1574-77]

In contrast, at trial, Ericka did not testify at all about any police or prosecutorial misconduct, nor did she mention any threats to her in relation to her testimony. [T 415] She also said that she was hesitant to testify – not because of police threats to take her children away – but because she was afraid of Mr. Bell. [T 414]

At the hearing, the prosecutor cross examined Braclet and tried to clean this all up by simply asking her if she testified truthfully at Bell's 1994 trial and 2002 postconviction hearing but it went nowhere as she could not remember whether she told the truth at trial or not:

> Q Okay. And when you testified before the trial in front of the trial jury as well as the ineffective assistance of counsel, did you try to tell the truth?
>
> A I don't recall.
>
> Q Okay. You have no idea if you told the truth or not.
>
> A I don't recall.

[PCR 1577-78]

The contrast between Ericka Braclet's 1994 and 2025 establishes newly discovered impeachment evidence concerning what motivated Braclet to testify against Bell (police misconduct in the form of threats). Because Braclet describes similar police and prosecutorial misconduct that Edwards and Jones did in their sworn recantations, it also supports the recantations themselves and thus supports that the State presented false testimony and withheld exculpatory *Brady* and *Giglio* impeachment evidence concerning Edwards and Jones.

G. Ned Pryor

At the hearing, Pryor claimed to not recall that he told CHU-Middle investigators that Bolena and Bateh wanted him to say that Bell was the shooter [PCR 1582] and claimed to not recall that he told CHU-

Middle investigators that Bateh told him that if he didn't say Bell was the shooter that he would go down for it. [PCR 1582]

Pryor did, however, answer a few crucial questions at the hearing that revealed he lied at Bell's trial:

> Q Did you ever see Michael Bell with gun that evening?
> A No.
> Q Never saw him with gun.
> A No.
> Q And in fact, at the time this incident occurred, you were not even there, were you?
> A When the incident occurred? No, I wasn't there.
> Q When the two people were killed, you did not see Michael Bell with gun, and you did not see the incident because you were not there, correct?
> A I plead the Fifth.

[PCR 1584-85]

At trial, Pryor did not mention any police or prosecutorial misconduct. He testified that he saw Bell the night of the murders in the Moncrief Liquors parking lot walking towards the victims with a firearm and then heard the gun shots. [T442-43]

The contrast between Pryor's 1994 and 2025 testimony establishes newly discovered evidence that Pryor testified falsely about what he saw the night of the murders and newly discovered impeachment evidence concerning what motivated Pryor to testify

against Bell (police misconduct in the form of threats). Because Pryor describes similar police and prosecutorial misconduct that Edwards and Jones did in their sworn recantations, it also supports the recantations themselves and thus supports the claim that the State presented false testimony and withheld exculpatory *Brady* and *Giglio* impeachment evidence concerning Edwards and Jones.

H. Dale George

At the hearing, Dale George pleaded the Fifth when asked about his statement to CHU-Middle investigators that Detective Bolena or prosecutor Bateh ever threatened to charge him with first degree murder or offered him a reduced sentence in exchange for his testimony against Bell. [PCR 1594-97] George also pleaded the Fifth when asked about his statement to CHU-Middle investigators that Detective Bolena has physically assaulted him while questioning him about this case. [PCR 1598-99]

At trial, Geroge did not testify at all about any police or prosecutorial misconduct and said that he was not being promised anything for his testimony. [T 475] He said what motivated him to testify was that he was tired of lying. [T 475]

The contrast between George's 1994 and 2025 testimony establishes newly discovered evidence that George testified falsely and newly discovered impeachment evidence concerning what motivated George to testify against Bell (his own criminal charges). Also, because George describes similar police and prosecutorial misconduct that Edwards and Jones did in their sworn recantations, it also supports the recantations themselves and thus supports that the State presented false testimony and withheld exculpatory *Brady* and *Giglio* impeachment evidence concerning Edwards and Jones.

I. Paula Goins

The trial court ruled that Detective Bolena and George Bateh merely "pressured her to testify *truthfully*" [PCR 1213] but that isn't what Goins said. At the hearing, Goins testified that she was pressured by Bolena and Bateh to testify, that they tried to physically intimidate her in her interview, and that they told her that she would go to prison if she didn't testify, as well as lose her job, house, and custody of her granddaughter. [PCR 1548-55] She also said that they told her what to say:

> Q All right. So what you're telling the Court is that some of the things you said were simply being said because

that was fed to you by George Bateh and/or Detective Bolena.

A Exactly. It was the whole scenario. Let me tell you, this whole thing happened. My whole family was under protection by the police after this incident. It was nothing for me to believe George Bateh or —- or the detective that I had to do this because people were shooting at us, trying to kill us in retaliation for this whole thing. We were under extreme duress.

...

Q And also, some of the stuff you were saying were things they were telling you to say.

A Yeah. They told me what she said and was asking me if that was said.

[PCR 1553-54]

At trial, Goins testified that she and Bell had a one-on-one conversation where he said "I got him". [PCR 1245] At the hearing, Goins testified that what actually happened was that she instead overheard a conversation that Bell was having with Ericka Williams (Braclet) [PCR 1552-53], that she couldn't recall all of the details of that conversation [PCR 1553], but was adamant that what Bell actually said to Ericka was "we got him" not "I":

Q But you never heard him say, I shot these people.

A I did hear the conversation. will admit that.

Q Okay. But did he ever say, I did it?

A No. We. He said it was another boy with

him. It was we. We did this.
Q All right.
A And —— and he was telling her the whole picture of what we did, him and Ned, I think his name was.

[PCR 1556]

The contrast between Goins' 1994 and 2025 testimony establishes newly discovered evidence that Goins testified falsely and newly discovered impeachment evidence concerning what motivated Goins to testify against Bell (improper pressure by the State that put her fear that she would lose her job, house, and custody of her granddaughter). Because Goins describes similar police and prosecutorial misconduct that Edwards and Jones did in their sworn recantations, it also supports the recantations themselves and thus supports that the State presented false testimony and withheld exculpatory *Brady* and *Giglio* impeachment evidence concerning Edwards and Jones.

III. THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE RECANTATION OF TWO KEY WITNESSES FOLLOWED BY THE STATE'S THREAT TO PROSECUTE ANY WITNESS THAT CHANGED THEIR TESTIMONY FOR PERJURY DEPRIVED BELL OF A FAIR AND RELIABLE EVIDENTIARY HEARING AND WARRANT-PHASE POSTCONVICTION DETERMINATION

An accused in a criminal case has a constitutional right to present witnesses in his defense, pursuant to the due process and the compulsory process provisions of the federal and state constitutions. See Florida Constitution, Article I, Section 16(a); see also U.S. Const. amends. V, VI, XIV § 1. "The right to offer the testimony of witnesses, and to compel their attendance, ... is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19 (1967).

On the morning of June 23, 2025, following Bell's motion objecting to the State's witness interference and before Bell could call any witnesses, the State said in open court that although there was no "plan" to charge recanting witnesses with perjury, it was a "possibility if they come on the stand and they say that their prior

testimony was lie." [PCR 1393-94] The Court made it clear that it had on its own accord contacted lawyers in preparation for the evidentiary hearing. However, Bell wasn't complaining about the appointment of lawyers. Bell was complaining that the State wanted to lock key trial witnesses into their previous testimony instead of allowing witnesses who had expressed a desire to recant the opportunity to do so free of the threat of prosecution.

Constitutional case law is legion that the state may not use threats of perjury or intimidating tactics which substantially interfere with a witness' decision to testify for a defendant. *State v. Feaster*, 877 A.2d 229, 242-45 (N.J. 2005). ("Such conduct, even if motivated by good faith, cannot be tolerated, particularly in a capital case"). While merely warning a witness of the consequences of perjury does not necessarily demand reversal, a showing of substantial interference with the witness' "free and unhampered" determination to testify amounts to a due process violation. *See, e.g., Webb v. Texas*, 409 U.S. 95 (1972); *United States v. Stuart*, 507 F.3d 391, 398 (6th Cir. 2007); *Newell v. Hanks*, 283 F.3d 827, 837-38 (7th Cir. 2002); *United States v. Foster*, 128 F. 3d 949, 953 (6th Cir. 1997); *United*

States v. Pinto, 850 F.2d 927, 932 (2nd Cir. 1988); *United States v. Morrison*, 535 F.2d 223, 224-28 (3rd Cir. 1976); *State v. Feaster*, 877 A.2d at 240-46; *F.C.L. v. Agustin*, 350 P.3d 482, 487 and n.4 (Or. App. 2015); *Woolfolk v. Commonwealth*, 339 S.W.3d 411, 417 (Ky. 2011); *People v. Coffman*, 96 P.3d 30, 72 (Cal. 2004); *State v. Melvin*, 388 S.E.2d 72, 77-80 (N.C. 1990). Florida case law is in accord. *See Muhammad v. State*, 782 So. 2d 343, 356-58 (Fla. 2001).

The intimidation or threat need not come from the judge. A threat to prosecute for perjury may well be even more intimidating to the witness if it comes from the prosecution (which, unlike the judge, is vested with the power to file a criminal charge). *See Morrison*, 535 F.2d at 228; *Melvin*, 388 S.E.2d at 79 (each applying *Webb* principle to prosecutorial conduct). In *Feaster*, 877 A.2d at 232:

> At the [postconviction] hearing, defendant intended to call Michael Sadlowski, a key State's witness who had recanted his trial testimony in a certified statement made to defendant's attorneys. Before Sadlowski took the stand at the hearing, the prosecutor indicated to Sadlowski's attorney that there would be "considerations" if he testified consistent with his recantation statement. When called as a witness, Sadlowski withdrew his certified statement and invoked his Fifth Amendment privilege against self-incrimination. Defendant contends that the prosecutor's thinly veiled threat to prosecute Sadlowski for perjury

> deprived him of a critical witness. We agree. We will not theorize whether Sadlowski would have invoked the privilege even in the absence of a prosecutorial threat. We now hold that the prosecutor substantially interfered with Sadlowski's decision to testify and, therefore, denied defendant a witness who might have supported his claim that he was wrongly convicted and sentenced to death. The prosecutor's interference with that witness' decision to testify violated defendant's state constitutional due process and compulsory process rights.[1]

This Court discussed the *Feaster* case in *Johnson v. State*, 397 So. 3d 626, 639 (Fla. 2024), in which Johnson lost a similar claim but Johnson was unsuccessful for reasons that don't apply to Mr. Bell. This Court distinguished *Johnson* from *Feaster*:

> The witness in [*Feaster*] wrote a certified statement, filed in court, that he would testify a certain way. 877 A.2d at 235. The evidence made clear that the prosecutor's threat kept him from doing so. Here, again, the record does not support the conclusions that Al would have testified differently; that the State directly interfered with his testimony; and that, had Al testified differently, the trial court would have granted Johnson a new penalty phase trial. And we do not find in Al's e-mail—which the trial court also saw—a basis upon which to conclude that the

[1] While true that the New Jersey Supreme Court relied on its state constitution, it also discussed at length the applicable federal due process and compulsory process case law (including *Webb v. Texas*) which similarly prohibit prosecutorial interference with a defense witness' testimony [877 A.2d at 238, 240-43 and n.5 and 8], and it also emphasized "the heightened requirement of reliability that attaches to a death verdict" [*id*, at 259]. That echoes the heightened reliability requirement of the Eighth Amendment [*id*, at 238].

> trial court abused its discretion in concluding that there would not have been a meaningful change to Al's testimony at the Spencer hearing. Johnson is not entitled to relief on this claim.

All of the distinguishing facts between *Feaster* and *Johnson* cut in Bell's favor. Bell's witnesses recanted in sworn affidavits to investigators which indicated that they intended to testify to the contents in court. Bell then filed those sworn recantations to the court. It is clear that the threat of perjury was precisely why both recanting witnesses Edwards and Jones changed their minds about testifying. And had both of the recanting witnesses done so on the record, along with all of the corroborating evidence of police and prosecutorial misconduct as to the other ("better", according to the State) witnesses, it is reasonable to conclude that the trial court would have granted Bell at the very least a new penalty phase trial. [See PCR 1214 where the trial court characterized the testimony that Bell planned on presenting as "systemic prosecutorial misconduct that resulted in all their trial testimony being coerced and false".]

In *Muhammad*, the Florida Supreme Court observed that "if a witness is threatened with perjury charges in light of a prior

inconsistent statement, the witness might be coerced to give the same testimony as that in the prior statement, not because it is the truth but because of judicial pressure from the threat of perjury charges." 782 So. 2d at 356-58. *See also Melvin*, 388 S.E.2d at 79-80 (if the perjury admonition "likely precluded a witness 'from making a free and voluntary choice whether or not to testify' . . . or changed the witness' testimony to coincide with the judge or prosecutor's view of the facts, . . . then a defendant's right to due process may have been violated")(citations omitted); *People v. Crabtree*, 276 N.W.2d 478 (Mich. App. 1979)(reversal required where prosecutor made "a thinly veiled threat of a perjury charge against the victim if she changed her story from that given at the preliminary examination").

It is also extremely important that even the State did not assert a firm belief that the recanting witnesses trial, penalty-phase, or original post-conviction hearing testimony was true and if they recanted what they said would be false but instead that if any witness testified that their prior testimony was a lie then the State's position

was that that would be perjury [PCR 1393-94].[2] When a key witnesses' memory is suddenly refreshed when confronted with the prospect of jail, one cannot be certain which version of the facts is indeed the "truth". *See Muhammad v. State*, 782 So. 2d at 357.

And here there are strong and multiple reasons for concern that the prior testimony of the recanting witnesses was actually false in light of the fact that former prosecutor George Bateh and Detective Bolena are known for exactly the kind of improper tactics (coercion, threats, and favors in exchange for testimony) that the recanting witnesses describe. See also Nichole Manna, *Investigation reveals dubious testimony, no evidence in 1993 case of Jacksonville man sentenced to death*, The Tributary (March 18, 2025), https://www.news4jax.com/news/local/2025/03/18/investigation-reveals-dubious-testimony-no-evidence-in-1993-case-of-jacksonville-man-sentenced-to-death-the-tributary/.

And Another case that both Bateh and Bolena worked together

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[2] This is a legally incorrect theory of prosecution for perjury. A lie told in 1994, even in a capital case, would not be actionable today because it would be subject to the pre-1997 statute of limitations which would have run already expired. *See Sheppard v. State*, 338 So. 3d 803, 825 n. 6 (Fla. 2022).

(Ronnie Ferrell) is currently being investigated by Bateh's former Office's Conviction Integrity Division due to "concerns" about Bateh's prosecutorial tactics and another case may soon be reviewed due to the same concerns (Kenneth Hartley). See Nichole Manna, *How a Florida prosecutor fixed a 'weak' case using a liar and 3 jailhouse snitches to send a man to Death Row*, The Tributary (April 24, 2025), https://jaxtrib.org/2025/03/17/how-a-florida-prosecutor-fixed-a-weak-case-using-a-liar-and-3-jailhouse-snitches-to-send-a-man-to-death-row/.

It should also be noted that the reason the recanting witnesses are facing the prospect of prosecution for perjury as a second-degree felony carrying a potential 15-year prison sentence is because this is a death penalty case. See Fla. Stat. §837.02(2). The reason for enhanced punishment for perjury in a capital case dovetails with the requirement of heightened reliability in a capital case. And while the State may be harmed if a defendant receives an undeserved life sentence based on perjured testimony in his favor, that pales in comparison to the irreparable harm to a defendant who is sentenced to death and executed based on perjured testimony.

If the recanting witnesses were allowed to testify freely in the June 23, 2025, evidentiary hearing, without fear of prosecution for a second degree felony, they were expected to recant testimony about witnessing Bell commit the murders, hearing Bell confess to the murders, and seeing Bell with the supposed murder weapon, and this Court may as a result have granted a new guilt and / or penalty phase jury trial. It was also clear from the record that the threat of perjury was why they refused to testify. It was made clear to Both Edwards and Jones, as well as almost every other witness, that they were at risk of being charged with perjury if they changed their testimony. [PCR 1393-94]

Because of the State's perjury threat, the testimony of these crucial witnesses – and this Court's fact-finding duty – was hampered. Carrying out Bell's execution therefore violates even basic standards of reliability, much less the heightened reliability required by the Eighth Amendment.

The State having refused to voluntarily offer the recanting witnesses immunity, this Court should apply the federal Third Circuit's reasoning in *United States v. Morrison*, 535 F.2d 223, 228-

29 (3rd Cir. 1976) and require the state to offer the recanting witnesses immunity from a perjury prosecution. While under ordinary circumstances a court has no inherent power to grant use immunity to a defense witness over the state's objection, there may be an exception where a defense witness' testimony has been tainted by prosecutorial misconduct. *See United States v. Morrison.*

Interfering with defense witness by means of a threat of perjury prosecution if he were to testify inconsistently with his prior testimony is prosecutorial misconduct that rose to the level of a due process violation in this case due to the fact that police and prosecutorial misconduct is what that led to the coerced trial testimony in the first place, the fact that the recanting witnesses' testimony was critical to a life-or-death determination.

IV. THE TIME LIMITS IMPOSED ON THIS WARRANT LITIGATION VIOLATES STATE AND FEDERAL DUE PROCESS BECAUSE UNDER THE UNIQUE CIRCUMSTANCES OF THIS CASE, MR. BELL WAS DENIED AN OPPORTUNITY FOR A COMPLETE HEARING ON FULLY INVESTIGATED CLAIMS

The lower court erred in denying Mr. Bell's claim that he is being denied full and fair postconviction proceedings in violation of the Due Process Clause of the Fourteenth Amendment and Article I, Section 9, of the Florida Constitution. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (noting "an essential principle of due process is that a deprivation of life . . . 'be preceded by notice and opportunity for **hearing appropriate to the nature of the case**'") (quoting *Mullane v. Cent. Hannover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)) (emphasis added). In Claim 3 of his successive Rule 3.851 motion, Mr. Bell argued that the warrant period and its constituent proceedings are so truncated that they preclude a meaningful hearing on *any* of his claims. (PCR-3. 596-97). This Court's scheduling order providing less than ten days for circuit court proceedings coupled with the circuit court's extremely expedited

schedule prevented Mr. Bell from having any meaningful opportunity to fully investigate and present his claims.

Further, the execution timeline is truncated despite Section 922.052(2)(b), Florida Statutes, providing for up to 180 days to execute a death warrant) that defendants and counsel – no matter how diligent – are forced to submit the very sorts of last-minute pleadings that are discouraged by courts. Justice Pariente spoke to this dilemma in her concurrence in *Jimenez v. Bondi*, 259 So. 3d 722, 726-27 (Fla. 2018), after Governor Scott signed a warrant on July 18, 2018, scheduling Jimenez's execution for 27 days later, on August 14, 2018:

> Before an execution may proceed, this Court has the solemn obligation to carefully ensure that there are no constitutional bars to the execution and that the defendant's rights have been protected. [S]ome claims, such as those challenging the execution method, cannot be raised or evaluated until the signing of the death warrant. At the least, defendants must have adequate time to investigate and raise and courts must have adequate time to properly review these warrant-based claims. When the machinery of the State is used to execute someone, this Court must remain vigilant, even if claims arise at the last minute.

"Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him *some real opportunity to protect it.*" *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930) (emphasis added). "At a minimum," due process "require[s] that deprivation[s] of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (quoting *Mullane*, 339 U.S at 313). As the United States Supreme Court held in *Mathews v. Eldridge*, "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner." 424 U.S. 319, 333 (1976) (quoting *Armstrong*, 380 U.S. at 553).

Nowhere can these principles be more important than in a capital case, where the Supreme Court has repeatedly emphasized the need for a heightened degree of reliability. *See, e.g., Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *see also Loudermill*, 470 U.S. at 542 (quoting *Mullane*, 339 U.S. at 313) (reiterating that the

due process requirements of notice and opportunity must be "appropriate to the nature of the case").

A. Mr. Bell received credible information of *Brady* and *Giglio* violations two days and three days before his postconviction motion was due. This extremely short warrant period severely prejudiced Mr. Bell, and any pleading deficiencies were a direct result of the unreasonably short circuit court deadlines and not a lack of diligence by Mr. Bell

Ordinarily, a defendant would have one year from the discovery of the new evidence to investigate, develop, and present his claim of newly discovered evidence. *See Mills v. State,* 684 So. 2d 801, 804 (Fla. 1996). Mr. Bell had three days from learning of the new evidence until his successive motion was due. During that three-day period, Bell's legal team was also attending court hearings in this case, visiting with Mr. Bell to discuss the warrant, and drafting the additional claims in his postconviction motion.

It is completely outside of Mr. Bell's control that witnesses were unwilling to come forward and allege that they were threatened or coerced to testify against Mr. Bell at trial until after his death warrant was signed. Charles Jones, Henry Edwards, Ned Pryor, Dale George, and Erika Willaims all testified at trial, and during postconviction

proceedings that they had not been coerced or threatened and that their trial testimony was true. It was perfectly reasonable for Mr. Bell to rely on this prior testimony, and completely unreasonable that he should have had to continue to continuously check in with them over a 30-year period to determine if they wished to change their testimony. *Waterhouse v. State*, 82 So. 3d 84, 104 (Fla. 2012).

Three days is a completely unreasonable time period to investigate and present claims of newly discovered evidence in a postconviction motion, and seven days is a completely unreasonable time frame to investigate and prepare for an evidentiary hearing on those claims. The fact that Mr. Bell was able to secure the testimony of ten witnesses over that short period of time is not indicative of the time period being reasonable but rather the shear number of witnesses that exist that had the same thing to say; Det. Bolena and ASA Bateh threatened and coerced witnesses to testify untruthfully at trial. Mr. Bell's defense team continue to receive tips and leads that tend to corroborate the statements these witnesses gave to defense investigators, and from lawyers stating that these were standard tactics for Bateh and Bolena. If Mr. Bell had even a fraction

of the 1-year he is entitled to under Rule 3.851, he would have been able to present a much more substantial and well plead 3.851 motion, and a plethora of additional evidence in support of his claims.

B. Any pleading deficiencies in the initial motion or motion to amend resulted directly from the short warrant period and unreasonably short circuit court deadlines imposed in this case

The trial court's order denying Mr. Bell's postconviction motion also denied Mr. Bell's Motion to Amend Claim One of the postconviction motion, and the Court further found that Mr. Bell's allegations of newly discovered evidence regarding witness Paula Goins were not plead in either the postconviction or proposed amendments. [PCR 1204; 1218] The court held that Mr. Bell failed to demonstrate good cause for the amendments. [PCR 1218] Any deficiencies in Mr. Bell's pleadings were the direct result of the unreasonable short warrant proceedings and trial court's scheduling order.

The trial court faulted the defense for not including the witnesses in the motion to amend in the initial motion given that the

interviews with those witnesses occurred before the initial motion was filed. But Rule 3.851(e)(2)(ii) requires that a claim of newly discovered evidence be accompanied by a statement that the witness would be available to testify under oath. Mr. Bell's defense team was unable to gain assurances from these witnesses that they were available to testify under oath in the three days they had to investigate the claim. [PCR 1162; 1168] Witnesses are often reluctant to testify at first, and it often takes time to gain trust and rapport before they are willing to agree to testify under oath. Accomplishing that in three days is nearly impossible.

The trial court also found that Claim One of the postconviction motion was untimely because he did not explain why CHU-N waited to reveal the recantations or to establish when CHI-N first learned of the new evidence. [PCR 1206] As outlined above, this was a completely unreasonable decision as Mr. Bell can not be faulted with the actions of a separate, autonomous agency and it is irrelevant when CHU-N learned of this new information because CHU-N has absolutely no relationship with Mr. Bell or his lawyers.

Setting that aside, had Bell not been litigating this issue under such an unreasonably compressed time period, Bell would have subpoenaed CHU-N investigator Dan Ashton to testify, and he would have both further explained the complete lack of relationship between two similarly named organizations practicing in two separate jurisdictions, and also that the new information was obtained well within the time limits of newly discovered evidence in 3.851. He also would have testified that he did not receive recantations from Jones and Edwards because he was not investigating Bell's case, but merely learned information that led him to believe that interviewing these witnesses about the Bell case would possibly lead to the discovery of *Brady/Giglio* violation. Mr. Bell was granted an evidentiary hearing on Friday June 20, 2025. That left his Tampa Bay area legal team with two days to prepare for and secure witness for the evidentiary hearing, and almost all of that time was after business hours or over the weekend. Bell did not learn until Saturday afternoon that Ashton would not appear willingly, and Bell's legal team spent the entirety of Saturday and Sunday traveling to, and in Jacksonville attempting to secure the attendance of other

witnesses. Bell did not have sufficient time to serve Mr. Ashton who is based out of Tallahassee, and did not have a personal address for Mr. Ashton and could not serve him at work because it was the weekend.

Ordinarily, a defendant would have a year to convince these witnesses to testify under oath, and could either amend their postconviction motion or file an additional successive motion within that one-year period. *See Jones v. State*, 709 So. 2d 512, 519 (Fla. 1998) ("As to reasonable diligence, a defendant seeking postconviction relief after a death sentence has been imposed must present his *Brady* claim within one year of the discovery of the new evidence.") Mr. Bell had three days. Additionally, Mr. Bell's defense team was unable to interview witness Paula Goins until the morning of the evidentiary hearing despite multiple efforts. Mr. Bell issued a subpoena to Ms. Goins by sliding under her door not knowing what she would say if she was called to testify. Mr. Bell did the best that he could under impossible circumstances. When it was clear that he would not be able have the additional witnesses agree to testify to what they told investigators, he issued them subpoenas and moved

to amend the motion. If there were deficiencies with Mr. Bell's initial motion or motion to amend, they were caused by the short warrant period and resulting short circuit court proceedings, not any lack of diligence on the part of Mr. Bell.

C. The short warrant period and unreasonably short circuit court deadlines caused the witnesses in this case to receive rushed uninformed legal advice from lawyers that knew nothing about the case

Additionally, almost all of the witnesses that Mr. Bell produced at the evidentiary hearing ultimately wound up pleading the Fifth Amendment to most questions they were asked. Had Mr. Bell had a year to develop his claims, this could have been avoided. Bell's defense team could have continued to build rapport with the witnesses and impress upon them the importance of their testimony, and potentially discuss the possibility of their testimony with their attorneys. Additionally, these witnesses could have sought sound legal advice from lawyers that had time to sufficiently familiarize themselves with the case and properly research the issues. Instead, they were given an extremely short period of time to consult with lawyers that they did not know, who knew nothing about the case,

and had no time to research what were complicated legal issues. There is absolutely nothing in the record about the knowledge and experience of these lawyers that were provided by the court. Were they even criminal defense lawyers? Did these lawyers know that the statute of limitations on perjury had run on the testimony the witnesses gave at trial in 1995[3]? Did the lawyers even know that the trial happened in 1995? Did they have access to transcripts of the trial and postconviction evidentiary hearing?

The State of Florida stated in open court where the witnesses were gathered "[I]t is a possibility if they come on the stand and they say that their prior testimony was a lie. That is something that we as the State take very seriously. That is an offense." [PCR 1393-94] That is not true. It is an offense to willfully make contradictory statements, and each of these witnesses indicated in their affidavits

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[3] *See Fla. Stat.* §837.02 (1995); *see also Capozzi v. State,* 37 So. 3d 370 (Fla. 5th DCA 2010) (recognizing that a statute of limitations cannot be extended without violating the ex post facto clause unless, 1) the statute of limitations has not run at the time of the amendment, and 2) the legislature expresses a clear intent for the new statute of limitation to apply retrospectively.) *See also Fla. Stat.* § 775.15, which clearly lacks a clear intent for the new statute to apply retroactively.

and interviews with defense investigators that their trial testimony was coerced by threats and promises from the state, including physical assaults, threats to charge the witness with first-degree murder, threats to charge witnesses with accessory to first-degree murder, threats to take the witnesses' children and grandchildren, threats to have the witness fired from their jobs, etc. A statement coerced by state actors is by its very nature is not willful. Did these lawyers learn that coercion by police and prosecutors was being alleged in the few minutes they discussed the case with their new clients? Absent the time crunch created by the short warrant period and even shorter trial court scheduling order, no reasonable attorney would provide legal advice to a client with so little information and time to familiarize themselves with the case. The only reasonable advice for these attorneys to give would be, "I don't know enough about this case to actually advise you of the possibility of a perjury conviction, and I don't have time to review the case or research legal issues, so the safest thing to do is plead the fifth." These invocations of the fifth amendment privilege were a direct result of the impossible

situation these lawyers were put in, not a considered and well-informed decision by the witnesses.

D. The truncated briefing schedule issued by this Court in response to the short warrant period set by the Governor violates Mr. Bell's due process rights with respect to presenting this appeal

Mr. Bell's motion for postconviction relief after the death warrant was signed was not denied until 11:33am on Tuesday June 24, 2025. Counsel for Mr. Bell did not receive notice that the record on appeal in this case had been filed with this Court until 5:18pm on June 24, 2025, despite this Court having set a deadline for the filing of the record on appeal at 4:30pm on June 24, 2025. [PCR 3] Pursuant to this Court's scheduling order, Mr. Bell has until 5:00pm on Wednesday June 25, 2025, to file his initial brief. *Id.* This leaves Mr. Bell with less than twenty-four hours to prepare his initial brief. This Court's scheduling order provides appellees with a deadline of 5:00pm on Friday June 27, 2025, to file their answer brief. *Id.* Bell was given only 24-hours to prepare his initial brief, yet appellees received 48-hours to prepare their answer brief, and appellees will have had the transcripts available for preparing their answer for

three times as long as Bell did for preparing his initial brief. Ordinarily a 24-hour discrepancy in the time provided to the parties to prepare the initial and answer briefs would be entirely negligible and the natural consequence of one party having to go first. Wut where, as here, the Appellant is given 24-hours to prepare their brief, 24 additional hours is an enormous advantage.

And it is not just the short time period from when the record on appeal was filed to when his initial brief was filed. Mr. Bell's postconviction motion after the death warrant was signed was not denied by the circuit court until 11:33am on June 24, 2025. [PCR 1202] Mr. Bell could not even begin to outline his initial brief until 29.5 hours before his brief was due because he did not know whether the circuit court would deny his claims, and if so, on what grounds the circuit court would deny his claims.

This Court's briefing schedule also required any writ petitions to be filed by 1:00pm on Tuesday June 24, 2025, less than an hour and a half after the circuit court denied his postconviction motion. [PCR 3] This truncated briefing schedule thrust upon Bell and this Court by the Governor's short warrant period is nowhere near the

Due Process Clause requirement of notice and an opportunity for hearing appropriate to the nature of the case. One hour and twenty-seven minutes to file writ petitions before this Court in a death penalty case.

And it is not as if Bell's legal team could begin preparing writ petitions in the days leading up to the denial of the postconviction motion, even assuming they could accurately predict the nature of the circuit court's ruling on their motion. The evidentiary hearing in this case did not conclude until after 5:00pm on Monday June 23, 2025, and Bell's legal team had to drive home from Jacksonville to the Tampa Bay area. Every waking moment of the week following the initial discovery of *Brady/Giglio* information was spent locating additional witnesses, filing appropriate motions, attending court hearings, and preparing for the evidentiary hearing.

The record on appeal consists of 1739 pages, including a 367 transcript of the evidentiary hearing that was held on June 24, 2025. Counsel for Bell cannot possibly review the entire record on appeal and draft his brief within the less than 24-hour period he has been provided and will have to take it on blind faith that the record on

appeal is complete. This is not the notice and opportunity for hearing appropriate to the nature of the case that the due process clause of the Fourteenth Amendment demands.

In the 7-day period from when Bell first obtained reliable information from a witness that his testimony was false and had been coerced and *Brady/Giglio* evidence had been suppressed, to the completion of the evidentiary hearing on this claim, Bell obtained affidavits and other statements from six witnesses at trial that they provided false testimony and/or had been coerced. This included statements from every witness at trial whose testimony tended to incriminate Mr. Bell. The remaining witnesses at trial presented no evidence as to the identity of the shooter. Mr. Bell now has 24-hours to brief this Court on this critical issue.

This Court has denied similar claims in recent death warrant litigation, but the circumstances in those cases were entirely different. For instance, in *Tanzi v. State*, 407 So. 3d 385 (Fla. 2025), Mr. Tanzi's postconviction motion warrant after the death warrant had been signed was summarily denied, and Mr. Tanzi had seven days to file his initial brief from the date that all transcripts had been

filed in the circuit court. *Tanzi v. State*, SC2025-0371, *State v. Tanzi*, 2000-cf-573 (Fla. 6th Jud. Cir.). The same was true in *Barwick v. State*, 361 So. 3d 785, 787 (Fla. 2023) and *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037 (Fla. Apr. 25, 2025). Hutchinson had four days after his postconviction motion was denied with the benefit of all transcripts having already been filed with the circuit court to file his initial brief in a case where his motion was summarily denied and no evidentiary hearing was held. *Hutchinson v. State*, SC2025-0517; *State v. Hutchinson*, 1998-cf-1382 (Fla. 1st Jud. Cir.). Barwick had five days from the summary denial of his postconviction motion without evidentiary hearing, and four days from the filing of the ROA to file his initial brief. *Barwick v. State*, SC2023-0531; *State v. Barwick*, 86-cf-0940 (Fla. 14th Jud. Cir.).

This case is clearly distinguishable from *Tanzi*, *Hutchinson*, and *Barwick*. Each of those cases involved summarily denied postconviction motions where no evidentiary hearing was granted or conducted. Each of those defendants had significantly more time to prepare their appellate briefs, particularly given that no new evidence was presented in the circuit court. Bell had a lengthy evidentiary

hearing, granted after the circuit court determined at the *Huff* hearing that his postconviction stated a claim of newly discovered evidence in Bell's postconviction motion.

In conclusion, the unreasonably short warrant period in this case, and the resulting unreasonably short scheduling order of this Court and the resulting unreasonably short circuit court deadlines set by the trial court deprived Mr. Bell of notice and opportunity for **hearing appropriate to the nature of the case** as required by the Due Process Clause of the Fourteenth Amendment. In a case where the circuit court had determined that Bell's postconviction motion filed after the death warrant was signed sufficiently plead a claim of newly discovered evidence as to warrant the holding of an evidentiary hearing, three days from the discovery of newly discovered evidence to plead a sufficient postconviction motion is not notice and an opportunity got hearing appropriate to the nature of the case. Seven days from the discovery of newly discovered evidence is not notice and an opportunity got hearing appropriate to the nature of the case. One hour and twenty-seven minutes to file any writ petitions is not notice and an opportunity got hearing appropriate to the nature of

the case. Less than twenty-four hours to file an initial brief on the merits is not notice and an opportunity got hearing appropriate to the nature of the case. This Court should stay Mr. Bell's execution, and remand to the trial court with instructions to provide Mr. Bell a reasonable time to investigate and present his claims of newly discovered evidence.

CONCLUSION

Appellant respectfully requests that this Court (1) vacate his convictions and sentence of death and remand his case for a new guilt phase and /or penalty phase trial, or (2) grant a stay of execution and a remand for a full and complete evidentiary hearing where the witnesses are not permitted to improperly shield themselves with the Fifth Amendment and the defense has adequate time to investigate and draft and file appellate arguments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, The Office of the Attorney General (capapp@myfloridalegal.com), Assistant Attorneys General Jonathan Tannen (jonathan.tannen@myfloridalegal.com), Christina Pacheco (christina.pacheco@myfloridalegal.com), Joshua Schow (joshua.schow@myfloridalegal.com), as well as Paula Montlary (Paula.Montlary@myfloridalegal.com) and Stephanie Tesoro (Stephanie.Tesoro@myfloridalegal.com), the Florida Supreme Court (warrant@flcourts.org), Alan Seth Mizrahi (amizrahi@coj.net), Duval Clerk (James.Hathaway@DuvalClerk.com), and The Honorable Jeb T. Branham (kbend@coj.net) on this 25th day of June 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with by Fla. R. App. P. 9.210(a)(6) as it is less than 75 pages. I further certify that this document complies with the typeface requirements of Fla. R. App. P. 9.045 (b).

/s/Robert A. Norgard
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