Case No. SC2025-0891
Lower Court No. 1994-CF-9776

In the Supreme Court of Florida

MICHAEL BERNARD BELL,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

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

ANSWER BRIEF OF APPELLEE

JAMES UTHMEIER
ATTORNEY GENERAL

JONATHAN S. TANNEN
Assistant Attorney General
Florida Bar No. 70842

CHRISTINA Z. PACHECO
Senior Assistant Attorney General
Florida Bar No. 71300

JOSHUA E. SCHOW
Assistant Attorney General
Florida Bar No. 1025691

COUNSEL FOR APPELLEE

Office of the Attorney General
3507 E. Frontage Rd., Ste. 200
Tampa, FL 33607-7013
Telephone: (813) 287-7910
capapp@myfloridalegal.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

Citations in this brief to the relevant records will be as follows: the record from Michael Bell's direct appeal (SC1960-86094) will be cited as "DAR"; the trial transcript that was filed in the direct appeal will be cited as "T"; the record on appeal from the denial of Bell's initial motion for postconviction relief (SC2002-1765) will be cited as "PCR02"; and the record that has been filed in the present appeal (SC2025-0110) will be cited as "PCR25". Additionally, Issues I-III of the Initial Brief have been rearranged in an effort to aid the Court's review of the lower court's final order denying relief.

STATEMENT REGARDING ORAL ARGUMENT

The State respectfully submits that oral argument is not necessary on the appeal from the denial of Bell's current successive motion to vacate. The claims raised in this successive motion were denied because they were untimely, procedurally barred, or meritless as a matter of established Florida law, or were unsubstantiated at the evidentiary hearing held below. Accordingly, oral argument will not materially aid the decisional process.

STATEMENT OF THE CASE AND FACTS

On December 9, 1993, Defendant, Michael Bernard Bell, shot and killed Jimmy West and Tamecka Smith in Jacksonville, Florida. For both killings, Bell was convicted of first-degree murder and sentenced to death. On June 13, 2025, Governor DeSantis signed Bell's death warrant, and his execution is scheduled to occur on Tuesday, July 15, 2025, at 6:00 p.m.

I. Facts of the Crimes.

In June 1993, Theodore Wright killed Bell's brother, Lamar, in self-defense after Bell and his brother attacked Wright as part of an ongoing feud. (T:394-99). Bell swore revenge and, in the months that followed, he repeatedly told friends and relatives that he planned to kill Wright. (T:402, 440-41, 468, 498-99).

Bell was a convicted felon and was not permitted to possess firearms. In fact, Bell had only recently been released from prison on parole on May 28, 1993, after serving three years of a six-and-a-half-year sentence for armed robbery. (DAR:101). Nonetheless, Bell went to a gun store on December 8, 1993, with his girlfriend Ericka Williams, and had Williams buy him an AK-47 rifle, a 30-round magazine, and 160 bullets. (T:403-08, 414-15, 418-26).

The night after he procured the rifle, Bell gathered two friends, Vanesse "Ned" Pryor and Dale George, and told them to come with him to the Moncrief Liquor Lounge. Bell was driving his own car with George as a passenger, while Pryor drove separately in another car. When they arrived at the lounge, Bell pointed out Wright's car, a yellow Plymouth, in the parking lot. (T:437-42, 465-69).

Bell did not know that Wright had recently sold the car to Wright's half-brother, Jimmy West. (T:398-99). Bell and George waited in the parking lot until West came out of the lounge with 18-year-old Tamecka Smith and her friend, Lora Hampton. (T:282-88, 468-69). Pryor waited down the street where he could still see Bell's car. (T:442-43). As West and the two women got into the yellow Plymouth, Bell put on a ski mask, picked up the AK-47, got out of his car, and started shooting. (T:443-44, 469-71).

Bell fired twelve shots at point-blank range into West, who was sitting in the driver's seat. Bell fired another four shots into Smith, who was in the front passenger's seat. Hampton, who was standing next to the car waiting for West to unlock the rear passenger door, ducked down and escaped injury. (T:289-91, 308-09, 386, 390). After shooting West and Smith, Bell sprayed bullets toward the front of the

liquor lounge, where about a dozen people had been waiting to go inside. (T:649-58). As Bell was shooting, George moved into the driver's seat. Once Bell had finished, Bell leapt into the car and threw the AK-47 into the back seat. George then quickly drove them away from the scene. (T:470-71). Pryor, who saw Bell get out of the car and heard the gunshots, likewise drove off. (T:458-60).

Immediately after the murders, Bell went to the house of his aunt, Paula Goins. Williams met Bell there after Bell called her and asked her to bring him some clothes. (T:411, 473). At Goins' house, Bell bragged to Goins and Williams about how he killed Wright's brother and another girl. (T:410-12, 500-13). Bell told both women that he and Wright were "even now" because Wright "killed [my] brother" and "[n]ow his brother is dead." (T:412, 512-13). Williams, at Bell's urging, later submitted a false police report claiming that the AK-47 she purchased had been stolen. (T:414-15).

II. Convictions and Death Sentences.

Bell was charged in Duval County circuit court with two counts of first-degree murder. (DAR:8, 28-29). During the guilt phase, the State presented testimony from Hampton, Wright, Williams, Pryor, George, and Goins. (T:281, 394, 400, 433, 461, 496). In addition,

Henry Edwards, who knew Bell and was at the liquor lounge on the night of the murders, testified that he saw Bell put on a mask, approach a yellow car, and start shooting into it, at which point Edwards fled. (T:304-10). As well, Hampton and Mark Richardson (another patron who was outside the liquor lounge that night) both testified that the masked gunman matched Bell's height, build, and complexion. (T:301-02, 342-44). Charles Jones further testified that Bell tried to sell him an AK-47 shortly after the murders, and that Bell later told him that he killed West in revenge for his own brother's death. When Jones asked Bell why he killed the girl, Bell replied, "[B]ullets don't know nobody." (T:487-89).

Bell declined to testify and did not present any guilt-phase witnesses or evidence. (T:525-28). In closing argument, Bell's trial counsel argued that Bell may have acted in self-defense based on Goins' testimony that Bell told her that he thought he saw West reaching for a gun. (T:606-08). The jury rejected that argument and found Bell guilty as charged of both murders. (T:634-36).

At the penalty phase, the State presented testimony from a lounge security guard, Jon Lipsey, that he and seven or eight other people were in the line of fire and hit the ground when Bell shot West

and Smith and sprayed bullets in the parking lot. Lipsey further testified that Bell shot four or five bullets into a house next door to the lounge where three children were residing at the time. (T:649-59). The State also introduced evidence of Bell's 1990 conviction for armed robbery. (T:659-62). For the defense, Bell's mother testified at the penalty phase that she and Bell had received death threats from Wright and West, Bell was gainfully employed and in good mental health at the time of the murders, and she did not believe Bell committed the murders of West and Smith. (T:663-77).

The jury unanimously recommended death for both murders. (T:720-24). The trial court followed the jury's recommendations and sentenced Bell to death on both counts. (DAR:100-15). In its sentencing order, the trial court found that the following aggravating factors applied: (1) Bell was convicted of a prior violent felony; (2) Bell knowingly created a great risk of death to many persons; and (3) the killings were committed in cold, calculated, and premeditated manner ("CCP"). (DAR:108-10). The trial court found one mitigating circumstance, which it gave little weight: Bell was under an extreme mental or emotional disturbance due to the death of his brother five months before the murders. (DAR:111-12).

III. Additional Murder Convictions.

After Bell was convicted of the murders of West and Smith, he was further charged in Duval County circuit court with one count of first-degree murder for the August 19, 1993, murder of his mother's boyfriend, Michael Johnson, and with two counts of second-degree murder for the September 25, 1989, murders of Lashawn Cowart and her two-year-old son, Travis Cowart. On September 21, 1995, Bell pled guilty to second-degree murder and was sentenced to 25 years in prison on all three counts. Bell did not appeal or seek collateral relief as to those convictions. (PCR25:24-25).

IV. Direct Appeal.

As to his first-degree murder convictions and death sentences for the murders of West and Smith, Bell appealed his convictions and death sentences to this Court. Bell raised the following four issues on direct appeal: (1) the trial court failed to conduct proper *Nelson*[1] and *Faretta*[2] inquiries; (2) the trial court erred in finding CCP as an aggravating factor; (3) the trial court erred in instructing the jury on

---

1 *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973).

2 *Faretta v. California*, 422 U.S. 806 (1975).

the CCP aggravator; and (4) the trial court erred in failing to properly consider and find mitigating circumstances. This Court rejected Bell's arguments and affirmed his convictions and death sentences. *See Bell v. State*, 699 So. 2d 674, 676-79 (Fla. 1997).

Thereafter, Bell filed a petition for writ of certiorari in the United States Supreme Court. On February 23, 1998, the Supreme Court denied review. *Bell v. Florida*, 522 U.S. 1123 (1998).

V. Initial State Postconviction Proceedings.

On May 4, 1998, Bell filed a Motion to Correct Illegal Sentence under Florida Rule of Criminal Procedure 3.800(a), arguing that the consecutive nature of his two death sentences rendered them illegal. The postconviction court denied Bell's motion on June 9, 1998. Bell did not appeal that decision. (PCR25:26, 45-46).

On June 1, 1999, Bell filed an initial motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. (PCR25:33). The postconviction court summarily denied Bell's motion. On April 26, 2001, this Court reversed the summary denial and remanded the matter for an evidentiary hearing. *See Bell v. State*, 790 So. 2d 1101 (Fla. 2001) (table decision); (PCR25:26).

On remand, Bell filed an amended Rule 3.850 motion, raising 29 claims for relief. (PCR02:41-70, 111-405). The postconviction court granted an evidentiary hearing on 14 of Bell's claims, which was held on April 8, 9, and 10, 2002. Bell called more than 30 witnesses at the evidentiary hearing. (PCR02:497-98, 963-1725). Relevant here, in response to Bell's claims that the testimony of multiple witnesses was false or coerced, Henry Edwards, Charles Jones, Ned Pryor, Dale George, and Ericka Braclet (neé Williams) all testified that they were not coerced and their trial testimony was the truth. (PCR02:1045-61 (Edwards), 1062-79 (Jones), 1229-50 (Pryor), 1301-31 (George), 1334-53 (Braclet)). In addition, a detective who investigated Bell's case, Detective William Bolena, testified that he did not threaten or coerce any witness to testify and he did not feed information to any witnesses. (PCR02:1354, 1412-14). Bell's trial counsel, Richard Nichols, also testified at the postconviction hearing in response to Bell's claims of ineffective assistance of trial counsel at the guilt and penalty phases. (PCR02:1492-1682).

After the evidentiary hearing, the postconviction court denied Bell's motion in full. (PCR02:716-51). Bell appealed to this Court, challenging the denials of 24 of his claims. *See Bell v. State*, 965 So.

2d 48, 54 & n.5 (Fla. 2007). Bell also filed a petition for writ of habeas corpus, raising eight claims. *Id.* at 54 & n.6. This Court affirmed the denial of postconviction relief and denied the habeas petition. *Id.* at 55-79. The Supreme Court denied Bell's subsequent petition for writ of certiorari. *Bell v. Florida*, 552 U.S. 1011 (2007).

VI. Federal Habeas Proceedings.

On September 10, 2007, Bell filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Middle District of Florida. The district court denied the petition as untimely. *Bell v. McDonough*, No. 3:07-cv-860, 2009 WL 10698415 (M.D. Fla. Jan. 15, 2009). The Eleventh Circuit Court of Appeals affirmed, and the Supreme Court denied Bell's subsequent petition for certiorari review. *Bell v. Fla. Att'y Gen.*, 461 F. App'x 843 (11th Cir. 2012), *cert. denied*, 572 U.S. 1118 (2014).

In 2013, Bell filed a successive federal habeas petition, which the district court struck for lack of jurisdiction. Bell later filed a motion for reconsideration of that ruling, which was denied. *Bell v. Fla. Att'y Gen.*, No. 3:07-cv-860, 2016 WL 11048052 (M.D. Fla. Apr. 5, 2016). The Eleventh Circuit denied Bell's motion for a certificate of appealability, and the Supreme Court declined certiorari review. *Bell*

v. Fla. Att'y Gen., No. 16-11791, 2017 WL 11622107 (11th Cir. June 19, 2017), *cert. denied*, 584 U.S. 982 (2018). In 2017, Bell filed a motion in the Eleventh Circuit seeking leave to file an additional successive federal habeas petition, which was denied. *In re: Michael Bell*, No. 17-14768, slip op. (11th Cir. Nov. 22, 2017).

VII. Successive State Postconviction Proceedings.

Since his initial postconviction proceedings concluded in 2007, Bell has filed numerous successive motions for postconviction relief in state circuit court. All of those motions were denied or dismissed, and those decisions have all been affirmed on appeal by this Court. *See Bell v. State*, 91 So. 3d 782 (Fla. 2012) (affirming summary denial of successive postconviction motion attempting to raise a new claim of ineffective assistance of trial counsel); *Bell v. State*, No. SC2016-0369, 2016 WL 5888880 (Fla. Oct. 16, 2016) (affirming dismissal as unauthorized of *pro se* successive motion alleging that Bell's constitutional rights were violated by the circuit court's June 1998 order denying his Rule 3.800 motion); *Bell v. State*, 235 So. 3d 287 (Fla. 2018) (affirming summary denial of successive motion raising claims for relief under *Hurst v. Florida*, 577 U.S. 92 (2016)), *cert. denied*, 586 U.S. 856 (2018); *Bell v. State*, 284 So. 3d 400 (Fla. 2019)

(affirming summary denial of successive motion alleging that comments made during Bell's jury trial improperly injected racial animus into the proceedings in violation of *Buck v. Davis*, 580 U.S. 100 (2017)), *cert. denied*, 140 S. Ct. 2579 (2020).

VIII. Proceedings Under Warrant.

After Governor DeSantis signed Bell's death warrant, this Court entered an order directing that all proceedings in the trial court be concluded by June 24, 2025, at 11:00 a.m. (PCR25:3-4). The circuit court, in turn, entered a scheduling order requiring Bell to file any successive motion for postconviction relief by June 18, 2025, at 4:00 p.m.; requiring the State to file its response to the motion by June 19, 2025, at 4:00 p.m.; setting a *Huff*[3] hearing for June 20, 2025, at 12:00 p.m.; and setting an evidentiary hearing, if required, for June 23, 2025, at 9:00 a.m. (PCR25:189-91).

A. Successive rule 3.851 motion.

On June 18, 2025, Bell filed a successive postconviction motion under Florida Rule of Criminal Procedure 3.851, raising four claims for relief. (PCR25:581-610). Bell's motion sought an evidentiary

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

hearing only on his first claim, which claimed newly discovered evidence of *Brady*[4] and *Giglio*[5] violations based on affidavits allegedly signed by Henry Edwards and Charles Jones purporting to recant their trial testimony. (PCR25:584-90, 635-38, 672-75). Relevant here, Bell further argued, in Claim 3, that the 32-day warrant period was unconstitutionally short. (PCR25:590-610).

In its response in opposition, the State argued that Claim 1 should be summarily denied because Bell's motion failed to address how the claim was timely, and the purported recantations, even if accepted as true, did not satisfy the requirements for relief under the *Brady*, *Giglio*, and newly discovered evidence tests. (PCR25:1083-91). As to Claim 3, the State argued that the claim was meritless under this Court's established precedent. (PCR25:1098-99). After hearing argument from counsel at the *Huff* hearing on Friday, June 20, the lower court granted an evidentiary hearing on Claim 1, to occur the following Monday, June 23. (PCR25:1287-1371).

---

4 *Brady v. Maryland*, 373 U.S. 83 (1963).

5 *Giglio v. United States*, 405 U.S. 150 (1972).

At 9:34 p.m. on Sunday, June 22, less than 12 hours before the evidentiary hearing, Bell filed a motion for leave to amend Claim 1 to plead additional subclaims based on new statements by Braclet, Pryor, and George. Additionally, Bell sought to supplement his subclaim regarding Edwards with new statements by Edwards' ex-wife, Cathy Robertson. (PCR25:1152-79). In support, Bell attached notes of interviews of Williams, Pryor, and Jones that were conducted by investigators Colin Kelly and Christy Dickerson from the Capital Habeas Unit of the Office of the Federal Defender ("CHU") on June 16, 17, and 18, 2025, and an affidavit that was signed by Robertson and notarized by Kelly on June 18, 2025. (PCR25:1157-68).

B. Evidentiary hearing.

At the evidentiary hearing, Bell called the following witnesses:[6] (1) Tennie Martin; (2) Charles Jones; (3) Henry Edwards; (4) Colin Kelly; (5) Paula Goins; (6) Ericka Braclet; (7) Vanness Pryor; (8) Dale George; (9) Cathy Robertson; and (10) Glory Mitchell. The State called one witness: George Bateh. (PCR25:1372-76).

---

[6] The State objected to Bell calling witnesses outside of the scope of Claim 1 as originally pled, which, as discussed, related only to Jones and Edwards. (PCR25: 1135-42; 1354-55).

Martin testified that she is an attorney for CHU's Middle District of Florida Division ("CHU-M") and has represented Bell since 2018 or 2019. According to Martin, she was contacted by an attorney from CHU's Northern District of Florida Division ("CHU-N") after Bell's death warrant was signed and learned that a CHU-N investigator had spoken with Edwards and Jones while investigating another case. Martin said that, until then, she did not know Edwards and Jones were willing to recant. (PCR25:1418-22).

When Jones testified at the evidentiary hearing, however, he declined to recant his trial testimony. As to almost all questions asked by Bell's counsel on direct examination, Jones relied on his privilege against self-incrimination under the Fifth Amendment of the United States Constitution. (PCR25:1424-41).

Edwards agreed that he signed the affidavit that was attached to Bell's rule 3.851 motion, but he testified that what was written in the affidavit "wasn't true." (PCR25:1442-47). Edwards explained that he was visited by investigators Kelly and Dickerson from CHU and signed the document they presented to him, but he did not write it and never even read it before he signed it. (PCR25:1447-48, 1463-64). Edwards indicated that he initially thought Kelly and Dickerson

were making a movie about Bell. (PCR25:1449, 1465). He testified that he signed the affidavit only because the investigators told him that he needed to do so to save Bell's life. (PCR25:1448-51, 1457, 1463). In rebuttal, Bell called Kelly, who testified that he wrote the affidavit based on what Edwards told him and read the affidavit to Edwards before he signed it. (PCR25:1474-80).

Goins, Braclet, Pryor, and George all testified that they were pressured to varying degrees to testify against Bell. However, none of the four witnesses (with the possible exception of Pryor) claimed to disavow their trial testimony. (PCR25:1545-1601). They all indicated that the events happened so long ago that they could not clearly remember what occurred or what they testified to. (PCR25:1552-53, 1563, 1569-70, 1589-91, 1594-98). On some questions, Braclet, Pryor, and George invoked their rights under the Fifth Amendment. (PCR25:1570-77, 1584-89, 1594-95, 1598-1601). Robertson and Mitchell testified that Edwards was a confidential informant for Detective Bolena. (PCR25:1602-14).

Bateh testified that at the time of Bell's trial, he was the director of the homicide unit for the Duval County State Attorney's Office and the lead prosecutor in Bell's case. (PCR25:1626-27). Bateh described

the circumstances under which Goins, who was represented by counsel, was subpoenaed to testify against Bell before the grand jury and at trial. Bateh explained that he knew Goins would be reluctant to testify against her nephew, but he needed her to tell the truth. (PCR25:1627-29). Bateh further testified that he never threatened Goins to get her to testify, he did not feed Goins answers to any of the questions that he asked, and he did not do that with any of the witnesses in Bell's case. (PCR25:1630).

After the evidentiary hearing, Bell filed an "emergency" motion for reconsideration challenging the lower court's rulings allowing several of the witnesses to invoke the Fifth Amendment during their testimony. (PCR25:1199-1201). The lower court entered a written order denying the motion. (PCR25:1220-22).

C. Final Order Denying Relief.

On June 24, 2025, the lower court entered a final order denying Bell's successive rule 3.851 motion. (PCR25:1202-19).

As to Claim 1, the lower court first found that Bell's subclaims regarding Edwards and Jones were untimely. The court explained that Bell failed to present any evidence as to why CHU-N waited to reveal the alleged recantations until after the death warrant was

signed, nor did Bell ever state or present credible evidence to establish which CHU unit first learned of the recantations or when that occurred. Ultimately, because Bell failed to prove that it had been less than one year since Edwards and Jones recanted, the two subclaims were untimely. (PCR25:1206-07).

Regardless, the lower court further determined that the two subclaims were meritless. As to the subclaim regarding Edwards, "Edwards not only stood by his trial testimony, but also directly stated that the contents of the affidavit were not true." (PCR25:1207). The lower court ruled that "Edwards' failure to recant his previous testimony under oath at the evidentiary hearing is ultimately fatal to [Bell]'s claim." (PCR25:1207). Furthermore, the lower court found "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." (PCR25:1207-08). As to the Jones subclaim, the lower court held that because Jones did not recant when he appeared in court, Bell failed to meet his burden of proof. (PCR25:1208-09).

Concerning Bell's additional subclaims raised in his motion to amend filed the night before the evidentiary hearing, and his unpled

subclaim regarding Goins raised for the first time at the evidentiary hearing, the lower court found that Bell "fail[ed] to demonstrate good cause as to why he did not include these individuals in his June 18 motion or plead them at all." (PCR25:1204). The lower court ruled that, in any event, Bell failed to establish that the new subclaims were timely. The lower court observed that Bell "previously raised allegations of coercion as far back as his 2002 postconviction proceedings." (PCR25:1209). The lower court further explained that Bell had "failed to adequately allege why these claims were not discoverable with the use of due diligence during his previous postconviction proceedings." (PCR25:1209-10).

Again, however, the lower court concluded that the subclaims were without merit. The lower court summarized the testimony of Braclet, Pryor, George, and Goins, and made credibility findings as to each witness. The lower court determined, as to all four witnesses, that Bell had failed to present any newly discovered evidence of prosecutorial misconduct, and that there was no evidence that the State put on false evidence through those witnesses. (PCR25:1210-14). The lower court concluded Claim 1 as follows:

> A common theme with all of Defendant's newly discovered witnesses is that they all allegedly made incredible statements to investigators for Defendant's federal counsel, after the death warrant was signed, about systemic prosecutorial misconduct that resulted in all their trial testimony being coerced and false. However, once Defendant called them to the stand their testimony did not support Defendant's allegations. The testimony did not demonstrate prosecutorial misconduct, but rather that the State leveraged the law permissibly to prosecute Defendant's crimes.
>
> Although Defense counsel insisted the testimony established newly discovered impeachment evidence, the coercion evidence could have been discovered with due diligence. These are all witnesses with some relation to Defendant, it is reasonable that procuring their testimony might require some convincing. None of the testimony brought out at the evidentiary hearing demonstrates the State's actions were of such a threatening nature that they amounted to the prosecutorial misconduct necessary to warrant relief. Further, even if all this suggestion of supposed threats had been presented at trial, Defendant has failed to connect how the credibility of these witnesses is weakened. Defendant never makes the connection that the witnesses embellished or fabricated their testimony to avoid these threats. On the contrary, it appears all of them were appropriately aware of how important testifying truthfully was. Accordingly, to the extent it was not discussed before, the Court finds Defendant has failed to prove this evidence, both individually and cumulatively, is of such a nature that there is a reasonable probability of a different outcome had he known about it.

(PCR25:1214-15).

As to Claim 3, the lower court noted that "[a]bsent a showing of prejudice, a compressed warrant litigation schedule does not deprive

a capital defendant of due process." (PCR25:1217) (citing *Tanzi v. State*, 407 So. 3d 385, 390-91 (Fla. 2025)). And in the instant case, Bell had failed to identify any matter on which he was "denied notice and an opportunity to be heard," particularly in light of the fact that the lower court allowed him to present evidence on his "emergency" claims filed the day before the hearing. (PCR25:1217). Thus, Bell's third claim was summarily denied. (PCR25:1217).

At the end of its final order, the lower court denied Bell's successive rule 3.851 motion in full. (PCR25:1218).[7] Bell thereafter filed a notice of appeal. (PCR25:1223-24).

[7] The lower court also summarily denied Bell's second and fourth claims, as well as Bell's separate motion to interview the jurors from his 1995 trial. (PCR25:1194-96, 1215-18). Because Bell has not challenged any of those rulings in his Initial Brief, however, he has waived them in this appeal. *See Truehill v. State*, 358 So. 3d 1167, 1186 n.12 (Fla. 2022) ("To the extent that Truehill asserts new arguments in his reply brief that were not raised in his initial brief, we find that those arguments are waived.").

SUMMARY OF THE ARGUMENT

Issues I-III

The lower court's denial of Claim 1 of Bell's successive motion for postconviction relief after an evidentiary hearing is supported by competent, substantial evidence. The lower court correctly ruled that Bell: (1) failed to establish how his claims were timely, given that every witness Bell called previously testified at his 1995 jury trial, the prior 2002 postconviction evidentiary hearing, or both; and (2) Bell failed to prove his various subclaims on the merits in light of each witness's testimony and the lower court's assessment of his or her credibility on the witness stand.

The lower court also properly allowed Bell's witnesses to consult with counsel about their testimony and to invoke their Fifth Amendment privileges in response to certain questions by Bell's attorneys. The witnesses had previously testified truthfully during Bell's trial and prior postconviction proceedings, and Bell put the witnesses on the stand during his recent evidentiary hearing hoping that they would recant their prior testimony, which could have constituted perjury. The lower court was not required to force the witnesses to answer Bell's questions. Nor was the State required to

offer the witnesses immunity to protect them from potentially testifying falsely to help Bell avoid execution.

Issue IV

The 32-day warrant period did not result in any denial of due process. This Court has previously determined that the signing of a death warrant does not permit a defendant to circumvent the Florida Rules of Criminal Procedure—including time and procedural limits for successive motions—when seeking postconviction relief. None of the complaints that Bell raises in his Initial Brief amount to a denial of his due process rights, especially in light of the fact that he has had almost 30 years to litigate any postconviction claims, and his current claims were fully litigated at the evidentiary hearing conducted by the lower court.

STANDARD OF REVIEW

The postconviction court granted an evidentiary hearing on one claim raised in Bell's successive postconviction motion alleging newly discovered evidence, as well as violations under *Brady* and *Giglio* based on affidavits from two trial witnesses, Henry Edwards and Charles Jones. In reviewing this claim, this Court defers to the lower court's factual findings that are supported by competent, substantial evidence but reviews the application of the law to the facts de novo. *See Hurst v. State*, 18 So. 3d 975, 988 (Fla. 2009). "[T]his Court will not substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court." *Id.* (quoting *Blanco v. State*, 702 So. 2d 1250, 1252 (Fla. 1997)).

Moreover, the trial court's decision on a recantation claim will not be overturned on appeal absent an abuse of discretion. *Dailey v. State,* 965 So. 2d 38, 46 (Fla. 2007). Recantation testimony is considered "exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. Especially is this true where the recantation involves a confession of perjury." *State v. Spaziano*, 692 So. 2d 174, 177 (Fla. 1997). When

there is conflicting testimony, it is within the "the trial court's discretion to find the state's witnesses more credible than those of the defense." *Kight v. Dugger*, 574 So. 2d 1066, 1073 (Fla. 1990); *see also Dailey*, 965 So. 3d at 46 ("Because recantation testimony entails a determination as to the credibility of the witness, this Court will not substitute its judgment for that of the trial court on issues of credibility so long as the decision is supported by competent, substantial evidence.") (quotation marks omitted); *Robinson v. State*, 865 So. 2d 1259, 1262 (Fla. 2004) (giving deference to the trial court's fact-based determination that a recantation was not credible); *Sochor v. State*, 883 So. 2d 766, 785-86 (Fla. 2004) (deferring to the circuit court's factual finding that the prosecutor never instructed a witness to lie, when the only evidence suggesting that was one witness's postconviction testimony that was contradicted by both his trial testimony and the prosecutor's postconviction testimony).

Bell's remaining postconviction claims were summarily denied. Bell chose to raise only one summarily denied claim on appeal—his due process claim challenging the time limits surrounding the death warrant litigation. When a trial court summarily denies a claim raised in a postconviction motion, the standard of review for the appellate

court is de novo. *Duckett v. State*, 148 So. 3d 1163, 1698 (Fla. 2014). "Because a court's decision whether to grant an evidentiary hearing on a rule 3.851 motion is ultimately based on written materials before the court, its ruling is tantamount to a pure question of law, subject to de novo review." *Hunter v. State*, 29 So. 3d 256, 261 (Fla. 2008). The remaining claims in Bell's postconviction motion that have not been raised on appeal have been waived. *See Truehill v. State*, 358 So. 3d 1167, 1186 n.12 (Fla. 2022); *Hojan v. State*, 212 So. 3d 982, 995 (Fla. 2017) (finding constitutional challenges presented in postconviction proceeding waived for not being raised in the appellate briefing).

ARGUMENT

ISSUES I-III

THE LOWER COURT PROPERLY DENIED CLAIM 1 OF BELL'S SUCCESSIVE POSTCONVICTION MOTION AS BOTH UNTIMELY AND MERITLESS.

In Claim 1 of his successive rule 3.851 motion filed after his death warrant was signed, Bell alleged newly discovered evidence of *Brady* and *Giglio* violations. The claim was premised on affidavits from Henry Edwards and Charles Jones, who previously testified at Bell's 1995 jury trial and 2002 postconviction evidentiary hearing. The affidavits claimed that Edwards' and Jones' prior testimony was not true, and that they were pressured to testify by Detective Bolena and the prosecutor. (PCR25:584-90, 635-38, 672-75). After the lower court granted an evidentiary hearing on Claim 1, Bell attempted to amend the claim to add similar subclaims regarding Erica Williams Braclet, Vanesse "Ned" Pryor, and Dale George, who also previously testified in 1995 and 2002. (PCR25:1152-79). At the hearing itself, Bell attempted to raise another such subclaim regarding his aunt, Paula Goins, who testified at his 1995 jury trial. (PCR25:1546-61).

All of these claims were properly denied after the evidentiary

hearing. First, Bell failed to explain–either in his rule 3.851 motions or at the evidentiary hearing–why these claims could not have been presented sooner given that all of these witnesses have been known to him for decades. As a consequence, Bell failed to meet his burden to prove that Claim 1 was timely under rule 3.851(d)(2).

Second, the postconviction court properly determined that Bell's claims were not proven based on the testimony presented at the evidentiary hearing and its assessment of each witness's credibility (or lack thereof). Because the lower court's credibility determinations are supported by competent, substantial evidence, this Court must affirm the denial of Claim 1.

I. Bell Failed to Plead or Prove that Any of His Subclaims Are Timely Under Rule 3.851(d)(2).[8]

"[P]ostconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final." *Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024) (citing Fla. R. Crim. P. 3.851(e)(2)). A claim filed outside the one-year period is untimely unless one of the following circumstances exists:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and

[8] Issue II.A. of Bell's Initial Brief.

> could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2).

"It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020). When a claim relies on purported newly discovered evidence, the defendant bears the burden to establish "that the newly discovered evidence was unknown by the trial court, by the party, or by counsel at the time of trial and it could not have been discovered through due diligence." *Cole*, 392 So. 3d at 1061 (quoting *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023)).

As a threshold matter, Bell's successive rule 3.851 motion was legally insufficient on the question of timeliness. While the affidavits from Edwards and Jones were dated June 16, 2025, and June 18, 2025–respectively three and six days after the death warrant was signed–Bell's motion was silent as to when Bell learned that Edwards and Jones were allegedly willing to recant and why he could not have

discovered that information sooner. Indeed, Bell's motion failed to address rule 3.851(d)(2) at all. The motion merely contained boilerplate statements, as to both Edwards and Jones, that "[t]his 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." (PCR25:587, 590).

Bell's proposed amended motion contained the same boilerplate statements regarding Braclet, Pryor, and George. (PCR25:1176-78). The amended motion was premised on interviews of those three witnesses that were conducted by CHU investigators on June 16, 17, and 18, 2025. (PCR25:1157-62, 1167-68). Again, Bell did not explain why those witnesses could not have been interviewed sooner, given that all three testified in both 1995 and 2002.

The dates of the affidavits and interviews were not sufficient, standing alone, to establish timeliness. This Court's decision in *Mungin* is closely on point. There, Mungin filed a third successive postconviction motion nearly 20 years after his trial that was based on an affidavit signed by a trial witness, Deputy Gillette, purporting to recant his trial testimony. *Mungin*, 320 So. 3d at 625. As here, Mungin alleged that the State violated *Brady* and *Giglio* by "failing to

divulge" the false testimony and "allowing Gillette to give false testimony at trial," "and that the information in Gillette's affidavit was newly discovered evidence that was likely to produce an acquittal at retrial." *Id.* This Court ruled that the claim was untimely under rule 3.851(d), explaining that "Deputy Gillette signed his affidavit on September 24, 2016, but Gillette was a known witness who was available to the defense since Mungin's 1997 trial." *Id.* at 625-26. Moreover, the "postconviction motion offer[ed] no explanation as to why Gillette's evidence could not have been ascertained long ago by the exercise of due diligence." *Id.* at 626.

Similarly, Bell's motion offered no explanation as to why Bell's counsel could not have interviewed the witnesses sooner. As the lower court pointed out in its final order, Bell's initial postconviction motion contained similar allegations regarding false testimony and police and prosecutorial coercion. (PCR25:1209); *see Bell*, 965 So. 2d at 61 ("Bell asserts that before trial, he told Nichols that a tape existed in which Williams confessed that her statements and testimony were coerced by Detective William Bolena of the Duval County Sheriff's Office, the lead investigator in this case."), 62 (recounting testimony by Andre Mays at the 2002 evidentiary hearing that Jones testified

against Bell in exchange for special favors while he was in jail), 73 (claim that George and Williams testified falsely against Bell because they were angry over a videotape they had seen that showed Bell having sex with George's girlfriend). At the 2002 hearing, Edwards, Jones, Pryor, George, and Williams all denied that they were coerced to testify or testified falsely at trial. (PCR02:1060-61, 1066, 1245, 1321-24, 1344). Detective Bolena likewise testified that he did not threaten or coerce any witness to testify, and that he did not feed information to any witnesses. (PCR02:1354, 1412-14).

"[M]ere conclusory allegations do not warrant an evidentiary hearing." *Cole*, 392 So. 3d at 1061. Bell's motion and amended motion alleged no facts to explain when Bell or his counsel learned that the trial witnesses were willing to recant, and why the alleged recantations could not have been obtained sooner. Consequently, Bell's motion was facially insufficient. *See, e.g.*, *Dailey v. State*, 283 So. 3d 782, 790 (Fla. 2019) (finding Dailey's newly discovered evidence claim based on a trial witness was untimely where "Dailey neglect[ed] to explain why he could not have discovered the information to which Slater testified either prior to trial or at some point during the decades that followed"); *Riechmann v. State*, 966 So.

2d 298, 307 (Fla. 2007) ("In short, the record is clear that the defense had long been aware of Veski's role in the case, including his claims of pressure from the prosecution. However, no legal justification for failing to assert this claim at an earlier time was offered to the trial court below to overcome the procedural bar for claims raised in successive postconviction motions."); *see also Rogers*, No. SC2025-0585, 2025 WL 1341642 at *4 (Fla. May 8, 2025) (finding Rogers' conflict-of-counsel claim procedurally barred where Rogers ceased communication with his counsel in 2021, but he waited until after the warrant was signed in 2025 to raise the claim). The State should not have been required to guess, before the evidentiary hearing was held, at Bell's theory for why his claims were timely.

Nonetheless, the lower court gave Bell the opportunity to show that his claim was timely at the evidentiary hearing. But Bell failed to meet his burden. In an effort to overcome the time bar, Bell called his federal counsel, Tennie Martin of CHU-M, who testified that after Bell's death warrant was signed, she was informed by an attorney from CHU-N that CHU-N had been in contact with witnesses from Bell's case several months earlier. That communication, according to

Martin, led CHU-M investigators to interview Edwards and Jones and obtain the affidavits from them. (PCR25:1420-21).

Martin's testimony left crucial questions unanswered. Bell asserts in his Initial Brief that the CHU offices are different entities and that the knowledge of one cannot be imputed to the other. Bell, however, presented no evidence of that at the evidentiary hearing. But even assuming for the sake of argument, as the lower court did, that the offices are separate, it is still unclear why Bell's counsel could not have discovered the information earlier. Bell presented no evidence to explain what prompted CHU-N to speak to Edwards and Jones, when that information was obtained, and why CHU-M could not also have interviewed them prior to the warrant. *Cf. Bates v. State*, 398 So. 3d 406, 408 (Fla. 2024) ("Bates does not say when he discovered the alleged family relationship between the juror and the victim. That is the end of the matter, for it is Bates's burden to establish good cause to excuse the long delay–which he is hard-pressed to do without explaining the timing of all this.").

Citing *Waterhouse v. State*, 82 So. 3d 84, 104 (Fla. 2012), Bell argues that he should not be required to "continuously check in with [the trial witnesses] over a 30-year period to determine if they wished

to change their testimony." Init. Br. at 49. The State is not suggesting otherwise. Nevertheless, *something* led CHU-N and CHU-M to believe that Edwards and Jones might be willing to change their testimony. Without explaining what that something was, and when it occurred, Bell failed to establish that the alleged recantations could not have been presented more than one year before the death warrant was signed through the exercise of due diligence.

Moreover, Bell presented no evidence at all to explain what led CHU-M to send investigators to interview Braclet, Pryor, and George, and to summon Goins to testify at the evidentiary hearing. It appears, rather, that CHU-M merely approached those witnesses to see if they might be willing to change their testimony 30 years after Bell's jury trial–precisely what Bell argues he should not have been required to do. If that is the case, then there is no reason why those witnesses could not have been approached years ago. And if Bell's counsel approached those witnesses based on the same information that led them to approach Edwards and Jones, then Bell's failure to specify what that information was and when it was learned is likewise fatal to his subclaims regarding those additional witnesses. As the lower court stated, "[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, especially in light of individuals who the State no longer had leverage over like Ned Pryor and Paula Goins." (PCR25:1209-10).

Ultimately, Bell failed to plead or prove that the new claims in his latest successive motion were previously "unknown to [Bell] or [his] attorney and could not have been ascertained by the exercise of due diligence." Fla. R. Crim. P. 3.851(d)(2)(A). Accordingly, the lower court correctly denied Claim 1 as time-barred.

II. Regardless, Competent, Substantial Evidence Supports the Denials of Bell's Subclaims on the Merits Following the Evidentiary Hearing Conducted Below.[9]

On the merits, Bell raised a combined *Brady*, *Giglio*, and newly discovered evidence claim. The lower court properly found, after considering the testimony at the evidentiary hearing, that Bell failed to prove the elements of any of those types of claims.

"To establish a *Brady* violation, a defendant must show: (1) evidence favorable to the accused, because it is either exculpatory or

[9] Issue II.B.-*I.* of Bell's Initial Brief.

impeaching; (2) that the evidence was suppressed by the State, either willfully or inadvertently; and (3) that prejudice ensued." *Davis v. State*, 383 So. 3d 743, 756 (Fla. 2024) (quoting *Guzman v. State*, 868 So. 2d 498, 508 (Fla. 2003)). "To establish materiality or prejudice under *Brady*, the defendant must demonstrate . . . a reasonable probability that the [factfinder's] verdict would have been different had the suppressed information been used at trial." *Id.* (original alterations, some quotation marks omitted) (quoting *Sheppard v. State*, 338 So. 3d 803, 827 (Fla. 2022)).

"To establish a *Giglio* violation, a defendant must demonstrate: '(1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material.'" *Truehill v. State*, 358 So. 3d 1167, 1183 (Fla. 2022) (quoting *Guzman v. State*, 868 So. 2d 498, 505 (Fla. 2003)). "A statement is considered material under *Giglio* if 'there is a reasonable probability that the false evidence may have affected the judgment of the jury.'" *Id.* (quoting *Ventura v. State*, 794 So. 2d 553, 563 (Fla. 2001)). "In analyzing this issue . . . courts must focus on whether the favorable evidence could reasonably be taken to put the whole case in such a different light as

to undermine confidence in the verdict." *Id.* at 1183-84 (original alteration) (quoting *Ventura*, 794 So. 2d at 563).

"To establish a claim of newly discovered evidence, a defendant must satisfy the two-prong test set forth in *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998)." *Id.* at 1184. To prevail under *Jones*, (1) "in order to be considered newly discovered, the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence," and (2) "the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial." *Id.* at 1185 (cleaned up) (quoting *Jones*, 709 So. 2d at 521). Under the second prong, the court "is required to consider all newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Id.* (cleaned up) (quoting *Jones*, 709 So. 2d at 521).

Here, Bell failed to establish the existence of any favorable evidence suppressed by the State or any false testimony that the State failed to correct. Nor was there any new evidence that would likely produce an acquittal on retrial. Indeed, none of the witnesses

at the evidentiary hearing credibly recanted their trial testimony or presented any new, material information.

A. Henry Edwards.

In his first subclaim, Bell alleged newly discovered evidence in the form of Edwards' recantation of his trial testimony. In an affidavit attached to Bell's motion, Edwards purportedly claimed that he did not see the murders because he was inside the liquor lounge at the time of the shootings, and that he lied at trial in exchange for favors from Detective Bolena. (PCR25:586-88, 635-38).

At the evidentiary hearing, however, Bell stood by his trial testimony and testified that the contents of the affidavit were not true. (PCR25:1442-47). Edwards explained that he was visited by CHU investigators Kelly and Dickerson and signed the document they presented to him, but he did not write it and never even read it before he signed it. (PCR25:1447-48, 1463-64). Edwards testified that he signed the affidavit only because the investigators told him that he needed to do so to save Bell's life. (PCR25:1448-51, 1457, 1463). In rebuttal, Bell called Kelly, who testified that he wrote the affidavit based on what Edwards told him and read the affidavit to Edwards before he signed it. (PCR25:1474-80).

The lower court found Edwards' testimony that he did not know what was in the affidavit to be "more credible" than Kelly's testimony that the affidavit reflected Edwards' statements. (PCR25:1207-08). According to the lower court, "Edwards testified sincerely that he only signed the affidavit because he believed, based on the CHU Investigators' representations, that doing so would save [Bell]'s life," and Edwards "seemed genuinely confused as to who exactly the CHU Investigators were." (PCR25:1208). The lower court concluded that in light of "Edwards' failure to recant and his additional evidentiary hearing testimony, [Bell]'s claim that Edwards previously testified falsely is without merit." (PCR25:1208).

The foregoing credibility findings are supported by competent, substantial evidence. First, the lower court had the advantage of seeing Edwards and Kelly in person and judging their sincerity face-to-face. As this Court has explained, "[p]ostconviction courts hold a superior vantage point with respect to questions of fact, evidentiary weight, and observations of the demeanor and credibility of witnesses." *Sweet v. State*, 248 So. 3d 1060, 1066 (Fla. 2018) (quoting *Ibar v. State*, 190 So. 3d 1012, 1018 (Fla. 2016)). "Unlike this Court, the trial judge is there and sees and hears the witnesses

presenting the conflicting testimony. The cold record on appeal does not give appellate judges that type of perspective." *Id.* (cleaned up) (quoting *Spann v. State*, 91 So. 3d 812, 816 (Fla. 2012)).

Second, Edwards had previously testified twice under oath. In his 1995 testimony, he testified in detail regarding the facts of the shooting. He explained that he had known Bell for about six months at that point through his friend Glory Mitchell, that he saw Bell put on a ski mask, pick up a gun, and start shooting at Moncrief Liquor Lounge on December 9, 1993, and that he (Edwards) fled because he was on parole and not supposed to be at a place that served liquor. He testified at trial that he told that story to the police and got no deal in exchange for his testimony. (T:303-15). At the evidentiary hearing in 2002, Edwards repeated the same version of the events. He further testified that the prosecutor, Bateh, always told him to tell the truth, and that neither Detective Bolena nor anyone else fed him information about what to say. (PCR02:1045-61).

"[R]ecanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true." *Sweet*, 248 So. 3d at 1066 (quoting *Consalvo v. State*, 937 So. 2d 555, 561 (Fla. 2006)). "If a postconviction court 'is

not satisfied that the recanted testimony is true, *it has a duty to deny the defendant a new trial.*'" *Id.* (original emphasis) (quoting *Heath v. State*, 3 So. 3d 1017, 1024 (Fla. 2009)). In this case, Edwards did not recant at all, and the postconviction court found that Edwards was credible when he testified that he did not know what was in the affidavit and that he only signed it to help Bell. Because those findings are supported by competent, substantial evidence, the denial of Bell's first subclaim must be affirmed.

At the evidentiary hearing, Bell presented additional evidence, through Cathy Robertson (Edwards' ex-wife) and Glory Mitchell that Edwards at some point acted as a confidential informant for Detective Bolena. (PCR25:1602-05, 1611-14). The lower court correctly held that in light of Edwards' failure to recant, "the testimony about his role as a confidential informant is no longer relevant to [Bell]'s Subclaim (1)." (PCR25:1208). Furthermore, any claim based on Edwards' role as an informant could not be considered newly discovered, and was therefore untimely, because Detective Bolena in fact testified at the 2002 hearing that Edwards acted as his informant in a separate case. (PCR25:1208); (PCR02:1370-74). As well, Mitchell

and Robertson both testified at the 2002 hearing and were thus known by and available to Bell. (PCR02:1017-23, 1090-1102).

B. Charles Jones.

Bell's second subclaim was based on a similar affidavit signed by Jones in which Jones purportedly stated that his trial testimony was false and that he lied at trial at the behest of Detective Bolena. (PCR25:588-90, 672-75). Jones affirmed at the evidentiary hearing that he signed the affidavit, but otherwise, he refused to answer any questions, citing the Fifth Amendment. (PCR25:1424-41). The lower court held that because "Jones did not recant and did not testify," there was "nothing to evaluate the credibility of." (PCR25:1209). The lower court held that like Bell's subclaim regarding Edwards, Bell's subclaim regarding Jones failed "because Jones was not willing to testify to any of his alleged recantations and, thus, [Bell had] failed to meet his burden of proof." (PCR25:1209).

The lower court's ruling was correct. In the absence of in-court testimony, there was no admissible evidence supporting a claim of newly discovered evidence based on Jones' alleged recantation. The affidavit, standing alone, was not admissible evidence on that point. *See Dailey v. State*, 279 So. 3d 1208, 1213-14 (Fla. 2019) (affirming

denial of newly discovered evidence claim based on affidavit taking sole responsibility for the murder, where the affiant invoked the Fifth Amendment when questioned about the affidavit); *Robinson v. State*, 707 So. 2d 688, 691 (Fla. 1998) ("The absence of direct testimony by the alleged recanting witness is fatal to this claim. In the end, therefore, Fields' unauthenticated, untested affidavit proffered by Robinson is nothing more than hearsay, *i.e.*, an out-of-court statement offered to prove the truth of the matter asserted, which is inadmissible because Robinson does not claim, nor do we find, that it comes within any hearsay exception.").

Additionally, the Jones subclaim suffered from essentially the same defects as the Edwards subclaim. Jones testified in detail at trial regarding his encounters with Bell, and he testified at the 2002 hearing that he was never coerced in any way regarding his trial testimony and that his trial testimony was the truth. (T:483-94); (PCR02:1066). Ultimately, there was no admissible evidence to support Bell's claim that Jones' trial testimony was false, and thus, Bell failed to carry his burden as to this subclaim.

C. Ericka Williams Braclet.

In Subclaim (3) of his proposed amended motion, Bell alleged that Williams denied knowing any information about the case until she was threatened by Bateh and Detective Bolena with prosecution as an accessory to first-degree murder. (PCR25:1176-77). At the evidentiary hearing, Williams testified that she was summoned to a police station for questioning, placed in an interrogation room for hours, and treated meanly by the officers. (PCR25:1575-76). When asked about her trial testimony that she went to Goins' house and talked with Bell about the case, Williams said that she did not recall because it was "over 30-some years ago." (PCR25:1569-71). When asked about her statements to the CHU investigators, Williams refused to answer under the Fifth Amendment. (PCR25:1570, 1573-74). When asked if her testimony in front of the jury was the truth, Williams said she did not recall. (PCR25:1578).

The lower court stated that, after observing Williams' demeanor and listening to her testimony, it found "the testimony that she did give to be credible." (PCR25:1210-11). However, it found that Bell's "allegations of newly discovered impeachment evidence that the State pressured and intimidated [her] to testify . . . are not proven. Rather, it appear[ed] the State generally outlined the reasonable possible

outcomes Ms. Williams faced if she refused to testify about what she had heard [Bell] say regarding the murders or her purchasing the gun [Bell] used in the murder[s], knowing [that Bell] was a convicted felon." (PCR25:1211). In total, the lower court found no evidence that the State "knowingly put on false testimony through Erica Williams' trial testimony." (PCR25:1211). Thus, the lower court again found that Bell had failed to meet his burden of proof.

Again, the lower court's findings are supported by competent, substantial evidence. Williams' testimony that she was interrogated and pressured to testify at trial under the specter of her own possible prosecution was neither surprising nor especially probative in light of the fact that she purchased the gun Bell used in the murders (which was corroborated by trial testimony from the gun store's manager), and later made a false police report claiming the gun had been stolen. (T:403-08, 414-15, 418-26). Further, Williams did not disavow her previous testimony, indicating, instead, that she could not remember what she said over 30 years ago. And as with other trial witnesses, Williams previously testified in 2002 that her trial testimony was the truth. (PCR02:1344). Under these circumstances,

the lower court properly found that Bell failed to prove that any false testimony was presented at trial through Williams.

D. Vanesse "Ned" Pryor.

In Subclaim (4) of his amended motion, Bell alleged that Pryor told the CHU investigators that the prosecutor, Bateh, threatened to charge him with first-degree murder if he did not testify falsely against Bell, and that his trial testimony was fed to him by Bateh. According to the investigators' notes, however, Pryor refused to sign an affidavit to that effect. (PCR25:1161-62, 1177-78).

At the evidentiary hearing, Pryor testified that he recalled meeting with the investigators, but he did not recall telling them that Bateh threatened him. He initially stated that he didn't recall seeing Bell with a gun that night and wasn't on the scene, but upon further questioning, he invoked the Fifth Amendment. (PCR25:1580-85). He agreed that he was in jail at the time of Bell's 1995 trial, but he did not recall what he was in jail for. He agreed that he was released from jail sometime after he testified, but he did not think his release had anything to do with Bell's case. (PCR25:1585-86). He did not recall what he testified to in 1995 or 2002. (PCR25:1587-91). He testified

that, at the time of the 2002 hearing, he was out of jail and was not facing any pending charges. (PCR25:1591).

The lower court found that, after observing Pryor's demeanor and listening to his testimony, the testimony that he gave was "not credible." (PCR25:1211-12). The lower court explained that "Pryor appeared to be confused, and he lacked memory about what he testified to at trial." (PCR25:1212). The lower court held that Bell's allegations of newly discovered evidence that the State pressured and intimidated Pryor to testify were not proven, and that Bell also failed to prove that the State knowingly presented false testimony through Pryor. Consequently, Bell failed to meet his burden of proof, and Subclaim (4) was denied on that basis. (PCR25:1212).

The lower court's ruling is supported by competent, substantial evidence. The lower court had the benefit of viewing Pryor in open court and was able to judge his credibility on the witness stand. Based on its unique vantage point, and its observation that Pryor appeared confused and legitimately did not recall his prior testimony from 30 and 23 years earlier, the lower court properly found Pryor's most recent testimony, including his assertions that he did not see Bell with a gun and was not at the liquor lounge that night, to be not

credible. *See Sweet*, 248 So. 3d at 1066. The lower court's credibility finding is further supported by Pryor's detailed trial testimony in 1995 describing what he saw on the night of the murders, and his 2002 testimony confirming that his trial testimony was true. (T:433-61); (PCR02:1231-50).[10] Its ruling is supported, as well, by Bateh's testimony at the evidentiary hearing that he did not "feed" testimony to any of the witnesses in Bell's case. (PCR25:1630). Thus, the lower court's ruling concerning Pryor must be affirmed.

E. Dale George.

In Subclaim (5) of his amended motion, Bell alleged that George told the CHU investigators that Bateh threatened to charge him with first-degree murder if he did not testify against Bell. George also allegedly stated that Detective Bolena used physical violence against him on one occasion. Like Pryor, George refused the investigators' requests that he sign an affidavit. (PCR25:1167-68, 1178).

---

[10] Pryor testified in 1995 that he was in jail on pending charges of crack cocaine possession and resisting without violence, and that Detective Bolena interviewed him about the Moncrief killings after he was arrested for throwing a brick through his girlfriend's window, but he denied that he testified in exchange for any agreement with the State. (T:433-35, 448-49). In 2002, Pryor again testified that he was not offered anything in return for his testimony and that no one influenced his statements. (PCR02:1232-35).

At the evidentiary hearing, George testified that he remembered speaking with the investigators, but he did not recall telling them any of the things that were written in their interview notes. George explained that he had "been under a lot of stress" and could not recall what he said. (PCR25:1595). He agreed that he was familiar with Detective Bolena. But when asked if he dealt with Detective Bolena in this specific case, George replied that it had been 30 years and he could not remember. (PCR25:1597-98). When asked if he told the CHU investigators that Detective Bolena "clotheslined" him, George invoked the Fifth Amendment and declined to answer any further questions about Bell's case. (PCR25:1598-1601).

The lower court wrote in its final order that, after observing George's demeanor and listening to his testimony, it found the testimony that he did give to be credible. On that basis, the lower court ruled that Bell's allegations of newly discovered impeachment evidence that the State pressured and intimidated George to testify were not proven, and that there was no evidence the State knowingly put on false trial testimony through George. Subclaim (5) of Bell's amended motion was therefore denied. (PCR25:1212-13).

The lower court's ruling is supported by competent, substantial evidence. As with Pryor, the lower court was able to view George in person and judge his credibility. *See Sweet*, 248 So. 3d at 1066. The lower court properly found George credible when he testified that he could not remember what occurred in this case or what he testified to at trial more than 30 years ago. Importantly, George did not claim that any portion of his trial testimony was false. Moreover, as with the prior trial witnesses, George's 1995 trial testimony was highly detailed as to the facts of the murders, and George affirmed at the 2002 hearing that his previous trial testimony was true. (T:461-83); (PCR02:1301-33). In 1995, George told the jury that he pled guilty and was awaiting sentencing on the crime of accessory after the fact in the Moncrief murders, and that he reached a plea deal with the State to limit his exposure to prison if he testified truthfully at Bell's trial. He agreed that when he first spoke with Detective Bolena, he lied about his involvement in the case, but he confessed to his role in the murders about two months later. (T:462-64). In 2002, George testified that no one coerced him to testify against Bell, that Detective Bolena never used force against him, and that he decided to tell the truth after sitting in jail for several months and thinking about his

life. (PCR02:1305-13, 1320-24). In light of George's prior testimony and the lower court's credibility findings, the denial of Subclaim (5) of Bell's amended motion must be affirmed.

F. Paula Goins.

Bell did not raise any claim at all regarding Paula Goins, either in his original or proposed amended motions. Rather, Bell called Goins to testify at the evidentiary hearing, and Bell's counsel argued in closing, for the first time, that her testimony constituted newly discovered evidence. (PCR25:1546-65, 1649-51).

Even so, the lower court properly found that Bell failed to prove any newly discovered evidence of false testimony or prosecutorial misconduct through Goins. Rather, Goins stated only that Detective Bolena and Bateh pressured her to testify truthfully about what she heard Bell say on the night of the murders. (PCR25:1547-51). Goins also stated that she was represented by counsel at the time and that her counsel was present whenever she spoke to investigators or testified. (PCR25:1551-52). According to Goins, she was subpoenaed to come to court and could have been held in contempt if she refused to testify. (PCR25:1555). Goins indicated that she thought Bell said "we" instead of "I" when he talked about the murders that night.

(PCR25:1556). However, she also said that she could not remember the specifics of what occurred because it was "so long ago," she felt "traumatized" by the experience, she was a cancer survivor and had been through "intense radiation treatments," and she had "tried to block all details of that night out." (PCR25:1552, 1562-63). When directly asked if she in fact heard the things she testified to at trial, Goins answered, "Yes." (PCR25:1560-61).

As the lower court correctly found, Goins' testimony would not have supported a newly discovered evidence claim even if one had been pled. That Goins did not testify willingly was not new evidence; rather, Goins testified at Bell's trial that she loved her nephew and did not want to be there. (T:496-98). At one point during her trial testimony, the trial court had to declare a recess to allow Goins to compose herself. The transcript reflects that Goins was accompanied by her attorney, Mr. Weinbaum. (T:501-02).

Further, at the evidentiary hearing, Goins did not recant her trial testimony and confirmed, instead, that she testified truthfully. The lower court ruled that in light of Goins' age, cancer treatments, the length of time since the trial, and murders, and Goins' "self-admitted attempts to block any memories of the night because of the

trauma it has caused her," it could not "find her completely reliable as to the specifics of her testimony yesterday," the lower court did "find her credible that she testified truthfully at trial." (PCR25:1214). Further, the only sanction Goins cited to was to potentially be held in contempt if she did not appear at Bell's trial. But as the lower court pointed out, "contempt is a legal consequence for failure to appear in response to a subpoena." (PCR25:1214). Additionally, Bateh testified at the evidentiary hearing that Goins was subpoenaed to come into court because she was reluctant to testify against her nephew, that he did so because he needed her to tell the truth, and that he never threatened her to get her to testify or fed her answers to any of the questions that he asked. (PCR25:1627-30).

In the end, there was no evidence of any State misconduct or false testimony by Goins. Thus, even if Bell had pled a claim based on Goins' testimony, the lower court properly found that Bell was not entitled to any relief. (PCR25:1214).

G. Materiality/Prejudice.

Finally, to the extent that any of the foregoing witnesses could be considered to have presented newly discovered evidence of any

Brady or *Giglio* violation, Bell failed to satisfy the materiality or prejudice prong of either type of claim.

As the trial court observed in its sentencing order, the State proved by "overwhelming evidence" at trial that Bell committed the murders of West and Smith. (DAR:113). Bell's trial counsel, Nichols, said the same thing at the 2002 evidentiary hearing. According to Nichols, Bell never told him anything that Nichols could use in Bell's defense, and when he asked Bell about the possibility of an alibi, Bell would not provide one. Bell would only tell Nichols that the State would have to prove its case in court and that he didn't think the State's witnesses would testify against him. According to Nichols, Bell seemed "surprised" when the witnesses did appear. (PCR02:1517-18, 1535). At that point, Bell suggested for the first time that Nichols pursue a self-defense claim, which Nichols admitted that the facts of the case did not support. (PCR02:1524-26).

At the evidentiary hearing on Claim 1 of Bell's most recent successive rule 3.851 motion, Bell presented nothing that would undermine the trial evidence presented in 1995 establishing that Bell, in fact, committed the murders. There was no new evidence of such a nature that, if it had been presented at trial, there was a

"reasonable probability" of a different verdict. *See Davis*, 383 So. 3d at 756; *Truehill*, 358 So. 3d at 1183. For that reason, as well, Bell's first claim fails and was correctly denied.

III. Bell's Assertions that the Lower Court Reversibly Erred by Allowing Some Witnesses to Invoke Their Rights Under the Fifth Amendment are Meritless.[11]

The Fifth Amendment of the United States Constitution precludes any person from being "compelled in any criminal case to be a witness against himself[.]" Amend. V, U.S. Const. And the Florida Constitution, likewise, prohibits any person from being "compelled in any criminal matter to be a witness against oneself." Art. I, § 9, Fla. Const. The Fifth Amendment privilege against self-incrimination is "fundamental to our system of constitutional rule." *Miranda v. Arizona*, 384 U.S. 436, 468 (1966). Courts have been clear that, even in the trial context, a witness's privilege against self-incrimination trumps a defendant's compulsory process rights. *See Landeverde v. State*, 769 So. 2d 457, 461 (Fla. 4th DCA 2000) (explaining that the Sixth Amendment right to compulsory process

---

11 Issue I of Bell's Initial Brief.

yields to a valid assertion of the Fifth Amendment's self-incrimination protection); *United States v. Cuthel*, 903 F.2d 1381, 1384 (11th Cir. 1990) ("While there is arguably a conflict between a witness's fifth amendment privilege and a defendant's sixth amendment right to compulsory process, such conflict long ago was resolved in favor of the witness's right to silence.").

The provision against self-incrimination "must be accorded liberal construction in favor of the right it was intended to secure." *Hoffman v. United States*, 341 U.S. 479, 486 (1951). The privilege extends to answers that would support a criminal conviction as well as "those which would furnish a link in the chain of evidence" needed to prosecute the witness. *Id.* (citing *Blau v. United States*, 340 U.S. 159 (1950)). It is up to the court to determine whether a witness's silence is "justified," and it should require a witness to answer only "if it clearly appears" that "he is mistaken." *Hoffman*, 341 U.S. at 486 (citing *Temple v. Commonwealth*, 75 Va. 892, 899 (Va. 1881)).

Bell claims that the lower court improperly allowed witnesses to assert the Fifth Amendment on "significant portions of their testimony." Init. Br. at 11. While some witnesses invoked the Fifth Amendment during their testimony, the court several times advised

witnesses to answer questions despite the witnesses having invoked. Bell, however, argues that the lower court should have required the witnesses to answer all the questions he asked.

Notably, the lower court highlighted that all witnesses who asserted their privilege against self-incrimination were defense witnesses, not state witnesses using the Fifth Amendment to "avoid answering hard questions on cross-examination." (PCR25:1221). The court further noted that Charles Jones, Henry Edwards, and Ned Pryor had the benefit of consultation with counsel before taking the stand. "Only one witness—Charles Jones—effectively refused to testify. Henry Edwards, in contrast, directly stated that the affidavit Defendant procured from him that Defendant hoped he would affirm was not true. This affidavit was procured under similar circumstances as Mr. Jones's." (PCR25:1485-95). The lower court determined that witness Paula Goins, who did not assert the Fifth Amendment, "never disavowed her trial testimony." (PCR25:1221). In sum, the court concluded that "[n]othing suggests" that Bell "would have carried his burden of proof if the Court had made witnesses answer more questions over their invocation of their Fifth Amendment rights than it did." (PCR25:1221).

Bell's assertion that he would have developed additional newly discovered evidence had the trial court required the witnesses to answer the questions is wrong and based on pure speculation. *See, e.g.*, *Dailey*, 279 So. 3d at 1213 (where codefendant Pearcy invoked the Fifth Amendment and refused to answer questions even after the court compelled him to answer). And Bell's contention that the questions in which the witnesses asserted privilege would "not in any way incriminate them nor subject them to possible perjury" is patently incorrect given that Bell was hoping to get the witnesses to testify in a manner that contradicted their prior testimony. Given the circumstances in which the testimony was procured, the State has reason to believe that any contradictory testimony would have been untruthful. The trial court did not err by allowing the witnesses to invoke their Fifth Amendment rights. Indeed, not doing so under the circumstances would have countered the very purpose that the Fifth Amendment privilege is intended to protect. *See, e.g., United States v. Doe*, 465 U.S. 605, 610 (1984) (explaining that the Fifth Amendment protects the person asserting the privilege only from *compelled* self-incrimination).

IV. Bell's Assertions that the State's References to Perjury and the Trial Court Allowing the Witnesses to Consult Counsel Deprived Him of Any Constitutional Rights are Meritless.[12]

Similarly (in Bell's Issue III), Bell asserts that his due process and compulsory process rights were violated because his evidentiary-hearing witnesses did not testify in the manner that he desired. Bell has failed to establish that any error occurred during his postconviction proceedings, much less one resulting in a violation of his constitutional rights.

As a threshold matter, Bell ignores that the proceedings below were in a postconviction posture. Bell does not have *any* Sixth Amendment right to compulsory process in postconviction proceedings. *Martinez v. Ct. of Appeal of Cal., Fourth App. Dist.*, 528 U.S. 152, 155-64 (2000). Similarly, Bell's due process rights are more limited in the postconviction context. *See* Issue IV, *infra*. Thus, Bell's reference to cases concerning his rights at trial are misplaced.

During Bell's evidentiary hearing and in his brief, he refers to "the State's perjury threat" against the witnesses. Init. Br. at 43-44. To be clear, the State never threatened to charge the witnesses with

---

12 Issue III of Bell's Initial Brief.

perjury. The State did not even speak to the witnesses. Nor did the State request that the lower court threaten the witnesses with any criminal charges concerning perjury. Instead, the State merely requested that the lower court allow the witnesses to meet with counsel, should they choose to do so, to ensure that they fully understood their rights. (PCR25:1391-94).

A witness who makes a false statement under oath in an official proceeding subjects himself or herself to criminal liability. *See* §§ 837.02(2), 837.021, Fla. Stat.[13] Thus, courts have recognized that trial judges are permitted to advise a witness of his or her rights when the witness is potentially exposing himself or herself to perjury. *Hill v. State*, 847 So. 2d 518, 522–23 (Fla. 5th DCA 2003); *Reese v. State,* 382 So. 2d 141 (Fla. 4th DCA 1980); *United States v. Smith,* 997 F.2d 674 (10th Cir. 1993).

---

[13] Bell states at several points the statute of limitations would have run on any lies told at Bell's original trial. Init. Br. at 41 n.2, 55. But this misunderstands the State's point. If the witnesses' testimony *at the evidentiary hearing* was false, then that would subject the witness to a charge of perjury by contradiction. § 837.021, Fla. Stat. Alternatively, if a witness testified that the sworn affidavit they signed a week ago was false, then they could be charged with perjury in official proceedings. § 837.02(2), Fla. Stat. In either scenario, the crime would not be completed until they offered that perjured testimony at the hearing.

It is entirely appropriate for the State to ensure witnesses are aware of the potential consequences of testifying, including that they may be charged with perjury if they testify falsely. In *Johnson v. State*, the prosecutor repeatedly stated during a hearing before the trial court that if a witness altered the testimony he provided during the penalty phase of trial that witness was "going to be charged with a crime so defense counsel needs to advise him of that." 397 So. 3d 626, 638 (Fla. 2024) (citation modified). Based on the discussions at the hearing, the trial court appointed counsel for the witness. *Id.* This Court found that there was nothing inappropriate about the prosecutor making sure the witness "was aware of the risk of criminal liability if he elected to change his earlier sworn testimony." *Id.* at 639. Bell asserts that the situation in *Johnson* is distinguishable but he never explains what those distinctions are or why they matter. Brief at 38–39. Indeed, the State's discussion of perjury in this case was even less overt than the situation in *Johnson*.

While a witness should be advised of his or her rights, the witness cannot be systematically intimidated with the prospect of perjury charges. In *Webb v. Texas*, 409 U.S. 95, 98 (1972), the Court held that the judge's "threatening remarks" "effectively drove that

witness off the stand[.]" There, the judge told a witness that the judge would "personally see" to it that the witness would be indicted for perjury if the witness lied under oath and that lying would mean prison time and "real trouble." *Id.* at 96. The judge also referred to the witness's testimony as a "hazard" and advised the witness that he did not "owe anybody anything to testify." *Id.* In noting that the trial judge "did not stop at warning the witness of his right to refuse to testify and of the necessity to tell the truth," the Supreme Court found that the judge's "unnecessarily strong terms" prevented the witness from freely choosing not to testify. *Id.* at 97-98.

Similarly, in *United States v. Morrison*, 535 F.2d 223 (3d Cir. 1976)–a case Bell relies heavily on in his argument, the prosecutor sent multiple messages to the witness's counsel that she was liable to be prosecuted for drug charges if she testified on the defendant's behalf. *Id.* at 225. The prosecutor then issued an invalid subpoena for the witness to appear at his office. *Id.* The prosecutor, while the officers that her testimony was meant to undermine were in the room actively instructing the prosecutor what to say, again warned her about the dangers of testifying, including that she could be charged with perjury. *Id.* at 225–26. The *Morrison* court found that "the

actions of the prosecutor in his repeated warnings which culminated in a highly intimidating personal interview were completely unnecessary." *Id.* at 277. This case does not involve such threatening remarks or strong language directed at the witnesses to intimidate them from testifying. In fact, unlike the situation in the cases Bell cites, all of the witnesses (save Charles Jones) took the stand and provided significant testimony at the evidentiary hearing.

In addition to accusing the State of threatening the witnesses, Bell demands that this Court compel the State to provide immunity to the witnesses who testified during the evidentiary hearing. Init. Br. at 43–44. Compelling the State to offer immunity to witnesses would violate the separation of powers. "Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) (explaining the executive function and complete discretion of the state attorney); *see also* art. V, § 17, Fla. Const.; *Hill v. State*, 847 So. 2d 518, 523 (Fla. 5th DCA 2003) (finding that the court was not required to compel the State to grant immunity to a witness). During the postconviction proceedings, Bell also demanded the trial court

compel the State to grant the witnesses immunity. (PCR25:1182-91, 1395.) The trial court declined, to do so, finding that it did not have the "authority to do so" and, even if it did have some discretion to do so, it would not exercise it because "as we've established on the record, there's no misconduct on the part of the State here." (PCR25:1543). Bell does not attempt to explain why this finding was incorrect. He simply chooses to ignore it.

Immunity is a tool to compel truthful testimony, not to produce falsehoods. *See, e.g.*, *United States. v. Apfelbaum*, 445 U.S. 115, 126 (1980) (explaining that the grant of immunity does not protect a person who testifies falsely); *Fowler v. State*, 447 So. 2d 296 (Fla. 2d DCA 1984) (discussing the use of immunity and perjured testimony). Here, offering witnesses immunity 30 years after their original testimony that the State has every reason to believe was truthful would undermine the integrity of the justice system. This is especially true when immunity would be given on the verge of Bell's impending execution, when the witnesses would have greater motivation to lie to assist Bell–as highlighted by Edwards' testimony that his affidavit "wasn't true" and that the CHU investigators encouraged him to sign

it to save Bell's life. (PCR25:1142-47, 1448-51, 1457, 1463). Bell is entitled to no relief here.

ISSUE IV

BELL WAS NOT DENIED DUE PROCESS AS A RESULT OF THE 32-DAY WARRANT PERIOD.

Neither the Constitution of the United States nor of the State of Florida afford Bell the right to protest a procedural inconvenience he has brought upon himself. Rather, "[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Additionally, Bell's due process rights are more limited in the postconviction context because he has already been found guilty by a jury of his peers and has already been lawfully sentenced to death. *Davila v. Davis*, 582 U.S. 521, 531 (2017) ("The trial is the main event at which a defendant's rights are to be determined."); *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) (explaining that postconviction due process "is not parallel to a trial right but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial, and has only a limited interest in postconviction relief."); *Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987) ("Postconviction relief is even further removed from the criminal trial

than is discretionary direct review."). Bell cites no case supporting his position that due process rights are a license to ignore the rules of procedure simply because the defendant delayed litigating ostensibly meritorious claims until the eleventh hour.

A. Bell's specific due process allegations raised on appeal are unpreserved.

While Bell lodges many complaints under Issue IV of his brief related to the time limitations of his postconviction proceedings, most of these issues were never presented to the lower court. Bell generally complained about the shortened time period of the warrant, but he did not directly tie his pleading deficiencies in his motion to amend to a due process claim, nor did he argue that the compressed schedule prevented Dan Ashton's testimony. Bell also made no argument that the shorter timeframe would have impacted the counsel that his testifying witnesses received. Given that these arguments were never raised below and ruled upon by the lower court, Bell has failed to preserve these issues for appellate review. *See Farina v. State*, 937 So. 2d 612, 628 (Fla. 2006); *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982). "Defendants have no constitutional due process right to correct an unpreserved error, and

appellate courts should exercise discretion under the doctrine of fundamental error very guardedly." *Ritchie v. State*, 344 So. 3d 369, 386 (Fla. 2022) (cleaned up).

B. Bell has failed to identify how he was denied an opportunity to be heard.

Bell's due process claim is consistent with the trend of recent death warrant litigation appearing to advocate that the death warrant itself triggers additional, unenumerated rights that allow courts to disregard the rules of procedure. Once the death warrant litigation commenced, these defendants have complained about the time constraints imposed upon them by a "truncated" death warrant period using some variation of a Due Process Clause claim. *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *8 (Fla. June 17, 2025); *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *4 (Apr. 25, 2025); *Tanzi*, 407 So. 3d at 390–91; *Ford v. State*, 402 So. 3d at 977–78; *Barwick*, 361 So. 3d at 790. Despite lodging multiple complaints about the difficulty of cramming years of legal work—that should have been done years ago—into a week, Bell grievances fare no better than those previously presented to this Court.

The first due process complaint Bell lodges is that, if he had been given one year to present his claims, his postconviction motion would have been "more substantial and well plead" and he would have been able to present "a plethora of additional evidence in support of his claims." IB at 50, 53–54. This claim is illusory. Bell does not identify any additional evidence he wished to present, let alone explain how he was barred from doing so. Given Bell's grand promises about what he expected the evidence would show at the evidentiary hearing, (PCR25:1306–1313), Bell's new promise of a "plethora" of new evidence should be taken with more than a healthy grain of salt. Furthermore, rule 3.851(h)(3) makes it clear that once a death warrant is signed, the time limitations are inapplicable. While the State certainly will concur that death warrant litigation can be difficult, operating under short timelines is not sufficient grounds for Bell to assert his due process rights have been violated.

In his second due process complaint, Bell blames the trial court and this Court for all his deficient pleadings. IB at 50. He alleges all these errors were "the direct result" of this Court and the trial court's scheduling orders. *Id.* While this is certainly a bold strategy, it does not pay off for him. This Court has already determined that the

signing of a death warrant does not permit a defendant to circumvent the Rules of Criminal Procedure when seeking postconviction relief. *Ford*, 402 So. 3d at 978. If Bell wishes to avail himself of the remedies available to him under Florida law, it is not unreasonable to expect him to abide by the rules established for seeking that relief.

The third due process issue Bell raises is that he was unable to secure the attendance of Dan Ashton, an investigator for CHU-N, to testify at the evidentiary hearing. Init. Br. at 52-53. Most of the purported testimony from Ashton would have been cumulative. (PCR25:1420-21, 1470-74). Moreover, the testimony Bell claims Ashton would have given contradicts testimony provided during the evidentiary hearing. *Contrast* (PCR25:1420-21) (Martin claiming that Ashton interviewed Edwards and Jones), *with* Init. Br. at 52 (claiming that Ashton never interviewed either Edwards or Jones, but "merely learned information that led him to believe that interviewing these witnesses about the Bell case would possibly lead to the discover of *Brady/Giglio* violation[s]").Therefore, nothing about failing to secure Ashton's testimony could ever amount to a due process issue.

Bell's fourth due process grievance is that witnesses who testified at the hearing *could have* received rushed, ineffective

counsel. To support this claim, proceeds to speculate about the advice the attorneys could have provided the witnesses and whether they were competent or qualified to provide that advice. Init. Br. at 55-57. Nothing in the record supports Bell's attempt to cast aspersions on the attorneys who were appointed to represent the witnesses. They were all attorneys from the court appointment registry list. (PCR25:1388-89, 1397-98, 1402-03, 1538). Nothing about how the witnesses responded indicated that any of the court-appointed attorneys failed to properly advise their clients.

For his fifth due process concern, Bell spends seven pages of his initial brief complaining about this Court's briefing schedule. Init. Br. at 57-63. Bell asserts that the briefing schedule distinguishes this case from this Court's recent rejection of other post-death warrant due process claims. Bell's attempts to distinguish this claim are unavailing. Init. Br. at 60-62. Although his claim is lengthy, Bell has not identified a single claim, argument, or issue that he could not brief had he been permitted more time. This omission is fatal. *Gudinas*, 2025 WL 1692284 at *8; *Hutchinson*, 2025 WL 1198037, at *4; *Tanzi*, 407 So. 3d at 390–91; *Ford*, 402 So. 3d at 977–78; *Barwick*, 361 So. 3d at 790. And of course, Bell also could have moved this

Court for a reasonable extension of time citing the same concerns listed in his Initial Brief. He did not.

C. Bell received far more opportunities to be heard than he was legally entitled to receive in these postconviction proceedings.

The trial court afforded Bell generous latitude that he was not entitled to receive. The trial court would have been well within its discretion to deny Bell's motion as untimely. *See* Issue I, *supra*. Indeed, the trial court did ultimately find that all his claims were untimely. (PCR25:1206-07; 1209-10). Yet the trial court still granted Bell an evidentiary hearing.

The trial court also allowed Bell to present testimony from witnesses that were not timely pled in Bell's written postconviction motion. During the case management conference on June 20, 2025, Bell's counsel announced—two days after the deadline for filing the postconviction motion had lapsed—he expected to present testimony from four witnesses (Dale George, Ned Pryor, Ericka Braclet, and possibly Paula Goins) which were unrelated to any claims contained in the written postconviction motion. (PCR25:1306-13). Bell then waited until 9:34:55 p.m. on June 22, 2025, less than twelve hours before the evidentiary hearing on this case was set to commence, to

file a motion to amend his postconviction motion. (PCR25:1152). Bell's motion to amend his pleadings contained unsigned, unsworn representations from investigators about interviews conducted with Dale George, Ned Pryor, and Ericka Braclet. (PCR25:1152-79). The trial court found that, based on Bell's own motion, it was apparent that information about Ericka Braclet, Ned Pryor, and Dale George was available to him before his motion was due. (PCR25:1204).

Rule 3.851(f)(4) requires a showing of good cause to amend any postconviction motion. This Court has previously found, there is no abuse of discretion in denying motions to amend when the amendments rely on facts that were "readily available" to the defendant's attorney at the time they filed the initial motion. *Tanzi v. State*, 94 So. 3d 482, 495 (Fla. 2012).[14] The trial court even allowed Bell to present testimony from Paula Goins, a witness not even *mentioned* in Bell's untimely motion to amend his postconviction pleadings. Despite being well within its discretion to deny Bell the

[14] The State objected during the *Huff* hearing, noting it would be improper to permit testimony on any unpled claims. (PCR25:1354-55). The next morning, the State filed a written motion laying out the same objection. (PCR25:1135-42). Bell's motion to amend was a tacit admission that the State's position is correct.

chance to present his untimely witnesses, the trial court still heard, and considered, the testimony of every witness Bell presented during the evidentiary hearing. (PCR25:1204). Short of completely disregarding the rules of criminal procedure, it is unclear exactly what other opportunities to be heard Bell believes he could have been entitled to receive.

CONCLUSION

The State of Florida respectfully requests that this Honorable Court affirm the lower court's order denying Bell's successive motion for postconviction relief. Because Bell's arguments on appeal are without merit, Bell is not entitled to a stay of execution.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

/s/ Jonathan S. Tannen
Jonathan S. Tannen
Assistant Attorney General
Florida Bar No. 070842
jonathan.tannen@myfloridalegal.com
capapp@myfloridalegal.com

/s/ Christina Z. Pacheco
CHRISTINA Z. PACHECO
Senior Assistant Attorney General
Florida Bar No. 0071300
christina.pacheco@myfloridalegal.com

capapp@myfloridalegal.com

/s/ Joshua E. Schow
JOSHUA E. SCHOW
Assistant Attorney General
Florida Bar No. 1025691
joshua.schow@myfloridalegal.com
capapp@myfloridalegal.com

Office of the Attorney General
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of June 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Robert Norgard, Esquire, Post Office Box 811, Bartow, Florida 33831, **norgardlaw@verizon.net, office@norgardlaw.com**; Rachel Roebuck, Esquire, 511 Columbia Drive, Apartment 11, Tampa, Florida 33606, **rroebucklaw@gmail.com**, and the Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org, canovak@flcourts.org**.

/s/ Jonathan S. Tannen
COUNSEL FOR APPELLEE

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style in compliance with Fla. R. App. P. 9.045(b), and that the word count is 14,940 words in compliance with Fla. R. App. P. 9.210(a)(2)(D).

/s/ Jonathan S. Tannen