**No._____**

IN THE

Supreme Court of the United States

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ERNEST D. SUGGS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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*On Petition for a Writ of Certiorari to the Supreme Court of Florida*

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**PETITIONER'S APPENDIX**

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## INDEX TO APPENDIX

# EXHIBIT 1

# Supreme Court of Florida

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No. SC16-576

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**ERNEST D. SUGGS**,
Appellant,

vs.

**STATE OF FLORIDA**,
Appellee.

[November 9, 2017]

PER CURIAM.

Ernest D. Suggs, a prisoner under sentence of death, appeals the circuit court's denial of his successive motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.851. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const. We affirm for the reasons that follow.

## BACKGROUND

We previously summarized the evidence presented at Suggs's trial as follows:

> Pauline Casey, the victim, worked at the Teddy Bear Bar in Walton County. On the evening of August 6, 1990, the bar was found abandoned, the door to the bar was ajar, cash was missing from the bar, and the victim's car,

purse, and keys were found at the bar. The victim was missing. Ray Hamilton, the victim's neighbor, told police that he last saw the victim shooting pool with an unidentified customer when he left the bar earlier that night. Based on Hamilton's description of the customer and the customer's vehicle, police issued a BOLO for the customer. Subsequently, a police officer stopped a vehicle after determining that it matched the BOLO description.

The driver of the vehicle was identified as the appellant, Ernest Suggs. Although he was not then under arrest, Suggs allowed the police to search his vehicle and his home. While searching Suggs' home, the police found, in a bathroom sink, approximately $170 cash in wet bills, consisting of a few twenty-, ten-, and five-dollar bills and fifty-five one-dollar bills.

Meanwhile, police obtained an imprint of the tires on Suggs' vehicle and began looking for similar tire tracks on local dirt roads. Similar tire tracks were found on a dirt road located four to five miles from the Teddy Bear Bar. The tracks turned near a power line, and the victim's body was found about twenty to twenty-five feet from the road. The victim had been stabbed twice in the neck and once in the back; the cause of death was loss of blood caused by these stab wounds. After the victim was found, Suggs was arrested for her murder.

In addition to the cash and tire tracks, police obtained the following evidence connecting Suggs to the murder: one of the three known keys to the bar and a beer glass similar to those used at the bar were found in the bay behind Suggs' home; the victim's palm and fingerprints were found in Suggs' vehicle; and a serologist found a bloodstain on Suggs' shirt that matched the victim's blood. Additionally, after his arrest, Suggs told two cellmates that he killed the victim.

In his defense, Suggs contended that he was framed and made the following claims: that he had small

> bills because his parents had paid him in cash for working on their dock; that the money was wet because he fell in the water while working on the dock; that other vehicles have tires similar to the tires on his vehicle; that the tires on his vehicle leave a specific overlap pattern because of the wear on them and that no such overlap pattern was found at the scene; that the underbrush on his vehicle did not match any brush from the area of the crime scene; that no fibers or hairs from the victim were found in his vehicle; that the fingerprints in his vehicle could have been left at any time before the day of the murder; that the enzyme from the blood stain on his shirt matches not only the victim but also 90% of the population; that the shirt from which the blood was taken was not properly stored and that the stain could come from any bodily fluid; that the tests performed on the blood stain produced inconclusive results, including the fact that the stain could have been a mixed stain of saliva and hamburger; that a news conference was held regarding his arrest twenty-four hours before the bay behind his house was searched, which provided ample time for someone to deposit the key and glass there; and that his two cellmates lied, gave inconsistent testimony, and received reduced sentences because of their testimony. Additionally, Suggs contended that both Ray Hamilton and Steve Casey, the victim's husband, could have committed the murder (with Casey having life insurance as a motive), and that those individuals were being pursued as suspects until his arrest, but as soon as he was arrested, police dropped their investigation of those suspects.
>
> The State countered this defense by showing that the dock on which Suggs was purportedly working contained no new wood; that the tire tracks did in fact match Suggs' vehicle; and that the enzyme from the blood did not come from Suggs.

Suggs v. State, 644 So. 2d 64, 65-66 (Fla. 1994). Suggs was convicted of first-degree murder, kidnapping, and robbery. Id. at 66.

We have previously summarized the penalty-phase evidence as follows:

> At the penalty-phase proceeding, one of Suggs' cellmates testified that Suggs told him he murdered the victim because he did not want to leave a witness. Additionally, the State entered into evidence a book entitled Deal the First Deadly Blow, which they had taken from Suggs' house. The State used this evidence to show that Suggs planned how he would kill the victim. The State also introduced evidence that Suggs was convicted of first-degree murder and attempted murder in 1979 and that he was on parole at the time of the murder in this case. Id. at 66.

After the penalty-phase proceeding, the jury recommended a death sentence by a seven-to-five vote, and the trial court sentenced Suggs to death, finding seven aggravating circumstances[1] and three mitigating circumstances.[2] Id.

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1. The trial court found the following aggravating circumstances:

> (1) A capital felony was committed by Suggs while under sentence of imprisonment; (2) Suggs was previously convicted of another capital felony and a felony involving the use or threat of violence to the person; (3) the crime for which Suggs is to be sentenced was committed while he was engaged in the commission of the crime of kidnapping; (4) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest; (5) the capital felony was committed for pecuniary gain; (6) the capital felony was especially heinous, atrocious, or cruel; (7) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

Suggs, 644 So. 2d at 66 n.1.

2. The trial court found the following mitigating circumstances:

> (1) The capacity of Suggs to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially

We affirmed Suggs's conviction and death sentence on direct appeal. Id. Thereafter, we affirmed the denial of his initial motion for postconviction relief. Suggs v. State, 923 So. 2d 419 (Fla. 2005). Suggs now appeals the summary denial of his successive motion for postconviction relief, filed October 27, 2015, which raised five claims of newly discovered evidence or Brady[3] violations concerning the following matters: (1) allegations that the victim's husband, whom Suggs argued at trial may have murdered her, sexually abused the victim's daughter; (2) activities and statements of law enforcement officers involved in the search of the bay; (3) recent statements by Suggs's sentencing judge; (4) the involvement in Suggs's case of FBI analyst Michael Malone, whose work has been discredited in other cases; and (5) an investigation of the Walton County Sheriff's Department by the Florida Department of Law Enforcement (FDLE) during the period when Suggs was being investigated, along with evidence of misconduct by the Sheriff and Suggs's prosecutor in a contemporaneous case.

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> impaired (he had been drinking at the time of the incident); (2) Suggs' family background (he came from a good family); and (3) Suggs' employment background (he was a hard worker).

Id. at 66 n.2.

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

## ANALYSIS

We review the circuit court's summary denial of each of these claims in turn, followed by a conclusion as to Suggs's argument that the cumulative effect of the new evidence requires a new trial, applying the de novo standard of review. Hunter v. State, 29 So. 3d 256, 261 (Fla. 2008). This standard requires us to accept the allegations of Suggs's motion as true to the extent that they are not conclusively refuted by the record and to uphold the circuit court's ruling if Suggs's claims are legally insufficient or their allegations are conclusively refuted by the record. See id.

### 1. Newly Discovered Evidence of the Husband's Motive

Suggs's first claim is based on information obtained from the victim's daughter relating to alleged sexual abuse of the victim's daughter by the victim's husband, whom Suggs argued at trial could have been the real murderer. To warrant relief, newly discovered evidence must "be of such nature that it would probably produce an acquittal on retrial." Jones v. State, 709 So. 2d 512, 521-22 (Fla. 1998). Suggs claims that the information concerning the alleged sexual abuse is newly discovered evidence of the victim's husband's motive for murdering her. However, Suggs's allegations do not indicate that the victim knew about the alleged sexual abuse of her daughter or provide any connection between the alleged abuse and a motive to murder the victim. Therefore, in a new trial, this information would be inadmissible as irrelevant and substantially more unfairly

prejudicial than probative. See §§ 90.401, 90.403, Fla. Stat. (2017). As a result, it would not "probably produce an acquittal on retrial," see Jones, 709 So. 2d at 521-22, and this claim was properly denied.

**2. Brady Claim Concerning the Search of the Bay**

Suggs's second claim is presented under Brady v. Maryland, 373 U.S. 83 (1963), and concerns the discovery of the key during the search of the bay behind his house and information Suggs has recently obtained from Deputy Wyatt Henderson of the Walton County Sheriff's Department, who participated in the search as a diver. The key was relevant not only because it fit a lock at the bar from which the victim was kidnapped, but also because a witness saw the victim place a key to that lock on the cash register earlier in the night, and no such key was found at the bar, among the victim's belongings, or on the victim in the investigation.

The search of the bay began on August 8, 1990, with the goal of finding the murder weapon, which was never recovered. According to the trial evidence, the search was conducted methodically, with four divers positioned along a rope a few feet apart and moving in an arch pattern from a fixed point at one end of the rope and then extending the rope after completing a full sweep. A drinking glass similar to the glasses used at the bar from which the victim was kidnapped was found on the first day. That afternoon, Investigator Steve Sunday of the Walton County Sheriff's Department obtained a key from the bar owner, stating in his report that

the key would be "used to give the divers and other officers a description of the key to look for." Henderson testified at trial that the dive team was not initially told to search for a key.

Testimony at trial established that the search of the bay continued on the morning of August 9, 1990, at the request of Captain Brad Trusty of the Walton County Sheriff's Department, even though the area had not been secured overnight on August 8, a press conference had been held naming Suggs as the suspect, Suggs's home was identifiable, and the bay was accessible to anyone. For the second day, the team used one additional diver. All the divers who testified, including Henderson, explained that on the morning of August 9, the search proceeded continuously from the area that had been searched the day before, except that the divers backed up and searched an overlapping segment of the bay due to poor visibility during the latter part of the prior day's search. The bar key was found during the search of the overlapping section by the diver who was the farthest out into the bay. That diver testified that the key was just beyond his position at the end of the rope.

In Suggs's successive motion for postconviction relief, he alleges that Wyatt Henderson has recently revealed that Captain Trusty told the dive team where in the bay to find the key; that Captain Trusty explained that Suggs had a water line on his pants during his interview, suggesting that evidence may be found farther out in the bay, even though Suggs was wearing black nylon shorts when he was

arrested; and that the divers were never shown the key that Investigator Sunday obtained on August 8. Suggs argues that this new information obtained from Henderson shows a Brady violation. We disagree because this information is not material under the Brady standard, which requires showing " 'a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.' " Mordenti v. State, 894 So. 2d 161, 170 (Fla. 2004) (quoting Strickler v. Greene, 527 U.S. 263, 280 (1999)). To meet this standard, a defendant must demonstrate that the suppressed evidence " 'could reasonably be taken to put the whole case in such a different light as to undermine the confidence in the verdict.' " Id. (quoting Allen v. State, 854 So. 2d 1255, 1260 (Fla. 2003)).

In reaching the conclusion that the information alleged to have been learned from Henderson is not material, we find it significant that Suggs's successive motion merely summarizes Henderson's recent statements, with no affidavit from Henderson. The successive motion does not purport to quote Henderson and in no way indicates that Henderson has recanted his trial testimony. Given these facts, the "new evidence" is clearly not material because it is consistent with the evidence at trial and would not be exculpatory.

First, Henderson is purported to have said—in Suggs's words—that Captain Trusty told the dive team where to find the key. Captain Trusty testified at trial that he requested the continuation of the search after the first day. Henderson and

others testified at trial that the search team essentially started back the second day where they had ended the search the night before, as darkness approached. Then, the team quickly found the key near where they had stopped the search the night before, either a little farther out (and therefore deeper) in the bay or in an overlap area which had been searched on the last pass of the prior evening when sunlight was diminishing and visibility was poor. Henderson is also alleged to have said that Trusty wanted the search to continue into deeper water because of a water line on Suggs's pants. Without a recantation of Henderson's trial testimony, which indicates a natural progression of the search in the normal course of an investigation, and only a summary of this "new" information in Suggs's words, we readily find these statements immaterial because they can be viewed in a manner that is completely consistent with the trial testimony and, without a recantation by Henderson, would necessarily have to be viewed that way. In fact, Suggs explains that, if Henderson had "been asked about why the search was expanded, he would have testified to the information conveyed to him by Captain Trusty."

With respect to the water stain, Suggs suggests that this statement (attributed by Henderson to Trusty) could not be true (and, therefore, could have been used to impeach Trusty), either because a water stain could not be seen on black fabric or because a water line would not have reached the fabric of shorts. The first inference cannot form a basis for relief because it is too speculative. Seawater contains salts and "other substances, including dissolved inorganic and organic

materials" and particulates, Fred T. Mackenzie, et al., Seawater, Encyc. Britannica, http://www.britannica.com/science/seawater (last visited October 30, 2017), and salt dissolved in water crystallizes and remains behind as the hydrogen dioxide evaporates, see Noushine Shahidzadeh et al., Salt stains from evaporating droplets, Scientific Reports (2015), http://www.nature.com/articles/srep10335 (last visited October 30, 2017) (studying stain patterns left through this commonly observed phenomenon). Further, depending on the composition of the bay water at the relevant location and time, it is possible that other solids would also remain after evaporation of the hydrogen dioxide, and either salt or other solids could be visible on dark fabric. With respect to both inferences, even Suggs admitted that he had been in the bay, in his clothing, the night of his arrest—which is how the money found in his home became wet (indicating that he would have been deep enough for the water to reach the pockets of his pants). Additionally, because Captain Trusty did not testify one way or the other about a water line, any impeachment value of this evidence would have to follow questioning by Suggs of Captain Trusty as to the reason he ordered the search to continue on the second day. To determine whether this questioning would have any impeachment value at all, we would have to speculate as to how it would progress. Therefore, the impeachment value of the water-line information does not create a reasonable probability of a different outcome. Cf. Wright v. State, 857 So. 2d 861, 870 (Fla. 2003) (finding

no Brady violation where "the exculpatory effect" of the evidence was "merely speculative").

The fact that the bar key obtained by Investigator Sunday was not shown to the search team of divers is similarly immaterial because it is consistent with the trial testimony. No one at trial testified that the key was shown to the divers, and the jury was aware that Investigator Sunday obtained a key from the bar owner the day before a key was found in the bay. And, Investigator Sunday's report does not say that he intended to show the divers the key; it states that he obtained the key to give the divers a description, and it notes the physical characteristics of the key as being silver with a round head.

In short, Suggs's new allegations concerning the key are consistent with the explanation of the search presented at trial and, therefore, our confidence in the verdict is not undermined. See Mordenti, 894 So. 2d at 170 (explaining that alleged Brady evidence is material only if it is of such a nature that it " 'could reasonably be taken to put the whole case in such a different light as to undermine the confidence in the verdict' " (quoting Allen, 854 So. 2d at 1260)). Accordingly, this claim was properly denied.

**3. Newly Discovered Evidence Concerning Sentencing Judge**

Suggs's third claim is that newly discovered evidence reveals that his sentencing judge failed to exercise her independent judgment over the decision to sentence him to death under the law as it existed when he was sentenced. Suggs

quotes statements his sentencing judge made in a memoir and a letter to the Governor in support of commuting Suggs's sentence to life, arguing that she not only deferred to the jury's vote, contrary to section 921.141(3), Florida Statutes (1989), and Ross v. State, 386 So. 2d 1191 (Fla. 1980), but also that she shifted her responsibility to the appellate court, contrary to Caldwell v. Mississippi, 472 U.S. 320 (1985). This claim is meritless. Suggs's sentencing judge issued a detailed order showing the requisite findings, and her recent revelation of her thought process at the time is not the type of evidence that would probably change the outcome at a new sentencing proceeding, as it would not be admissible evidence. See Marek v. State, 14 So. 3d 985, 990 (Fla. 2009) (requiring that newly discovered evidence related to sentencing be of such a nature that it would "probably yield a less severe sentence"). Moreover, the sentencing judge's thought process inhered in her decision and is not subject to review. Cf. Foster v. State, 132 So. 3d 40, 64-65 (Fla. 2013) (explaining that jurors' private thoughts inhere in the verdict). For these reasons, Suggs's claim is distinguishable from cases where relief has been warranted due to postconviction revelations that prosecutors drafted sentencing orders imposing death without input from the sentencing judges or after ex parte communications. See Roberts v. State, 840 So. 2d 962, 972-73 (Fla. 2002) (ex parte communication); Card v. State, 652 So. 2d 344, 345-46 (Fla. 1995) (lack of input). Accordingly, this claim was properly denied.

### 4. Brady Claim Concerning FBI Agent Malone

Suggs's fourth claim is that the State committed a Brady violation by using FBI Agent Michael Malone to test evidence for Suggs's case and not notifying Suggs when Malone was later investigated and found to have performed unreliable work in numerous cases. This claim, too, fails the Brady materiality requirement. Malone concluded that none of the hair found on the victim's body matched Suggs's hair, and Suggs was aware of this conclusion at the time of trial. Given that Malone did not testify in Suggs's trial, that Malone did not provide any evidence inculpating him, and that Suggs has not provided a non-speculative reason to believe that any hair other than the victim's was found on the victim's body, there is no reasonable probability that Suggs's allegations concerning Malone would have produced a different verdict. Therefore, our confidence in the verdict is not undermined. See Bolin v. State, 184 So. 3d 492, 500-01 (Fla. 2015) (holding that Malone's contamination of evidence in a separate case was not relevant in a case where Malone had the limited role of receiving evidence, checking for hair and fibers, and forwarding the evidence to other examiners and did not testify), cert. denied, 136 S. Ct. 790 (2016); Rhodes v. State, 986 So. 2d 501, 506-08 (Fla. 2008) (finding a lack of Brady materiality in the revelation that Malone falsely testified that hairs in the victim's hand belonged to the victim, where postconviction testing was unable to exclude either the victim or the defendant as the source of the hair). Accordingly, this claim was properly denied.

### 5. Brady Claim Concerning Misconduct of Sheriff's Department and Prosecutor

Suggs's fifth claim is that the State committed a Brady violation by failing to disclose that the FDLE was investigating the Walton County Sheriff's Department for misconduct during the period when Suggs was being investigated and prosecuted and that, according to testimony from collateral proceedings in another case, both the Sheriff and the assistant state attorney who prosecuted Suggs engaged in misconduct in a contemporaneous case.[4] If Suggs had known of the FDLE's investigation or the alleged misconduct by the Sheriff and prosecutor, that knowledge does not undermine our confidence in the verdict, as the related evidence would not have been admissible at Suggs's trial as either substantive or impeachment evidence. See §§ 90.404(1), (2)(a), Fla. Stat. (1989) (providing that evidence is inadmissible when its sole relevance is to prove bad character or propensity); Bogle v. State, 213 So. 3d 833, 840 (Fla.) (recognizing that "particular acts of misconduct" are inadmissible for impeachment purposes), petition for cert. filed, No. 17-6329 (U.S. Sept. 7, 2017). Accordingly, this claim was properly denied.

4. Suggs has not alleged that the FDLE found misconduct in either his case or the contemporaneous case.

### 6. Cumulative Effect of the New Allegations

Finally, Suggs argues that when all the allegations presented in this postconviction proceeding are considered cumulatively with the trial evidence and other admissible evidence developed in prior postconviction proceedings, he is entitled to a new trial. We disagree. As explained above, the only additional evidence presented in this proceeding potentially admissible in any retrial is that regarding the key addressed in claim two, and there is no reasonable probability that, had this evidence been disclosed to the defense, the result of the trial would have been different. Therefore, our confidence in the verdict is not undermined.

## CONCLUSION

For the foregoing reasons, we affirm the summary denial of Suggs's successive motion for postconviction relief.

It is so ordered.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and LAWSON, JJ., concur.
NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

An Appeal from the Circuit Court in and for Walton County,
Kelvin Clyde Wells, Judge - Case No. 661990CF000338CFAXMX

Robert S. Friedman, Capital Collateral Regional Counsel, Dawn B. Macready, and Stacy Biggart, Assistant Capital Collateral Regional Counsel, Northern Region, Tallahassee, Florida,

for Appellant

Pamela Jo Bondi, Attorney General, and Lisa A. Hopkins, Assistant Attorney General, Tallahassee, Florida,

for Appellee

# EXHIBIT 2

# Supreme Court of Florida

TUESDAY, MARCH 13, 2018

**CASE NO.: SC16-576**
Lower Tribunal No(s).:
661990CF000338CFAXMX

ERNEST D. SUGGS vs. STATE OF FLORIDA

Appellant(s) Appellee(s)

Appellant's Motion for Rehearing is hereby denied.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and LAWSON, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

cd
Served:

LISA HOPKINS
STACY BIGGART
DAWN B. MACREADY
JOSHUA ALLAN MITCHELL
HON. LINDA LEE NOBLES, CHIEF JUDGE
HON. KELVIN CLYDE WELLS, JUDGE
HON. ALEX ALFORD, CLERK

# EXHIBIT 3

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR WALTON COUNTY, FLORIDA**

**STATE OF FLORIDA**,

**v.** **CASE NO.: 1990-CF-000338**

**ERNEST D. SUGGS**,

Defendant.

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**ORDER DENYING THE DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND PURSUANT TO RULE 3.851**

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**THIS CAUSE** comes before the Court after the filing of the defendant's Successive Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend Pursuant to Rule 3.851, electronically filed by counsel on October 27, 2015;[1] the State's Answer to Suggs' Successive Motion to Vacate Judgment and Sentence, electronically filed by counsel on November 12, 2015;[2] and the defendant's Response to State's Answer to Suggs' Successive Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend Pursuant to Rule 3.851, electronically filed by counsel on December 1, 2015. A case management conference was held on December 15, 2015. After the case management conference, the Court determined that an evidentiary hearing was not necessary regarding the defendant's successive motion and heard argument on the purely legal claims not based on disputed facts raised in the defendant's motion. Having considered the defendant's successive rule 3.851 motion, the state's

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[1] ("Motion")
[2] ("State's Answer")

answer, the defendant's response, the record, relevant legal authority, and the arguments presented by counsel at the case management conference, the Court makes the following findings of fact and conclusions of law.

The defendant was found guilty by jury in 1992 and was sentenced to death for first-degree murder (count I).[3] The defendant was also convicted of and sentenced for kidnapping (count II) and robbery with a deadly weapon (count III).[4] The defendant's convictions and sentences were affirmed.[5] A second amended motion to vacate the defendant's convictions and sentences was filed in August 2001.[6] An evidentiary hearing was held in January 2003.[7] The defendant's claims were denied after the evidentiary hearing.[8]

In the instant motion, the defendant appears to raise multiple claims based on newly discovered evidence and Brady[9] violations. For a defendant to be entitled to relief based on newly discovered evidence, he must satisfy two requirements: (1) "the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence;" and (2) "the newly discovered evidence must be of a nature that it would probably produce an acquittal on retrial." Marek v. State, 14 So. 3d 985, 990 (Fla. 2009) (citing Jones v. State, 709 So. 2d 512, 521 (Fla. 1998)). The second requirement is satisfied if the evidence "weakens the case against the defendant so as to give rise to a reasonable doubt as to his culpability." Marek, 14 So. 3d at 990 (internal quotations and citation omitted). Under the second prong, a trial court is required

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[3] See Mot. Attach. A. The Court references the attachments as labeled by the defendant.
[4] See Mot. Attach. A.
[5] Mot. 2. The Court references the pages as numbered by the defendant.
[6] Mot. 4.
[7] Mot. 4-5.
[8] Mot. 5.
[9] Brady v. Maryland, 373 U.S. 83 (1963).

to "consider all newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered and the evidence which was introduced at the trial." Jones, 709 So. 2d at 521 (internal quotations and citation omitted). "A postconviction court must even consider testimony that was previously excluded as procedurally barred or in another postconviction proceeding in determining if there is a probability of an acquittal." Hildwin v. State, 141 So. 3d 1178, 1184 (Fla. 2014) (citations omitted). To determine whether the allegedly newly discovered evidence requires a new trial, a trial court should evaluate (1) "whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence," (2) "whether [the] evidence is cumulative to other evidence in the case," and (3) "the materiality and relevance of the evidence and any inconsistencies in the newly discovered evidence." Marek, 14 So. 3d at 990 (quoting Jones, 709 So. 2d at 521).

A Brady claim requires a defendant to prove that (1) "the evidence is favorable to him either because it is exculpatory or because it is impeaching," (2) "the state willfully or inadvertently suppressed it," and (3) "that the suppression resulted in prejudice." Jones v. State, 998 So. 2d 573, 579 (Fla. 2008). "The burden is on the defendant to demonstrate that the evidence he claims as *Brady* material satisfies each of these elements." Duckett v. State, 918 So. 2d 224, 235 (Fla. 2005) (citation omitted). Evidence is material, or prejudicial, ". . . only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." U.S. v. Bagley, 473 U.S. 667, 682 (1985); see also Jones, 998 So. 2d at 579 (citation omitted).

## ANALYSIS

In his first claim,[10] the defendant alleges newly discovered evidence consists of a disclosure the victim's daughter, Ms. Laura Johnson, made to an investigator regarding sexual abuse committed by her step-father, who was Mr. Stephen Casey, when she was a minor.[11] The defendant alleges that such information could not have been discovered earlier because Ms. Laura Johnson only recently disclosed the information.[12] However, the record refutes such a claim. In particular, the record reflects that the nature of her relationship with her step-father was raised during a postconviction evidentiary hearing held in January 2003.[13] At such hearing, Ms. Laura Johnson testified that she had a "sexual relationship" with Mr. Stephen Casey that began approximately two months after he married her mother.[14] Considering such information, any claim based on Mr. Stephen Casey's relationship with Ms. Laura Johnson is untimely.

In his second claim,[15] the defendant appears to allege that newly discovered evidence consists of "Captain Brad Trusty" knowing where to expand a search of Choctawhatchee Bay.[16] The defendant appears to allege that Captain Brad Trusty knew where to search because "they noticed a visible waterline on [the defendant's] pants, and because of this waterline, the investigators believed that additional evidence may be found further out in the bay."[17] The defendant also alleges that the "waterline" observation was not included in law enforcement's

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[10] Mot. 11-15. The Court renumbers the claims in the order of appearance in the instant motion.
[11] Mot. 11-12.
[12] Mot. 12.
[13] Hr'g Tr., vol. I, 64-79, Jan. 23, 2003 (Attach. 1). The Court includes the entire portion of witness's hearing testimony as attachment one. Ms. Laura Johnson was known as Ms. Laura Sexton at the time of the 2003 hearing.
[14] Hr'g Tr., vol. I, 77-79, Jan. 23, 2003 (see Attach. 1).
[15] Mot. 15-17.
[16] Mot. 15.
[17] Mot. 15.

reports.[18] Additionally, the defendant alleges that the key's subsequent discovery was an important part of the state's theory at trial.[19] The defendant alleges that Captain Brad Trusty's decision to expand the search area could have been used at trial as exculpatory or impeaching evidence "to bolster" his defense and "to cross-examine [Captain Brad] Trusty."[20] However, the record reflects that Captain Brad Trusty testified at trial that he instructed the dive team to conduct the second day's search.[21] The record also shows the timeline of the search was described at trial.[22] Considering such information was known at the time of trial, newly discovered evidence does not apply. As a result, any claim based on such information is untimely. To the extent that the defendant relies on Mr. Wyatt Henderson's more recent comments as newly discovered evidence to support the instant claim,[23] the information could have been obtained earlier through diligence.

In his third claim,[24] the defendant alleges that newly discovered evidence regarding comments made by the Honorable Judge Laura Melvin in a published memoir in some way establish that she believed she was required to sentence the defendant to death.[25] The defendant also references a letter written by such Judge during the defendant's clemency process.[26] However, the content of such memoir and letter are not of a nature that would probably produce an acquittal on retrial. In other words, the personal reflections of a sentencing judge written many years after the defendant's sentencing do not automatically weaken the case against the

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[18] Mot. 15.
[19] Mot. 16.
[20] Mot. 17.
[21] State's Answer 8. The Court references the pages as numbered by the state.
[22] State's Answer 8.
[23] Mot. 15.
[24] Mot. 17-26.
[25] Mot. 17-18.
[26] Mot. 19.

defendant so as to give rise to a reasonable doubt as to his culpability. Therefore, any claim based on the memoir or letter does not qualify as newly discovered evidence.

In his fourth claim,[27] the defendant alleges that "exculpatory evidence was intentionally destroyed" by an FBI analyst, who was Mr. Michael Malone, because he "was known to have altered evidence in cases he handled."[28] The defendant argues samples were "intentionally destroyed" automatically because Mr. Michael Malone handled the evidence, which allegedly would render any future testing unreliable.[29] The "exculpatory evidence" consists of pubic hair combings from the victim and pubic and head hair samples from the victim and the defendant.[30] In an attempt to support the instant claim, the defendant references a September 2013 letter to the defendant's federal CJA attorney.[31] The letter describes the Department of Justice's investigation of FBI laboratory analysts whose work was questioned for improper practices in 1996 and identifies Mr. Michael Malone as a criticized "examiner" who is believed to have worked on the instant case.[32] The letter also states a report was issued in 1997 by a Department of Justice task force that identified Mr. Michael Malone as a "criticized" examiner.[33]

However, the evidence does not qualify as a Brady violation. For example, the defendant cannot establish prejudice because he acknowledges "neither the state, nor defense counsel offered any evidence at trial" of pubic hair combings from the victim and pubic and head hair samples from the victim and the defendant.[34] Considering results from the original hair sample tests were not presented to the jury at the defendant's trial, there exists no reasonable probability

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[27] Mot. 27-29.
[28] Mot. 29.
[29] Mot. 28-29.
[30] Mot. 27.
[31] Mot. 27-28.
[32] Mot. 27-28.
[33] Mot. 27.
[34] Mot. 27.

that the outcome would have been different. Additionally, the absence of any forensic testing results alone does not automatically constitute either exculpatory or impeaching evidence. Regarding any alleged Brady violation for failing to disclose that Mr. Michael Malone's laboratory work "destroyed" the hair samples before the defendant's trial, the FBI did not release information regarding criticized laboratory testing procedures and analysts until 1996 and 1997.[35] The state could not have suppressed information that was not known until after the defendant's trial. To the extent the defendant raises a claim of newly discovered evidence regarding information contained in the September 2013 letter,[36] the existence of the criticized laboratory analysts was known publicly as early as 1997.[37] Considering the age of the task force's report, any issue regarding criticized laboratory analysts could have been discovered earlier through diligence. The September 2013 letter does not "restart" the time in which to file a related newly discovered evidence claim. In any event, the defendant does not establish good cause for failing to raise the instant claim in a prior rule 3.851 motion, especially because the information could have been discovered as early as 1996 or 1997.

In his fifth claim,[38] the defendant alleges newly discovered evidence exists that the Florida Department of Law Enforcement[39] was investigating the Walton County Sheriff's Office for "misconduct" when the original investigation was conducted and during the defendant's trial.[40] However, the mere existence of an investigation does not automatically constitute newly discovered evidence or qualify as evidence of a nature that would probably produce an acquittal

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[35] Mot. 27. See Duckett, 918 So. 2d at 234-35; see also Wyatt v. State, 71 So. 3d 86, 102-03 (Fla. 2011).
[36] The letter states that "the work of one or more of the 13 criticized examiners is believed to have been involved in the criminal prosecution of Ernest Donald Suggs."
[37] A task force report was issued identifying thirteen examiners, including Mr. Michael Malone, whose work may have fallen below professional standards. Mot. 27.
[38] Mot. 29-32.
[39] ("FDLE")
[40] Mot. 29.

on retrial. To the extent the defendant relies on testimony from an FDLE analyst in an unrelated Walton County criminal case,[41] the defendant does not establish that her testimony would show any "misconduct" occurred or "brazen tactics" were used during the investigation or prosecution of the instant defendant.[42] To the extent the defendant attempts to use the existence of FDLE's investigation as Brady material, such information also does not qualify automatically as exculpatory or impeaching evidence. The existence of an investigation also would not establish any reasonable probability that the outcome of the proceeding would have been different. Therefore, any claim based on the mere existence of an investigation by FDLE of the Walton County Sheriff's Office is untimely.

Furthermore, rule 3.851, Florida Rules of Criminal Procedure, allows a court to deny a successive motion if the motion (1) raises new and different grounds but no good causes exists for failing to assert those grounds in a prior motion or (2) fails to abide by the rule's time limits, such as newly discovered evidence claims. As described above, all of the instant claims are untimely or fail to satisfy an exception to the rule's filing deadline. Therefore, the Court finds that the instant motion is untimely, successive, procedurally barred, and unauthorized under rule 3.851(d)(1)-(2), (e)(2).

Accordingly, it is hereby **ORDERED** that:

1. The defendant's Successive Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend Pursuant to Rule 3.851, electronically filed by counsel on October 27, 2015, is **DENIED**.
2. The defendant has thirty days to file his notice of appeal.

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[41] Mot. 29-31.
[42] Mot. 31.

**DONE AND ORDERED** in Chambers in DeFuniak Springs, Walton County, Florida.

(eSigned by KELVIN WELLS in 01 JUDGE WELLS INBOX FOLDER on 02/29/2016 02:51:49 U0GeGKuU)

**KELVIN C. WELLS**
**CIRCUIT JUDGE**

KCW/elm

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of the foregoing Order has been furnished by regular U.S. mail (unless otherwise indicated) to:

**ROBERT S. FRIEDMAN, Esq.**
Capital Collateral Regional Counsel – North
175 Salem Court, Tallahassee, Florida 32301
*by electronic delivery to*: Robert.Friedman@ccrc-north.org

**DAWN B. MACREADY, Assistant Capital Collateral Regional Counsel – North**
175 Salem Court, Tallahassee, Florida 32301
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**RICHARD LEVASSEUR, Assistant Capital Collateral Regional Counsel – North**
175 Salem Court, Tallahassee, Florida 32301
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**TINESHIA D. MORRIS, Assistant Attorney General**
Office of the Attorney General, Capital Appeals
PL-01 The Capitol, Tallahassee, Florida 32399-1050
*by electronic delivery to*: capapp@myfloridalegal.com *AND*
Tineshia.morris@myfloridalegal.com

**JOSHUA MITCHELL, Assistant State Attorney**
524-A Highway 90 East, DeFuniak Springs, Florida 32435
*by electronic delivery to*: jmitchell@sa01.org

**[Certificate of Service Continued on the Next Page]**

**ERNEST D. SUGGS, DC# 220267**
Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32026

**ALEX ALFORD**
**Clerk of Court**


BY:
Deputy Clerk

# ATTACHMENT 1

IN THE CIRCUIT COURT IN AND FOR WALTON COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO: 90-338CF

ERNEST D. SUGGS, VOLUME I

Defendant.

_____/

COPY

THE ABOVE CAUSE came on for hearing in Open Court beginning on the 23rd day of January, 2003, with the Honorable Thomas T. Remington, Judge of the Circuit Court in and for The First Judicial Circuit of Florida presiding, and the following proceedings were had:

APPEARANCES

FOR THE PLAINTIFF:
CLAYTON J.M. ADKINSON, ESQUIRE
Assistant State Attorney
DeFuniak Springs, Florida

and

CHARMAINE M. MILLSAPS, ESQUIRE
Assistant Attorney General
The Capitol
Tallahassee, Florida

FOR THE DEFENDANT:
HILLIARD E. MOLDOF, ESQUIRE
1131 SE Second Avenue
Ft. Lauderdale, Florida

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Q Right, and I told you that you didn't have to; correct?
A No, you told me I could go back to the cell.
Q Right, but I told you that you didn't have to talk to me if you didn't want to?
A No, sir, you told me I could go back to the cell.
MR. ADKINSON: That's all.
THE COURT: Okay.
MR. MOLDOF: Nothing further from Mr. Broxson.
THE COURT: Thank you very much.
THE WITNESS: You're welcome, sir.
BAILIFF: Is the witness released for return?
MR. MOLDOF: Yes.
(Witness leaves courtroom.)
MR. MOLDOF: We're going to call Laura Sexton.
(Witness comes forward.)
WHEREUPON,

LAURA SEXTON

was called as a witness and, having been first duly sworn, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. MOLDOF:
Q Good morning, ma'am.
A Good morning.
Q Could you state your name?

A Laura Sexton.
Q Where do you live?
A Sylacauga, Alabama.
Q Back in 1990 where were you living?
A Sylacauga, Alabama.
Q Did you know an individual by the name of Pauline Casey?
A Yes.
Q How did you know her?
A She's my mother.
Q And you know Steve Casey?
A Yes.
Q And he is?
A Was my stepfather.
Q Ray Hamilton?
A Yes.
Q How did you know him?
A He was a friend of my mom's. When I lived down there with them in 1986 we always called him Bird Man because he had a big parrot. He was a friend of my mom's. When I would go visit my parents, he lived right behind them.
Q So Steve Casey and your mom lived in the house immediately in front of Ray Hamilton?
A Yes.

Q I realize some of this is sensitive. I apologize for going into it with you. To just kind of get to the heart of this, your mom was found deceased on what day, if you recall?

A I believe it was August 6.

Q She was missing on August 6. Do you remember when her body was found?

A The next morning.

Q When was the funeral, if you recall?

A The Friday after, which I believe was the tenth.

Q On that Friday did anything occur with Mr. Casey?

A Yes, it did.

Q Can you tell the Court what that was?

A We was at the funeral home. It was right before the funeral service when everybody was still viewing the body in the church. Mr. Casey walked up to me and I remember it very clearly, me and my fiance and my dad and my aunt were standing beside each other. We were on the first row of the pew in the church. He walks up and he pulls me to the side and said, I'd like to give this to you. It belonged to your mother. It was a gold watch and it still had her blood on it.

Q You say it was a gold watch. Had you ever seen it before?

A No.

Q You said there was blood on it. How did you determine that?

A Because you could clearly see it. It was around the rim and in between the creases of the watch. It had a -- the band on it had like sort of like a man's, the rings, you know?

Q Right.

A But it was a woman's. It was diagonal, catty-cornered to each other, and it was in between them and in the clasp.

Q Okay. This was on the tenth, you say?

A Yes, I believe it was the tenth.

Q When he gave you that watch, what if anything did you do with respect to the watch and your believing there was blood on it? Who did you call or who did you notify?

A My dad automatically noticed it and they said -- they turned around and looked at him. I'm not going to say the words, but my dad turned and looked and said, the least you could have done, you SOB, is washed the blood off.

Q Okay. What happened then? What, if anything, did you do with that?

A I just held on to it as tight as I could because my mother was gone.

Q Did you ever tell anybody about that?

A Yes.

Q Who?
A It was a few years later because I was only sixteen at the time and didn't think nothing, you know, of the trial. I had called Mr. McMillian.
Q Who's that?
A He was the sheriff at the time.
Q Okay.
A Told him about it and he said it was impossible, there was no blood -- I mean no watch on her body when they found her, that I was lying.
Q When you said it had blood on it, did he ever ask to see it or examine it?
A They asked where it was at and I told them at the time, you know, it was just basically my word, but I had witnesses that had seen it. In '91 I was in a car wreck and it got busted up.
Q With respect to that information, did you ever communicate it to anybody else?
A Yes.
Q To whom?
A Brad Trusty and Clayton Adkinson.
Q And told them the very same thing you've told us?
A Yes.
Q Did they bring you in and interview you about that?

A No.

Q You said you were present with other family members, other individuals who also saw that. Were they ever contacted?

A No.

Q And you did --

A My dad, I'm sorry.

Q I'm sorry, go ahead.

A My dad was last year by an investigator.

Q When you're saying a couple of years later, this was in 1990 that you actually received the watch? Do you remember the year that you actually called?

A It was probably around 1994.

Q After -- in other words, when you said I was 16 at the time, tell the Court what you meant by that in terms of realizing about the trial.

A I was young. I mean I wasn't really aware of what goes on in court trials. After the watch had got busted up in '90 it sort of slipped my mind and it reflected back on me around '94.

Q Again, you realized Mr. Suggs had been tried and convicted for this?

A Yes.

Q You came forward at that point to talk to Mr. McMillian, Mr. Trusty and Mr. Adkinson?

A Um-hum. I called them on the phone.

Q Did anyone ever put you in touch with Mr. Suggs' attorneys at that time?

A No, I had to do that all on my own.

Q And that's how you eventually came to contact me; correct?

A Yes.

Q In terms of at the time of Mr. Stewart or Mr. Kimmel, did anyone give you those names and ask you to contact them?

A No, sir, I believe it was a lady I spoke with. I can't reflect the name and I had to ask who the attorneys were?

MR. MOLDOF: Okay, that's all I have. Thank you.

MR. ADKINSON: Judge, may we approach?

THE COURT: Sure.

(WHEREUPON, a sidebar was held.)

THE COURT: Do you want this on the record?

MR. ADKINSON: We can go ahead and do that. Before I cross that, I'd like to move to exclude her testimony because there's nowhere in this 3.850 motion that there's any allegation of this type evidence, newly discovered evidence. The only thing they talked about in this 3.850 was that of a will. This is the first time any of this has been raised. I don't know

what claim this goes to.

MR. MOLDOF: It certainly goes to the IAC claim of Mr. Stewart and Mr. Kimmel not investigating information and it's a Brady claim. Her name was listed on the defense's witness list. He's had --

MR. ADKINSON: I'm not going to deny that. But it's not in regards to any claims you've filed.

MR. MOLDOF: Did you say you do deny it or you don't deny it?

MR. ADKINSON: No, I don't deny she's listed on the list. But as to what claim does she go to?

MR. MOLDOF: The IAC claim of ineffective assistance of counsel, not talking to the family members of the victim to have this information available. Like the complaint sets out, Judge, Steve Casey is the focus of the arguments of ineffective assistance of counsel in the sense that Steve Casey gave an alibi that upon review of the documents --

THE COURT: Was Steve Casey Pauline Casey's husband at the time of her death?

MR. MOLDOF: Right, her stepfather. The only reason I mention that is that obviously those people, Steve Casey, were a focus of some of the allegations in this case. To say why would they ever talk to her daughter, I mean, if you're talking to Steve Casey and

talking to family members, it wouldn't be a leap for a defense attorney to investigate that.

THE COURT: All right.

(WHEREUPON, the sidebar was concluded.)

CROSS EXAMINATION

BY MR. ADKINSON:

Q How old are you now?

A Pardon me?

Q How old are you?

A I'm 28.

Q At the time your mom was killed?

A I was 16.

Q Sixteen?

A Um-hum.

Q Where did you live?

A Sylacauga, Alabama.

Q Did you live with your father?

A Yes.

Q How long had you lived with your father?

A For about three years.

Q So you had not lived with your mother for the three-year period before her death?

A No.

Q Excuse me?

A No, sir.

Q Did you know Steve Casey?
A Yes, I did.
Q Was Steve and your mother in the military together?
A Yes, they were.
Q Was it only three years you had not lived with your mother?
A Yes.
Q Where did she live during that three-year period?
A She was stationed in Germany and then she come out of the military and moved back to Florida.
Q Do you know how long she had been in Florida before her death?
A Approximately about two and a half or three months.
Q Had you seen her?
A Yes.
Q Excuse me?
A Yes.
Q Where had you seen her?
A She come and visited me in July.
Q One month before her death?
A Yes.
Q She visited you?
A Yes.

Q Other than that when was the last time you had seen her over the past three years?

A That would've been it. We only kept in contact over the phone.

Q Was your father with you at the funeral?

A Yes.

Q Was Pauline's father there, too?

A No, her father's passed away.

Q So, your father. What other family members were there when this supposedly happened?

A My father's wife, my stepmother; my fiance; my brother; my aunts; my uncles.

Q They're all adults; right?

A Yes.

Q And they knew you had received the watch?

A Yes.

Q But yet at the time you received the watch no one said anything to anybody about the watch?

A No, sir, we just assumed the sheriff had turned it over to him until we came later to find out that wasn't true.

Q You knew there was a man on trial; right?

A Yes.

Q In fact, did any of your family attend that trial?

A Yes, sir.
Q Did you?
A No.
Q Who did attend from your family?
A My grandmother and my grandfather.
Q They knew about the watch; right?
A Yes.
Q They were present during the trial, they knew the attorneys representing Mr. Suggs; correct?
A Um-hum.
Q You knew he was represented; right?
A Pardon me?
Q You knew he was represented?
A I assumed he was represented.
Q What happened to this watch, now?
A I was in a wreck in 1991 and it got busted up.
Q You never had it tested for blood?
A No, there was no reason to. We had done assumed that the sheriff had turned it over, that it wasn't evidence.
Q Did you ask him if the sheriff had turned it over to him?
A No. He told us. He came to us and gave us the watch and said it was given to him and he was giving it to me.

Q Said it was given to him?
A He didn't say by whom.
Q He didn't say by whom?
A No.
Q Didn't you contact the sheriff's office sometime after the trial about getting your mother's personal contents?
A Yes, I did.
Q In fact, her purse was one of the items you wanted; right?
A Yes.
Q Did you get those items?
A I finally got them last summer. I got the items out of her purse, not her purse.
Q That's what you contacted Investigator Trusty about; wasn't it?
A No, I contacted Brad Trusty not only about the purse but about the watch, also, and how come Steve Casey was never questioned. I discussed various things with Brad Trusty.
Q Excuse me?
A I discussed various things with Brad Trusty.
Q It's your testimony that you called and talked to me?
A Yes, sir. I only spoke to you once, but I talked

numerous times with Brad Trusty.

Q This was in 1994?

A I believe it was around '94, yes, sir.

Q When did you supposedly lose the watch?

A July 4, 1991, I was in a bad car accident at 5:30 in the morning in Goodwater, Alabama.

Q That's when you lost the watch?

A Yes, sir.

Q What kind of relationship did you have with Steve Casey?

A As in from the beginning or all the time?

Q Yeah.

A In the beginning we just, you know, stepfather, getting to know him some when I moved down there in 1986. About a month after I moved down there they got married. About two months after they got married we started having a sexual relationship.

Q You moved back to Alabama?

A No, not until after we moved to California.

Q Who moved to California?

A Me, my mother and him.

Q The last three years what was your relationship with Steve Casey?

A The last three years before my mother was murdered?

Q Yes.
A None.
Q How did you get along with Steve Casey?
A We got along fine.
Q Did you know he got some insurance proceeds from your mother's death?
A I wasn't aware of that until after the funeral.
MR. ADKINSON: I don't have anything else, your Honor.
MR. MOLDOF: Just one question.

REDIRECT EXAMINATION

BY MR. MOLDOF:

Q How did you become aware that the watch was important? What made you realize the watch was important?
A Me and my dad got to discussing it and then I called Sheriff McMillian and was discussing my mother's belongings and also brought the watch up to him, about Steve Casey giving me the watch. He called me a liar, that it was impossible, that there was no watch on my mother's body when they found her.
Q That's when you realized something was amiss?
A Yes, sir.
Q You had assumed up until then that McMillian had given him the watch?
A Yes, sir.

MR. MOLDOF: That's all I have.

MR. ADKINSON: No other questions.

THE COURT: Did you say you and Mr. Casey had a sexual relationship?

THE WITNESS: Yes, sir.

THE COURT: When was that?

THE WITNESS: Probably around December of '86 through February of '87.

THE COURT: You would have been pretty young?

THE WITNESS: Thirteen years old.

THE COURT: What?

THE WITNESS: I'm was 13 years old.

THE COURT: All right. Thank you.

(Witness leaves the courtroom.)

MR. MOLDOF: Judge, at this point I need a little break. I don't think I have anyone lined up, but I want to talk to counsel for a moment.

THE COURT: That will be fine. How much time do you need?

MR. MOLDOF: Maybe ten minutes and we can announce to the Court and maybe get our ducks in a row.

THE COURT: We'll take ten minutes and see where we are.

(WHEREUPON, a recess was taken.)

MR. MOLDOF: Judge, as I indicated earlier today,

CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF OKALOOSA )

We, CLIFORD W. GODWIN, CAROL S. HEARNE, and JOANNA D. AMUNDS, Official Court Reporters and Notary Publics, in and for the State of Florida at Large, do hereby certify that we reported the aforementioned matter, and that the foregoing pages are a true and correct record.

IN WITNESS WHEREOF, we have hereunto subscribed our names and affixed our seals this 18th day of February, 2003.

CLIFFORD W. GODWIN

CAROL S. HEARNE

JOANNA D. AMUNDS

STATE OF FLORIDA
COUNTY OF OKALOOSA

The foregoing certificate was acknowledged before me this 18th day of February, 2003, by Clifford W. Godwin. Carol S. Hearne, and Joanna D. Amunds, who are personally known to me.

Dorothy M. Craft

Dorothy M. Craft
MY COMMISSION # DD062178 EXPIRES
October 30, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

# EXHIBIT 4

Circuit Judge Laura Melvin, Retired
6223 Hwy 90 #200
Milton, FL 32570
August 26, 2013

Governor Rick Scott
State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Re: Response to your request for input re commutation of the death penalty of SUGGS, Ernest Donald, DOB 08/08/1955, DC# 220267

Dear Governor Scott:

On July 15, 1992, I was the trial judge sitting in Walton County when I sentenced Ernest D. Suggs to death in the electric chair, carefully following. the law. I did not impose the death penalty because I thought Suggs deserved it, or that the emotional stress of the victim's family would somehow be made lighter, or because I thought it was the moral thing to do, or that society would be even a whit better off by killing Suggs in retribution. As a Judge, I understood that I did not have the right or authority to impose my personal convictions, and so I did my job, following the written mandates of the statutes as currently written.

As the Governor of Florida, you have power and authority not granted to me or any other Circuit Judge. Unlike Circuit Judges who are bound by the statutes, you have the Constitutional power as set forth at Article IV, Section 8, to commute Suggs' death sentence to life in prison without parole, a sentence that would better serve all of the citizens of Florida. The vote of his jury – seven to five for death – demonstrates that even for a jury in the most conservative part of the state, Suggs' execution is by no means the unanimous choice. I urge you to commute Suggs' death sentence to life in prison.

The concept of justice is complex, though the word "justice" is often brandished about as an irrefutable defense for whatever position the sword-bearer is taking. It is good to remember that there was a time in this country when it was considered "just" to hang someone who stole your horse, or to

hang a woman in Salem for being a "witch." 150 years ago under the law, black people were killed in the name of justice for slight infractions, while at the same time white people could justly kill blacks without having to resort to a Court. We've improved our definition of justice over the years, yet we continue to claim the right to kill killers, in retribution.

I am constantly amazed at how little the citizens of Florida know about the realities of imposing the death penalty. Without even addressing the obvious moral issues of killing in retribution, concrete facts that argue against the death penalty include:

- The death penalty is not cost effective. It cost three times as much to execute a defendant as it does to imprison for life.
- DNA results increasingly show the fallibility of eye witnesses and other evidence.
- Imposition of the death penalty is technical capricious; if you get arrested for the same crime with the same facts in South Florida, that jury is less likely to recommend the death penalty than a jury in a rural area in North Florida. I have a friend who sat on the criminal bench in Ft. Lauderdale for 15 years and never had the jury recommend the death penalty. Yet in one year I heard three capital murder cases in Walton County, and the jury recommended the death penalty in two of the three.
- There is no study that shows that the death penalty is a deterrent to crime, in spite of all of the political posturings to the contrary.
- There is racial bias in the administration of the death penalty.
- In Florida all death sentences must be reviewed by the Florida Supreme Court. Death penalty cases make up 12% of the Supreme Court's docket yet, because of the complexity and finality involved, such cases usurp 50% of the Court's time, leaving the remaining 88% of its cases only 50% of its time and attention. [1] It is easy – yet naïve – to simply assert that the court system should speed up the process. The number of people released from death row after DNA testing demonstrated they had been wrongfully convicted certainly does not argue for haste in this business of retribution killings.

21 years after I imposed the death penalty, Suggs still waits to be killed in the metal and concrete world of death row with 405 other in Florida and

[1] "Take a hard look at the real cost of the death penalty" *Florida Bar News*, March 2010

3,300 others in the United States. And, 21 years later I still do not believe it is just to kill him, not as that word is used in Micah 6:8

*"What doth the Lord require of thee but to do justly, and to love mercy, and to walk humbly with thy God?"*

I urge you "to do justly" and follow this higher law that is not subject to the fickle winds of political expediency. I urge you to commute Ernest E. Suggs' death sentence and instead require that he live the rest of his life in prison without parole.

Sincerely,

Laura Melvin

Copy to:
Russ Gallogly, Parole Examiner
Florida Parole Commission
2225 Pat Thomas Parkway
Quincy, FL 32352