Third District Court of Appeal

State of Florida

Opinion filed February 17, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-1954
Lower Tribunal No. 07-44274A

Joshua Broughton,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Jose L. Fernandez, Judge.

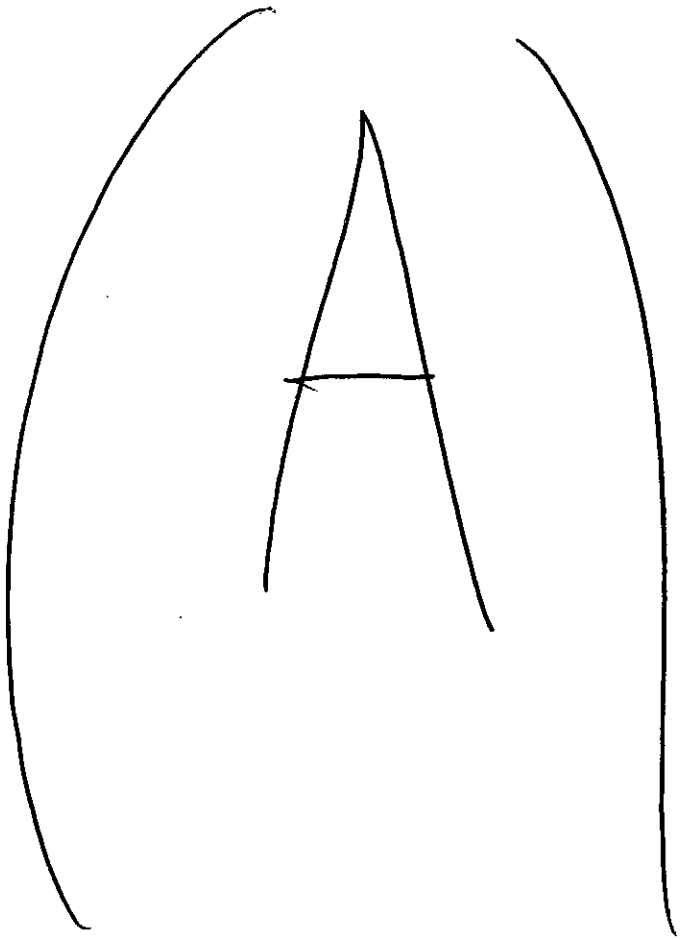
Joshua Broughton, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, C.J., and SCALES and LOBREE, JJ.

PER CURIAM.

Affirmed.



F070

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

THE STATE OF FLORIDA,

VS.

JOSHUA BROUGHTON,

_____/

CASE F07-44274A
CRIMINAL DIVISION 70
JUDGE FERNANDEZ

ORDER DENYING DEFENDANT'S *PRO SE* MOTION FOR POST-CONVICTION RELIEF AND/OR PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE is before the Court for consideration of the Defendant's *pro se* Motion for Post-Conviction Relief and/or Petition for Writ of Habeas Corpus, filed on or about May 12, 2020. The Court having reviewed the motion, the State's response thereto and incorporated Motion for Rule to Show Cause, the court files and records in this case, and being otherwise fully advised in the premises therein, hereby denies the Defendant 's motion on the following grounds:

The Defendant was sentenced on July 31, 2009 after guilty verdicts on the charges of robbery with a firearm (count 1) and dealing in stolen property (count 7). The Defendant was sentenced as a habitual violent offender on both counts. The Defendant was sentenced to thirty years in state prison followed by five years of probation, with a ten year minimum mandatory pursuant to 10/20/Life for possession of a firearm and a fifteen year minimum mandatory pursuant to Florida Statute 775.084 (Habitual Violent Offender statute) on count one, and a ten year

minimum mandatory on count seven pursuant to Florida Statute 775.084 (Habitual Violent Offender statute). The Defendant's conviction and sentences were affirmed on appeal by the Third District Court of Appeal on July 29, 2011. The Defendant has filed numerous post-conviction motions all of which have been denied and affirmed on appeal. The Defendant's current motion entitled a Motion for Post-Conviction Relief and/or Petition for Writ of Habeas Corpus was filed on or about May 12, 2020.

The Defendant argues in his motion that he has "newly discovered evidence" in the form of certified documents he obtained pursuant to a public records request from the Palm Beach County Clerk's Office. These documents which relate to bench warrants issued in the years 2007 and 2008 are clearly not "newly discovered evidence." These documents have been available to the Defendant for almost thirteen years. His argument is that these documents somehow establish that his arrest in this case was illegal and that would have made his statement to the police in this case illegal. He is clearly wrong in both his conclusion that this is "newly discovered evidence," and his argument that these documents would somehow establish that his arrest was illegal and/or his statements to police would have been found to be inadmissible "fruits of the poisonous tree" by the trial court. These arguments could have, and should have, been made at the time of trial,

and/or on appeal. The Defendant's arguments are without merit, and untimely made.

The Court declines to enter the State's requested order to show cause. The Defendant was represented by counsel who reviewed and adopted the Defendant's motion. Counsel also filed a reply to the State's responsive pleading.

The Defendant is hereby notified that he has the right to appeal this order to the District Court of Appeal of Florida, Third District within thirty (30) days of the signing and filing of this order.

The Clerk of this Court is hereby ordered to send a copy of this Order to the Defendant, Joshua Broughton, DC#B01108, Madison C.I., 382 S.W. MCI Way, Madison, FL. 32340 .

If the Defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this order, to the appellate court the following:

1. Defendant's Motion for Post-Conviction Relief filed on or about May 12, 2020.
2. The State's response filed on or about August 25, 2020.
3. This order.

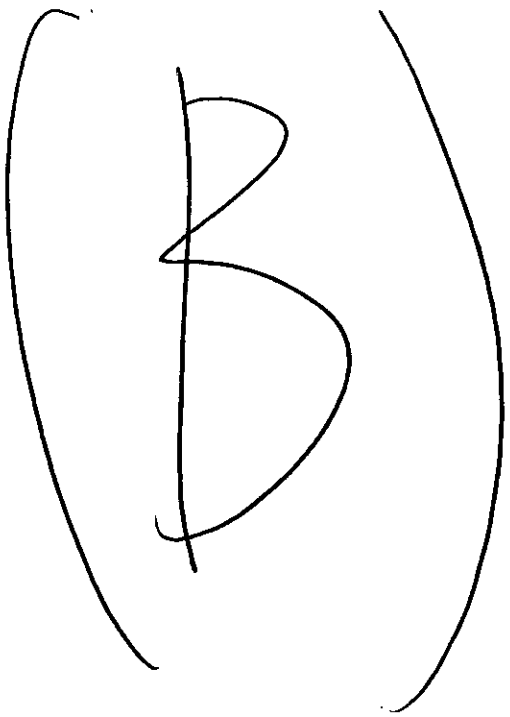
DONE AND ORDERED at Miami, Miami-Dade County, Florida, this 24th day of November 2020.

JOSE L. FERNANDEZ,
Circuit Court Judge

I CERTIFY that a copy of this order has been furnished to the MOVANT, JOSHUA BROUGHTON by mail this 4TH day of DECEMBER, 2020.

Deputy Clerk
RODEL QUIJANO 8945

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office DEC 04 2020
HARVEY RUVIN, Clerk of Circuit and County Courts
Deputy Clerk



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Any other use of this paper will result in Disciplinary Action per F.A.C. 33-601.314 (7-4)

IN THE DISTRICT COURT OF

APPEAL

OF FLORIDA

THIRD DISTRICT

MARCH 23, 2021

JOSHUA BROUGHTON,
Appellant(s)/Petitioner(s),
vs.
THE STATE OF FLORIDA,
Appellee(s)/Respondent(s),

CASE NO.: 3D**20-1954**

L.T. NO.: 07-44274A

BY ORDER OF THE COURT:

In re: Article I, section 16(b)(10)b Time Limitations

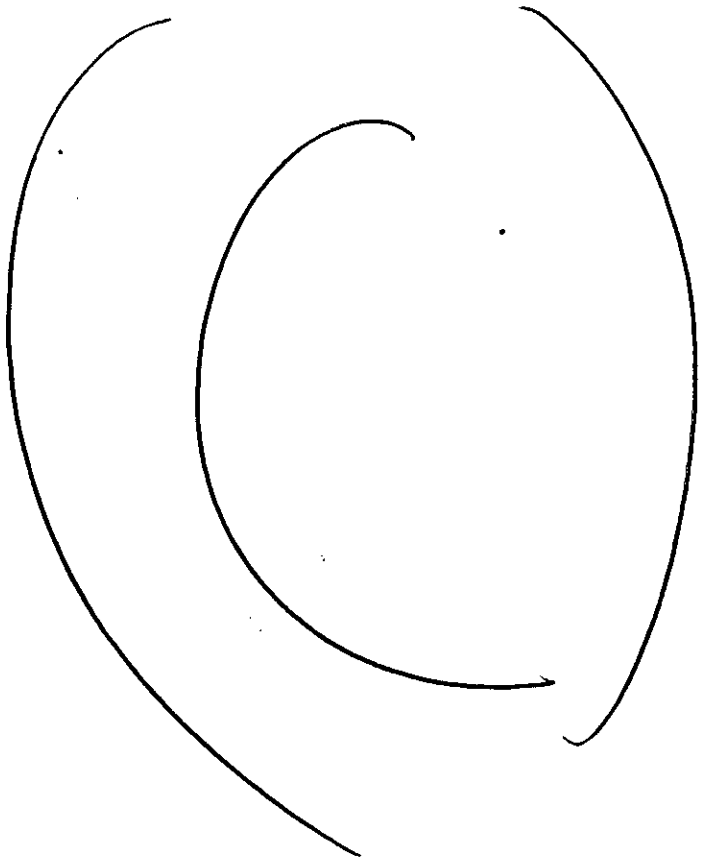
Article I, section 16(b)(10)b. of the Florida Constitution provides that all state-level appeals and collateral attacks on any judgment must be complete within two years of the date of appeal in non-capital cases and five years from the date of appeal in capital cases unless a court enters an order with specific findings as to why the court was unable to comply and the circumstances causing the delay. Pursuant to the administrative procedures and definitions set forth in Supreme Court of Florida Administrative Order No. AOSC19-76, this case was not completed within the time frame required by Article I, section 16(b)(10)b. because the time frame had already expired by the time this case was filed in this Court.

A True Copy
ATTEST

CLERK
DISTRICT COURT OF APPEAL
THIRD DISTRICT

cc: Office of Attorney General Joshua Broughton

la



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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

JOSHUA BROUGHTON,

Defendant.

CASE NO. F07-44274A

Section No. 7

Judge Fernandez

DEFENDANT'S REPLY TO STATE'S RESPONSE TO DEFENDANT'S PRO SE MOTION FOR POST-CONVICTION RELIEF AND/OR PETITION FOR WRIT OF HABEAS CORPUS ALLEGING MANIFEST INJUSTICE

COMES NOW Defendant JOSHUA BROUGHTON, by and through undersigned counsel, and pursuant to Florida Rule of Criminal Procedure 3.850(b)(1), and files this Reply to the State's Response to Defendant's Motion for Postconviction Relief and/or Petition for Writ Of Habeas Corpus Alleging Manifest Injustice, Based on Newly Discovered Evidence. In furtherance thereof, Defendant states:

SUMMARY OF THE ISSUE

This Court should grant Mr. Broughton an evidentiary hearing based on the newly discovered evidence to wit: Mr. Broughton was subject to an illegal arrest on December 17, 2007, where there was no active bench warrant pending in Palm Beach County, and the Miami-Dade Police Department arrested him based on a non-existent active warrant in violation of his Constitutional rights, and where Mr. Broughton's counsel relied on the veracity of statements made by Plaintiff during Detective Lopez's deposition.

ARGUMENT

I. THE RECENT DISCOVERY OF THE LACK OF AN ACTIVE BENCH WARRANT[1] AGAINST MR. BROUGHTON ON DECEMBER 17, 2007 CONSTITUTES NEWLY DISCOVERED EVIDENCE AND WITHOUT AN ACTIVE AND VALID WARRANT, MR. BROUGHTON WAS ARRESTED ILLEGALLY, THEREBY VIOLATING HIS CONSTITUTIONAL RIGHTS AND CAUSING A MANIFEST INJUSTICE.

Pursuant to Florida Rule of Criminal Procedure 3.850, a noncapital defendant may attack his judgment and sentence collaterally more than two years after it becomes final based on newly discovered evidence. *See* Fla. R. Crim. P. 3850(b); *see also Burns v. State*, 110 So. 3d 96, 96–97 (Fla. 2d DCA 2013) (citing *Bolender v. State*, 658 So. 2d 82, 85 (Fla. 1995) (explaining that a movant who seeks postconviction relief on basis of newly discovered evidence must file his motion

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[1] See Motion for Postconviction Relief and/or Petition for Writ of Habeas Corpus Alleging Manifest Injustice, dated May 7, 2020, pages 8 and 9, attached hereto as Exhibit A.

> ... Upon review of the CERTIFIED documents that the clerk mailed the Defendant the following new evidence was discovered:
>
> (1) The Defendant did NOT have ACTIVE BENCH WARRANT IN PALM BEACH COUNTY on DECEMBER 17, 2007, when the MIAMI-DADE POLICE DEPRTMENT ARRESTED HIM.
>
> (2) The Fugitive Warrant / Arrest Affidavit lists two Palm Beach County Warrants: 07-012902 and 07-17274. (citing Exhibit I).
>
> (3) Warrant 07-17274 had already been executed and the Defendant had been arrested, went before the court, and was released on bond on or about December 4, 2007.
>
> (4) Warrant 07-012902 was not issued UNTIL JANUARY 15, 2008. This warrant was only issued based on the fact that the Defendant failed to appear at his January 14, 2008. (citing Exhibit J).

Id., at 8.

within two years from the date the evidence could have been discovered with the exercise of due diligence).

To prevail on a claim of newly discovered evidence, the defendant must show: (1) he nor his counsel knew about the evidence or that his counsel could not have uncovered the evidence through due diligence at the time of trial, and (2) that the evidence is of such a nature that it would probably produce an acquittal on retrial. *See Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1992), *see also Wyatt v. State*, 71 So. 3d 86, 99 (Fla. 2001). These requirements are known as due diligence and probability prongs, respectively. *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2009).

Where a newly discovered evidence claim is properly pleaded, an evidentiary hearing is required to evaluate the credibility and to determine "whether the statements are true and meet the due diligence and probability prongs . . . unless the affidavit is inherently incredible or obviously immaterial to the verdict and sentence." *Nordelo v. State*, 93 So.3d 178, 185 (Fla. 2012) (quoting *Davis v. State*, 26 So. 3d at 526 (Fla. 2009) and citing *McLin v. State*, 827 So. 3d 948, 955 (Fla. 2002) (requiring an evidentiary hearing to test the credibility of the codefendant's statements that served as the basis for a newly discovered evidence claim)).

A postconviction court's decision to grant or deny an evidentiary hearing is subject to written materials provided as the basis for such relief. *See Nordelo v. State*, 93 So. 3d at 184 (Fla. 2012). Accordingly, the trial court's ruling is "tantamount to a pure question of law." *Id.* However, in undertaking this review, the factual allegations of the motion must be accepted as true unless refuted by the record. *Simpson v. State*, 100 So. 3d 1258, 1259 (Fla. 4th DCA) (citing *Nordelo*, 93 So. 3d at 184).

Also, if a motion for postconviction relief is summarily denied for legal insufficiency and has never been addressed on its merits, the court cannot summarily deny a subsequent motion for

being successive without an evidentiary hearing on the merits of the motion. *Roth v. State*, 479 So. 2d 848 (Fla. 3rd DCA 1985).

Alternatively, "Article I, Section 13 of the Florida Constitution mandates the availability of the writ of habeas corpus." 2 Fla. Practice, *Appellate Practice* § 9.6 (2019); *see* Art. I, § 13, Fla. Const. By way of the writ, "an appellate court has the authority to correct a 'manifest injustice.'" *Dickerson v. State*, 204 So. 3d 544, 545 (Fla. 5th DCA 2016) (citation omitted). Courts have "inherent authority to grant a writ of habeas corpus to avoid incongruous and manifestly unfair results." *Johnson v. State*, 226 So.3d 908 (Fla. 4th DCA 2017) (quoting *Stephens v. State*, 974 So.2d 455, 457 (Fla. 2d DCA 2008)). Relief may be granted even on a successive petition or claim where failing to do so would result in manifest injustice. *Id.*, (citing *Figueroa v. State*, 84 So.3d 1158, 1162 (Fla. 2d DCA 2012); *Stephens*, 974 So.2d at 457).

A. When an Individual is Unreasonably Seized Based on a Void or Nonexistent Warrant, any Evidence Obtained as a Result of the Seizure Must be Suppressed, Even If the Arresting Officers Act in Good Faith Because the Mistake Does Not Take Away the Illegality of the Arrest

A void or a nonexistent warrant may not be the basis for a legal arrest and search. *See State v. Gifford*, 558 So. 2d 444, 445 (Fla. 4th DCA 1990) (citing *Martin v. State* 424 So.2d 994, 995 (Fla. 2d DCA 1983); *Pesci v. State*, 420 So.2d 380, 382 (Fla. 3d DCA 1983)).

Moreover, even if the arresting officers do not discover the warrant's invalidity until after the arrest, it does not transform it into a lawful one. *State v. Gifford*, 558 So. 2d at 445 (Fla. 4th DCA 1990). Nor does the "good faith exception" to the exclusionary rule apply and validate the arrest. *Id.* (citing *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984)).

In the instant case, the Miami-Dade Police Department lacked probable cause to arrest Mr. Broughton.[2] They picked up Mr. Broughton based on a pretense, *i.e.* a warrant that did not exist. *Compare, e.g. State v. Gifford*, 558 So. 2d 444, 445 (Fla. 4th DCA 1990) (where the detective testified that, before interviewing appellee, he had probable cause because (a) he had interviewed the victims and witnesses; (b) while with the victims and sexual assault counselors at the medical center, he picked up bits and pieces of information from the road patrol commander; and (c) the vehicle described as an instrumentality of the offense by both victims was found at appellee's residence). Here there was at the most, mere suspicion lacking articulable facts or a bare conclusion. *State v. Gifford*, 558 So. 2d at 445 (citing *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527, *reh'g denied,* 463 U.S. 1237, 104 S.Ct. 33, 77 L.Ed.2d 1453 (1983)).

"When an individual is unreasonably seized, any evidence obtained as a result of the seizure must be suppressed." *See Bowen v. State*, 685 So. 2d 942, 944 (Fla. 5th DCA 1996). Moreover, "oral statements made after an unlawful search or arrest can be suppressed in the same manner as tangible evidence obtained during an unlawful search or arrest where those statements are properly considered fruits of the unlawful search." *Hanania v. State*, 264 So.3d 317, 324 (Fla. 2d DCA 2019) (citing *Wong Sun v. United States*, 371 U.S. 471, 485–86, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) and *Talley v. State*, 581 So.2d 635, 636 (Fla. 2d DCA 1991)). Determining whether such statements are admissible requires consideration of three factors: "The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct ...." *Brown v. Illinois*, 422 U.S. 590, 603–04, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975) (citation omitted) (footnotes omitted); *see also State v.*

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[2] *See* Motion for Postconviction Relief and/or Petition for Writ of Habeas Corpus Alleging Manifest Injustice, dated May 7, 2020, pages 8 and 9, *supra.*

Frierson, 926 So.2d 1139, 1143 (Fla. 2006). The burden of proving that the statements are admissible rests with the State. *Brown*, 422 U.S. at 604, 95 S.Ct. 2254.

Cases where the three factors were considered and statements were suppressed include *Brown v. Illinois*, 422 U.S. at 604–05, 95 S.Ct. 2254 (holding that a statement made within two hours of arrest was inadmissible when there were no intervening circumstances); *State v. Rogers*, 427 So.2d 286, 288 (Fla. 1st DCA 1983) (holding that statements made the day after the arrest were inadmissible when they were made during the same period of custody and there were no intervening circumstances), and *Reza v. State*, where the Third District Court of Appeal found that the trial court erred by denying the motion to suppress Reza's initial confession where there was no probable cause to detain or arrest Reza, there was a minimal passage of time between the illegal arrest and confession, and there were no intervening circumstances sufficient to disconnect the illegality of the detention from Reza's inculpatory statements during the initial interrogation. *See Reza v. State*, 163 So.3d 572 (Fla. 3d DCA 2015).

Additionally, even if the arresting officers acted in good faith, and this was a mistake, it does not take away the illegality of the arrest. Indeed, an otherwise illegal arrest is not insulated from challenge by the fact that the arresting officer relies on erroneous information dispatched by a fellow officer or employee. *State v. Gifford*, 558 So. 2d at 449 (Fla. 4th DCA 1990) (Esquiroz, J., dissenting) (citing *Albo v. State,* 477 So.2d 1071, (Fla. 3d DCA 1985); *Dean v. State,* 466 So.2d 1216 (Fla. 4th DCA 1985)).

Florida courts have long held that the knowledge of one officer may be imputed to other officers under the fellow officer rule, and the same is true for their mistakes. *See State v. J.R.D.*, No. 2D18-2034, 2019 WL 6974141 (Fla. 2d DCA Dec. 20, 2019) (holding that good faith exception to exclusionary rule did not apply to suppression of contraband discovered pursuant to

illegal arrest resulting from warrant mistake) (citing *Walker v. State*, 606 So. 2d 1220, 1221 (Fla. 2d DCA 1992) ("Based on the 'collective knowledge' or 'fellow officer' rule, an otherwise illegal arrest cannot be insulated from challenge by the fact that the arresting officer relied on erroneous radio information from a fellow officer or employee."); *Reza v. State*, 163 So. 3d 572, 576 n.4 (Fla. 3d DCA 2015) ("Thus, 'the rule works both ways: to validate an arrest when the responsible officers have probable cause and to vitiate it when, as here, none objectively exists.' " (quoting *Albo*, 477 So. 2d at 1073)). "[J]ust as the police may permissibly act upon their collective knowledge, so they are restrained by their collective ignorance." *Albo*, 477 So. 2d at 1074. Hence, even if the arresting officers relied in good faith on information from the dispatch officer, it does not insulate this arrest from the application of the exclusionary rule.

"The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." *Arizona v. Evans*, 514 U.S. 1, 10, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995). Under this rule, the police conduct resulting in the illegal seizure need not be nefarious or intentional for the remedy of suppression to apply; suppression is also appropriate to "deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Herring v. United States*, 555 U.S. 135, 144, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009). Accordingly, even if Mr. Broughton's arrest was a mistake, under the exclusionary rule, any statements that he made while in custody should have been suppressed under the Fourth and Fifth Amendments to the United States Constitution.

B. Mr. Broughton Has Satisfied the Due Diligence Prong Because He Relied on the State's Veracity During Detective Lopez's Deposition and Thus, He Did Not Have Any Other Way of Learning This Information Until Recently

To prevail on a claim of newly discovered evidence, the defendant must show: (1) he nor his counsel knew about the evidence or that his counsel could not have uncovered the evidence through due diligence at the time of trial, and (2) that the evidence is of such a nature that it would probably produce an acquittal on retrial. *See Jones v. State*, 591 So. 2d 911, 915-16 (Fla. 1992), *see also Wyatt v. State*, 71 So. 3d 86, 99 (Fla. 2001). These requirements are known as due diligence and probability prongs, respectively. *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2009).

In *Waterhouse v. State,* both trial and postconviction counsel relied on a police report that stated a witness did not remember when the defendant or the victim left a lounge on the night of the murder. *Rivera v. State*, 187 So.3d 822 (Fla. 2015) (citing *Waterhouse v. State,* 82 So.3d 84, at 102 (Fla.2012)).

In *Waterhouse*, counsel did not contact the witness because of this report, but the witness later stated that the report did not accurately reflect the information he provided to the police. *Id.*, (citing *Waterhouse v. State,* 82 So.3d at 90). The State asserted that counsel was not diligent because the reference to the witness in the police report provided notice that the individual was a potential witness. *Id.* The Florida Supreme Court held that counsel is permitted to rely on the veracity of a police report, and due diligence is met if (1) a witness swears in an affidavit that he or she spoke to police about the crime, but the report ultimately contained inaccurate or false information, and (2) counsel swears that he or she relied on the veracity of the report and did not contact the witness because the report indicated the witness could not provide any pertinent information. *Id.*, (citing *Waterhouse v. State,* 82 So.3d at 104). The Court explained that

> [t]o place the onus of verifying every aspect of an unambiguous police report on defense or collateral counsel would not only create

> a substantial amount of work in a capital case, but also could be viewed as downplaying the seriousness of allegedly false police reports.

Id. At 103.

Similarly, here Mr. Broughton's counsel relied on the veracity of Prosecutor Nina Tarafa's statement during Detective Lopez's deposition that Mr. Broughton was in jail for Surveyor Equipment Robbery.[3] This assertion by Tarafa misled counsel and gave counsel no reason to doubt the accuracy of the false statement.

In light of these facts, Mr. Broughton has established the due diligence prong of his newly discovered evidence claim where he did not have any other way of knowing or learning about the lack of an active warrant when he was arrested based on the veracity of the State Prosecutor's assertions during Detective Lopez's deposition.

C. Mr. Broughton Has Satisfied the Probability Prong Because Mr. Broughton's Oral Statement Must Be Excluded as Fruit of the Poisonous Tree and There is No Other Likely Evidence to Convict Him

The probability prong is sufficiently pleaded when the defendant provides facts showing how the new evidence "weakens the case against [him] so as to give rise to a reasonable doubt as to his culpability." *Davis*, 26 So. 3d at 526 (quoting *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998)). In determining whether the evidence compels a new trial, the trial court must "consider all newly discovered evidence which would be admissible." *Jones,* 591 So. 2d at 916 (Fla. 1991).

The probability prong is strengthened when there is no other likely evidence for which to convict the defendant. *See, e.g.*, *Wyatt v. State*, 71 So. 3d 86, 101 (Fla. 2011) (concluding that the newly discovered evidence relating to a letter regarding an agent's unreliable testimony was not of such a nature that it would probably produce an acquittal on retrial because (1) the state did not

[3] *See* Motion for Postconviction Relief and/or Petition for Writ of Habeas Corpus Alleging Manifest Injustice, dated May 7, 2020, page 9, *supra*.

base its case on that letter, (2) other witnesses linked the defendant to the murder, (3) DNA evidence matched the defendant to one of the victims, (4) the defendant admitted to stealing a car that was distinctively similar to the one used in the crime, (5) the defendant made inculpatory statements, and (6) all victims were shot by the same weapon). For example, an affidavit that contains information negating the evidence that implicated the defendant in a murder may satisfy the probability prong.

"When an individual is unreasonably seized, any evidence obtained as a result of the seizure must be suppressed." *See Bowen v. State*, 685 So. 2d 942, 944 (Fla. 5th DCA 1996). Additionally, "oral statements made after an unlawful search or arrest can be suppressed in the same manner as tangible evidence obtained during an unlawful search or arrest where those statements are properly considered fruits of the unlawful search." *Hanania v. State*, 264 So.3d 317, 324 (Fla. 2d DCA 2019) (citing *Wong Sun v. United States*, 371 U.S. 471, 485–86, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). An officers' good faith reliance on the validity of a warrant cannot save an improper search, because the good-faith exception articulated in *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), relates to judicial error in issuing a warrant unsupported by probable cause, not to police misconduct in making an unlawful arrest based on a void warrant. *See State v. White,* 660 So.2d 664, 666–67 (Fla.1995).

In *White,* the arrest was premised upon the assumption that an outstanding active warrant had been returned against the defendant, when in fact the warrant had been served four days earlier and was no longer valid at the time White was arrested. *Id.* at 665–66. The supreme court approved the trial court's ruling that a void warrant cannot support the arrest and an incidental search, and approved the suppression of contraband found in the search incident to his arrest.

In the same way, here any reliance on the void warrant was insufficient to justify Mr. Broughton's arrest. Consequently, any oral statements made by Mr. Broughton after his unlawful arrest should also be suppressed in the same manner as tangible evidence obtained during an unlawful search or arrest where those statements are properly considered fruits of the unlawful search." *Hanania v. State, supra* (citing *Wong Sun v. United States*, 371 U.S. 471, 485–86, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

Accordingly, Mr. Broughton has sufficiently pleaded the probability prong where any oral statements made by Mr. Boughton while illegally detained must be suppressed and there is no other likely evidence for which to convict him. Therefore, at the minimum, Mr. Broughton should be granted an evidentiary hearing to determine whether the newly discovered evidence is "of such a nature that it would probably produce an acquittal on retrial." *See Simpson v. State*, 100 So. 3d 1258, 1259 (Fla. 4th DCA 2012) (citing *Nordelo*, 93 So. 3d at 185–86).

CONCLUSION

As all allegations in Defendant's Motion must be accepted as true, except to the extent that the record conclusively rebuts them, Mr. Broughton asserts he has established an entirely sound factual and legal basis for an evidentiary hearing. *Edwards v. State*, 652 So.2d 1276, 1276-1277 (Fla. 1995); *Arbelaez v. State*, 775 So.2d 909 (Fla. 2002). Mr. Broughton therefore respectfully requests this Court hold an evidentiary hearing on this matter or, in the alternative, grant his motion to vacate his conviction and sentence in the above-captioned cause and order a new trial and/or sentencing hearing.

WHEREFORE, Mr. Broughton respectfully requests this Honorable Court grant the following relief, and any other relief this Court deems just and proper:

1. A new trial based on the newly discovered evidence presented in the form of lack of an active warrant on December 17, 2007.
2. An evidentiary hearing based on Mr. Broughton's Declaration;
3. That the judgments entered and sentences imposed be vacated; and
4. Such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court, and all parties of record, via CM/ECF this 5th day of November 2020.

s/ Ana M. Davide
Ana M. Davide, Esq.