No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

LUCKENS PETIT,
Petitioner,

versus

ATTORNEY GENERAL OF FLORIDA, Ashley Moody,
Respondent(s).

INDEX TO APPENDICES

No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

LUCKENS PETIT,
Petitioner,

versus

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Respondent(s).

Appendix A

(Order of the Fourth District Court of Appeal of the State of Florida)

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

LUCKENS PETIT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D21-2787

[March 17, 2022]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barbara Duffy, Judge; L.T. Case No. 07-12912CF10D.

Luckens Petit, Arcadia, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

GROSS, GERBER, and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

LUCKENS PETIT,
Petitioner,

versus

ATTORNEY GENERAL OF FLORIDA, Ashley Moody
Respondent(s).

Appendix B

(Order of the Fourth District Court of Appeal of Florida denying rehearing)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

April 25, 2022

CASE NO.: 4D21-2787
L.T. No.: 07-12912CF10D

LUCKENS PETIT v. STATE OF FLORIDA

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellant's April 1, 2022 motion for rehearing is denied.

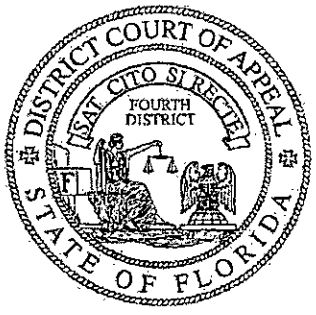
Served:

cc: Attorney General-W.P.B. Luckens Petit

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

LUCKENS PETIT,
Petitioner,

versus

ATTORNEY GENERAL OF FLORIDA, Ashley Moody
Respondent(s).

Appendix G

(Published Opinion of the Fourth District Court of Appeal of Florida on Direct Appeal. *Petit v. State, 92 So.3d 906 (Fla. 4th DCA 2012)*)

Lukens PETIT v. STATE of Florida, 92 So.3d 906 (Fla. 4th DCA 2012)

CIKLIN, J.

We grant the motion for clarification, withdraw our previous opinion and substitute the following in its place.

Introduction

Lukens Petit appeals his convictions for one count of felony murder, three counts of attempted felony murder, and one count of armed robbery. Petit received a life sentence for the felony murder and thirty years for each of the remaining convictions, all to be served concurrently. While ultimately we affirm the convictions, we write to discuss the Confrontation Clause arguments raised by Petit. As for all other arguments Petit raises, we find them to lack merit and do not discuss them further.

Background

On July 14, 2007, armed gunmen robbed a carwash in Pompano Beach. After the suspects fled in a vehicle, two of the victims pursued them onto southbound I-95 until the suspects took the Hollywood Boulevard exit. By this point, the suspects were being chased by police cars. The suspects ran through an intersection and crashed into a vehicle containing three individuals, all of whom were seriously injured. One of the individuals inside the suspects' vehicle was killed in the accident as well.

After Petit was arrested for his involvement in the robbery and automobile collision, Edder Joseph, the owner of a carwash and one of the robbery victims, testified at Petit's bond hearing.[1] He said that he and his employee, Rubin Saint Remy, were at the carwash when a vehicle pulled in very fast; five men wearing homemade ski masks and holding guns, including at least one shotgun, got out of the vehicle and ordered everyone on the ground. The five men took Joseph's money, identification, and jewelry, got back into the vehicle, and fled the scene. Joseph and Saint Remy quickly entered one of the vehicles at the carwash and pursued the suspects onto and down I-95.

Joseph's testimony at the bond hearing was read into the evidence at Petit's trial because Joseph refused to testify. Sometime after the robbery, Joseph was the victim of a shooting, which he survived. Joseph then started living with various relatives and friends to elude authorities and anyone else. Petit objected to Joseph's bond hearing testimony being admitted at trial, arguing that it violated the Confrontation Clause as understood in Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). The trial

[1] The bond hearing was held pursuant to State v. Arthur, 390 So.2d 717 (Fla. 1980).

court overruled the objection, finding that the state demonstrated that Joseph was unavailable.

At the trial, audio recordings of four 911 calls were admitted into evidence and played for the jury. The first call came from an individual reporting the robbery. The second was a call back from the 911 operator after the first call was disconnected. The third call originated from Saint Remy as he and Joseph pursued the suspects on I-95, and the fourth call was initiated when the third call was disconnected and a 911 operator called back. Petit objected to all of these calls being admitted, arguing that they were Confrontation Clause violations under Crawford as well. The trial court found all of the calls to be nontestimonial because they were part of an ongoing emergency and admitted them.

Bond Hearing Testimony

Petit argues on appeal that Joseph's statements at the bond hearing were impermissibly admitted because they violated his Sixth Amendment[2] right to confront witnesses as explicated in Crawford. More specifically, Petit argues (1) the state did not prove Joseph's unavailability, and (2) there was no meaningful opportunity for cross-examination at the bond hearing.

In State v. Belvin, 986 So.2d 516 (Fla. 2008), our supreme court summarized the Crawford holding of the United States Supreme Court:

> [I]n Crawford, the Supreme Court ... held the admission of a hearsay statement made by a declarant who does not testify at trial violates the Sixth Amendment if (1) the statement is testimonial, (2) the declarant is unavailable, and (3) the defendant lacked a prior opportunity for cross-examination of the declarant. The Court emphasized that if "testimonial" evidence is at issue, "the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." Crawford, 541 U.S. at 68, 124 S.Ct. 1354. "Only [testimonial statements] cause the declarant to be a 'witness' within the meaning of the Confrontation Clause." Davis v. Washington, 547 U.S. 813, 821, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006). "It is the testimonial character of the statement that separates it from other hearsay that, while subject to traditional limitations upon hearsay evidence, is not subject to the Confrontation Clause." Id.

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[2] The Sixth Amendment's Confrontation Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with witnesses against him." Amend. VI, U.S. Const.

Id. at 520. The state concedes that Joseph's statements at the bond hearing were testimonial, and we find no reason to question this concession. Therefore, the relevant inquiry regarding Joseph's bond hearing testimony is whether the state proved Joseph's unavailability and whether Petit had an opportunity for cross-examination.

"The trial court's determination that a witness is 'unavailable' for confrontation purposes involves a mixed question of law and fact which this court reviews de novo, giving deference to the basic, primary or historical facts as found by the trial court." Essex v. State, 958 So.2d 431, 432 (Fla. 4th DCA 2007) (citation and quotation marks omitted). Further, whether the bond hearing provided an opportunity for cross-examination for Confrontation Clause purposes is a purely legal question and should therefore be reviewed by this court de novo. See, e.g., Cromartie v. State, 70 So.3d 559, 563 (Fla. 2011) ("The issue in this case is a pure question of law and therefore the standard of review is de novo.").

As to the required analysis concerning unavailability in the instant case, the facts are uncontested. We must determine whether these facts could permit the trial court to find that the declarant, Joseph, was unavailable for Crawford purposes.

An investigator for the state attorney's office testified that he was the individual responsible for locating Joseph. The investigator testified first about his interaction with Joseph back in March of 2009, approximately six months before Petit's trial. The investigator testified that Joseph was "scared to death" of testifying because "he had been shot several times because of just becoming involved with the police and he felt that testifying would be even worse." According to the investigator, Joseph did not cooperate or agree to come to court. He said that he reached out to Joseph's wife to try to locate Joseph the day before the trial. The investigator said that Joseph's wife put Joseph on the phone at one point. Joseph told the investigator he was still frightened of testifying, that he thought this case was over because of a co-defendant's trial, and that he lost his vision and had trouble walking as a result of being shot. Joseph said he was not living with his wife but was living with different relatives and friends to keep his location unknown. The investigator said that Joseph refused to testify and never disclosed his location. The investigator also said that it was "impossible" to find Joseph and that he "may be in deep hiding." The investigator further testified that he served a subpoena on Joseph via his attorney back in March for a co-defendant's trial and Joseph did not appear to testify.

On appeal, Petit argues that an individual can only be considered "unavailable" for Confrontation Clause purposes if he fits into any of the categories in section 90.804(1), Florida Statutes (2007). Section 90.804, however, defines "unavailability" of the declarant for the purpose of the hearsay exceptions. But the Florida Supreme Court has defined unavailability for Confrontation Clause purposes much more broadly than section 90.804(1): "In order for a witness to be unavailable for confrontation purposes, the State

Clause violation occurred in admitting the victim's prior testimony from an adversarial preliminary hearing because the defendant had an opportunity for cross-examination at the hearing.

Petit cites to an older case from the First District, Nazworth v. State, 352 So.2d 916 (Fla. 1st DCA 1977). In Nazworth, the defendant appealed the admission at trial of testimony taken at a bond hearing. Id. at 917. The witness's testimony on direct and cross-examination at the bond hearing encompassed eight total transcript pages, but the state conducted a forty-two-page re-direct examination that was not subject to cross-examination and which was read into the record at trial. The First District found, "The extensive re-direct of [the witness] by the state after the limited cross-examination by [the defendant's] counsel did not afford the defendant an opportunity for proper cross that would have been available had [the witness] testified at trial." Id. at 918. Petit emphasizes the following language from Nazworth:

> A bond hearing is for the purpose of setting bond. The inquiry conducted bears little or no resemblance insofar as defendant is concerned with trial.

Id. Nazworth is distinguishable for multiple reasons. First, it predates Crawford. Second, it does not appear to be a case dealing with the Confrontation Clause, but rather with the general admissibility of prior testimony under Florida common law. Third, in the instant case we are not presented with a lengthy re-direct examination which was not subject to cross-examination. Finally, Nazworth is brief and its analysis is quite limited. Thus, we find Nazworth inapplicable to the instant case.

We can find no Florida case addressing whether a bond hearing satisfies the requirement of an opportunity for the cross-examination as explained in Crawford. Therefore, we turn to relevant federal cases for guidance. The United States Supreme Court has explained that "the Confrontation Clause guarantees only 'an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" Kentucky v. Stincer, 482 U.S. 730, 739, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987) (quoting Delaware v. Fensterer, 474 U.S. 15, 20, 106 S.Ct. 292, 88 L.Ed.2d 15 (1985)).

In U.S. v. Hargrove, 382 Fed.Appx. 765, 778 (10th Cir.2010), the Tenth Circuit stated the following clear understanding of the interplay of Crawford and other rules of evidence regarding cross-examination:

> "Crawford requires only that the defendant have an opportunity to cross-examine the adverse witness at the prior proceeding--it does not require that the defendant have a similar motive at the prior proceeding. The prior motive requirement comes from the Federal

> Rules of Evidence, not the Confrontation Clause." See Fed.R.Evid. 804(b)(1).

Id. The Tenth Circuit continued to distinguish between a Crawford issue and an evidentiary issue regarding prior testimony:

> [The defendant] also claims testimony in a Kansas state court preliminary hearing can never satisfy the requirements of the Confrontation Clause because the purpose of a preliminary hearing under Kansas law is limited to determining the existence of probable cause. This argument is unavailing because the Supreme Court has held testimony from a preliminary hearing can be admitted without violating the Confrontation Clause despite the fact the function of a preliminary hearing "is ... determining whether probable cause exists ...." What matters under the Confrontation Clause is whether the defendant had a prior opportunity to cross-examine the witness. Under Kansas law, "[t]he defendant has the right to cross-examine witnesses against him and introduce evidence on his behalf [at the preliminary examination]." [The defendant] had the right and he exercised that right.

Id. at 779 (citations and footnotes omitted); see also O'Neal v. Province, 415 Fed. Appx. 921, 924 (10th Cir. 2011) ("[U]nder Crawford, a preliminary hearing affords sufficient opportunity for cross-examination ...."); Samayoa v. Ayers, 649 F. Supp.2d 1102, 1145 (S. D. Cal. 2009) (" '[S]imilar motive' is a state evidentiary requirement, and not a requirement under the Confrontation Clause. The Supreme Court has refrained from conducting any similar motive inquiry in their [sic] Sixth Amendment cases ....").

Thus, the Tenth Circuit has found that the opportunity for cross-examination under the Confrontation Clause is not the same as that contemplated under the Federal Rules of Evidence, which requires similarity of motive to develop testimony. The same is true in Florida and in the instant case--the rules of evidence for Florida and the Florida common law may require that prior testimony only be admitted if there is similarity of motive to develop testimony, but that is a separate analysis from Crawford and the Confrontation Clause. Petit's argument below was clearly and unambiguously a Crawford objection alone.

Therefore, the trial court did not err in admitting Joseph's prior testimony at the bond hearing over Petit's Crawford objection. Joseph's statements were testimonial and therefore fell within the ambit of Crawford's application of the Confrontation Clause. However, the state demonstrated that Joseph was unavailable for trial, and Petit had an opportunity to cross-examine Joseph at the bond hearing, which his counsel took. Therefore, Crawford was satisfied.

The Four 911 Calls

"An appellate court employs a mixed standard of review in considering a trial court's ruling on the admissibility of evidence over an objection based on the Confrontation Clause." Hernandez v. State, 946 So.2d 1270, 1277 (Fla. 2d DCA 2007). As such, the trial court's factual findings must be supported by competent, substantial evidence; the trial court's legal conclusions, however, are subject to de novo review. Id. In the matter of the 911 calls, the only issue presented is whether the calls were testimonial or nontestimonial. This is a legal question, and therefore we approach it de novo.

The Supreme Court in Crawford purposefully declined to provide any definition for "testimonial." Crawford, 541 U.S. at 68, 124 S.Ct. 1354 ("We leave for another day any effort to spell out a comprehensive definition of 'testimonial.' "). Approximately two years after Crawford was decided, however, the Supreme Court provided further guidance as to what constitutes testimonial and nontestimonial statements in Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006).

In Davis, the statements at issue came from a 911 call[4] made by a victim of domestic violence who was in the process of being abused by her former boyfriend. Id. at 817. The victim told the 911 operator, "He's here jumpin' on me again." The victim then said that the former boyfriend was "runnin' now." The operator asked the victim a number of questions about the former boyfriend's identity and whereabouts.

The Court concluded that those statements made to the 911 operator were nontestimonial and therefore admitting them did not violate the Confrontation Clause. The Court stated the following standard:

> "Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." Davis, 547 U.S. at 822, 126 S.Ct. 2266.

The Court also considered a separate case, Hammon v. Indiana, reported with Davis. Id. at 819. In Hammon, the statements at issue were made directly to police officers and did not involve 911 calls. The police responded to a reported domestic disturbance.

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[4] In a footnote, the Court considered 911 operators the functional equivalent of law enforcement officers for Confrontation Clause purposes. Davis, 547 U.S. at 823 n. 2.

They found the victim, appearing frightened, alone on the front porch, but she told the police that "nothing was the matter." She gave the police permission to enter the house and they found the victim's husband in the kitchen. The officers questioned both the victim and her husband in separate rooms and these statements to police were the ones at issue.[5] The Court found that the statements were testimonial:

> "Both statements deliberately recounted, in response to police questioning, how potentially criminal past events began and progressed. And both took place some time after the events described were over. Such statements under official interrogation are an obvious substitute for live testimony, because they do precisely what a witness does on direct examination; they are inherently testimonial." Id. at 830.

The Court in Davis emphasized that its analysis was constrained by the facts presented to it in the case and stated that it was not "attempting to produce an exhaustive classification of all conceivable statements--or even all conceivable statements in response to police interrogation--as either testimonial or nontestimonial." Id. at 822.

Recently, in Michigan v. Bryant, --- U.S. ----, 131 S.Ct. 1143, 179 L.Ed.2d 93 (2011), the Supreme Court offered a further refinement of its Crawford/Davis jurisprudence. The Court explained that determining "whether an emergency exists and is ongoing is a highly context-dependent inquiry." Id. at 1158. The Court explained the "primary purpose test" as follows:

> "To determine whether the "primary purpose" of an interrogation is "to enable police assistance to meet an ongoing emergency," which would render the resulting statements nontestimonial, we objectively evaluate the circumstances in which the encounter occurs and the statements and actions of the parties." Id. at 1156 (quoting Davis, 547 U.S. at 822, 126 S.Ct. 2266).

Continuing, the Court reiterated that the subjective or actual intentions of the individuals involved is not a consideration. Instead, the primary consideration is whether "the information the parties knew at the time of the encounter would lead a reasonable person to believe that there was an emergency, even if that belief [is] later proved incorrect." Id. at 1157 n. 8.

The Court also explained the narrowness of its prior holding in Davis. Because Davis and Hammon involved "domestic violence, a known and identified perpetrator, and, in

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[5] The victim subsequently refused to testify against her husband.

Hammon, a neutralized threat," the Court had "focused only on the threat to the victims and assessed the ongoing emergency from the perspective of whether there was a continuing threat to them." Id. at 1158. Importantly, the Court found:

> "Domestic violence cases like Davis and Hammon often have a narrower zone of potential victims than cases involving threats to public safety. An assessment of whether an emergency that threatens the police and public is ongoing cannot narrowly focus on whether the threat solely to the first victim has been neutralized because the threat to the first responders and public may continue. Id. The Court also reiterated that 'the existence vel non of an ongoing emergency is not the touchstone of the testimonial inquiry; rather, the ultimate inquiry is whether the 'primary purpose of the interrogation [was] to enable police assistance to meet [the] ongoing emergency.'" Id. at 1165 (quoting Davis, 547 U.S. at 822, 126 S.Ct. 2266).

The Court then provided a nonexhaustive list of considerations which may aid courts in determining whether an emergency is ongoing: (1) whether an armed assailant poses a substantial threat to the public at large, see id. at 1158; (2) the type of weapon used by the assailant, see id. at 1158-59; (3) the severity of the victim's injuries, see id. at 1159; (4) the formality of the interrogation, see id. at 1160; and (5) the involved parties' statements and actions. See id. Finally, the Court reiterated its observation in Davis that "'a conversation which begins as an interrogation to determine the need for emergency assistance' can 'evolve into testimonial statements.'" Id. at 1159 (quoting Davis, 547 U.S. at 828, 126 S.Ct. 2266).

With this guidance in mind, we now address whether the four 911 calls introduced in the instant case were testimonial or nontestimonial. This determination hinges on whether the questions from the 911 operator occurred during the context of an ongoing emergency and were designed "to enable police assistance to meet [the] ongoing emergency." Bryant, 131 S.Ct. at 1165.

The first 911 call was from an unknown individual calling to report the robbery. It was a very brief conversation, in which the caller made semi-coherent statements to the 911 operator. The caller stated that he or she was at a food store and saw "the car pulled up and guns and all." The caller said he or she did not know what was going on. The caller then disconnected the call.

During the first call, the 911 operator only asked very preliminary questions trying to discern what the caller was trying to report. From the brief and discombobulated statements made by the caller, the situation appeared to involve armed suspects, but based on the brevity of the call and the caller's difficulty making coherent sentences it would be unclear what was actually happening from this call--just that some situation involving guns was occurring or had occurred. We have no trouble concluding that the

primary purpose of the 911 operator's questions was to determine whether an ongoing emergency existed in the first place and thus the statements from this call were nontestimonial.

In the second call, which was also very brief, the 911 operator reversed the call to get the caller back on the line. The operator asked basic questions such as what type of vehicle the suspects drove, what they did during the robbery, how many suspects were present, and what weapons they brandished. In this call, the 911 operator's questions were once again designed to gather basic background information to determine if an ongoing emergency even existed. The statements during this call were also nontestimonial.

The third call occurred when Saint Remy called 911 to report the robbery as he and Joseph were pursuing the suspects on I-95. Initially the 911 operator was unclear as to what the caller was reporting, so the first few questions were preliminary in nature. Once the operator discerned that Saint Remy was in a vehicle pursuing another vehicle containing multiple armed robbers down a major interstate highway at presumably high speeds, the operator then attempted to convince Saint Remy to stop following the suspects because it was dangerous.

Petit argues that this call could not relate to an ongoing emergency because Saint Remy's actions--chasing the suspects down I-95--in effect created (or extended) the emergency situation. However, the Supreme Court in Bryant held that the subjective intent of the parties is not relevant. Instead, the proper analysis is whether "the information the parties knew at the time of the encounter would lead a reasonable person to believe that there was an emergency, even if that belief [is] later proved incorrect." Bryant, 131 S.Ct. at 1157 n. 8. The 911 operator had limited information, mainly that the victims of a robbery were pursuing another vehicle containing multiple armed suspects down an interstate highway. This was also an informal interrogation, whose primary purpose appears to have been to convince Saint Remy to cease his pursuit. A reasonable person, when faced with these facts, would believe that an emergency was ongoing. Thus, the statements from this call were nontestimonial.

The fourth 911 call is admittedly more difficult to analyze. It is substantially lengthier than the prior three calls, lasting approximately fifteen minutes. After the third call was abruptly disconnected, the 911 operator reversed the call to Saint Remy. The call ended when Saint Remy followed the suspects off I-95 and came upon the recent wreckage of the suspects' collision with another vehicle.

We note first that multiple armed suspects were still on the loose, posing a substantial risk to the public at large. Indeed, this substantial risk to the public culminated in the armed suspects causing a collision that took one life and grievously injured multiple third parties. Exacerbating the situation, two of the robbery victims were speedily pursuing the

armed suspects on a major public highway. Saint Remy told the 911 operator that the suspects were speeding and driving erratically. If these circumstances cannot be classified as an ongoing emergency, we have trouble imagining what would.

While we have little difficulty concluding that the circumstances, as known to the parties at the time, constituted an "ongoing emergency," this determination does not end our analysis. We must now decide "whether the 'primary purpose of the interrogation [was] to enable police assistance to meet [the] ongoing emergency.'" Bryant, 131 S.Ct. at 1165 (quoting Davis, 547 U.S. at 822). In the fourth call, the 911 operator repeatedly asked for updates from Saint Remy regarding his location on I-95. The 911 operator also asked about the suspects' location multiple times as well. At some point, Saint Remy informed the 911 operator that the suspects were being pursued by police vehicles in a high-speed chase. The 911 operator's questions appear designed primarily to obtain a continual stream of information from Saint Remy about his and the suspects' whereabouts. The suspects were attempting to elude the police and engaged in a high-speed chase. The questions that the 911 operator asked Saint Remy were designed to assist the police in identifying and locating a car full of armed robbers. In other words, the primary purpose of the interrogation was "to enable police assistance to meet [the] ongoing emergency." Id. As such, the statements from the fourth 911 call were nontestimonial, and admitting them at trial did not violate the Confrontation Clause. Finally, even assuming the last of the 911 calls was an abuse of discretion to admit, any error would be harmless, since there is "no reasonable possibility that the error contributed to the conviction." State v. DiGuilio, 491 So.2d 1129, 1135 (Fla. 1986).

Affirmed.

GERBER and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County, Bernard I. Bober, Judge; L.T. Case No. 07-012912 CF10D.

Jonathan S. Friedman, Law Offices of Jonathan S. Friedman, P.A., Fort Lauderdale, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, Mark J. Hamel, Assistant Attorney General, West Palm Beach, for appellee.

No.: _____

IN THE

SUPREME COURT OF THE UNITED STATES

LUCKENS PETIT,
Petitioner,

versus

ATTORNEY GENERAL OF FLORIDA, Ashley Moody,
Respondent(s).

PROOF OF SERVICE

I, Luckens Petit, Petitioner pro se, do hereby certify under the penalty of perjury that on this 4th day of July 2022, I personally handed a true copy of Appendices "A" thru "G" to Petitioner's Petition for Writ of Certiorari to an official at DeSoto Annex for the sole purpose of mailing via first class U.S. Mail postage prepaid to all parties required to be served as follow:

- Office of the Clerk, Supreme Court of the United States, 1 First Street Northeast, Washington, DC 20543-0001; and
- Office of the Attorney General; 1515 North Flagler Drive, Suite 900; West Palm Beach, Florida 33401.

Luckens Petit, DC# B04065
Petitioner, Pro se

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 07-12912CF10D
Plaintiff,	Judge: Barbara Duffy
v.	
LUCKENS PETIT,	
Defendant.	

ORDER WITHDRAWING ORDER DISMISSING DEFENDANT'S AMENDED MOTION FOR REHEARING

—AND—

ORDER WITHDRAWING ORDER STRIKING DEFENDANT'S REPLY TO STATE'S RESPONSE TO MOTION FOR REHEARING

—AND—

ORDER DENYING DEFENDANT'S [ORIGINAL] MOTION FOR REHEARING

THIS CAUSE came before the Court upon Defendant's *pro se* "Motion for Acknowledgment," filed on August 16, 2021, which the Court shall treat as a Motion to Withdraw its previous Order Dismissing Defendant's *pro se* Amended Motion for Rehearing, entered by the Court on August 2, 2021, wherein the Court, *inter alia*, (1) found that no *original* motion for rehearing had been filed by Defendant, (2) found that the "Amended" Motion for Rehearing—treated as an *original* motion for rehearing—was untimely filed, and (3) adopted the State's Response and found that even if the Amended Motion had been timely filed, it was nonetheless without merit. The Court, having examined the instant "Motion for Acknowledgment," the court file, and applicable law, finds and decides as follows:

In the instant "Motion for Acknowledgment," Defendant has provided sufficient evidence that he had timely filed, pursuant to Rule 3.850(j), his *original pro se* Motion for Rehearing (in response to the Court's Order Denying Defendant's *pro se* Motion for Post-Conviction Relief, entered on April 30, 2021).[1] Therefore, the Court withdraws its previous Order Dismissing Defend-

[1] The original *pro se* motion for rehearing had a scrivener's error and was returned by the Clerk of the Court to Defendant unfiled with a notation that it could not be processed due to an incorrect case number. Defendant thereafter corrected the case number and refiled the pleading as an "*Amended* Motion for Rehearing." In all other respects, the original and the amended motions are identical.

ant's Amended Motion for Rehearing (as untimely), entered on August 2, 2021, and also withdraws its previous Order Striking Defendant's *pro se* Reply to State's Response to Motion for Rehearing, entered on August 19, 2021, and supersedes those two Orders with the following Order:

After reviewing and considering Defendant's [original] timely filed *pro se* Motion for Rehearing, the State's Response (filed on July 28, 2021), Defendant's Reply to the State's Response, the court file, and applicable law, the Court adopts and incorporates herein the legal and factual reasoning that is set forth in the State's Response and denies Defendant's [original] timely filed *pro se* Motion for Rehearing as being without merit.

Accordingly, it is

ORDERED AND ADJUDGED that the Court's Order Dismissing Defendant's *pro se* Amended Motion for Rehearing, entered on August 2, 2021, is hereby **WITHDRAWN**; and it is further

ORDERED AND ADJUDGED that the Court's Order Striking Defendant's *pro se* Reply to State's Response to Motion for Rehearing, entered on August 19, 2021, is hereby **WITHDRAWN**; and it is further

ORDERED AND ADJUDGED that Defendant's Motion for Rehearing is hereby **DENIED**.

Defendant has thirty (30) days from the date of this Order to file an appeal (of the Court's Order Denying Defendant's *pro se* Motion for Post-Conviction Relief, entered on April 30, 2021).

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 30 day of August, 2021.

BARBARA DUFFY
CIRCUIT COURT JUDGE

Copies furnished to:

Joel Silvershein, Esq.
Assistant State Attorney

Luckens Petit, Defendant, DC #L64367
DeSoto Correctional Facility–Annex
13617 SE Highway 70
Arcadia, FL 34266-7800

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

June 10, 2021

CASE NO.: 4D21-1628
L.T. No.: 07-12912CF10D

LUCKENS PETIT v. STATE OF FLORIDA

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that the May 17, 2021 petition for writ of habeas corpus is denied.

LEVINE, C.J., WARNER and ARTAU, JJ., concur.

Served:

cc: Attorney General-W.P.B. Luckens Petit State Attorney-Broward
Clerk Broward Hon. Bernard I. Bober

kk

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,	Case No. 07-12912CF10D
Plaintiff,	Judge: Barbara Duffy
v.	
LUCKENS PETIT,	
Defendant.	

ORDER DENYING DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF AND MOTION TO ENLARGE ISSUE

THIS CAUSE came before the Court upon the Defendant's *pro se* Motion for Post-Conviction Relief, pursuant to Rule 3.850, Florida Rules of Criminal Procedure, submitted to prison authorities on September 13, 2019, and filed with the Court on September 18, 2019, and Defendant's *pro se* Motion to Enlarge Issue (which this Court shall treat as a supplement to Defendant's Motion for Post-Conviction Relief), filed with the Court on April 19, 2021. Pursuant to Court Order, the State filed a Response to the Motion for Post-Conviction Relief on December 12, 2019. The Court, having examined the instant motions, the State's Response, the court file, and applicable law, finds as follows:

On or about September 24, 2009, Defendant was convicted by jury of the following offenses:

- Count 1—First-Degree Murder
- Count 3—Armed Robbery
- Count 5—Attempted First-Degree Murder
- Count 6—Attempted First-Degree Murder
- Count 7—Attempted First-Degree Murder

On November 6, 2009, he was sentenced as follows:

- Count 1—Life in prison.
- Count 3—Thirty years in prison, with a minimum-mandatory term of ten years, with credit for 872 days of time served, to be served concurrent to count 1.
- Count 5—Thirty years in prison, with credit for 872 days of time served, to be served concurrent to counts 1 and 3.

- Count 6—Thirty years in prison, with credit for 872 days of time served, to be served concurrent to counts 1, 3 and 5.
- Count 7—Thirty years in prison, with credit for 872 days of time served, to be served concurrent to counts 1, 3, 5 and 6.

Defendant appealed his convictions and sentences, which were affirmed *per curiam* by the Fourth District Court of Appeal. *Petit v. State*, 982 So. 3d 906 (Fla. 4th DCA 2012). The Mandate entered on August 10, 2012.

Defendant thereafter filed three prior motions for post-conviction relief, the first of which was denied on the merits, the second of which was denied both procedurally and on the merits, and the third of which was denied on the merits. All three Orders were affirmed on appeal.

In the instant *fourth* motion for post-conviction relief, Defendant alleges newly discovered evidence. In the instant Motion to Enlarge Issue, he supplements his allegation of newly discovered evidence.

The Court adopts and incorporates herein the legal and factual reasoning that is contained in the State's Response[1] and denies the instant motions. As more fully set forth in the State's Response, the instant Motion for Post-Conviction Relief is successive (as well as the supplement thereto), as Defendant fails to allege why the allegations raised in the instant Motion for Post-Conviction Relief (and supplement thereto) could not have been raised in any of his prior motions. In order to successfully establish a claim of newly discovered evidence in a rule 3.850 motion, the asserted facts must have been unknown by the trial court, a party, or by counsel at the time of the trial and could not have been known through due diligence, and the evidence must be of such a nature that it probably would produce an acquittal at retrial.

Defendant fails to demonstrate that the alleged evidence was or could not have been discovered with due diligence at the time of trial, or at the time he filed his initial motion for post-conviction relief. Moreover, Defendant fails to demonstrate how the affidavit of Ruben Saint Remy constitutes a timely claim of newly discovered evidence when this person was named in

[1] The State has certified that a copy of its 285-page Response was sent to the Defendant via U.S. mail on December 12, 2019; as such, an *additional* copy is not attached hereto.

Defendant's 2013 post-conviction motion. Further, even if the alleged evidence were newly discovered, it would not probably result in an acquittal at retrial.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Defendant's Motion for Post-Conviction Relief and Motion to Enlarge Issue are hereby **DENIED**.

The Defendant has thirty (30) days from the date of this order to file an appeal.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 30 day of April, 2021.

BARBARA DUFFEY
CIRCUIT COURT JUDGE

Copies furnished to:

Joel Silvershein, Esq.
Assistant State Attorney

Luckens Petit, Defendant, DC #L64367
DeSoto Annex
13617 SE Highway 70
Arcadia, FL 34266-7800