

APPENDIX

1. CONVICTION DATED
JANUARY 22, 2020
2. SENTENCING DATED
JULY 20, 2020
3. MOTION FOR SEVERANCE
DECEMBER OF 2019
4. ORDER STRIKING SEVERANCE AS PRE-MATURE
DATED MARCH 20TH, 2020 (3RD D.C.A.)
5. 3RD D.C.A. CONFIRMATION OF CONVICTION
AFTER DIRECT APPEAL, DATED APRIL 06, 2023
6. APPELLATE ATTORNEYS DIRECT APPEALS BRIEF
CASE NO. 3D20-1160
7. MOTION FOR DISCOVERY
8. ORDER DENYING DISCOVERY
9. MOTION FOR MISTRIAL
10. ORDER DENYING MISTRIAL
11. MOTION FOR ACQUITAL
12. ORDER DENYING ACQUITAL

13. FIRST AMNEST AFFIDAVIT CASE No. 13005321

DATED

14. ORDER DENYING FIRST AFFIDAVIT DATED

15. 2ND AMNEST AFFIDAVIT CASE No. 13005321

DATED

16. ORDER DENYING SECOND AMNEST AFFIDAVIT

DATED

17. MOTION FOR REHEARING, 2ND AFFIDAVIT

18. ORDER DENYING REHEARING, 2ND AFFIDAVIT

19. DIRECT APPEAL OF 2ND AFFIDAVIT

20. ORDER OF 3RD D.C.A. PER CURIAM AFFIRMANCE

OF DENIAL OF SECOND AMNEST AFFIDAVIT

21. ORDER OF THE FLA. SUPREME COURT DENYING
JURISDICTION (AFTER PETITION FOR MANDAMUS) OF
PER CURIAM AFFIRMANCE / 2ND AMNEST AFFIDAVIT

22. PETITION FOR A WRIT OF HABEAS CORPUS IN THE
3RD D.C.A. CASE NO. 3D21-1393

23. ORDER 3RD D.C.A. DENYING PETITION CASE NO.
3D21-1393

24. THE SUPREME COURT REFUSING TO EXCEPT
JURISDICTION. PER CURIAM AFF. 3D21-1393

25. POST-CONVICTION MOTION

26. ORDER DENYING POST-CONVICTION MOTION
DATED NOVEMBER 17, 2023

27. 3RD D.C.A. PER CURIAM AFFIRMANCE OF DENIAL
OF POST-CONVICTION MOTION.

28. JANUARY 10TH TRANS. PGS. 10-12

29. HABEAS CORBUS PETITION CASE NO. 3D20-0276
(ACCESS TO COURTS)

30. TRANSCRIPTS. JANUARY 21ST, 2020.

31. SEARCH WARRANT

32. SEARCH WARRANTS AFFIDAVIT

33. PORTION OF POLICE REPORT OF DETECTIVE JAMES
HATZIS PGS.

APPENDIX CASES

1. KENNEDY, 39 LEO 519, 136 U.S. 436 (1880)

AS DUE PROCESS OF LAW IS THE FIFTH AMENDMENT
REFERRED TO THE LAW OF THE LAND WHICH DERIVES IT'S
AUTHORITY FROM THE LEGISLATIVE POWERS CONFERRED ON

CONGRESS BY THE CONSTITUTION OF THE UNITED STATES,
EXERCISED WITHIN THE LIMITS THEREIN DESCRIBED, AND
INTERPRETED ACCORDING TO THE PRINCIPLES OF THE COMMON
LAW, SO, IN THE FOURTEENTH AMENDMENT, THE SAME WORD
REFERRED TO THAT LAW OF THE LAND IN EACH STATE,
WHICH DERIVES ITS AUTHORITY FROM THE INHERENT AND
RESERVED POWERS OF THE STATE, EXERTED WITHIN THE
LIMITS OF THOSE FUNDAMENTAL PRINCIPLES OF LIBERTY AND
JUSTICE WHICH LIE AT THE BASE OF ALL OUR CIVIL AND
POLITICAL INSTITUTIONS,

2. DUNCAN VS. MISSOURI, 38 LED. 485, 152 U.S.
377 (1894)

BUT THE PRIVILEGES AND IMMUNITIES OF CITIZENS OF
THE UNITED STATES, PROTECTED BY THE 14TH AMENDMENT, ARE
PRIVILEGES AND IMMUNITIES MISSING OUT OF THE
GOVERNMENT, AND GRANTED OR SECURED BY THE
CONSTITUTION, AND DUE PROCESS OF LAW AND EQUAL
PROTECTION OF THE LAWS AND SECURED IF THE LAWS
OPERATE ON ALL ALIKE, AND DO NOT SUBJECT THE INDIVIDUAL
TO ARBITRARY EXERCISE OF THE POWERS OF GOVERNMENT.

3. BUNKLEY VS. FLORIDA, 123 S.C.T. 8020

"IT HAS LONG BEEN ESTABLISHED THAT "THE DUE PROCESS
CLAUSE . . . FORBIDS A STATE TO CONVICT A PERSON OF
A CRIME WITHOUT PROVING EACH ELEMENTS OF THE CRIME
BEYOND A REASONABLE DOUBT."

4. BUSH VS. GORE, 531, U.S. 98 121 S.C.T 525

"HAVING ONCE GRANTED THE RIGHT TO VOTE ON EQUAL TERMS, THE STATE MAY NOT ABRIDGEMENT AND DISPUTIVE TREATMENT, VALUE ONE PERSON'S VOTE OVER THAT OF ANOTHER."

5. WILKINSON VS. AUSTIN, 545 U.S. 209, 162 L.E.D. 174
125 S.C.T. 2384

"BECAUSE THE REQUIREMENTS OF DUE PROCESS ARE FLEXIBLE AND CALL FOR SUCH PROCEDURAL PROTECTIONS AS THE PARTICULAR SITUATION DEMANDS. MOSSISARY VS. BREWER, 408 U.S. 471, 481, 92. S.C.T. 2593, 33 L.E.D. 2D 434 (1972), WE GENERALLY HAVE DECLINED TO ESTABLISH RIGID RULES AND INSTEAD HAVE EMBRAZED A FRAMEWORK TO EVALUATE THE SUFFICIENCY OF PARTICULAR PROCEDURES. THE FRAMEWORK ESTABLISHED IN MATTHEWS VS. ELDIDGE, 424 U.S. 319, 96 S.C.T. 893 (1976)."

6. MATTHEWS VS. ELDIDGE, 424 U.S. 319, 47 L.E.D.
2D 18, 96 S.C.T. 893

"THE RIGHT TO BE HEARD BEFORE BEING CONDEMNED TO SUFFER CUMEROUS LOSS OF ANY KIND, EVEN THOUGH IT MAY NOT INVOLVE THE STIGMA AND HARSHSHIP OF A CRIMINAL CONVICTION IS A PRINCIPLE BASIC TO OUR SOCIETY." MCGATH, 341 U.S. 123, 168, 95 L.E.D. 817, 71 S.C.T. 624 1951. FIRST, THE PRIVATE INTEREST THAT WILL BE AFFECTED BY THE OFFICIAL ACTION; SECOND, THE RISK OF AN ERHONIOUS DEPRIVATION OF SUCH INTEREST THROUGHOUT THE PROCEDURAL USED, AND THE PROBABLE VALUE, IF ANY, OF ADDITIONAL OR SUBSTITUTE PROCEEDING SAFEGUARDS."

7. BABWAH VS. UNITED STATES, 972 F.2.D 30 (2D CIR. 1992)

"HOWEVER, FED. R. APP. P. 2, GIVES A COURT OF APPEALS THE DISCRETION TO OVERLOOK SUCH A FAILURE OF MANIFEST INJUSTICE OTHERWISE WOULD RESULT."

8. AUTIOM VS. KING, 500 F.3D 1335, 1343 (11TH CIR. 2007)

"ALTHOUGH A DISTRICT COURT'S DECISION TO GRANT OR DENY EQUITABLE RELIEF IS REVIEWED FOR ABUSE OF DISCRETION, A DISTRICT COURT BY DEFINITION ABUSES ITS DISCRETION WHEN IT MAKES AN ERROR OF LAW." KOAN VS. UNITED STATES, 518 U.S. 81, 100, 116 S.C.T.

9. MARYLAND VS. BRADY, 83 S.C.T. 1194, 10 L.E.D. 2D 215, 313 U.S. 83 (1963)

"WE NOW HOLD THAT THE SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT, IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION."

10. BAKER VS. STATE, 818 SO. 2D 1226, 1240 (FLA. SUPREME CT. 2004)

"THE WHIT OF HABEAS CORPUS IS ENSHINED IN THIS CONSTITUTION TO BE USED AS A MEANS TO CORRECT MANIFEST INJUSTICE AND ITS AVAILABILITY FOR USE WHEN ALL OTHER REMEDIES HAVE BEEN EXHAUSTED HAS SECURED OUR SOCIETY WELL OVER MANY CENTURIES."

11. D.H. VS. ADEPT COMMUNITY SERVICE, 871 SO.3D 870
(FLA. 2018)

"CLAIMS NOT RAISED BY AN APPELLATE IN HIS INITIAL BRIEF ARE ABANDONED. EVEN THOUGH AN ISSUE HAS BEEN ABANDONED, AN APPELLATE COURT MAY NONETHELESS ADDRESS THAT ISSUE IF IT INVOLVES THE COURTS "JURISDICTION OR OTHER ISSUES RAISING OBVIOUS FUNDAMENTAL ERRORS".

FUNDAMENTAL ERRORS ARE THOSE WHICH GO "TO THE FOUNDATION OF THE CASE OR... TO THE MERITS OF THE CAUSE OF ACTION." QUOTING, MIAMI VS. STECKLOFT, 111 SO.2D 446, 447 (FLA. 1959) AND SANDFORD VS. ROBIN, 237 SO.2D 134 (FLA. 1970).

12. ADAMS VS. FLORIDA, 957 SO.2D 1183 (FLA. 2006)

"MOREOVER, THE STATE SUGGESTS THAT THE 3,850 MOTION WAS TIME BARRED. ALTHOUGH THE STATE IS TECHNICALLY CORRECT, WHERE AS HERE, THE STATE FINDS THAT A MANIFEST INJUSTICE HAS OCCURRED, IT IS THE RESPONSIBILITY OF THAT COURT TO CORRECT THE INJUSTICE IF IT CAN."

FEDERAL STATUTES

1. 28 U.S.C.S. 1615 WAITS

a) THE SUPREME COURT AND ALL COURTS ESTABLISHED BY ACT OF CONGRESS MAY ISSUE ALL WAITS NECESSARY OR APPROPRIATE IN AID OF THEIR RESPECTIVE JURISDICTIONS AND AGREEABLE TO THE USAGES AND PRINCIPLES OF LAW.

2. 28 U.S.C.S. REVIEWS OF STATE COURT DECISION

A REVIEW BY THE SUPREME COURT OF A JUDGEMENT OR DECREE OF A STATE COURT SHALL BE CONDUCTED IN THE SAME MANNER AND UNDER THE SAME REGULATIONS, AND SHALL HAVE THE SAME EFFECT, AS IF THE JUDGEMENT OR DECREE REVIEWED HAD BEEN RENDERED IN A COURT OF THE UNITED STATES.

3. 28 U.S.C.S. 2241 POWER TO GRANT WRIT

THE WRIT OF HABEAS CORPUS SHALL NOT EXTEND TO A PRISONER UNLESS —

(3) HE IS IN CUSTODY IN VIOLATIONS OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES.

4. 28 U.S.C.S. 2254 STATE CUSTODY, REMEDIES, IN FEDERAL COURTS

(A) THE SUPREME COURT, OR A JUSTICE THEREOF, A CIRCUIT JUDGE, OR A DISTRICT COURT SHALL ENTERTAIN AN APPLICATION FOR A WRIT OF HABEAS CORPUS IN BEHALF OF

5 28 U.S.C.S. PROCEEDINGS IN FORMA PAUPERIS

(a) (1) SUBJECT TO SUBSECTION b, ANY COURT OF THE UNITED STATES MAY AUTHORIZE THE COMMENCEMENT, PROSECUTION OR DEFENSE OF ANY SUIT, ACTION OR PROCEEDING, CIVIL OR CRIMINAL, OR APPEAL THEREIN, WITHOUT THE PAYMENT OF FEES OR SECURITY THEREFOR, BY A PERSON WHO SUBMITS AN AFFIDAVIT THAT INCLUDES A STATEMENT OF ALL ASSETS SUCH PRISONER (PERSON) POSSESSES THAT THE PERSON IS UNABLE TO PAY SUCH FEES OR GIVE

SECURITY THEREOF.

STATE STATUTES

1. 933.07 ISSUANCE OF SEARCH WARRANTS

"THE JUDGE, UPON EXAMINATION OF THE APPLICATION AND PROOFS SUBMITTED, IF SATISFIED THAT PROBABLE CAUSE EXISTS FOR ISSUING OF THE SEARCH WARRANT, SHALL THEREUPON ISSUE A SEARCH WARRANT SIGNED BY HIM OR HER WITH HIS OR HER NAME OF OFFICE."

2. 933.08 SEARCH WARRANTS TO BE SERVED BY OFFICERS MENTIONED THEREIN.

"THE SEARCH WARRANT SHALL IN ALL CASES BE SERVED BY ANY OF THE OFFICERS MENTIONED IN ITS DIRECTION."

3. 837.021 PERJURY BY CONTRADICTORY STATEMENTS

"WHOEVER, IN ONE OR MORE OFFICIAL PROCEEDINGS THAT RELATE TO THE PROSECUTION OF A CAPITOL FELONY, WILLFULLY MAKES TWO OR MORE MATERIAL STATEMENTS UNDER OATH WHICH CONTRADICT EACH OTHER, COMMITS A FELONY OF THE SECOND DEGREE."

4. TERMS AND CONDITIONS OF APPEALS AND COLLATERAL REVIEW IN CRIMINAL CASES. 924.051

"AN APPEAL MAY NOT BE TAKEN FROM A JUDGEMENT OR ORDER OF A TRIAL COURT UNLESS A PREJUDICIAL ERROR IS ALLEGED AND IS PROPERLY PRESERVED OR, IF NOT PROPERLY,

EXHIBIT
No. 1

ORDEM, CONVICTION

CRIMINAL
DIVISION

JUDGMENT

THE STATE OF FLORIDA

VS.

JOSEPH TEMAN SWIFT

PLAINTIFF

DEFENDANT

CASE NUMBER: F13005321

CLOCK IN

2020 FEB -4 PM 4:15

FILED FOR RECORD

AGUSTIN SANDOVAL

The Defendant, JOSEPH TEMAN SWIFT, being personally before this Court represented by J. SWIFT PROSE, his/her attorney of record.
 The State represented by MARI JIMENEZ, Assistant State's Attorney, and having:

- been tried and found guilty
- DNA not taken

to the following crime(s):

COUNT	CRIME	DEGREE	OFFENSE STATUTE NO.
1	MURDER 1ST DEGREE	C/F	782.04(1) 775.087
2	MURDER 1ST DEGREE	C/F	782.04(1) 775.087
3	MURDER/PREMEDITATED/ATTEMPT/FA/DDLY WEP/AGG BATT	L/F	782.04(1)(A)1 777.04 (1) 775.087
4	MURDER/PREMEDITATED/ATTEMPT/FA/DDLY WEP/AGG BATT	L/F	782.04(1)(A)1 777.04 (1) 775.087
5	ESCAPE/BEFORE 10/1/19	2/F	944.40
7	RESISTING OFFICER WITH VIOLENCE TO HIS PERSON	3/F	843.01
9	BURGLARY/WITH ASSAULT OR BATTERY/ARMED	L/F	810.02(2)(A) 775.087

and no cause being shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

RECORDED

893

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

DIVISION <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> OTHER	FINGERPRINTS OF DEFENDANT
---------------------------------------------------------------------------------------------------	----------------------------------

THE STATE OF FLORIDA VS.

Joseph Swift

PLAINTIFF

DEFENDANT

CASE NUMBER: F13-5321

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
1. L. Thumb	2. L. Index	3. L. Middle	4. L. Ring	5. L. Little
				

I hereby certify that the foregoing fingerprints on this judgment are the fingerprints of the defendant named above, and that they were placed thereon by said defendant in my presence, in open court, on this date.

Fingerprints taken by: Offc E Salinetra Jr

Name

(Co)

Title

Social Security Number of the Defendant Refused

Defendant unable or unwilling to provide Social Security Number due to: _____

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this _____ day of JAN 22 2020 20_____.


EXHIBIT

No. 2

OMDAK. SENTENCING

REF. No. 1

AGUSTIN SANDOVAL

FILED FOR RECORD

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA		258
CRIMINAL SENTENCE		CLOCK IN
DIVISION		00 JUN 21 PM 2:52
AS TO COUNT: 1, 2, 3, 4, 9		
THE STATE OF FLORIDA VS.		CLERK
JOSEPH TEMAN SWIFT		CIRCUIT & COUNTY COURTS
PLAINTIFF	DEFENDANT	MIAMI-DADE COUNTY, FL
CASE NUMBER: F13005321		1000 2nd Avenue #5
The Defendant, being personally before this Court, accompanied by his/her attorney: RODERICK D VEREEN, PCAC and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he/she should not be sentenced as provided by law, and no cause having been shown:		

And the court having on 01/22/2020 deferred imposition of sentence until this date.

IT IS THE SENTENCE OF THE COURT that the defendant:

Is hereby committed to the custody of the Florida Department of Corrections.

TO BE IMPRISONED:

For a term of LIFE.

RECORDED

1016

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA		258
CRIMINAL DIVISION	SENTENCE	CLOCK IN
AS TO COUNT: 5		
THE STATE OF FLORIDA	VS.	
PLAINTIFF	JOSEPH TEMAN SWIFT	
	DEFENDANT	
CASE NUMBER: F13005321		
<p>The Defendant, being personally before this Court, accompanied by his/her attorney: RODERICK D. VIREEN, PCAC and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he/she should not be sentenced as provided by law, and no cause having been shown:</p>		

1
FILED FOR RECORD
AGUSTIN SANDOVAL

And the court having on 01/22/2020 deferred imposition of sentence until this date.

IT IS THE SENTENCE OF THE COURT that the defendant:

Is hereby committed to the custody of the Florida Department of Corrections.

TO BE IMPRISONED:

For a term of 15.00 Year(s).

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

25

**CRIMINAL
DIVISION**

SENTENCE

AS TO COUNT: 7

THE STATE OF FLORIDA **VS.**

VS

PLAINTIFF

DEFENDANT

CASE NUMBER: F13005321

CLOCK IN

卷之三

The Defendant, being personally before this Court, accompanied by his/her attorney: RODERICK D. VEREEN, to PCAC and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he/she should not be sentenced as provided by law, and no cause having been shown:

And the court having on 01/22/2020 deferred imposition of sentence until this date.

IT IS THE SENTENCE OF THE COURT that the defendant

Is hereby committed to the custody of the Dade County Jail.

TO BE IMPRISONED:

For a term of 5.00 Year(s).

Time Served

IN REF: Defendant
JOSEPH TEMAN SWIFT

1

OTHER PROVISIONS

CASE NUMBER: F13005321

CATEGORY	OTHER PROVISION DESCRIPTION	SPECIFICATION
Jail Credit	It is further ordered that the Defendant shall be allowed a total of the specified time as credit for time incarcerated prior to imposition of this sentence.	2,695 DAYS
Consecutive/concurrent as to Other Counts	It is further ordered that the sentence imposed for counts specified shall run as indicated with the sentence set forth in counts specified of this case.	COUNTS 1,2,3,4 AND 9 CONSECUTIVE AND COUNT 5 CONCURRENT WITH COUNT 1

In the event the above sentence is to the Department of Corrections, the Sheriff of Miami-Dade County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

Orders:

COURT COST IMPOSED PURSUANT TO F.S. 775.083 (2) (PREV.PROG.) -\$50.00, F.S. 938.01 (1) & 938.15 (LETF) -\$5.00, F.S. 938.03 (4) (CCC) -\$50.00, F.S. 938.05 (1) (LFCJTF) -\$225.00, F.S. 938.19 (2) (TEEN COURT) -\$3.00, F.S. 938.27 (8) (COST OF PROSECUTION) -\$100.00, F.S. 938.06 (CRIME STOP) -\$20.00, F.S. 27.52 (1) (B) (P.D. APPL. FEE) -\$50.00, F.S. 938.29 (COST OF DEFENSE) -\$100.00, TOTAL: \$603.00

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this 20th day of July, 2020.


JUDGE RICHARD HERSCHE DIV. F013

Third District Court of Appeal

State of Florida

Opinion filed April 6, 2022.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-1160
Lower Tribunal No. F13-5321

Joseph Swift,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Richard Hersch, Judge.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Ivy R. Ginsberg, Assistant Attorneys General, for appellee.

Before LOGUE, SCALES, and GORDO, JJ.

PER CURIAM.

Joseph Swift appeals the trial court's ruling that he was competent to stand trial and separately contends that the trial court did not conduct a reasonably thorough Faretta examination. We affirm. Woodbury v. State, 320 So. 3d 631, 644 (Fla. 2021) ("When a defendant claims a trial court failed to order a competency hearing, either *sua sponte* or on request from a party, we will uphold the court's determination absent an abuse of discretion."); Barnes v. State, 124 So. 3d 904, 913 (Fla. 2013) (holding that to be found incompetent, a defendant must demonstrate "a present inability to assist counsel or understand the charges"). However, because the trial court did not enter a written order memorializing its May 22, 2019 on-the-record finding that Mr. Swift was competent, as required by Florida Rule of Criminal Procedure 3.212(b), we remand to the trial court to enter an order *nunc pro tunc* to that date.

Affirmed, remanded with instructions.

EXHIBIT

No. 12

ON DEM DENYING ACQUITAL

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

DIVISION <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> OTHER	ORDER <input type="checkbox"/> GRANTING / <input checked="" type="checkbox"/> DENYING DEFENDANT'S PRO SE MOTION FOR: <u>ACQUITTAL FILED 2/4/2020</u> <u>2/5/2020 AND 3/16/2020</u>	CASE NUMBER F13-5321
THE STATE OF FLORIDA	VS.	JOSEPH TEMAN SWIFT
PLAINTIFF	DEFENDANT	FILED FOR RECORD 7/21/2020 2:52 PM CLOCK IN CLERK CIRCUIT & COUNTY COURTS MIAMI-DADE COUNTY, FL 305-558-1234 305-558-1234

THIS CAUSE HAVING COME BEFORE the Court upon the Defendant's Pro Se Motion and the Court having examined the said Motion and the Motion being sufficient/ insufficient to support the relief prayed, IT IS THEREUPON,

CONSIDERED, ORDERED AND ADJUDGED that the above Pro Se Motion filed by the above prisoner be, and the same is hereby

GRANTED. _____

The movant is advised that any change in the original Judgment or Sentence will be forwarded to the Department of Corrections under separate order.

DENIED. _____

The movant is advised that he/she has the right to appeal within thirty (30) days of the rendition of this order.

DONE AND ORDERED IN Chambers Open Court at Miami, Dade County, Florida, this 20th day of JULY, A.D., 2020.


JUDGE RICHARD HERSCHE DIV.13

I CERTIFY that a copy hereof has been furnished to the movant, JOSEPH TEMAN SWIFT, by mail this day of **JULY 21 2020**, 2020.

RECORDED

Clerk's web address: www.miami-dadeclerk.com

CLK/CT 775 REV. 4/03 RH 7/21/2020

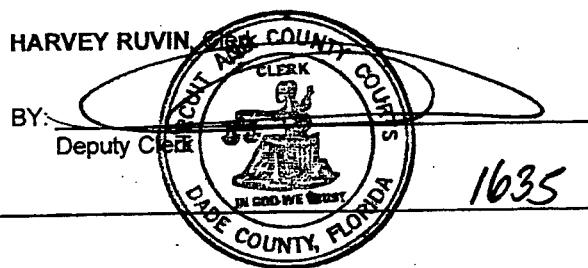


EXHIBIT
No. 14

OMOEM DENYING 1ST ARREST AFFIDAVIT

1cc Daff
1cc Sae

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

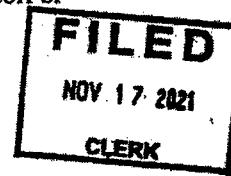
THE STATE OF FLORIDA,
Plaintiff,

vs.

JOSEPH SWIFT,
Defendant

CRIMINAL DIVISION
CASE NO.: F13-5321

JUDGE RICHARD HERSCH



ORDER DENYING APPLICATION SEEKING ARREST WARRANT

On or about November 3, 2021, the Defendant filed a document entitled "Arrest Affidavit". (attached hereto) In this document, Swift moves to compel an arrest warrant for Ms. Taree Jacquelyn Jones, a victim and witness in Swift's trial. As ground he asserts that she gave false testimony at his trial. In support, he argues that portions of her testimony was contradicted by another witness.

The Defendant fails to present any legal grounds for the extraordinary relief he seeks. Further, beyond the "production" of an arrest warrant, Swift fails to identify any other remedy that he seeks. As this request for an arrest warrant is without any legal basis, this motion will be DENIED.

Done and Ordered in Miami-Dade County this 17th day of November, 2021.

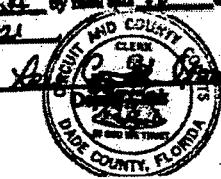
Richard Hersch
Circuit Court Judge
CIRCUIT COURT JUDGE

Copies to:

Joseph Smith, DC# W80731
4320 N.E. 168th
Okeechobee, FL 34972-4824

Clerk of Third District Court of Appeal

I CERTIFY that a copy of this order has been furnished to
the PLAINTIFF, Joseph Swift, by mail this 17th day
of November, 2021.



EXHIBIT

No. 16

2ND ARREST AFFIDAVIT, DENIAL IN
THE 11TH JUDICIAL CIRCUIT COURT.

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

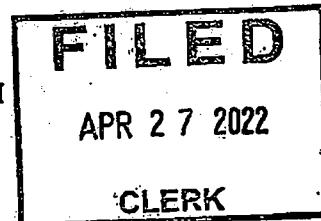
THE STATE OF FLORIDA,
Plaintiff,

vs.

JOSEPH SWIFT,
Defendant

CRIMINAL DIVISION
CASE NO.: F13-5321

JUDGE RICHARD HERSCHE



ORDER DENYING APPLICATION ENTITLED "ARREST AFFIDAVIT" FILED APRIL 7, 2022

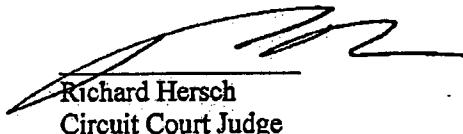
This cause having come before the Court on Defendant's application entitled "Arrest Affidavit" filed on April 7, 2022. In this application he seeks a warrant for the arrest of a witness at his trial urging that she committed perjury.¹ This is his second application of this nature. There is no basis for this Court to issue such relief and in fact, this Court lacks the power to provide the relief he suggests.

Therefore, this request for relief is **DENIED**. Attached is the application entitled "Arrest Affidavit."

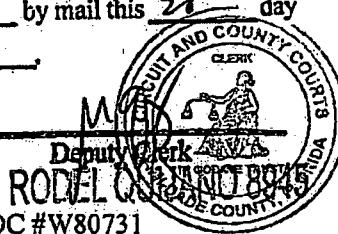
Done and Ordered in Miami-Dade County this 27th day of April, 2022.

CERTIFY that a copy of this order has been furnished to

the MOVANT, JOSEPH SWIFT by mail this 27 day
of APRIL, 2022.


Richard Hersch
Circuit Court Judge

Copies to:
Joseph Smith, FDOC #W80731
Okeechobee Corr. Inst.
3420 N.E. 168th St.
Okeechobee, FL 34972-5402



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 29-28-2022
HARVEY RUVIN, Clerk of Circuit and County Courts
Deputy Clerk


RODELOQUANO 8945



¹ Swift selects portions of her testimony that he claims were inconsistent.

Third District Court of Appeal
State of Florida

Opinion filed September 14, 2022.
Not final until disposition of timely filed motion for rehearing.

No. 3D22-943
Lower Tribunal No. F13-5321

Joseph T. Swift,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.315(a) from
the Circuit Court for Miami-Dade County, Richard Hersch, Judge.

Joseph T. Swift, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, SCALES and HENDON, JJ.

PER CURIAM.

Affirmed.

EXHIBIT

No. 21

OPINION OF THE FLA. SUP. CT. DENYING
JURISDICTION OVER ARREST AFFIDAVIT #2
(AFTER MANDAMUS)

Supreme Court of Florida

MONDAY, OCTOBER 17, 2022

CASE NO.: SC22-1360

Lower Tribunal No(s).:

13D22-943; 132013CF0053210001XX

JOSEPH SWIFT

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. See *Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

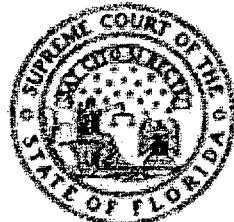
No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



td

Served:

MICHAEL W. MERVINE

JOSEPH SWIFT

HON. RICHARD L. HERSCHE, JUDGE

HON. MERCEDES M. PRIETO, CLERK

HON. HARVEY RUVIN, CLERK

EXHIBIT
No. 23

ORDER DENYING HABEAS CORPUS
CASE. NO. 8021 - 1393

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY 06, 2021

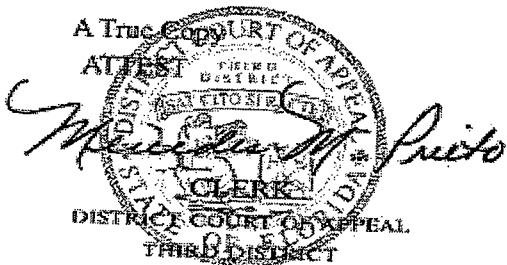
JOSEPH T. SWIFT,
Appellant(s)/Petitioner(s),
vs.
THE STATE OF FLORIDA, et al.,
Appellee(s)/Respondent(s),

CASE NO.: 3D21-1393
L.T. NO.: F13-5321

Following review of the pro se Petition for Writ of Habeas Corpus, it is ordered that said Petition is hereby stricken as unauthorized.

See Logan v. State, 846 So. 2d 472 (Fla. 2003); Davis v. State, 789 So. 2d 978, 981 (Fla. 2001) (“The decision to allow a convicted defendant the ability to proceed pro se in appellate proceedings is vested in the sound discretion of the appellate court.... Also vested in the sound discretion of an appellate court is the decision whether to accept pro se filings.”).

FERNANDEZ, C.J., and LINDSEY and BOKOR, JJ., concur.



cc: Office of Attorney General
Joseph T. Swift

Public Defender Appeals
Hon. Richard Hersch

Susan S. Lerner

ns

EXHIBIT

No. 24

FLA. SUP. CT. DENYING HABEAS
CORPUS REVIEW CASE, NO. 3D21-1393

Supreme Court of Florida

MONDAY, SEPTEMBER 27, 2021

CASE NO.: SC21-1155

Lower Tribunal No(s).:

3D21-1393; 132013CF0053210001XX

JOSEPH SWIFT

vs. STATE OF FLORIDA, ET AL.

Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



d1

Served:

BRIAN H. ZACK
SUSAN S. LERNER
HON. HARVEY RUVIN, CLERK
HON. RICHARD L. HERSCHE, JUDGE
HON. MERCEDES M. PRIETO, CLERK

JOSEPH SWIFT

EXHIBIT

No. 31

SEARCH WARRANT

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

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

SEARCH WARRANT

IN THE NAME OF THE STATE OF FLORIDA, TO ALL AND SINGULAR:

FILED FOR RECORD
2013 MAR 11 PM 12:07
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CLERK'S OFFICE

The Director of the Miami-Dade Police Department, Miami-Dade County, Florida, who is also known as the Sheriff of Metropolitan Miami-Dade County, Florida, or his Deputies, and the Commissioner of the Florida Department of Law Enforcement, or any of his duly constituted Agents, and all Investigators of the State Attorney of the Eleventh Judicial Circuit of Florida, Miami-Dade County, Florida.

Affidavit having been made before me by Detective Maria Mederos, and incorporated herein by reference, that she has probable cause to believe and she does believe that at the premises described as:

387 NE 191 Street, Apartment #106, which is located within the Vista Palms Apartment Complex, which is the second complex east of NE 3 Avenue, and faces NE 191 Street, in Miami-Dade County, Florida. Building "387" is the fourth building north of NE 191 Street and is the second building east of the western boundary of the Vista Palms complex. Building "387" has an east/west axis and faces south, is tan in color with a pitched flat brown shingle roof. The numbers "387" are displayed on the south wall on a placard.

Page 1 of 3 Pages
Affiant's initials MJL
Judge's initials AM

Apartment #106 is located on the first floor in the westernmost breezeway. The door is the first door north within the westernmost breezeway entrance, is located on the east wall, faces west and is brown in color. The number "106" is located on a placard on the east wall, just south of the apartment door. The residence being in Miami-Dade County, Florida, hereinafter referred to as "The Premises," a weapon, instrumentality or means by which a felony, to wit: Murder, in violation of Florida Statute 782.04, has been committed, or evidence relevant to proving said felony has been committed therein, is contained therein, to wit: knife(knives), as well as blood, DNA, cell phone, photographs, computers, fingerprints, hairs, clothing, fibers, correspondence, notes, diaries, and any tangible evidence, hereinafter referred to as "The Property."

And as I am satisfied that there is probable cause to believe that "The Premises" is being used as aforesaid and that the felony aforesaid has been committed and that "The Property" above-mentioned is being concealed and stored at "The Premises" above-described, I expressly find probable cause for the issuance of this Search Warrant.

YOU ARE HEREBY COMMANDED to enter and search forthwith "The Premises" above-described, and the curtilage thereof, for "The Property" above-described, serving this warrant and making the search in the Daytime or the Nighttime, as the exigencies may demand or require, or on Sunday, with the proper and necessary assistance, and if "The Property" above-described be found there, to seize it and to arrest all persons in the unlawful possession thereof, leaving a copy of this Warrant and a receipt for the property taken and prepare a written Inventory of the property seized and return this Warrant and bring the property and all persons arrested before a court having

Page 2 of 3 Pages
Affiant's initials LL
Judge's initials AK

competent jurisdiction of the offense within ten (10) days from the date of issuance as required by law.

WITNESS MY HAND and seal this 5, day of March, 2013.


JUDGE OF THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA

EXHIBIT

No. 26

ORDER DENYING POST-CONVICTION MOTION

DATED FEBRUARY 17, 2023 CASE NO. 13005321

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

STATE OF FLORIDA,
Plaintiff,

vs.

JOSEPH SWIFT,
Defendant.

Criminal Division
Case No. F13 -5321
Section No. 13
Judge Richard Hirsch

FILED
FEB 17 2023
CLERK

**ORDER DENYING DEFENDANT'S MOTION
FOR POSTCONVICTION RELIEF**

THIS CAUSE is before the court on Defendant, Joseph Swift's Motion for Post Conviction Relief filed November 1, 2022. The court has reviewed the Motion, the trial and hearing transcripts, and the court file and record in this case and conducted its own research, and being otherwise fully advised in the premises, hereby denies the Defendant's Motion for Post-Conviction Relief as set forth below:

FACTS AND PROCEDURAL HISTORY

On March 5, 2013, Joseph Swift was arrested for the stabbing deaths of Jeneth Jones and Wade Jones, Jr. and the attempted murder of Natasha Jones and Taree Jones. The facts of this case are best encapsulated in the narrative of Detective Hatzis at the time of the arrest:

On Sunday, March 3, 2013 the Defendant entered the above listed address and once inside began stabbing the residents of the house with an unknown type large knife. The Defendant chased the victims throughout the residence breaking down doors where the victims

attempted to hide in bedrooms and he continued chasing them and cornering them while repeatedly stabbing them .. the Defendant stabbed Victim #1 Wade Jones to death inside the residence. The Defendant stabbed Victim #2 Jeneth Jones who escaped the residence but died across the street trying to seek help from a neighbor. The Defendant stabbed Victim #3 Natasha Jones (his ex-girlfriend) inside the residence until she was incapacitated. Victim #3 was transported to Ryder Trauma in critical condition. The Defendant stabbed Victim #4 Taree Jones inside the residence and she ran to a neighbor's residence where she was transported to Ryder Trauma in critical condition.

Probable cause affidavit attached. Swift dated Natasha Jones a few years earlier and was identified as the assailant by Natasha and her sister, Taree Jones. These facts were largely borne out at trial.¹ The Defendant testified that he was present at the residence that night. Restless and unable to sleep and, after 4-5 years without contact with the Jones family, he found his way to their house. TT at 1456-60. He testified that he saw the attacks on the four victims, first from outside the residence, and ultimately from inside after he entered the home. TT at 1460-1. He claimed to struggle with the assailant briefly, but gave up and fled the home. TT at 1461-2.

Swift was charged by Indictment with two counts of first-degree murder, two counts of attempted first-degree murder, one count of escape, three counts of resisting an officer with violence, and one count of armed burglary with assault

¹ The trial transcripts commencing on January 10, 2020 will be referred to by the symbol "TT." The COC is directed to attach these transcripts to this Order and they are to be designated as Appendix I.

or battery. Although represented by appointed counsel for over six years, Swift elected to represent himself at trial. He was convicted of all counts after a jury trial.

Swift was sentenced to life in prison on each of the murder and attempted murder offenses, as well as the burglary count. He was sentenced to fifteen years on the escape and five years (time served) on the resisting charges. Sent. Tr. at 33-34.² Those convictions and sentences were subsequently affirmed by the Third District Court of Appeal. *Swift v. State*, 338 So. 3d 389 (Fla. 3d DCA 2022). Swift's appeal to the Third District raised three grounds: (1) the trial court erred by not conducting a thorough inquiry and independently determining whether he was competent to represent himself at trial; (2) the trial court failed to order a mental competency evaluation during trial when his standby attorney raised concern; and (3) the record failed to establish a competency hearing was conducted.

Subsequent to his direct appeal, Defendant has filed a number of proceedings in the appellate courts. Defendant filed a *pro se* petition for writ of habeas corpus in the Third District Court of Appeal. The Third District denied the petition. *Swift v. State*, 307 So. 3d 875 (Fla. 3d DCA 2020). Defendant

² The sentencing proceedings of July 20, 2020 are attached as Appendix H and will be referred to as "Sent. Tr." The recorded sentence is also attached as Appendix E

sought review of that denial in the Florida Supreme Court, and his case was dismissed because notice was not timely filed. *State v. Swift*, No.: SC21-11622021, WL 3520605 (Fla. Aug. 11, 2021). Swift has an extensive history of filings not salient to the instant claims.³

On July 7, 2022, Defendant filed his most recent *pro se* petition for writ of habeas corpus in the Third District, Case No. 3D22-1171, arguing ineffective assistance of counsel. The Third District, upon its own motion, transferred said Petition to this court on July 13, 2022. This court reviewed the Petition and, treating it as a Rule 3.850 application dismissed it without prejudice as legally

³ On July 1, 2020, Defendant filed a *pro se* petition for writ of prohibition, again in the Third District, which was denied as legally insufficient. *Swift v. State*, 348 So. 3d 557 (Fla. 3d DCA 2020). Thereafter, Defendant filed yet another *pro se* petition for writ of habeas corpus which the Third District struck as unauthorized. *Swift v. State*, 349 So. 3d 410 (Fla. 3d DCA 2021). The Florida Supreme Court dismissed Defendant's appeal of that decision because notice was not timely filed. *Swift v. State*, No.: SC21-12532021, WL 3918876 (Fla. Sep. 2, 2021). In May 2022, the Florida Supreme Court denied a petition for writ of mandamus as Swift failed to show a clear legal right to the requested relief. *Swift v. State*, No.: SC22-317, 2022 WL 1536997 (Fla. May, 16, 2022).

Defendant filed a petition identical to the instant in the Third District on August 25, 2021, and the appellate court transferred it to this court on August 9, 2021. *Swift v. State*, No. 3D21-1588, 2021 WL 3578853 (Fla. 3d DCA 2021). Via written order of August 25, 2021, this court dismissed the petition as premature pursuant to *Sandoval v. State*, 932 So. 2d 1147 (Fla. 2d DCA 2006).

On June 2, 2022, Defendant filed a notice of appeal of the trial's court's denial of an arrest affidavit to the Third District. The Third District dismissed that appeal. *Swift v. State*, 347 So. 3d 1265 (Fla. 3d DCA 2022).

insufficient.⁴ Thereafter, Defendant filed the instant "Motion for Post Conviction Relief." (Attached as Appendix A.)

Defendant now seeks post-conviction relief in this court pursuant to Florida Rule of Criminal Procedure 3.850. This application for postconviction relief is timely.

DEFENDANT'S CLAIMS FOR POSTCONVICTION RELIEF

Defendant asserted fourteen grounds for relief, each of which is addressed below.

GROUND I: The Defendant alleged that he was prejudiced at trial because the trial judge did not allow him to review and copy the State's evidence before trial. He states his claim as follows:

"The trial judge would not honor my right to review and copy the state's evidence before trial (Judge Hersch) see (Fla. R. Crim P. 3.220 "discovery") This constitutes a departure from the essential requirements of law, a fundamental error, which prejudiced me during trial, doing harm to my right to due process (ref. 8 Trans Jan10, 2020)."

⁴"Where a movant files a properly pleaded claim but incorrectly styles the postconviction motion in which it was raised, the trial court must treat the claim as if it had been filed in a properly styled motion." *Gill v. State*, 829 So. 2d 299, 300 (Fla. 2d DCA 2002) (citing *Hogan v. State*, 799 So. 2d 1095 (Fla. 2d DCA 2001)).

Appendix A at p. 6.

Defendant's claim involves pre-trial discovery and trial issues. Defendant chose to represent himself *pro se* at trial, rather than be represented by the experienced, veteran attorneys (Roderick Vereen and David S. Markus) who had discovered and prepared his case for nearly seven years. Defendant raised motions directed to this issue. If aggrieved by the trial court's rulings, they could have been directly appealed to the Third District Court of Appeal. Accordingly, this claim is barred as an issue that should have been raised on direct appeal.

Rule 3.850 "does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence." Fla. R. Crim. P. 3.850(c)(7); Fla. Stat. § 924.051(8) ("It is the intent of the Legislature that all terms and conditions of ... collateral review be strictly enforced, including the application of procedural bars"). See *Parker v. State*, 611 So. 2d 1224, 1226 (Fla. 1992) ("We have repeatedly said that a motion under Rule 3.850 cannot be used for a second appeal to consider issues that either were raised in the initial appeal or could have been raised in that appeal"); *Mikenas v. State*, 460 So. 2d 359 (Fla. 1985); *Dunn v. State*, 282 So. 3d 899, 902 (Fla. 1st DCA 2019) ("[C]laims of trial court error are not cognizable in a motion for postconviction relief. . . . Those claims must be raised on direct appeal."); *Austin v. State*, 160 So. 2d 730 (Fla. 2d DCA 1964).

Even if this issue was not procedurally barred, a review of the record conclusively refutes the Defendant's claim. Although Defendant referenced the proceedings on January 10, 2020, he fails to designate any specific denial of his motion regarding discovery. A review of the transcripts reveals that the court took close notice of Swift's complaints. See, e.g. TT at 10-12; 25-30; 34-5. On page 35 of the transcripts of that day, the court and the Defendant discussed the specific deposition transcripts in his possession. Although not required by any procedural rule, the court promised the defendant that he would be made aware of the witnesses that would be called each day of trial. TT at 37. After Swift was given the opportunity to make further motions on this issue, he asked to move on to the motions to suppress. *Id.* As noted, even if this issue not procedurally barred, Swift is not entitled to relief on this claim.⁵

GROUND II: Defendant alleged the State failed to present evidence to prove his guilt of the charged offenses and that the two homicides were first degree murders based on perjurious testimony of two witnesses. Defendant's objection to the trial testimony of Dr. Emma Lewis as "misleading" was properly overruled. Contrary to Defendant's claims in his motion, TT at 1368, does not

⁵ Swift's claim regarding the video evidence is addressed in Ground XII, *infra*.

contain testimony about defensive wounds to the victim. This claim is based on issues that should have been raised in the direct appeal.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Insufficiency of the evidence is not a cognizable postconviction claim. *Hamilton v. State*, 14 So. 3d 1089 (Fla. 5th DCA 2009); *Morris v. State*, 422 So. 2d 338 (Fla. 3d DCA 1982).

GROUND III: The Defendant claimed the warrant used to collect evidence used during trial was not lawfully executed and violated his right to due process and against improper search and seizure.

This claim is based upon pre-trial procedural and evidentiary issues that are barred as they should have been raised on direct appeal. See *Morris v. State*, 422 So. 2d at 341 (prosecutorial misconduct not appropriately raised by way of Rule 3.850 collateral attack when a direct appeal has been taken).

GROUND IV: Defendant alleges ineffective assistance of counsel during the July 20, 2020 sentencing phase based on attorney Roderick Vereen's claimed failure to present argument in support of a *pro se* Motion for Acquittal.

To prevail on an ineffective assistance of counsel claim, a defendant must show both that trial counsel's performance was deficient, and that the deficient

performance prejudiced the defendant so as to deprive him of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Crain v. State*, 78 So. 3d 1025, 1033 (Fla. 2011). “There is a strong presumption that trial counsel’s performance was not ineffective.” *Lukehart v. State*, 70 So. 3d 503, 512 (Fla. 2011). To establish the deficiency prong under *Strickland*, the defendant must prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687. The defendant carries the burden to “overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” Id. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91 (1955)).

A. Defendant’s motions for acquittal

At the close of the State’s case, Swift made an *ore tenus* motion for judgement of acquittal, primarily arguing that the evidence presented failed to exclude every reasonable hypothesis of innocence. TT at 1411-27. He renewed this motion at the close of all the evidence, primarily arguing that his version of the facts should be accepted over that of the witnesses for the State. TT at 1841-51.

Post-trial, Swift filed three written documents entitled "Motion for Acquittal" [sic].⁶ In the February 4 motion, he attacks the murder verdicts arguing that only circumstantial evidence was presented to prove premeditation and that reasonable hypotheses of innocence existed. He ignores the fact that the jury also found him guilty of first-degree felony murder, a charge not requiring premeditation. Swift argues that the attempted murder verdicts cannot stand because the assailant ceased the attack before killing the victims, thus showing a "complete and total abandonment" of the offense.

In his February 6 motion, he attacks the jury's guilty verdict on the escape and resisting charges. Swift's complaint here is fact based, primarily asserting an insufficiency of evidence. The March 16 motion is identical to the February 4 motion.

B. Claim of ineffectiveness

These motions were addressed by this court at the July 20, 2020

⁶ These motions, filed on February 4 and 5 and March 16, 2020 are attached as Appendix E. Although not raised by the State in the post-verdict, presentence stages, it is likely this court was without jurisdiction to address one or more of these motions. *State v. Nicholson*, 819 So. 2d 908, 910 (Fla. 4th DCA 2002)(Motion for new trial must be filed within ten days of rendition of verdict as permitted under the rule or trial court is without jurisdiction to hear the motion.) The verdict in this case was rendered on January 22, 2020. It is unknown when Swift provided the corrections personnel with these motions for filing, but likely the March motion would have been untimely.

sentencing proceedings. Sent. Tr. at 12. The court addressed them on their merits and they were denied.⁷ See *Davis v. State*, 425 So. 2d 654, 655 (Fla. 5th DCA 1983)(“The fact that the evidence is in conflict does not entitle appellant to a judgment of acquittal because the weight of the evidence and the credibility of the witnesses is for the jury.”). Swift does not argue that his counsel was ineffective by failing to adopt the motions, but rather, by failing to *make argument* on the motions. Appendix A at 8-9.

There simply was no prejudice to Defendant. Not re-arguing an identical motion previously denied at trial could not cause prejudice to Defendant. Under the prejudice prong, “*Strickland* places the burden on the defendant, not the State, to show a ‘reasonable probability’ that the result would have been different.” *Wong v. Belmontes*, 558 U.S. 15 (2009) (quoting *Strickland*, 466 U.S. at 694). At trial, the State presented sufficient evidence for the case to be considered by the jury; accordingly, Defendant’s *ore tenus* motions for acquittal made at trial on January 21 and 22, 2020 were properly denied by this court. TT at 1411-26; 1841-51.

⁷ A review of the transcript of that day might cause one to be concerned about the competency of Swift. However, he was again represented by counsel, who did not believe Swift to be incompetent. Nor did this court. Dr. Ralph Richardson attended the virtual hearing, and at the request of the court, conducted a competency evaluation. His report finding Swift competent was filed July 22, 2020.

Further, Defendant's counsel exercised professional judgment in not arguing what would have been a frivolous motion at sentencing, as the court had previously considered, and denied, a similar motion at trial. The exercise of professional judgment does not provide a basis for relief under *Strickland*. Defendant has not shown that the strategy was so "patently unreasonable that no competent attorney would have chosen it." *Carmona v. State*, 814 So.2d 481, 482 (5th DCA 2002) (quoting *Haliburton v. Singletary*, 691 So. 2d 466, 471 (Fla. 1997)). Swift is not entitled to relief on this issue.

GROUND V: Defendant asserts there was insufficient evidence to support the charged offense of resisting an officer with violence claiming his mental state at the time prevented required intent and that schizophrenia explained his behavior with police after the crime occurred. Defendant did not file a notice of intent to rely upon insanity as a defense. This claim is based upon issues which could have been raised on direct appeal and is barred accordingly.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Insufficiency of the evidence is not a cognizable post-conviction claim. *Hamilton v. State*, 14 So. 3d 1089 (Fla. 5th DCA 2009); *Morris v. State*, 422 So. 2d 338 (Fla. 3d DCA 1982).

GROUND VI: Defendant contends there is insufficient evidence to support the charged offense of first-degree attempted murder of Natasha Jones because the assailant ended his attack upon her and left her alive. The cases cited by Defendant, *State v. Boom*, 490 So. 2d 1370 (Fla. 2d DCA 1986) and *State v. Rogers*, 386 So. 2d 278, 280 (Fla. 2d DCA 1980) address sworn motions to dismiss and do not support this claim. This claim should have been raised on direct appeal and is barred in this proceeding.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Insufficiency of the evidence is not a cognizable post-conviction claim. *Hamilton v. State*, 14 So. 3d 1089 (Fla. 5th DCA 2009); *Morris v. State*, 422 So. 2d 338 (Fla. 3d DCA 1982).

GROUND VII: Defendant contends there is insufficient evidence to support the charged offense of first-degree attempted murder of Taree Jones because she was the only direct witness and the assailant ended his attack upon her and left her alive. Again, the cases cited by Defendant, *State v. Boom*, 490 So. 2d 1370 (Fla. 2d DCA 1986) and *State v. Rogers*, 386 So. 2d 278, 280 (Fla. 2d DCA 1980) offer no support of this claim. This claim should have been raised on direct appeal and is barred in this proceeding.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Insufficiency of the evidence is not a cognizable post-conviction claim. *Hamilton v. State*, 14 So. 3d 1089 (Fla. 5th DCA 2009); *Morris v. State*, 422 So. 2d 338 (Fla. 3d DCA 1982).

GROUND VIII: Defendant contends the trial judge was biased or prejudiced against him and denied a motion for mistrial and motion for disqualification.⁸ In order to disqualify a judge, the facts asserted must be reasonably sufficient to create a well-founded fear in the mind of the party that he will not receive a fair trial. *Heier v. Fleet*, 20 So. 2d 669 (Fla. 4th DCA 1994). It is a well-settled principle that adverse rulings, without more, do not constitute the requisite bias or prejudice necessary to support disqualification. *John Young Song v. State*, 338 So. 3d 984 (Fla. 3d DCA 2022), citing *Mendoza v. State*, 87 So. 3d 644, 664 (Fla. 2011). Mistrial and disqualification are issues for direct appeal and cannot be brought in this proceeding.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Claims of trial court error must be raised on direct appeal. *Bowles v. State*, 979 So. 2d 182 (Fla. 2008).

⁸ This motion is attached as Appendix G. The court denied this motion on July 20, 2020. Sent. Tr. At 12.

GROUND IX: Defendant claims the evidence supporting the conviction for the first-degree murder of Janeth Jones is insufficient. Sufficiency of evidence is an issue for direct appeal and is barred in this proceeding.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Insufficiency of the evidence is not a cognizable post-conviction claim. *Hamilton v. State*, 14 So. 3d 1089 (Fla. 5th DCA 2009); *Morris v. State*, 422 So. 2d 338 (Fla. 3d DCA 1982).

GROUND X: Defendant claims the evidence supporting the conviction for the first-degree murder of Wade Jones is insufficient. Sufficiency of evidence is an issue for direct appeal and is barred in this proceeding.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Insufficiency of the evidence is not a cognizable post-conviction claim. *Hamilton v. State*, 14 So. 3d 1089 (Fla. 5th DCA 2009); *Morris v. State*, 422 So. 2d 338 (Fla. 3d DCA 1982).

GROUND XI: In this claim, Swift asserts a denial of due process in that the trial court “presenting argument in opposition” to his motions, often without “allowing the prosecution an opportunity to do so.” Appendix A, Memorandum at 14. The one record excerpt Defendant cited (TT at 1411-27) shows the court

questioning Defendant regarding his argument advocating his motion for acquittal. It could be that Swift, although proceeding *pro se*, didn't like being treated like a lawyer. Judges routinely question the positions of attorneys during argument. Regardless, if Swift felt the court was unfair, he had remedies available at the time. In fact, as noted above, Swift later moved for the recusal of the court. Swift's claim that this court's treatment of him was a denial of due process is conclusively refuted by the trial transcript and proceedings attached.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Claims of trial court error must be raised on direct appeal. *Bowles v. State*, 979 So. 2d 182 (Fla. 2008). Swift raises no argument here that warrants relief.

GROUND XII: Swift frames this issue as follows:

"The trial judge's decision to ignore my demand for discovery let to me being unfairly surprised when the prosecution began to present evidence during trial."

Appendix A, Memorandum at 16. Swift again raises the complaint that he did not get discovery. Specifically, he asserts that he did not have the opportunity to see the autopsy photographs beforehand and that he did not see surveillance video before trial. There is no suggestion that these materials were not available for inspection for the six-plus years that Swift had counsel

actively conducting discovery. Swift claims that he would have filed motions to exclude the autopsy photos if he had seen them before trial.

Swift elected to be his own attorney. Consequently, it was his responsibility to request a *Richardson*⁹ hearing if he believed the State had failed to honor their discovery obligations. Swift was warned each day of the disadvantages of proceeding *pro se*. He cannot now be heard to complain that he did not do a good job as a lawyer.

Additionally, Swift cannot show prejudice. An examination of the trial record shows that the court carefully parsed out photos that would be overly prejudicial to the Defendant. TT at 1368-79. Swift later raised this issue by moving for a mistrial. TT 1429.

His complaint regarding the surveillance video also lacks any showing of prejudice.¹⁰ When Swift expressed a desire to present this video evidence at trial, TT at 1429-35, this court responded by ordering the production of the videos by the State and standby counsel. The video was located, shown to the Defendant, and over authentication objection by the state, admitted as evidence. TT at 1649-67. At Swift's request, it was played several times before

⁹ *Richardson v. State*, 246 So. 2d 771 (Fla. 1971)(A hearing is required to flesh out whether there is a discovery violation and, if so, what remedies are needed to cure any prejudice.)

¹⁰ Captured by a surveillance camera on a nearby home, this video showed a shadowy figure near the scene of the murders. TT at 1650.

the jury. TT at 1671. Swift also sought a mistrial on this issue. TT at 1650. As a result, this claim raises pre-trial procedural and trial evidentiary issues that are now procedurally barred.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Claims of trial court error must be raised on direct appeal. *Bowles v. State*, 979 So. 2d 182 (Fla. 2008).

GROUND XIII: Defendant claims ineffective assistance of direct appeal counsel and that counsel argued baseless claim instead of what should have been raised, namely Grounds 1, 4, 5, 6, 7, 8, 9-10.

Defendant's request for relief in connection with his direct appeal are not properly in this court pursuant to Rule 3.850 but in an appropriate petition for relief to the appellate court.

GROUND XIV: Defendant claims evidence to support the conviction for burglary/armed/assault is insufficient. This claim should have been raised on direct appeal.

Grounds that could have or should have been raised on direct appeal are not authorized pursuant to Rule 3.850. Insufficiency of the evidence is not a

cognizable post-conviction claim. *Hamilton v. State*, 14 So. 3d 1089 (Fla. 5th DCA 2009); *Morris v. State*, 422 So. 2d 338 (Fla. 3d DCA 1982).

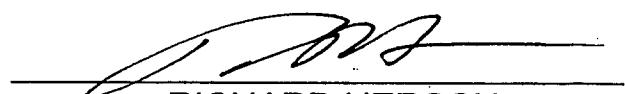
Accordingly, Defendant is not entitled to relief.

It is hereby ORDERED AND ADJUDGED that Defendant, Joseph Swift's Motion for Postconviction Relief pursuant to Florida Rule of Criminal Procedure 3.850 is hereby **DENIED**.

Defendant Joseph Swift is hereby notified that he has the right to appeal this Order to the Third District Court of Appeal of Florida within thirty (30) days of the signing and filing of this Order. Attached to this order pursuant to Fla. R. Cr. P. 3.850 (f)(5) are appendices as follows:

- A. Defendant's Motion for Post Conviction Relief;
- B. Probable Cause Affidavit.
- C. Indictment
- D. Verdict
- E. Sentence
- F. Motions for Acquittal
- G. Motion to Recuse
- H. Sentencing Transcript of July 20, 2020
- I. The COC is directed to attach the trial transcript to this Order. (1862 pages)

DONE AND ORDERED in Miami-Dade County, Florida, on this 17
day of February, 2023.



RICHARD HER SCH
Circuit Judge

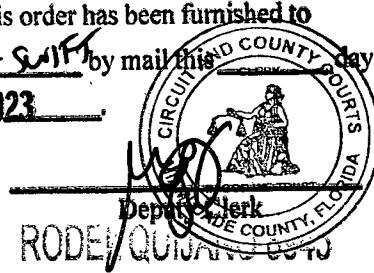
cc:

State Attorney's Office

The Clerk of Court is hereby ordered to send a copy of this Order to the Defendant

Joseph T. Swift DC # W80731
Okeechobee Correctional Institution
420 N.E. 168th Street
Okeechobee, FL 34972-4824

I CERTIFY that a copy of this order has been furnished to
the MOVANT, JOSEPH T. SWIFT by mail this 17 day
of MAR 02, 2023.



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 MAR 02 2023 15 20

LUIS G. MONTALDO, CLERK AD INTERIM of Circuit and County Courts

Deputy Clerk

RODELQUIANO 0045



C

EXHIBIT

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3RD D.C.A.S. PER CURIAM AFFIRMANCE

OF 3,850 POST-CONVICTION MOTION

1

Third District Court of Appeal

State of Florida

Opinion filed May 17, 2023.

Not final until disposition of timely filed motion for rehearing.

No. 3D23-0576
Lower Tribunal No. F13-5321

Joseph T. Swift,
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, Richard Hersch, Judge.

Joseph T. Swift, in proper person.

Ashley Moody, Attorney General, for appellee.

Before MILLER, GORDO and BOKOR, JJ.

PER CURIAM.

Affirmed.

**Additional material
from this filing is
available in the
Clerk's Office.**