DOCKET NO.: _____

IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

CAPITAL CASE

APPENDIX

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IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX A:

Bates v. State, 398 So. 3d 406 (Fla. 2024), (Florida Supreme Court Opinion Affirming the Denial of Motion to Interview Juror).

Supreme Court of Florida

No. SC2023-1683

KAYLE B. BATES,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

October 24, 2024

COURIEL, J.

Kayle Barrington Bates appeals an order of the postconviction court denying his motion, made under Florida Rule of Criminal Procedure 3.575, to interview a juror who served at his trial in 1983. Bates claims to have learned at some unspecified time (but years after his conviction) that the juror is the second cousin of a person who was married to the victim's sister. We have

jurisdiction.[1] *See* art. V, § 3(b)(1), (9), Fla. Const. Bates's motion is time-barred, so we affirm.

I

In 1983, a jury found Bates guilty of the kidnapping, attempted sexual battery, armed robbery, and first-degree murder of Janet White. *See Bates v. State*, 465 So. 2d 490 (Fla. 1985). Bates attacked White in her State Farm Insurance office. *Bates v. State*, 3 So. 3d 1091, 1097 (Fla. 2009). He forced her into the woods behind the building; there he beat, tried to rape, and eventually murdered her. *Id.* Bates was found at the scene of the crime with the victim's blood on his clothing. *Id.* Police found other physical evidence connecting Bates to the victim's corpse, including clothing fibers consistent with Bates's pants, Bates's knife case and hat, a watch pin consistent with his watch, and semen on the

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1. Although Bates did not style his motion as having been made pursuant to Florida Rule of Criminal Procedure 3.851, that is how we review it. *See* Fla. R. Crim. P. 3.851(a) ("This rule shall apply to all postconviction proceedings that commence upon issuance of the appellate mandate affirming the death sentence to include all motions and petitions for any type of postconviction or collateral relief brought by a defendant in state custody who has been sentenced to death and whose conviction and death sentence have been affirmed on direct appeal.").

victim and on Bates's underwear. *Id.* Bates gave inconsistent confessions that further implicated him in the murder. *Id.* After he was convicted, the jury recommended the death penalty. The court sentenced Bates to death.

This case has a long history of appeals. In the original direct appeal, this Court affirmed Bates's first-degree murder conviction but remanded to the trial court for reconsideration of the death sentence and a reweighing of the aggravating and mitigating factors. *Bates v. State*, 465 So. 2d at 493. At resentencing, Bates was once again sentenced to death. *See Bates v. State*, 506 So. 2d 1033 (Fla. 1987). This Court affirmed. *Id.* at 1035. In 1989, in between appeals, the Governor signed Bates's death warrant. *See Bates v. Dugger*, 604 So. 2d 457, 458 (Fla. 1992). The trial court stayed his execution and ordered a new sentencing hearing; this Court, affirming that order, found that Bates's counsel had been ineffective and ordered a new resentencing before a jury. *Id.* at 459. After that proceeding, the jury recommended a death sentence by a vote of nine to three, and the circuit court again imposed a death sentence. *Bates v. State*, 750 So. 2d 6, 9 (Fla. 1999). This Court affirmed. *Id.* at 18. Years later, Bates petitioned this Court for a writ of habeas

corpus and raised several issues about how his jury had been selected, among other claims. *See Bates v. State*, 3 So. 3d at 1097. This Court denied relief on all claims. *Id.* at 1107.

II

Bates's effort to interview one of his jurors is 40 years late. Without a showing of good cause for the delay, his claim is time-barred. Rule 3.575 requires that a motion seeking to interview a juror "be filed *within 10 days* after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time." Fla. R. Crim. P. 3.575 (emphasis added). We have addressed rule 3.575 denials on direct appeal and in postconviction proceedings. *Compare Foster v. State*, 132 So. 3d 40, 65-66 (Fla. 2013) (affirming postconviction appeal of 3.575 denial), *and Johnston v. State*, 63 So. 3d 730, 739-40 (Fla. 2011) (same), *with Hampton v. State*, 103 So. 3d 98, 107, 122 (Fla. 2012) (affirming in a direct appeal the denial of a rule 3.575 motion). But the timing contemplated by the rule suggests that the best time for a rule 3.575 motion is on the heels of trial, and thus in connection with a direct appeal, when memories are fresh and facts more readily ascertained.

Bates does not say when he discovered the alleged family relationship between the juror and the victim. That is the end of the matter, for it is Bates's burden to establish good cause to excuse the long delay—which he is hard-pressed to do without explaining the timing of all this.[2] *Cf. Ramirez v. State*, 922 So. 2d 386, 390 (Fla. 1st DCA 2006) (stating that, after juror interviews are granted, "the initial burden will be on the defense 'either to show that prejudice resulted or that the [premature deliberations or conversations] were of such character as to raise a presumption of prejudice' " (alteration in original) (quoting *Russ v. State*, 95 So. 2d 594, 600-01 (Fla. 1957))); *Gray v. State*, 72 So. 3d 336, 338 (Fla. 4th DCA 2011) (same). That is, if he cannot establish when he learned of the alleged relationship between the juror and the victim, it is hard to assess why—or, obviously, for how long—the relevant information was unknown. The courts of our state regularly hold appellants to this burden. *See Rivet v. State*, 307 So. 3d 801, 807

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2. The order below indicates that the motion was filed within one year of Bates's counsel discovering the familial connection. However, Bates does not say when he learned the relevant information or shared it with his lawyer.

(Fla. 1st DCA 2018) (finding motion filed 14 days after trial was "untimely without good cause" because defense counsel discovered the issue during trial); *Belcher v. State*, 9 So. 3d 665, 666 (Fla. 1st DCA 2009) (finding motion time-barred where defense counsel raised the issue in court more than a month after learning of potential misconduct); *cf. Maiya v. Kennedy*, 743 So. 2d 1183, 1184 (Fla. 4th DCA 1999) ("The record does not demonstrate good cause to avoid the time limits of the rule; . . . there was no reason offered, by proffer or otherwise, why the search could not have been conducted within the time limits of the rule."); *Beyel Bros., Inc. v. Lemenze*, 720 So. 2d 556, 558 (Fla. 4th DCA 1998) (finding motion untimely where defendants did not file until about three months after the final verdict).[3]

---

3. *Maiya* and *Beyel Bros.* consider the civil counterpart to rule 3.575, Florida Rule of Civil Procedure 1.431(h). Rule 3.575 is a newer rule with limited precedent discussing the "good cause" requirement. *See Amends. to Fla. Rules of Crim. Proc.*, 886 So. 2d 197 (Fla. 2004) (adopting rule 3.575 for juror interviews in criminal cases, effective 2005). Cases applying the nearly identical civil rule are informative.

III

Because Bates has failed to carry his burden of showing good cause for the 40-year delay at issue, we affirm the postconviction court's denial of Bates's motion.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

An Appeal from the Circuit Court in and for Bay County,
Dustin Stephenson, Judge
Case No. 031982CF000661XXAXMX

Suzanne Keffer, Capital Collateral Regional Counsel, James L. Driscoll, Jr., Assistant Capital Collateral Regional Counsel, and Jeanine Cohen, Staff Attorney, Office of Capital Collateral Regional Counsel, Southern Region, Fort Lauderdale, Florida,

for Appellant

Ashley Moody, Attorney General, and Charmaine M. Millsaps, Senior Assistant Attorney General, Tallahassee, Florida,

for Appellee

IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX B:

Bates v. Florida, No. SC2023-1683, 2024 WL 4879705 (Fla. Nov. 25, 2024) (Unreported Florida Supreme Court Opinion Denying Rehearing).

Supreme Court of Florida

MONDAY, NOVEMBER 25, 2024

Kayle B. Bates,
Appellant(s)
v.

State of Florida,
Appellee(s)

SC2023-1683
Lower Tribunal No(s).:
031982CF000661XXAXMX

Appellant's Motion for Rehearing is hereby denied.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

A True Copy
Test:

SC2023-1683 11/25/2024
John A. Tomasino
Clerk, Supreme Court
SC2023-1683 11/25/2024

KC

Served:

CAPAPPEALS TLH ATTORNEY GENERAL
LARRY RYALS BASFORD
BAY CLERK
JEANINE L. COHEN
JAMES LAWRENCE DRISCOLL, JR.
CHARMAINE MILLSAPS
HON. CHRISTOPHER N. PATTERSON
HON. DUSTIN SCOTT STEPHENSON

Supreme Court of Florida

THURSDAY, DECEMBER 12, 2024

Kayle B. Bates,
Appellant(s)
v.

State of Florida,
Appellee(s)

SC2023-1683
Lower Tribunal No(s).:
031982CF000661XXAXMX

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

A True Copy
Test:

SC2023-1683 12/12/2024
John A. Tomasino
Clerk, Supreme Court
SC2023-1683 12/12/2024

KC

Served:

CAPAPPEALS TLH ATTORNEY GENERAL
LARRY RYALS BASFORD
BAY CLERK
JEANINE L. COHEN
JAMES LAWRENCE DRISCOLL, JR.
CHARMAINE MILLSAPS
HON. CHRISTOPHER N. PATTERSON
HON. DUSTIN SCOTT STEPHENSON

IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX C:

Circuit Court's Order Denying Motion to Interview Juror, November 6, 2023.

Filing # 185541774 E-Filed 11/06/2023 01:50:40 PM

IN THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA
IN AND FOR BAY COUNTY

CASE NO.: 82-0661-CFMA

STATE OF FLORIDA,

Plaintiff,

vs.

KAYLE BARRINGTON BATES,

Defendant.

ORDER DENYING MOTION TO INTERVIEW JUROR

THIS MATTER is before the Court on the Defendant's Motion to Interview Juror pursuant to Florida Rule of Criminal Procedure 3.575 filed on May 31, 2023. Having considered said Motion, the State's Response, the Defendant's Reply, court file and records, and being otherwise fully advised, this Court finds as follows:

Facts & Procedural History

On June 14, 1982, victim Janet White was attacked inside the insurance office building in which she worked. She was taken from her office to the woods behind the building, where, after struggling with her assailant, she was sexually assaulted and murdered. The Defendant was found near the crime scene, was questioned by police, and ultimately confessed to murdering the victim.

On July 6, 1982, the Defendant was indicted for the First-Degree Murder, Kidnapping, Attempted Sexual Battery, and Armed Robbery of Janet White. At the conclusion of a two-and-a-half-day trial in January 1983, the jury returned its verdict, finding the Defendant guilty as charged as to each count. In March 1983, the Defendant was sentenced to death for First-Degree Murder, to two life sentences for Kidnapping and Armed Robbery, and to fifteen years in prison for Attempted Sexual Battery. On appeal, the Florida Supreme Court affirmed the convictions but remanded for the Defendant to be resentenced on the murder conviction. Bates v. State, 465 So. 2d 490, 491 (Fla. 1985). The trial court subsequently reimposed the death penalty, and the Florida Supreme Court affirmed the sentence on appeal. Bates v. State, 506 So. 2d 1033 (Fla. 1987). Following the Defendant's receipt of postconviction relief in 1992, the trial court conducted a new penalty phase and reimposed the death penalty; the Florida Supreme Court affirmed the sentence on appeal. Bates v. State, 750 So. 2d 6 (Fla. 1999).

The Defendant has now filed the present Motion seeking to interview Hubert Donald Gilmore, a juror at the Defendant's original trial in 1983. Without providing a date of the

revelation, he claims that another inmate informed him that one of his jurors was related to the victim. On June 2, 2022, after conducting genealogy research, the Defendant's federal counsel ultimately determined this allegation to be true—Mr. Gilmore's second cousin was married to the victim's sister at the time of his trial. Additional research by state counsel confirmed the findings of federal counsel. The Defendant contends that Mr. Gilmore's failure to "disclos[e] [his] familial connection" to the victim as well as his answer in the negative to "the question of whether he or a relative had ever been the victim of a crime" gives the Defendant "reason to believe that his verdict may be subject to a legal challenge." He therefore requests "an order permitting the interview of Juror Gilmore to determine . . . whether a new trial is warranted." In its Response, the State argues that the Motion is untimely and that the allegations contained therein do not rise to the level of requiring a juror interview.

Applicable Law

Florida Rule of Criminal Procedure 3.575 permits "[a] party who has reason to believe that the verdict may be subject to legal challenge [to] move the court for an order permitting an interview of a juror or jurors to so determine." However, "in light of the strong public policy against allowing litigants either to harass jurors or to upset a verdict by attempting to ascertain some improper motive underlying it[,]" Florida law allows juror interviews only in limited circumstances where "the moving party has made sworn allegations that, if true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings." Baptist Hosp. of Miami, Inc. v. Maler, 579 So. 2d 97, 100 (Fla. 1991); Johnson v. State, 804 So. 2d 1218, 1225 (Fla. 2001). The United States Supreme Court has explained why the sanctity of jury deliberations must be scrupulously protected:

> As early as 1915 this Court explained the necessity of shielding jury deliberations from public scrutiny:
>
> > "Let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict. If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation—to the destruction of all frankness and freedom of discussion and conference."
>
> . . .
>
> There is little doubt that postverdict investigation into juror misconduct would in some instances lead to the invalidation of verdicts reached after irresponsible or improper juror behavior. It is not at all clear, however, that the jury system could survive such efforts to perfect it. Allegations of juror misconduct, incompetency, or inattentiveness, raised for the first time days, weeks, or months after the verdict, seriously disrupt the finality of the process. Moreover, full and frank

> discussion in the jury room, jurors' willingness to return an unpopular verdict, and the community's trust in a system that relies on the decisions of laypeople would all be undermined by a barrage of postverdict scrutiny of juror conduct.

Tanner v. United States, 483 U.S. 107, 119–21 (1987) (citations omitted) (quoting McDonald v. Pless, 238 U.S. 264, 267–68 (1915)). The Florida Supreme Court later opined, "Imperfect as it may be, in a free country such as ours, the jury system continues to be the finest method ever devised for the resolution of disputes. To permit jury verdicts to be impugned [unnecessarily] would sow the seeds for the destruction of that system." Devoney v. State, 717 So. 2d 501, 505 (Fla. 1998).

The Florida Supreme Court has recently explained the appropriate standard of evaluation for a claim that a juror failed to honestly answer a question during voir dire:

> The predicate for a juror misconduct claim of this nature is failure on the part of a juror "to answer honestly a material question on voir dire." Thus, a mistaken but honest answer to a question—either because the juror mistakenly believed his answer was correct or because the question was unclear—will not warrant postconviction relief. And a "material" question is one that has "a natural tendency to influence, or [is] capable of influencing," the determination of whether a juror is actually biased against the defendant.
>
> Proving a juror's dishonesty in response to a material question does not end the analysis, because the defendant additionally must establish that the dishonesty resulted in prejudice. More specifically, in postconviction proceedings, the challenger must establish that the juror's misconduct resulted in the defendant being denied his constitutional right to an impartial jury. And to make that showing, the challenger must prove "actual juror bias against the defendant."

Martin v. State, 322 So. 3d 25, 34–35 (Fla. 2021). Thus, the evaluation of a claim alleging that a juror was dishonest during voir dire is two-fold: (1) whether there is a sufficient claim of dishonesty by the subject juror and (2) whether the alleged dishonesty resulted in the juror's actual bias against the Defendant.

Analysis

Facial Sufficiency

The Court finds that the present Motion could be dismissed as facially insufficient. As previously indicated both in this Order and in the Defendant's Motion, a motion filed pursuant to Rule 3.575 must either be under oath or accompanied by an affidavit. See Johnson, 804 So. 2d at 1225. The present Motion is not accompanied by an affidavit, and while it is signed by an officer of the Court, it is not specifically submitted under oath as required by law. Therefore, it could properly be dismissed. However, because denial is also an available remedy, the Court has elected to overlook the Motion's facial insufficiency.

Timeliness

The Court finds that the present Motion is due to be denied as untimely. Rule 3.575 requires that a motion seeking to interview a juror "be filed within 10 days after the rendition of

the verdict, unless good cause is shown for the failure to make the motion within that time." The Motion was filed approximately 40 years after the Defendant's trial and more than 1 year after the Defendant learned of the alleged relationship between the victim and one of his jurors.[1] The Defendant claims that the connection "could not have reasonably been discovered within ten days of the trial through due diligence" because "[t]he victim's sister, Mary Lou Floyd, assumed the last name Gilmore upon her marriage, so neither trial counsel nor postconviction counsel could have discovered her connection to Juror Gilmore prior to receiving direct information from another inmate." Even assuming such a claim were sufficient to constitute "good cause," the almost year-long delay between counsel's discovery of the juror's relation to the victim and the filing of the claim certainly renders the present Motion untimely under Rule 3.575. See Belcher v. State, 9 So. 3d 665 (Fla. 1st DCA 2009) (holding that a motion was time barred because defense counsel waited more than a month after learning of potential misconduct to raise the issue with the court); Order Denying Defendant's Motion to Interview Jurors at 2, State v. Dailey, No. 521985CF00708XXXXNO (Fla. 6th Cir. Ct. Oct. 14, 2019), 2019 WL 8195120 at *1 (ruling that defendant could not wait until after his death warrant was signed to seek to interview jurors where basis for request had been known to defense counsel for over two years[2]). Furthermore, to the extent that the claim could be construed as one of newly discovered evidence and the filing construed as a Motion for Postconviction Relief pursuant to Florida Rule of Criminal Procedure 3.851, the Motion would remain untimely because it was not filed within one year of the Defendant's discovery of the alleged relationship between the victim and one of his jurors. See Byrd v. State, 14 So. 3d 921, 924 (Fla. 2009) ("Claims of newly discovered evidence must be brought within a year of the date the evidence was or could have been discovered through due diligence."). Therefore, the Motion is due to be denied.

Legal Sufficiency

The Court finds that the present Motion could also be denied because it is legally insufficient. As previously explained, a juror interview is only appropriately conducted where "the alleged error was so fundamental and prejudicial [that it] vitiate[s] the entire proceedings." Johnson, 804 So. 2d at 1225. Furthermore, a request for a juror interview must contain "allegations that are not merely speculative or conclusory[.]" Foster v. State, 132 So. 3d 40, 65 (Fla. 2013); see also State v. Monserrate-Jacobs, 89 So. 3d 294 (Fla. 5th DCA 2012) (claim that defense believed juror may have observed an expiration date on an item of evidence was speculative because defense failed to identify facts in support of the claim and failed to allege that an expiration date was visible on the item). In determining whether the Defendant's claim is entitled to postconviction relief, the Court must first consider whether there is a sufficient claim of dishonesty by the subject juror and, if such a claim has been made, then consider whether the alleged dishonesty resulted in the juror's actual bias against the Defendant.

It is clear in the present case that the Defendant's claim fails as to both considerations. First, the Defendant has not sufficiently established that Juror Gilmore was dishonest during voir

[1] The Motion was filed *within* one year of federal postconviction counsel's discovery of the distant familial relationship between the victim and Juror Gilmore.

[2] Defendant Dailey's motion was filed on October 18, 2019, and indicated that counsel became aware of the claims as early as April 2017. Defendant's Motion to Interview Jurors at 1–2, State v. Dailey, No. 521985CF00708XXXXNO (Fla. 6th Cir. Ct. Oct. 8, 2019), 2019 WL 8219875.

dire. The Defendant has alleged that Juror Gilmore failed to disclose that he was related to the victim by way of his second cousin's marriage to the victim's sister. However, the Defendant fails to assert that Juror Gilmore was even aware of this distanced relationship, and such a claim would certainly be speculative. Therefore, there is no evidence before the Court to suggest that Juror Gilmore was dishonest when he responded in the negative to "whether he or a relative had ever been the victim of a crime." Further, the question was not entirely clear, as Juror Gilmore may have believed that the attorney's use of the term "relative" applied only to persons related by blood, not persons related by marriage and certainly not persons even further removed. Therefore, Juror Gilmore's answer—even if mistaken—does not rise to a level of dishonesty that entitles the Defendant to postconviction relief.

Second, even assuming that Juror Gilmore's answer was dishonest, the Defendant has not sufficiently established that Juror Gilmore was actually biased against him. Such a claim would be speculative, as there is no evidence to suggest that Juror Gilmore wanted to serve on the Defendant's jury in order to convict him. In fact, a different perspective—that Juror Gilmore would want to ensure that the person responsible for Ms. White's murder was properly convicted —is equally as plausible. Therefore, because there is no evidence of actual bias, the Defendant is not entitled to the requested postconviction relief. Accordingly, the Motion could be denied as legally insufficient.

Conclusion

This Court is tasked with the significant responsibility of "balanc[ing] two competing interests: the right of a particular defendant to a fair trial in compliance with federal and Florida law, and the policy that jurors must be shielded from needless prying and harassment." See State v. Hamilton, 574 So. 2d 124, 130 (Fla. 1991).

> A trial represents the expenditure of valuable public and private resources. Jurors, as private citizens, are called upon to invest their time and energy in judicial proceedings for little financial remuneration with the expectation that fulfillment of their civic duty will be sufficient reward for their service. Summoned as they are from all walks of life, most jurors are not trained in the judicial process and many find it difficult when confronted for the first time with the niceties of the law and its array of procedures. The jurors hear the evidence and the legal instructions and then struggle to sort through it all as they search for the truth. Often times they must make extraordinarily difficult decisions in cases that have very serious consequences for all of the participants. To allow inquiry into the jurors' emotions and feelings of inadequacy as they go through this often difficult process is to expect something closer to perfection than they and our judicial system can legitimately be expected to give. Although there will always be disappointed litigants in search of a reason to undo what a jury has done, to allow improper inquiry of individual jurors in furtherance of that effort poorly serves the ends of justice, obstructs finality in judicial proceedings, and cheapens the investment made by those who are willing to search for the truth through the judicial process and proclaim it through their verdict.

Aragon v. State, 853 So. 2d 584, 589–90 (Fla. 5th DCA 2003). For the reasons so eloquently articulated by the Aragon court, juror interviews are necessarily and understandably limited to rare circumstances in which the jury deliberation processes "must be penetrated in order to secure the integrity of the entire judicial process." Sconyers v. State, 513 So. 2d 1113, 1116 (Fla. 2d DCA 1987). The present case does not present such a circumstance, as it would certainly be unreasonable to interrupt the life of Juror Gilmore—assuming that he is still alive—to question him about a relationship that he may not know to exist and how it relates to the jury service that he performed over forty years ago. In the present case, it is more appropriate to shield this gentleman from the "needless prying and harassment" requested by the Defendant.

Therefore, it is

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

DONE AND ORDERED in Bay County, Florida, on Monday, November 6, 2023.

03-1982-CF-000661-AM 11/06/2023 12:50:16 PM

Dustin Stephenson, Judge
03-1982-CF-000661-AM 11/06/2023 12:50:16 PM

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IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX D:

Circuit Court's Order Denying Petitioner's Motion for Rehearing, December 21, 2023.

IN THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA
IN AND FOR BAY COUNTY

CASE NO.: 03-1982-CF-000661-AM

STATE OF FLORIDA,
Plaintiff,

-vs-

KAYLE BARRINGTON BATES,
Defendant.

ORDER DENYING MOTION FOR REHEARING

THIS MATTER is before the Court on the Defendant's Motion for Rehearing filed on Monday, November 20, 2023. Having considered said Motion, court file and records, and being otherwise fully advised, this Court finds that the Motion is due to be denied, as it fails to raise any new argument or allegation of merit that the Court previously overlooked or that renders erroneous this Court's November 06, 2023 Order Denying Motion to Interview Juror. See Hollywood v. Clark, 15 So. 2d 175, 180 (Fla. 1943); Cole v. Cole, 130 So. 2d 126, 130 (Fla. 1st DCA 1961).

Therefore, it is

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

DONE AND ORDERED in Bay County, Florida, on Thursday, December 21, 2023.

03-1982-CF-000661-AM 12/21/2023 02:15:13 PM

Dustin Stephenson, Judge
03-1982-CF-000661-AM 12/21/2023 02:15:13 PM

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IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX E:

Petitioner's Motion to Interview Juror, filed in the Fourteenth Judicial Circuit in and for Bay County, Florida, Case No. 82-0661-CFMA, May 31, 2023.

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT IN AND FOR BAY COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **Case No. 03-1982-CF-661**

KAYLE BARRINGTON BATES,

Defendant.

_____/

DEFENDANT'S MOTION TO INTERVIEW JUROR

Kayle Barrington Bates, by and through undersigned counsel, respectfully moves this Honorable Court for an order permitting postconviction counsel to interview Juror Hubert Donald Gilmore pursuant to Rule 3.575, Florida Rules of Criminal Procedure, and Rules Regulating the Florida Bar 4-3.5(d)(4). As grounds for this motion, Mr. Bates states:

1. In January 1983, Mr. Bates was tried by a jury on charges of first-degree murder, kidnapping, attempted sexual battery, and robbery with a deadly weapon. He was convicted of all charges on January 20, 1983.

2. Jury selection began on January 17, and was immediately tainted by nearly all of the prospective jurors having learned of the case from the newspaper, radio, or television.

3. The voir dire also revealed an inordinate number of connections between the prospective jurors and themselves, the parties involved in the case, and court personnel. Both Assistant State Attorney Jim Appleman and Judge Turner described the situation as "unusual" as they had never experienced a situation where so many prospective jurors at a criminal trial in Panama City knew each other (TT. 1274).[1] While some jurors were dismissed as a result of their associations with the parties, witnesses and other potential jurors, several of the jurors that ultimately served and convicted Mr. Bates were knowledgeable of his case and connected to it in at least one way.[2]

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[1] Prospective juror Melba Lois Johnson's husband, Robert Taylor Johnson, worked at RCA at Tyndall as a Recovery Systems Supervisor as indicated in her juror questionnaire, and was therefore colleagues with Juror Gilmore (TT. 1348; Juror Questionnaire). Prospective juror Johnny Johnson knew the husband of the victim, William Randy White, as well as Dr. Joseph Sapala who performed the autopsy of the victim, and Dr. William Sybers who took over Dr. Sapala's office after his departure (TT. 1328).

[2] Below is a list of a few of the connections that Mr. Appleman and Judge Turner were referencing in their observations:

- Juror Michael Franck went to college with and worked alongside State witness Geraldine Gilchrist (TT. 1333-34). Franck also personally knew Leo Sorento who was listed as a State witness but not called (TT. 1333).
- Juror Robert Lowe knew State witnesses Sergeant Williams and Dr. Joseph Sapala, as well as Mr. Bates as a result of their contemporaneous service in the National Guard (TT. 1242, 1245-46). Juror Lowe also knew officers Bobby Nowell and Greg Roberts with Bay County Sheriff's Office (TT. 1241-42).
- Juror Lois Lawrence was a member of the same church as part-time assistant state attorney Bill Lewis (TT. 1227), and her sister-in-law was the niece of Judge Turner (TT. 1238). Lawrence further knew the court reporter, Floie

4. Among the jurors selected to serve as a member of the jury at Mr. Bates' trial was Hubert Donald Gilmore, who Mr. Bates now knows is and was related to the victim at the time of the 1983 trial.

5. On June 2, 2022, after Mr. Bates was told by another inmate that a relative of the victim served on his jury, his federal court counsel determined that that Juror Gilmore's second cousin, Billy Joe Gilmore, was married to Mary Lou Floyd-Gilmore, the victim's sister.

6. Billy Gilmore and Mary Lou Floyd-Gilmore married in June 1960,[3] briefly divorced in 1984, and remarried in 1991. They were married at the time of Mr. Bates' 1983 trial.

7. The initial information provided to Mr. Bates was vague: it had been overheard that at the trial of a Black man accused of killing a white female employee of an insurance company in Lynn Haven who was convicted and sentenced to death by an all-white jury[4], a relative of the victim had been a juror on the case. With this information, Mr. Bates' federal court counsel reviewed various documents in the case, but did not initially find the connection. It was only after conducting genealogy

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Lynn (TT. 1238), and state witness Janet Boyd of the Bay County Sheriff's Office who may have been a former student (TT. 1247).

- Finally, alternate juror Robert Lee Exley and Judge Turner were former neighbors (TT. 1363).

[3] Florida Marriage Index, 1927-2001.

[4] *See, e.g.*, *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019) (vacating conviction after prosecutor repeatedly sought an all-white jury to convict a Black man for murder).

research that Mr. Bates' federal court counsel finally found the Gilmore-Floyd connection. Thereafter, state court appointed counsel for Mr. Bates conducted additional independent research verifying the Gilmore-Floyd familial relationship.

8. Based on Census Records at the time of trial, Bay County had an approximate population of 97,740 people. Lynn Haven City had a population of 5,918 and the Lynn Haven division had a population of 10,386[5]. The Lynn Haven and greater Bay County communities were not booming metropolises, and the connections between the jurors were not mere coincidences. These communities were small enough in size that many of the jurors knew each other, knew each other's spouses, or were neighbors.[6]

9. After Juror Gilmore joined the venire panel, he and his panel of prospective jurors answered in the affirmative when asked if they were aware of the killing of the victim or learned about it via television, radio, or newspaper (TT. 1345-46).

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[5] 1980 Florida Census.

[6] Notably, prospective juror Mary Miller worked at Margaret Fashions at the time of the crime, and was colleagues with the victim's sister (TT. 1222), the wife of Robert Benefield who was listed as a witness for the State but not called (TT. 1244-45), and Betty Griffeth, the wife of prospective juror Billy Griffeth (TT. 1288). Mary Miller and Robert Benefield were also neighbors (TT. 1244). Prospective juror Unni Dover lived three houses down from State witness Geraldine Gilchrist (TT. 1243), who was also summoned to serve on Mr. Bates' jury, but was unable to serve as she was already set to testify (Juror Questionnaire).

10. Juror Gilmore's colloquy was particularly brief. When he joined the pool, his jury panel was asked whether any of the prospective jurors knew the victim. (TT. 1345). The transcript indicates that the prospective jurors answered in the negative. *Id.* Thereafter, Juror Gilmore was directly asked a single compound question: what he and his wife did for employment and whether he had any connections to law enforcement (TT. 1348). Prior to joining the panel, Juror Gilmore was present in the courtroom for the entire jury selection and was instructed to listen to the questions asked (TT. 1212).[7] Twelve times either trial counsel, Assistant State Attorney Appleman, or Judge Turner asked whether any of the prospective jurors knew the victim either by her married name White or maiden name Floyd, or whether they were related to her. Juror Gilmore never disclosed their familial connection (TT. 1217, 1222, 1225, 1258, 1264, 1282, 1286, 1311, 1314, 1345, 1367, 1372). Furthermore, on his juror questionnaire, Juror Gilmore answered the question of whether he or a relative had ever been a victim of a crime in the negative.

11. Florida law provides that a defendant may move the court for an order permitting them to interview a juror if they have reason to believe the verdict may

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[7] After the first panel of jurors was sworn in, Judge Turner requested that the questions asked of the jurors be listened to by those in the panel as well as those sitting in the courtroom waiting to be sworn in before summarizing the case: "I want you to listen, both if you're on the jury and if you're sitting in the courtroom, I want you to listen carefully to the questions that are asked these jurors, it will help us appreciably" (TT. 1212).

be subject to legal challenge. Fla. R. Crim. P. 3.575. In order to be entitled to interview jurors, a defendant must present "sworn allegations that, if true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings." *Johnson v. State*, 804 So. 2d 1218, 1225 (Fla. 2001). Inquiries are limited to allegations involving "an overt prejudicial act or external influence." *Reaves v. State*, 826 So. 2d 932, 943 (Fla. 2002).

12. Mr. Bates has reason to believe that his verdict may be subject to legal challenge and seeks an order permitting the interview of Juror Gilmore to determine based upon the allegations set forth herein whether a new trial is warranted.

13. Generally, a Motion to Interview Juror must be filed within ten days after a verdict is rendered, but can be filed after the ten-day window upon a showing of good cause. Fla. R. Crim. P. 3.575. Mr. Bates can demonstrate good cause. Here, the incorporated allegations could not have reasonably been discovered within ten days of the trial through due diligence. The victim's sister, Mary Lou Floyd, assumed the last name Gilmore upon her marriage, so neither trial counsel nor postconviction counsel could have discovered her connection to Juror Gilmore prior to receiving direct information from another inmate. This motion is filed within one year of Mr. Bates' undersigned counsel discovering the familial connection between Juror Gilmore and the victim.

14. The relationship between Juror Gilmore and Billy Gilmore was not so distant that Juror Gilmore could have lacked the knowledge that he and the victim in this case were related. Juror Gilmore's failure to apprise the Court of this relationship deprived Mr. Bates of his constitutional right to a fair trial. *See McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554 ("One touchstone of a fair trial is an impartial trier of fact—"a jury capable and willing to decide the case solely on the evidence before it."").

CONCLUSION

For the reasons explained herein, Mr. Bates respectfully requests that this Court grant this motion and allow a formal proceeding to interview Juror Gilmore.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

KAYLE BARRINGTON BATES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX F:

Petitioner's Motion for Rehearing of the Circuit Court's Denial of the Motion to Interview Juror, November 20, 2023

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT IN AND FOR BAY COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. **Case No. 03-1982-CF-661**

KAYLE BARRINGTON BATES,

Defendant.
_____/

MOTION FOR REHEARING OF ORDER DENYING JUROR INTERVIEW

Comes Now the Defendant, Kayle Barrington Bates, by and through the undersigned counsel and moves this Court to grant rehearing of this Court's November 6, 2023 order denying Mr. Bates' Motion to Interview Juror and as grounds, states:

Mr. Bates respectfully submits that this Court has overlooked previously argued issues of fact and law or arguments on both. This Court should grant rehearing of Mr. Bates' Motion to Interview Juror, grant the motion and allow the interview of the juror in question.

Procedural History

In January 1983, Mr. Bates was tried by a jury on charges of first-degree murder, kidnapping, attempted sexual battery, and robbery with a deadly weapon. He was convicted of all charges on January 20, 1983. Following a remand and a new penalty phase trial, Mr. Bates was again sentenced to death following a 9-3 recommendation by the jury. This motion involves the jury selection that occurred during his 1983 trial. Mr. Bates has diligently sought relief from his judgment and sentence of death in state and federal court.

On May 31, 2023, Mr. Bates filed a Motion to Interview Juror. The State filed its response on June 2, 2023, and Mr. Bates replied on June 20, 2023. This Court denied the motion on November 6, 2023. This Court should grant rehearing of Mr. Bates' Motion to Interview Juror, grant the Motion and allow the interview of the juror in question.

Facial Insufficiency

This Court found Mr. Bates' Motion to Interview Juror lacking because this motion did not contain an affidavit or, in the alternative, was not sworn. If after reviewing this motion, this Court finds that

this is now dispositive, Mr. Bates requests 20 days to amend his motion and provide an affidavit or swear to the motion. Nevertheless Mr. Bates submits that any affidavit or oath requirement is not required under the Rule and that even if it were required, an affidavit would serve no purpose and is unnecessary for this Court's decision. Florida Rule of Criminal Procedure states:

> RULE 3.575. MOTION TO INTERVIEW JUROR
>
> A party who has reason to believe that the verdict may be subject to legal challenge may move the court for an order permitting an interview of a juror or jurors to so determine. The motion shall be filed within 10 days after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time. The motion shall state the name of any juror to be interviewed and the reasons that the party has to believe that the verdict may be subject to challenge. After notice and hearing, the trial judge, upon a finding that the verdict may be subject to challenge, shall enter an order permitting the interview, and setting therein a time and a place for the interview of the juror or jurors, which shall be conducted in the presence of the court and the parties. If no reason is found to believe that the verdict may be subject to challenge, the court shall enter its order denying permission to interview.

There is no requirement in this Rule that a motion to interview juror(s) be sworn or be accompanied by affidavits. If the Florida Supreme Court wished to mandate such a requirement, it certainly would appear in the Rule. It would be rather senseless to omit a

dispositive requirement in the very Rule which the Court has created to facilitate juror interviews. It violates due process under the Florida Constitution and United States Constitution to trap litigants seeking to follow a rule by maintaining a hidden dispositive requirement that proves fatal to relief under the rule.

Counsel is unaware of any other rule that has unwritten requirements. The Rules of Criminal Procedure do have some requirements that a motion be sworn but these Rules state the requirements and how to specifically meet them. The requirements for a sworn motion are seen in Rule 3.852 and 3.853. Rule 3.851 once required the motion itself to be sworn but the Rule was amended to require that counsel affirm that the motion was discussed with the client. The oath requirement now does not appear in the Rule.

The lack of a sworn allegation requirement in Rule 3.575 was recognized by the court in *Ramirez v. State*, 922 So. 2d 386 (Fla. 1st DCA 2006), wherein the court stated that the Florida Supreme Court "necessarily disavowed its *dicta* (and any possible holding) requiring sworn allegations ... when it adopted Rule 3.575, which contains no requirement that any motion filed under the rule be verified." *Id.* at 389; *see also Gray v. State*, 72 So. 3d 336, 337 (Fla. 4th DCA 2011)

("Rule 3.575 does not require the filing of sworn affidavits in order to interview a juror."). However, another District Court in *Dowd v. State*, 227 So. 3d 194 (Fla. 2d DCA 2017) found:

> [T]he District Court in *Ramirez* overlooks the fact that when the court decided *Maler*, rule 1.431 had already been adopted, and it did not require sworn allegations. Further, the [S]upreme [C]ourt continues to use the standard announced in *Maler*, including the need for sworn allegations, even where an interview is sought under rule 3.575. *See, e.g., Crain v. State*, 78 So.3d 1025, 1045 (Fla. 2011). Given that, it seems unwarranted to assume the [S]upreme [C]ourt intended to disavow that statement in *Maler*.

Id. at 199, n.7. Whatever view is correct, it is clear that "sworn allegations" are not required under the Rule and that courts' quotes from opinions that predate the rule are merely vestigial. As the court in *Ramirez* found, no case was presented to that court that "showed sufficiency of a request for juror interviews turned solely on the lack of sworn allegations." *Ramirez*, at 389. Likewise, Mr. Bates' motion should not turn on the lack of what he was not required to present.

Additionally, affidavits or sworn allegations would merely be a *pro forma* exercise and of no use based on the facts of the instant case. Mr. Bates received vague information from a fellow inmate that may have shown that he was denied the right to a fair and unbiased

jury. A vague allegation that a biased juror sat on Mr. Bates' jury would have been viewed by this Court as insufficient to file a motion to interview itself, and even more so if the Court considered the source. Mr. Bates needed to gain further information before presenting the motion to interview juror. Simply restating what a fellow inmate said would be insufficient to raise the issue. After Mr. Bates told counsel of this information, both his state and federal counsel investigated the juror's relation to the victim. However, the investigation involved several data searches that used accessible data bases to confirm the juror's relationship. There would not be any allegations in the data that would increase in veracity if they were sworn.

Mr. Bates, or someone else, could swear to allegations that "*if* true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings." *See Baptist Hosp. of Miami, Inc. v. Maler*, 579 So. 2d 97, 100 (Fla. 1991) (emphasis added). Such allegations, "if true" could invoke all sorts of extreme cases. This does nothing to resolve the questions that a jury interview would answer. Without speaking with the juror in question, there is no way for anyone to allege a level of

bias that would vitiate the trial. Once the extent of the relationship is determined, only then can this Court decide this legal question.

Timeliness and Merits

The motion was timely. It was filed within one year of the juror's relationship to the victim being confirmed by Mr. Bates' investigative team. Mr. Bates proceeded judiciously, considering the very serious nature of interviewing the juror. Because of the nature of the motion, Mr. Bates was required to be exceptionally diligent in confirming the relationship with the victim. This took time. Mr. Bates should not be penalized for seeking a level of certainty necessary for bringing such a claim. Mr. Bates showed good cause for not bringing his motion within 10 days from the verdict.

The one-year time limit for filing a newly discovered evidence claim would only begin after Mr. Bates interviews the juror. Only when the juror admits he was aware of his relationship to the victim can Mr. Bates show that he was tried by a biased juror. Unless, and until, he is given this opportunity, Mr. Bates does not have the necessary newly developed evidence to plead such a claim. This Court should have no doubt that if Mr. Bates had sufficient evidence for a newly discovered evidence claim, without a juror interview, he would

have filed the motion already. Mr. Bates has maintained his innocence since trial. There is no advantage to him needlessly delaying the issue and remaining in prison for a longer period of time.

While this Court misinterpreted the timeliness of the Motion to Interview Juror, Mr. Bates would point out that he diligently litigated the issue surrounding Florida's prohibition of post-verdict juror interviews much earlier. Mr. Bates challenged the constitutionality of the prohibition at least as early as the first postconviction motion following the instant judgment and sentence both becoming final after he was resentenced to death in 1995. In his postconviction motion, Mr. Bates alleged:

> Claim VI: The rules prohibiting Mr. Bates' lawyers from interviewing jurors to determine if Constitutional error was present violates equal protection principles, the first, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

This claim was denied by the postconviction court and Mr. Bates appealed the denial to the Florida Supreme Court arguing in Argument IV- that the "Juror Interview Ban is Unconstitutional." The Florida Supreme Court held on this issue, that "[t]his claim [wa]s procedurally barred because it could have been raised on direct

appeal." *Bates v. State*, 3 So. 3d 1091, 1105, n.13 (Fla. 2009) (citations omitted). This does not account for the fact that Mr. Bates sought to interview the jurors in postconviction, not before direct appeal.

Mr. Bates asked the Florida Supreme Court to,

> declare Rule 4-3.5(d)(4), Rules Regulating the Florida Bar invalid as being in conflict with the Eighth and Fourteenth Amendments to the United States Constitution and to allow Mr. Bates unfettered discretion to interview the jurors in this case. The failure to allow Mr. Bates the ability to freely interview jurors is a denial of access to the courts of this state under article I, section 21 of the Florida Constitution. Even if this Court does not find the rule unconstitutional, Mr. Bates is still cntitlcd to interview jurors on the basis of good cause.

Mr. Bates was far from being untimely. Had Mr. Bates' been granted the right to interview jurors in his initial postconviction proceeding, this matter could have been resolved with a respectful interview of the jury.

Had Mr. Bates been able to interview jurors, through counsel, Mr. Bates would have been able to investigate his case for evidence that he did not receive a trial by an unbiased jury that the Constitution demands. Instead, since this motion was denied, he could only challenge the inchoate unconstitutionality of the jury if

some sort of issue became known to him by chance. In the instant case, Mr. Bates was advised by a fellow inmate of the possibility that a juror was related to the victim. After that, Mr. Bates' legal teams engaged in a thorough investigation of the matter to obtain the information necessary to seek a juror interview in the instant motion.

Under the current system, Mr. Bates' ability to challenge the constitutionality of the jury based on unknown issues, at least similarly to the current issue, is based on chance. First a third party has to come into possession of relevant information; second, that party has to communicate the information to the party who may have suffered the constitutional harm. Lastly, in a case like Mr. Bates' case, counsel must attempt to investigate the matter using secondary sources, which may be found inconclusive by the court presented with the issue. Nowhere else does the law require such chance and fortune to coalesce in order to receive a remedy from a denial of constitutional rights.

Mr. Bates' due process right to a trial by an impartial jury was violated when the juror in question declined to disclose his relationship to the victim. The denial of the opportunity to verify this relationship through a juror interview prevents such violation from

being rectified. Respectfully, this Court's order did not fully consider the importance of the rights that Mr. Bates seeks a remedy for the denial of these rights. Mr. Bates needs a jury interview to establish that the juror in question, did not disclose his relationship to the victim during voir dire and that this relationship affected his ability to be fair and impartial.

This Court should grant rehearing because the denial in this case is itself a violation of Mr. Bates' rights under the United States Constitution and the Florida Constitution.

Mr. Bates is sentenced to the most serious and extreme penalty possible. He has a right to challenge his conviction and death sentence under the habeas clauses of the United States and Florida Constitutions. Despite the injustices he has suffered, here and throughout his case, Mr. Bates sought relief in a respectful and fair manner. He merely seeks to answer important questions that have arisen concerning his right to a fair and unbiased jury. The time and invasiveness would be limited because Mr. Bates seeks to only ask narrowly-tailored questions, even if they go to essential rights. This Court's order also denied Mr. Bates' due process under the United States Constitution and the Florida Constitution. *See Chambers v. Mississippi*, 410 U.S. 284, 285 (1973) (holding that a state rule

violated due process when used to deny a substantive federal constitutional right).

There would be no needless prying or harassment if the Court ordered an interview. This Court maintains the discretion to determine the place, manner, conditions and scope of the interview. Thus, the interview could occur in the presence of the Court to mitigate any of the Court's concerns. The allegation is narrow in-and of-itself, the inquiry would be strictly limited to the juror's relationship with the victim and knowledge thereof. Lastly, as of this Court's denial, it has been confirmed that the juror is still alive.

It was speculative to suggest that the juror interpreted "relative" in a way that overcomes Mr. Bates' constitutional challenge. *See Feagin v. State*, 307 So. 3d 988, 995 (Fla. 2d DCA 2020) (finding alternate juror failed to disclose relationship to victim, the relationship was a material fact, and no lack of due diligence on counsel's part because the juror failed to speak up during voir dire).

Further, Lynn Haven is a very small community. It is unreasonable to assume that the juror not only did not know of the relationship, or did not feel the need to disclose it despite listening to other prospective jurors disclose their relationships to court

personnel, members in the state attorney's office, or other jurors, even if they appeared remote. It is also speculative to suggest that the juror would want to serve on the jury for purposes of making sure the right person was convicted. An interview would obviate the need to further speculate and overcome the unconstitutionality such speculation entails.

Mr. Bates seeks exactly what the movant received in *Martin v. State*, 322 So. 3d 25 (Fla. 2021). While Mr. Martin was ultimately unsuccessful, the postconviction court actually allowed an interview of the suspect juror. *Id.* at 31. Mr. Martin obtained the information to argue his claim that he was denied the right to a fair and impartial jury. Mr. Bates seeks the same opportunity. In *Martin*, the Florida Supreme Court asserted the importance of these rights:

> It is well established that "the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process." *Irvin v. Dowd*, 366 U.S. 717, 722 [ ] (1961) (citing *In re Oliver*, 333 U.S. 257 [ ](1948); *Tumey v. Ohio*, 273 U.S. 510 [ ](1927)). The right to an impartial jury trial is secured by the Sixth Amendment and by the Due Process Clause of the Fourteenth Amendment. *Morgan v. Illinois*, 504 U.S. 719, 726-27 [ ] (1992); *Turner v. Louisiana*, 379 U.S. 466, 471-72 [ ] (1965). This Court has recognized that whenever a potential juror is affected by bias or prejudice against the

> defendant, "it cannot be said that he is fair-minded and impartial, and, if accepted as a juror, that he would be of that standard of impartiality which is necessary to prevent an impairment of the right to jury trial." *Johnson v. Reynolds*, 97 Fla. 591, 121 So. 793, 796 (1929); *see also Dyer v. Calderon*, 151 F.3d 970, 973 (9th Cir. 1998) ("The bias or prejudice of even a single juror would violate [defendant]'s right to a fair trial.").

Id. at 32. The United States Constitution requires an impartial jury. Based on the relationship with the victim, a juror interview would determine if Mr. Bates was denied these rights. Most importantly, no fair-minded person would agree that if there were such bias, this juror should have sat in judgment in a death penalty case.

This Court should grant rehearing.

Respectfully submitted,

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