No. 25-5083

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL BELL,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR JULY 15, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTION PRESENTED

Whether the state courts violated the Eighth or Fourteenth Amendments by allowing some witnesses to plead the Fifth Amendment in response to certain questions at a capital postconviction evidentiary hearing.

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OPINION BELOW

The decision below of the Florida Supreme Court appears as *Bell v. State*, No. SC2025-0891, 2025 WL 1874574 (Fla. July 8, 2025).

JURISDICTION

Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. Respondent agrees that this statute sets out the scope of this Court's certiorari jurisdiction. This Court lacks jurisdiction, however, because the issues raised were resolved on independent and adequate state law grounds, and the federal question presented in the certiorari petition was neither presented to nor decided by the Florida Supreme Court. Even if jurisdiction were present, this case is inappropriate for the exercise of this Court's discretionary jurisdiction because the Florida Supreme Court's opinion does not conflict with any decision by this Court, another state court of last resort, or a United States court of appeals, nor does it decide any important or unsettled question of federal law. *See* Sup. Ct. R. 10(b)-(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the constitutional and statutory provisions involved.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On the night of December 9, 1993, Michael Bernard Bell murdered Jimmy West and Tamecka Smith with an AK-47 rifle in Jacksonville, Florida. For both killings, Bell was convicted of first-degree murder and sentenced to death in 1995. On June 13, 2025, Governor Ron DeSantis signed Bell's death warrant, and his execution is scheduled for July 15, 2025, at 6:00 p.m.

Facts of the Crimes

In June 1993, Theodore Wright killed Bell's brother, Lamar, in self-defense. Bell swore revenge and, in the months that followed, he repeatedly told friends and relatives that he planned to kill Wright. *Bell*, 2025 WL 1874574, at *1 (citing *Bell v. State*, 699 So. 2d 674, 675 (Fla. 1997)). Bell was a convicted felon and was not legally allowed to possess firearms. *Id.* at *12; *see* Fla. Stat. § 790.23 (1993). To carry out his plan to kill Wright, Bell went to a gun store on December 8, 1993, with his girlfriend Ericka Williams, and had Williams buy him an AK-47 rifle, a 30-round magazine, and 160 bullets. *Bell*, 2025 WL 1874574, at *11.

The night after he procured the rifle, Bell spotted Wright's car, a yellow Plymouth. Bell left the area and quickly returned with two friends—Vanesse "Ned" Pryor and Dale George—and the now-loaded AK-47. *Id.* at *1, *12-13. After a short search, Bell saw the yellow car again in the parking lot of a liquor lounge. Bell did not know that Wright had previously sold the car to Wright's half-brother, Jimmy West. *Id.* Bell and George waited in the parking lot in Bell's car until West came out of the lounge with Tamecka Smith and a second female. Pryor, who drove separately, parked down the street where he could still see Bell's car. *Id.* As West and the two women got into the yellow Plymouth, Bell put on a ski mask, picked up the AK-47, got out of his car, and started shooting. *Id.* at *1, *8, *12-13.

Bell fired twelve shots at point-blank range into West and another four shots into Smith. The second female ducked and escaped injury. After shooting West and Smith, Bell sprayed bullets toward the front of the liquor lounge, where about a dozen

people had been waiting to go inside. *Id.* at *1. As Bell was shooting, George moved into the driver's seat of Bell's car. Once Bell had finished, George drove them away from the scene. *Id.* at *1, *13. Pryor, who saw Bell get out of the car with the AK-47 and heard the gunshots, likewise drove away. *Id.* at *12.

After the shooting, George went back to his own car and parted ways with Bell. George went to Williams' apartment, which she shared with George's girlfriend, and told her that "Michael got Theodore." *Id.* at *11, *13. Williams did not believe him, so George drove her to the liquor lounge, where she saw numerous police vehicles. George then took Williams back to her apartment. Shortly thereafter, Bell called Williams and asked her to bring him some clothes at his aunt's house. George refused to see Bell and went home, while Williams took the clothes to Bell. *Id.*

Bell had previously told his aunt, Paula Goins, about his intent to kill Wright. On the night of the murders, after Bell had parted ways with George, Bell went to Goins' house where he boasted to Goins about how he had gotten revenge on Wright by killing Wright's brother and another girl. *Id.* at *14-16. When Williams arrived, Bell similarly told Williams that "now the score [was] even" between himself and Wright because he had killed Wright's brother as well as "an innocent girl." *Id.* at *11. At Bell's urging, Williams submitted a false police report about three months later claiming that the AK-47 she purchased had been stolen. *Id.*

Convictions and Death Sentences

Bell was ultimately charged in Duval County, Florida, with two counts of first-degree murder. At Bell's March 1995 jury trial, Williams, Pryor, George, and Goins

testified about Bell's desire to kill Wright in revenge for his own brother's death, their respective roles in the murders of West and Smith, and Bell's statements afterward admitting to the murders. *Id.* at *1, *11-16. In addition, Henry Edwards, who had known Bell for about six months in December 1993 and was standing outside the liquor lounge on the night of the murders, testified at Bell's trial that he saw Bell put on a ski mask, pick up a rifle, walk toward a car, and start shooting into it. Edwards testified that there was only one gunman. *Id.* at *7. Charles Jones, who had known Bell for about ten years at the time of the murders, further testified that Bell tried to sell him an AK-47 a few days after the murders, and that Bell later told him that "he killed West because Wright killed his brother" and that Smith was simply "at the wrong place at the wrong time." *Id.* at *9.

Bell did not present any evidence or witnesses during the guilt phase of his trial. In the defense's guilt-phase closing argument, Bell's counsel argued that Bell may have acted in self-defense based on Bell's statement to Goins that he believed West was reaching for a weapon just before he (Bell) started shooting. *Id.* at *1, *15; *see also Bell v. State*, 965 So. 2d 48, 63-64 (Fla. 2007). The jury rejected that claim and found Bell guilty as charged. *Bell*, 2025 WL 1874574, at *1.

At the penalty phase, the State presented testimony from a lounge security guard, John Lipsey, that he and seven or eight other people were in the line of fire and hit the ground when Bell shot West and Smith and sprayed bullets in the parking lot, and that Bell fired four or five bullets into a house next door to the lounge where three children were residing at the time. The State also introduced

evidence of Bell's 1990 conviction for armed robbery. *Bell*, 699 So. 2d at 675; *Bell*, 965 So. 2d at 74. For the defense, Bell's mother testified at the penalty phase that she and Bell had received death threats from Wright and West, Bell was gainfully employed and in good mental health at the time of the murders, and she did not believe Bell committed the murders. *Bell*, 699 So. 2d at 675-76.

The jury unanimously recommended death for both murders. *Id.* at 975. The trial court followed the jury's recommendations and sentenced Bell to death on both counts. *Id.* at 976. In its sentencing order, the trial court found that the following aggravating factors applied to the murders: (1) Bell was convicted of a prior violent felony; (2) Bell knowingly created a great risk of death to many persons; and (3) the killings were cold, calculated, and premeditated. *Id.* at 976 & n.1. The trial court found one mitigating circumstance, which it assigned "marginal" weight: Bell was under an extreme mental or emotional disturbance due to the death of his brother five months before the murders. *Id.* at 976 & n.2, 679.

The Florida Supreme Court affirmed Bell's convictions and death sentences on direct appeal. *Id.* at 679. Bell then filed a petition for writ of certiorari in this Court. Bell's convictions and death sentences became final when this Court denied review on February 23, 1998. *Bell v. Florida*, 522 U.S. 1123 (1998).[1]

[1] After Bell was convicted of the murders of West and Smith, he pled guilty to three additional counts of second-degree murder for the August 1993 murder of Michael Johnson and the September 1989 murders of Lashawn Cowart and her two-year-old son, Travis Cowart. Bell was sentenced to 25 years in prison on each count. Bell did not appeal or seek collateral relief as to those convictions.

Prior Collateral Proceedings

After his convictions and death sentences became final on direct appeal, Bell filed a motion for postconviction relief in state circuit court. The motion was initially summarily denied, but the Florida Supreme Court reversed the summary denial and remanded the case for an evidentiary hearing. *Bell*, 965 So. 2d at 54 (citing *Bell v. State*, 790 So. 2d 1101 (Fla. 2001) (table decision)).

On remand in April 2002, the postconviction court held a three-day evidentiary hearing. *Id.* Among Bell's numerous postconviction claims, Bell asserted that the testimony of multiple trial witnesses was false or coerced. *See id.* at 61 (addressing claim that Williams' testimony was coerced by the lead investigator in Bell's case, Detective Bolena), 62 (addressing claim that Jones testified against Bell in exchange for special favors while he was in jail), 73 (addressing claim that George and Williams testified falsely against Bell because they were angry over a videotape they had seen of Bell having sex with George's girlfriend). In response, Edwards, Jones, Williams, Pryor, and George all testified at the 2002 evidentiary hearing that their trial testimony was the truth. *Id.*; *Bell*, 2025 WL 1874574, at *7-12.

Additionally, Bell's trial counsel, Richard Nichols, testified at the 2002 hearing in response to Bell's claims of ineffective assistance of counsel. Nichols testified that the evidence against Bell was "essentially overwhelming," and that Bell would not provide any alibi or tell him any information that he could use in Bell's defense. *Bell*, 965 So. 2d at 63. Bell would only tell Nichols that the State would "have to bring it to [him] in the courtroom" and that he "didn't believe the State's witnesses would

actually show up to court." *Id.* Nichols explained that Bell seemed "surprised" when the witnesses did appear. *Id.* At that point, the only available trial strategy was to "try[] to expose any defects or deficiencies . . . in the State's case," but "there just weren't any." *Id.* Just before the jury charge conference, Bell told Nichols for the first time that "maybe" he shot the victims in self-defense because he thought West was reaching for a gun. *Id.* at 63-64. As a result, Nichols requested a self-defense jury instruction and unsuccessfully argued that theory in closing. *Id.*

After the evidentiary hearing, the postconviction court denied each of Bell's claims for relief. Bell appealed that decision to the Florida Supreme Court and simultaneously petitioned for a writ of habeas corpus. *Id.* at 54. The Florida Supreme Court affirmed the postconviction court's denial of relief and denied Bell's habeas petition. *Id.* at 54-79. This Court denied Bell's petition for writ of certiorari from that decision. *Bell v. Florida*, 552 U.S. 1011 (2007).

Bell next filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in federal district court. The district court denied Bell's petition as untimely. *Bell v. McDonough*, No. 3:07-cv-860, 2009 WL 10698415 (M.D. Fla. Jan. 15, 2009). The Eleventh Circuit affirmed that ruling, and this Court denied Bell's petition for certiorari review. *Bell v. Fla. Att'y Gen.*, 461 F. App'x 843 (11th Cir. 2012), *cert. denied*, 572 U.S. 1118 (2014). Bell later attempted to file a successive § 2254 petition in the district court, but the district court dismissed the successive petition for lack of jurisdiction. *Bell v. Fla. Att'y Gen.*, No. 3:07-cv-860, 2016 WL 11048052 (M.D. Fla. Apr. 5, 2016), *certificate of appealability denied*, No. 16-11791, 2017 WL 11622107

(11th Cir. June 19, 2017), *cert. denied*, 584 U.S. 982 (2018). In 2017, the Eleventh Circuit denied Bell's motion for leave to file an additional successive § 2254 petition. *In re: Michael Bell*, No. 17-14768, slip op. (11th Cir. Nov. 22, 2017).

Since his initial state postconviction proceedings concluded in 2007, Bell has also filed numerous successive motions for postconviction relief in state court, all of which were summarily denied or dismissed. *See Bell v. State*, 91 So. 3d 782 (Fla. 2012) (affirming denial of successive postconviction motion raising claim for relief under *Porter v. McCollum*, 558 U.S. 30 (2009)); *Bell v. State*, No. SC2016-0369, 2016 WL 5888880 (Fla. Oct. 16, 2016) (affirming circuit court order striking Bell's second successive postconviction motion); *Bell v. State*, 235 So. 3d 287 (Fla. 2018) (holding that *Hurst v. Florida*, 577 U.S. 92 (2016), does not apply to Bell's death sentences), *cert. denied*, 586 U.S. 856 (2018); *Bell v. State*, 284 So. 3d 400 (Fla. 2019) (affirming denial of successive postconviction motion raising claim for relief under *Buck v. Davis*, 580 U.S. 100 (2017)), *cert. denied*, 140 S. Ct. 2579 (2020).

Proceedings Under Warrant

After Governor DeSantis signed Bell's death warrant on June 13, 2025, Bell filed a new successive postconviction motion in state circuit court raising four claims for relief. However, Bell sought an evidentiary hearing only on his first claim, in which he alleged newly discovered evidence of *Brady*[2] and *Giglio*[3] violations based on alleged misconduct by the police and prosecution. *Bell*, 2025 WL 1874574, at *3-

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

[3] *Giglio v. United States*, 405 U.S. 150 (1972).

4 & n.5. In support, Bell attached affidavits from Henry Edwards and Charles Jones purporting to recant portions of their trial testimony. *Id.* at *4, *8, *10. The circuit court granted an evidentiary hearing on the claim. *Id.* at *3.

The night before the evidentiary hearing, Bell filed an amended motion raising further newly discovered evidence claims based on additional statements allegedly made by Ericka Williams, Ned Pryor, and Dale George to investigators for Bell's federal counsel after the death warrant was signed. *Id.* at *3, *11. At the hearing, Bell also presented testimony from Paula Goins, which his counsel later argued constituted newly discovered evidence of misconduct. *Id.*

The testimony at the evidentiary hearing did not support Bell's allegations. Edwards testified that what was written in the affidavit he signed "wasn't true." *Id.* at *8. Edwards explained that the affidavit was written for him by the investigators for Bell's counsel, that he never read it before he signed it, and that he "simply went along with what the . . . [i]nvestigators told him had happened because he did not want [Bell] to be executed." *Id.* at *8-9. Jones admitted that he signed the affidavit but he refused to answer almost all other questions, invoking his privilege against self-incrimination under the Fifth Amendment. *Id.* at *10.

Bell fared no better with Williams, Pryor, and George, who had all refused to sign affidavits. *Id.* Williams testified that she was questioned after the murders by officers who were mean to her and threatened that her children would be taken away. She did not, however, recant her previous testimony. When asked about the specifics of her testimony at trial in 1995 and the postconviction hearing in 2002,

Williams said that she did not recall. *Id.* at *11. Pryor and George both denied that they told the investigators for Bell's federal counsel that they were threatened by law enforcement. When asked about the specifics of their prior testimony, Pryor and George both invoked the Fifth Amendment. *Id.* at *12-13.

Goins similarly denied that she was threatened by law enforcement. *Id.* at *16. Goins indicated that Detective Bolena behaved in a hostile or imposing manner while she was being questioned but, with respect to any alleged threats, Goins testified only that she was warned of legal consequences if she did not tell the truth and was told there was a possibility of five years of incarceration if she committed perjury. *Id.* Regarding her trial testimony, Goins reaffirmed that she heard a conversation between Bell and Williams on the night of the murders where Bell admitted to shooting West and Smith. *Id.* Goins stated that she thought Bell said "we" instead of "I" when he was describing the murders that night, but Goins also testified that "given the passage of time and the current state of her health, the transcript of her trial testimony would be accurate." *Id.*

The circuit court determined that all of Bell's new claims were both untimely under Florida law and meritless based on the testimony presented at the evidentiary hearing. On appeal, the Florida Supreme Court approved those findings and affirmed the denial of Bell's successive motion. *Id.* at *3-18.

Initially, however, the Florida Supreme Court rejected Bell's argument that the trial court erred by allowing witnesses called at the evidentiary hearing to consult with counsel and invoke the Fifth Amendment at various points in their

testimony. The Florida Supreme Court explained that "the constitutional guarantee against self-incrimination extends not only to answers that would themselves support a conviction but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the witness for a crime." *Id.* at *4 (quoting *State ex rel. Mitchell v. Kelly*, 71 So. 2d 887, 894 (Fla. 1954) (citing *Hoffman v. United States*, 341 U.S. 479 (1951))). Whether a witness's answer to a question would pose such a risk of incrimination is a matter that must be decided within "the sound discretion of the trial court under all the circumstances of the case." *Id.* (quoting *Mitchell*, 71 So. 2d at 897). "To sustain the privilege[,] it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Id.* (quoting *St. George v. State*, 564 So. 2d 152, 155 (Fla. Dist. Ct. App. 1990) (citing *Emspak v. United States*, 349 U.S. 190, 198 (1955), and *Hoffman*, 341 U.S. at 486-87)).

In Bell's case, the Florida Supreme Court noted that each of the witnesses who invoked the Fifth Amendment had previously testified both at Bell's 1995 trial and 2002 postconviction hearing, and that Edwards and Jones had also signed sworn affidavits purporting to recant some portions of their trial testimony. The Florida Supreme Court explained that under those circumstances, the circuit court, on its own initiative, properly offered those witnesses the opportunity to consult with counsel before they testified again at the 2025 hearing. *Id.* The Florida Supreme Court noted, as well, the potential risks to the witnesses of a "charge of perjury by

contradiction" if their "testimony *at the evidentiary hearing* was false," or a charge of "perjury in official proceedings" if they "testified that the sworn affidavit they signed a week ago was false." *Id.* at *5 (original emphasis) (citing Fla. Stat. §§ 837.021, 837.02(2)). Based on its review of the lower court record, the Florida Supreme Court found that "[t]he circuit court did not err in permitting each witness to invoke the privilege against self-incrimination." *Id.*

Proceeding to Bell's alleged *Brady* and *Giglio* violations, the Florida Supreme Court determined that Bell had failed to establish—for purposes of the time limits for successive postconviction motions set out in Florida Rule of Criminal Procedure 3.851(d)(1)-(2)—that the claims were raised within one year of the date that the allegedly new evidence either was discovered or could have been discovered through the exercise of due diligence. *Id.* at *3, *7, *10-11. As to Edwards and Jones, the Florida Supreme Court agreed with the circuit court's finding that Bell failed to show at the evidentiary hearing when his counsel learned that those witnesses were allegedly willing to recant and whether it had been less than one year since that occurred. *Id.* at *7. As to the remaining witnesses, Bell failed to establish why the alleged new evidence could not have been discovered earlier given that Bell had previously "raised claims of coercion as far back as his 2002 postconviction proceedings." *Id.* at *10-11.

On the merits, the Florida Supreme Court agreed that Edwards' and Jones' failure to recant was fatal to Bell's *Brady* and *Giglio* claims for those witnesses. The Florida Supreme Court further held that even if it were to accept the contents of

their affidavits as true, Bell could "establish neither the materiality prong of *Brady*, nor the prejudice prong of *Giglio*" in light of the "overwhelming evidence presented at Bell's trial" proving his guilt. *Id.* at *9-10. For the remaining witnesses, the Florida Supreme Court agreed with the circuit court that Bell failed to prove the existence of any misconduct by the State or that any false testimony was presented through those witnesses. *Id.* at *11-17. The Florida Supreme Court endorsed and adopted the following observation made by the circuit court:

> Although Defense counsel insisted the testimony [as to claim one] established newly discovered impeachment evidence, the coercion evidence could have been discovered with due diligence. These are all witnesses with some relation to Defendant, it is reasonable that procuring their testimony might require some convincing. None of the testimony brought out at the evidentiary hearing demonstrates the State's actions were of such a threatening nature that they amounted to the prosecutorial misconduct necessary to warrant relief. Further, even if all this suggestion of supposed threats had been presented at trial, Defendant has failed to connect how the credibility of these witnesses is weakened. Defendant never makes the connection that the witnesses embellished or fabricated their testimony to avoid these threats. On the contrary, it appears all of them were appropriately aware of how important testifying truthfully was. Accordingly, to the extent it was not discussed before, the Court finds Defendant has failed to prove this evidence, both individually and cumulatively, is of such a nature that there is a reasonable probability of a different outcome had he known about it.

Id. at *17 (original alteration).

Finally, the Florida Supreme Court rejected Bell's arguments that he was entitled to relief based on the "totality of the circumstances," that the warrant period was unreasonably short, or that he had presented any "'substantial grounds upon which relief might be granted'" that would justify a stay of execution. *Id.* (quoting *Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023)). Accordingly, the Florida Supreme

Court affirmed the denial of Bell's successive motion for postconviction relief and denied Bell's motion for a stay of execution. *Id.*

REASONS FOR DENYING THE PETITION

I. This Court Lacks Jurisdiction.

In his certiorari petition to this Court, Bell articulates a legal theory that the state courts—by allowing some witnesses to invoke their Fifth Amendment right against self-incrimination at the recent evidentiary hearing on Bell's successive postconviction motion—violated Bell's Eighth and Fourteenth Amendment rights to heightened reliability in capital cases and due process. According to Bell, if the witnesses' invocations of the Fifth Amendment had been overruled, he could have developed additional evidence to support his claim of newly discovered evidence of *Brady* and *Giglio* violations at his 1995 jury trial.

Bell's hybrid Eighth and Fourteenth Amendment theory carries no support in this Court's precedents. Bell cites not a single case, from this Court or any other, holding that witnesses lose their protections under the Fifth Amendment in capital collateral proceedings. Before this Court may even consider the merits of the claim, however, it must have jurisdiction to do so. Here, such jurisdiction is lacking because (a) Bell's newly discovered evidence claim was rejected by the Florida Supreme Court on the independent and adequate state-law ground that it was untimely raised under the applicable Florida Rule of Criminal Procedure, and (b) Bell never presented his current Eighth and Fourteenth Amendment argument to the Florida Supreme Court, nor did the Florida Supreme Court address that issue. For lack of jurisdiction, alone, Bell's petition for a writ of certiorari must be denied.

A. Bell's *Brady*/*Giglio* Claim Was Rejected on the Independent and Adequate State-Law Ground that It Was Untimely Under Florida Rule of Criminal Procedure 3.851(d).

When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016). This "adequate and independent state grounds" rule stems from the fundamental principle that this Court lacks jurisdiction to review matters of state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). This Court has stated that its "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And [that] power is to correct wrong judgments, not to revise opinions" or "render an advisory opinion." *Id.* "[I]f the same judgment would be rendered by the state court after [this Court] corrected its views of federal laws, [this Court's] review could amount to nothing more than an advisory opinion." *Id.* at 126. Thus, if a state court's decision is separately based on state law, this Court "will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010).

Although Bell argues otherwise, the Florida Supreme Court's determination that Bell's newly discovered evidence claim was untimely under the Florida Rules of Criminal Procedure constitutes a separate basis for the denial of his claim that is both independent of the federal-law question Bell raises in this Court and adequate to support the denial of postconviction relief. The governing state-law rule, Florida Rule of Criminal Procedure 3.851(d), provides that any motion to vacate a judgment

of conviction and sentence of death must be filed no later than one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). The one-year limitations period is subject to only three exceptions:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2).

A successive motion for postconviction relief must be dismissed if "there was no good cause for failing to assert th[e] grounds [for relief] in a prior motion" or "the claim fails to meet the time limitation exceptions set forth in subdivision (d)(2)." Fla. R. Crim. P. 3.851(e). "For an otherwise untimely claim to be considered timely [under the first exception] as newly discovered evidence, it must be filed within a year of the date the claim became discoverable through due diligence." *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020). Further, "[i]t is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Id.*

The Florida Supreme Court has observed that "recantations, as a general matter, are highly unreliable as a form of newly discovered evidence." *Bell*, 2025 WL 1874574, at *7. It has further held that "recanted testimony [does not] qualif[y] as newly discovered evidence as a matter of law." *Id.* (quoting *Davis v. State*, 26 So. 3d 519, 528 (Fla. 2009)). Rather, "[t]he newly discovered evidence claim remains to be

factually tested in an evidentiary hearing to determine whether the defendant has demonstrated that the successive motion has been filed within the time limit for when the statement was or could have been discovered through the exercise of due diligence." *Id.* (quoting *Davis*, 26 So. 3d at 528-29).

In *Mungin*, for example, the defendant filed a successive postconviction motion nearly 20 years after his trial based on an affidavit from a trial witness purporting to recant his previous testimony. *Mungin*, 320 So. 3d at 625. Like Bell, Mungin alleged that the State violated *Brady* and *Giglio* by "failing to divulge" the false testimony and "allowing [the witness] to give false testimony at trial," "and that the information in [the witness]'s affidavit was newly discovered evidence that was likely to produce an acquittal at retrial." *Id.* The Florida Supreme Court ruled that the claim was untimely under rule 3.851(d), explaining that although the witness signed the affidavit in 2016, he "was a known witness who was available to the defense since Mungin's 1997 trial." *Id.* at 625-26. Moreover, Mungin "offer[ed] no explanation as to why [the purported recantation] could not have been ascertained long ago by the exercise of due diligence." *Id.* at 626. Thus, the Florida Supreme Court ruled that the claim was untimely, and therefore, it was properly denied by the state postconviction court after an evidentiary hearing. *Id.* at 625-26. Mungin's certiorari petition to this Court was denied. *Mungin v. Florida*, 142 S. Ct. 908 (2022).

This case is no different. Bell attempted to meet his burden through testimony from his federal counsel, Tennie Martin of the Capital Habeas Unit ("CHU"). Martin testified that after Bell's death warrant was signed, she received a call from a CHU

attorney from a different region who told her that an investigator "may have, in the course of his investigation, over the last couple of months in a case of theirs, had contact with a couple of witnesses in Mr. Bell's case and there may be information." *Bell*, 2025 WL 1874574, at *7. Martin said that "[a]fter further coordination to determine how to proceed, and after contacting Bell's [state] postconviction attorney, Robert Norgard, two federal investigators contacted Edwards and Jones and obtained signed, sworn statements from them regarding their trial testimony." *Id.*

Martin's testimony left crucial questions unanswered. She did not explain, for example, what prompted the first investigator to speak to Edwards and Jones, when that information was obtained, and why Bell's counsel could not also have contacted those witnesses before the warrant was signed. Edwards and Jones were known to Bell, having both previously testified in 1995 and 2002. Without any evidence to establish what led Edwards and Jones to allegedly recant, how CHU learned of the purported new evidence, and when that occurred, Bell failed to establish that it had been less than one year since the new evidence "was or could have been discovered through the exercise of due diligence." *Id.* Therefore, the Florida Supreme Court "agree[d] with the circuit court's conclusion" that Bell's subclaims regarding the alleged recantations by Edwards and Jones were untimely. *Id.*

The Florida Supreme Court reached the same conclusion for Bell's subclaims regarding Williams, Pryor, George, and Goins. *Id.* at *10-11. Noting that Bell had "raised claims of coercion as far back as his 2002 postconviction proceedings," the circuit court explained that "[w]hatever precipitated [Bell] to consider coercion claims

for some trial witnesses should also have led him to conduct due diligence on the other remaining witnesses . . . ." *Id.* Because Bell "failed to adequately allege why these claims were not discoverable with the use of due diligence during his previous postconviction proceedings," the circuit court found that the additional subclaims were untimely. *Id.* The Florida Supreme Court agreed. *Id.*

Bell argues that this Court has jurisdiction because "reasonable diligence . . . is a necessary component of any *Brady* claim," and thus, according to Bell, "the [Florida Supreme] [C]ourt's reliance on state law depended on the merits of Bell's federal claims." Pet. at 1 (footnote omitted). The Florida Supreme Court's timeliness analysis, however, made no reference to and was wholly separate from the question of whether Bell had established the existence of any *Brady* violation. That is made clear by the heading "Timeliness" in the Florida Supreme Court's opinion, and its citation to Rule 3.851(d). *Bell*, 2025 WL 1874574, at *7. Only after it held that Bell's subclaims were untimely did it address whether Bell had proven the elements of a *Brady* or *Giglio* violation for each witness. *Id.* at *7-17. Moreover, the plain text of Rule 3.851(d)(2)(A) makes clear that the requirement that the evidence "could not have been ascertained by the exercise of due diligence" applies to *all* successive postconviction claims based on new evidence, not just claims raised under *Brady*. The Florida Supreme Court was plainly addressing state, not federal law.

A state court's finding that a federal law claim is time-barred under the state's procedural rules constitutes an independent and adequate state-law ground for rejecting the claim. *See Walker v. Martin*, 562 U.S. 307, 316-17 (2011) (finding that

California's time bar qualified as an adequate state procedural ground); *Jeter v. Sec'y, Fla. Dep't of Corr.*, 479 F. App'x 286, 287-88 (11th Cir. 2012) (holding that the Florida courts' dismissal of Jeter's postconviction motion as untimely under Fla. R. Crim. P. 3.850 was a rejection on adequate and independent state procedural grounds); *cf. Michigan v. Long*, 463 U.S. 1032, 1042 (1983) (stating that this Court will "assume that there are no such grounds when it is *not* clear from the opinion itself that the state court relied upon an adequate and independent state ground") (emphasis added). Because the Florida Supreme Court explicitly found Bell's claims untimely under Rule 3.851(d), this Court lacks jurisdiction.

B. Bell Failed to Present His Eighth and Fourteenth Amendment Argument to the Florida Supreme Court.

Jurisdiction is also lacking because Bell's Eighth and Fourteenth Amendment argument was never presented to the Florida Supreme Court, and the point was not addressed in the Florida Supreme Court's opinion.

This Court's jurisdiction to review a case from a state court of last resort is premised on the state court "decid[ing]" an important question of federal law. Sup. Ct. R. 10(b)-(c). "With very rare exceptions, [this Court has] adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that [it] will not consider a petitioner's federal claim unless [the claim] was either addressed by, or properly presented to, the state court that rendered the decision [this Court has] been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (cleaned up). If a federal question was not properly presented in state court, then this Court has "no power to consider it." *Street v. New York*, 394 U.S. 576, 582 (1969). "[W]hen, as here, the

highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Id.*

Bell asks this Court to grant review to address the question of whether his execution would violate the Eighth and Fourteenth Amendments in light of the fact that witnesses at his most recent postconviction evidentiary hearing were allowed to plead the Fifth Amendment. Pet. at i. However, that was not what Bell argued in the Florida Supreme Court. Bell argued, rather, that the circuit court judge had "erred in permitting certain witnesses to invoke their privilege against self-incrimination" under general Fifth Amendment principles, and that "allowing these witnesses to do so prevented [Bell] from being able to develop additional newly discovered evidence relating to alleged police/prosecutorial misconduct and trial witness impeachment." *Bell*, 2025 WL 1874574, at *4. Bell further argued that "the witnesses' invocation of the privilege against self-incrimination violated his *Sixth* Amendment right of confrontation . . . ." *Id.* at *5 (emphasis added). The Florida Supreme Court rejected those arguments, holding that the circuit court properly found that "there was a reasonable and good faith basis for invoking the privilege," and that the Sixth Amendment confrontation right does not apply in a successive postconviction proceeding. *Id.* But Bell did not claim that the Fifth Amendment issue implicated the Eighth or Fourteenth Amendments, and the Florida Supreme Court did not address that question. *See id.* at *4-5. For that reason, as well, this Court lacks jurisdiction as to the question presented in Bell's certiorari petition.

II. There is No Conflict of Decisions or Important or Unsettled Question of Federal Law to Warrant This Court's Review.

Even if this Court had jurisdiction, review would be unwarranted. As a general matter, this Court does not review state court decisions merely because a question of federal law is implicated. Rather, the state court typically must have "decided an important question of federal law in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals" or "with relevant decisions of this Court," or "decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10. "A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.*

Bell complains in strident terms about the state circuit judge and the State's purported "meddling" with his presentation of evidence at the evidentiary hearing. Pet. at 18. But his certiorari petition fails to identify any conflict between the Florida Supreme Court's opinion and the decision of another state court of last resort, a United States court of appeals, or this Court on an important question of federal law. Nor does he identify any important federal question decided by the Florida Supreme Court that has not been, but should be, settled by this Court. Instead, Bell seems merely to register his displeasure with the Florida Supreme Court's rejection of his arguments on appeal, which is not a basis for certiorari review.

Even on their own terms, Bell's various arguments in his certiorari petition are misplaced. Bell first claims that the circuit judge and the State interfered with his right to present witnesses by allegedly threatening the witnesses with perjury

charges. Pet. at 15-19. That is not what occurred. Importantly, five of Bell's witnesses (Jones, Edwards, Williams, Pryor, and George) had previously testified at both the 1995 trial and the 2002 postconviction evidentiary hearing. At the 2002 hearing, all five witnesses testified that their trial testimony was the truth. The State's concern, as explained at the evidentiary hearing, was not that the witnesses had committed perjury during the earlier proceedings, but rather, that they would commit perjury *at the 2025 evidentiary hearing* by falsely claiming that their earlier testimony was not true. *Bell*, 2025 WL 1874574, at *5. That concern proved prescient when Edwards subsequently testified that the affidavit he signed was false, that he did not write it, and that he only signed it to help Bell avoid execution. *Id.* at *8. For that reason, the State asked only that the witnesses be given the opportunity to consult with counsel before they testified at the hearing, which the circuit judge explained he had already decided to do even before the State raised the issue. App. 20-25d.

Based on its review of the record, the Florida Supreme Court "expressly reject[ed] Bell's allegation that the State threatened evidentiary hearing witnesses with perjury charges." *Id.* at *17. That finding is fully supported by the transcript. Nor did the circuit judge do so. Rather, the circuit judge only advised the witnesses that their new testimony, if it contradicted their prior testimony, could carry perjury risks, and it therefore offered them the appointment of counsel for purposes of the hearing and the opportunity to consult with counsel if they desired, which each witness accepted. App. 26-27d, 31-32d, 153-60d, 166-68d.

This case bears no resemblance to *Webb v. Texas*, 409 U.S. 95 (1972), which Bell cites in his petition. There, the trial judge told a witness that the judge would "personally see" that the witness would be indicted for perjury if he lied under oath, and that lying would mean "real trouble." *Id.* at 95-96. The judge also referred to the witness's testimony as a "hazard" and advised him that he did not "owe anybody anything to testify." *Id.* at 96. In noting that the trial judge "did not stop at warning the witness of his right to refuse to testify and of the necessity to tell the truth," this Court found that the judge's "unnecessarily strong terms" prevented the witness from freely choosing not to testify and "effectively drove that witness off the stand," depriving the defendant of due process of law. *Id.* at 97-98.

Nothing remotely similar occurred in this case. Here, the circuit court judge carefully and respectfully informed the witnesses of possible risks of contradicting their prior sworn testimony and offered them the opportunity to consult with counsel who would be appointed to represent them. Moreover, the conduct at issue in *Webb* occurred during a jury trial. *See id.* at 95. By contrast, the instant case involves a postconviction proceeding, where a defendant's right to due process is more limited. *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) (stating that the defendant's right to due process in postconviction proceedings "is not parallel to a trial right but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial, and has only a limited interest in postconviction relief"); *see also Davila v. Davis*, 582 U.S. 521, 531 (2017) ("The trial is the main event at which a defendant's rights are to be determined.") (quotation marks omitted);

Murray v. Giarratano, 492 U.S. 1, 10 (1989) ("State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal.").

Bell next argues that the Florida Supreme Court erred by finding that the circuit judge did not abuse his discretion by upholding the witnesses' invocations of the Fifth Amendment at various points in their testimony. Pet. at 19-21. Bell does not argue, however, that the Florida Supreme Court misstated this Court's Fifth Amendment precedents or that its opinion conflicts with a decision of another court on an important or unsettled question of federal law. Moreover, based on its review of the record, the Florida Supreme Court properly found that the circuit judge did not abuse his discretion, since all of the witnesses had reasonable and good faith bases to invoke the Fifth Amendment. *Bell*, 2025 WL 1874574, at *4-5; *see also Hoffman*, 341 U.S. at 486 (stating that the privilege against self-incrimination applies when "the witness has reasonable cause to apprehend danger from a direct answer"); *Wells v. State*, 364 So. 3d 1005, 1013 (Fla. 2023) (explaining that the Florida Supreme Court "will not find an abuse of discretion unless the trial court makes a ruling which no reasonable judge would agree with"). Edwards and Jones had signed sworn affidavits the week before the hearing and would be exposed to possible perjury charges if those affidavits were false. Williams, Pryor, and George had all participated to varying degrees in the murders of West and Smith. And given the substantial passage of time since the 1993 murders, the 1995 trial, and the 2002 postconviction hearing, all five witnesses may have been understandably concerned about contradicting their prior

testimony based on mistaken or faulty memories. Indeed, Williams, Pryor, and George all testified during the 2025 hearing that they did not remember what they had said 30 years earlier. App. 198-99d, 207-08d, 219-20d, 227d.

Bell further argues that the witnesses waived their Fifth Amendment rights by answering some questions and not others. But Bell never raised that argument in the Florida Supreme Court, and the point is not addressed in the Florida Supreme Court's opinion. Therefore, this Court lacks jurisdiction as to that point. *See* § I.B., *supra*. Moreover, *Mitchell v. United States*, on which Bell relies, states only that a testifying witness waives the privilege for purposes of cross-examination. *See* 526 U.S. 314, 321 (1999) ("The privilege is waived for the matters to which the witness testifies, *and the scope of the 'waiver is determined by the scope of relevant cross-examination*.'") (emphasis added) (quoting *Brown v. United States*, 356 U.S. 148, 154-55 (1958)). Bell is complaining that the witnesses were permitted to invoke the Fifth Amendment on direct examination. Thus, *Mitchell* is not on point.

Last, Bell argues that upholding the circuit court's decisions to sustain the witnesses' Fifth Amendment invocations "would raise serious constitutional issues" under the Eighth and Fourteenth Amendments. Pet. at 22-23. As discussed, Bell never raised this argument in the Florida Supreme Court. Further, Bell cites no authority to support his claim that the Fifth Amendment carries less weight during successive postconviction proceedings in capital cases. Even in the trial context, the privilege against self-incrimination trumps a defendant's Sixth Amendment right to compulsory process. *See United States v. Cuthel*, 903 F.3d 1381, 1384 (11th Cir. 1990)

("While there is arguably a conflict between a witness's fifth amendment privilege and a defendant's sixth amendment right to compulsory process, such conflict long ago was resolved in favor of the witness's right to silence.") (citing *Alford v. United States*, 282 U.S. 687, 694 (1931)); *see also Miranda v. Arizona*, 384 U.S. 436, 468 (1966) (explaining that the Fifth Amendment privilege against self-incrimination is "fundamental to our system of constitutional rule"). Ultimately, Bell fails to identify any conflict or federal question that warrants review by this Court.

III. Bell's Underlying *Brady*/*Giglio* Claim is Meritless.

In addition to the reasons stated above, this Court should deny review because Bell's underlying *Brady* and *Giglio* claim is facially without merit. As the Florida Supreme Court correctly explained, to succeed on his claim, Bell had to establish that favorable evidence was suppressed by the State (under *Brady*) or that the State knowingly presented false evidence (under *Giglio*), and that the suppressed or false evidence was material. *Bell*, 2025 WL 1874574, at *5-6; *see Brady*, 373 U.S. at 87; *Giglio*, 405 U.S. at 145. Material, in this context, means "a reasonable probability that, had the suppressed evidence been disclosed, the jury would have reached a different verdict," or "a reasonable possibility that the false testimony could have affected the judgment of the jury." *Bell*, 2025 WL 1874574, at *5-6. Additionally, to obtain a new trial under Florida law, Bell had to prove that "the newly discovered evidence [is] of such nature that it would probably produce an acquittal on retrial." *Id.* at *6 (quoting *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998)).

Bell failed to present any credible evidence to support his *Brady* and *Giglio* claim. His claim, as initially pled, was based on affidavits from Edwards and Jones purporting to recant their trial testimony. At the evidentiary hearing, however, Edwards not only refused to recant, but he flatly testified that the affidavit he signed was not true, that he did not write it, and that he signed it only to help Bell avoid execution. *Id.* at *7-9. Jones admitted that he signed the affidavit but otherwise invoked the Fifth Amendment. *Id.* at *9-10. In light of Edwards' testimony, as well as Jones' 2002 testimony that his trial testimony was the truth, the most likely explanation for Jones' refusal to testify is that he, unlike Edwards, was not willing to admit that he had signed a fraudulent affidavit in an effort to help Bell.

Williams, Pryor, and George refused to sign affidavits at all. *Id.* at *10. And none of those witnesses recanted their trial testimony at the evidentiary hearing, but instead invoked their Fifth Amendment rights as to some questions while also stating, in response to other questions, that they did not remember what they had said at Bell's trial more than 30 years earlier. *Id.* at *10-14. In his current petition, Bell ascribes the witnesses' refusals to recant to purported perjury threats by the State. As the Florida Supreme Court correctly found, the State did not, in fact, threaten the witnesses with perjury charges. Moreover, Bell ignores the possibility that the witnesses refused to recant, not because of anything the State or the circuit judge did, but because their trial testimony was the truth—as all three witnesses testified when Bell made similar allegations in 2002.

In the end, there was no evidence of any misconduct by the State or false trial testimony to support Bell's allegations under *Brady* and *Giglio*. Furthermore, the Florida Supreme Court correctly held that, even if it were to accept Bell's unproven allegations as true, Bell could not satisfy the materiality prongs of *Brady* or *Giglio* in light of the totality of the evidence. *Id.* at *9-10, *16-17.

As the Florida Supreme Court observed, the evidence of Bell's guilt was truly "overwhelming." *Id.* at *9. Bell's trial counsel, Richard Nichols, said the same thing at the 2002 evidentiary hearing. According to Nichols, Bell never told him anything that Nichols could use in Bell's defense, and when he asked Bell about the possibility of an alibi, Bell would not provide one. Bell would only tell Nichols that the State would have to prove its case in court and that he didn't think the State's witnesses would testify against him. Nichols testified that Bell seemed "surprised" when the witnesses did appear. *Bell*, 965 So. 2d at 63-64. At that point in the proceedings, the only available defense strategy was to try to poke holes in the State's case. But as Nichols explained, "there just weren't any." *Id.* at 63.

Moreover, despite Bell's complaints to this Court about his witnesses at the 2025 evidentiary hearing invoking the Fifth Amendment, Bell ignores the fact that his aunt, Paula Goins, never did so. And despite Goins' complaints about being subpoenaed at trial and forced to testify against her nephew, Goins never recanted her trial testimony. On the contrary, Goins admitted on direct examination that she heard a conversation in which Bell admitted to shooting the victims. App. at 185d. When she was further asked on cross-examination if she in fact heard the things she

testified to at trial, Goins answered, "Yes." App. 188-90d. In its opinion, the Florida Supreme Court quoted at length from Goins' detailed trial testimony recounting Bell's statement to her before the murders that Wright "need[ed] to be in the morgue like [Bell]'s brother," and Bell's statements to her after the murders boasting about how he had gotten revenge against Wright by killing Wright's brother and another girl. *Bell*, 2025 WL 1874574, at *14-16. Goins' testimony, which was consistent with all of the other evidence, left no doubt that Bell committed the murders.

Based on the totality of the trial evidence, as well as the evidence presented during Bell's 2002 and 2025 postconviction proceedings, the Florida Supreme Court correctly ruled that Bell could not satisfy the materiality prongs of *Brady* or *Giglio*, nor was there any newly discovered evidence that would likely produce an acquittal or result in a lesser sentence on retrial. *Id.* at *7-17. There was no error at all in the proceedings below, let alone a conflict of decisions or important or unsettled federal law question that would warrant the intervention of this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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