NO. 25-5097

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL BERNARD BELL

Petitioner,

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

And

ATTORNEY GENERAL, STATE OF FLORIDA

Respondents.

PETITIONER'S REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CAPITAL CASE
DEATH WARRANT SIGNED
EXECUTION SCHEDULED 6:00 P.M., JULY 15, 2025

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Respondents assert that Bell's *Brady/Giglio* claim from his second-in-time petition is fatally flawed because the Florida Supreme Court ruled that the bulk of the claim was time-barred and the remaining portion of the claim was never exhausted in state court. Brief in Opposition at 19. They further argue that Bell could have simply sought authorization for a successive petition under 28. U.S.C. § 2244. Brief in Opposition at 22.

IV. THE AUTHORIZATION PROCESS UNDER §2244 DOES NOT PROVIDE AN ADEQUATE REMEDY FOR THE CONSTITUTIONAL VIOLATIONS

Respondents argue Bell could have sought permission to file a successive petition. But the authorization process under §2244(3) does not provide an adequate remedy. §2244 requires a petitioner to show his actual factual innocence by clear and convincing evidence. Requiring that showing for a claim involving *Brady/Giglio* violations allows the State a mechanism to completely invert the burden of proving their case beyond a reasonable doubt. The State can, as they did here, obtain a conviction through the presentation of false evidence and where material exculpatory evidence is withheld. It can then wait until after the first habeas petition is filed to disclose its own misconduct, and now the petitioner has to prove his actual factual innocence by clear and convincing evidence. There is a reasonable probability that but for the state's misconduct Bell would have been acquitted at trial or received a less severe sentence, but now because of the State's

misconduct he is required to prove his own innocence. The State cannot be allowed to flip the burden of proof by continuing to hide its own misconduct.

V. BELL'S UNDERLYING *BRADY/GIGLIO* CLAIM IS NOT TIME BARRED

a. The Florida Supreme Court's Decision

i. Charles Jones and Henry Edwards

The Florida Supreme Court determined newly discovered evidence claims as to Edwards and Jones were untimely. *Bell v. State*, No. SC2025-0891, 2025 WL 1874574, at *7 (Fla. July 8, 2025)("Defendant did not explain why CHU North waited to reveal the alleged recantations of two witnesses who testified against Defendant until after the death warrant was signed. Nor did Defendant ever state or present credible evidence to establish which CHU unit first learned of the purported new evidence and when that occurred. Fundamentally, Defendant did not prove it has been less than one year since Henry Edwards and Charles Jones allegedly recanted. Therefore, Subclaims One and Two are untimely.").

ii. Ericka Williams, Ned Pryor, and Dale George

The Florida Supreme Court also determined the statements alleging threats, physical assaults, and promises of leniency to witnesses Williams, Pryor, and George were also untimely. *Bell,* No. SC2025-0891, 2025 WL 1874574, at *10-11. ("[W]e conclude as a threshold matter that the circuit court did not err in finding that these claims were untimely raised. Noting that Bell "previously raised claims of coercion as far back as his 2002 postconviction proceedings," the court concluded:

Whatever precipitated Defendant to consider coercion claims for some trial witnesses should also have led him to conduct due diligence on the other remaining witnesses, especially in light of individuals who the State no longer had leverage over like Ned Pryor and Paula Goins. Defendant has failed to adequately allege why these claims were not discoverable with the use of due diligence during his previous postconviction proceedings.").

i. Handwritten Detective Notes Regarding Mark Richardson and Affidavits of Derrick Jones, Gary Browder, and Maurice Williams

The Florida Supreme Court did not address the handwritten detective notes regarding Mark Richardson or affidavits of Jones, Browder, and Williams, and did not apply a time bar to them. Thus, there is not even an alleged independent and adequate state law ground barring this claim. Bell did not obtain the handwritten notes until July, 2 2025, and did not obtain the affidavits until between June 29 - July 1, 2025, after the circuit court proceedings had concluded and after briefing at the Florida Supreme Court was complete. Bell attached the handwritten notes and additional affidavits to a Motion to Relinquish Jurisdiction for Further Fact Development filed with the Florida Supreme Court. *Bell v. State*, SC2025-0891 (Fla. July 3, 2025). Because the Florida Supreme Court did not address the merits and denied the motion to relinquish jurisdiction for further fact development, and because the Florida Supreme had divested the circuit court of jurisdiction to entertain any additional successive state postconviction petitions in its June 13,

2025 post-warrant scheduling order, there was an absence of state corrective process available to Bell to raise this claim under 28 U.S.C. §2254(b)(1)(B)(i).

Bell had diligently attempted to obtain the handwritten detectives' notes. Bell had previously requested *Brady* information from the State in discovery at trial and during postconviction proceedings. Specifically, Bell filed a demand for discovery requesting "any material information within the State's possession or control which tends to negate the guilt of the accused as to the offense charged." ROA at 12. The state responded, "None known to the state at this time." ROA at 16. During postconviction, Bell filed a Motion for Review and Release of Sealed Files Held by the Capital Post-Conviction Repository on July 5, 2000. In its order on the motion, the Court found that the very handwritten notes at issue here were exempt from public records disclosure. PC ROA at 25-26. Bell cannot be faulted for failing to obtain records sooner that both the State and trial court told him did not contain discoverable information, and were not subject to disclosure.

b. There were not adequate and independent state law grounds for denying Bell's *Brady* claims

"[F]ederal habeas review is [not] barred every time a state court invokes a procedural rule to limit its review of a state prisoner's claims. We have recognized that "'[t]he adequacy of state procedural bars to the assertion of federal questions' ... is not within the State's prerogative finally to decide; rather, adequacy 'is itself a federal question.'" *Lee,* 534 U.S., at 375 (quoting *Douglas v. Alabama,* 380 U.S. 415, 422 (1965)); see also *Coleman,* 501 U.S., at 736, ("[F]ederal habeas courts must ascertain for themselves if the petitioner is in custody pursuant to a state court

judgment that rests on independent and adequate state grounds")." *Cone v. Bell*, 556 U.S. 449, 465–66 (2009).

i. The Florida Supreme Court's Denial of Bell's *Brady/Giglio* claim rested on state law grounds intertwined with an interpretation of federal law

In order for independent and adequate state law ground to bar review of a federal habeas claim, the state law ground must not be intertwined with an interpretation of federal law. *Caldwell v. Mississippi,* 472 U.S. 320, 328 (1985); *Ake v. Oklahoma,* 470 U.S. 68, 75 (1985). Additionally, the state procedural bar must be adequate and not applied in an arbitrary or unprecedented manner. *NAACP v. Alabama ex rel Patterson,* 357 U.S. 449, 457–58 (1958). As an example, the Eleventh Circuit has developed a three-part test to determine if a state procedural bar is independent and adequate. *See Card v. Dugger*, 911 F.2d 1494 (11th Cir. 1990).

> First, the last state court rendering a judgment in the case must clearly and expressly state that it is relying on state procedural rules to resolve the federal claim without reaching the merits of that claim. Secondly, the state court's decision must rest solidly on state law grounds, and may not be "intertwined with an interpretation of federal law." Finally, the state procedural rule must be adequate; *i.e.,* it must not be applied in an arbitrary or unprecedented fashion.

Judd v. Haley, 250 F.3d 1308, 1313 (11th Cir. 2001).

Applying the cause and prejudice analysis to a *Brady* claim is closely intertwined with reviewing the merits of the *Brady* claim. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). The suppression of evidence constitutes cause for the

failure to assert the *Brady* claim in the state courts. *Id.* Prejudice exists if the suppressed evidence was material for *Brady* purposes. *Id.* Therefore, resolving the merits of a *Brady* claim is essentially required to resolve the procedural default challenge. Based on the foregoing reasons, the Florida Supreme Court's opinion rests on state law grounds intertwined with an interpretation of federal law.

ii. Bell's case is an exceptional case under *Lee v. Kemna*

In "exceptional" cases where the federal court disagrees with the state court's determination that a state procedural rule was violated, and believes the rule was substantially satisfied, the rule is considered inadequate to foreclose federal review. *See Lee v. Kemna,* 534 U.S. 362, 375, 385 n. 15 (2002). *See, also, Cruz v. Arizona*, 598 U.S. 17, 26 (2023)

> [T]his case implicates this Court's rule, reserved for the rarest of situations, that 'an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question.' … 'Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights.' … This Court has applied this principle for over a century."; "Only violations of state rules that are '"firmly established and regularly followed" … will be adequate to foreclose review of a federal claim.'" (quoting Court's prior application of rule in habeas corpus context in *Lee v. Kemna*, infra, 534 U.S. at 376); Court holds that state supreme court's application of state procedural rule to foreclose state postconviction relief "is not adequate to preclude review of a federal question" because "Arizona Supreme Court applied Rule 32.1(g) in a manner that abruptly departed from and directly conflicted with its prior interpretations of that Rule" and accordingly "state-court judgment rests on a novel and unforeseeable state-court procedural decision lacking fair or substantial support in prior state law"; Court rejects state's "object[ion] that a decision against it would forestall Arizona's ability to 'flesh out' its Rule 32.1(g) jurisprudence in new contexts": Court explains that "Arizona Supreme Court is free to extend its prior Rule 32.1(g) jurisprudence,

> including by applying the Rule to new situations as they arise" but that "[w]hat the Arizona Supreme Court cannot do is foreclose federal review by adopting a '"novel and unforeseeable"' approach to Rule 32.1(g) that lacks '"fair or substantial support in prior state law."'"

Cruz, 598 U.S. at 26. See also *Walker v. Martin*, 562 U.S. 307, 320 (2011) ("A state ground, no doubt, may be found inadequate when 'discretion has been exercised to impose novel and unforeseeable requirements without fair or substantial support in prior state law.'"); Hathorn v. Lovorn, 457 U.S. 255, 262–63 (1982) (quoting Barr v. City of Columbia, 378 U.S. 146, 149 (1964) ("'State courts may not avoid deciding federal issues by invoking procedural rules that they do not apply evenhandedly to all similar cases'");

1. Charles Jones and Henry Edwards

The State courts' determination the affidavits of Charles Jones and Henry Edwards violated Fla.R.Crim.P. 3.851, which contains a one-year statute of limitations for claims based on newly discovered evidence, was objectively unreasonable and not supported by the evidence. The circuit court and Florida Supreme Court both focused on Bell having not proven when CHU-N had obtained information that Jones and Edwards had *Brady/Giglio* information.

First, it is objectively unreasonable to impute knowledge of a separate autonomous law office that had no connection to Bell's case and practiced in an entirely different jurisdiction to Bell. CHU-M and CHU-N share nothing except a similar name. They do not share offices, personnel, resources, or infrastructure. Bell had no ability to compel CHU-N to disclose to him anything, and CHU-N was

under no obligation to make any disclosure. Respondents know this. They have litigated against both offices for years. They don't serve pleadings on CHU-M cases to CHU-N. They don't call CHU-N when they want to speak to someone at CHU-M. Yet they continue to attempt to exploit the confusion created by the shared names of the agencies as they did at the trial court, Florida Supreme Court, and District Court, and the Eleventh Circuit.

Second, uncontradicted testimony at the post-warrant evidentiary hearing established, even if the court were to erroneously impute CHU-N knowledge to Bell, CHU-N discovered the information "over the last couple of months" in relation to a June 13, 2025 conversation between CHU-M and CHU-N. WarrantPC at 1420. Bell's postconviction motion was filed on June 18, 2025, within 1-year of CHU-N's discovery of the information. The State courts' resolution of this issue was clearly erroneous.

2. Ericka Williams, Ned Pryor, and Dale George

The State courts' finding that the evidence of coercion, threats, physical violence, and promises of leniency made by witnesses Williams, Pryor, and George was untimely was based on Bell having alleged witnesses had been coerced as early as his 2002 initial state postconviction evidentiary hearing, and Bell did not explain why he did not investigate these claims with regards to these three witnesses at that time. This was a completely unreasonable factual determination without any evidentiary support. All three witnesses were called to testify at the 2002 evidentiary hearing, and all three denied they had been coerced in any way. *See* PC

at 1245; 1322; 1344. Just as a federal habeas petition cannot be expected to "regularly solicit recantations to demonstrate due diligence under §2244(d)(1)(D)," *Shabazz v. Filion*, 402 F. App'x 629, 631 (2d Cir. 2010), under Florida law, "[r]egardless of the time span from the time of trial to the discovery of the new testimony, recanted testimony cannot be "discovered" until the witness *chooses* to recant. *Davis v. State*, 26 So. 3d 519, 528 (Fla. 2009).

a. Alternatively, Bell can show cause and prejudice to overcome the default

In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice. *Coleman v. Thompson*, 501 U.S. 722, 724 (1991).

iii. Charles Jones and Henry Edwards

Bell obtained information from CHU-N that Jones and Edwards likely had *Brady/Giglio* evidence on June 13, 2025. He obtained an affidavit from Edwards on June 16, 2025, and from Jones on June 18, 2025, and included both affidavits in his June 18, 2025, successive state postconviction motion. Bell had been ordered to file any successive motions by June 18, 2025. WarrantPC at 190. A *Huff*[1] hearing was held on Friday June 20, 2025, to determine whether Bell would be granted an

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1993)

evidentiary hearing on his motion. WarrantPC at 1287. The circuit ordered Bell's motion sufficiently plead a *Brady/Giglio* claim to entitle him to an evidentiary hearing, and scheduled the evidentiary hearing for Monday June 23, 2025. This gave Bell's legal team one weekend to ensure the attendance of witnesses at the evidentiary hearing. But Florida law does not allow the service of subpoena on Sundays absent a court order signed pursuant to an affidavit that the witness intends to escape from the State on a Sunday. *See* Fla. Stat. § 48.20. So Bell's legal team had one day, Saturday, to issue subpoenas.

Bell's state and federal legal teams are based in the Tampa Bay area of Florida. The vast majority of witnesses for the evidentiary hearing resided in the Jacksonville area where the evidentiary hearing would take place. CHU-N Division Chief Linda McDermott and CHU-N investigator Dan Ashton were based in Tallahassee, and defense counsel did not have home addresses for either and service could not be made at their place of business which was closed for the weekend. The defense team spent all day Saturday serving subpoenas on witnesses in Jacksonville.

Had the State Courts not created an unreasonable scenario under which Bell had one weekend day to serve subpoenas, Ashton and McDermott could have been subpoenaed to testify at the evidentiary hearing, and they would have testified that the evidence as to Jones and Edwards had been discovered by them approximately two months before Bell's successive state postconviction motion was filed. The unreasonable deadlines thrust upon Bell by the state courts caused Bell to fail to

present the testimony of Ashton and/or McDermott. Bell was prejudiced because he was unable to present testimony from these witnesses that would establish the timeliness of his motion.

VI. CONCLUSION

For the reasons stated in his Petition for Writ of Certiorari and this reply, and his Emergency Motion for Stay of Execution, this Court should grant certiorari and stay Mr. Bell's execution.

Respectfully submitted,

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