APPENDIX A

Rel: June 20, 2025

ALABAMA COURT OF CRIMINAL APPEALS

CR-2024-0641

Mario Dion Woodward v. State of Alabama

Appeal from Montgomery Circuit Court
(CC-07-1388.61)

MEMORANDUM DECISION

WINDOM, Presiding Judge.

Mario Dion Woodward appeals the circuit court's dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., in which he challenged his 2008 convictions for two counts of capital murder and his sentence of death. Woodward was convicted of one count of capital murder for killing Officer Keith Houts, an on-duty police officer,

see § 13A-5-40(a)(5), Ala. Code 1975, and convicted of a second count of capital murder for killing Houts by firing a deadly weapon from within a vehicle, see § 13A-5-40(a)(18), Ala. Code 1975. By a vote of 8-4, the jury recommended that Woodward be sentenced to life in prison without the possibility of parole. The trial court overrode the jury's recommendation and sentenced Woodward to death.

On December 16, 2011, this Court affirmed Woodward's convictions and sentence. Woodward v. State (CR-08-0145), 123 So. 3d 989 (Ala. Crim App. 2011). The Alabama Supreme Court subsequently denied certiorari review on April 19, 2013. On November 18, 2013, the Supreme Court of the United States denied Woodward's petition for a writ of certiorari. Woodward v. Ala., 571 U.S. 1045 (2013).

In April 2014, Woodward filed his first Rule 32 petition, asserting a claim of newly discovered evidence and multiple claims of ineffective assistance of counsel.[1] The circuit court summarily dismissed all the claims raised in Woodward's petition but determined that an evidentiary

[1] This Court may take judicial notice of its own records and does so in this case. See Nettles v. State, 731 So. 2d 626, 629 (Ala. Crim. App. 1998); Hull v. State, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992).

hearing was warranted on Woodward's claim that trial counsel had been ineffective for failing to make a Batson[2] objection to the State's use of its peremptory strikes. After an evidentiary hearing, the circuit court issued an order denying that claim. This Court affirmed the circuit court's dismissal in part and denial in part of Woodward's first Rule 32 petition on April 27, 2018. See Woodward v. State, 276 So. 3d 713 (Ala. Crim. App. 2018). The Alabama Supreme Court denied certiorari review on November 16, 2018, and the Supreme Court of the United States likewise denied certiorari review on October 7, 2019. Woodward v. Ala., 140 S. Ct. 46 (2019).

On October 18, 2023, Woodward filed this, his second, Rule 32 petition, in which he alleged: 1) that newly discovered material evidence entitles him to a new trial and 2) that the State failed to disclose exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). In support of his petition, Woodward attached several documents he had obtained from the United States Marshals Service ("USMS") in connection with a complaint he had filed in federal court alleging

[2] Batson v. Kentucky, 476 U.S. 79 (1986).

violations of the Freedom of Information Act ("FOIA"). Woodward pleaded that some of the documents, namely, an application for an order authorizing the installation of a pen register or trap and trace device and the supporting affidavit, contained exculpatory information that constituted newly discovered evidence under Rule 32.1(e), Ala. R. Crim. P. The relevant portions of the application provide:

> "In support of this application, Assistant U.S. Attorney [REDACTED], states the following:
>
> "1. Application is an "attorney for the government" as defined in Rule 54(c) of the Federal Rules of Criminal Procedure and, therefore, pursuant to Title 18, United States Code, Sections 2703(d), 3123(a), 3123(b)(2), and 3124(a), may apply for disclosure of telecommunication records and the installation of a pen register and trap and trace.
>
> "2. Applicant certifies that the information sought is relevant and material to a [sic] ongoing criminal investigation, to wit: that the United States Marshals Service is conducting an investigation to [REDACTED] a suspected fugitive from justice, and under investigation by the United States Marshals Service for Assault I, in violation of the Code of Alabama Section 13A-6-20; and that it is believed that the requested telecommunications records, pen register and trap and trace will assist the United States Marshals Service in the apprehension of said suspected fugitive because cellular phone number (334) 312-4477 and (334) 312-5758 are cellular phone belonging to [REDACTED]. Investigators have developed information that [REDACTED] is the regular driver of a vehicle that was used in the shooting of a Montgomery Police officer on September 28, 2006.

Investigators have reason to believe that [REDACTED] was driving the car at the time of the shooting. For that reason, it is believed that these records will assist in locating [REDACTED]."

(C. 84-86.) Additionally, the supporting affidavit states in pertinent part:

"I, the undersigned affiant, state that the following information is true and correct to the best of my knowledge. I am a Deputy United States Marshal assigned to the Montgomery, Alabama office. I have been a criminal investigator with the United States Marshals Service for nineteen years. During that time, I have conducted numerous fugitive investigations involving the tracking of cellular phones.

"On September 28, 2006, a Montgomery Police Officer was conducting a routine traffic stop in the area of North Decatur Street in Montgomery, Alabama. As the officer approached the car, an unknown person shot the police officer approximately five times and then drove off. Video from inside the patrol car shows that the car was a 2006 Chevrolet Impala with Alabama tag # [REDACTED].

"Investigators later determined that Alabama tag # [REDACTED] belongs to [REDACTED] of Lowndesboro, Alabama. Investigators located [REDACTED] at her work, and [REDACTED] told investigators that [REDACTED] is the operator of the vehicle. [REDACTED] also gave investigators her [REDACTED] cellular phone number, (334) 312-4477. [REDACTED] also told investigators that her [REDACTED] named Mario Woodward.

"Investigators with the Montgomery Police Department checked their intelligence databases and found that Woodward had given cellular number, (334) 312-5758 during a previous investigation.

> "Investigators determined that the phone carrier for both phones is Alltel cellular. Investigators contacted Alltel concerning the subscriber information for both phones and found that both phones are based on the same account in the name of Mario Woodward.
>
> "Based on my experience, phone records for (334) 312-4477 and (334) 312-5758 will aid in the location of [REDACTED] and Woodward."

(C. 87-88.) Woodward pleaded that the application and supporting affidavit constituted newly discovered evidence because the contents indicated that the USMS believed that someone other than Woodward was driving the vehicle from which Off. Houts had been shot.

On November 16, 2023, the State filed an answer and a motion to dismiss, arguing that Woodward's petition was untimely, successive, insufficiently pleaded, and without merit. On January 10, 2024, Woodward filed an amended petition, asserting additional facts and arguments in support of his previously raised claims and attaching one additional exhibit to support the amended filing. The State filed an amended answer and motion to dismiss on February 9, 2024, addressing the new factual allegations and arguments raised in Woodward's amended petition as well as the exhibit attached thereto. On April 3,

2024, Woodward filed a reply to the State's answer. On July 18, 2024, the circuit court issued an order summarily dismissing Woodward's Rule 32 petition, finding that his claims were precluded. Woodward filed a motion to reconsider on August 16, 2024, which was subsequently denied by the circuit court on August 21, 2024.

On appeal, Woodward reasserts the claims raised in his Rule 32 petition and argues that the circuit court erred by dismissing his petition without affording him an evidentiary hearing. Woodward also reasserts a claim from his motion to reconsider, contending that the circuit court's order summarily dismissing his petition was insufficient.

In this Court's opinion on direct appeal, we set out the following facts surrounding Woodward's convictions:

> "Montgomery police officer Keith Houts was on patrol in a neighborhood in north Montgomery on September 28, 2006, and he conducted a traffic stop at approximately 12:30 p.m. Shonda Lattimore testified that she was sitting on her porch when she saw a police officer begin to execute a stop on a gray Impala automobile being driven by a black man wearing a red hat. Lattimore testified that she saw the driver of the Impala reach down for something as the Impala and the police car, with its emergency lights on, passed by the end of her street, before they went out of sight. Soon after the cars passed out of her sight, she heard four or five gunshots fired.

"During the traffic stop Officer Houts entered the license tag of the Impala into the mobile data terminal in his patrol car; the vehicle was registered to Morrie Surles. Officer Houts's patrol car was equipped with a video camera that recorded the events that occurred during the stop. The video recording was played for the jury. The video showed that Houts got out of his patrol car and approached the driver's side door of the Impala. Just as Officer Houts reached the door, the driver of the Impala fired a gun and shot Officer Houts in the jaw. Medical testimony established that the bullet entered Officer Houts's neck and severed his spine, causing him to collapse instantly. The driver then reached his arm out of the vehicle and shot Officer Houts four more times. The driver fled the scene in the Impala. Although the dashboard camera captured the shooting on videotape, it did not reveal the identity of the assailant because Officer Houts's patrol car was positioned behind the Impala and because the assailant did not get out of the vehicle.

"Although Officer Houts survived the shooting, he never regained consciousness, and he died two days later.

"The police determined that the Impala was registered to Morrie Surles ('Morrie'). Morrie testified that she had purchased the Impala for her daughter, Tiffany Surles ('Surles').

"At around 9:30 on the morning of the shooting, Woodward visited a family friend, Shirley Porterfield. According to Porterfield, Woodward was driving a light-colored Impala, and he was wearing blue jeans, a white t-shirt, and a red fleece jacket. At approximately the same time the shooting occurred, Sharon Shephard, a Montgomery Animal Control officer driving in the area, saw an Impala being driven by a dark-skinned male pass by her at a high rate of speed.

"During the evening on the date the shooting occurred, Surles's Impala was found burned in a Montgomery neighborhood. Thalessa Shipman testified that she was a captain of the "Neighborhood Watch" for her street. She said that she heard a loud car driving around the neighborhood on the night of September 28, 2006. The car stopped at her driveway in the cul-de-sac, then backed up to an empty lot located next to her lot. She identified the car as a dark-colored Dodge Neon. Shipman looked over the fence into the empty lot and saw a light-colored car there, and someone standing beside that car. Seconds later, the light-colored car went up in flames, and the person who had been standing next to the burning car jumped into the Neon, and the Neon sped away. Shipman contacted law-enforcement authorities, and they later identified the Impala as being registered to Morrie Surles based on the vehicle-identification number. Additional evidence established that a friend of Woodward's, Joseph Pringle, owned a black Dodge Neon that had a loose muffler and was loud. The State played a video recording of Pringle's Neon for Shipman, and she identified the sound of the car as the one she had heard on the night the car was burned in her neighborhood. A detective involved in the murder investigation received information about a black Dodge Neon, and on the day of the murder he and his partner located the car. Joseph Pringle was in the driver's seat, and another man was in the passenger seat; the trunk of the vehicle was open. A third man was standing next to the car, speaking to Pringle; that man was holding a gas can.

"Tiffany Surles, Woodward's girlfriend at the time of the shooting, testified that in September 2006 she was living with Woodward in an apartment they had rented together. During the evening of September 27, 2006, Surles and Woodward argued, and Woodward left the apartment in her Impala, and he returned later that night. Surles testified that the following morning, on the day Officer Houts was shot, she was taking a shower when Woodward left the apartment again.

Woodward had the keys to her Impala the night before, and the Impala was gone. Surles had decided the night before that she was going to move out of the apartment. After Woodward left the apartment on the morning of the shooting Surles telephoned a friend, Wendy Walker, and asked her to help Surles move out of the apartment. Walker and Surles moved Surles's personal belongings to Walker's apartment, and the two women decided to drive to Birmingham to go shopping. Woodward telephoned Surles before she and Walker left for Birmingham, and he wanted Surles to meet him. Surles testified that Woodward met them at Walker's apartment complex and that he got out of a small, dark car. Walker testified that the car Woodward got out of was a black Neon. Neither woman saw Surles's Impala.

"Woodward joined Surles and Walker in Walker's vehicle, and they drove to Birmingham. Surles and Walker testified that during the trip to Birmingham Woodward said that he had 'messed up' and that he had shot a police officer who pulled him over. Walker testified that Woodward spoke on his cellular telephone during the trip and that she had heard him tell someone to 'get rid his girl['s] car.' (R. 963.) Surles stated that Woodward told her that he had taken care of her car. Surles said she did not get her car back. Walker and Surles testified that Woodward threw something out of Walker's vehicle while they were en route to Birmingham. Walker testified that the object Woodward threw was a gun.

"Walker and Surles testified that in Birmingham they went to the Century Plaza shopping mall. Woodward bought a change of clothing and then asked the women to drop him off at a building near the Valleydale exit of the interstate. Vernon Cunningham testified that he is acquainted with Woodward, and that Woodward telephoned him on September 28, 2006, and wanted to meet with him. Cunningham arranged to meet with Woodward and said two girls dropped Woodward off at the arranged meeting place on Valleydale

Road in Birmingham later that day. Cunningham drove Woodward to Cunningham's house. On the way to Cunningham's house, they stopped at a grocery store; a videotape from the store's security camera showed that Woodward was wearing blue-jean shorts, a red sweatshirt, and a red baseball cap with a white emblem on the front. After they arrived at Cunningham's house, Woodward gave Cunningham the sweatshirt and red baseball cap he had been wearing, and he told Cunningham to burn them. Cunningham testified that he burned the items in his outdoor grill, and the police found remnants of clothing in that grill. Cunningham also testified that Woodward told him that he had shot a police officer during a traffic stop.

"Cunningham testified that Woodward asked for a ride and Cunningham agreed to take him to a local restaurant. Roderick Jeter picked Woodward up at the restaurant and drove Woodward to Atlanta, where he dropped Woodward off at a gas station.

"Montgomery police detectives interviewed numerous witnesses, and, from the information they received, they determined that Woodward had confessed to shooting Officer Houts and that he was then in Atlanta.

"Deputy United States Marshal Joe Parker testified that a be-on-the-lookout, or 'BOLO,' had been issued for Woodward in the Atlanta area and that on the day after the shooting he recognized Woodward while he was at a gas station in Atlanta. Parker arrested Woodward. He further testified that, at the time of the arrest, Woodward spontaneously exclaimed, 'What's going on? I didn't shoot anybody.' (R. 1114.)

"Records custodians for two cellular telephone companies testified about calls placed from Woodward's cellular telephones and as to which towers in Montgomery

> and Birmingham that the calls were routed through. That testimony established that Woodward was in the area where Officer Houts was shot at the same time the shooting took place.
>
> "Finally, Agent Al Mattox from the Alabama Bureau of Investigation testified that he had reviewed and attempted to enhance the videotape from Officer Houts's dashboard camera. He testified that it appeared from the videotape that the person who killed Officer Houts was a black male."

Woodward v. State, 123 So. 3d 989, 999–1001 (Ala. Crim. App. 2011).

Standard of Review

Woodward appeals the circuit court's summary dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P. According to Rule 32.3, Ala. R. Crim. P., "[t]he petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle [him] to relief." Rule 32.6(b), Ala. R. Crim. P., establishes the pleading requirements for postconviction petitions as follows:

> "The petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings."

This Court has stated the following concerning the scope of Rule 32.6(b), Ala. R. Crim. P.:

> "'Rule 32.6(b) requires that the petition itself disclose the facts relied upon in seeking relief.' Boyd v. State, 746 So. 2d 364, 406 (Ala. Crim. App. 1999). In other words, it is not the pleading of a conclusion 'which, if true, entitle[s] the petitioner to relief.' Lancaster v. State, 638 So. 2d 1370, 1373 (Ala. Crim. App. 1993). It is the allegation of facts in pleading which, if true, entitle a petitioner to relief. After facts are pleaded, which, if true, entitle the petitioner to relief, the petitioner is then entitled to an opportunity, as provided in Rule 32.9, Ala. R. Crim. P., to present evidence proving those alleged facts."

Boyd v. State, 913 So. 2d 1113, 1125 (Ala. Crim. App. 2003) (emphasis in original).

> "The burden of pleading under Rule 32.3 and Rule 32.6(b) is a heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The full factual basis for the claim must be included in the petition itself. If, assuming every factual allegation in a Rule 32 petition to be true, a court cannot determine whether the petitioner is entitled to relief, the petitioner has not satisfied the burden of pleading under Rule 32.3 and Rule 32.6(b)."

Hyde v. State, 950 So. 2d 344, 356 (Ala. Crim. App. 2006) (emphasis in original).

Moreover,

> "[a]n evidentiary hearing on a coram nobis petition [now a Rule 32 petition] is required only if the petition is 'meritorious

> on its face.' Ex parte Boatwright, 471 So. 2d 1257 (Ala. 1985). A petition is 'meritorious on its face' only if it contains a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the facts relied upon (as opposed to a general statement concerning the nature and effect of those facts) sufficient to show that the petitioner is entitled to relief if those facts are true. Ex parte Boatwright, supra; Ex parte Clisby, 501 So. 2d 483 (Ala. 1986)."

Moore v. State, 502 So. 2d 819, 820 (Ala. 1986). "The sufficiency of pleadings in a Rule 32 petition is a question of law. 'The standard of review for pure questions of law in criminal cases is de novo. Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003).'" Ex parte Beckworth, 190 So. 3d 571, 573 (Ala. 2013) (quoting Ex parte Lamb, 113 So. 3d 686, 689 (Ala. 2011)). See also Ex parte Hinton, 172 So. 3d 348, 353 (Ala. 2012). With these principles in mind, this Court will address Woodward's claims.

I.

Woodward first argues that the circuit court erred by summarily dismissing his newly-discovered-evidence claim. Specifically, Woodward asserts that his newly-discovered-evidence claim satisfies all five requirements of Rule 32.1(e), Ala. R. Crim. P., and is, therefore, not subject to preclusion. In support of this argument, Woodward seeks postconviction relief based on what he characterizes as newly discovered

evidence: an application for an order authorizing the installation of a pen register or trap and trace device and a supporting affidavit, both of which are dated the same day as the shooting.

Initially, this Court holds that Woodward's claim is barred by Rule 32.2(c), Ala. R. Crim. P. Under the facts of this case, the alternate limitations period in Rule 32.2(c) required Woodward to file his petition "within six (6) months after the discovery of the newly discovered material facts." This Court's review of the record indicates he failed to do so.

On January 26, 2023, Woodward received a redacted copy of the application and supporting affidavit from the USMS. Woodward subsequently requested that any references to himself be disclosed, and, on March 17, 2023, he received a copy of the documents with references to himself unredacted. Woodward then "requested that the USMS confirm that Mr. Woodward's name was entirely unredacted from the March 17, 2023, reproduction." (C. 160.) On May 26, 2023, the USMS replied that Woodward's name had been fully unredacted in the March 17, 2023, response. In other words, Woodward received on March 17, 2023, the version of the alleged newly discovered evidence on which his

claims rely. Woodward then filed his postconviction petition on October 18, 2023, more than six months after receiving this evidence.

Woodward asserts that May 26, 2023, the date on which he received confirmation from the USMS that his name had been redacted, should be considered the date of the discovery of the newly discovered material facts, and that, to hold otherwise would force petitioners to "rush to court with incomplete and ambiguous information to ensure they are not time barred." (Woodward's reply brief, at 16 n.1.) However, nothing in Rule 32.2(c) required Woodward to file his petition immediately or to otherwise "rush" upon learning of the information contained in the application and supporting affidavit from the USMS. Rather, Rule 32.2(c) required Woodward to file his petition "within six (6) months after the discovery of the newly discovered material facts."[3] This he failed to do.

The response of the USMS Woodward received on May 26, 2023, contained no new information. Woodward learned of what he alleges are

[3] Allowing a petitioner to restart the time for filing a petition by "confirming" evidence already known would allow a petitioner to extend the time indefinitely. This would defeat the purpose of Rule 32.2(c), Ala. R. Crim. P.

newly discovered material facts on March 17, 2023. Because he filed his petition on October 18, 2023, more than six months after receiving this evidence, his petition was untimely. See Rule 32.2(c). Consequently, the circuit court did not err in dismissing this claim.

Moreover, even if Woodward had timely raised this claim, he still would not be entitled to relief because it fails to meet the requirements of Rule 32.1(e), Ala. R. Crim. P.

> "Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief on the ground that ... [n]ewly discovered material facts exist which require that the conviction or sentence be vacated by the court."

Rule 32.1(e), Ala. R. Crim. P. Newly discovered evidence is defined as evidence in which:

> "(1) The facts relied upon were not known by the petitioner or the petitioner's counsel at the time of trial or sentencing or in time to file a posttrial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence;
>
> "(2) The facts are not merely cumulative to other facts that were known;
>
> "(3) The facts do not merely amount to impeachment evidence;

> "(4) If the facts had been known at the time of trial or of sentencing, the result probably would have been different; and
>
> "(5) The facts establish that the petitioner is innocent of the crime for which the petitioner was convicted or should not have received the sentence that the petitioner received."

Rule 32.1(e), Ala. R. Crim. P. Before an allegation can be considered a claim based on newly discovered evidence, it must meet all five requirements of Rule 32.1(e), Ala. R. Crim. P. See Tarver v. State, 769 So. 2d 338, 340 41 (Ala. Crim. App. 2000) ("We have repeatedly stated that before a claim may be considered as newly discovered evidence the claim must meet the definition of newly discovered evidence found in Rule 32.1(e).").

> "The requirements in Rules 32.1(e)(1), (e)(2), and (e)(3) are self-explanatory. Rule 32.1(e)(5) requires not that the newly discovered facts actually establish a petitioner's innocence but that the newly discovered facts 'go to the issue of the defendant's actual innocence,' i.e., are relevant to the issue of guilt or innocence, 'as opposed to a procedural violation not directly bearing on guilt or innocence.' Ex parte Ward, 89 So. 3d 720, 727 (Ala. 2011). As for the requirement in Rule 32.1(e)(4) 'that the result probably would have been different had the newly discovered evidence been presented to the jury, this calculation must be made based on the probative value of the newly discovered evidence and its relationship to the other evidence presented to the jury.' Id. at 728."

Lloyd v. State, 144 So. 3d 510, 516 (Ala. Crim. App. 2013).

In this case, Woodward failed to plead the elements of newly discovered evidence sufficiently. In particular, Woodward failed to plead any facts in his amended petition explaining whether the result of his trial would have been different had the alleged newly discovered evidence been known at the time of trial as required by Rule 32.1(e)(4), Ala. R. Crim. P., especially considering the other evidence of guilt presented at trial.[4] Woodward also failed to plead any facts establishing how this alleged newly discovered evidence is relevant to the issue of his guilt or innocence, as required by Rule 32.1(e)(5), Ala. R. Crim. P. The only facts Woodward pleaded in his amended petition relating to the fourth and fifth prongs of Rule 32.1(e), Ala. R. Crim. P., are as follows:

> "(4) The newly-discovered evidence seriously undermines the presentation of law enforcement's investigation of the shooting of Officer Houts, contradicts evidence presented by the State at trial, and would have seriously altered Mr. Woodward's defense strategy at trial, such that a different outcome at trial is reasonably probable; and
>
> "(5) The newly-discovered evidence further bolsters Mr.

[4] Throughout his petitions and his briefs to this Court, Woodward repeatedly refers to the State's evidence as "circumstantial." His confessions, however -- of which he made at least three -- constitute direct evidence of his guilt.

> Woodward's repeated argument that he is innocent of this crime, that someone else committed the crime, and shows that Mr. Woodward should not have been convicted of this crime or received the death penalty, as detailed in Mr. Woodward's Initial Rule 32 petition."

(C. 163.) However, these "bare and conclusory" allegations are insufficient to support a claim of newly discovered evidence. Moody v. State, 95 So. 3d 827, 857 (Ala. Crim. App. 2011). Because Woodward failed to plead his newly-discovered-evidence claim sufficiently, the circuit court did not err in dismissing his claim. See Rule 32.7(d), Ala. R. Crim. P.

Yet, even if Woodward had sufficiently pleaded his claims, the alleged newly discovered evidence still fails to satisfy the requirements of Rule 32.1(e), Ala. R. Crim. P. For example, the application for an order authorizing the installation of a pen register or trap and trace device and the supporting affidavit contain hearsay statements and would not be admissible to prove the truth of the matter asserted -- that is, that law-enforcement officers suspected that another individual may have committed the offense in the hours following the shooting. See Townley v. State, 501 So. 2d 508, 509 (Ala. Crim. App. 1986) ("The courts of Alabama have consistently held that the admission of hearsay

information contained in the affidavit in support of a search warrant constitutes reversible error."). At best, the documents could be admitted for the limited purpose of impeachment, which Rule 32.1(e)(3), Ala. R. Crim. P., explicitly excludes from the definition of newly discovered evidence. "'The trial court will not, of course, be put in error for refusing a new trial because of newly discovered evidence when such evidence would not be admissible upon a retrial of the cause.'" Wynn v. State, 246 So. 3d 163, 185 (Ala. Crim. App. 2016) (quoting Houston v. State, 208 Ala. 660, 663, 95 So. 145, 147 (1923)).

Additionally, Woodward's claim fails to satisfy the requirement in Rule 32.1(e)(5), Ala. R. Crim. P., that the purported newly discovered evidence "establish[es] that [he] is innocent of the crime for which [he] was convicted." At trial, "[t]he crux of the State's case was the overwhelming circumstantial evidence tying Woodward to the murder, Woodward's actions after the crime, such as his flight to Georgia and the statement he made when he was arrested, and Woodward's confessions to three witnesses that he had shot a police officer." Woodward v. State, 276 So. 3d 713, 764 (Ala. Crim. App. 2018). The fact that another individual may have been under investigation in the hours following the

shooting is not "relevant to the issue of [Woodward's] guilt or innocence" considering the substantial evidence presented at trial. Lloyd, 144 So. 3d at 516.

Consequently, the circuit court correctly found that Woodward's newly-discovered-evidence claim failed to satisfy the requirements of Rule 32.1(e), Ala. R. Crim. P., and, therefore, was subject to preclusion. Lloyd v. State, 144 So. 3d 510, 516 (Ala. Crim. App. 2013) ("[I]f all the requirements in Rule 32.1(e) are not satisfied, a claim of newly discovered material facts is subject to the preclusions in Rule 32.2."). Specifically, Woodward's claim is barred by Rule 32.2(b), Ala. R. Crim. P., because it was raised in a successive petition.

Woodward's claim of newly discovered evidence is procedurally barred, insufficiently pleaded, and without merit. Therefore, this issue does not entitle Woodward to any relief. See Rule 32.7(d), Ala. R. Crim. P.

II.

Woodward next argues that the circuit court erred in dismissing his claim that the State violated Brady v. Maryland, 373 U.S. 83 (1963), by

failing to disclose the application for an order authorizing the installation of a pen register or trap and trace device and the supporting affidavit.

> "The United States Supreme Court in Brady held that 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution.' 373 U.S. at 87. 'To establish a Brady violation, [the petitioner] must demonstrate: (1) that the prosecution suppressed evidence; (2) that that evidence was favorable to [the defendant] or exculpatory; and (3) that the evidence was material.' Ex parte Kennedy, 472 So. 2d 1106, 1110 (Ala. 1985)."

Ray v. State, 80 So. 3d 965, 973 (Ala. Crim. App. 2011).

Again, Woodward asserts that the application and supporting affidavit contain information that the USMS initially suspected another person was driving the vehicle at the time of the shooting. Woodward pleaded in his amended petition that his Brady claim is based on newly discovered evidence but also pleaded that the State's failure to disclose the application and affidavit "violated Mr. Woodward's due process rights under the Fourth Amendment to the United States Constitution and Sections 6 and 13 of the Alabama Constitution," thereby entitling Woodward to a new trial. (C. 166.)

"A Brady claim may be raised in a postconviction petition as either a claim of newly discovered evidence under Rule 32.1(e), Ala. R. Crim. P., or a constitutional claim under Rule 32.1(a), Ala. R. Crim. P." Stallworth v. State, 171 So. 3d 53, 75 (Ala. Crim. App. 2013). Whether raised pursuant to Rule 32.1(a) or 32.1(e), Ala. R. Crim. P., "[a] Brady claim is subject to the procedural default grounds contained in Rule 32.2, Ala. R. Crim. P." Barbour v. State, 903 So. 2d 858, 868 (Ala. Crim. App. 2004). In cases where the appellant filed a direct appeal, as Woodward did in this case, Rule 32.2(c), Ala. R. Crim. P., requires claims raised pursuant to Rule 32.1(a), Ala. R. Crim. P., to be raised "within one (1) year after the issuance of the certificate of judgment by the Court of Criminal Appeals." See Bryant v. State, 181 So. 3d 1087, 1133-34 (Ala. Crim. App. 2011) (opinion on return to second remand) (holding that a Brady claim raised under Rule 32.1(a), Ala. R. Crim. P., may be subject to preclusion); Wood v. State, 891 So. 2d 398, 420 (Ala. Crim. App. 2003) (holding that the State's failure to comply with its discovery obligations under Brady was a nonjurisdictional claim). Thus, to the extent that Woodward raises a constitutional Brady claim pursuant to Rule 32.1(a), Ala. R. Crim. P., his claim is procedurally barred under Rule 32.2(c), Ala. R. Crim. P.,

because his petition was filed well after the one-year time limitation had expired. To the extent that Woodward raises a Brady claim based on newly discovered evidence pursuant to Rule 32.1(e), Ala. R. Crim. P., his claim is still procedurally barred by Rule 32.2(c) because, as explained above, Woodward failed to raise his claim in a petition filed within six months of his discovering of the evidence.

Moreover, Woodward's Brady claim is insufficiently pleaded. For instance, Woodward failed to plead sufficient facts to demonstrate that the evidence was material. "[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." Johnson v. State, 612 So. 2d 1288, 1293 (Ala. Crim. App. 1992). Woodward pleaded that the evidence "would have altered trial counsel's investigation and development of a defense at the guilt phase of the trial" (C. 171), yet failed to explain what that investigation would have revealed, what the new defense would have presented, or how that undefined defense would have countered the State's significant evidence of guilt.

Additionally, a postconviction Brady claim raised in a Rule 32 petition must meet all five prerequisites of 'newly discovered evidence' in Rule 32.1(e), Ala. R. Crim. P." McWhorter v. State, 142 So. 3d 1195, 1259 (Ala. Crim. App. 2011) (citing Payne v. State, 791 So. 2d 383, 398 (Ala. Crim. App. 1999)). As discussed above, Woodward did not plead sufficient facts to establish that the application and supporting affidavit constitute newly discovered evidence; Woodward's Brady claim shares the failings of his claim of newly discovered evidence.

Woodward's Brady claim is procedurally barred and insufficiently pleaded. Therefore, this issue does not entitle Woodward to any relief. See Rule 32.7(d), Ala. R. Crim. P.

III.

Woodward finally argues that the circuit court's order summarily dismissing his petition is insufficient. Specifically, Woodward claims that the circuit court erred in dismissing his petition without making specific findings of fact regarding the merits of each of his claims.

"Rule 32.7(d), A. R. Crim. P., permits the trial court to dismiss the petition 'if the court determines that the petition is not sufficiently

specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings.'" Patty v. State, 652 So. 2d 337, 338-39 (Ala. Crim. App. 1994). "'Rule 32.7 does not require the trial court to make specific findings of fact upon a summary dismissal.'" Woodward v. State, 276 So. 3d 713, 737 (Ala. Crim. App. 2018 (quoting Fincher v. State, 724 So. 2d 87, 89 (Ala. Crim. App. 1998)). "Contrary to [the appellant's] argument, '"Rule 32.9(d), Ala. R. Crim. P., requires the circuit court to make specific findings of fact only after an evidentiary hearing or the receipt of affidavits in lieu of a hearing.'" Daniel v. State, 86 So. 3d 405, 412 (Ala. Crim. App. 2011), quoting Chambers v. State, 884 So. 2d 15, 19 (Ala. Crim. App. 2003).

In this case, the circuit court summarily dismissed Woodward's amended petition on the grounds that it was time-barred pursuant to Rule 32.2(c), Ala. R. Crim. P., and insufficiently pleaded. The circuit court did not hold an evidentiary hearing or otherwise accept evidence. See Harris v. State, 365 So. 3d 1075, 1094 (Ala. Crim. App. 2021) (holding that when summarily dismissing a claim on the grounds that it is insufficiently pleaded, the circuit court is not required to "express

findings as to [the claim's] purported deficiency"); Fowler v. State, 890 So. 2d 1101, 1103 (Ala. Crim. App. 2004) ("Findings are not required if the petition is dismissed."). Therefore, Woodward's argument that the circuit court erroneously dismissed his petition without making specific findings of fact is without merit.

"[W]here a simple reading of the petition for post-conviction relief shows that, assuming every allegation of the petition to be true, it is obviously without merit or is precluded, the circuit court [may] summarily dismiss that petition." Shaw v. State, 148 So. 3d 745, 765 (Ala. Crim. App. 2013) (internal citations and quotation marks omitted). Because Woodward's claims are meritless or insufficiently pleaded pursuant to Rules 32.3 and 32.6(b), Ala. R. Crim. P., summary disposition of Woodward's Rule 32 petition was appropriate.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

Cole and Minor, JJ., concur. Kellum, J., concurs in the result. Anderson, J., recuses himself.