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

Case No. F86-030610
Judge Thomas

**STATE OF FLORIDA v.**

**KRISHNA MAHARAJ**, Defendant.
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**RESPONSE TO DEFENDANT'S SUPPLEMENTAL MEMORANDUM OF LAW CONCERNING TIMELINESS OF POSTCONVICTION CLAIMS OF NEWLY DISCOVERED EVIDENCE, AND DEFENDANT'S SUPPLEMENT TO AND FURTHER SUPPORT FOR RULE 3.850 MOTION FOR POST-CONVICITON RELIEF APPENDING RELEVANT EVIDENTIARY PROFFER, AND INCLUDING RESPONSES TO DUE DILIGENCE GRID, AND GRID OUTLINING PROCEDURAL ISSUES PRESENTED IN CASE.**

THE STATE OF FLORIDA, by and through the undersigned counsel, files this Response to defendant's Supplemental Memorandum of Law Concerning Timeliness of Postconviction Claims of Newly Discovered Evidence, and defendant's Supplement to and Further Support for Rule 3.850 Motion for Post-Conviciton Relief Appending Relevant Evidentiary Proffer, and including responses to Due Diligence Grid, and Grid Outlining Procedural Issues Presented in Case, all of which have been filed by the defendant in support of his Motion for Postconviction Relief and to Vacate Judgment and Sentence Pursuant to Fla.R.Crim.P. 3.850 (Amending and Supplementing Previous Filing of December 20, 2012),[1] and state as grounds therefore the following:

[1] At the last hearing before this Court on September 24, 2013, the defense asked for additional time to file more affidavits. This Court gave the defense until October 11, 2013. Despite or ignoring that court order, the defendant provided no additional

**FACTS**

First, the State is readopting its prior responses, except as specifically noted. It will not repeat all of the previous arguments set forth, but will reiterate some of them as necessary. The facts of the trial have been previously set forth as they were found in the Florida Supreme Court's opinion in *Maharaj v. State*, 597 So. 2d 786, 787-790 (Fla. 1990). However, the State will be supplementing those facts as set forth below and elsewhere in this response.

Second, an important witness who testified at trial and who is not mentioned in the Florida Supreme Court's opinion is Clifton Segree. Segree testified that he was visiting Tino Geddes during October of 1986. He stated that on October 16th, he was with Geddes all day. He testified that they first went to see The Times being printed, then they went to a lounge and the to The Times' offices. He did not see the defendant anytime

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affidavits to the State until a meeting with the defense on November 25, 2013, when the State was provided with copies of the Affidavits which have been filed by the defendant in a redacted form in their Exhibits J, W and X. There are documents, Exhibits A, B, C, D, H, P, Q, T, U, V, Y, and Z, as well as the affidavit in Exhibit S, which were not provided to the State and as such, the State requests that this Court strike those documents. Furthermore, this Supplemental Motion which contains additional facts is NOT SWORN to by the defendant in violation of Fla.R.Crim.P. 3.850(e) & (n). As such, this Court is not required to consider these new factual allegations.

during the day. (R. 3676-3680).[2] While at the newspaper's offices, Segree heard Geddes receive a call from the defendant, and as a result, he, Geddes and the defendant's wife went to Miami International Airport. (R. 3684). At the airport, they met the defendant. (R. 3684). Thereafter, they all went to Denny's and at that time the defendant told Geddes and Segree that they were going to be his alibi. When Neville Butler arrived, they left the defendant alone. (R. 3690-3691). Segree stated that he refused to go along with the alibi. (R. 3693-3698).

Third, the defendant has started his most recent Supplement with the statement that "Various people- who have no motive to assist [the defendant], no motive to lie on his behalf, and every reason to know the truth - have stated unequivocally and in detail that he is innocent." The State will show in this response that NONE OF THOSE PERSONS, MANY OF WHO ARE UNIDENTIFIED, HAVE ANY FIRST HAND KNOWLEDGE, provide no admissible testimony or evidence, and only attempt to further the nonsensical and wholly speculative theories of the defense. As will be clear from this response, the defendant's allegations are really nothing more than an example of the well-known theory of "Six Degrees of Separation." The theory is that everyone and

[2] "R" denotes a page on the record on direct appeal from the defendant's initial conviction. The record contains the transcript of the trial proceedings.

everything is six or fewer steps away, by way of introduction, from any other person in the world, so that a chain of "friend of a friend" statements can be made to connect any two people in a maximum of six steps.[3] It will be clear to this Court that none of the defendant's pleadings with their exhibits provide sufficient allegations that would require this Court to grant an evidentiary hearing on the defendant's successive postconviction motion. This Court must finally end this litigation and summarily deny the defendant's motion with prejudice.

**PRIOR POSTCONVICTION MOTION**

The defendant filed a lenghty amended motion for postconviction relief on May 15, 1997. Issues arose as to which state agency was responsible for funding the defendant's costs for the postconviction proceedings. The postconviction court offered to stay the postconviction proceedings until the funding issue could be resolved. However, the defendant insisted upon going forward with the evidentiary hearing. *Maharaj v. State*, 778 So. 2d 944, 952-953 (Fla. 2000). Thus, on September 8, 1997, the matter proceeded to a multiday evidentiary hearing. The facts that were adduced at the prior motion for postconviction relief are set forth in the Florida Supreme Court's opinion in *Maharaj v. State*, 778 So. 2d 944, 953-959 (Fla. 2000). After

[3] It was originally set out by Hungarian author Frigyes Karinty in 1929 and popularized by a play a written by American playwright John Guare in 1990.

hearing the evidence and argument of counsel and considering post hearing memoranda, the lower court denied the motion as it related to the defendant's convictions in a detailed 25 page order. See Exhibit 12 attached to the State's initial Appendix.

**THE PRESENT AMENDED MOTION AND ITS TWO SUPPLEMENTS AND GRIDS**

The present Amended Motion and it two Supplements and Grids are governed by Fla.R.Crim.P. 3.850, as amended effective, *nunc pro tunc* to July 1, 2013. *See In re: Amendments to the Florida Rules of Criminal Procedure*, 38 Fla.L.Weekly S884 (Fla. Dec. 5, 2013). In that the defendant's present Amended Motion and his two Supplements were filed after that date because his initial Motion was clearly legally deficient and subject to dismissal without prejudice, the new rules apply. The State submits that the defendant's present Amended Motion and its Supplements and Grids do not present a legally sufficient postconviction motion and as such should now be summarily denied with prejudice.

Fla.R.Crim.P. 3.850(h) provides that:

> A second or successive motion is an extraordinary pleading. Accordingly, a court may dismiss a second or successive motion if the court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the defendant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure or there was no good cause for the failure of the defendant or defendant's

> counsel to have asserted those grounds in a prior motion.

The State submits that this successive motion fails to allege new or different grounds for relief and is either conclusively resolved as a matter of law or by reliance upon the records of this case or is otherwise legally insufficient as pled despite this Court providing the defendant with an opportunity to amend his motion on two occasions. As such, this Court is permitted to deny the motion with prejudice. Fla.R.Crim.P. 3.850(f)(2) & (5).

**ARGUMENT**

**LAW CONCERNING TIMELINESS OF POST CONVICTION CLAIMS OF NEWLY DISCOVERED EVIDENCE**

In order for this Court to put into perspective the defendant's varied claims of newly discovered evidence, this Court must apply the law as set forth in Fla.R.Crim.P. 3.850, as interpreted by the Florida Supreme Court and not as the defendant has misinterpreted or wished it was. As previously set forth by the State in its prior responses to the motion for postconviction relief and its amendment, pursuant to Fla.R.Crim.P. 3.850(b), a motion for postconviction relief must be filed within two years of the finality of a defendant's conviction and sentence. In order to have claims considered in a motion, such as these, that were filed beyond that time period, the defendant must allege and prove:

> (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 herein and has been held to apply retroactively.

Claims are procedurally barred as successive when the claim was previously raised or could have been raised in any of the prior postconviction motions. Fla.R.Crim.P. 3.850(h).

To avoid the procedural bar that would inevitably come with this untimely successive motion, the defendant alleges that the Motion is based on newly discovered evidence. Even alleged *Brady*[4] or *Giglio*[5] claims have to be based on timely claims of newly discovered evidence. *See, e.g., Zeigler v. State*, 632 So. 2d 48 (Fla. 1993); *Agan v. State*, 560 So. 2d 222 (Fla. 1990); *Rogers v. State*, 932 So. 2d 620 (Fla. 5th DCA 2006). However, to circumvent that procedural bar, the Motion has to at least allege under Fla.R.Crim.P. 3.850(b)(1) that "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, and the claim is made within 2 years of the time the new facts were or could have been discovered with the exercise of due diligence." Further, because the Motion is also a successive motion, the defendant must also show that the facts on which he

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[4] *Brady v. Maryland*, 373 U.S. 83 (1972).
[5] *Giglio v. United States*, 405 U.S. 150 (1972).

bases his claims were not available during the earlier post conviction proceedings. *Johnson v. Singletary*, 695 So. 2d 263, 265 (Fla. 1996).

During previous argument before this Court, the defendant asserted that because he alleged that he was actually innocent, the time limits in the rule did not apply to him. This Court asked defense counsel to provide authority for that proposition. The defendant cited three cases in his Supplemental Memorandum of Law Concerning Timeliness of Postconviction Claims of Newly Discovered Evidence. However, none of those cases remotely support the defendant's assertions regarding claims of actual innocence.

Each of the cases cited by the defendant all support the time period requirements set forth by the rule. In *Perez v. State*, 118 So. 3d 298 (Fla. 3d DCA 2013) and *Wiles v. State*, 114 So. 3d 952 (Fla. 4th DCA 2013), the post-conviction motions alleging newly discovered evidence were considered to be timely because at the very least they contained allegations that the alleged newly recanted testimony was evidence discovered within two years of the filing of the motion. In *Burns v. State*, 110 So. 3d 96 (Fla. 2d DCA 2013), the Court held that the trial court should have given the defendant an opportunity to amend his motion within a reasonable amount of time with allegations that identified when or how the defendant discovered the evidence and why it could not

have been discovered sooner. This Court has given the defendant more than a reasonable amount of time to amend his motion to set forth sufficient allegations as required by the rule.

In fact, it is clear that even claims of actual innocence must be timely raised in state postconviction motions. In *Peterka v. State*, 15 So. 3d 581, 2009 WL 1464454 (Fla. 2009), in an unreported opinion, the Florida Supreme Court held that *Schlup v. Delo*, 513 U.S. 298 (1995) which recognized an "actual innocence" exception to procedural bars in federal habeas corpus petitions, did not apply to state court proceedings. *See also Reed v. State*, 116 So. 3d 260, 264 (Fla. 2013); *Owen v. Crosby*, 854 So. 2d 182, 187-188 (Fla. 2003). Thus, the law in Florida does not support the defendant's position that an "actual innocence" claim is not subject to the postconviction time limits.

The State recognizes that if the defendant presents a sufficient and timely claim of newly discovered evidence, then and only then, may the Court in assessing the impact of the newly discovered evidence, conduct a cumulative analysis of all the admissible evidence, and consider admissible evidence that was previously presented in another proceeding, to determine if there is a probability of an acquittal. *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999). *See also Jones v. State*, 709 So. 2d 512, 522 fn. 7 (Fla. 1998). However, if the newly discovered evidence is not admissible at a trial, then it cannot support the granting

of a motion to vacate. *See Williamson v. State, 961 So. 2d at 234; Kokal v. State*, 901 So. 2d 766, 775 (Fla. 2005); *Schofield v. State*, 67 So. 3d 1066, 1069 (Fla. 4th DCA 2011); *State v. Nussdorf*, 575 So. 2d 1320 (Fla. 4th DCA 1991).

It is the State's position that the defendant has again failed to sufficiently allege in his motion that the State has violated *Brady* or *Giglio*. The defendant has failed to present claims of newly discovered admissible evidence. The State submits that like the allegations in the defendant's Motion for Postconviction Relief and its amendment which were previously filed, as well as in the most recent supplemental motion, are legally insufficient. Furthermore, the allegations contained in the Declaration of Prince Ellis, the Redacted Declaration of [former Miami Police Officer] found in Exhibit W, the redacted Declaration of [Colombian] found in Exhibit J, redacted Declaration of Gary J. McDaniel, found in Exhibit X, the Declaration of Christopher Chen-Lee Change, found in Exhibit S, as well as the documents Pertaining to Jaime Vallejo Mejia, Adam Hosein, Richard Solomon, and the other documents appended to the defendant's most recent Supplement, are not newly discovered admissible "evidence," and they are also legally insufficient to require an evidentiary hearing. Thus, this Court will be

compelled to summarily deny the defendant's motion for postconviction relief along with its amendments and supplements.[6]

**GRID OUTLINING PROCEDURAL ISSUES PRESENTED IN CASE AND DUE DILIGENCE GRID**

In the postconviction motion and its amendment previously filed by the defendant, he included a virtually unreadable "grid" in which he attempted to state his claims of newly discovered evidence, the evidence which supported the claims, and his attempts to show when he discovered this newly discovered evidence. At the previous argument on this case, this Court found the "grid" to be difficult to decipher and asked defense counsel to set forth a more understandable "grid" that set forth with more particularity the claims that were being raised, whether they were previously raised, i.e., their procedural posture, and when defense counsel became aware of the facts underlying the claims and the due diligence used to uncover those facts. In response to that request, defense counsel divided up the prior "grid" into two grids, one called a Due Diligence Grid and the other a Grid Outlining Procedural Issues Presented in Case. The "grids" are again joined together as Exhibit AA to the defendant's most recent Supplement. However, when the State refers to the "grid" it is

[6] Thus, the State submits that this Court should not sign the defendant's Proposed Order Denying State's Motion to Dismiss Petitioner's Rule 3.850 Motion for Postconviction Relief which was presumptuous at the very least.

referring to the two separate "grids" attached to the previous pleading.

The State submits that the grids, no matter what form, continue to be difficult to decipher. The defendant in his latest Supplement has tried to set forth the claims in a more coherent manner. As such, the State will respond to the defendant's claims both as they appeared in the "grids" and as he as set forth in the recent Supplement. However, this Court should still find that the defendant has not sufficiently set forth what his claims are and how they are timely claims of newly discovered evidence, and then summarily deny these claims.

**1. Actual Innocence**

On page 1 of the Grid Outlining Procedural Issues Presented in this Case, the defendant seemed to set forth his first claim as actual innocence and then stated that all evidence submitted at trial and in the prior postconviction hearing had to be considered together and was never subject to a procedural bar. First, as set forth above, these claims are subject to a procedural bar. Second, Florida does not recognize a free standing claim of actual innocence, finding that such a claim is encompassed in claims of newly discovered evidence. *Tompkins v. State*, 994 So. 2d 1072, 1089 (Fla. 2008).[7] Third, this Court must first find that there

[7] In *Tompkins* the Court stated that Florida's standard for newly discovered evidence is more liberal that the standard for

is in fact newly discovered admissible evidence presented in the present postconviction motion, and only then is this Court required to conduct a cumulative analysis with prior evidence presented at trial and credible admissible evidence established at the prior postconviction hearing. The State submits that the defendant has not proffered any such evidence.

Initially, the State submits that none of the Affidavits or Declarations which the defendant has submitted in support of his Amended Motion or Supplement can be considered by this Court as they fail to comply with Fla.R.Crim.P. 3.850(c), as amended effective, *nunc pro tunc*, July 1, 2013. Rule 3.850(c) requires:

> If the defendant is filing a newly discovered evidence claim based on recanted trial testimony or on a newly discovered witness, the defendant shall include an affidavit from that person as an attachment to his or her motion. For all other newly discovered evidence claims, the defendant shall attach an affidavit from any person whose testimony is necessary to factually support the defendant's claim for relief. If the affidavit is not attached to the motion, the defendant shall provide an explanation why the affidavit could not be obtained.

The State submits that none of the Affidavits or Declarations provided by the witnesses are legally sufficient as they fail to follow statutory requirements for affidavits and none of the

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raising an actual innocence claim in the federal courts. In comparing the two claims, the Court found that Tompkins could not satisfy either standard. *Id.* at 1089-1090.

affidavits would subject any of these witnesses to perjury charges.

The October 13, 2013 Redacted Declaration of [Colombian](Exhibit J),[8] the August 6, 2013 Declaration of Prince Ellis, refiled as Exhibit O, and the Declaration of Christopher Chen-Lee Change (Exhibit S) are legally insufficient as they do not meet the requirements for affidavits administered in a foreign country under s. 92.50, *Fla. Stat.* (2013). Exhibit J, the Colombian affidavit was allegedly signed in Colombia, Ellis' was allegedly signed in the Bahamas, and Chen-Lee Chang's was signed in London, England.

Neither indicates that they were "taken or administered" "by or before any minister, consul general, charge d'affaires, or consul of the United States resident in such country." "The jurat, or certificate of proof or acknowledgment" has not been "authenticated by the signature and official seal of the officer or person taking or administering the same." *See* s. 92.50(b). The Colombian's and Ellis' appeared to both have been signed before the defendant's private investigator, who clearly does not qualify as one of the persons who can take or administer the

[8] The State would note that there are no redactions in Exhibit J, but in light of the fact that the defendant refers to the affidavit as being redacted, and since the defendant never mentions the Colombian's name in the Supplemental Motion, this may be a mistake by defense counsel. As such, the State will also not refer to the person by name.

affidavits under the statute. Chen-Lee Change's does not indicate at all who the affidavit was signed before.

Similarly, the October 1, 2012 Declaration of the former Miami Police Officer (Exhibit W) is also deficient. This Declaration apparently was executed in Florida, but not before a notary, in fact, it apparently was not witnessed by anyone. The Declaration concludes by stating: "5. I am not going to have a witness to this declaration here in the prison as that could endanger me. However, the foregoing is a true and accurate account of what I know about this matter and does not exhaust the sum of what I know. Done under oath this 15th day of Oct., 2012." For the Declaration to be a valid affidavit it has to have been verified as required by s. 92.525, *Fla. Stat.* (2013). It can be by an oath administered by a person authorized under s. 92.50(1), *Fla. Stat.* (2013) or it can be by a written declaration that meets the requirements under s. 92.525(2), *Fla. Stat.* (2013). The declaration requires the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and the facts stated in it are true." Although, the Declaration in Exhibit W states that the following was true and accurate, nowhere in the Declaration does the former Miami Police Officer declare that under "penalties of perjury." Thus, it is legally insufficient.

None of these affidavits or declarations or the defendant's Amended Motion or Supplement contains any sufficient explanation why the required legally sufficient affidavits could not be obtained. A legally insufficient affidavit or declaration cannot support the allegations in the defendant's motion and do not require this Court to grant an evidentiary hearing based on them. *See Hamilton v. Alexander Proudfoot Company*, 576 So. 2d 1339 (Fla. 4th DCA 1991); *Green v. State*, 941 So. 2d 1250 (Fla. 5th DCA 2006). The defendant first filed his successive motion over a year ago. He is not *pro se*, but represented by experienced counsel. Counsel has or should have been aware since April 18, 2013, when the Florida Supreme Court's initial opinion was rendered, that the amendments to Fla.R.Crim.P. 3.850 would require affidavits of these witnesses. The statutory rules for affidavits are not new. There is no reason why the defendant's motion and its amendments with its attachments and filings could not have been properly prepared so that they would be legally sufficient as required by the law. This Court should now deny the defendant's amended motion with prejudice.

**CLAIMS**

**I. THE MOO YOUNGS WERE LAUNDERING MONEY FOR THE COLOMBIAN CARTELS. THIS IS WHAT PRECIPIATED THEIR MURDERS.**

The defendant again alleges that the victims were murdered because they were laundering money for the Colombian drug cartels.

He expresses disbelief that the courts have dismissed this claim as "speculation." Unfortunately, for the defendant this claim was, and remains pure speculation. The defendant has not proffered one piece of admissible evidence to prove this allegation. He sets forth statements at pp. 2-3 of his latest Supplement about what he thinks the victims had done, but provides not one iota of evidence to support those statements. "Just because" the defendant says it is, does not make it true.

The defendant now takes his rejected allegations one step further and claims at pp. 3-4 of his latest Supplement that he now has "direct" proof of the victim's involvement in narcotics. The State and the defendant apparently have a different definition of what "direct" proof is. The defendant's "direct" proof means uncorroborated hearsay from unnamed persons and more speculative conclusions which come from Gary McDaniel's, one of his private investigator, redacted affidavit, Exhibit X.

The first claim of "direct" proof are hearsay statements from the unidentified "CS 1" who allegedly told McDaniel the following:

He "recalled Escobar speaking of the facts that led to the Dupont murders." CS 1 stated that Pablo Escobar and he had a conversation that took place in either "June or July 1986." CS 1 allegedly "brought up the name Mejia and an individual known as "El Chino," who was a known killer working directly for Escobar, in the context of the murder of the Moo Youngs." CS 1 "**said**

**something to the effect of:** "Mejia was also a trafficker and money launderer who worked for (or with) the Medellin Cartel. CS 1 stated that he remembered Escobar talked about the Dupont Murders. They **could** be the same because the Cartel was pissed about the guy stealing money that was laundered in Miami for them." CS 1 "indicated that Escobar was angry that he was losing money 'faster than he could make it' and had ordered these murders." Exhibit X, at paragraphs 20, 21.

The second claim of direct proof is the claim that another cartel member confirmed that [the defendant] was not involved in the murders of the Moo Youngs." Exhibit X, at paragraph 26. However, the unredacted Declaration fails to name the person who was the alleged source of this information. The unredacted Declaration also states that the alleged cartel member did not elaborate on his involvement in the murders. Thus, the defendant's first two claims of "direct" proof are at a minimum inadmissible "double hearsay." There is nothing even remotely in McDaniel's Declaration that would be admissible as newly discovered "evidence."

The third claim of direct proof is the allegation, without one iota of real proof, that *Cargil International (Bahamas)* was the Moo Young's main money laundering front, which was registered at the office of F. Nigel Bowe, a "convicted cartel member." The fourth claim of direct proof is the allegation that the "Moo

Youngs had a history of involvement in drug dealing going back to their time in Jamaica with the Jadusingh family, their neighbors and close business associates.[9] The defendant's proof of this is that Astill Jadusingh was convicted for trafficking in marijuana by transporting the drugs from Jamaica to Virginia in 1982. (Exhibit V). He then claims that his allegation regarding the Moo Youngs is "confirmed" by a number of unnamed persons in Jamaica, and because Derrick Moo Young's son, Paul Moo Young, testified in the civil litigation regarding the victims' wills, that the victims owned a company called Kingston General Agencies. The defendant then claims that Jadusingh was employed by that company in 1983 because that was in a loan application verification by Jadusingh.[10]

Nowhere in all the documents attached by the defendant to his motion, his amendment, and his supplement, (not including the so-called affidavits and declarations) are the Moo Youngs named in any way as money launderers or drug traffickers. These claims of direct proof are based on nothing but speculation. There is

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[9] On page 4 of the Due Diligence Grid, the defendant made the untimely allegation that the Moo Youngs' had independent links to Jamaican drug dealing because Duane Moo Young was the best man at the wedding of one the Jadusinghs, who had a family member who was convicted on federal drug charges in Virginia in 1986. Needless to say, this is speculative at the very least and certainly not "admissible" evidence.

[10] These allegations are also clearly untimely as these facts were known or should have been known at the earlier postconviction hearing.

nothing in the allegations that would be admissible as newly discovered "evidence."

The defendant asserts that the Moo Youngs were skimming money off of the top of their laundering schemes in an effort to make up for their losses. He claims that he had a forensic accountant who would have testified to that in the 1997 hearing but that he was not permitted the funds for that testimony. See Supplemental Motion at p. 4 fn. 4. As stated *supra* at p. 4, this issue of payment of costs has been litigated by the defendant and decided adversely to him. It was his choice to go forward with the evidentiary hearing and not to wait for the funds to become available.

The defendant claims that a full forensic accounting of the Moo Young documents is in the process of being completed and will be presented "to underline in great detail what should be obvious to everyone at this point." Again, the State reiterates that these continual amendments and supplements MUST stop. The defendant has had over sixteen (16) years since the last hearing to have his full forensic accounting. Any more amendments or supplements will clearly be untimely and an abuse of the postconviction process. In addition the only thing that is OBVIOUS to anyone who really looks at these fantastical allegations by the defendant is that they are empty and have no substance.

## III. THESE MURDERS WERE COMMITTED BY THE COLOMBIAN DRUG CARTELS AT THE INSTIGATION OF DRUG TRAFFICKING KINGPIN AND NARCO-TERRORIST PABLO ESCOBAR.

The defendant asserts that it should never be his "task" to prove who did the crime, but that he "now in a position to do so." This statement demonstrates that the defendant continues to fail to understand that in a postconviction proceeding it is HIS BURDEN, to first present sufficient allegations to support his claims that he is entitled to an evidentiary hearing, and then to PROVE with ADMISSIBLE evidence that he is entitled to a new trial. A careful review of the defendant's pleadings will show that he has not met his burden and as such he is not entitled to an evidentiary hearing and his motions should be summarily denied with prejudice.

### A. The Murders Were Ordered By Pablo Escobar

The defendant continues with his narrative about how Pablo Escobar ordered the murders of the Moo Youngs because they had lost money that Escobar believed was his. According to his story, Escobar sent two Colombian hit men, El Chino and Cuchilla to join Jaime Vallejo Meija to assassinate the Moo Youngs and in doing so, they were joined by Neville Butler, Tino Geddes, Eddie Dames, and Adam Hosein, who were linked to drug dealers, like F. Nigel Bowe, who for unknown reasons could not just kill the Moo Youngs, they decided they had to frame the defendant. As will be shown in this

Response, this theory is fantastical and not supported by any evidence that would be admissible for purposes of a new trial.

First, the defendant has not alleged that this is newly discovered evidence in that he could not have discovered this through due diligence. Nowhere in the affidavit of the Colombian, Exhibit J, does he state that if he had been contacted earlier he would not have testified to what was in his affidavit, especially in light of the fact that he stated in his affidavit that he had testified in other legal proceedings to drug trafficking and other assassinations by the Medellin Cartel.

In fact in the October 10, 2013, Declaration of McDaniel, one of the defendant's private investigators, he stated that through leads he received information that the Colombian might be willing to discuss the Moo Young murders. (Declaration at paragraph 28).[11] He stated that the Colombian was only willing to meet with him before he was released from prison. (Declaration at paragraph 36.). McDaniel stated that he met with the Colombian on September 20, 2013, who at that time had been in prison in Colombia for almost 23 years and was getting ready to be released from prison. (Declaration at paragraphs

[11] Although this paragraph was redacted in the filed Exhibit, the State is presenting in its Response as it is necessary for the arguments. The State will not mention the Colombian by name, but it has to fully respond and will not be hamstringed by the defendant's redactions.

31, 34). Mr. McDaniel's Declaration in which he states that he joined the defense team in November of 2012, (Declaration at paragraph 4) is insufficient to demonstrate that "RA" the defense's current lead investigator in this case, who McDaniel stated did "significant parts of the investigation" (Declaration at paragraph 7) could not have discovered any of the alleged "newly discovered" evidence in a timely manner.

Furthermore, the Declaration of McDaniel, contains nothing but his speculation, theories and conclusions that are apparently based on hearsay statements made to him by the Colombian and other unnamed persons who related further hearsay about persons involved in drug trafficking. See Declaration at paragraphs 40-73. Notably there is nothing which directly indicates that the victims were connected with these other persons who had been convicted of drug or money laundering charges other than McDaniel's statements that the victims were. See Declaration at paragraphs 74, 78. In that all the so called "facts" alleged in Mr. McDaniel's Declaration apparently occurred many years ago, there is nothing in the Declaration which sets forth facts which would demonstrate that this "newly discovered" evidence could not have been discovered by the use of due diligence. This claim based on the Affidavit of the Colombian and the Declaration of McDaniel is untimely.

Even if the claim is timely, the defendant does not allege how he intends to prove any of those allegations with newly discovered admissible evidence. The allegations come from two sources - the first is what is contained in the Affidavit of the Colombian. The second is in the Declaration of McDaniel. Neither the Affidavit nor the Declaration present any "admissible evidence."

The Colombian in his affidavit stated the following:

The Colombian was a lieutenant in the Medellin Cartel in Colombia that was headed by Pablo Escobar Gavíria, who died on December 2, 1993. Escobar told him "directly" that the Moo Youngs "had stolen his money and that of his partners and that therefore 'they had to die.'" He then discussed how in the years 1981 to 1989, the Medellin Cartel used Miami and Switzerland, as well as Luxembourg and Panama to launder money. Gustavo Givíria Riveros was in charge of laundering the money of the Cartel, using front companies and Miami police officers who were paid by the Cartel.

Escobar told him that one of the banks they were using was in Panama which the Moo Youngs had said "they and their contacts had under control, and wanted to buy." As a result of the theft of that money, a friend of his, Guillermo Zulluaga, a.k.a Cuchilla, who worked as a paid assassin, coordinated the murders of the Moo Youngs. Cuchilla had coordinated the execution of

Barry Seal, an informant, in Louisiana in February of 1986. Jaime Vallejo Mejia, also played an important role in money laundering, and that the police protected Mejia when he was arrested in Oklahoma for money laundering, such that he never served any prison time.

"[W]ithin the Antioquia mafia it was said that the Moo Youngs had submitted a false letter of credit and this was the reason that their murder was ordered." Cuchilla "bought a beautiful farm" in "Antioquia with money from many assassinations, but mainly from the killings of Barry Seal and the Moo Youngs."

The State submits that there is nothing in this affidavit of the Colombian that would be newly discovered "admissible evidence" if he were to testify in a retrial in this case. Everything that the Colombian discusses in his affidavit is inadmissible hearsay. He has no firsthand knowledge of anything that he discussed concerning the allegation that Escobar hired Cuchilla to coordinate the murders of the Moo Youngs because they allegedly had stolen money from the Medellin Cartel.

Similarly, the "facts" that make up most of the basis of Mr. McDaniel's Declarations are inadmissible hearsay. McDaniel repeated some of what the Colombian told him that is in his Affidavit. (Declaration at paragraph 35). McDaniel also stated that his associate was kidnapped for three days in order to meet

with Mejia, who allegedly "confirmed" that the defendant was not involved in the murders of the Moo Youngs, and that the Moo Youngs had to be killed because they had lost Colombian drug money (Declaration at paragraphs 25, 26). He also stated that one of his confidential sources, CS 1 also brought up the names of Mejia and an individual known as "El Chino," a known killer who worked for Escobar. (Declaration at paragraph 20). McDaniel then stated that he met with "El Chino," who is John Henry Millan, but that Millan insisted that it was not him. He then stated that he "had further contact with El Chino through a contact, and he has admitted his presence in the room where the Moo Youngs were killed. However, he is claiming some kind of law enforcement linkage that prevents him from going on the record." (Declaration at paragraphs 68-69).

These repetitions of what others have allegedly stated is double or triple hearsay and clearly not admissible as none of those statements conforms with an exception to the hearsay rules. *See* sec. 90.805, *Fla. Stat.* (2013). Inadmissible hearsay evidence cannot qualify as newly discovered evidence. *Robinson v. State*, 707 So. 2d 688, 691 (Fla. 1998); *Lightbourne v. State*, 644 So. 2d 54, 56 (Fla. 1994).

For a variety of reasons these statements would not be admissible as statements against the penal interest of Escobar,

Cuchilla, or El Chino. Section 90.804(2)(c), *Fla. Stat.* (2013) provides as follows:

> A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement.

First, it is unknown when Escobar or Cuchilla allegedly made these statements to the Colombian. Assuming that they were made at a time when Colombia had an extradition treaty with the United States, there is no indication whatsoever that either Escobar or Cuchilla reasonably believed that they would be extradited for their alleged admissions regarding the Moo Young murders at the time they made their statements. There is no allegation by the defense that these drug traffickers were being extradited by Colombia at that time. In fact in the GAO Report on *Nontraditional Organized Crime*, (Exhibit U, at p. 12) in discussing Escobar and other Colombian drug cartel leaders, it states "Escobar has been indicted in Florida, California, Georgia, and Colorado." "All of these individuals are believed to be residing in Colombia, but American efforts to extradite

them for trial in the United States had been thwarted by a 1987 Colombian Supreme Court decision nullifying the enabling clause of Colombian's extradition treaty with the United States."

Similarly, the circumstances surrounding the obtaining of El Chino's statement is not contained in the Declaration, so it does not appear that El Chino had a reasonable belief that his statement would subject him to extradition. If the declarant does not reasonably believe that they would be prosecuted for the admitted crime, the statement is not one against their penal interest. *See Marek v. State*, 14 So. 3d 985, 995 (Fla. 2009). *See also United States v. Brandenfels*, 522 F. 2d 1259, 1264 (9th Cir. 1975) (statement not against declarant's interest where at the time of the statement, he was not in custody or awaiting extradition).

In addition, the statements contained in McDaniel's Declaration as they relate to Jamie Vallejo Mejia or El Chino cannot be construed as statements against penal interest. In the Declaration when recounting hearsay from his associate, he stated at paragraph 26, that Mejia "declined to elaborate on his own involvement in the crime." That is not a statement implicating Mejia.[12] Similarly, El Chino allegedly admitted to being in the

[12] Similarly, nowhere in the Affidavit or Declaration does the Colombian implicate himself in the murders. He only repeats what others allegedly told him about their alleged involvement.

room where the Moo Youngs were killed but does not state he was in the room at the time of the murders or what his role was in the murders. Statements that do not admit to criminal liability for the acts are not statements against penal interest. *See Chahine v. McQuiggin*, 2012 WL 2094407 (E.D. Mich. 2012)(declarant's statement admitting he shot the victim, but did it in self-defense, is not a statement against penal interest)

Assuming Escobar, Cuchilla, and/or El Chino reasonably believed that they could be extradited, or the statements were against their penal interests, there is nothing in the alleged facts as set forth in the Colombian's Affidavit or McDaniel's Declaration that were corroborated and/or trustworthy. In fact, other than the general allegation that Escobar was behind the Moo Young murders, there is nothing in the hearsay statements from CS 1 (a confidential unnamed source) in McDaniel's Declaration that corroborates the Colombian or *visa versa*. CS 1 mentions Mejia and El Chino as being involved somehow in the murders, but does not mention Cuchilla. The Colombian mentioned Cuchilla as being involved. Although he does mention Mejia, it is not as someone involved in the actual murders. He does not mention El Chino.

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Thus, these statements would not qualify as statements as against penal interest.

It is also interesting to note that in McDaniel's Declaration he stated that CS 1, who he believed was one of his sources giving him "direct and credible information" (Declaration at paragraph 22) told him that he and Escobar had a conversation that took place in either "June or July 1986" about the facts that led to the Dupont murders. CS 1 also brought up the names of Mejia and an individual known as El Chino, a known killer who worked for Escobar. McDaniel quoted CS 1 as stating that "'Mejia was also a trafficker and money launderer who worked for (or with) the Medellin Cartel. I remember Escobar talking about the Dupont Murders. **They could be the same** because the Cartel was pissed about the guy stealing money that was being laundered in Miami for them.'" (Declaration at paragraph 20.) This statement of CS 1 regarding Escobar is admittedly speculation by CS 1. A further problem with this recitation of the facts is that the homicides of the Moo Youngs did not occur until October of 1986. Thus, it appears it may not have involved this homicide, further demonstrating the unreliability of the allegations in the Affidavit.

There is simply no corroboration for the hearsay statements attributed to Escobar, Cuchilla, or El Chino. The State does not doubt that they were involved in other drug related homicides, and although that makes them the perfect persons for the defense to

point their fingers at, that does not make them responsible for the murders of the Moo Youngs.

The defendant's attempt to show that Mejia was hired by Pablo Escobar or the Colombian cartels to participate in the murder of the Moo Youngs is contradicted by common sense. Why would Mejia set himself up across the room from the murder scene, the only other occupied room on the floor, give his name and address to the police, go to the police station and give a statement, so the police would investigate him? Of course the defendant will say it is because he knew that the corrupt Miami police would not investigate him. However, despite his allegations of general corruption, he makes no allegations of corruption regarding Det. Buhrmaster, the lead investigator, other than the disproved allegations that he lied at the trial. See Response, *infra*, at pp. 56. The defendant's theory simply makes no sense. It is certainly not a plausible theory that if it were allowed to be introduced at a new trial, would probably result in an acquittal.

Furthermore, to believe the defendant's assertion one would also have to believe that Escobar and/or Mejia and/or Cuchilla and/or El Chino arranged to have Neville Butler, Eddie Dames, Tino Geddes and/or Clifton Segree frame the defendant. The allegation that Dames and Geddes had ties to Bahamian or Jamaican drug dealers who allegedly had ties to the Colombian cartels provides no proof or corroboration of an agreement to assist in killing the

Moo Youngs and then frame the defendant for the Colombians. The same is true with the allegations of the Moo Youngs' ties to drug trafficking in the Bahamas because of their alleged relationship with Adam Hosein and F. Nigel Bowe. This is an example of the Six Degrees of Separation theory.

If the Colombians were intending to frame the defendant how did they know that the defendant would not truly have an air tight alibi, thus putting the suspicion on Mejia? Stating that the police were part of framing the defendant is not an answer without any evidence to back up that claim. Again, how would the police know if the defendant had an air tight alibi? Furthermore, just stating that there were corrupt police officers at that time involved with the drug cartels is not corroboration that they were involved in framing the defendant to protect the Medellin cartel in these murders. The State would note that the defendant has not cited any specific case in which police officers framed innocent persons for murders committed by drug cartels. Furthermore, the history of homicides committed by members of Colombian drug cartels shows that these killers were brazen, and just committed the crimes without fear of being caught, with no need to frame anyone. Many of these homicides were in retaliation and meant to send a message to others.[13] If an innocent person is framed then

[13] For example the assassination of Barry Seal that allegedly Cuchilla was involved in, was carried out without the need to

the message is not sent. Simply put, these hearsay statements are not reliable, trustworthy or corroborated and thus, are inadmissible. *See, e.g., Robinson v. State*, 707 So. at 692; *Lightbourne v. State*, 644 So. 2d at 57; *Prevatt v. State*, 866 So. 2d 729 (Fla. 5th DCA 2004).[14]

Furthermore, to the extent the defendant's intent in introducing this evidence would be to show that someone else committed the murders, he has not proffered sufficient evidence that would support its admission. In *King v. State*, 89 So. 3d 209 (Fla. 2012) the Court reiterated the standard for the admission of evidence proffered by defendants to show that someone else committed the crime for which they are charged:

> The United States Supreme Court has held that "the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986) (quoting *California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81* L.Ed.2d 413 (1984)). However, the Supreme Court has also explained that this opportunity is not without limitation:
>
> While the Constitution ... prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules

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frame anyone. *See State v. Velez*, 588 So. 2d 116 (La. 3d Cir. 1992).

[14] As such they would not be admissible under any due process analysis. *Sliney v. State*, 699 So. 2d 662, 670 (Fla. 1997); *Lightbourne v. State*, 644 So. 2d at 57; *Czubak v.State*, 644 So. 2d 93, 95 (Fla. 2d DCA 1994).

of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury....

A specific application of this principle is found in rules regulating the admission of evidence proffered by criminal defendants to show that someone else committed the crime with which they are charged. See, e.g., 41 C.J.S., Homicide §216, pp. 56-58 (1991) ("Evidence tending to show the commission by another person of the crime charged may be introduced by accused when it is inconsistent with, and raises a reasonable doubt of, his own guilt; but frequently matters offered in evidence for this purpose are so remote and lack such connection with the crime that they are excluded"); 40AA Am. Jur.2d, Homicide §286, pp. 136-38 (1999) ("[T]he accused may introduce any legal evidence tending to prove that another person may have committed the crime with which the defendant is charged.... [Such evidence] may be excluded where it does not sufficiently connect the other person to the crime, as, for example, where the evidence is speculative or remote, or does not tend to prove or disprove a material fact in issue at the defendant's trial." (footnotes omitted)).

*Holmes v. South Carolina*, 547 U.S. 319, 326-27, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006).

For a defendant to make statements in questions to introduce a theory of the possibility that someone else committed a crime, there must be sufficient evidence in the record to support that underlying theory. *See Cohen v. State*, 581 So. 2d 926, 927 (Fla. 3d DCA) (holding that where the defendant alleged that the victim met with a drug dealer days before the murder, the theory that "somebody else did it" was

properly excluded where "there is insufficient evidence on the record to support its relevancy"), *review denied,* 592 So. 2d 679 (Fla. 1991). Other jurisdictions have also concluded that the other evidence introduced in the case must provide *a clear link* to the crime charged. In *Johnson v. United States,* 552 A. 2d 513 (D.C. 1989) the District of Columbia Court of Appeals explained:

"[B]efore evidence of the guilt of another may be deemed relevant and thereby admissible, the evidence must *clearly link* that other person to the commission of the crime...."

What we mean by "clearly link" ... is proof of facts or circumstances which tend to indicate some reasonable possibility that a person other than the defendant committed the charged offense.... *[S]ee* 29 Am.Jur.2d, *Evidence* §441 (1967) (defendant should not be able to "indulge in conjectural inferences that some other person might have committed the offense").

*Id.* at 516 (quoting *Brown v. United States,* 409 A.2d 1093, 1097 (D.C. 1979). Similarly, in a case where the defendant contended that the murder of the victim was a revenge killing because the victim's father was a police informant, the Arkansas Supreme Court held that the trial court did not abuse its discretion in excluding this evidence where it only created an inference or conjecture as to the guilt of the third party, and "there was no direct or circumstantial evidence linking the drug dealers to the actual perpetration of this particular crime." *Shields v. State,* 357 Ark. 283, 166 S.W.3d 28, 32 (2004).

89 So. 3d at 223-224.

In this case, the evidence which the defendant has asserted demonstrates that the victims laundered money does not clearly link the victims to the Colombian drug cartels, or to these homicides because there is no "proof" which tends to indicate a "reasonable" possibility that Pablo Escobar ordered the murders that Colombians or others working for and with the cartel committed. For the same reason, there is no "proof" that clearly links those persons to having framed the defendant. Thus, the evidence is speculative and inadmissible. It does not make it newly discovered evidence.

**B. The Money Man Involved in the Case Was Jaime Vallejos Mejia**

Once again attempting to decipher what the claims are, it appears again to be allegations that the State had an obligation to inform the defense that Jaime Vallejos Mejia was indicted in Oklahoma for drug related charges in March of 1987[15] coupled with claims of newly discovered evidence concerning Mejia and his connection with Colombian drug cartels. These allegations can be found in pp. 1-2 of his Due Diligence Grid.

First, there is no *Brady* violation in regard to the alleged failure of the State to inform the defense that Mejia was indicted in Oklahoma for drug related charges. The State is not

[15] That date is after the homicides in this case, such that even if the police had checked Mr. Mejia's background at the time of the homicide as Det. Buhrmaster testified to, this arrest would not have been there. (R. 3555).

required to provide material in possession of other non-Florida law enforcement officers, especially criminal histories of civilian witnesses who the State is not intending to call as a witness. *See State v. Wright*, 803 So. 2d 793 (Fla. 4th DCA 2001). *See also Barron v. State*, 990 So. 2d 1098 (Fla. 3d DCA 2007). Although Mejia was listed on the State's Discovery as a witness and the statement taken from him by the police was provided in discovery, the State never intended and did not call him as a witness.

Second, Mr. Mejia, who was a 52 or 53 year old man, approximately 5'3" tall, and weighing about 150 pounds (R. 3550-3551), was listed because he was staying in the room across from the room where the victims were killed. Mr. Mejia in his statement to the police indicated that he was not present in the hotel during most of the day, having left before the murders were committed and returning afterward. See Statement of Mejia, attached as Exhibit 20.[16] Mr. Mejia also had a business office on the 6th floor of the Dupont Plaza. (R. 3496). Mr. Mejia was cooperative with the police at the time, including coming down to the police station to give his statement. (R. 3406). As set forth *supra*, in its discussion on Pablo Escobar, it is clear

[16] The State is continuing numerically from its initial Appendix in labeling its exhibits. The Mejia statement was originally part of the Appendix to the defendant's Amended Motion filed in his prior postconviction proceeding, as document FDI.

that the defendant has not alleged any "admissible" or credible evidence in his motion, amended motion or "grids" or the affidavits or declarations appended to the Supplement, which contradict that statement. Again, the hearsay statements contained in McDaniel's Declaration is not admissible evidence.[17]

### C. One of the True Assassins Was an Escobar Hit Man Named Cuchilla

Another convenient person to blame the murders of the Moo Youngs on besides the deceased Pablo Escobar, is Manuel Guillermo 'Cuchilla' Zulauaga Salazar, who also coincidentally is deceased. As stated *supra*, the defendant has not alleged any admissible or credible evidence to support that claim.

### D. One of the True Assassins Was an Escobar Hit Man Named El Chino

Again, as stated supra, the defendant has not alleged any admissible or credible evidence to support this claim. The State would note that the State has no obligation to hunt for "evidence" that the defendant believes will support his claims. However, the State, not because it believed they would be any value, but because it was the ethical practice, submitted the fingerprints that the defense provided of Mejia, Cuchilla and El Chino, to have

[17] The defendant states at p. 9 of his most recent Supplement that "Additional material concerning [Mejia's] involvement in this manner must remain under seal, due to its highly sensitive nature and so will be discussed in a separate, sealed document." The State does not know what the defendant is referring to and would again object to any sealed documents and any further amendments or supplements.

them compares with those unidentified latent fingerprints found in the hotel room. On January 13, 2014, (the date of this response), the State received an oral report that there is no identification between the defense's submitted prints and the unidentified prints at the crime scene because the standards were not of sufficient quality. When the State receives the written report it will file the same with the Court. However, the State is not surprised that the defendant, knowing this would be the outcome, has fell back on "they must have been wearing gloves" excuse to continue with this endless fantastical theory.

## IV. THE OTHERS INVOLVED IN THE CONSPIRACY TO MURDER THE MOO YOUNGS INCLUDED TINO GEDDES, EDDIE DAMES, NEVILLE BUTLER, ADAM HOSEIN

### A. Tino Geddes

In his most recent Supplement, based on nothing but hearsay statements in the Declaration of another of his private investigators, Christopher Chen-Lee Chang, (Exhibit S) the defendant claims that Tino Geddes lied at his trial because he was himself working with a Jamaican Narco-Gang linked to the Colombian cartels. To support this claim the defendant alleges as newly discovered evidence, that sometime after Tino Geddes died in 2011, Mr. Chang learned that Carl "Bya" Mitchell, a member of the Shower Posse Gang grew up with Geddes, and was a

fixer for the Gang, and that Carlton McBridge a/k/a "Popcorn"[18] said that Geddes was able to arrange a meeting with senior police officials which resulted in him being released from custody.[19] It is not clear if Mr. Chang personally spoke with McBridge, or whether he was repeating what he heard from other people. Regardless, what is clear is that Chang's Declaration is inadmissible hearsay.

In addition, the defendant does not assert what specific trial testimony of Geddes this "evidence" would have been admissible for as impeachment. A witness cannot be impeached with alleged bad acts for which he has not been convicted of and which are unrelated to this case. *See Pantoja v. State*, 59 So. 3d 1092 (Fla. 2011). Thus, there is nothing admissible in these allegations against Mr. Geddes, even if true.

The defendant has also alleged that Geddes' former attorney, Churchill Neita, who represented Geddes' in his 1987 arrest in Jamaica, has apparently told Mr. Chang that what Geddes testified to about his arrest at the defendant's trial was untrue. He allegedly states that Geddes did not accidently forget that he had a gun with him at the airport that he had brought for his own protection, but rather was deliberately bringing the gun through

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[18] Interesting in his prior pleadings, the defendant said the person was "Peanut." This shows the unreliability of these hearsay Declarations.

[19] These allegations can be found in defense counsel's book in Chapter 17, at pp. 297-300, titled "The Battle Continues."

the airport for his drug cartel associates. As such, he was facing life in prison and thus, his sentence of a fine that he received because of the intervention of the prosecutors in the defendant's case was very light.

First, this claim is not timely newly discovered "evidence." In his book, in Chapter 17, p. 298, defense counsel alleged that Geddes had been not just arrested for bringing in a gun, but that he had in fact been arrested with several guns, ammunition and a silencer. Nowhere in his Due Diligence Grid or in Chang's Declaration does the defense explain why this information could not have been discovered sooner.

Second, this claim is also legally insufficient because it fails to allege how this evidence would be admissible even if true. He does not allege that the State prosecutors knew these alleged facts such that it would be grounds for impeachment at trial and thus was *Brady* or *Giglio* even if the allegations were true. Furthermore, it appears that the information was learned by Mr. Neita through the attorney-client conversations he had with Geddes, which would be inadmissible hearsay.

The State would note that the defendant has alleged at p. 4 of his Due Diligence Grid that this "evidence" is important because it would suggest that Geddes lied about being asked to fabricate an alibi by the defendant because he was involved in the

drug dealing, facing life in prison and was "presumably"[20] being paid by the cartels to change his story. However, this theory totally ignores an important witness who was the last person to testify at trial, that is, Clifton Segree. As set forth above Segree testified that the defendant wanted him and Geddes to be false alibi witnesses and he refused to do so. What is interesting about Segree is that he is not mentioned anywhere in the defendant's pleadings. He is not even mentioned in defense counsel's book.

**B. Eddie Dames**

The defendant alleges that Eddie Dames was a narcotics operative who helped choreograph the effort to frame the defendant for these murders before "high tailing" it back to the Bahamas. This claim is based on absolutely NO EVIDENCE whatsoever. It is based on speculation by Prince Ellis[21] as to Dames motives as well as his belief that Dames was "tight" with F. Nigel Bowe, the lawyer in Nassau, who may have known the Moo Youngs because they allegedly registered a vehicle from Bowe's office. The defendant had also alleged a link in his prior pleading between Bowe and Adam Hosein.

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[20] This is one of the many examples of the speculation which envelops the defendant's postconviction motions.

[21] The State will discuss Prince Ellis' Declaration, *infra* at pp. 57-63.

Since Bowe was subsequently convicted of drug crimes with Colombian cartel members prior to 2000, the defendant surmises that he had to be part of a conspiracy to frame the defendant. Again, this is nothing new. In fact this theory is found in defense counsel's book in Chapter 9, titled "The Other Suspects." This was a running theme during the last evidentiary hearing. The defendant wanted to present evidence that Bowe had called Hosein who talked to George Bell, the defendant's accountant, to show that Hosein was friends with Bowe and to infer that they were involved in drug trafficking. (PCT. 831).[22] The State then brought up the fact that Bell had pled to drug trafficking charges and as such that could show that the defendant, through his accountant, Bell, was involved in drug trafficking. (PCT. 855). Also in defense counsel's book, in Chapter 9 at pp. 173-175, it is alleged that the defendant's brother, Ramesh Maharaj, an attorney, represented Hosein, in some "criminal travails."

Using the defendant's Six Degree of Separation theory, the defendant can also be easily linked to drug trafficking. Then since the defendant is linked to drug trafficking, under the

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[22] Pages of the transcript of the prior postconviction evidentiary hearing will be referred to as "PCT." This Court should review the transcripts of the prior evidentiary hearing as it will see that the manner in which it was actually conducted differs greatly from the biased, mischaracterized and disingenuous account by defense counsel in his book in Chapter 14, titled "The Road to Nowhere."

defendant's theory that the Moo Youngs were killed because they had laundered money for the cartels, the defendant had another motive to kill the Moo Youngs, he must have done it as part of this cartel conspiracy. What this demonstrates is that the defendant has simply not alleged any timely credible "newly" discovered evidence.

**C. Neville Butler**

The next set of allegations which the defendant alleges is newly discovered is that he now has evidence that Neville Butler "committed perjury" in at least six other unrelated cases. These cases allegedly go back to various civil cases from 1982 through 1995. His source of this information is someone named "W." Putting aside the fact that the defendant does not sufficiently allege any due diligence, he also does not allege any "admissible" evidence that would establish that Mr. Butler had lied in these other cases.

Again, this Court has held that the defendant must provide names of alleged witnesses. He has not done that. Furthermore, even if he did name someone, none of what is alleged would have been admissible to impeach Mr. Butler at trial. Again, there is no allegation as to how "W," other than being an alleged former business associate of Mr. Butler's, has any first-hand knowledge of the so-called facts. Second, even if he did, this would be collateral impeachment at most, which is not permitted. Mr.

Butler was not convicted of, much less charged with any crimes, in particular perjury, which would have arisen from these unrelated cases. A witness cannot be impeached with alleged bad acts that he lied in other unrelated circumstances. *See Pantoja v. State, supra*. Thus, there is simply nothing admissible in these allegations against Mr. Butler, even if true.

**D. Adam Hosein**

The defendant alleges that Adam Hosein was the person who supplied the firearm to the cartel assassins, but because he cannot decide on a theory, has also alleged that Hosein may even have pulled the trigger. Again, nothing in the allegations suggest why any of the "new" allegations could not have been discovered earlier by due diligence. Nothing in the Declarations and affidavits relating to Escobar even mention Hosein. Thus, these allegations are based on claims that the defendant has been aware of since the prior postconviction motion.

The defendant has repeated the allegations by George Abschal that Hosein went to the Dupont Plaza Hotel with a gun on the morning of the homicides and came back later telling Abschal not to mention where he had been. He also alleged that found in the police files that there was a message from Hosein left for Room 1215. As previously responded to by the State, none of that

evidence was newly discovered. This was known at the time of the prior postconviction hearing.

The defendant in his amended Motion also had stated that "additional new evidence has come to light that Hosein apparently admitted his part in the murder of the Moo Youngs to at least a third party, a friend of his." He also claimed that a confidential source said that "the actual shooter was apparently Jaime Vallejo Mejia and that Hosein was in the room as 'back up.'" However, no such person has been identified by the defendant. The defendant then included as part of his "facts" in his amended motion that in 1996 Dr. Derrick Djhagaroo told one of defense counsel's associates that "Hosein had told him that his (Hosein's) mother would be upset with him if the truth came out." Then in late 2012, an unnamed British television journalist told defense counsel that the second wife of Dr. Derrick Djhagroo provided him with evidence (which is not set forth so is unknown, but may be a tape) that Dr. Djhagroo told her that Hosein confessed to him that "he was actually been involved in the murders."

The State submitted that this "evidence" was not newly discovered as it could have been pursued sometime between 1996 and 2012. Furthermore, it was not admissible because it was quadruple hearsay and was insufficient because it contained no details as to exactly what Hosein was allegedly referring to. Nowhere has the defendant explained how Hosein is connected with the Colombian

cartels other than a claim that he was in the room with Mejia. In none of the new affdavits or declarations is there mention of Hosein being involved. It is nothing but more speculation.

Even the documents which the defendant has attached to his Notice of Filing Documents Pertaining to Adam Hosein contain court documents from 1986, 1987, and 1992, which clearly could have been located either at trial or certainly at the time of the last evidentiary. Furthermore, their relevancy to this case is tenuous at best. The Satisfaction of Judgment for $1,193.69, in a lawsuit by the Dupont Plaza Hotel against Hosein in October, 1987, stemming from a lawsuit filed in 1986, proves nothing other than Hosein owed the Dupont Plaza money. There is no explanation of how the Final Judgment for $164,159.91 in *Exxon Company v. Maradam Oil, Inc, Adam Hosein and Mariane Hosein*, on December 5, 1986, in a 1986 Broward County civil case is relevant to anything. Nor is there an explanation of the relevancy of the 1997 Notice of Federal Tax Lien for $57,567.12, on a Broward County residence owned by Adam Hosein for the tax period ending on December 31, 1986. The fact that Mr. Hosein may have had financial problems in 1986 is irrelevant or provides only more speculation for a motive for him to be involved in the murder of the victims. The bottom line is that these allegations as alleged concerning Adam Hosein are not newly

discovered and are simply legally insufficient to rise to a level of meeting the standards for newly discovered evidence.

**E. Richard Solomon**

The defendant has now alleged that Richard Solomon is another of the Moo Young conspirators who has now been exposed as a criminal. This claim is based on an allegation that in the months before their deaths the Moo Youngs were negotiating with the Los Angeles Church Loan Corporation's agent, Richard Solomon, for control of millions of dollars worth of gems and Yen bonds. A letter was found in Derrick Moo Young's briefcase from Solomon to Moo Young dated June 6, 1986. From that the defendant surmises that was to raise cash to pay back the cartels. Solomon was subsequently convicted of money laundering for a conspiracy that began around 1993. Due to that conviction, the defendant has then jumped to the conclusion that the Moo Youngs had to be involved in money laundering with Solomon. Again, not only is that not newly discovered evidence, it is like all of the defendant's claims, this is, pure speculation with no "facts" admissible or otherwise to support this allegation.

**F. The Conspiracy is Based on Speculation**

By throwing out names of notorious Colombian and other narcotics traffickers and members of the Jamaican Shower Posse and alleging links to them by various persons from Mejia, Hosein, Dames, Bowe, and Geddes, the defendant spins his

fantastical theories that are unsupported by any admissible evidence. The defendant's allegations are really nothing more than another example of the theory of "Six Degrees of Separation." The defense alleges that a business connection between the victims and Hosein, Dames and Bowe means that they were all involved in drug trafficking or money laundering with notorious drug traffickers and thus were killed by Colombian assassins under the orders of Pablo Escobar, one of those being Mejia who was also involved in drug trafficking and was staying in the room across from where the murders occurred. This makes up Chapter 10 of defense counsel's book, which is titled "The Money Trail" and Chapter 11, which is titled "The Colombian Connection"[23] as well as the Affidavit of the Colombian and the Declaration of McDaniel.

At the prior postconviction hearing, the Court found that all of these allegations by the defendant which tried to show that the victims were drug dealers or money launderers, and thus were killed by people who were drug dealers or working for drug dealers was found not to have been proven and were nothing more

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[23] There were additional allegations of newly discovered evidence relating to Hosein in the defendant's initial and amended motions, which the State has previously responded to and reasserts and incorporates those arguments again, i.e., that those allegations were untimely and were not legally sufficient to establish admissible newly discovered evidence.

than hearsay and mere speculation. In particular the Court stated that:

> First, the purported evidence would be inadmissible at trial because it relies primarily on hearsay and speculation. Second the evidence could have been discovered earlier through the exercise of due diligence. Third, the evidence would not address the merits of the case, but merely attack the character of the victims. Finally, the Court concludes that the evidence would not produce a different result on a retrial because of the sufficiency of the evidence to sustain the defendant's convictions.

See Exhibit 12, Order on Rule 3.850 Petition for PostConviction Relief, at p. 21.

The defendant did not challenge this finding on appeal. Rather, the defendant argued that the Court erred by not "seeing the critical significance of the evidence, such as ... the links between Butler and Dames (3.850 Tr. 543-46), or between Bowe and Hosein, (3.850 Tr. 831-32), and constantly limited the defense presentation." See Exhibit 13, Corrected Brief of Appellant, Krishna Maharaj, on Appeal, at p. 96. The trial court's rulings were affirmed by the Florida Supreme Court. *Maharaj v. State*, 778 So. 2d at 959 fn. 13.

This case is similar to what occurred in *Schofield v. State*, 67 So. 3d 1066 (Fla. 4th DCA 2011). In *Schofield* the defendant was convicted of murdering his wife. At his trial there were several unidentified fingerprints found in his wife's

abandoned car. Years later the fingerprints were identified as belonging to one Jeremy Scott. At the evidentiary hearing on the defendant's motion for post-conviction relief based on this newly discovered evidence, the defendant wanted to introduce evidence that Scott had been violent towards his ex-girlfriend and others. The Fourth District held that this evidence would not be admissible in a retrial because it was only relevant to show Scott's alleged bad acts and violent propensities. *Id.* at 1070-1071. The Court went on to note that "[w]hile we recognize that this evidence is intriguingly serendipitous to Schoefield, its favorability does not make it admissible outside the rules of evidence any more than if its import made his conviction even more compelling." *Id.* at 1071 fn. 4. Thus, regardless of how intriguing the defense paints this picture of other persons who were responsible for the murders of the Moo Youngs, the bottom line is that the defendant has not alleged any new admissible evidence that establishes that the victims were involved in drug trafficking or money laundering such it would provide a motive and show that Escobar, Cuchilla, El Chino, Mejia, Hosein, Bowes, or Geddes or any other unknown person would want to murder them and frame the defendant.

## V. THERE APPEARS TO HAVE BEEN POLICE COLLUSION IN THE EFFORT TO FRAME [THE DEFENDANT] FOR THESE MURDERS.

The defendant had set forth in his "grid" as the second claim that he was intentionally framed by corrupt Miami law enforcement officers, which violated *Brady*. He slightly reframes the issue in his Supplement as Claim V, that there was police collusion in the effort to frame the defendant. He stated that this was based on newly discovered evidence from inside the Miami Police Department and only just revealed to the defense. Looking to the Due Diligence Grid, at p. 1, the defendant asserted that this claim was based on a mid-2012 investigation[24] where "a former police officer was persuaded to give a statement that Pete Romero admitted the police intentionally framed [the defendant] for a crime he did not commit." That former police officer[25] provided the defense with a Declaration on October 1, 2012.

What is interesting about that Declaration is that former police officer did not mention Pete Romero or any police officer by name and stated only that he visited the scene of the murders

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[24] It should be noted that in his prior amended motion, defense counsel had stated at paragraph 92 that the he "did not learn this until 2011, when he learned it from a confidential source." It is questionable whether this claim is timely, i.e., filed within two years of learning the information as this is based on an affidavit filed in 2014.

[25] The former officer is a four time convicted felon, having been convicted in Miami-Dade County of kidnapping, aggravated battery with a deadly weapon, trafficking in cocaine and possession of cocaine in 2006. He was sentenced to a total of thirty five (35) years in prison with a thirteen (13) year minimum mandatory term and he is presently incarcerated.

when they occurred and knew that the defendant was framed "because one of the officers in charge of investigating the double murder told [him] flat out that they were going to do this." The former police officer then stated that there was a great deal of corruption in Miami at that time, with the police helping the drug cartels cover up crimes, even homicides, committed by the drug dealers. The defendant then stated in his Grid that this was new exculpatory evidence because a federal judge had told an audience in May of 1986, shortly before the Moo Young murders, that Miami was "experiencing the double jeopardy of rampant violent crime by the police..."[26]

The claim concerning what Officer Pete Romero allegedly told the former police officer in 2011 is legally insufficient on its face. To establish a *Brady* claim the defendant has to allege that the State withheld evidence that would lead to *admissible* substantive or impeachment evidence. *Rodriguez v. State*, 39 So. 3d 275, 294 fn. 13 (Fla. 2010). If in fact there was a police officer who told another officer he committed or was going to commit a crime, that is not *Brady* because a police officer's personal knowledge of their own criminal activities is not information that is readily available to the prosecution and as such the prosecutors cannot be held to have constructive notice of

[26] This reference can be found in defense counsel's book, in Chapter 11, at p. 193.

the officer's crimes which would require them to provide that information to the defense. *Breedlove v. State*, 580 So. 2d 605, 606-607 (Fla. 1991).

Furthermore, the former police officer's affidavit does not set forth any admissible evidence. As stated *supra*, the affidavit does not even mention Romero by name, but states that when he visited the crime scene on the day the murders occurred, he was told by one of the officers in charge of investigating the murders that the police were going to frame defendant. This statement is totally insufficient as it fails to set forth the identity of the officer, or what the officer, if it was in fact Romero, who has since died, meant by framing the defendant. It fails to set forth how such a statement by Officer Romero or any other officer to Flynn would have led to *admissible* (not inadmissible hearsay) substantive or impeachment evidence, such that it would require a new trial. *See Williamson v. State*, 961 So. 2d 229 (Fla. 2007).

The State would note that it inaccurately stated in its prior response to the defendant's Amended Motion, that Officer Romero was not a new witness to this case. The State does not know if he is or is not. The State had stated that at the prior postconviction evidentiary hearing, there was litigation about alleged inconsistencies between what Romero had stated that Det. Buhrmaster reported about the defendant's statement and what Det. Buhrmaster had testified to. Those alleged inconsistencies

were explained and found to not support the defendant's claims. The naming of Romero came from a mistake in the Florida Supreme Court's opinion on the appeal affirming the denial of the prior post conviction motion, where the Court referred to the witness as Romero.[27] *Maharaj v. State*, 778 So. 2d at 953-59, fn. 11. However, a review of the evidentiary hearing indicates that it was Lt. David Rivero who had testified at the prior hearing, not Romero. (PCT. 653-667). The State would further note that this of course conclusively refutes the defendant's allegations that Det. Buhrmaster falsified his testimony as he sets forth at p. 23 of his latest Supplement. This claim was litigated in the prior postconviction evidentiary hearing and found to be without merit.[28] There is no allegation regarding what Romero's

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[27] This may have come from the defendant's Amended Rule 3.850 Petition, see Exhibit 9 to State's Appendix to Motion to Strike and/or Dismiss Motion for PostConviction Relief and to Vacate Judgment and Sentence Pursuant to Fla.R.Crim.P. 3.850 Filed on December 20, 2012, at p. 80, paragraph 230, which inadvertently referred to the witness as David Romero. That name is also included in defense counsel's book at pp. 109 and 202. The State does not know where the defense obtained the name "David Romero" from and if there is such a person, so again, the State does not know whether Officer Pete Romero is a new witness.

[28] The defendant alleged that that he had made a prior statement to police that his gun had been taken during a traffic stop. This issue was litigated at trial and the State presented witnesses who testified the defendant's gun was not taken during the traffic stop. (R. 2325-2343, 3383-3388). At the postconviction evidentiary hearing the defendant presented the testimony of Manuelos Stavros who testified that the defendant told him the gun was taken in a traffic stop prior to the accident. (PCT. 184-187). However, Stavros' testimony would have been impeached by an earlier statement that the defendant

connection, if any, was with this case and without more, this claim as alleged is legally insufficient.

In addition, the defendant again argues that the police had taken his gun in a traffic stop. The defendant alleged that that he had made a prior statement to police that his gun had been taken during a traffic stop. This issue was litigated at trial and the State presented witnesses who testified the defendant's gun was not taken during the traffic stop. (R. 2325-2343, 3383-3388). At the postconviction evidentiary hearing the defendant presented the testimony of Manuelos Stavros who testified that the defendant told him the gun was taken in a traffic stop prior to the accident. (PCT. 184-187). However, Stavros' testimony would have been impeached by an earlier statement that the defendant had complained of money being taken, not a gun. (PCT. 188-189). See *Maharaj v. State*, 778 So. 2d at 958. The claim was found to be without merit and is conclusively refuted by the records. Thus, this claim is legally insufficient and provides no basis upon which to grant an evidentiary hearing on the motion for postconviction relief.

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had complained of money being taken, not a gun. (PCT. 188-189). See *Maharaj v. State*, 778 So. 2d at 958.

## VI. OTHER CLAIMS RAISED IN THE PRIOR AMENDED MOTION AND SUPPLEMENT

### 1. Prince Ellis

In his Due Diligence Grid, at pp. 5-6 of the Prior Amended Motion and Supplement, the defendant set forth the "recent" affidavit from Prince Ellis which the defendant characterized as a recantation. At trial Ellis testified that he had come from Nassau to Miami on October 15, 1986, to purchase steaks, decorations, and disco equipment with his partner Eddie Dames. (R. 2266-2267). They had agreed to meet on October 15, 1986, at Dames' hotel room, room 1215, at the Dupont Plaza. (R. 2268). Dames had flown in two days earlier. (R. 2269). Dames said he was going to try to buy a steam table and other equipment from an ice company. (R. 2269). When Ellis got to the Dupont Plaza he tried to contact Dames, but was unable to. He then checked into the hotel and was given a room on the fifth floor but never went to the room at that time. (R. 2271). He went instead to dinner and watched sports at the Hyatt, and then went to a nightclub on Miami Beach. (R. 2270, 2272). He tried to call Dames around 3:00 a.m., but there was still no answer. (R. 2272).

Ellis did not see Dames until 9:30 a.m. on October 16, 1986. Dames was with Neville Butler. (R. 2274). Ellis saw Butler talking to three or four other persons, two were black

and one was a light-skinned black. (R. 2303). Dames and Ellis left the Dupont Plaza around 10:30 a.m. Butler remained behind. (R. 2276). Dames and Butler made plans to meet around 1:00 p.m. (R. 2277). After buying disco equipment and getting something to eat, they returned to the Dupont Plaza around 2:30 p.m. (R. 2282). Dames appeared to be stalling. (R. 2312). Dames asked Ellis to call his room to see if anyone was there. He did so and was told to hold on by the person who answered the phone. They were then met downstairs by two homicide detectives and told that two people were murdered in Dames' room. (R. 2282-2283). After speaking to the detectives for about an hour, Ellis and Dames drove together with the officers to the police station. (R. 2284). However, before they got into the police car, Ellis saw Butler standing outside the hotel.

Dames and Butler had a conversation, and then Ellis and Dames went to the police station for questioning. (R. 2284-2285). After leaving the police station after four hours (R. 2285), they met Butler who was with a young woman in the car that Dames had rented. (R. 2287). Ellis observed that Butler was acting nervous, he had a broken watch in his hand and his shirt was torn and had a little blood stain on it. (R. 2289). Butler said that he did not know there was going to be any shooting and "the man just went crazy." (R. 2290). Ellis asked

Butler what was going on and Dames said he would tell him about it later. (R. 2290).

They all went to a Sizzler Steakhouse. Dames said that Butler knew what went on and that Butler should call the police. Ellis told Dames that he should call the police. (R. 2290). The girl with Butler said to Butler that a man was calling him all day and wanted him to meet with him at the Denny's near the airport. (R. 2291). Dames then called the police. (R. 2291). About fifteen minutes later, Det. Buhrmaster and another officer arrived at the Sizzler. Butler was gone at that time leaving to change his clothes. (R. 2292). Butler then came back to Sizzler's and talked to Det. Buhrmaster. (R. 2292). Butler then left with the police officers. (R. 2293).[29]

In Ellis' present Declaration he discusses in more detail the alleged conversations and interactions with Dames and Neville Butler after the homicide. However, there is nothing in the Declaration that is new. In fact, almost everything that he states in his Declaration was provided in prior unsworn statements made in a British documentary shown in Great Britain on its Channel 4, on August 14, 1995, and set forth in the

[29] Ellis, Dames and Butler's girlfriend then left, they stopped off at Butler's girlfriend's family's house to watch the news, then they went back to the Hyatt, where Ellis was going to be staying, stopping for five minutes on the way there for Dames to get out of the car and come back in. (R. 2293). After he was dropped off at the hotel, Ellis stayed the night and left for the Bahamas the next afternoon. (R. 2294).

amended postconviction motion, see Exhibit 9, at pp. 170-173.[30] In addition, in defense counsel's book, in Chapter 9, at pp. 165-167, defense counsel details his meeting with Ellis in the Bahamas which led to the filming of his interview. The transcript of that interview was attempted to be introduced at the prior evidentiary hearing, but was not allowed because the State was not given access to the complete, unedited tapes and could not verify the accuracy of the transcriptions. (PCT. 707-712, 970, 1865-1882).

Although, Ellis was listed as a defense witness for the prior postconviction evidentiary hearing, the defendant did not present his testimony. Although he attempted to claim that he did not have the funds to bring the multitude of witnesses that he wanted, he never demonstrated that was so, especially as it applied to Ellis.[31] Thus, by no stretch of the imagination can

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[30] In the Appendix to the defendant's amended motion at Volume 7, document HO is the transcript of Ellis interview. The State is attaching that as Exhibit 21.

[31] The defendant had his daughter, Christina Nandall, who lived in England come to testify to non-violent and other traits of her father. (PCT. 875-890). If Ellis' testimony was as important as the defendant would like this Court to believe, it is hard to understand why neither the defendant or his family, or even counsel could not find a few hundred dollars or less to pay for round trip airfare for Ellis to fly from the Bahamas to Miami. Counsel allegedly spent his own money for him to fly to the Bahamas and interview Ellis. (PCT. 971). In fact, defense counsel in his book, in Chapter 9, at p. 164, stated that "[e]arly one morning in November 1996, [he] took a cheap twenty-minute flight from Fort Lauderdale to Nassau." Most likely, Ellis could have testified in one day and there would have been

Prince Ellis's Declaration be considered by this Court as newly discovered evidence.

In addition, Ellis' Declaration is not really a recantation of his trial testimony, but rather an expansion of it to try to fit the story that the defense wants to put forth. The gist of Ellis' Declaration is that Dames must have been involved in the murder of the victims. That is nothing new. It was never the State's position that Dames and Butler had no connection since it was the State's theory that Butler, at the defendant's urging, used the pretext of a business meeting with Dames and Ellis, who were interested in importing and exporting certain products to lure the victims to the hotel. Butler arranged to use Dames' suite at the hotel.

Other than Mr. Ellis' editorial feelings about what he believed was in Dames' mind, the only "facts" that are different from Ellis trial testimony is that he claimed that when Butler was in the car with him and Dames, Butler said: "They went crazy and bullets were just flying all over the place. They just started shooting." Thus, the word "they," instead of the words

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no necessity for the defense to have to pay the costs of a hotel. However, the defense decided that they wanted to make this alleged lack of funds an issue for an appeal, and the Florida Supreme Court rejected that claim because the defense refused to continue the evidentiary hearing until October, 1997, when funds may have become available from CCR. *See Maharaj v. State*, 778 So. 2d at 952-953.

"the man." This was contained in the transcript of his television interview. See Exhibit 21 at pp. 24-26, 56.

What is interesting is that Ellis has now added the "fact" that he heard the name Hosein coming up in the conversation as someone who had been involved in what happened in the room. He also claims in his Declaration that Dames told Butler to call the defendant and make arrangements to meet him at Denny's. First, the defendant does not assert how these statements are newly discovered in that he could not have discovered them with due diligence. Defense counsel talked with Ellis before the postconviction evidentiary hearing and thus, he could have brought forth these statements if he chose to call Ellis at the hearing. As set forth above, counsel did not.

Furthermore, both of these statements are in contradiction to statements he made in his television interview. Ellis never mentioned the name Hosein in his television interview. Furthermore, he stated that when Butler told Dames that the defendant has called him several times to meet him at the Denny's, see Exhibit 21 at p. 28, Dames suggested to Butler that he not meet the defendant because he was afraid of what would happen to him, i.e., they were going to be killed. Exhibit 21 at pp. 29-30.

Neither of these additional statements in the Declaration about Hosein or what was meant by "they" is specific and amounts

to nothing more than an attempt to impeach Butler. However, in light of Ellis' prior testimony, the above inconsistencies with his television statements and the fact that Butler was impeached during trial, even if "newly discovered" it is not of such value that when viewed cumulatively, that it probably would result in an acquittal on retrial.

**2. Ballistics Evidence**

The last allegation of newly discovered evidence in the Due Diligence Grid at p. 7, was the claim that Thomas Quirk's, the ballistics expert, testimony regarding the gun residue was based on an unacceptably small sample and was invalid. This is a different allegation than what was presented in the post conviction motion and its amendment, where the allegation was that the testimony presented by the State at trial was overstated regarding the firearm used to commit the murders and whether the defendant owned a firearm that was consistent with the type that was used.

At trial Quirk testified that gunshot residue usually stays on an individual's hands approximately four hours, but that if a person touched something or washed their hands the gunshot particles would be removed. (R. 3356-3357). Quirk also testified about gunshot residue in terms of the gunshot residue found surrounding the hole in a pillow, which he determined was a close contact shot (R. 3364), as well as gunshot residue surrounding

bullet holes on a blue shirt, which he determined that some of shots were fired from more than five or six feet away (R. 3365-3367) and one was close contact. (R. 3368). He also testified that gunshot residue found around the bullet hole on the slacks indicated that the shot was fired from within six feet. (R. 3371). Thus, the State does not know what this claim about gunshot residue or ballistics or Quirk really alleges or its relevancy to the postconviction motion.

As to the initial claim regarding Quirk, the State previously responded that Quirk testified that the eight bullets fired were from a pre-1976 Smith & Wesson model 39, a nine-millimeter semiautomatic pistol with a serial number under 270000. Evidence in the record established that Maharaj owned a Smith & Wesson nine-millimeter pistol, having a serial number of A235464. The defendant's allegations are not based on any newly discovered evidence[32] and are unsupported even by what he alleged. In this case, Quirk never testified that the gun owned by the defendant fired any of the fatal shots. Thus, there was no overstating of any expert testimony. The present allegation concerning gunshot residue is insufficient as it totally fails to set forth any evidence to support the allegation.

**THE DEFENDANT'S MOTION AND ITS AMENDMENTS AND SUPPLEMENTS SHOULD BE SUMMARILY DENIED BECAUSE THEY ARE LEGALLY**

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[32] *See Foster v. State*, 38 Fla.L.Weekly S756, 764-766 (Fla. Oct. 17, 2013).

**INSUFFICIENT, IN THAT THEIR ALLEGATIONS, EVEN IF THE "EVIDENCE" IS DEEMED ADMISSIBLE, ARE INSUFFICIENT TO ESTABLISH THAT THE DEFENDANT IS ENTITLED TO A NEW TRIAL UNDER *BRADY* OR *GIGLIO* OR AS NEWLY DISCOVERED EVIDENCE.**

The State has addressed above, the timeliness and the legal sufficiency relating to the admissibility of the alleged "evidence" relating to these claims. However, the State submits that even if this Court should find the claims to be timely, as amended, and even if the "evidence" is deemed admissible, they do not support a claim under any legal theory that the defendant is entitled to a new trial, and thus the claims should now be summarily denied.

If the claims are *Brady* claims then the defendant has to allege that there was suppression by the prosecution of evidence favorable to the defendant, where that evidence is material either to guilt or to punishment. Favorable evidence includes impeachment evidence as well as exculpatory evidence. Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Strickler v. Greene*, 527 U.S. 263, 119 S.Ct. 1936, 1947 (1999) *quoting United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375 (1985). *See also Young v. State*, 739 So. 2d 553 (Fla. 1999); *State v. Parker*, 721 So. 2d 1147 (Fla. 1998). As shown throughout this Response, the defendant has not alleged any facts that support a claim that the

State withheld favorable evidence under *Brady*. The vague allegations contained in the former police officer's affidavit would not support a finding that there is a reasonable probability that if this vague evidence had been disclosed to the defense, that the result of the proceedings would have been different.

To establish a *Giglio* claim, the defendant must show "(1) that the testimony was false; (2) that the prosecutor knew the testimony was false; and (3) that the statement was material." *Ventura v. State*, 794 So. 2d 553, 562 (Fla. 2001) citing *Robinson v. State*, 707 So. 2d 688, 693 (Fla. 1998). Materiality is defined in this situation as whether the false testimony could in any reasonable likelihood have affected the judgment of the jury. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 766 (1972). "In analyzing this issue courts must focus on whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the confidence in the verdict." *Ventura v. State, supra,* 794 So.2d at 563. Again, as shown throughout this Response, the defendant has not alleged any facts that support a claim under *Giglio* that the State knowingly presented any false testimony, and certainly none regarding a material fact in which there is a reasonable likelihood that it affected the judgment of the jury.

For those claims that are to be treated as newly discovered evidence claims, this Court in determining whether to grant a new

trial based on newly discovered evidence must find that 1) that the evidence was unknown and could not have been known at the time of trial through due diligence and 2) that "the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial". *Jones v. State*, 591 So. 2d 911, 915-916 (Fla. 1991). As stated *supra*, if the defendant presents a sufficient and timely claim of newly discovered evidence, then and only then, may the Court in assessing the impact of the newly discovered evidence, conduct a cumulative analysis of all the admissible evidence to determine if there is a probability of an acquittal. *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999). *See also Moore v. State*, 38 Fla.L.Weekly S869 (Fla. Nov. 27, 2013).

The State submits that the allegations in the initial, amended, supplemental Motion, the "Grids," the most recent Supplement and in the Declarations of Gary J. McDaniel, the Declaration of the former police officer, the Affidavit of the Colombian, the Declaration of Christopher Chen-Lee Chang, and the Declaration of Prince Ellis, remain legally insufficient to support a claim of newly discovered evidence that would permit this Court to grant a new trial. There is nothing which the defendant has alleged concerning the victims being drug traffickers or money launderers and their alleged relationship with drug traffickers that amounts to anything more than mere

speculation. Evidence that is speculative is inadmissible. *See Keller v. State*, 586 So. 2d 1258, 1261 (Fla. 5th DCA 1991) *abrogated on other grounds State v. Smith*, 840 So. 2d 987 (Fla. 2003). These pleadings add nothing new in the way of "admissible" evidence to require this Court to question the Court's finding after the prior postconviction evidentiary hearing which held this evidence to be inadmissible and speculative, a finding not appealed by the defendant.

The alleged basis for the defendant's amended postconviction and supplement to the motion is that he is actually innocent because someone else, i.e., Colombian drug dealers killed the victims because they allegedly owed money to the drug dealers, and then those Colombian drug dealers conspired with drug dealers from the Bahamas and Jamaica, along with police officers in the Miami Police Department to frame the defendant. Even if this speculative evidence was admissible, reviewing it with all the evidence cumulatively that would be admissible at a new trial, supports only one finding that this speculative evidence is not of such a nature that it would probably produce an acquittal on retrial.

First, the evidence presented at trial was very strong. As taken from the facts set forth by the Florida Supreme Court in its opinion in *Maharaj v. State*, 597 So. 2d 786, 787-90 (Fla. 1992), the facts adduced at trial demonstrated that the defendant

had a motive to murder Derrick Moo Young, that he killed Derrick Moo Young, and that Duane Moo Young was killed because he was at the wrong place at the wrong time.

> During the trial, the primary witness for the State was Neville Butler. Butler testified that in June, 1986, he worked for *The Caribbean Echo*, a weekly newspaper directed to the West Indian community in South Florida. Prior to Butler's employment, the *Echo* had published an article, in May, 1986, accusing Derrick Moo Young of theft. When Butler joined the Echo, he assisted the publisher, Elsee Carberry, in writing an article in July, 1986, which charged Maharaj with illegally taking money out of Trinidad. Butler testified that on October 10, 1986, an article was published in the *Echo* accusing Maharaj of forging a $243,000 check. This article explained that the check was the basis for a lawsuit that Moo Young had filed against Maharaj.
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> Butler testified that in September, 1986, he was unhappy working for the *Echo* and contacted Maharaj seeking employment with *The Caribbean Times*, Maharaj's newspaper. Butler testified that, at Maharaj's urging, he arranged for a meeting between Derrick Moo Young and Maharaj at the DuPont Plaza Hotel in Miami so that Maharaj could extract a confession from Moo Young regarding his extortion of $160,000 from Maharaj's relatives in Trinidad. Butler arranged this meeting for October 16, 1986, using the pretext of a business meeting with some Bahamian individuals named Dames and Ellis, who were interested in importing and exporting certain products. Butler arranged to use Dames' suite at the hotel.[33] Butler stated that Maharaj made it clear that he should not tell Moo Young that he would be at the meeting.
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> According to Butler, Maharaj wanted to (1) extract a confession of fraudulent activity from Derrick Moo Young, (2) require Moo Young to issue two

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[33] As stated in the Florida Supreme Court's opinion on the postconviction appeal, Butler also testified Dames was aware of the meeting and agreed to let Butler use his name. *Maharaj v. State*, 778 So. 2d 944, 954 fn. 7 (Fla. 2000)

checks to repay him for the fraud, and (3) have Butler go to the bank with the checks to certify them, at which time Maharaj would allow Moo Young to leave upon hearing of the certification. Butler stated that Derrick Moo Young and, unexpectedly, Duane Moo Young, his son, appeared at the hotel room. Once inside, Maharaj appeared from behind a door with a gun and a small pillow. An argument broke out between Maharaj and Moo Young over the money owed. Maharaj shot Derrick Moo Young in the leg. At that time, Derrick Moo Young attempted to leave. Maharaj ordered Butler to tie up Duane Moo Young with immersion cords. Maharaj also ordered Butler to tie up Derrick Moo Young; however, before he could do so, Derrick Moo Young lunged at Maharaj. Maharaj fired three or four shots at Derrick Moo Young.

After shooting Derrick Moo Young, Maharaj questioned Duane Moo Young regarding the money. During this time, Derrick Moo Young crawled out the door and into the hallway. Maharaj shot him and pulled him back into the room. Shortly thereafter, Duane Moo Young broke loose and hurled himself at Maharaj, but Butler held him back. Then Maharaj took Duane Moo Young to the second floor of the suite where he questioned him again. Later, Butler heard one shot. Maharaj came downstairs and both he and Butler left the room. They both waited in the car in front of the hotel for Dames.

Sometime later, Butler met with Dames and Ellis, the two men he used to lure Moo Young to the hotel. They encouraged him to tell the police what he knew of the murders. Later that day, Maharaj called Butler asking that he meet him at Denny's by the airport so they could make sure and get their stories straight. Butler called Detective Burmeister [sic] and told him what had transpired earlier that day in suite 1215 of the DuPont Plaza Hotel. The detective, along with another officer, drove Butler to Denny's to meet Maharaj and, at a prearranged signal, the detectives arrested Maharaj.

The State also presented the testimony of Tino Geddes, a journalist and native of Jamaica. He testified that in December, 1985, he met and began working for Elsee Carberry, the publisher of the *Echo*.

Geddes stated that, while working for Carberry, he met Maharaj, and that he and Carberry went to Maharaj's home to discuss an article which Maharaj wanted the *Echo* to publish concerning Derrick Moo Young. Geddes stated that Carberry agreed to publish the article for $400. The article was published in the May 2, 1986, edition of the *Echo* and detailed the background of a civil suit filed against Derrick Moo Young by Maharaj's wife.

Geddes further testified that, because of the *Echo's* subsequent favorable coverage of Derrick Moo Young, Maharaj became hostile towards Carberry. Geddes stated that Maharaj purchased exotic weapons and camouflage uniforms and that, on several occasions, he and Maharaj had tried to harm Carberry. On one occasion, Maharaj had Geddes meet him at the bar of the DuPont Plaza Hotel; then he took him to a hotel room. Maharaj had a light-colored automatic pistol and a glove on one hand. Maharaj told Geddes to call and lure Carberry and Moo Young to the hotel room. Fortunately, Geddes was unable to get either Carberry or Moo Young to come to the hotel room.

The State also presented Elsee Carberry, the publisher of *The Caribbean Echo*. Carberry testified that he knew both Maharaj and Derrick Moo Young before his paper started publishing the articles. Carberry stated that he was approached by Maharaj's accountant, George Bell, who requested that he publish a front-page article about Moo Young. Carberry refused this request until he met with Maharaj. A meeting was arranged and Carberry was provided documentation for the article. Carberry testified that Maharaj told him that Moo Young stole money from him and that he had documents to prove it. They agreed on a center spread and Maharaj paid $400 to have the article published.

Carberry testified that, after the first article, Maharaj wanted him to do a weekly article on Moo Young. Carberry refused and Maharaj attempted to buy *The Caribbean Echo*. When this failed, Carberry learned that Maharaj was starting his own newspaper. Shortly thereafter, Carberry was contacted by Derrick Moo Young, who wanted to present his side of the story. Carberry met with Moo Young, who provided documentation to refute Maharaj's allegations.

Carberry then began his own investigation and began publishing articles unfavorable to Maharaj. These articles were printed June 20, June 27, July 18, July 25 and October 10, 1986.

On July 5 an article was published to inform the readership that the *Echo* could not be bribed. This statement was printed in response to Maharaj's attempt to bribe Carberry. The July 18 and 25 articles charged Maharaj with taking money illegally out of Trinidad. The October 10 article accused Maharaj of forging a $243,000 check and explained that Moo Young was filing a lawsuit against Maharaj based on the forged check. During this period of time, Maharaj severed his relationship with Carberry.[34]

The State presented other corroborating evidence concerning the events that took place at the DuPont Plaza Hotel. The maid assigned to this room testified that she cleaned the room in the early morning of October 16, 1986, and, upon entering it, found that it had not been used the previous evening. She also explained that, when she left the room, it was in perfect order, including the fact that the "Do Not Disturb" sign was on the inside of the door. At 12:15 p.m., she and her boss were asked to check the room. They attempted to enter the room but were unable to do so because it was locked from the inside and, consequently, the master key would not work. She explained that the room could not be locked from the inside unless someone was in the room. Ten minutes later, she returned with a security guard, and they noticed that the "Do Not Disturb" sign was hanging on the doorknob. This time when she tried the master key, it worked; she opened the door and, upon entering

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[34] At the postconviction evidentiary hearing the defense presented a memo that discussed Carberry's possible involvement in various fraud schemes and his illegal presence in the United States. Carberry's trial testimony focused on the articles that appeared in his newspaper concerning the defendant and the victims. However, as noted by the Florida Supreme Court, both the reputation of the newspaper and Carberry individually were substantially impeached during Carberry's testimony and during the testimony of Butler and Geddes. *Maharaj v. State*, 778 So. 2d at 955.

> the room, noticed that the furniture had been moved and that there were two bodies.
>
> A police fingerprint expert testified that he found Maharaj's prints on: (1) the "Do Not Disturb" sign attached to the exterior doorknob of suite 1215; (2) the exterior surface of the entrance door; (3) the outer surface of the downstairs bathroom; (4) the top surface of the desk; (5) an empty soda can; (6) the telephone receiver; (7) the top of the television set; (8) a glass table top; (9) a plastic cup; (10) the *Miami News* newspaper; (11) a *U.S.A. Today* newspaper; and (12) torn packages that held immersion heaters. Butler's prints were also found on a plastic glass, the telephone, the desk, the front door, and the television set.
>
> The State presented a firearms expert, who examined the spent projectiles and casings. The expert testified that the eight bullets fired were from a pre-1976 Smith & Wesson model 39, a nine-millimeter semiautomatic pistol with a serial number under 270000. Evidence in the record established that Maharaj owned a Smith & Wesson nine-millimeter pistol, having a serial number of A235464.

Additionally, as stated *supra*, an important witness who testified at trial and who is not mentioned in the Florida Supreme Court's opinion is Clifton Segree, who corroborating Geddes' testimony, testified that he refused the defendant's request to be part of a false alibi for the defendant.

At the first postconviction evidentiary hearing, the following admissible evidence was presented by the defense. Inside the victims' briefcase found in the hotel room were recently purchased life insurance policies, passports which described foreign travel by the victims from the United States to Panama, Jamaica and other

countries, notes and papers pertaining to International letters of credit, appointments and business card, which the Florida Supreme Court noted that at most might have shown possible involvement in the commission of fraud. *Maharaj v. State*, 778 So. 2d at 954.[35]

In addition, the defendant presented at the prior postconviction evidentiary hearing, what can best be characterized as a weak alibi. Two witnesses testified to an alibi. The first was Arthur McKenzie who testified that he saw the defendant and Geddes and another man in Ft. Lauderdale between 11:30 and 12:00 on the day of the murders. (PCT. 832-838). However, on cross examination, he stated that he saw them a week after the crime. (PCT. 842). He stated that he remembered the day because he was late paying his rent, which was due two days after the crime. (PCT. 842-843).

The other witness was Douglas Scott, who was George Bell's brother-in-law, and worked as a delivery person for the defendant's newspaper. He testified that he saw the defendant at

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[35] In addition, at the postconviction hearing the defense presented a deposition of Shaula Nagel, Derrick Moo Young's daughter, taken during a subsequent civil suit relating to the life insurance policies, which, based on minor inconsistencies, would have somewhat impeached some of her deposition testimony concerning various issues surrounding her father, including some of his business dealings. *Id.* at 956. The Florida Supreme Court incorrectly stated in its opinion that Ms. Nagel testified at trial, she did not and the claim at the hearing was that she lied in her criminal deposition.

the newspaper office shortly before noon on the day of the crime. (PCT. 845-848).

Although, not permitted to testify at the postconviction hearing because of proof issues (PCT. 857-859), the Court considered the deposition and affidavit of George Bell in determining whether the defendant's trial counsel was ineffective for not calling alibi witnesses. (PCT. 861). In his deposition and affidavit, Bell, the defendant's accountant (R. 965) and close friend (R. 969) who had pled to conspiracy to traffic in marijuana, drug trafficking charges, (R. 952), stated that he met the defendant in his office around 12:00 p.m. that day, and that Scott was in his office at that time. Bell then stated that he and the defendant left and picked up a friend of the defendant's, named "Gang," and the three of them went to a shopping center and then to Tarks for lunch where one of the employees recognized the defendant and said hello to him. (R. 982-986). He stated that he was with the defendant from noon until a bit after 3:00 p.m. (R. 982).

Bell was hardly unbiased. He stated that he was good business friends with the defendant, and was concerned about the newspaper he and the defendant had started together that was not running after the defendant's arrest. Bell visited the defendant many times in jail asking about when they were going to start the newspaper again. The defendant said he would do it when he was

acquitted. (R. 971-972). Bell's statements were contradicted by Geddes who testified in his deposition that he talked to Bell about what his testimony would be and that Bell had told him that he (Bell), Douglas Scott (not "Gang") and the defendant had lunch together around 12:00. See Geddes deposition at p. 41, which was previously attached to the Appendix to defendant's 1997 Amended Rule 3.850 Petition filed in Volume 19 as Exhibit S-TG-E.

This "alibi" is further weakened by the testimony of Geddes and Segree at trial. In addition Det. Buhrmaster testified that the defendant in his statement to him said that he was at Kenon Press in Broward County at 10:00 a.m., that he then talked to Tino Geddes and then he got gas at a gas station in Broward, that he did not recall the type of gas station and said he had paid for the gas in cash. He then said that he did nothing for the rest of the day and that he was with no one who could verify this for him. (R. 3459-3560).

None of the admissible evidence presented at the prior postconviction evidentiary hearing when viewed cumulatively with the evidence presented at trial was found by the Florida Supreme Court to be sufficient to support any of his claims that he was entitled to a new trial on any of the legal theories alleged. *Id.* at 953-959. The allegations in the present amended postconviction motion when viewed cumulatively are likewise insufficient to support the granting of a motion for new trial as they do not rise

to the level of a showing of the probability of an acquittal at retrial.

The evidence of the insurance policies on the victims, or the possible involvement in the commission of fraud do not establish a motive for any other person to want to kill the victims other than mere speculation, and they certainly do not provide evidence that someone other than the defendant killed the victims. The documentary evidence and the hearsay evidence set forth in the amended motion relating to Hosein and the victims' relationship with the corporations, the criminal convictions of Mejia and Dames, without "admissible" testimony to connect them to the murders remains just speculation.

What this Court has been provided with by the defendant in his allegations, are speculative affidavits and declarations relating to the alleged desire of the Colombian drug traffickers to kill the Moo Youngs and for the police to frame the defendant. As stated *supra*, in the State's discussion concerning Mejia, this theory is nothing more than a variation of "Six Degrees of Separation" and is patently illogical. There is no attempt to provide a reasonable connection between how these murders were committed and the defendant being framed. This speculative evidence when combined with a very weak alibi that appeared to have been concocted, does not by itself rise to a level of showing the probability of an acquittal at retrial.

When viewed cumulatively with the trial testimony and evidence as set forth above, i.e., various witnesses linking the defendant to the murders, including the eyewitness, Butler, and other witnesses, such as Geddes and Segree that the defendant attempted to concoct a false alibi, along with the fingerprints on items found in the hotel room such as on the bloody "DO NOT DISTURB" sign and the torn package of the immersion heaters used to tie up the victims, and the evidence linking the defendant to the same type of murder weapon used in this case, it is clear that the defendant has not met the standards for newly discovered evidence, for this Court to grant a new trial. It is not of such a nature that it would probably produce an acquittal on retrial *See, e.g., Moore v. State*, 38 Fla.L.Weekly S869 (Fla. Nov. 27, 2013); *Tompkins v. State*, 980 So. 2d 451 (Fla. 2007); *Rutherford v. State*, 926 So. 2d 1100 (Fla. 2006).

In that the defendant has already been given three opportunities which were much more than sixty (60) days each to refile, *see* Fla.R.Crim.P. 3.850(f)(2); *Spera v. State*, 971 So. 2d 754 (Fla. 2007), an amended legally sufficient pleading on these claims and has been unable in good faith to do so, this Court must now deny with prejudice these claims as untimely and legally insufficient.

Wherefore, based on the foregoing, this Court should summarily deny with prejudice the defendant's Motion for

Postconviction Relief and to Vacate Judgment and Sentence Pursuant to Fla.R.Crim.P. 3.850 (Amending and Supplementing Previous Filing of December 20, 2012) and all of the amendments and supplements all of which have been filed by the defendant in support of his Motion for Postconviction Relief.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed and mailed to Benedict P. Kuehne, Esquire, Ben.Kuehne@kuehnelaw.com and Susan Dmitrovsky, Esquire, SusanD@kuehnelaw.com, Miami Tower, Suite 3550, 100 S.E. 2nd Street, Miami, Florida 33131, , on this the 14th day of January, 2014.

By: _____
Penny H. Brill
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