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IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR HOLMES COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

v. CASE NO.: 07-282 CF

AMANDA E. LEWIS,

Defendant.

ORDER DIRECTING STATE TO RESPOND TO DEFENDANT'S SECOND OR SUCCESSIVE MOTION FOR POST CONVICTION RELIEF ALLEGING NEWLY DISCOVERED EVIDENCE

THIS MATTER is before the Court on the Defendant's Motion for Post Conviction Relief pursuant to Rule 3.850, Fla. R. Crim. P. filed November 7, 2025, alleging newly discovered evidence. Having considered said Motion, the court files and records, and being otherwise fully advised, this Court finds as follows:

The Defendant was charged by Indictment with Count 1, First Degree Felony Murder and Count 2, Aggravated Child Abuse. See Indictment filed 10/11/2007. After a jury trial, the Defendant was found guilty as charged. See Jury's Verdict Form filed 2/22/2008. The Court sentenced her to serve natural life for Count 1, and thirty (30)-years in the Department of Corrections for Count 2 with credit allowed for 194 days. See Judgment and Sentence filed 3/17/2008. Following a direct appeal, the Defendant's conviction and sentences were affirmed. *See Lewis v. State*, 34 So. 3d 183 (Fla. 1st DCA 2010); *see also Lewis v. State*, 97 So. 3d 823 (Fla. 2012).

Prior Post Conviction Proceedings

On December 2, 2013, the Defendant filed her original Rule 3.850 Motion for Post Conviction Relief alleging 3 grounds for relief, which the Court struck with leave to amend pursuant to *Spera v. State*, 971 So. 2d 754 (Fla. 2007). On April 11, 2014, the Defendant filed her Amended Rule 3.850 Motion raising four grounds for relief; however, the Defendant's newest ground labeled Claim Four was facially insufficient. Therefore, the Defendant's motion was stricken again pursuant to *Spera*.

On July 30, 2014, the Defendant filed her Second Amended Motion for Post Conviction Relief raising four grounds of ineffective assistance of counsel. On December 4, 2014, the Court

entered a Final Order denying Defendant's post conviction motion with prejudice. *See* Final Order Denying Second Amended Motion for Post Conviction Relief filed December 4, 2014. Following an appeal, the trial court's ruling was per curiam affirmed in First DCA Case Number 1D15-12 on March 17, 2015. *See Lewis. v. State*, 160 So. 3d 414 (Fla. 1st DCA 2015).

On June 19, 2018, Defendant filed her Second or Successive Motion for Post Conviction Relief pursuant to Fla. R. Crim. P. 3.850 alleging newly discovered evidence. The Court struck the Defendant's motion with leave to amend pursuant to *Spera v. State*, 971 So. 2d 754 (Fla. 2007). Then, on October 31, 2018, Defendant filed her Amended Rule 3.850 Motion alleging one ground for the Court's consideration raising a newly discovered evidence claim, which was once again struck pursuant to *Spera*.

Finally, on March 11, 2019, the Defendant filed her Second Amended Motion, alleging one ground for relieve alleging newly discovered evidence, which the Court denied with prejudice. See Order Denying Second Amended Motion for Post Conviction Relief filed April 9, 2019. Following an appeal, the trial court's ruling was per curiam affirmed in First DCA Case No. 1D19-1830 on November 18, 2019. *See Lewis v. State*, 284 So. 3d 976 (Fla. 1st DCA 2019).

Instant Post Conviction Proceedings

On November 7, 2025, the Defendant filed the instant Motion for Post Conviction Relief alleging newly discovered evidence raising four (4) grounds for relief.

The Defendant raises a claim of newly discovered evidence. Under Fla. R. Crim. P. 3.850, a motion for post-conviction relief must be filed within two years after the conviction and sentence become final. Fla. R. Crim. P. 3.850(b). One exception, known as "newly discovered evidence", is that a motion may be filed outside of the limitation period if it alleges 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." *Id.*

Newly discovered evidence claims may be raised in successive post-conviction motions. *See White v. State*, 964 So. 2d 1278 (Fla. 2007). If the defendant is filing a newly discovered evidence claim based on recanted trial testimony or on a newly discovered witness, the defendant must include an affidavit from that person as an attachment to the motion. For all other newly discovered evidence claims, the defendant must 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 must provide an explanation why the required affidavit could not be obtained. *See* Fla. R. Crim. P. 3.850(c).

Two requirements must be met in order for a conviction to be set aside on the basis of newly discovered evidence: (1) to be considered newly discovered, the evidence must have been unknown to the trial court, to the party, or to counsel at the time of trial, and it must appear that

the defendant or defense counsel could not have known of it by the use of due diligence; and (2) the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial. *See Pittman v. State,* 90 So.3d 794, 813-814 (Fla. 2011). Newly discovered evidence satisfies the second prong if it weakens the case against the defendant so as to give rise to a reasonable doubt as to his culpability. *See Tompkins v. State,* 994 So.2d 1072, 1086 (Fla. 2008); *see also Calhoun v. State,* 312 So. 3d 826, 836-837 (Fla. 2019).

In **Ground One**, the Defendant was not present at a critical state of trial. See Trial Transcript (Statement of Facts from February 21, 2008, Vol I & II) at p. 384, **filed May 19, 2008.** See also Defendant's Exhibit B, Affidavit of Defendant Amanda Lewis, and Defendant's Exhibit C, Affidavit of Walter Smith, (wherein he stated under oath that neither the court nor he informed Amanda Lewis of what transpired during that chamber conference.) See Paragraph 6 of Exhibit C. Here, the Defendant alleges that she did not have actual or constructive possession of her trial transcripts until May 17, 2024, when they were obtained by a member of the Prisons and Justice Initiative. See Motion at p. 21.

In an abundance of caution, the Court shall direct a response from the State as to this ground.

In **Ground Two**, the Defendant alleges that a juror's failure to disclose prejudicial extrinsic information in violation of the Defendant's right to due process and impartial jury. See Transcript of Jury Selection held 02/18/2008, at p. 108-109, **filed June 16, 2014**.; see also Defendant's Exhibit E, Affidavit of Dr. Amanda Lewis.

In determining whether a juror's nondisclosure of information during voir dire warrants a new trial, courts have generally utilized a three-part test. Specifically, the Florida Supreme Court in *Johnston v. State,* 63 So. 3d 730, 738 (Fla. 2011) has explained that:

> [i]n determining whether a juror's nondisclosure of information during voir dire warrants a new trial, courts have generally utilized a three-part test. First, the complaining party must establish that the information is relevant and material to jury service in the case. Second, that the juror concealed the information during questioning. Lastly, that the failure to disclose the information was not attributable to the complaining party's lack of diligence.

See Johnston 63 So. 3d 730, 738 citing *De La Rosa v. Zequeira,* 659 So. 2d 239, 241 (Fla.1995) (citations omitted); *see also Lugo v. State,* 2 So. 3d 1, 13 (2008).

Under the first prong of *De La Rosa,* Johnston must establish that the nondisclosed information is relevant and material to jury service in this case. *De La Rosa,* 659 So. 2d at 241; *see also Murray v. State,* 3 So. 3d 1108, 1121–22 (Fla.2009). "There is no per se rule that involvement in any particular prior legal matter is or is not material." *Roberts v. Tejada,* 814 So.2d 334, 345 (Fla.2002); *see also State Farm Fire & Cas. Co. v. Levine,* 837 So. 2d 363, 366 n. 2 (Fla.2002). Factors that may be considered in evaluating materiality include the remoteness

in time of a juror's prior exposure, the character and extensiveness of the experience, and the juror's posture in the litigation. *Roberts*, 814 So. 2d at 342; *See Johnston v. State*, 63 So. 3d 730, 738 (Fla. 2011).

But "materiality is only shown 'where the omission of the information prevented counsel from making an informed judgment—which would in all likelihood have resulted in a peremptory challenge.' " *Levine,* 837 So. 2d at 365 (internal quotation marks omitted) (quoting *Roberts,* 814 So. 2d at 340). In other words, "[a] juror's nondisclosure ... is considered material if it is so substantial that, if the facts were known, the defense likely would peremptorily exclude the juror from the jury." *Murray,* 3 So. 3d at 1121–22 (quoting *McCauslin v. O'Conner,* 985 So. 2d 558, 561 (Fla. 5th DCA 2008)); *See Johnston v. State*, 63 So. 3d 730, 738-739 (Fla. 2011).

Under the second prong of this test, the information must be directly asked for and not provided. *See Wiggins v. Sadow*, 925 So. 2d 1152, 1155 (Fla. 4th DCA 2006). And further, to overcome the third prong, due diligence must be demonstrated by the defense as it relates to questioning the jurors. *See Hampton v. State*, 103 So. 3d 98, 113 (Fla. 2012).

In an abundance of caution, the Court shall direct a response from the State as to this ground. *See Carratelli v. State*, 961 So.2d 312, 324 (Fla.2007) ("[W]here a postconviction motion alleges that trial counsel was ineffective for failing to raise or preserve a cause challenge, the defendant must demonstrate that a juror was actually biased.").

In **Ground Three**, the Defendant was denied fair trial due to statutorily disqualified juror serving on jury.

Here, the Defendant asserts that Juror Davison was born on June 23, 1990, meaning she was only seventeen years old during the Defendant's trial in February 2008. See Defendant's Exhibit F, Private Investigator Report on Juror Jessica Davison; see also Defendant's Exhibit C, Affidavit of Walter Smith (Defendant's trial Counsel), (wherein he stated under oath that it was his standard practice to review the prospective juror list, which would include each juror's name, address, and *date of birth* to ensure that all jurors met the statutory qualifications to serve. To the best of trial counsel's recollection, nothing on the list or during voir dire indicated that Ms. Davison was 17 years old, and he had no reason to suspect she was underage.) See Paragraph 4 of Exhibit C.

> **40.01 Qualifications of jurors.**—Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of the United States and legal residents of this state and their respective counties and who possess a driver license or identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to chapter 322 or who have executed the affidavit prescribed in s. 40.011.

See Section 40.01, Florida Statutes; see also Section 40.011, Florida Statute ("Jury List"); and Rule 3.281, Fla. R. Crim. P. ("List of prospective Jurors")

In *Rivera v. State*, --- So. 3d ---, 2025 WL 3534064 (Fla. 2d DCA December 10, 2025), the Second District Court of Appeal held that the alleged evidence of juror misconduct through nondisclosure of information was not information that was "unknown" and "could not have been ascertained by the exercise of due diligence" and thus did not provide a basis for exception to two-year time limitation for motion. Specifically, the Court in *Rivera* stated the following in their written opinion:

> Mr. Rivera argued below that Covert Ops Jury Investigations "relied primarily on information from [the juror's] Facebook page to substantiate her identity," which resulted in the discovery of the juror's family and romantic partners having criminal histories. Thus, the argument goes, because the social media posts allegedly did not exist until after his time to file a postconviction motion had expired, the information constitutes newly discovered evidence. This argument is explicitly contradicted by the Covert Ops Jury Investigations affidavit. According to the affidavit, the Facebook page was used to "*further confirm* that [the juror] had been connected to these family members during the time of Mr. Rivera's trial." (Emphasis added.) As to the juror's address being proximate to the scene of the crime, that address was verified via the Hillsborough County Clerk of Court's official records.
>
> The source of the information purported to be newly discovered evidence—prison records, arrest records, marriage records—is that of *publicly available records*. Because the information is publicly available, it could have been discovered with due diligence. Because it could have been discovered with due diligence, it is not newly discovered evidence, and Mr. Rivera's motion must be procedurally barred as untimely under rule 3.850. As to Mr. Rivera's argument that he and his family did not have "the necessary financial resources to afford such an investigation until August 2021," this is not a permissible exception to the time limit imposed by rule 3.850(b). Moreover, inability to afford professional investigative services does not foreclose the reasonable possibility that nonprofessionals could access the same publicly available records.
>
> When it comes to the question of nondisclosed information during voir dire, neither the State nor the defense has an affirmative duty to investigate whether the jurors' answers are truthful or whether they are concealing pertinent information responsive to questioning during voir dire. By virtue of the fact that such claims are premised on a juror's concealment of information, it is logical to presume that, typically, neither party will know whether there is juror misconduct until a party goes looking for it; the information that could reveal the misconduct is there all along, but it is not very likely to come to light unless someone investigates the juror through extraneous sources of information. Thus, the time to exercise due diligence under rule 3.850 does not run from when a party finds out that material information was not disclosed—it runs from when the judgment and sentence become final, when either party can, of their own volition, investigate the matter. Moreover, the circumstances of this case are different than a typical scenario in which a defendant, years later, serendipitously learns of some

previously undiscoverable fact that indicates a juror had concealed information or lied. Rather, this defendant went on a fishing expedition but did not do so until after the time period to file a postconviction motion had expired. The exception to the time bar applies when the information did not become ascertainable until after the deadline, not when the postconviction defendant only decided to start looking for it after the deadline. *See* Fla. R. Crim P. 3.850(b)(1) (providing an exception under circumstances in which the facts were "unknown ... and *could not have been* ascertained by the exercise of due diligence" (emphasis added)).

In his reply brief, Mr. Rivera places emphasis on the inability of a defense attorney to know whether a juror is lying when questioned during voir dire. But this only underscores the conclusion that the defense team can and should conduct juror investigations during the proper time period. It certainly does not mean that a claim of juror misconduct can wait until a postconviction defendant gets curious enough long after the two-year time limit expires and then finally decides to hire someone to investigate possible juror misconduct. The same diligence the defendant showed over a decade later could have been shown before the time limit expired. And whatever efforts the professional juror investigators exerted could have been made by private investigators, lawyers, or diligent nonprofessionals prior to the expiration of the two-year time limit.

This opinion should not be read to imply that, but for the untimeliness of the rule 3.850 motion, Mr. Rivera would have established a valid postconviction juror misconduct claim entitling him to relief. We do not reach that question. Mr. Rivera failed to adequately allege facts in his untimely motion that indicate his claim is based on information that satisfies the test for newly discovered evidence. As support for his entitlement to an evidentiary hearing, Mr. Rivera cites authority that provides for an evidentiary hearing on the issue of actual bias, not on the issue of whether the putative newly discovered evidence could have been discovered earlier with due diligence. *See Smith v. Phillips*, 455 U.S. 209, 215, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982) ("This Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias."). In this case, no postconviction hearing is necessary to determine whether the information constituted newly discovered evidence to avoid the time bar because the postconviction court could determine as a matter of law that it did not, based on the allegations of and the attachments to Mr. Rivera's postconviction motions. *See* Fla. R. Crim. P. 3.850(f)(5) ("If the motion is legally sufficient but all grounds in the motion can be conclusively resolved either as a matter of law or by reliance upon the records in the case, the motion shall be denied without a hearing by the entry of a final order.").

The postconviction court correctly concluded that Mr. Rivera's motion was filed after the two-year deadline in rule 3.850 and that Mr. Rivera did not establish that "the facts on which [his] claim is predicated were unknown to" him and his attorney and "could not have been ascertained by the exercise of due diligence." *See* Fla. R. Crim. P. 3.850(b)(1).

See *Rivera*, at p. 4-5. (Case No. 2D2023-2718).

In this case, the Defendant's Exhibit F, the private investigator report on Juror Jessica Davison reflects that the investigator used possible criminal records, driver's license information, current vehicle information, and voter registration.

In an abundance of caution, the Court shall direct a response from the State as to this ground. See *State v. Rodgers*, 347 So. 2d 610, 613 (Fla. 1977) ("in the absence of evidence the defendant was not accorded a fair and impartial jury or that his substantive rights were prejudiced by the participation and misconduct of the unqualified juror, he is not entitled to a new trial."); *Lowery v. State*, 705 So. 2d 1367, 1370 (Fla. 1998) (this Court recognized an exception for cases in which a juror was under prosecution by the same State Attorney's Office at the time of his jury service. However, the Court made clear that it did "not overrule Rodgers; [it was] simply carving out an exception based on the unique circumstances presented."); *Lugo v. State*, 2 So. 3d 1, 15-16 (Fla. 2008) see also 33 Fla. Jur. 2d Juries §52. Age restrictions on jury service; effect of violation of statutory requirements pertaining thereto.

In **Ground Four**, the Defendant alleges newly discovered evidence. Defendant alleges that she did not discover this information until March 2, 2025 and March 5, 2025 concerning Juror Davison.

Specifically, Defendant argues (1) that Juror Davison's failure to disclose prejudicial extrinsic information constitutes newly discovered evidence and warrants a new trial; and (2) service of statutorily disqualified Juror Davison prejudiced the defendant and necessitates a new trial.

In an abundance of caution, the Court shall direct a response from the State as to this ground.

Conclusion

A defendant seeking a new trial based upon newly discovered evidence has a high burden. In order to obtain a new trial under this theory, a defendant must meet the following two requirements:

> First, to qualify as newly discovered evidence, the asserted facts must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known them by the use of diligence. Second, to prompt a new trial, the newly discovered evidence must be of such nature that it would *probably* produce an acquittal on retrial.

Blanco v. State, 702 So.2d 1250, 1252 (Fla. 1997) (citations omitted) (emphasis in original). *See also Jones v. State*, 709 So. 2d 512 (Fla. 1998). Both requirements must be met.

Newly discovered evidence satisfies the second prong if it weakens the case against the defendant so as to give rise to a reasonable doubt as to his culpability. *See Tompkins v. State*, 994 So.2d 1072, 1086 (Fla. 2008). Stated another way, the proffered evidence must substantially undermine confidence in the outcome of the prior proceedings. *See Merritt v. State*, 68 So.3d 936 (Fla. 3d DCA 2011). In determining whether the newly discovered evidence requires a new trial, the trial court must consider all newly discovered evidence which would be admissible and must evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial. *Id.* (internal quotation omitted). This determination includes an analysis of whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence. The trial court should also determine whether this evidence is cumulative to other evidence in the case and should consider the materiality and relevance of the evidence and any inconsistencies in the newly discovered evidence. *Id.* at 1086-1087.

In an abundance of caution, the Court shall direct a response from the State as to this ground of newly discovered evidence and the Defendant's other grounds raised. Therefore, it is

ORDERED AND ADJUDGED that the State Attorney's Office shall respond to the allegations raised in the Defendant's Amended Motion for Post Conviction Relief as to Ground One alleging newly discovered evidence within sixty (60) days from the date of this Order.

DONE AND ORDERED this Tuesday, February 3, 2026 in Chambers, Holmes County, Florida.

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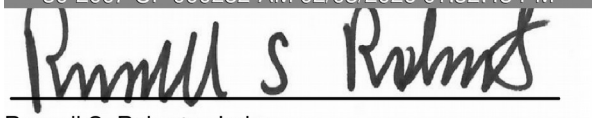

Russell S. Roberts, Judge
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to the following individuals on Tuesday, February 3, 2026.

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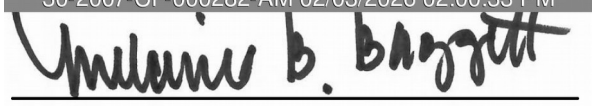

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