

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU

OCT 25 1999

CLERK, SUPREME COURT
BY _____

TERRY MELVIN SIMS,

Appellee,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 96,818

Seminole Co. 78-363-CFA

Death warrant Signed

Execution Set for

October 26, 1999 at 7:00 am

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR SEMINOLE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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CERTIFICATE OF FONT

This brief is typed in Courier New 12 point.

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MISCELLANEOUS

Rule 3.850, *Fla. R. Crim. P.* 1, 2, 9, 12, 13, 16

Rule 3.850(b)(1), *Fla. R. Crim. P.* 1

STATEMENT OF THE CASE AND FACTS

On October 21, 1999, Sims filed a successive, abusive *Florida Rule of Criminal Procedure* 3.850 motion in the Circuit Court of Seminole County, Florida. The Circuit Court conducted a status conference on the morning of October 22, 1999, and scheduled a *Huff* hearing for Saturday, October 23, 1999, and further scheduled an evidentiary hearing for Sunday, October 24, 1999. The State filed its response to the motion on Friday, October 22, 1999.

On October 23, 1999, the Court conducted a *Huff* hearing, and, at the conclusion of that proceeding, determined that an evidentiary hearing was necessary on the two claims contained in the Rule 3.850 motion.¹

On Sunday, October 24, 1999, the Circuit Court conducted an evidentiary hearing on the claims contained in Sims' Rule 3.850 motion. At that hearing, Sims presented the testimony of four witnesses -- the two attorneys who represented him at his 1979 trial, and two convicted felons who testified that one of the witnesses (Halsell) who testified at Sims' trial told them that

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Curiously, the court cited *Gaskin v. State*, 737 So.2d 509 (Fla. 1999), as authority for compelling an evidentiary hearing. *Gaskin* is not relevant authority for that position, and the court's reliance on that decision is confusing, at best. There was no basis for conducting an evidentiary hearing on any of the claims because, even if the averments of newly discovered evidence are taken as true, there is no reasonable probability of a different result on retrial. *Stano v. State*, 708 So.2d 271 (Fla. 1998); *Remeta v. State*, 710 So.2d 543 (Fla. 1998).

Sims was not at the scene of the robbery. The testimony of the individual witnesses is summarized below.²

THE INDIVIDUAL WITNESSES

At the evidentiary hearing held before the Honorable Judge O.H. Eaton, Jr., on Sunday, October 24, 1999, Appellant, Terry Melvin Sims, characterized the case against him as "house of cards on a moving train." In an effort to substantiate that claim, he presented the live testimony of three witnesses in person and one via telephone. He also offered into evidence two affidavits, those purportedly of Jerry Lawrence and Clyde Oglesby, and withdrew the affidavit of Eston Bullard which had previously been filed in support of the successive motion. The alleged affiants of the other two affidavits originally offered in support of the motion, Walter Danny Morrison and Harold Bryan, testified; however, neither identified the purported affidavits, nor did they testify that they had given affidavits much less that the ones offered in support of the motion were their affidavits.

The first witness called was Sims' trial counsel, Mark Rabinowitz. Mr. Rabinowitz testified at Sims' prior Rule 3.850 proceeding in 1990. At the instant hearing, he testified that the primary defense was that Terry Gayle, not Terry Sims, was the robber and killer. The State's primary witnesses against Sims were the two codefendants, Halsell and Baldree, and three witnesses from the

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Sims also offered two affidavits from persons who claimed to have heard Halsell make certain statements.

scene of the crime, i.e., the drug store.³

Mr. Rabinowitz said that the information contained in the Morrison, Bryan, and Oglesby affidavits would have given the defense specific dates and times of offenses involving Terry Gayle which were close in time to the murder. They could also have been used to show motivation on the part of the codefendants to testify against Sims and would have shown the close connection between the robbers in this case and Terry Gayle. Mr. Rabinowitz recalled having previously heard of Mr. Oglesby and said that he believes that he knew of him at the time of trial. He could not remember if he recognized the name "Jerry Lawrence."

Regarding Seminole County Lieutenant Calangelo, Mr. Rabinowitz testified that he is "a fine and honorable police officer." He added that he feels the same way about Lt. Salerno and still feels "that way today." Mr. Rabinowitz offered these opinions after having spent approximately 15 minutes reading the parts of the deposition of Lt. Calangelo which dealt with the lieutenant's information of other crimes and individuals which might be pertinent to Sims' defense. This deposition was offered by Sims in support of his successive motion for the proposition that the State withheld *Brady* evidence in the form of Lt. Calangelo's knowledge of other drug store burglaries in which Halsell and Terry Gayle had worked together. In his deposition, Lt. Calangelo mentions nothing about any knowledge of any connection between Halsell and Terry Gayle, much less knowledge of an

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Each of these three witnesses positively identified Sims at trial.

interview during which Halsell linked Terry Gayle to specific drug store burglaries close in time to the instant one.

Mr. Rabinowitz admitted that the affidavit of Oglesby ties Terry Sims in as one being considered as a participant in the Orlando area drug store robbery allegedly being planned by Halsell and Baldree. He also admitted that at Halsell's deposition and on cross at trial, he stopped questioning Halsell about his connection with Terry Gayle. He acknowledged the questions and answers as follows:

Q. Do you know a man by the name of Terry Wayne Gayle?

A. Yes, sir.

Q. How do you know him?

A. I know him from Jacksonville.

Q. Have you ever been involved in any drugstore burglaries with him?

A. Yes, sir.

Q. Ever bought any drugs from him?

A. I've bought drgus from him.

Q. How about a man by the name of Melvin Eugene McCollum?

Deposition, at 139.

Q. Do know a man by the name of Terry Wayne Gale?

A. Yes, sir.

. . .

Q. And have you ever been involved in any crimes with Terry Wayne Gale?

A. Yes, sir.

Q. How many occasions?

A. Quite a few.

(R 348-349.

When asked why he did not ask further questions about the Halsell/Gayle connection, trial counsel said that during Halsell's deposition, the Assistant State Attorney had suggested that Halsell might want to invoke the Fifth amendment and decline to answer further questions about other crimes he had participated in. However, counsel admitted that this incidence occurred earlier in the deposition than did the questioning about Gayle and that he made no attempt to ask the questions to see whether Halsell would refuse to answer questions regarding Terry Gayle and his criminal activities.

Mr. Rabinowitz agreed with the State that had the evidence of the alleged burglaries perpetrated by Halsell and Gayle been admitted, it would have opened the door for the State to present the considerable evidence of Sims' extensive participation in these activities. Indeed, the exhibit Sims offered in support of his instant motion, includes the important evidence which would have then been admissible. Having been asked to list the most active members of the drug store burglars, unofficially called the "Dixie Mafia," or "the Company," Halsell listed twelve persons. That list included Sims and did **not** include Terry Gayle. Further, during that same interview, Baldree said that Sims told him that he "would kill any Police Officer who attempted to take them into custody" during a criminal enterprise.

Judge Eaton asked Mr. Rabinowitz several questions regarding the defense of mistaken identity. Specifically, he inquired whether

trial counsel had investigated a possible alibi for Sims and whether they had had Sims examined by a doctor in regard to the alleged gunshot wound received from the gun of Deputy Pfiel. He also wanted to know if counsel had inquired into whether anyone could verify the claim made by Sims' girlfriend that he had recently received a wound to the left hip in a industrial accident. Mr. Rabinowitz said that they investigated the alibi defense and put on the evidence they had on that issue; he indicated that Sims was not examined by a doctor and that they had no evidence to put on in regard to any industrial accident.

Sims' next witness was trial counsel, W. J. Heffernan, Jr., who testified via telephone. Mr. Heffernan said that he has practiced criminal defense work for some 27 years. The defense theory was mistaken identification and that the codefendants had decided to blame Sims instead of Terry Gayle. Mr. Heffernan admitted that both Sims and Gayle were very involved in the drug store burglaries group and they were referred to as "Big T" (Terry Gayle) and "Little T" (Terry Sims). Mr. Heffernan said that at some point after the trial, he saw a report from the Jacksonville Police Department about the "Dixie Mafia."

Mr. Heffernan said he does not think that Halsell had the right to invoke the Fifth Amendment. He said that trial counsel "just missed it." Regarding the affidavits, he said that they could have used them to show that Halsell was "lying to protect a friend." However, he maintained that they did investigate and talk to other witnesses about Terry Gayle.

In response to Judge Eaton's questions, Mr. Heffernan said that they investigated an alibi for Sims and tried to show he was not in the Seminole County area at the time of the offense. On the issue of the defense investigation into whether Sims was the victim of a gunshot wound, he said that the State tried to have Sims subjected to surgery to remove the bullet, but the court denied it as too invasive.

Mr. Heffernan testified (inaccurately) that he put on some women at trial who testified that Sims injured himself while working on a roof and that they had taken care of him. Counsel reluctantly admitted that the defense did not have him examined medically.

Sims' next witness was Bay Correctional Institution inmate, Harold Bryan. Mr. Bryan, a holder of 13 felony convictions, testified that he has been, and is, a heroin addict. He did drugs with Halsell during the early 1970's and knew Terry Gayle, as well as his brother, Larry Gayle. Bryan said that he did everything he could to supply his drug habit, including burgling drug stores. He worked with Terry Gayle, Halsell, and others. His first drug store burglary with Gayle and Halsell was in 1977.

Bryan claimed that some time right after Christmas, 1977, he was present at a discussion of a possible robbery to be done "around Orlando." He, Terry Gayle, Baldree, and Halsell discussed it, but Bryan turned it down because he was unwilling to escalate to robbery.

Thereafter, at a time when the news of the Seminole County drug store robbery had "just come on the news," he was in Jacksonville with Halsell. Halsell told him that "Terry got into a gun battle,"

and a deputy was killed in a shoot out.

At some unspecified time in 1981, in Jacksonville, Bryan asked Halsell why Terry Sims was put in a position to have a gun battle with a police officer. He claimed that at this time, Halsell indicated that it was not Terry Sims who had shot the deputy. Bryan said he spoke up and told Halsell not to say any more because he did not want to have that type of information and he thought that he already knew who Halsell was "talking about."

Bryan said that he met Terry Sims through Nelson Silver, one of those Bryan identified as being involved in the drug store crimes. In fact, he said there were "probably 50 people out of Duval County" who were involved with the criminal group. He admitted that Terry Sims was an active member of that group.

Regarding whether he would have given this information to Sims in 1990 (when the first 3.850 was pending), he said that he did not know what he would have done then. He indicated that it would have probably depended on whether he was "strung out on heroin." Later, he said that he probably would not have told anyone about it before the past three years.

Sims' final witness was Union Correctional Institution inmate, Danny Morrison who had 12 felonies to his credit. Morrison said that Halsell was "scared of the two other guys" who had done the instant robbery. Although he opined that Sims was not one of "the two other guys," Defense Counsel Heffernan earlier testified that Halsell feared both Sims and Clarence Eugene Robinson (the fourth participant in the subject robbery).

The alleged affidavit of Jerry Lawrence states that Mr. Lawrence knew Halsell and Baldree and was "part of a group of people that was using drugs and burglarizing drug stores" He claimed that he met Halsell after he was released from jail on the instant offense, and Halsell indicated that Sims was not involved in the crime. He claimed he also met Baldree after he got out of jail and Baldree told him that he "snitched" on Sims because he "couldn't refuse their deal." Although Lawrence made some parting comment about snitching on "someone who was not there," Baldree did not comment and left.

The State put on no witnesses. Judge Eaton issued an order denying all relief late in the afternoon of October 24, 1999. A separate order denied Sims' motion for stay of execution. This appeal follows.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY DENIED ALL RELIEF

The State incorporates herein all of the previously-lodged pleadings filed in connection with this proceeding. Specifically, the State incorporates the responses and defenses pleaded in the "Response to Emergency Motion to Vacate" which was filed on October 23, 1999. The trial court's orders denying all relief and denying a stay of execution are correct and should be affirmed in all respects for the reasons set out below. In addition to the reasons for denial of relief contained in the trial court's order, denial of all relief is correct for the additional reasons contained in this brief.

With regard to the *Brady* claim (Claim I of the Rule 3.850

motion), the trial court made the following findings of fact:

The defendant recently (within the last few weeks) discovered a police report authored by H. F. McGilvray of the Gainesville Police Department who was working on drug store burglaries and robberies in Gainesville. This officer interviewed James Halsell in an effort to clear these cases. Halsell gave McGilvray a complete statement about the crimes being investigated and was subsequently given favorable treatment for his cooperation. Lt. Anthony Calangelo was investigating the homicide in this case and he initiated contact with McGilvray. **There is no evidence that Lt. Calangelo had the report and suppressed it from the defendant.** The defense took Lt. Calangelo's deposition and, being a trained police officer, he answered the questions asked of him but did not volunteer any information. As a result, **the defense did not learn of the McGilvray interviews since further inquiry on the subject was not made.**

The defense asserts that Halsell misled them during his deposition because he did not disclose the interview. **However, from a review of the deposition, the court concludes that Halsell was answering questions pertaining to this case and did not intentionally mislead the examiner. He was not specifically asked about interviews for other cases in different counties.**

The theory of defense in this case was that a companion of the group named Terry Gayle was the murderer and not Terry Sims. Officer McGilvray's report discloses that Halsell was involved in several "drug store jobs" in Gainesville with Terry Gayle, some of which occurred in October, 1977. The defendant urges that if this fact had been known the jury would have been more likely to believe the "mistaken identity" defense. But Halsell was thoroughly discredited by cross examination at trial and it stretches the imagination to suppose that the only Terry in the group that committed crimes outside of Gainesville was Terry Gayle. The court finds the claim for the Brady violation to be without merit.

Order, at 2-3 [emphasis added]. Those findings of fact are supported by competent substantial evidence, and should not be disturbed. Of course, it is axiomatic that the trial court's resolution of disputed facts is entitled to great deference on appeal, and will not be disturbed absent an abuse of discretion. Sims cannot meet that

standard. There is no basis for relief, and the trial court should be affirmed in all respects.

In resolving the "newly discovered evidence" claim (Claim II), the trial court made the following findings:

In order for newly discovered evidence to be the basis for relief it must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that the defendant or his counsel could not have known about it through the use of due diligence. Since the statements attributed to Halsell were made after the trial they appear to meet this threshold test. However, the question before the court is whether this evidence would probably produce an acquittal at retrial. *Jones v. State*, 591 So.2d 911 (Fla. 1991). The answer to this question is probably not. **First, there are three independent eye witnesses to the robbery.** Second, the testimony of the other codefendant who testified at trial, Curtis Baldree, has not been attacked as untrue except to theorize that if Halsell said he was lying at trial Baldree must have lied too. **Third, the person who shot and killed George Pfiel was wounded in the process by a gunshot to the hip. The defendant had such a wound which went untreated for several days. The doctor who treated Sims testified at trial as a rebuttal witness.**

Thus, there was substantial competent evidence to convict Sims of the murder **even if the jury totally rejected the testimony of Halsell and even if they rejected the testimony of Baldree.**

Order, at 4 [italics in original; emphasis added]. Those findings of fact by the trial court are supported by competent substantial evidence, are not an abuse of discretion, and should be affirmed in all respects.

In his "Application for Stay of Execution" filed on October 25, 1999, Sims alleges that the "affidavit"⁴ of one Joyce Gray, who

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Of course, "[a]ssertions in affidavits are a far cry from assertions made under circumstances which subject them to probing cross-examination." *Smith v. Wainwright*, 777 F.2d 609, 618 (11th

testified at his trial in 1979, contains matters that entitle him to a stay of execution. That claim is controlled by this Court's decision in *Mills v. State*, where this Court addressed a similar claim of "new evidence" coming from a witness who testified at trial. This Court held:

However, Tina Partain testified at trial and was available at that time for examination concerning any connection between Fredrick and the victim or between Fredrick and Mock, or concerning any other persons who had connection with either of them. Nor is there sufficient showing that Tina Partain was not available through due diligence during the time required by the rule.

Mills v. State, 684 So.2d 801, 805 (Fla. 1996) [emphasis added]. The Gray affidavit presents a situation that is no different from *Mills*. That case controls the result in Sims' case, as well. Moreover, to the extent that further discussion of the Gray affidavit is necessary, the finding of the Circuit Court that Sims would have been convicted even if the jury rejected the testimony of Baldree (which is the subject of the Gray affidavit), is dispositive of the issue.⁵

In addition to the fact-based reasons for denial of relief, the following procedural grounds are additional, and independently adequate, grounds for denial of all relief.

The claims and sub-claims contained in Sims' Rule 3.850 motion are untimely, successive, and are an abuse of procedure. To the extent that Sims' claims are based on "newly discovered evidence"

Cir. 1985).

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The State has filed a separate Response to the Application for Stay of Execution. All arguments contained therein are incorporated herein by this reference.

allegations, Sims cannot establish the due diligence component of Rule 3.850(b)(1), and, for that reason, is not entitled to relief because he cannot make the necessary threshold showing that would allow consideration of such claims. Further, the "new evidence" claims fail because none of that evidence is even admissible⁶ because it is hearsay that is being offered for the truth of the matters asserted therein. See, *Stano v. State*, 708 So.2d 271 (Fla. 1998). Because that is so, the denial of relief was proper.

To the extent that Sims claims that the claims contained in the Rule 3.850 motion could not have been timely raised because he only "recently" discovered the evidence at issue, that claim fails. Sims has had the Public Records Act (Chapter 119 of the *Florida Statutes*) available to him at all times relevant, and any failure to take advantage of public records discovery is a failure to exercise due diligence.⁷ Because Sims has failed to exercise due diligence in his discovery as it relates to public records, he cannot escape the preclusive effect of Rule 3.850's time limitation on the presentation of successive claims. See, *Zeigler v. State*, 654 So.2d 1162 (Fla. 1995); *Zeigler v. State*, 632 So.2d 48 (Fla. 1993); *Agan v. State*, 560 So.2d 222 (Fla. 1990); *Demps v. State*, 515 So.2d 196 (Fla. 1987). The

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Further, Sims has not even suggested how hearsay statements by a dead man could be admitted at any proceeding for any purpose.

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On October 21, 1999, this Court issued an order affirming the denial of Sims' motion to compel production of public records. The order indicates that an opinion will follow, but, as of the filing of this brief, it has not been released.

facts of this case are functionally identical to the facts in *Zeigler*, with the notable exception that Sims waited until October of **1999** before he filed his belated requests for records under Chapter 119 and the related provisions of *Florida Rule of Criminal Procedure* 3.852. These requests were not made until long after the initial round of state and federal collateral attack litigation was concluded and a warrant for the execution of Sims' sentence was signed. Regardless of how "due diligence" is defined, Sims cannot demonstrate it -- his motion is time-barred, and relief should be denied on that basis.

To the extent that further discussion of the due diligence component is necessary, Florida law is clear that, **because this is a successive motion for post-conviction relief filed more than one year after finality of the judgment and sentence**, Sims has the burden of demonstrating his exercise of due diligence. *See, Mills v. State*, 684 So.2d 801, 804-05 (Fla. 1996); *Stano v. State*, 708 So.2d 271 (Fla. 1998); *Buenoano v. State*, 708 So.2d 941, 952 (Fla. 1998); *Remeta v. State*, 710 So.2d 543, 546-8 (Fla. 1998); *Davis v. State*, 24 Fla. L. Weekly S345 (Fla. July 1, 1999). *Buenoano* and *Remeta* explicitly hold that a capital defendant's "eleventh hour" initiation of the public records process does not provide a basis for a stay of execution or for other relief. *Buenoano*, 708 So.2d at 952-3 ("The Public Records Act has been available to Buenoano since her conviction; but most of the records she alleges were not disclosed prior to the filing of her latest rule 3.850 motion were not requested until January 1998, or later. . . . Buenoano has not alleged that through the exercise of

due diligence she could not have made these requests within the time limits of rule 3.850."); *Remeta*, 710 So.2d at 546 (same). The murder in this case took place in 1977, and Sims' convictions and sentence of death have been final since 1984. Sims could and should have brought this claim years ago.

In addition to a complete failure of proof as to the due diligence component of the new evidence standard, Sims has also completely failed to establish, assuming *arguendo* that the due diligence component is overcome, that the evidence at issue is reasonably likely to produce an acquittal on retrial. Under settled Florida law, that is the standard that Sims must meet. See, *Stano, supra; Remeta, supra; Jones v. State*, 591 So.2d 911, 915 (Fla. 1991). The "evidence" at issue herein is, at best, of questionable validity. Moreover, **the testimony of only one witness is implicated by Sims' claims**. The true state of the record is that the testimony of three eyewitnesses, as well as the testimony of Sims' co-defendant who was inside the pharmacy with Sims, is not affected by the purported "false" testimony of Halsell.⁸ Moreover, that testimony cannot possibly produce an acquittal on retrial because there can be no cross-examination of Halsell which would allow him to be impeached

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Halsell was another participant in the robbery. He testified against Sims, as did Baldree, who was inside the pharmacy along with Sims. Both Halsell and Baldree are deceased. The evidence against Sims is summarized in the State's memorandum summarizing the facts, which was previously filed in this case. The lower court found that there was no reasonable probability of a different result if the testimony of **both** codefendants was rejected by the jury. Order, at 4.

with any "statement" he allegedly made to Bryan or Morrison. See *Stano, supra*.⁹

Insofar as the independent *Brady* claim is concerned, the trial court properly denied relief on the merits. The true facts are that the only reason the purported *Brady* evidence was not discovered at the time of the trial is because defense counsel did not ask the right questions during deposition discovery as the trial court found. Order at 3. See, Halsell deposition. See also, McGilvray deposition [indicating that the claim lacks any basis in fact]. This information could have been timely discovered through the exercise of due diligence, and, because of that failure, is now time-barred, in addition to being subject to the successive petition bar. See, *Mills, supra; Stano, supra; Buenoano, supra; Remeta, supra; Davis, supra; Atkins, supra; Bolender, supra*.

Moreover, the "*Brady*" claim is nothing more than a claim that the Gainesville Police Department had **some** information that linked Gayle and Robinson to one or more drugstore **burglaries**.¹⁰ Sims pursued

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The same arguments apply to the Gray affidavit, which is the "basis" for the October 25, 1999, motion for stay. As the circuit court found, Sims would still have been convicted even if the jury wholly rejected the testimony of both co-defendants.

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Showing that the "real killer", Gayle, had committed burglaries of drugstores, even if his partners were some of the suspects from this murder, does not in any way provide any plausible evidence that Gayle was at the scene of the murder. Obviously, burglary and robbery are not the same offense, and it is doubtful that such offenses could be used for *Williams* Rule or reverse-*Williams* Rule purposes. A reading of trial attorney Heffernan's affidavit indicates that, even though he has nearly 30 years of experience in criminal law, he does not recognize the difference between the

the "mistaken identity" defense at trial and in subsequent litigation. On appeal from the denial of his Rule 3.850 motion, this Court stated:

Next, Sims argues that the State deliberately withheld exculpatory evidence consisting of a document that allegedly would have connected another man, Terry Wayne Gayle, to the present crime. We find this argument highly improbable. Even accepting the defense's argument at face value, the document would have done no more than show that Gayle was a copurchaser of "lock pullers" later used by Sims and his codefendants to steal a car. We see no way this document could have established either that Gayle was at the scene of the instant crime or that he actually committed the murder. **The admissible evidence overwhelmingly established Sims as the triggerman; and no plausible evidence showed that Gayle was at the scene. This document thus was immaterial evidence, and its exclusion was not error.** *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985).

Sims v. State, 602 So.2d at 1257 [emphasis added]. The evidence from the successive proceeding is no different, and the trial court correctly denied relief. That ruling should be affirmed in all respects.

CONCLUSION

For the reasons contained herein, this Court should affirm the trial court's denial of relief, and should deny the motion for stay of execution.

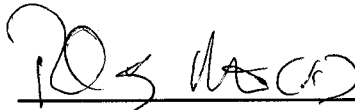
offenses. Motion, at 17-18.

Respectfully submitted,

ROBERT A BUTTERWORTH
ATTORNEY GENERAL



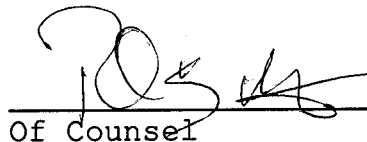
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by Facsimile and U.S. Mail to Timothy P. Schardl, Law Offices of Mark E. Olive, P.A., 320 West Jefferson Street, Tallahassee, Florida 32301; and Steven H. Malone, Assistant Public Defender, 15th Judicial Circuit, 421 Third Street, West Palm Beach, Florida 33401, on this 25 day of October, 1999.



Of Counsel