

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR
SEMINOLE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

CASE NO: 592004CF002491A

v.

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Defendant.

**PETITION FOR DETERMINATION OF STATUS AS A WRONGFULLY
INCARCERATED PERSON**

Pursuant to the Victims of Wrongful Incarceration Compensation Act, Fla. Stat. § 961.03, Clemente Javier Aguirre-Jarquin hereby submits this petition for a determination of his status as a wrongfully incarcerated person.

Clemente Aguirre was wrongfully incarcerated for more than 14 years in connection with the 2004 murders of Cheryl Williams and Carol Bareis. Aguirre has always maintained his innocence. Since the day of the victims' murders, he has maintained that he found the victims in their home after their death, and no evidence has been presented to the contrary. Nonetheless, he was charged with these crimes in 2004, and then in 2006 a jury wrongly convicted him and sentenced him to death. He spent more than a decade on death row. In 2016, based on powerful new evidence of Aguirre's innocence and overwhelming new evidence of the guilt of another suspect, Samantha Williams—including DNA, forensic, and testimonial evidence, including multiple confessions by Samantha to her friends and neighbors—the Florida Supreme Court unanimously vacated Aguirre's convictions and sentence because "adding the newly discovered evidence to the picture changes the focus entirely [Aguirre] is now the scapegoat for [Samantha Williams's] crimes." *Aguirre-Jarquin v. State*, 202 So. 3d 785, 795 (Fla. 2016).

In the immediate aftermath of the Florida Supreme Court's decision—indeed, the very day that the Supreme Court released its opinion—the State announced its intent to continue to prosecute Aguirre for these crimes. Accordingly, after the Supreme Court vacated Aguirre's convictions and sentence, the State transferred Aguirre from Union Correctional Institution to the John E. Polk Correctional Facility in Seminole County, where he was held pending retrial (and where he remained until November 5, 2018). Twice in 2018 this case came within a day of a jury being seated to retry Aguirre. But, as described in more detail below, neither trial got off the ground. All the while, new evidence continued to surface that tended to exculpate Aguirre and inculpate Samantha Williams. Finally, on November 5, 2018, at the conclusion of the death-qualification phase of jury selection for Aguirre's re-trial—and after four mid-trial depositions that exposed some of the deep and inherent flaws in the State's case against Aguirre—attorneys for the State of Florida stated in open court that the State was entering a *nolle prosequi* on all charges that it had previously had filed against Aguirre. Aguirre was finally released that day from the State's custody, after spending more than 14 years incarcerated for crimes he did not commit.

As explained below, there is substantial and verifiable evidence not only of Aguirre's innocence, but also of Samantha Williams's guilt. Aguirre has also never been convicted of a felony. Accordingly, the Court should certify that Aguirre is a wrongfully incarcerated person eligible for compensation under the Victims of Wrongful Incarceration Compensation Act.

PROCEDURAL HISTORY

1. Aguirre is a Honduran immigrant with no criminal history. He has consistently maintained his innocence since the June 16, 2004 stabbing murders of Cheryl Williams and Carol Bareis. The only evidence presented in this case is consistent with the story that Aguirre told investigators on the day of the murders, that he found the victims—his next-door neighbors—only

after their deaths, and the victims' blood got on his clothes when he checked them for signs of life.

2. The State charged Aguirre with the murders (and burglary of the home that was the crime scene) in June 2004 and immediately took him into custody to await trial. His case went to trial in 2006, and the jury convicted him on all three charges and sentenced him to death. Aguirre's conviction was based in part on the testimony of Samantha Williams, the victims' daughter/granddaughter. Aguirre testified as the only witness in his defense, explaining that he had visited the victims' home the morning after the murders and found their bodies. He explained that he lifted Cheryl's body to see if she was alive, which explained the blood on his clothes that police later recovered. *See Aguirre-Jarquin*, 202 So. 3d at 788.

3. Even at the original trial, there were problems with the State's case. The State's bloodstain expert could not say that any of the bloodstains on Aguirre's clothes had been caused by motion, as one would expect to see after a stabbing. *See Original Trial Tr.* at 1264–1316 (Testimony of N. Scott Henderson) (attached as Exhibit A). The State's fingerprint expert testified that Aguirre's left palm print was found on the knife, but that testimony was indisputably and demonstrable false—indeed, a Florida Department of Law Enforcement internal investigation later revealed that the testimony was a complete fabrication. *See Aguirre-Jarquin v. Florida*, 9 So. 3d 593, 603 (Fla. 2009), *cert denied*, 559 U.S. 942 (2010). And there was no evidence presented that Aguirre ever entered the southeast bathroom of the crime scene, where the State argued at trial that the killer would have had to clean up.

4. Before that 2006 trial, none of the more than 150 bloodstains that State investigators had swabbed at the crime scene were tested for DNA—the State had DNA-tested only the blood on Aguirre's clothes (which returned results for the victims' blood, but *no blood from Aguirre*, just his “wearer DNA”) and the murder weapon (which also returned DNA results from the victims'

blood, but *no blood from Aguirre*).

5. On direct appeal, the Florida Supreme Court affirmed Aguirre's convictions and sentence, and the United States Supreme Court denied certiorari review. *See Aguirre-Jarquin*, 9 So. 3d 593, *cert denied*, 559 U.S. 942 (2010).

6. The case moved to post-conviction proceedings, and it was then that Aguirre's new, court-appointed post-conviction counsel from Capital Collateral Regional Counsel (Middle) developed a host of verifiable, exonerating evidence. That evidence included exculpatory forensic and DNA evidence, and evidence that powerfully pointed to Samantha Williams as the killer—including DNA evidence, her multiple confessions, voluminous records showing her history of violence and mental health issues, and evidence of both her motive to commit the crimes and at least one previous threat to take her mother's life. Counsel also uncovered other critical new testimonial and documentary evidence that supported Aguirre's longstanding claim of innocence and Samantha's guilt.

7. Among other things, the 150+ bloodstain swabs that had been collected at the crime scene but never tested were finally tested in 2012. None of those bloodstains contains Aguirre's DNA. But eight of them—some of which were found within inches of the victims' blood, in high-traffic areas at the crime scene, in areas that testimony showed had been cleaned on the night of the murder, and in the southeast bathroom where the State had previously argued that the killer would have had to clean up—contained Samantha's DNA. Numerous witnesses also came forward during post-conviction proceedings to testify that Samantha had confessed to them—these, her friends, neighbors, acquaintances—that she had killed her mother and grandmother. *See Aguirre-Jarquin*, 202 So. 3d at 792–93.

8. Aguirre's counsel presented all of that evidence to Judge Jessica J. Recksiedler as

part of a motion for new trial under Fla. R. Crim. P. 3.851 on the basis of newly discovered evidence, but Judge Recksiedler denied the motion. Aguirre timely appealed.

9. On October 26, 2016, on the basis of the new, substantial, exonerating evidence that had been developed during the post-conviction proceedings, the Florida Supreme Court “reverse[d] the circuit court’s orders denying Aguirre’s postconviction motions, vacate[d] Aguirre’s convictions and sentences, and remand[ed] for a new trial,” holding in a unanimous opinion that the “newly discovered evidence gives rise to a reasonable doubt as to his culpability.” *Aguirre-Jarquín*, 202 So. 3d at 795. The Court recognized that the evidentiary record not only powerfully points towards Aguirre’s innocence, but also towards Samantha Williams as the true murderer. *See id.* (“No longer is Aguirre the creepy figure who appears over Samantha’s bed in the middle of the night; he is now the scapegoat for her crimes.”).

10. Nonetheless, on the same day that the Florida Supreme Court issued its opinion overturning Aguirre’s convictions and sentence, the State of Florida announced its intent to re-prosecute Aguirre for these crimes. *See Rene Stutzman, Court overturns death sentence, conviction in double homicide*, ORLANDO SENTINEL (Oct. 27, 2016).¹ The Seminole County State Attorney’s Office issued a statement that day that made its plan to retry Aguirre—despite the Supreme Court’s strident opinion that the evidence pointed strongly away from Aguirre and towards Samantha Williams—unambiguous and unmistakable: “We respect the Florida Supreme Court opinion and will retry the case. Of course we will not be commenting on the facts or evidence in what is an on-going criminal trial. While we might disagree with the Court’s opinion, we respect their authority and are beginning trial preparation now.” *See New trial ordered for*

¹ Available at <http://www.orlandosentinel.com/news/breaking-news/os-clemente-aguirre-conviction-death-sentence-overturned-20161027-story.html> (attached hereto as Exhibit B).

Seminole County death row inmate, WFTV NEWS (Oct. 27, 2016).²

11. Aguirre was not released from the State's custody following the Supreme Court's decision and the issuance of the mandate on November 17, 2016. Instead, he was ordered transferred from Union Correctional Institution to John E. Polk Correctional Facility on December 5, 2016, where he remained incarcerated through his retrial. *See* Order to Transport (12/5/2016) (attached as Exhibit D).

12. This Court docketed the Supreme Court's mandate on December 7, 2016. *See* Mandate (11/27/16) (attached as Exhibit E, showing 12/07/16 circuit court recording date in the top right corner). That same day, Judge Recksiedler appointed counsel for Aguirre and scheduled a case management conference for December 9, 2016—less than three weeks after the November 17, 2016 mandate had issued and just two days after the Court docketed the mandate. *See* Order Appointing Attorney (12/7/2016) (attached as Exhibit F); Order Setting Conference (12/7/2016) (attached as Exhibit G). The December 9, 2016 case management conference proceeded as scheduled, and the State again expressed its intent to retry Aguirre for these crimes. From that date forward, the case proceeded to trial—the State issued supplemental discovery requests, and the parties took numerous depositions.

13. Judge Recksiedler initially presided over the proceedings following remand and scheduled Aguirre's retrial for February 19, 2018. The trial started as planned, but on February 27, 2018, following six-and-a-half days of juror death qualification and the questioning of 100+ potential jurors, Judge Recksiedler *sua sponte* struck the entire panel of 51 death-qualified jurors and ordered the parties to start trial anew. That decision followed the revelation that several

² Available at <https://www.power953.com/news/new-trial-ordered-for-seminole-county-death-row-inmate/8tjdLy8Rbx3VH7Gc6zYOVO/> (attached hereto as Exhibit C).

potential jurors had been researching the case and learned of Aguirre's previous (and now vacated) convictions on the very charges for which he was being tried. *See* Open Court Minutes at p.40 (2/27/2018) (attached as Exhibit H).

14. Aguirre subsequently moved to disqualify Judge Recksiedler. Although Judge Recksiedler initially denied that motion, after Aguirre petitioned the Fifth District Court of Appeal for a writ of prohibition Judge Recksiedler *sua sponte* "recuse[d] herself from the handling of this case." J. Recksiedler Recusal Order (3/15/18) (attached as Exhibit I).

15. The case was then briefly reassigned to Judge Donna McIntosh and then later to this Court before the Honorable John D. Galluzzo. The Court set Aguirre's second retrial for October 15, 2018. *See* Order of Reassignment (3/22/2018) (attached as Exhibit J); Order Setting Time Certain Jury Trial (7/18/2018) (attached as Exhibit K).

16. The case proceeded to trial on that date, and the parties began jury selection. During the death-qualification process, new facts and developments in the case led the parties to request four depositions, which the Court ordered should be taken before the jury was empaneled.

a. Aguirre's counsel deposed Samantha Williams on October 24, 2018, in-court, with the Court presiding and Ms. Williams on the witness stand. Among other things, Samantha testified that she has a history of committing violent acts that she does not remember and that it is possible that she could have committed these murders and simply does not remember it. *See, e.g.*, S. Williams Dep. Tr. (10/24/18) (attached as Exhibit L) at 314–316 (testifying that she cannot be certain that she did not commit these crimes); *see also id.* at 63 (testifying that it was "possibl[e]" that she had previously "flown into a violent rage and [doesn't] remember it"); *id.* at 65; *id.* at 110–111 (Q: "And have you ever sort of come out of one of these moments of explosive rage or having an explosive

temper and say, oh, my God, what did I just do? And sort of wake up from it?” A. “Yes.”); *id.* at 152; *id.* at 184; *id.* at 202.

b. Aguirre’s counsel deposed Christine Snyder, the State’s footwear impression witness, on October 25, 2018. Among other things, Ms. Snyder testified that there is no evidence (and she cannot say) that Aguirre ever entered the southeast bathroom at the crime scene, where the State has previously argued that the killer would have had to clean up and where there are numerous bloodstains, in close proximity, from both the victims and Samantha Williams. *See* C. Snyder Dep. Tr. (10/25/2018) (attached as Exhibit M) at 120–21, 181–82.

c. The State deposed Nicole Bouzigard on October 31, 2018, in-court, with the Court presiding and Ms. Bouzigard on the witness stand. The State sought to question Ms. Bouzigard about an affidavit that she had provided to Aguirre’s counsel on October 28, 2018. Ms. Bouzigard is the ex-wife of Mark Van Sandt, who discovered the victims’ bodies the morning after the crimes and was the only witness who had previously provided an alibi for Samantha Williams on the night of the murders. Among other things, Ms. Bouzigard testified that Van Sandt told her “consistently . . . that Samantha Williams woke him up during the night of June 16–17, 2004, said she ‘had a bad feeling about her mom,’ and left through the window of his bedroom.” N. Bouzigard Affidavit ¶ 6 (attached as Exhibit N); *see also, e.g.*, N. Bouzigard Dep. Tr. (10/31/2018) (attached as Exhibit O) at 89–91. Ms. Bouzigard also testified that Mark Van Sandt told her that Samantha Williams had confessed to him that she committed these crimes, and that Van Sandt’s mother, Carolyn Van Sandt, also told her that Samantha had confessed to her as well. *See* Exh. O at 90–97; Exh. N at ¶ 7.

d. Aguirre's counsel then deposed Mark Van Sandt immediately following Ms. Bouzigard's deposition, on the afternoon of October 31, 2018, in-court, with the Court presiding and Van Sandt on the witness stand. Among other things, Van Sandt testified that he has "told [Nicole] a couple of times where [Samantha] did leave where she came through the window" and that it is possible he told Nicole that Samantha had climbed out of his parents' window on the night of July 16–17, 2004. M. Van Sandt Dep. Tr. (10/31/2018) at 18:12–19:12 (attached as Exhibit P). Van Sandt also acknowledged that he is "a pathological liar" and that he "has had problems with the truth for a long time." *Id.* at 86; *see also id.* at 84–85.

17. On Monday, November 5, 2018, the first trial day after the depositions of Nicole Bouzigard and Mark Van Sandt, the State announced in open court that it was entering a *nolle prosequi* on all charges against Aguirre and that it was dropping the case. Aguirre was released from the State's custody later that day. *See Nolle Prosequi* (11/5/2018) (attached as Exhibit Q).

LEGAL STANDARD

Florida's "Victims of Wrongful Incarceration Act," chapter 961 of the Florida Statutes, requires a trial court to determine whether someone is a "wrongfully incarcerated person" upon petition by that person or his attorneys. *See Fla. Stat. § 961.03* (2010). The Act defines a "wrongfully incarcerated person" as follows:

(4) "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and, with respect to whom pursuant to the requirements of section 3 of this act, the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

Id. § 961.02(4). The Act further requires that to meet that definition and be eligible for

compensation, the petition must (1) “state that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence,” and (2) “state that the person is not [otherwise] disqualified . . . from seeking compensation under the Act.” *Id.* § 961.03(1)(a).³ The petitioner is entitled to compensation under the Act if he proves by “clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense.” *Id.* §§ 961.03(3), 961.03(7)(a).

ARGUMENT

Aguirre was a wrongfully incarcerated person, as that term is defined in the Act, and is entitled to compensation under the Act because there is clear and convincing evidence that he did not commit the crimes that served as the basis of his incarceration. As detailed below, there is substantial and verifiable evidence of his innocence (as well as substantial and verifiable evidence of Samantha Williams’s guilt), and he is not otherwise disqualified from compensation because he has never been convicted of a felony. This Court should grant the petition.

I. There is substantial, verifiable evidence of Aguirre’s innocence.

On November 5, 2018, after Aguirre spent 14 years incarcerated for the murders of Cheryl Williams and Carol Bareis, the State of Florida issued a *nolle prosequi* dismissing all charges against Aguirre. The *nolle prosequi* is itself conclusive proof of Aguirre’s innocence. But the State’s decision to drop all charges in this case—and, thus, the irresistible conclusion that Aguirre is actually innocent of these crimes—is independently supported by a wealth of verifiable

³ The disqualification provisions, commonly known as the “Clean Hands” provisions, disallow compensation where the petitioner was previously convicted of, or pleaded guilty or *nolo contendere* to, some other (defined) offense. *See* Fla. Stat. § 961.04(1)–(5). Aguirre is not disqualified under those provisions because none of those facts exist here—he has no criminal history or record.

exonerating evidence that formed the basis of the Florida Supreme Court's unanimous decision to vacate his convictions in 2016 as well as additional verifiable exonerating evidence that has been discovered during the last two years since the Supreme Court's decision.

A. The State's entry of a *nolle prosequi* on all charges is conclusive proof of Aguirre's innocence.

The fact that the State entered a *nolle prosequi* on all charges that it previously had pressed against Aguirre is *per se* evidence of his innocence on those charges. Under Florida law, a *nolle prosequi* as a matter of law "indicates the innocence of the accused" as long as it was not "the result of a negotiated plea or bargain." *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1356 (Fla. 1994). *Alamo* arose in the malicious-prosecution context but its equation of a *nolle prosequi* with a petitioner's innocence applies with equal force in this analogous context and is consistent with other Florida law. In *Alamo*, the Florida Supreme Court held that a *nolle prosequi* satisfies the requirement in a malicious-prosecution case of proof that there was "a bona fide favorable termination of the charges." 632 So. 2d at 1356. That comports with the importance that the Legislature has placed on a *nolle prosequi* in its previous enactments. Florida Statutes section 961.055(1)–(2) provided a means of compensation for individuals convicted and sentenced to death before December 31, 1979, and for those individuals, a *nolle prosequi* entered by a governor-appointed special prosecutor "constitute[d] conclusive proof that the defendant is innocent of the offenses charged." *See also* Fla. Stat. § 961.056.

Here, there was no "negotiated plea or bargain," the State simply dropped all charges against Aguirre three weeks into jury selection and after four mid-trial depositions exposed the complete and inherent flaws in the State's case.

B. All of the evidence presented at Aguirre's original trial is consistent with his statements to police and trial testimony that he simply found the victims' bodies after their deaths.

Aguirre has consistently maintained his innocence since June 17, 2004. He has always said that he discovered the victims' bodies after their deaths, which, as presented below, is consistent with all of the evidence presented at Aguirre's original trial.⁴

1. In June 2004, Clemente Aguirre lived in a mobile-home park on Vagabond Way, in Seminole County. He lived next door to Cheryl Williams and her wheelchair-bound mother, Carol Bareis. Cheryl's two adult children, Samantha Williams and Eric Bareis, also had rooms in the mobile home and lived there from time to time.

2. On June 16, 2004, Cheryl and Samantha argued after someone spilled ice on the mobile home's kitchen floor. Cheryl was angry because she had just mopped the floor and Samantha's boyfriend, Mark Van Sandt, failed to clean up the ice. Mark and Samantha's account was inconsistent and fluctuated over time, but sometime between 11:00 p.m. and 11:30 p.m., Samantha and Mark left the mobile home and ultimately went to Mark's parents' house to spend the night because, as Mark put it, Cheryl stayed upset about the ice and was not going to give them "any peace and quiet."

3. Around 8:45 a.m. the next morning, Mark left his parents' house and drove the short distance back to the mobile home, ostensibly to retrieve Samantha's work clothes from the washing machine. The Williams's dryer was broken, Mark later told authorities, so Samantha asked him to bring the clothes to his parents' house to dry.

4. When Mark arrived at the mobile home, the door was unlocked but difficult to open. Mark pushed the door open, entered the residence, and found Cheryl's body partially blocking the

⁴ The background facts are set forth in *Aguirre-Jarquín*, 202 So. 3d at 786–89.

doorway. She was dead, lying face down in a pool of blood. Mark called 911 from his cell phone and reported that Cheryl's body was "cold" and "very stiff."⁵ Deputies from the Seminole County Sheriff's Office arrived a few minutes later and found Cheryl's body as Mark had described. She had been stabbed 129 times with a kitchen knife. The officers also discovered Carol Bareis's body in an adjacent room; she had been stabbed twice.

5. The officers took Mark's sworn statement, that he was with Samantha at the mobile home the night before, that Samantha fought with Cheryl over the spilled ice, that he ultimately went with Samantha to his parents' home, and that he returned to Cheryl's home the next morning to pick up Samantha's work clothes.

6. The authorities also interviewed Samantha, who arrived at the scene with Mark's father. Mark's father found Samantha hiding in Mark's bedroom when he went to tell her about the murders. Once she finally came out of hiding and heard the news, she paused to smoke a cigarette before heading to the mobile home. When officers asked Samantha where she and Mark had gone after leaving the mobile home that night, Samantha paused a full 27 seconds before answering that they had gone to the home of Mark's friend, Phil Keidaish.⁶

7. Around 11 a.m., one of the officers went next door to interview Aguirre and his roommates. The officer was not a fluent Spanish speaker and at that time Aguirre (like his roommates) spoke only halting English. The men initially denied knowing anything about the murders. But later that afternoon, Aguirre reached out to law enforcement and requested a Spanish speaker. He then told them the truth: He had gone to the Williams's mobile home at approximately 6 a.m. to ask for some beer. That was not an uncommon occurrence—he was friendly with his

⁵ See Transcript of Mark Van Sandt 911 Call (6/17/2004) (attached as Exhibit R).

⁶ See, e.g., Exh. L (S. Williams Dep.) at 26, 271-72; see also Post-Conviction Tr. at 520-624 (Testimony of Samantha Williams) (attached as Exhibit S).

neighbors and had been inside the Williams's mobile home numerous times in social settings. When he arrived that morning, the front door was partially open, so he walked in. He found Cheryl's body in the entry hall, with "blood everywhere." Unsure whether she was still alive, Aguirre bent down, tried to lift Cheryl's body to check for a pulse, and then placed her back down once he realized that she was already dead. He went home and took a shower, put his now-bloody clothes into a plastic bag, and tossed them onto his roof. When the officers asked him why he hadn't called the authorities immediately, Aguirre explained that he had been afraid that he would be deported.⁷

8. The officers also asked Aguirre if he would allow them to retrieve his bloody clothes, and he told them "to just go pick [the bag] up [off the roof] and check it, that he [had] nothing to fear."

a. The State ultimately submitted those clothes for DNA testing before the first trial. The results revealed that both victims' blood (but none of his own blood) was on Aguirre's clothing, consistent with his statements to investigators and his trial testimony.

b. The State also presented testimony at Aguirre's original trial from crime laboratory analyst Scott Henderson about the bloodstain patterns on Aguirre's clothes. Henderson acknowledged that, at the time of trial, he was "being trained in . . . bloodstain pattern analysis." He could not determine whether any of the stains on Aguirre's nylon shorts were stains that had been caused by motion. He also testified that it would have been "unusual" for the killer to get stains on the back of his or her clothes, as with Aguirre's shorts, and acknowledged that the shorts had "some void patterns . . . , which indicates that

⁷ See generally Original Trial Tr. at 1422–36 (Testimony of Clemente Aguirre) (attached as Exhibit T).

the shorts may have been folded in those areas.”⁸ All of that testimony, of course, was consistent with Aguirre’s explanation that he squatted down and touched Cheryl’s body to his lap as he was trying to check for her pulse.

c. (Later post-conviction evidence—namely, testimony from new defense expert Barie Goetz, the first and only bloodstain pattern expert for the defense—would reveal that the bloodstain patterns on Aguirre’s clothes not only lined up with his consistent story of how he found the bodies but also ruled him out as the killer.⁹)

9. Aguirre also willingly and voluntarily gave the officers samples of his DNA during that his interview.

a. At Aguirre’s original trial, the State did not present any evidence that Aguirre’s DNA had been found at the crime scene other than the “wearer DNA” on his clothes.

b. (In fact, later post-conviction evidence would reveal—after the bloodstain evidence was first tested for DNA in 2012—that *none* of Aguirre’s blood was found at the crime scene, which is a critical piece of evidence in light of the 129 stab wounds to Cheryl Williams and in light of testimony from the State’s medical examiner that these murders involved a “violent struggle.” *Aguirre-Jarquin*, 9 So. 3d at 606.)

10. At the original trial, the State also introduced evidence of bloody footwear impressions that had been found at the crime scene. Christine Craig (now Snyder), a crime-scene analyst with the Seminole County Sheriff’s Office, testified that she had analyzed the impressions and determined that the impressions inside the house were “consistent with” the tread pattern on

⁸ See Exhibit A (Testimony of N. Scott Henderson).

⁹ See, e.g., Post-Conviction Tr. at 298–417 (Testimony of Barie Goetz) (attached as Exhibit U).

Aguirre's shoes, although she could not positively identify the prints as Aguirre's.¹⁰

a. (Later post-conviction evidence would show that these footwear impressions lacked any "distortion" that one would typically see if footwear impressions were made during a struggle, which is consistent with Aguirre's account of how he found the bodies and walked through the house to see whether others were in danger.¹¹ Post-conviction evidence also revealed bloodstains from the victims and Samantha Williams within inches of each other in the southeast bathroom, but there was no evidence that Aguirre ever walked into that bathroom.¹²)

11. The State presented testimony at the original trial from Aguirre's former supervisor, that the murder weapon (a Sysco kitchen knife) "was similar to" some of the knives at Aguirre's former place of employment. But the supervisor could not say for certain whether the knife had come from that restaurant.¹³ And although Aguirre's original trial counsel never highlighted it, law enforcement photographs taken at the crime scene showed boxes from the popular knife manufacturer, Sysco, inside the Williams's mobile home at the time of the murders.

a. (Later post-conviction evidence also would show that the residents in the Vagabond Way neighborhood would regularly host cookouts at each other's homes and would share kitchen utensils among their various homes.)

12. Samantha testified at the original trial that the front door to the mobile home usually stayed unlocked and that she and Aguirre had been invited social guests in each other's homes. She told the jury about her interactions with Mark and the victims on the night of June 16. She

¹⁰ See, e.g., Exh. M (C. Snyder Dep.) at 19-20.

¹¹ See *id.* at 86-88, 102-03.

¹² See *id.* at 119-21, 182.

¹³ See Original Trial Tr. at 914-942 (Testimony of John Andrich) (attached as Exhibit V).

also explained the placement of certain furniture in the mobile home, including, importantly, a mirror that she insisted had been removed from the wall of her bathroom between the time she left the home after the argument with her mother about the spilled ice and when the victims' bodies were discovered. The evidence included a visible smear of blood on the wall where the mirror had previously been mounted, as well as one on the floor next to where it was found unbroken the next day.

a. (Later post-conviction evidence would show that the mirror had Samantha's palm print on it, and that the blood smears found on the wall and on the floor next to the mirror were hers.¹⁴)

C. New evidence developed after Aguirre's original conviction shows his actual innocence and powerfully points to Samantha Williams as the true killer.

1. **DNA evidence.** Aguirre twice moved under Rule 3.853 to release evidence for DNA testing. The circuit court ordered DNA testing on 150+ bloodstains, along with certain other forensic evidence, collected from the crime scene; none contained Aguirre's blood. By contrast, eight bloodstains contained the DNA profile of Samantha Williams. All eight of those stains came from high-traffic areas, in close proximity to the victims' blood and/or from the bathroom where the State had argued the killer had cleaned up—thus indicating a high likelihood of deposit close in time to the murders.¹⁵

a. One of Samantha's bloodstains had been taken from the kitchen floor, which Cheryl had mopped the night before the bodies were discovered. (Indeed, it was her recent mopping of the floor that fueled the spilled-ice argument with Samantha and Mark

¹⁴ See, e.g., Seminole County Sheriff's Office, J. Ahern Report (1/8/2018) (attached as Exhibit W); Laboratory Report (2/12/2018) (attached as Exhibit X).

¹⁵ See DNA Laboratory Reports (attached as Exhibit Y).

Van Sandt that night.) Blood from both victims was found nearby.

b. Another of Samantha's bloodstains had been taken from the southeast living room, in the middle of the floor, on the way to the southeast bathroom (the only working bathroom in the trailer) where the State had argued that the killer cleaned up. Cheryl's blood was found nearby.

c. Four of Samantha's bloodstains—one from the door and three from the middle of the floor, within inches of Cheryl's blood—had been taken from the southeast bathroom, again where the State had argued that the killer cleaned up.

d. Two of Samantha's bloodstains had been taken from the half bathroom in Samantha's bedroom, one from the wall, near where Samantha insisted that a full-length mirror had been hanging when she and Mark left the house the night before the bodies were discovered, and the other from the floor, next to the mirror. Other bloodstains taken from Samantha's bedroom and bathroom belonged to Cheryl.

2. ***Samantha's confessions.*** Since the 2006 trial, Aguirre's counsel has discovered that Samantha Williams has repeatedly made statements to friends, neighbors, acquaintances, and others that she killed her mother and grandmother. Some of these happened around the time that her DNA was being collected for purposes of testing. The Florida Supreme Court characterized these as "confessions to multiple individuals that she killed the victims." *Aguirre-Jarquin*, 202 So. 3d at 791. In all, the evidence shows that Samantha has confessed to these crimes to at least 12 different people.

a. ***Nicole Casey.*** In August 2010, authorities responded to the Williams's mobile home after Samantha set fire to a blanket inside. Neighbors reported that Samantha had been "complaining of 'demons' in her head and [had] stated that the 'demons' caused

her to kill her family (approximately 9 yrs ago).” One of those witnesses, Nicole Casey—a longtime friend of Samantha’s—testified at the May 2013 evidentiary hearing that she heard Samantha say “[t]hat the demons in her head” “[m]ade her kill her mom . . . [a]nd her grandmother.” Casey also described a separate incident that occurred three months later, in which Samantha showed her—by pantomiming a stabbing motion—how she had “hurt her mom.”¹⁶

b. ***Lt. Marco Ramirez.*** A video taken from a patrol car’s dashboard camera after Samantha was arrested in 2007 for causing a disturbance at a bar shows Samantha threatening to “f*** murder” the arresting officer, Lt. Marco Ramirez. She then told Officer Ramirez repeatedly that her mother and grandmother “died from me,” that she is “sorry that I’m alive,” and that nobody has cared about her for 10 years. In the video, Samantha is seen screaming, cursing, spitting, foaming at the mouth, and banging her head against the patrol car’s divider.¹⁷

c. ***Candace Nagata.*** On another occasion in March 2008, Samantha was involuntarily committed after she started smashing objects, banging her head against the wall, and threatening to hurt others when she became intoxicated. Candace Nagata—one of Samantha’s neighbors and Cheryl’s friend—witnessed the outburst and wrote a sworn statement that Samantha told her that she was “responsible for” her mother’s death:

[O]bserved Samantha Williams beating her head repeatedly against concrete wall. Stated, *‘I am responsible for my mom dying,’ ‘It’s all my fault,’ ‘I want to die,’ ‘I don’t have anything to live for.’* Also observed Samantha throwing glass objects across the room (glasses and plates) when I offered

¹⁶ Post-Conviction Tr. at 783–801 (Testimony of Nicole Casey) (attached as Exhibit Z).

¹⁷ See Post-Conviction Tr. at 863–900 (Testimony of Lt. Marco Ramirez) (attached as Exhibit AA); see also Exh. L (S. Williams Dep.) at 324-328.

to take her home she stated ‘I will kill you.’¹⁸

d. ***Christine Laravuso.*** Christine Laravuso—one of Samantha’s former neighbors on Vagabond Way—testified during post-conviction proceedings that on March 23, 2012, she was “barbequing” with some of her neighbors, just a few houses away from where Samantha was living at the time. Shortly after Christine arrived at the barbeque, Samantha approached the group and stopped to talk. Samantha later attempted to drink directly from a liquor bottle, but Christine stopped her from doing so. Christine testified that this interaction prompted Samantha to tell her—in no uncertain terms—that she had “killed [her] grandmother and mother”:

She – that’s when she started yelling. She’s like nobody likes me, I can’t even come over here, nobody likes me, she doesn’t know I’m evil and I’m crazy and, that’s when everybody else was like, what’s wrong with her; and she just started yelling how she was crazy, nobody likes her and then she – like her entire demeanor changed completely from what it was before, and that’s when she *stated that she had killed her grandmother and her mother.* And she walked off – I don’t know what she was saying as she walked off, I couldn’t really say, but she walked off yelling and screaming and mumble jumbling

She confirmed that Samantha’s “exact words” were, “I’m crazy, I’m evil, and I killed my grandmother and my mother.” And Christine believed that stunning admission was true because Samantha had a “very serious” demeanor when she said it.¹⁹

e. ***Marianne Laravuso and Michael Bowman.*** Another of Samantha’s former neighbors, Marianne Laravuso, and her boyfriend, Michael Bowman, testified

¹⁸ Post-Conviction Tr. at 632–651 (Testimony of Candace Nagata) (attached as Exhibit BB).

¹⁹ See 5/22/2015 Evidentiary Hr’g Tr. at 18–67 (Testimony of Christine Laravuso) (attached as Exhibit CC); Aff. of Christine Laravuso (5/5/2014) (attached as Exhibit DD).

during post-conviction hearings regarding two separate instances in which Samantha stated that she killed her mother and grandmother. On a weekend in July 2012, Marianne and Bowman were preparing to camp out in the front yard at Marianne's Vagabond Way residence. They had started a campfire and were sitting on the tailgate of a truck parked in the driveway when Samantha approached and asked whether she could stay and have a beer. Bowman quickly agreed. Marianne knew Samantha from the neighborhood and would have preferred that Samantha not join them, but Marianne did not object strongly because she "give[s] everybody the benefit of the doubt." About an hour after Samantha arrived, Marianne asked her to leave. Marianne and Bowman both testified that, at that point, Samantha got upset. Samantha told them that she "wasn't afraid" of them and then abruptly stated—clearly and in these "exact words"—"I killed my mom and grandma." The admission "shocked" Marianne and Bowman; they both believed that Samantha meant what she said. At that point, it became "time for her to go." Marianne again asked her to leave, and this time, Samantha left. A few hours later, after Marianne and Bowman were in their tent for the night, Samantha came back by the house. She was standing by the fire, carrying a duffel bag, and this time, she appeared to Marianne to have been drinking heavily. Marianne immediately told her to leave, and at that point, Samantha got "[v]ery nasty, mean, and again, she repeated herself, she said I'm not afraid of nobody, I'm not afraid of you, I killed my mom and grandma." Samantha then left and did not return. A few months later, Marianne exited her house and saw Samantha standing in her yard. When she confronted Samantha and asked her to leave, Samantha responded, "I'm not afraid of you guys . . . I killed my mom, I killed my grandmother." Marianne testified that she believed that what Samantha was saying was true and that it seemed to her to be a "threat,"

like Samantha was “giving [her] a warning or something.”²⁰

f. **Marie Finnegan.** Marie Finnegan testified during a January 29, 2018 deposition that on at least two occasions, Samantha told her that she killed her mother.²¹ One of these occasions was when she was playing cards with Samantha and others on her porch late one evening, and Samantha said “Well, can I tell you what else I did? I killed my mother.” Ms. Finnegan questioned Samantha, and Samantha responded “No, I really did.” Ms. Finnegan asked her to stop, but Samantha responded “But I’m going to tell you how I did it” and proceeded to tell Ms. Finnegan about stabbing her mother. That same night, Samantha also cut herself with an ax trying to chip wood and refused to go to the hospital, stating “I can’t go to the hospital because they’re going to think – they’re going to put me away because I [hurt] my mother.”

g. **Lenny Finnegan.** Lenny Finnegan also provided deposition testimony about Samantha “slamming her ax into her foot” in November 2011.²² He testified that she stated “I can’t go, I can’t go. I killed people and I can’t. They’re going to put me in – lock me up in the mental hospital and they’re never going to let me go.” Mr. Finnegan also testified that he heard Samantha say that evening that she had “killed people.”

h. **Charles Heacock.** Charles Heacock was a one-time neighbor of Samantha Williams. On November 16, 2016, Heacock told a State investigator that he remembered Samantha having a fight with a female neighbor in 2006, during which Samantha told the female that “she had killed her mother and grandmother and the voices had told her to do

²⁰ See 5/22/2015 Evidentiary Hr’g Tr. at 92–113 (Testimony of Marianne Laravuso) (attached as Exhibit EE); *id.* at 68–90 (Testimony of Michael Bowman) (attached as Exhibit FF); Aff. of Marianne Laravuso (5/2/2014) (attached as Exhibit GG); Aff. of Michael Bowman (5/12/2014) (attached as Exhibit HH).

²¹ See M. Finnegan Dep. Tr. (1/29/2018) at 21–26, 31–33 (attached as Exhibit II).

²² See L. Finnegan Dep. (1/29/2018), at 17–31 (attached as Exhibit JJ).

it and she couldn't help herself due to the way her mother treated her like a child.”²³

i. **Marissa Heacock.** Marissa Heacock was Samantha's neighbor and knew her for 16 years.²⁴ In 2011, Ms. Heacock began hanging out with Samantha almost every day for a few months. *Id.* at 7-8. Ms. Heacock testified at her January 29, 2018 deposition that in 2011, she remembered Samantha being very mad at someone and stating, “I'll kill them. I've done it before.” Ms. Heacock also testified to Samantha's fits of rage.

j. **Mark Van Sandt.** Nicole Bouzigard—Mark Van Sandt's former wife—testified that one night in 2016, Mark drove Ms. Bouzigard to 121 Vagabond Way to tell her about the morning he found Carol Bareis and Cheryl Williams. That night, Mark also “disclosed [to Bouzigard] that Samantha had admitted that she had killed her mother and grandmother.”²⁵

k. **Carolyn Van Sandt.** Bouzigard also testified that in July 2018, while standing outside Ms. Bouzigard's parents' house, Carolyn Van Sandt (Mark's mother) told her that “Samantha told her [*i.e.*, Carolyn] directly that she killed her mother and grandmother.”²⁶

3. **Records of Samantha's previous violence, threats, and mental-health history.** Records surfaced during post-conviction proceedings that reveal Samantha Williams's violent history—including numerous threats (including against her mother) and acts of violence against others—and her serious mental-health issues. Samantha's history of violence and threats towards others spans over two decades, both before, during, and after time period in which Cheryl Williams

²³ See Report of Investigation, Statement by Charles R. Heacock at pp. 2-3 (11/16/2016) (attached as Exhibit KK).

²⁴ See Marissa Heacock Dep. (1/29/2018) (attached as Exhibit LL).

²⁵ See Exh. O (N. Bouzigard Dep.) at 93–94.

²⁶ *Id.* at 96, 105–07.

and Carol Bareis were murdered.

a. During post-conviction proceedings, Samantha Williams testified that she has been involuntarily committed under the Baker Act more than 60 times.²⁷ At various times during her life, Samantha has been diagnosed with Intermittent Explosive Disorder, Borderline Personality Disorder, and Bipolar Disorder, as well as severe drug and alcohol dependence.²⁸

b. For example, on September 23, 2001, Samantha was Baker Acted after Cheryl Williams called the police because Samantha was “depressed and was beating her head against the wall.”²⁹ Cheryl told the responding officers that “she was scared that Samantha will hurt herself and that Mrs. Cheryl Williams cannot control it.”³⁰ When she was taken to the emergency room, she “was spitting on staff, was quite hostile, screaming, yelling and out of control.”³¹ Because of her violent behavior, Samantha was placed in four point restraints. While she was restrained, with her mother sitting at her bedside, Samantha stated: “I’m going to f*** kill you. I’ll kill all of you if I get out.”³²

c. On August 29, 2004, just a few short months after Cheryl Williams and Carol Bareis were murdered, Samantha physically assaulted Austin Brusen and punched Charlene Brusen in the face, such that Charlene “had a swollen right eye and a laceration

²⁷ See Exh. S (Post-Conviction Testimony of S. Williams) at 524, 624–625; see also Exh. L (S. Williams Dep.) at 58–59, 128.

²⁸ See Seminole Community Mental Health Center – Psychiatric Discharge Summary dated June 10, 2002 (attached as Exhibit MM).

²⁹ See Seminole County Police Report # 2001CJ006752 (9/23/2001) (attached as Exhibit NN).

³⁰ *Id.*

³¹ See Orlando Regional Healthcare System Record dated September 23, 2001 (attached as Exhibit OO).

³² *Id.*; see also Exh. L (S. Williams Dep.) at 220 (“Q: Okay. So you don’t know whether you said it to your mother or someone else; isn’t that true? Because you just told us you don’t remember this; right? A: Yeah.”).

next to her right eyebrow.”³³ When she was confronted with this incident during her deposition, Samantha claimed that she didn’t remember assaulting Ms. Brusen.³⁴ She went on to admit, however, that she could not say with any certainty whether there were other incidents like this, in which she became violent and abusive towards others but did not remember.³⁵

d. On August 11, 2010, Samantha was Baker Acted again after setting her bedding on fire and attempting to burn down her house at 121 Vagabond Way.³⁶ When the police arrived at the scene, an eye-witness told them that Samantha “has been saying that ‘demons’ are in her head and caused her to ‘kill’ her family.”³⁷ When Samantha was confronted about this incident during her deposition, Samantha again claimed to not remember the incident but did not deny that she very well may have told her neighbor that demons in her head made her kill her family.³⁸

e. On February 27, 2013, the Seminole County Sheriff’s Office was called to the Seminole Behavioral Healthcare facility after Samantha refused to comply with treatment work assigned to her after she was Baker Acted.³⁹ Chief Medical Officer Dr. Valerie Westhead told police that Samantha had become “belligerent and began threatening

³³ See Seminole County Police Report # 200400008559 (8/27/20014) (attached as Exhibit PP).

³⁴ See Exh. L (S. Williams Dep.) at 177 (“Q: ...You assaulted them in your house; right? A: No. I don’t remember assaulting them in my house.”).

³⁵ *Id.* at 184 (“Q: You can’t say with any certainty whether there were other incidents like this, Ms. Williams, in which you were violent and abusive towards others because you don’t have any recollection. A: Nope. Q: Correct? A: Yes.”).

³⁶ See Seminole County Police Report # 2010IT001590 (8/11/2010) (attached as Exhibit QQ).

³⁷ *Id.*

³⁸ See Exh. L (S. Williams Dep.) at 228 (“Q: My question is: since you don’t remember what you said on this incident, on this night, isn’t it true that you very well may have told the neighbor that demons in your head made you kill your family...and you just don’t recall? A: I suppose; yeah. Sure.”).

³⁹ See Seminole County Police Report # 201300001774 (2/27/2013) (attached as Exhibit RR).

to harm herself and expressed to staff members that she ‘wanted to stab the woman that made her write essays.’”⁴⁰ When confronted with this information during her deposition, Samantha admitted that she had threatened Dr. Westhead in this way, but she denied that she meant it.⁴¹

4. ***Forensic evidence.*** Aguirre’s post-conviction experts also provided testimony that powerfully supports Aguirre’s innocence. Aguirre’s original counsel never hired forensic experts before his original trial because in their words, they did not want to go on “a whore search” for “CSI Las Vegas, a blood whisperer.”

a. ***Barie Goetz***, a 35-year-veteran crime scene reconstructionist and former Colorado Bureau of Investigation bloodstain-pattern analyst explained during the post-conviction hearing that nylon absorbs blood differently from cotton, a fact that the State’s analysts should have taken into account, but failed to, when they examined the bloodstain patterns.⁴² In particular, he explained that because nylon is “a very tightly woven fabric and it’s somewhat water-repellent,” when blood gets on it the blood “spreads out” and leaves a distinct pattern that is a “much bigger stain than a drop of blood on cotton.” Based on that fact, Goetz explained that “all the stains that are present on” Aguirre’s nylon shorts resulted from “a transfer of blood,” *not* projected blood. Indeed, he concluded that Aguirre could not have killed the victims while wearing the shorts, as the State argued at trial, because “the perpetrator in this case would have had projected blood present . . . on the clothes that they were wearing.” “[W]hoever was the perpetrator,” Goetz testified, was not

⁴⁰ *Id.*

⁴¹ See Exh. L (S. Williams Dep.) at 255 (“Q: So your testimony is that you said it, you who carries around a box cutter in your shoe to this day, who has stabbed herself with a knife while trying to stab a box, you said that you wanted to stab the woman that made you write essays because you didn’t mean it; is that your testimony? A: Yes.”).

⁴² See generally Exh. U (Post-Conviction Testimony of B. Goetz).

“wearing those shorts.” He further explained that the bloodstain patterns on the nylon shorts are consistent with Aguirre’s testimony at trial that he lifted Cheryl Williams’s body onto his lap to check her pulse. Goetz also testified that a swipe of Cheryl’s blood on an overturned kitchen chair could not have been caused by the nylon shorts worn by Aguirre. The pattern was more consistent with fabric made “with a coarser weave” than the nylon shorts. He testified that it was “a fabric transfer of blood, but not consistent with nylon,” meaning that someone else carrying Cheryl’s blood brushed against the chair.

Goetz further explained that Samantha Williams’s blood was “fresh” and was deposited at the same time as the victims’ blood. He based his conclusion on (1) his 35 years of experience in crime-scene investigation, (2) the notes of the crime-scene analyst who documented, collected, and photographed the stains, and (3) the color of the bloodstains. Goetz testified that “obvious signs of aging would be a darkening of the color,” which is caused when the stain oxidizes as a result of being exposed to sunlight. Goetz explained that the stains caused by Samantha’s blood did not appear darker than the stains caused by the victims’ blood, meaning that they were likely deposited at the same time.

Goetz also testified that “the physical evidence at the scene of the shoe impressions” is “consistent with [Aguirre’s] testimony . . . that he did walk into the trailer and walked into those three rooms, four rooms around the bodies of the deceased.” Goetz based that opinion on the fact that the shoeprints were very clear transfers, and not transfers that evidenced excessive movement—all of which indicates someone passively, deliberately walking around the scene after the blood had time to pool, rather than hurried or frantic movement.

- b. ***Dr. Daniel Spitz***, the chief medical examiner for Macomb County,

Michigan, testified in part to rebut State witness Dr. Thomas Beaver.⁴³ Beaver had testified that Cheryl Williams's body had not been moved before he arrived on the scene the evening of June 17—contrary to Aguirre's explanation that he found the body, lifted it to check for a pulse, and then laid it back down. Beaver contended that “sparing” on Cheryl's body—that is, portions of the body that showed an absence of blood—supported his theory because sparing is typically seen when a corpse is in a resting position and blood pools around (but does not run across) the areas touching the ground. He explained that when he arrived, there was some sparing on Cheryl's body where it was touching the floor. On cross-examination, Beaver conceded that “if the body was moved five to six hours after death . . . you would [still] see the same type of marks.” On redirect, Beaver clarified that if the body had been moved before he arrived, he would have expected to see “another ring around that area of skin.”⁴⁴

Spitz rebutted Beaver's conclusions. In particular, he pointed out something Beaver had failed to observe—that, in fact, there was “another ring” on Cheryl Williams's body in that same area. This double ring is exactly what Beaver testified he would expect to see if the body had been moved, and Spitz explained that it is consistent with Aguirre's account that he rolled the body onto his lap and then placed it back down. And if the body was in rigor mortis when Aguirre arrived at the scene, Spitz explained that the body would have “roll[ed] as a unit” and “not mov[ed] independently,” thus allowing it to be put back in substantially the same place.

Spitz also identified other forensic evidence corroborating Aguirre's account and

⁴³ See generally Post-Conviction Tr. 34–63, 106–116 (Testimony of Daniel Spitz) (attached as Exhibit SS).

⁴⁴ See generally Post-Conviction Tr. 64–100 (Testimony of Thomas Beaver) (attached as Exhibit TT).

rebutting Beaver's initial opinion that the body had not been moved. He noted the presence of two "well-defined blood drips which are parallel to one another on the lower portion of [Cheryl's] back." These blood lines, he testified, further "indicate that the body was moved at some point . . . prior to the medical examiner's office arriving on scene." Spitz explained—again, consistent with Aguirre's testimony that he rolled the body onto his lap, and then rolled it back—that gravity caused blood to flow on the left side of her back. After some hours, the blood has dried in that position and was no longer pulled down by gravity. Spitz testified that the body was not found in a position that would have caused the blood to flow in that direction on its own and that the blood lines stop mid-way across the back. Thus, Spitz explained that the body must have been briefly moved before the medical examiner arrived, causing blood to flow and to dry in parallel lines once it was lowered back down.

5. ***Testimonial Evidence.*** New testimony from fact witnesses during post-conviction proceedings also tends to prove Aguirre's innocence and points to Samantha as the true murderer.

a. ***Mark Van Sandt.*** New evidence came forward that before Mark left to go to the Williams's home to dry Samantha's clothes the morning after the murders, Samantha told him that "she had a bad feeling about" her mother and grandmother. The police had never investigated Mark's statement that he was going to pick up Cheryl's work clothes and never visited his parents' home.⁴⁵ Mark had never been deposed before the original trial—new evidence shows that the deposition notice was served on Samantha Williams and he failed to appear⁴⁶—and he testified for the State but was not cross-examined during

⁴⁵ See Post-Conviction Tr. at 728–739, 1023–51 (Testimony of Mark Van Sandt) (attached as Exhibit UU).

⁴⁶ See Exh. L (S. Williams Dep.) at 90–96.

Aguirre's original trial.

b. **Jamie Bernard.** Bartender Jamie Bernard of Pretzels, where Samantha once worked and Aguirre visited frequently, testified at the post-conviction hearing that Aguirre had been in the bar until 3:15 a.m. on the morning of June 17, 2004, and that he had been “friendly and nice and polite” on that night, just the “same as he always was.” Bernard also testified it was common knowledge within the community that Cheryl and Samantha's relationship was strained. The reason that Samantha “hated her mother so much,” Bernard explained, “was because [Cheryl] made [Samantha] have sex with her drug dealers.”⁴⁷

c. **Monica George.** Monica George, part owner of Pretzel's at the time of the murders, also testified that the staff knew Aguirre as someone who was “well liked and easygoing and very friendly.” She also testified that she knew Samantha, both from Samantha's time working at Pretzel's and as a patron, and that she had fired Samantha after six months for being dishonest and stealing tips from other waitresses. George testified that Samantha had a reputation for dishonesty. She also testified that in the six months leading up to the murders, she had observed Samantha and Cheryl arguing, sometimes while Cheryl was drunk.⁴⁸

d. **Lisa Chapin.** Lisa Chapin was a friend of Samantha, Cheryl Williams, and Carol Bareis. She testified that she visited the crime scene the day after the murders to console Samantha and to see whether there was anything that she could do for the family.⁴⁹

⁴⁷ See Post-Conviction Tr. at 418–459 (Testimony of Jamie Bernard) (attached as Exhibit VV).

⁴⁸ See Post-Conviction Tr. at 703–717 (Testimony of Monica George) (attached as Exhibit WW).

⁴⁹ See Post-Conviction Tr. at 740–762 (Testimony of Lisa Chapin) (attached as Exhibit XX).

Samantha asked her to take her to “get some beer,” which she did. While they were at the convenience store, Chapin heard a “loud crash of like ice dropping.” When Chapin turned around, she realized that Samantha had dropped a bag of ice; Samantha then started screaming, “Now . . . you want to f*** [complain] about a couple of pieces of ice. Well, now here’s a whole f*** bag.” Chapin testified that she quickly paid for the ice and left the convenience store.

6. *New evidence developed before October 2018 trial.* Following the Supreme Court’s decision vacating Aguirre’s convictions, additional verifiable, exonerating evidence developed:

a. A palm print on the mirror found on the bathroom floor of the crime scene—which Samantha testified was hanging on the bathroom wall when she left the trailer hours before the murders—matched Samantha’s palm print. Aguirre’s prints were not identified on the mirror.⁵⁰

b. During an in-trial deposition, Christine Snyder—a footprint expert for the Seminole County Sheriff’s Office—testified that there was no evidence that Aguirre entered the southeast bathroom of the trailer, where the victims’ blood was found within inches of Samantha’s blood.⁵¹

c. In June 2018, the Seminole County Sheriff’s Office turned over approximately 1,400 recordings of phone calls that Mark Van Sandt—Samantha’s only alibi for the night of the murders—made while he was an inmate in the Seminole County and Lake County Jails. The recordings are for calls and visits from November 2017 to

⁵⁰ See Exh. W (Seminole County Sheriff’s Office, J. Ahern Report (1/8/2018)).

⁵¹ Exh. M (C. Snyder Dep.) at 119–21, 182.

August 2018. Some of the recordings include discussions about this case, the State's pending charges against Mark, and communications between the State and Mark regarding Mark's planned testimony at Aguirre's new trial. These phone calls also include Mark's acknowledgement that he is a pathological liar, which he verified under oath during an October 31, 2018 deposition.⁵²

d. Samantha testified during an in-trial deposition that she has a history of committing violent acts that she does not remember and that it is possible she could have committed the murders and simply does not remember it.

e. Nicole Bouzigard testified at an in-trial deposition that Mark Van Sandt had told her that, on the night of the murders, Mark saw Samantha climb out of his parents' bedroom window while telling him that she had "a bad feeling" and asking him to check on her mother and grandmother the next morning.⁵³ Bouzigard also testified that both Mark and his mother, Carolyn, told her that Samantha had confessed to them separately that she had killed her mother and grandmother.⁵⁴

CONCLUSION

Because there is substantial, verifiable evidence of Aguirre's actual innocence for the murders of Cheryl Williams and Carol Bareis—crimes for which he spent 14 years wrongfully incarcerated (from June 17, 2004 to November 5, 2018)—this Court should enter an order certifying that Aguirre is eligible for compensation under Florida Statute § 961.04.

⁵² See, e.g., Exh. P (M. Van Sandt Dep.) at 84–86.

⁵³ Exh. N (N. Bouzigard Aff.) ¶ 6; see also Exh. O (N. Bouzigard Dep.) at 89–91.

⁵⁴ Exh. O (N. Bouzigard Dep.) at 90-97; Exh. N (N. Bouzigard Aff.) at ¶ 7.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 11, 2019, I promptly filed this Petition for Determination of Status as a Wrongfully Incarcerated Person, and Clemente Aguirre's sworn affidavit in support, with the Clerk of the Court using the Florida e filing portal. I further certify that I immediately served through email, per Fla. Stat. § 961.03, a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which Mr. Aguirre was incarcerated.

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