

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

DAVID CURTIS SMITH,

Appellant,

v.

Case No. 5D19-101

STATE OF FLORIDA,

Appellee.

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Opinion filed November 15, 2019

3.850 Appeal from the Circuit Court  
for Marion County,  
R. Gregg Jerald, Judge.

Susanne K. Sichta and Rick A. Sichta, of  
The Sichta Firm, LLC, Jacksonville, for  
Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Carmen F. Corrente,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

WALLIS, J.,

Appellant appeals the trial court's order summarily denying his successive Florida Rule of Criminal Procedure 3.850 Motion for Postconviction Relief. Appellant's motion was based on newly discovered evidence of juror misconduct that came to light fifteen years after he was found guilty and convicted of sexual battery upon a person under

twelve, kidnapping of a child under thirteen with aggravated child abuse and/or sexual battery, attempted first-degree murder, and aggravated child abuse.

Specifically, Appellant's ground of newly discovered evidence claims a juror concealed during voir dire that she had been the victim of sexual crimes as a child despite being questioned on that topic. The evidence of the concealment was revealed on September 2, 2017, when a local newspaper published a Letter to the Editor purportedly written by the same juror, which may have contradicted her answers to voir dire questions.

We find that the Appellant's claims are both facially valid and not conclusively refuted by the record. See Peede v. State, 748 So. 2d 253, 259 (Fla. 1999). Therefore, we remand this case for the trial court to hold an evidentiary hearing. See James v. State, 717 So. 2d 1086, 1086 (Fla. 5th DCA 1998).

REVERSED and REMANDED with Instructions.

EISNAUGLE, J., and JACOBUS, B.W., Senior Judge, concur.