TRIAL COURT CASE NUMBER: CF81-1860A1-XX

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT

EXHIBITS FOR PENDING HABEAS PETITON

Exhibit A	Sworn Affidavit of Actual Innocence
Exhibit B	Deposition of Sandy Woodard
Exhibit C	Trial Transcripts
Exhibit E	Det. Woodard's Statement
Exhibit D	Death Investigation Report & Affidavit of Diane Heisler
Exhibit F	Photograph of Entrance Wound with Autopsy Report
Exhibit G	Sighn's Statement
Exhibit H	Probable Cause Affidavit/Arrest Report
Exhibit I	Order Following (*****) First Appearance
Exhibit J	Excerpt of Motion to Reduce Bond
Exhibit K	Indictment
Exhibit L	Postconviction Relief – January 1986
Exhibit M	Hearing November 4th, 1981
Exhibit N	Luten's Order Granting Habeas Corpus
Exhibit O	Motion to Set Bond

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs. Case No.: CF81-1860A1-XX

ANTHONY W. BROOM,
Defendant.
_____/

NEWLY DISCOVERED EVIDENCE FOR BELATED APPEAL AND SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF (Rule 3.850(b) Florida Rules of Criminal Procedure)

ANTHONY W. BROOM, *in propria persona*, hereinafter Defendant or Broom, pursuant to Rule 3.850(b), Fla. R. Crim. P. (2013), respectfully requests the Court to vacate the judgment and sentence.

THIS CASE CAN NOW BE APPEALED AND REVIEWED UNDER THE UNITED STATES SUPREME COURT HOLDING IN MCQUIGGIN v. PERKINS, 569 U.S. ____, 133 S. Ct. 1924, 185 L. Ed. 2d. 1019 (2013).

In support, the Defendant states as follows:

STATEMENT OF THE CASE

In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, case number CF81-1860A1-XX, Anthony W. Broom ("Broom") was charged by indictment, returned August 21, 1981, with one count of First Degree Premeditated Murder, §782.04, Fla. Stat., allegedly committed June 24, 1981, and trial commenced on November 30, 1981, and concluded on December 2, 1981. The jury returned a verdict of

guilty to the lesser included offense of Second Degree Depraved Mind Murder, §782.04(2), Fla. Stat. On December 23, 1981, a sentence of Natural Life with a three (3) year minimum mandatory was imposed. Counsel of record at all stages of the trial court proceedings was Richard Barest, Esq., 2920 Franklin Street, Lakeland, Fl. 33801.

Notice of appeal to the Second District Court of Appeal was files on December 30, 1981, DCA docket number: 87-17, Raising, *inter alia*, "the evidence was insufficient to support the conviction." On September 24, 1982, the court per curiam affirmed without opinion. Broom v. State, 422 So.2d 848 (Fla. 2nd DCA 1982) (table), *Cert. Denied,* 424 So.2d 760 (Fla. 1982) (Table). Counsel on appeal was Jack T. Edmond, Esq., Bartow, Florida 33801.

On January 4, 1983, Broom, *pro se,* filed a motion for mitigation of sentence in the trial court. On January 7, 1983, the court corrected the sentence to reflect credit for 179 days jail time, and denied the motion on January 10, 1983.

On February 24, 1983, Broom, *pro se,* filed a Petition for Writ of Habeas Corpus, 28 USC § 2254, in the United States District Court, Middle District of Florida, raising, *inter alia*, "failure to prove the corpus delicti." The court denied the petition without a hearing on March 24, 1985, and on August 23, 1983, the Eleventh Circuit Court of Appeals per curiam affirmed without opinion. Broom v. Fortner, 772 F.2d 916 (11th Cir 1983) (Unpublished).

On December 10, 1985, Broom, *pro se,* filed his first Rule 3.850 motion raising:

I: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO FILE A MOTION TO DISMISS THE CHARGE UNDER FLA.R.CRIM.P. 3.190(C)(4);

II: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO IMPEACH STATE'S WITNESSES;

III: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT TO MISLEADING JURY INSTRUCTIONS.

On December 13, 1985, an Amended Motion was filed to alter Ground One to allege:

I: INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO FILE A PETITION FOR WRIT OF HABEAS CORPUS TO HAVE THE CHARGE DISMISSED UNDER § 907.045, FLA. STAT.

On February 7, 1986, the court denied the motion without an evidentiary hearing, rehearing denied February 20, 1986

On February 27, 1986, a *pro se* Notice of Appeal to the Second District Court of Appeal was filed, case number 86-538. On March 21, 1986, the court per curiam affirmed without opinion. Broom v. State, 487 So.2d 298 (Fla. 2nd DCA 1986) (Table). Mandate issued on May 12, 1986.

On September 19, 1986, Broom, *pro se,* filed his second Rule 3.850 Motion with Memorandum of Law, raising:

I. THE INDICTMENT WAS OBTAINED THOUGH THE KNOWING USE OF FALSE INFORMATION;

II. INSUFFICIENT EVIDENCE;

III. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR 1.) FAILING TO INVESTIGATE OR CALL WITNESSES; 2.)

FAILING TO MOVE TO DISMISS THE PROBABLE CAUSE AFFIDAVIT; AND 3.) DENYING BROOM THE RIGHT TO TESTIFY;

IV. CUMULATIVE FUNDAMENTAL ERROR.

On February 11, 1987, the court summarily denied the motion without an evidentiary hearing.

On February 23, 1987, Broom, *pro se,* filed a Notice of Appeal to the Second District Court of Appeal, case number 87-608. On March 27, 1987, the court per curiam affirmed without opinion. Mandate issued April 17, 1987.

On or about December 23, 1986, Broom, *pro se,* file a Petition for Writ of Habeas Corpus in the Sixth Judicial Circuit Court, in and for Pinellas County, Florida (where incarcerated). The court denied the petition on March 24, 1987, but granted rehearing on May 27, 1987, and on July 28, 1987, granted the Petition.

The State appealed to the Second District Court of Appeal, which reversed on March 4, 1988. State v. Broom, 523 So.2d 639 (Fla. 2nd DCA 1988).

On or about October 4, 2001, Broom, *pro se,* filed a Petition for Writ of Habeas Corpus in the trial court. On November 15, 2001, the court denied the Petition, rehearing denied May 9, 2002.

On July 14, 2002, Broom, *pro se,* filed a Notice of Appeal to the Second District Court of Appeal, Broom v. state, 856 So.2d 987 (Fla. 2d. DCA 2003) case number 2D02-2623. On May 30, 2003, the court per curiam affirmed without opinion, rehearing denied

July 22, 2003.

On September 19, 2003, Broom, *pro se,* filed a Rule 3.850 (h) Motion in the Trial court. On September 25, 2003, the court dismissed the Motion.

Broom v. State, 907 So.2d 1261 (Fla. 3rd DCA 2005).

On April 19, 2005, Broom, *pro se,* filed a Motion for Leave to File a Successive Rule 3.850 Motion beyond the 2-year limit or alternatively a Petition for Writ of Habeas Corpus under Rule 3.850(h). On June 21, 2005, the court denied the Motion, rehearing denied July 8, 2005.

On October 13, 2005, Broom, *pro se,* filed a petition for Writ of Habeas Corpus in the Supreme Court of Florida. On January 20, 2006, the court dismissed this Petition, rehearing denied April 13, 2006.

Broom v. State, 947 So.2d 1163 (Fla. 1st DCA 2006) Case No.: 1D06-6004.

On April 9, 2006, Broom, *pro se*, filed a Motion to Correct Illegal Sentence in the trial court. On August 17, 2006, the court denied the Motion, rehearing denied unknown.

On May 17, 2006, Broom, *pro se*, filed a "Great Writ" in the United States Supreme Court, which was returned without action.

On or about July 17, 2006, Broom, *pro se*, filed an Application to File a Second or Successive Petition, pursuant to 28 U.S.C. §2244(b), in the Eleventh Circuit Court of Appeals. On August 4, 2006, the court denied the Application.

On November 17, 2006, Broom, *pro se*, filed a Petition for Writ of Habeas Corpus

in the First District Court of Appeal. On or about December 15, 2006, the court denied the Petition, rehearing denied February 5, 2007.

Broom v. State, 948 So.2d 816 (1st DCA 2007).

On July 16, 2007, Broom, *pro se*, mailed a letter to the Florida Supreme Court which the court construed as a petition for Writ of Habeas Corpus and dismissed on August 22, 2007.

On April 24, 2008, Broom, *pro se*, filed a Petition for Writ of Habeas Corpus in the United States District Court, Northern District. On April 30, 2008, the court transferred the Petition to the United States District Court, Middle District of Florida. On June 23, 2008, the court dismissed the Petition.

On July 7, 2008, Broom, *pro se*, filed a Motion for relief from Judgement in the United States District Court, Middle District of Florida. The court denied the Motion on July 10, 2008.

On July 28, 2008, Broom, *pro se*, filed an Application for Certificate of Appealability in the Eleventh Circuit Court of Appeals. On December 2, 2008, the court denied the Application, Motion for Reconsideration denied January 22, 2009.

Petition for Writ of Certiorari filed October 13, 2009, in the 2nd DCA, Case No. 1D09-164-CA.

Motion for Certificate of Appealability following denial of COA request by District Court (Circuit Rule 22-1(d)) October 29, 2004, Case No.: 09-1494OB.

Motion for relief from judgment, November 11, 2009, 10th Jud. Cir., Case No. CF81-001860-AI-XX.

Motion to Leave to Amend First Motion for Motion for Postconviction Relief, November 12, 2009, Case No. CF81-1860A1-XX

Motion Denying Defendant's Motion for Leave to Amend first Motion for Post-Conviction Relief and Amended Motion for Post-Conviction Relief, Case No.: 81-001860-A1-XX.

Order Denying Defendant's Motion for Leave from Judgement Case No. CF81-001860-A1-XX, December 17, 2009.

Rehearing, December 31, 2009 Case No.: CF81-001860-A1-XX.

Order Dismissing Rehearing, Case No.: CF81-001860-A1-XX, January 25, 2010.

Appeal to order Denying Defendant's Motion for Leave to Amend first Motion for Post-Conviction Relief and Amended Motion for Post-Conviction Relief, Case No. 2D10-270, January 15, 2010.

Petition for Writ of Habeas Corpus, Case No. 2D10-285, filed January 19, 2010.

Habeas Corpus, Broom v. State, 28 So.3d 52 (Fla. 2d DCA 2010) Case No.: 2D10-285, dismissed February 8, 2010.

Appeal 2nd DCA, Broom v. State, 36 So.3d 93 (Fla. 2d DCA 2010) Case No.: 2D10-270, initial brief of Appellant, February 22, 2010.

Case # 2D10-270, per curiam affirmed, May 7, 2010.

Mandate from 2nd DCA in case 2D10-270, June 2, 2010.

Petition for Writ of Habeas Corpus, 1st DCA, Case No. 1D10-3883, July 16, 2010 Broom v. State, 44 So.3d 638 (Fla. 1st DCA 2010)

Per curiam affirmed, Case No. 1D10-3883, 1st DCA, Habeas Corpus, August 13, 2010.

Motion for Rehearing, Case No.: 1D10-3883, Habeas Corpus, September 20, 2010.

Petition for Writ of Certiorari, Florida Supreme Court, October 13, 2010.

Petition for All Writs/Habeas Corpus to correct manifest injustice, Case No. SC10-2049, October 13, 2010.

Letter, October 26, 2010, All Writ or Habeas Corpus, Case No. SC10-2049, Florida Supreme Court. – New Case.

Florida Supreme Court, October 26, 2010, Acknowledgment of new Case No. SC10-2049, All Writ or Habeas Corpus to correct manifest injustice.

Mandamus denied, Florida Supreme Court, January 7, 2011, Florida Supreme Court, State v. Broom, 54 So.3d 489 (Fla. 2011) Case No. SC10-2059, L.T. Case No. 1D10-3883, Trial Case No. CF81-1860A1-XX.

Original Writ of Habeas Corpus, filed February 8, 2011, in the United States Supreme Court under 28 U.S.C. 2243, Case No. SC10-2049.

Belated and Successive Motion for Post-Conviction Relief 3.850(b) Change In Law filed February 21, 2011

CONVICTION OF AN OFFENSE NOT CHARGED VIOLATING DUE PROCESS UNDER THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION.

Petition for Writ of Habeas Corpus, 1st DCA, Broom v. State, 71 So.3d 404 (1st DCA 2011)

Habeas Corpus, per curiam denied, August 31, 2011, Case No.: 1D11-3995.

Motion for rehearing, Case # 1D11-3995, filed September 14, 2011.

Rehearing to Correct Manifest Injustice, denied October 14, 2011, Case No.: 1D11-3995.

Notice of Appeal, Case No.: 1D11-3995, filed November 7, 2011.

Appeal – Effect on the proper administration of justice, filed November 10, 2011, Broom v. State, 76 So.3d 937 (Fla. 2011), Case No.: SC11-2229.

Letter with new Case No.: SC11-2229, from Florida Supreme Court, November 21, 2011.

Appeal case # 1D11-3995, dismissed November 21, 2011.

Petition for All Writ, Case No.: SC11-2313, filed November 16, 2011, with Appendix in support of All Writ.

Letter from Florida Supreme Court excepting All Writ or Habeas Corpus, Case No.: SC11-2313, December 12, 2011.

Broom v. State, 83 So.3d 706 (Fla. 2012).

Broom v. State, 945 So.3d 502 (Fla. 2012).

Broom v. State, 100 So.3d 135 (Fla. 2d DCA 2012) Case No.: 2D12-916

Petitioner has been seeking permission from the federal Eleventh Circuit Court under the restrictions of the AEDPA to file a Second or Successive Petition for Writ of Habeas Corpus claiming a miscarriage of justice.

a.) Case No.: 13-11304-B denied March 29, 2013.

b.) Case No.: 13-11304, reconsideration denied April 25, 2013.

c.) Case No.: 13-13231-B, denied July 31, 2013.

d.) Case No.: 13-14310-D, denied October 1, 2013.

e.) Case No.: 13-14693-C, denied November 13, 2013.

This is not a complete statement of the case. The court will have to rely on the court docket sheet for the complete filings, for the lack of storage space and Mayo Correctional officers disregard for inmates legal work, most all court filings have been destroyed.

On February 21, 2014, - Original Petition for Writ of Habeas Corpus was mailed by U.S. mail to the United States supreme Court, with Exhibit A-N.

On March 4, 2014, Amendment to Original Writ of Habeas Corpus was mailed by U.S. mail to the Untied Sates Supreme Court with Exhibit X only.

On March 3, 2014, the Original Petition for Writ of Habeas Corpus was mailed and returned with Exhibit A-N.

On March 12, 2014, the Amendment to Original Writ of Habeas Corpus was mailed and returned with Exhibit X with a copy of the United States Supreme Court Rules.

ISSUE

THE NEWLY DISCOVERED EVIDENCE ESTABLISHES THAT THE EVIDENCE IS INSUFFICIENT TO SHOW THAT DEFENDANT'S FRIEND'S DEATH RESULTED FROM THE CRIMINAL AGENCY OF ANOTHER

THERE IS NO UNDISPUTED EVIDENCE IN THIS CASE AND WHAT EVIDENCE THERE IS DOES NOT ESTABLISH PROBABLE CAUSE OR THE CRIMINAL AGENCY OF ANOTHER, EXCLUDING THE FRAUDULENT EVIDENCE

Defendant was charged with first degree murder was accused of shooting the victim with a firearm and convicted of second degree murder with a firearm of Charlotte Martz. The State's theory that Defendant murdered Charlotte relied entirely on circumstantial evidence. There was no witness placing the Defendant at the incident at the time of the fatal gunshot injury. In fact, two witnesses in the motel room adjacent to the Defendant's room where the tragedy occurred were Barbara Singh, and her Husband Kumar Singh. These witnesses play a vital role in the Petitioner's actual innocence even though they were never called to testify. In order for this court to get a clear understanding of this wrongful conviction, the Defendant will start at the scene of the tragedy. In doing so, the Defendant will establish his factual and actual innocence. Had it not been for the admitted nefarious acts of the lead Detective, Sandra F. Woodard, that had a vocal and personal dislike for Defendant (Exhibit B – p. 7, L. 19-22), there was no evidence of the criminal agency of another and no probable cause of a crime being committed (no corpus delecti).

I – FACTS FROM THE SCENE:

On June 24, 1981, at approximately 3:30 a.m. to 4:00 a.m., Defendant Broom returned to his room from the Coke machine and found his friend, Ms. Charlotte Swenson Martz, with what appeared to be a gunshot wound to the left side of her head (Exhibit A - Sworn Affidavit of Actual Innocence). He had an ambulance and police immediately summoned (Exhibit B - Detective Woodard's Deposition, p.7, L23-25; p.8, L1-3). The police arrived first and could see the gun laying on the floor next to the decedent while the Defendant tried to administer CPR, but would not enter the room until the gun was secured. Defendant picked the gun up by the barrel from the floor beside the bed and tossed it onto the couch. (Exhibit C - Trial Transcript (TR), p. 32 L1-4 and p.81, L15-25)[1]. The police entered and picked up the gun (Exhibit C - TR, p.85, L21-24) with their bare hands.

The ambulance arrived shortly thereafter, and the Emergency Medical Technicians (EMTs) took over the first-aid from Broom (Exhibit C - TR, p.64, L4-9) repositioning Ms. Martz's body further down on the bed in order to administer first-aid.

II - FIRST LAW ENFORCEMENT PERSONAL SURMISED SUICIDE

The police asked Broom what happened, and he stated: "I have no idea what happened." (Exhibit C - TR, p. 42 L4-9). The first law enforcement personnel that arrived

[1] All numbers are referred to are numbers in the upper right hand corner of the transcripts which is referred to by TR followed by a page number and line number(s).

on the scene were investigating and found only that Ms. Martz was in the room at the time of the tragedy (Exhibit C - TR, p. 32, L 20-21).

Because there was no criminal agency of another Officer Quinn surmised suicide (Exhibit C - TR, p. 60, L.23-25 and p. 61, L1). Defendant's continual entrance and exit of the room questioning the status of his friend made the officer decide to have him seated in the back of a patrol car to preserve the scene (Exhibit C - TR, p43, L16-25).

III – LEAD DETECTIVE ARRIVAL AT SCENE:

With officers already on the scene, Detective Woodard arrived and observed Broom sitting in the rear of a squad car. She accusingly stated: "Tony, what have you done now?" (Exhibit B - p.4 L.25 and p. 5, L1-2) This detective, however, never made a case against Broom and didn't have any part in prior misdemeanor charges (Exhibit B, p. 5, L. 6-9). The fact is Detective Woodard nurtured a personal dislike for the Defendant. (Exhibit B - p. 7, L19-22).

Due to her late arrival, Det. Woodard merely observed the scene and the body subsequent to any material and exculpatory evidence having been compromised and/or destroyed. In fact, over twenty (20) minutes had passed since the first law enforcement officers had arrived on the scene surmising suicide, before Det. Woodard arrived and took over. (Exhibit B - p. 4 L. 5-19). She was briefed by officers as to their findings and the evidence (Exhibit C - p. 44 L. 10-11). The officers first to arrive on the scene and view the body and all evidence as it was at the time of their arrival surmised suicide based on their

professional observations. Detective Woodard purposely dismissed the surmised suicide because she already had her mind made up it was a homicide (Exhibit B, p. 30 L. 10-16), i.e., "Tony, what have you done now?," (Exhibit B, p. 4:25-5:2).

IV – NEWLY DISCOVERED EVIDENCE

The newly discovered evidence, which is the "death investigator report," only recently came to the Defendant's attention, but was sent with the deceased's body to the morgue for the medical expert Dr. Youngs, the state's own pathologist , as evidence for him to utilize and prepare his findings for his autopsy report.

The Defendant did not know and had no reason to know that death investigator report existed, because it was not provided by the state in discovery to the defense as required by law. Nor was it in the State Attorney file Broom paid for when he ordered a copy of the State Attorney's file around 2003.

The Defendant first became aware of this material, exculpatory, evidence when he was provided a copy (Exhibit D) (death investigator report and affidavit of Diane Heisler), by an advocate for wrongfully convicted, P.O. Box 542 Blufton, S.C. 29910, by U.S. mail on April 30, 2012, after she **personally** made a trip to the Winter Haven Police Department (WHPD), in Winter Haven, Florida, and asked for the Defendant's record.

It will be shown, that Detective Woodard is the affaint of this tainted material, which is the exculpatory evidence that is the lynchpin to the state's fraudulent charge of murder. Detective Woodard, has a personal dislike for the Defendant (Exhibit B, p.7 L.

19-22). There is no evidence of the criminal agency of another and no probable cause of a crime being committed without the fabricated death investigator report which adversely influenced the pathologist in his findings for his autopsy reports, see the following:

V – <u>DEATH INVESTIGATOR REPORT</u>

The death investigator report (Exhbit D) shows: Date/time viewed by investigator to be 6-24-81 at 4:34 a.m, submitted by detectives Henry and Woodard. The report states in pertinent part:

> "According to investigator the victim and suspect were in Rm # 539 just prior to shooting…"
> Date/time viewed by investigator was 6-24-81 / 4:34 am Report submitted by: Detective Henry and Woodard dated 6-24-81 / 5:45

However, Detective Henry was not on the scene at 3:34 a.m. as stated, to view anything, as this report falsely alleges.

The death investigator report is material and worded to influence the state's medical examiner's autopsy findings. That is, this report wrongfully places Defendant in the room with Ms. Martz as a suspect at the time of the tragedy.

The state needed this death investigator report as their lynchpin to show (though fabricated) probable cause and the criminal agency of another for the charge of murder. That is, the fabricated report mislead the medical examiner's facts for his autopsy report. By not being able to say with any medical certainty whether death was from suicide, homicide or by a bizarre accident.

Detective Woodard had no specific evidence, direct or physical evidence that Tony

Broom was in the room at the time Charlotte Martz shot herself other than what she felt. (Exhibit C – TR. p. 255 L. 3-9).

Falsely placing Broom as a suspect in the room with Ms. Martz at the time of the tragedy, caused Dr. Youngs to have to include the hypothesis of homicide. Without the false and fabricated death investigator report Dr. Youngs' Autopsy report could have only read suicide or some type of a bizarre accident, and Broom would not have been charged with Ms. Martz's death.

This fabricated death investigator report removed the question of law (was there the criminal agency of another) leaving only a question of facts for the jury (did Broom commit the murder)

There is nothing without the fabrication, but innuendo, speculation and conjecture to put Broom in that room with Ms. Martz at the time of the tragic incident as the suspect, which is to show the criminal agency of another and removes the question of law of corpus delicti with a false document clearly shown to be such.

The first law enforcement personnel arrived on the scene approximately ½ hour before detective Woodard's arrival and approximately 1 hour before Det. Henry arrived. These first officers saw the scene and situation before anything i.e., before the victim and the gun were moved which compromised, prejudiced and tainted any later observation for probable cause and/or for the criminal agency of another. The first officers observed the situation and surmised suicide. (TR. p. 60, L. 23-25 and p. 61, L1). Also officer Dennis

testified:

> Q: Was anyone in the apartment? [motel room]
> A: Only the victim.
> Q:Sir.
> A: Only the victim, which was lying on the bed.

(TR. P.32, L. 20-23).

Det. Woodard had no specific direct or physical evidence that the Defendant was in the room at the time of the shooting (TR. P. 255L. 3-9). Nevertheless, this Death Investigator Report unequivocally provided the foundation of a crime for Det. Woodard's reprehensible acts to make Defendant out to be a murderer, falsely placing him in the room with Ms. Martz just before the shooting as the suspect.

The Death Investigator Report started the fraud perpetrated by state action in an attempt to establish Probable Cause and the criminal agency of another, tainting this entire case from that point forward, including all appeals. The information in the Death Investigator Report is the catalyst to the corruption of fraud perpetrated on the defendant in this case. The first Police Officer on the scene saw everything before any of it was moved, destroyed, manipulated, or compromised in any way, including before Ms. Martz's injured body, which was moved down on the bed so the EMT's could perform first aid or before the gun had been tossed on the sofa from the floor by Defendant at the behest of the police, in order to get the police to come in and help him.

There is no evidence to substantiate the false and fraudulently misleading statement, "According to Investigator, the victim and suspect were in Room #539 just prior

to shooting....." as stated in the Death Investigator Report. This statement is unequivocally incorrect. It was presented to the Medical Examiner with the body of Ms. Martz to influence him from making a fair and unbiased determination on valid untainted evidence so he could accurately determine the cause and manner of death.

VI. AFFIANT OF THE DEATH INVESTIGATOR REPORT

Det. Henry arrived at 4:58 a.m. or "approximately 45 to 50 minutes upon his arrival...." The Winter Haven Police Department was investigating an alleged homicide at that particular room, and there were four officers on the scene (TR. p. 66, L.6-9). Det. Woodard arrived at 4:30-4:35 a.m. (Exhibit B, p. 4, L. 3-14). And the first Law Enforcement Personnel had been there from 4:13 a.m. (TR. p. 28, L.3-17) and had prima facie surmised suicide (TR. p. 60, L. 23-25 and p. 61, L. 1). A fact presumed to be true unless disproved by some evidence to the contrary. The first Police Officers that surmised suicide were the ONLY Law Enforcement Personnel that observed the scene BEFORE it became compromised. Any other evaluation by anyone is nothing more than polluted speculation and baseless conjecture, not evidence of a crime scene. The Death Investigator Report states: "viewed by inspector on 6-24-81 at 4:34 a.m. "....Report submitted by Det. Henry & Woodard Dated 6-24-1981 Time 5:45." From the foregoing it has been clearly shown that Det. Henry could not have viewed the body as the inspector on 6-24-81 at 4:34 a.m., since he did not arrive on the scene until just before 5 a.m., at 4:58 a.m.. And the first Law Enforcement Personnel which had arrived at 4:13 a.m. surmised suicide. This

established that Det. Woodard is the Affiant of the false and fabricated Death Investigator Report where she herself stated that she arrived at 4:30 a.m., and is the only investigator on the report that was there at 4:34 a.m. to view anything.

Det. Woodard had already had Defendant transported to the W.H.P.D. and told him that he was under arrest for first degree murder, evidencing she wanted it to be a homicide and did everything she could to make it appear as such, ignoring the first Law Enforcement Personnel's findings of a surmised suicide. Because of Det. Woodard's late arrival at the scene she could not and did not know how the scene looked at the time the first officers arrived approximately ½ hour before her and before the scene became compromised. This clearly establishes that her Death Investigator Report is fraudulent and inflammatory for there was NO suspect to the "surmised suicide" and no one in the room (TR. p. 32,L.20-23) with Ms. Martz when the gunshot occurred.

The Death Investigator Report was presented to the Medical Examiner with the body distractedly influencing him from making a fair and unbiased determination on the valid evidence to reach the cause and manner of death.

The evidence in this case is undisputed that a bullet wound to the head was the cause of death. However, because of the false and fraudulent report being presented to the Medical Examiner, the determination of death was not from a fair and unbiased finding.

Without this false and fraudulent report, there is No evidence to indicate the manner of death to be a homicide. The only valid evidence established some type of a suicide or a

bizarre accident as stated by the state's expert pathologist. There is no criminal agency of another and no crime with the Medical Examiner's Report reflecting only a suicide or some type of a bizarre accident as the valid evidence shows. Broom would have been exonerated because the valid evidence does not show any type of a homicide or that a crime was committed by anyone other than the deceased, with a self – inflicted gunshot wound.

This Newly Discovered Evidence was clearly: 1) Discovered since trial; 2) could not have been discovered with due diligence; 3) is material to the issue; 4) goes to the merits of the case and not merely for impeachment of the character of the witness; 5) is not merely cumulative; and 6) will produce a different result on retrial or an acquittal.

VII – STATE PATHOLOGIST:

No rational trier of fact could have found probable cause or evidence of the criminal agency of another beyond a reasonable doubt. State's expert pathologist, Dr. Youngs' two theories clearly show that the deceased, not the Petitioner, fired the fatal gunshot. Forensically established by the stippling/tattooing on the backside of her left index and middle fingers. The tattooing was caused by the revolver's cylinder flair sending stippling into the trigger and middle fingers of the decedent, (Exhibit C, TR, p.111, L12-25; p. 113, L6-10) as the fatal gunshot fired. There was no stippling on the Defendant or GSR.

Dr. Youngs' other theory was that "the hand had been interposed between the barrel of the gun and the skin" (Exhibit C, TR, p. 112 L24-25 and p.113 L1-6). However, this is

impossible (her hand between the barrel of the gun and her head) as her fingers would have blocked the stippling, leaving stippling on her hand and not her head as the undisputed evidence established. (Exhibit F, photo of entrance wound and Autopsy Report).

Evidence clearly established there was round, *uninterrupted* tattooing/stippling around the head wound (Exhibit C, TR, p.97 L. 7-25). With the second theory eliminated by Dr. Youngs' own findings, this leaves only his theory of gunpowder discharged around the cylinder of the revolver onto the hand (Exhibit C, TR, p. 111 L. 13-17).

Since the individual holding the revolver discharged it, residue of this type was found on the back of the hand (Exhibit C, TR, p. 113, L6-13). This clearly shows that Dr. Youngs' theory of the deceased holding the gun as it discharged is the only viably valid theory, that is, the fatal injury is the result of a self-inflicted gunshot, there was no murder and nothing on the Defendant's hands. Neither test could have proved Broom fired the gun that evening (TR. p. 283 L. 14-16). The neutron test revealed nothing on Charlotte's or Broom's hands. (TR. p. 252 L. 11-25 and p. 253 L. 1-4)

VIII – <u>MOTEL ROOM #539 DESTROYING EXCULPATORY EVIDENCE</u>

Detective Woodward's reprehensible procedures allowed for the destruction of key evidence after it was in police custody, notably the fingerprints of the deceased and those of the officers that handled the gun with their bare hands were suspiciously misleading. (Exhibit C, TR, p. 32, 80, 82, 126-27, and 129). The stippling/tattooing, which the pathologist stated was present on the backside of the deceased's fingers (Exhibit C, TR, p.

111 L 12-25), was wiped away by the officer on the scene when conducting the requisite tests but in the wrong order (Exhibit C, TR, p. 155 L. 5-25), leaving only the tattooing after he wiped away the stippling from her fingers/hand.

Because of the inferior police procedures, no fingerprints were recovered from the gun. (Exhibit C, TR, p. 252, L. 7-10). Detective Woodard prepared and packaged the gun herself for the lab (Exhibit C, TR. p.251, L14-16). Detective Woodard had "no specific evidence, direct or physical evidence that Tony Broom was in the room at the time Charlotte was shot other than what *she felt*" (Exhibit C, TR, p. 255 L. 3-9) (*emphasis added*). Detective Woodard documented evidence **after** it had been moved/compromised (the body and the gun having been moved prior to her arrival), yet she never stated this fact. Instead, presented testimonial evidence of the body, even going as far as to state, " that is where it was when the fatal shot was received" (Exhibit E - Detective Woodard's Statement , p. 19 L. 1-5). She never saw Ms. Martz's body prior to the EMTs moving it to administer first aid.

IX – <u>MURDER CHARGE WITH NO PROBABLE CAUSE</u>:

The Winter Haven Police Department (W.H.P.D.) investigated this case, however, Defendant was transferred from the city of Winter Haven to the Polk County Jail and, with no valid probable cause or any evidence showing the criminal agency of another, was booked on the charge of first-degree murder. The above mentioned Death Investigation Report was never produced in discovery by the State for the defense.

As will be established, Detective Woodard's personal dislike for Defendant makes this a clear-cut case of a rush-to-judgment by creating, utilizing, and front-loading fraudulent evidence to establish probable cause and/or the criminal agency of another only to then use rules of criminal procedure and/or law to remove the fraudulent document and utilize the illegal indictment to obtain a conviction. This denied Defendant due process of law and created a manifest injustice against Defendant where NO safeguards were employed in this case – further denying due process. Justice has not been served where there is no valid probable cause. *See* Evans v. State, 808 So. 2d. 92, 101 (Fla. 2001), which opined:

> "[T]his Court finds that due process is implicated when "a prosecutor permits a defendant to be tried upon an indictment which he or she knows is based on perjured, material testimony without informing the court, opposing counsel and the grand jury."

Id. (quoting Anderson v. State, 574 So. 2d. 87, 91 (Fla. 1991)).

X – PROBABLE CAUSE AFFIDAVIT/ARREST REPORT FOR ARREST

Although Defendant had already stated that he did not want to talk to law enforcement, Detective Woodard, while questioning Broom, informed him that, "**if he did not want to talk to them then they would have to charge him because there were no witnesses**" (*See* Exhibit B. p 13 L18-23). Defendant's arrest, was admittedly the result of him exercising his right in remaining silent – his arrest and charge (with no other evidence) simply because he had told Det. Woodard that if he was going to be arrested for murder then she could speak with his attorney. A complaint is, of course, essential to initiate such

action. Testimony is clear that Det. Woodard did not know what occurred in that motel room (Exhibit B, p. 22 L. 8-10). She further stated that the physical evidence pertaining to the actual shooting itself was inconclusive (Exhibit B, p. 30 L 1-3). She stated that she considered it being suicide or accident but that she did not think it was. (Exhibit B, p. 30 L 10-13). The motive for the first-degree murder charge is based solely on the testimony of the victim's family and close friend (Exhibit B, p. 30 L4-9), who could only testify to the parties' relationship and Broom's character. Detective Woodard had her mind made up that it was a homicide with no evidence, only speculation and conjecture. (Exhibit B, p. 30 L14-16). The court may not speculate as to how the death occurred. Meyers v. State, 704 So. 2d. 1368, 1369 (Fla. 1997). Pathology and material evidence established self-inflicted gunshot.

The evidence, or lack thereof, shows a false arrest by the lead detective with no actual probable cause. With no evidence and no witnesses, Detective Woodard swore to and signed the Probable Cause Affidavit/Arrest Report on June 24, 1981. Det. Woodard interviewed the couple who were staying in the adjacent room, the Singh's. Kumar and Barbara Singh stated that they heard "no voices or nothing" but had heard a commode lid falling. (Exhibit G). Specifically, Mr. Kumar Singh stated, "nope, nope. We was sleeping. We heard nothing until the loud noise what wake (sic) us up." (Exhibit G).

Det. Woodard, instead of including in her affidavit what the Singh's *actually* said when interviewed, fraudulently stated that the Singh's heard arguing that then a loud

"bang." (Exhibit H). Det. Woodard's sworn affidavit is materially different than what the witnesses actually stated. In fact, no indication of a crime or actions potentially indicating "arguments" prior to the commode-lid bang were ever spoken of by any witnesses. Det. Woodard's fabrications materially altered and polluted every subsequent proceeding contrary to the Singh's statements, (Exhibit G), clearly establishing Det. Woodard's perjury of a government document in her attempt to establish a crime had been committed.

In fact, when Det. Woodard returned to the scene, she took statements which clearly indicate that the Singhs were sleeping and heard **NOTHING** until they were awakened by a loud noise that they thought was a commode lid simply slammed down really hard. (Exhibit G).

Detective Woodard filed the Probable Cause Affidavit/Arrest Report (Exhibit H) and falsely alleged that:

> "...DEFENDANT AND VICTIM...BECAME INVOLVED IN AN ARGUMENT... AND A FEW MINUTES LATER A LOUD "BANG" WAS HEARD BY WITNESS BARBARA SINGH AND HER HUSBAND KUMAR SINGH..."

Nothing shows the Affiant, Det. Woodard, had personal knowledge which causes this to be only **HEARSAY**. Compare (Exhibit G) to (Exhibit H), which unequivocally establishes extrinsic fraud through state action, for a criminal offense by the lead detective where clearly there is no probable cause and no criminal agency of another, denying Defendant's constitutional right to due process of law. No probable cause for arrest.

XI – FIRST APPEARANCE HEARING

The time/date stamp of, JUN 25 3:20 p.m., (Exhibit H), establishes that the Probable Cause Affidavit/Arrest Report and the Singh's statements were not filed with the Clerk of the Court until two hours and five minutes after the First Appearance was held in front of the Honorable Judge J. Dale Durrance. But, Judge Durrance did not demand, as he should have, proof for the probable cause or the criminal agency of another such as the Singhs to testify to the probable cause. He relied on Det. Woodard and her sworn probable cause affidavit/arrest report, which that the Prosecutor knew to be false. First Appearance Hearing was based on extrinsic fraud which erroneously/fraudulently indicated the criminal agency of another, and probable cause.

An affidavit must provide the [judge] with a substantial basis for determining the existence of probable cause. Illinois v. Gates, 462 U.S. 213, 239, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d. 527 (1983).

In other words, "[S]ufficient information must be present to the [judge] to allow that official to determine probable cause, his action cannot be mere ratification of the bare conclusions of others." *Id.* 462 U.S. at 239

Furthermore, Rule 3.180(a)(1), Fla.R.Crim.P., mandates that Defendant be present at his First Appearance Hearing; however, Defendant was not allowed to be in the courtroom for that hearing, and Defendant happened to be the only person that would know Detective Woodard's affidavit was fraudulent, and would have spoken on this point had he been present. The State realized this and, therefore, kept Defendant out of that

(Exhibit O - Motion To Set Bond at 2.)

courtroom during that hearing. Nor, were the Singhs at the First Appearance. Judge Durrance had NO evidence to substantiate Det. Woodard's fraudulent affidavit, denying due process. First appearance was a sham and a mockery of the judicial system

XII– ORDER FOLLOWING (*****) FIRST APPEARANCE HEARING

The order issued following First Appearance was issued at 1:15 p.m. June 25, 1981, showing probable cause to detain Defendant was based upon the deposition or testimony [of Det. Woodard] a copy of which was filed, with the Clerk of the Court *after* the First Appearance Hearing (Exhibit I) Defendant's counsel was, therefore, unable to object to the lack of probable cause and the lack of subject matter jurisdiction because the State did not file said documents with the Clerk of the Court until *after* probable cause hearing, and subject matter jurisdiction had been determined based upon the perjured affidavit, thereby denying due process of law. Hence, fraud on the court was committed.

Judge Durrance was duty bound to demand proof of the probable cause and the criminal agency of another, but he dropped the ball denying Defendant due process of law, resulting in a miscarriage of justice which was caused by Judge Durrance's lack of proper action.

XIII – BOND REDUCTION HEARING

A Bond Reduction Hearing (Exhibit J), was held June 25, 1981 at 3:35 pm, or just about 2 hours and 20 minutes *after* the First Appearance Hearing ended. The Bond Reduction Hearing was held in front of Honorable Judge Clinton A. Curtis, as well as all

other hearings and trial for this case. Present at the Bond Reduction Hearing was ASA Hardy O. Pickard, Defense counsel Richard Barest and the Defendant Broom.

Defendant was informed by his counsel as to how and why he was being held. This was the first time defense counsel and Broom had talked or even seen one another. Broom then informed counsel that the "affidavit" was a fabrication and that Detective Woodard was a prevaricator (which only Broom, Det. Woodard and prosecution would have known) and why he should have been at his First Appearance Hearing.

Upon learning that the affidavit contained perjured material statements which the witnesses did not state, yet were used to establish probable cause and/or the criminal agency of another, Defense Counsel questioned Detective Woodard regarding the affidavit. Once Detective Woodard was caught in her lie, she admitted the following on cross-examination:

A: Like I say, I did not write that affidavit.
Q: Well, ma'am, you interviewed these witnesses personally?
A: Yes, sir.
Q: And you know what they told you?
A: Yes, sir.
Q: And you signed this affidavit under oath, which is different than what they told you?
A: Yes, sir.
Q: Did you think there was something wrong with that?
A: I did not re-read it, once it was typed. That was my error.
Q: You never read the affidavit? You just signed it?
A: I didn't re-read it.
Q: What do you mean, "You didn't re-read it?"
THE COURT: She's already said it was her error.
Please move on Mr. Barest.

(Exhibit J, p. 30, L 1-17).

This evidence was not previously presented at trial, and shows: "it is more likely than not that no reasonable juror would have found Defendant guilty beyond a reasonable doubt 513 U.S. at 327, 115 S. Ct. 851". As cited in House v. Bell, _____ U.S. _____, _____, 126 S. Ct. at 2077, _____ L. Ed. 2d. _____ (2006).

However, because the Court intervened, Defense Counsel was not allowed to impeach the detective for her perjury in the sworn affidavit, which is a criminal offense of falsifying a government document another miscarriage of justice created. Also, Defense Counsel was prohibited from suppressing this perjured affidavit. It was allowed to be used and was, therefore, presented as if it were true and correct even after Det. Woodard admitted her falsity – denying due process of law and creating a manifest injustice, through Judge Curtis' actions or lack there of.

The foregoing pages illustrate how Detective Woodard and the State front-loaded, and/or set the stage, for establishing probable cause and/or the criminal agency of another using fraudulent reports and/or compromised material evidence.

1. Detective Woodard fabricated the Death Investigation Report.

2. Detective Woodard provided a perjured Probable Cause Affidavit/Arrest Report using incorrect witness statements.

3. Judge Durrance failed to require proof as law demands, of probable cause, but allowed mere perjured evidence as proof of the probable cause

4. Judge Curtis conspired with the ASA to allow proven perjury to remain the probable cause.

5. The State Attorney's Office, through ASA Pickard, allowed those fraudulent documents to be utilized to obtain a Grand Jury Indictment infra.

6. This shows a conspiracy of the judicial system, to put an innocent man in prison.

Defendant will now show how these documents, illegally presented and/or obtained, caused the trial court's order to be null and void and illegal.

XIV – STATE'S DRAFTED INDICTMENT

The State Attorney, or his assistant, drafted the indictment for the Grand Jury pursuant to Chapter 905.19, Florida Statutes (1979-81). However, "a prosecutor shall not institute or cause to be instituted criminal charges when he *knows* or it is obvious that the charges are not supported by probable cause." Gerstein v. Pugh, 420 U.S. 103, 121 n. 22, 95 S. Ct. 854, 867 n. 22, 43 L. Ed. 2d. 54, n. 22 (1975). (*emphasis added*). The prosecutor's office knowingly and/or intentionally, with reckless disregard for the truth, utilized the admittedly perjured affidavit to draft a tainted indictment. Without said perjured affidavit there is NO probable cause, and justice is again denied.

The State's prosecuting attorney is an agency of the State, and, if he knowingly secures a conviction by the conscious and deliberate use of a perjured affidavit – which history has show to be the modus operandi for ASA/Prosecutor Hardy O. Pickard. *See* Kelley v. Singletary, 222 F. Supp. 2d. 1357, 1363 (S.D. Fla. 2002). This is sufficient

ground for holding such judgment of conviction null and void. No grosser fraud could be perpetrated upon a court. The agencies of the State, for the administration of the law and justice, must never be allowed to be prostituted to the defiance of law and effectuation of injustice. Those who minister in the temple of justice must keep their hands clean. Skipper v. Shumacker, 118 Fla. 867, 160 So. 357, 358 (Fla. 1935). This, however, has not been the case with ASA Hardy Pickard.

Defendant was prejudiced by being tried on an indictment founded on perjured affidavit. The State did nothing to correct the arresting lead detectives perjured affidavit. The Court turned a blind eye. Hardy O. Pickard, ASA, committed fraud on the Court when he presented Det. Woodard's perjured Probable Cause Affidavit/Arrest Report, (affidavit), in Order to obtain Probable Cause and for the Criminal Agency of Another at the First Appearance Hearing, Gerstein v. Pugh, *supra.*, and then to the Grand Jury in order to influence them into returning the State's fundamentally tainted, drafted indictment with their true bill. The ASA never informed the Grand Jury, the Court and the Defense, Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d. 104 (1972), of his use of the perjured affidavit he knew to be such, denying due process of law, and yet another miscarriage of justice.

NO COURT HAS ADDRESSED THE MERITS OF THE ISSUES RAISED IN THIS POST CONVICTION MOTION.

XV - ASA STATE ACTION AS PROSECUTOR

Defendant provides this Court with substantive evidence which corroborates the

claim of fraud perpetrated by the prosecutor through state action. Appraisal of the following allows this Court to view this issue not as a matter of opinion for decision by a jury, but as a matter of law per the Court to decide regarding due process rights of Defendant, violated by fraudulent state action.

This Court is undeniably in possession of these facts and laws upon full review of this Motion establishing the reckless disregard and malicious intent through FRAUD by state action, violating both federal and state due process resulting in a manifest injustice.

Defendant discovered numerous state actions of due process violations perpetrated by ASA Hardy O. Pickard. These acts of due process violations show prosecutorial misconduct and reflect Mr. Pickard's modus operandi in the courtroom, similar to Kelley where the District Court held, "This case presents many incidences of prosecutorial misconduct. Mr. Pickard has a habit of failing to turn over exculpatory evidence and impeachment evidence." Kelley v. Singletary, 222 F. Supp. 2d. 1357, 1363 (S.D. Fla. 2002)(emphasis added). [FN 3] goes on to state: "In another capital murder case, Circuit Judge Barbara Fleischer, sitting by designation by the Florida Supreme Court as a temporary judge of the Tenth Circuit, ordered a new trial for a defendant because Assistant State Attorney Hardy Pickard withheld impeachment materials from the defense. State of Florida v. Melendez, No.: CF-84-1016A2-XX (Tenth Judicial Circuit of Florida), slip op. Filed December 5, 2001." Kelley, id, n3.

A more recent Supreme Court case, Johnson v. State, 44 So. 3d. 51, 73 (Fla. 2010),

emphatically and unequivocally reveals the ongoing corruption of ASA Pickard. The Court held in pertinent part: ". . .we must vacate the death sentence under Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d. 104 (1972). . . This result is dictated by the misconduct of the original prosecutor in the case, Hardy Pickard. His misconduct tainted the state's case at every stage of the proceeding. . . This is not a case of overzealous advocacy, but rather a case of deliberately misleading at both the trial court and this Court." *Id.* at 44 So. 3d. at 73.

The Johnson Court further held,

> "It must be emphasized that in our American legal system there is no room for such misconduct. . . Jones v. State, 705 So. 2d. 1364, 1367 (Fla. 1998). . . In our system of justice, ends do not justify means. Rather, experience teaches that the means become the end and that irregular and untruthful arguments lead to unreliable results. Lawlessness by a defendant never justifies lawless conduct at trial. *See, e.g.* United States v. Bagley, 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d. 481 (1985); Giglio, *supra.*; Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d. 1217 (1959); Guzman v. State, 868 So. 2d. 498 (Fla. 2003). The State must cling to the higher standard even in its dealing with those who do not."

Johnson, id. (emphasis added).

Defendant's trial was at the same time and same court as Johnson, with the same Prosecutor, Pickard. As previously illustrated, ASA Hardy Pickard was fully aware that the Probable Cause Affidavit/Arrest Report, fraudulently sworn to by the investigating officer, was ficticious due to the fact that it contained material facts that Mr. Pickard knew the witnesses (Singhs) did not state. Although the Defendant knew it to be false, he has been unable to prove it until now. With the recent Death Investigation Report, the

Defendant is suitably positioned to expose the collusive and fraudulent behavior of all parties. Where case-related facts or evidence is withheld by other State agents, such as law enforcement officers, the State Attorney is charged with constructive knowledge and possession of withheld evidence by other State agents, such as law enforcement officers. *See* Gorham v. State, 597 So. 2d. 782, 784 (Fla. 1992); *See also* Archer v. State, 934 So. 2d. 1187, 1203 (Fla. 2006)("The prosecutor is charged with possession of what the State possesses").

The State's drafted indictment (Exhibit K) states in pertinent part:

> ". . .ANTHONY W. BROOM. . . .FROM A PREMEDITATED DESIGN TO EFFECT THE DEATH OF A HUMAN BEING, UNLAWFULLY DID KILL A HUMAN BEING, TO WIT: CHARLOTTE MARTZ, BY SHOOTING HER WITH A FIREARM. . ."

Compare Exhibit "K" with the admittedly perjured Probable Cause Affidavit/Arrest Report Exhibit "H", and it is clearly seen that the State utilized the knowingly perjured affidavit to draft the State's indictment. That drafted indictment is not supported with a valid probable cause and was drafted from knowingly perjured information, yet the State, hid this from the Court, the Defense, and the Grand Jury, falsehood he knew to be such. It was utilized to influence the Grand Jury, falsehood as stated in the State's Response dated January 20, 1986, the Clerk's file stamp dated February 7, 1986 (Exhibit "L"), *infra*. **Motion to Dismiss, Defendant's Motion for Postconviction Relief**.

Proof that the perjured affidavit was used to persuade the Grand Jury into returning the State's drafted indictment with their "true bill" (*See* Exhibit "L") was not made known

to Petitioner for over five (5) years after his judgment and conviction, and after his direct appeal and federal habeas corpus filing were all denied. Without a valid indictment for a capital offense, both the State and Federal Constitutions are violated. Article I, §15, Florida Constitution and Amendment V and XIV of the United States Constitution guarantee that no person shall be held to answer or be tried for a capital crime without a valid indictment. To do otherwise violates due process, a manifest injustice thus established, as in this present case. Article I, §9, Florida Constitution and Amendments V and XIV, §1 of the U.S. Constitution.

XVI - NO TRIER OF FACTS COULD HAVE FOUND A CRIME BEYOND A REASONABLE DOUBT

No rational trier of facts could have found probable cause or the criminal agency of another beyond a reasonable doubt. In fact, the evidence clearly indicates that the deceased herself fired the fatal gunshot. Moreover, as previously stated and testified to such, Detective Woodard already had a personal dislike for this Petitioner (Exhibit B – Detective Woodard's Deposition, p. 7 L 19-22) which prejudiced her ability to conduct her investigation in an objective manner. Her fraudulent statement made in the Death Investigation Report was purposely included to misguide the State's pathologist so as to include homicide as the cause and manner of death; however, even with the fraudulent document, he could not say with medical certainty whether the cause of death was suicide, homicide or some type of a bizarre accident (Exhibit C, TR, p. 121 L 14-21).

Further complicating a proper and true finding by the pathologist is the fact that

Detective Woodard did not send the pathologist evidence photos showing the original location of where the gun had fallen from the deceased's left hand after the fatal shot had been discharged but rather photos taken of the gun where it lay on the sofa. Defendant had been forced by the officers to pick it up from the floor and toss it to the sofa in order to get the officers to enter the room and help administer first-aid to Ms. Martz. Evidence photos of the deceased body were taken after the EMTs had moved her body toward the foot of the bed so that their first aid could be properly administered. No evidence photos were ever taken of the body when the head had been positioned near the headboard, where the first officers on the scene had seen her body positioned. (Exhibit C, TR p. 31, L16-21, p. 32, L5-13), nor were any photos taken of the gun on the floor.

Detective Woodard never informed the State's pathologist that the first officers to arrive on the scene had already surmised suicide based on the evidence at the scene prior to it being compromised and/or destroyed.

The pathologist's trial testimony stated that an uninterrupted round zone of stippling was around the entrance wound (Exhibit C, TR, p. 97 L14-17). He also stated that there was stippling on the back side of the index and middle fingers of the left hand and that the gunshot wound was to the left side of her head (Exhibit C, TR, p. 111 L12-17). The stippling was in an uninterrupted pattern around the entrance wound indicating that her hand had **not** been interposed between the end of the barrel and her skin in a blocking manner. This indicates a type of self-inflicted injury and negates one of the pathologist's

two theories, leaving only his theory that the stippling on the deceased's fingers was the result of her discharging the fatal shot from the revolver, stippling having come out from around the revolver's cylinder and onto her fingers. (Exhibit C, TR, p.113 L 6-10).

Comparing Exhibit C, TR, p. 97 L 14-17 to that of Exhibit C, TR p. 113 L 2-6 clearly indicates a circular stippling pattern around the entrance wound (Exhibit F, *supra.*). Therefore, it is clearly shown that the hand could not have been interposed between the end of the barrel and the head but, the individual holding the revolver discharged it. (Exhibit C, TR. p. 113, L6-10)

It has already been shown that Detective Woodard arrived at the scene late; took over as lead detective, and clearly had a personal dislike for Broom. Further stated, the first law enforcement personnel who arrived on the scene 20 minutes prior to Det. Woodard had already surmised suicide based on the evidence at the time of their arrival. Nevertheless, Det. Woodard decided to fabricate material facts in the Death Investigation Report to attempt to indicate probable cause for the criminal agency of another by falsely stating, absent any evidence to support her statement, that the suspect and victim were in the room together "just prior to the shooting." This detective did not and could not have known if anyone was in that room with the victim at the time of the shooting, for she did not arrive on the scene for over 20 minutes after the first police officers had arrived.

Purged of its erroneous/perjured statement, the Probable Cause Affidavit/Arrest Report is wholly lacking in facts tending to show that a crime had been committed. When

the affidavit contains inaccurate statements which materially affect its showing of probable cause, it is rendered invalid. U.S. v. Leon, 104 S. Ct. 3405 (1984). Without probable cause and/or the criminal agency of another, the prosecutor could not have had the Grand Jury return the State's indictment with their "true bill." That is why the ASA had to utilize detective Woodard's admittedly perjured Probable Cause Affidavit/Arrest Report to obtain a "true bill" through the secrecy of the Grand Jury.

In other words, the State did behind closed doors what it knew it could not have done in the open. A capital crime has to be charged by a Grand Jury indictment, which is done in secrecy; whereas, an Information for a non-capital offense requires a sworn oath by a trustworthy witness(es) or proof for the probable cause of a crime / the criminal agency of another to be attached to the information. The State could not attach proof of a crime, hence the capital crime for an indictment. A Grand Jury indictment based on the fraudulent documents and/or testimony, just as a conviction that was based upon tainted evidence cannot stand. Mesarosh v. United States, 352 U.S. 1 at 14, 77 S. Ct. 1, 8, 1. L. Ed. 2d. 1 (1956). The duty to correct the false testimony of a government witness is on the prosecutor, and this duty arises when the false evidence appears. Napue v. Illinois, 360 U.S. 264 at 270, 79 S. Ct. 1173 (1959); *See also* United States v. San Filippo, 564 F. 2d. 176, 178 (5th Cir. 1977).

Where the quality of the evidence presented to the Grand Jury is in question, it is clear authority for dismissal of an indictment. *See*, Basturo, 497 F. 2d. 781, 786 (9th Cir.

1974) as cited in Anderson vs. State, *infra*. An indictment must be returned by an *unbiased* Grand Jury. *See*, Shower v. State, 86 So. 3d. 1218, 1222 (Fla. 2nd DCA 2012)("It is constitutional error when a jury's general guilty verdict could have been based on an illegally inadequate theory."); *See also*, U.S. vs. Spellissy, 438 Fed. Appx. 780, 782-83 (11th Cir. 2011). As in Dr. Youngs flawed theory of the victim's hand interposed between the gun and head. Flawed, because an uninterrupted hand would make it impossible for the stippling to remain "perfectly round"; there would have been, at least, one or two unignorable and glaringly obvious gaps. No longer would a perfectly round area of stippling be possible.

Dismissal of an indictment is required when, "the Grand Jury has been overreached or deceived in some significant way as where perjured testimony has been knowingly presented". United States v. Thompson, 576 F. 2d. 784 (9th Cir. 1978) as cited in U.S. vs. Barnes, 681 F. 2d. 717, 72__ (C.A. 11th (Fla) 1982), and Rudd v. ex rel Christian, 310 So. 2d. 295 (Fla. 1975)("If the State Attorney and his assistants should in any way attempt to influence the finding of the Grand Jury, other than presenting evidence and rendering legal advice, any indictment returned may be set aside for improper influence. An overstepping of the State Attorney's function could constitute an invasion of the function of the Grand Jury, and interfere with their independence."). *See* Fraudulent Affidavit.

XVII - HEARING HELD NOVERMBER 4, 1981

The hearing held before Judge Curtis on November 4, 1981 unequivocally shows

ASA Hardy Pickard informed the Court that all notes and writing taken by the Grand Jurors and the Secretary (appointed by the Grand Jury Foremen, pursuant to Fla. Stat. §905.13 (1979-81)) were all "taken down to the State Attorney's Office and put through a shredder" (Exhibit M, p 5, L 3-11). Effectively and knowingly destroying exculpatory evidence that could have and would have exonerated Defendant. Violating Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194,1196-97, 10 L. Ed. 2d. 215 (1963). Witness testimony before the Grand Jury is not guaranteed the same secrecy as the Grand Jurors, and may be disclosed whenever material to the administration of justice. Brown v. Dewell, 167 So. 687 (Fla. 1936).

XVIII - RESPONSE TO POSTCONVICTION MOTION (1-20-86)

It was over five (5) years after Broom's order from the trial court that ASA Pickard admitted that he overreached the Grand Jury, as seen in the last paragraph on the first page of Exhibit "L", stating in pertinent part:

> "First, defendant was not prosecuted based upon Det. Woodard's affidavit. Defendant was prosecuted based upon an indictment returned August 21, 1981 by a Polk County Grand Jury. Once the indictment was returned, Det. Woodard's probable cause affidavit **ceased** to play any part in the case. The return of the indictment conclusively established probable cause to try the defendant regardless of the truth or falsity of the allegation in Det. Woodard's affidavit." (emphasis added).

Assuming arguendo, even if Detective Woodard's probable cause affidavit ceased to play any part in the case once the indictment was returned, due process had been violated because Detective Woodard's affidavit contained material statements that were

utilized by the prosecutor to influence the Grand Jury into returning their true bill. Fraudulent affidavit had already been admitted to being perjurious by its own Affiant. (Exhibit J p. 30 L. 1-17). Florida law "requires setting aside the indictment if perjured testimony was 'false in any material respect that would have effected the indictment.' " Anderson v. State, 574 So. 2d. 87, 91 (Fla. 1991)(and cases cited therein). Defendant's indictment must be set aside.

The Court's statement regarding the affidavit to cease to play a part in this case, clearly establishes that it *was* playing apart in obtaining the indictment. Once the indictment true bill was obtained, it then became the "probable cause." Detective Woodard's admittedly perjurious Probable Cause Affidavit/Arrest Report, in the eyes of the State, ceased to be needed. Hence, it "ceased to play any part," in this case. If this were allowed to stand, it would be tantamount to underwriting any ASA or investigating detective's ability to fabricate any charge based upon indiscriminate and fantastical allegations, anarchy would begin to rule and run our criminal justice system.

The ASA never informed the Court, the Defense, or the Grand Jury of such existing perjury, which the U.S. Supreme Court demands in its findings of Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763 (1972). Detective Woodard's perjured Probable Cause Affidavit/Arrest Report was allegedly no longer necessary by the prosecution where the indictment had become the probable cause. *See*, Murray v. State, 3 So. 3d. 1108, 1118 (Fla. 2009). However, Detective Woodard's affidavit is material and the "Court finds that due

process is implicated when 'a prosecutor permits a defendant to be tried upon an indictment which he or she knows is based on perjured material testimony without informing the court, opposing counsel, and the grand jury.' " *Id.* (quoting Anderson v. State, 574 So. 2d. 87, 91 (Fla. 1991)(and the cases cited therein). *See also*, Zeigler v. Crosby, 345 F. 3d. 1300, 1309 (11th Cir. 2003)(citing Anderson, *supra.*). The foregoing has clearly outlined the factual basis showing blatant fraud on the court and the denial of due process, which caused the court to lack subject matter jurisdiction necessary for the court to proceeded with the case. The forthcoming requested relief, therefore, must be granted. A court without authority to adjudicate a matter has NO jurisdiction, *e.g.*, a court of limited criminal jurisdiction has no power to try a murder indictment, and its judgment therein would be void and of no effect because it lacks subject matter jurisdiction. Black's Law Dictionary Abridged Sixth Edition at pg. 595 under "jurisdiction of the subject matter."

This Court may entertain postconviction proceeding and discharge petitioner held under an illegal or void order issued by the trial court which there is no appellate jurisdiction but this court may not review, "the legal sufficiency of the order."

> State ex. re. Scalderferri v. Sandstrom, 285 So. 2d. 409 (Fla. 1973)(holding that circuit court may entertain habeas corpus proceeding and discharge petitioner held under an illegal or void order issued by a court over which there is no appellate jurisdiction, but may not review "the legal sufficiency of the order); James v. Heidman, 272 So. 2d.207, 208 (Fla. 4th DCA 1973)(permitting reviewing court without appellate jurisdiction to discharge a person based on illegality of order, ...as cited in Murray v. Regier, 872 So. 2d. 217, 222 (Fla. 2002).

Hence, Judge Luten's ORDER GRANTING WRIT OF HABEAS CORPUS, the 28 July 1987, infra. As a reviewing court this Court is permitted to view the detention order in light of the relevant fact and law." Alachua Regional Juvenile Detention Center v. T.O., 684 So. 2d. 814, 817 cited in Murray at 222. If the challenged detention order was determined to be in violation of the Defendant constitutional guarantee of due process, then the order would clearly be 'illegal," and not merely defective, irregular or insufficient form or substance. In Murray v. Regier, 872 So. 2d. at 221. This Court should grant postconviction relief based on a due process challenge by Defendant detained under conviction without valid probable cause and lack of subject matter jurisdiction. This is seen in Exhibit "N," Order Granting Petition for Writ of Habeas Corpus" issued by Pinellas County Circuit Judge, Honorable Claire K. Luten on the 28th day of July, 1987. Even though this was reversed by the District Court in State v. Broom, 523 So. 2d. 639 (Fla. 2nd DCA 1988), but not on the merits Judge Luten granted the writ on, but the District Court reversed on procedures only.

Judge Luten's Order held:

> "To couch the probable cause affidavit in the language used is clearly to manipulate the facts in order to establish probable cause for a charge of first-degree murder. . . . .The totality of the circumstances clearly indicates serious due process violations, which have jeopardized the search for justice in this case. Whatever personal feelings affected Officer Woodard, whatever noble reasons directed the actions of the State, whatever was being sought by anyone. . . justice was not found.

Here an unbiased judge's review of the record clearly shows a miscarriage of justice, yet the District Court reversed only on procedures. Even though, the habeas order

shows the trial court order was void, denying due process and, lacking subject matter jurisdiction. The District Court's findings were another miscarriage of justice in this case, where there is nothing legally establishing probable cause or evidence of the criminal agency of another.

Although there were other witnesses sworn by the State in said cause, there was no witness who testified to any fact upon which a verdict of guilt could be based save the self-proclaimed and exposed untrustworthy witness Det. Sandy F. Woodard, the Death Investigation Report and the perjured Probable Cause Affidavit/Arrest Report; that the sole basis for the conviction of the Defendant was the report and affidavit which was knowingly used by the agencies of the State of Florida, in order to obtain the arrest and indictment against him and his subsequent conviction and those authorities also deliberately destroyed and/or stayed and/or tainted evidence which would have impeached and/or refuted the indictment against him; and that he could not upon reasonable diligence, have discovered prior to his trial and the denial of his motion for a new trial and prior to his judgment of acquittal and prior to the affirmance of the judgment by the District Court of Appeal, (because the secrecy of the grand jury) the evidence which was subsequently unveiled and proved that the affidavit against him was obtained by fraud on the court. Defendant urges that the knowing use by the agencies of the State of Florida of said affidavit to obtain his indictment and conviction and the deliberate destruction of evidence that would have immediately impeached said affidavit, constituted a denial to him of due process of law in

contravention of section I of the Fourteenth Amendment to the Constitution of the United States.

These allegations entitle Defendant to postconviction relief upon the authority of the case of Mooney v. Holohan, 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791, 98 A.L.R. 406 (1935).

The opinion of the Supreme Court of the United States in Mooney, refer to the requirements of the due process clause of the Fourteenth Amendment. That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie, at the base of our civil and political institutions. Herbert v. Louisiana, 272 U.S. 312, 316, 47 S. Ct. 103, 71 L. Ed. 270 [273], 48 A.L.R. 1102 (1926). It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretence of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of an affidavit known to be perjurous. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. And the action of prosecution officers on behalf of the state, like that of administrative officers in the execution of its laws, may constitute state action within the purview of the Fourteenth Amendment. That Amendment governs any action of a state, 'whether through its legislature, thorough its courts, or through its executive or

administrative officers.' Carter v. Texas, 177 U.S. 442, 447, 20 S. Ct. 687, 689, 44 L. Ed. 839 [841]; Rogers v. Alabama, 192 U.S. 226, 231, 24 S. Ct. 257, 48 L. Ed. 417 [419], Chicago; B. and B.R. Co. v. Chicago, 166 U.S. 226, 233, 17 S. Ct. 581, 41 L. Ed. 979, [983, 984].

The postconviction motion further alleges in general language that the State of Florida contrived the conviction of the Defendant through pretence of the trial which in truth and in fact was only used as a means of depriving him of his liberty through a deliberate deception of the court and the jury by the presentation of an indictment known to be tainted, and that without the tainted probable cause indictment so presented there is no basis whatever for his conviction and that such contrivance by the agency of the State of Florida who procured his conviction and imprisonment is inconsistent with the rudimentary demands of justice, and that the judgment of conviction against him was obtained by fraud upon the court and is null and void, and that his imprisonment thereunder is a denial of due process of law and equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States. *See* Exhibit N, Luten's Order Granting Writ of Habeas Corpus. The trial court lacked subject matter jurisdiction for there was NO crime, and a usurpation thereof is a nullity for want of jurisdiction

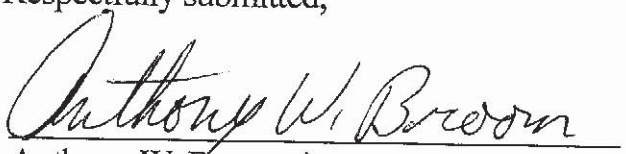
Therefore, Petitioner respectfully requests that he be immediately discharged and/or receive any other relief that the court deems just and proper.

V. CONCLUSION

Defendant has, with detail, fully illustrated the manifest injustice that occurred in the present case that has him wrongly incarcerated as a result of the violation, knowingly and purposefully committed, of his Constitutional rights to due process of law guaranteed according to both federal and state constitutions when agents of the State created and/or utilized fraudulent documents to create an indictment, obtain a Grand Jury "true bill," and, thus, acquire a conviction for a crime which had no probable cause upon which it must be established, and no criminal agency of another.

Defendant requests this Honorable Court to fully examine the contents, facts, and arguments of this postconviction motion and grant Defendant relief; finding that he is illegally incarcerated in Lafayette County, Florida @ Mayo Correctional Institution Annex, and any other relief as deemed fitting, and proper according to Constitutional laws including, but not limited to, a Show Cause Order to the State.

Respectfully submitted,



Anthony W. Broom, in *propria persona*

UNNOTARIZED OATH

UNDER PENALTIES OF PERJURY, pursuant to §92.525, Florida Statues, and State v. Shever, 628 So. 2d. 1102 (Fla. 1994) and 28 U.S.C. §1746, I

declare that I have read the foregoing document and the facts stated in it are true and correct.

Anthony W. Broom

Anthony W. Broom, in *propria persona*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Postconviction 3.850(b) Motion with Exhibits A through O was placed in the hands of Mayo Correctional Institution Annex officials for mailing, by U.S. Mail, to: Clerk of the Circuit Court, P.O. Box 9000 – Drawer CC9, Bartow, Florida 33831-9000 on this 3 day of April, 2014.

Respectfully submitted,

Anthony W. Broom

Anthony W. Broom, in *propria persona*
DC#: 081443 / D4-108U
Mayo Correctional Institution Annex
8784 West U.S. Hwy. 27
Mayo, Florida 32066