IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ANTHONY W. BROOM,
Petitioner,

vs. CASE NO.: 1D11-3995
L.T. CASE NO.: **CF81-1860A1-XX**

STATE OF FLORIDA,
Respondent.
_____/

PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner, **ANTHONY W. BROOM**, (Petitioner or Broom) *pro se*, and files this petition for writ of habeas corpus showing:

JURISDICTION

1. Jurisdiction is proper in this Court pursuant to Chapter 79, Florida Statute (2010).

2. Safeguards were ignored and due process of law was violated by and through State action, when the prosecution utilized perjury/fraud/conspiracy to obtain the grand juror's "true bill". This State action results in the indictment being void and/or illegal when there was no crime and Broom is actually innocent.

3. Broom was involuntarily placed in Mayo Correctional Institution, located at 8784 W. U.S. 27, Mayo, Florida 32066-3458, Lafayette County, within the jurisdiction of the First District Court of Appeal.

4. Habeas corpus alleging an entitlement to immediate release must be filed in the court with jurisdiction over the facility where the prisoner is housed. Bush v. State, 945 So.2d 1207, 1213 n. 11 (Fla. 2006). The writ of habeas corpus is to be filed in the territorial jurisdiction of the court over the institution when the prisoner is being illegally detained, if it would mean his immediate release. "The extraordinary writ has its primary object to determine the legality of the restraint under which a person is held." State ex rel. Mcleod v. Logan, 87 Fla. 348, 100 So. 173 (1924); cited in T.O. v. Alachua Juvenile Detention Ctr., 668 So.2d 243,244 (Fla. App. 1st Dist. 1996).

5. Broom, is not filing this petition arguing his innocence or guilt. In fact, the writ of habeas corpus does not act upon the prisoner seeking relief, but upon the person who holds him in what is alleged to be unlawful custody.

Habeas corpus provisions contemplate a proceeding against some person who has immediate custody of the party detained with the power to produce the body of such party before the court or judge that it may be liberated if no sufficient reason is shown to the contrary. Weles v. Whitney, 114 U.S. 564, 574, 55 S.Ct. 1050, 1054-55, 29 L.Ed. 2d 277 (1885); Cited in Braden v. 30th Judicial Circuit Court (KY), 410 U.S. 484, 494-95, 93 S.Ct. 1123, 35 L.Ed. 2d 443 (1973).

6. The "Writ of Habeas Corpus is the fundamental Instrument for safeguarding individual freedom against arbitrary and lawless state action" Harris v. Nelson, 394 U.S. 286, 290-91, 89 S.Ct. 1082, 86, 22 L.Ed. 2d 281 (1969).

"The very nature of the writ demands it to be administered with the initiative and flexibility essential to insure the miscarriages, of justice within its reach are surfaced and corrected" Harris v. Nelson, supra, at 394 U.S. 291.

7. "If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities and issue such appropriate orders, as will do justice. In habeas corpus, the niceties of the procedure are not anywhere near as important as the determination of the ultimate question as to the legality of the restraint" Anglin v. Mayo, 88 So.2d 918, 919-20 (Fla. 1956); Cited in Santana V. Henry, 12 So.3d 845, 848 (1st DCA 2009).

8. Venue is proper in this court pursuant to Murray v. Regier, 872 So.2d 217, 221 (Fla. 2002), when the trial court that entered the order that is void or illegal then the reviewing court has jurisdiction.

9. This Court must assume for the purposes of review that the allegations of the Petitioner's habeas petition are true. Van Povch v. Dugger, 579 So.2d 346, 348 (1st DCA 1991).

10. In support to his serious charges Broom submits a chronological history of the judicial proceeding connected with the indictment. Broom set forth the evidence which, proves the fabrication of the affidavit used to draft and indict, knowledge of the prosecuting authorities of the fabrication and their suppression of impeachment evidence at their command. Broom also submits admissions by the state that the evidence offered against Broom was fabricated and said indictment is void and/or illegal, denying due process of law.

11. Broom is further deprived of due process do law by the State's failure in the circumstances set forth to provide any corrective judicial process by which an indictment so obtained may be set aside. Both post-conviction rules 3.800 and 3.850 assumes that the proceeding was legal or at least would have been had not some error occurred. Habeas corpus is the proper and only remedy available in this cause where the charging instrument was by perjury and/or fraud and/or conspiracy perpetrated by State action.

RELIEF SOUGHT

12. Broom respectfully requested that this Honorable Court GRANT this extraordinary writ of habeas corpus based upon the forthcoming facts, arguments and authorities and ORDER Broom's immediate release from imprisonment or in the alternation GRANT a show cause ORDER as required in Santana v. Henry, 12

So.3d 843, 844-45 (Fla. 1st DCA 2009) and any other relief that this Court deems just and proper.

FACTS, ARGUMENT AND AUTHORITIES

ISSUE

WAS DUE PROCESS OF LAW VIOLATED BY STATE ACTION WHEN THE STATE USED PERJURY AND/OR FRAUD AND/OR CONSPIRACY TO ESTABLISH THE CRIMINAL AGENCY OF ANOTHER AND PROBABLE CAUSE TO INDICT?

13. The evidence of this case is insufficient as a matter of law to establish the commission of a crime. This statement is relevant if Ms. Martz had fired the fatal shot herself. In fact, a review of the evidence of the pre indictment investigation reveals that there was no evidence to show a crime. There is only evidence that establishes some type of a self- inflicted accident suicide as is shown below.

14. Upon Broom's return to his hotel room, Broom found his close and intimate friend Charlotte Martz with what appeared to be a gun shot injury to her head. Broom had help summoned (Exhibit A, Det. Woodward's deposition at P.7, Ln. 23 through 25 and p.8, lines 1 through 3). Broom was attempting mouth-to-mouth resuscitation (Exhibit A, P.6, Ln 12 through 15) when the first law enforcement personnel arrived. The ambulance arrived shortly thereafter (Exhibit A, P.7, Ln. 4 through 5) and the EMT's took over the CPR from Broom. When asked Broom informed the law enforcement personnel that "he had no idea what

happened". These first law enforcement personnel prima facie surmised suicide. A fact, presumed to be true unless disproved by some evidence (Blacks Law Dictionary Sixth Edition at page 825). Broom was asked to wait outside, but Broom was so concerned about how his friend was doing that Broom kept going in and out of the room. So an officer escorted Broom to a patrol car and had Broom to have a seat in the back seat. After a few minutes Broom was informed that his friend did not make it.*

15. Well over a half hour after the tragedy had occurred and a considerable amount of time after the first law enforcement personnel had arrived, Det. Woodard arrived at the hotel (Exhibit A, p. 4, ln. 5 through 10). But, Det. Woodard went straight to the patrol car and stated: "Tony (Broom) what have you done now?" (Exhibit A, p. 5, ln. 1). Det. Woodard has a personal dislike for Tony Broom (Exhibit A, p. 7, ln. 19 through 22). Broom was too upset over his friend's death to respond to Det. Woodard's accusatory statement, so Det. Woodard went into hotel room.

* It is important to note that the Polk County Medical Examiner (ME) was never able to determine the manner of death (Exhibit B, Autopsy Report). The cause of death was a gunshot wound to the head and the ME was not called to the grand jury. It is also equally important to note that Broom was tested and found to have NO gunpowder residue/stippling on his hands. Also there is no evidence to indicate that Broom was in the hotel room a the time of the fatal gunshot injury.

16. The law enforcement personnel that arrived a substantial amount of time before Det. Woodard's late arrival, informed Det. Woodard: 1) "Patrolman Quinn said they had gotten a call of the shooting; when they got there that Tony Broom was supposedly attempting to give mouth-to-mouth resuscitation to the victim." (Exhibit A, p. 6, ln. 12 through 15); 2) "Patrolman Dennis --... And he told me (Det. Woodard) that the gun was laying on the floor and they wouldn't go in because of that... So he (Tony Broom) picked up the gun and threw the gun up on the sofa and said there's the gun". (Exhibit A, P.6, Ln. 15, 21 through 25 and P.7, Ln. 1); 3) The ambulance arrived that Broom had the hotel desk clerk to summon(Exhibit A, P.7 Ln. 4 through 7, 23 through 25 and P. 8 Ln. 1 through 3) 4) Broom was hysterical over his friend's untimely death (Exhibit A, P.10, Ln. 16 and 17); 5) Charlotte's car was in the parking lot (Exhibit A, P.34 Ln. 4 through 6); 6) It appeared that Charlotte drove to Broom's hotel room (Exhibit A, P.34, Ln. 9 and 10); 7) Broom did not flee but did every thing he could to try to save Charlotte's life; 8) The first law enforcement personal prima facie surmised suicide; 9) Nothing established that Broom was in that hotel room at the time of the tragedy. Despite all these facts that Det. Woodard had been advised of, Det Woodard still decided "Tony Broom needed to be talk to and I (Det. Woodard) had them take him (Broom) to the police department where I met him there" (Exhibit A, P.11, Ln. 9 through 11). Broom had been locked in the backseat of a patrol car

for an hour and a half and when Broom arrived at the Winter Haven Police Department (W.H.P.D.) Broom was placed in a holding cell for approximately another half hour. Broom, still continued to go in and out of hysterics at W.H.P.D. (Exhibit A, P. 12, Ln. 19 through 21). While in the holding cell Broom called Charlotte's family to let them know about the tragedy. Broom got Charlotte's sister Ora Lee on the phone and let her know that Charlotte had died. Ora Lee asked Broom what happened and Broom stated that he (Broom) did not know and Broom did not say that he (Broom) shot Charlotte.

17. Broom was moved from the holding cell and taken to a booth for questioning (Exhibit A, P.13, Ln. 25 and P.14, Ln. 1). "He (Broom) had already said he didn't want to talk to us and I (Det. Woodard) told him (Broom), you know, **if he didn't want to talk to us, we would have to charge him because there were no witnesses**" (Exhibit A, P. 13, Ln. 20 through 23). Broom had been illegally held for over two hours, so Broom told Det. Woodard that she could talk to his (Broom's) attorney. Det. Woodard then informed Broom being he (Broom) wouldn't talk to her (Det. Woodard) that he (Broom) was under arrest for first-degree murder. This illegal arrest violated Broom's right to remain silent. Det. Woodard had already stated that there were no witnesses and there was no evidence showing the criminal agency of another or Broom in the room at the time of the tragedy and no probable cause for a crime. In fact, the first law enforcement

personnel on the scene established just the opposite by a prima facie surmised suicide. Because Broom refused to talk to Det. Woodard, Det. Woodard charged Broom with first-degree murder, just as Det. Woodard had threatened to do.

18. Det. Woodard then had Broom transferred from the W.H.P.D. to the Polk County Sheriff's Department where Broom was booked for the Capitol offense of first-degree murder of his friend Charlotte Martz at approximately 10:00 am, June 24, 1981, without any valid evidence of a crime being committed.

19. On this same day June 24, 1981 at 10:00 am, Det. Woodard had a conversation with Dr. Youngs, the State's pathologist, who was qualified as the State's expert. Dr. Youngs unequivocally stated that there was stippling on Charlotte's left hand (Exhibit B, supra).

20. Dr. Youngs, as the State's expert, put forth two theories as to how Charlotte Martz may have come to have stippling on the fingers of her left hand. 1) Stippling on Charlotte's fingers could have been by Charlotte interposing her left hand between the end of the barrel of the gun and her head as the gun fired; or 2) The stippling could have come from Charlotte holding the gun discharging it with stippling coming out from around the cylinder of the revolver and into Charlotte's fingers.

21. This expert further stated that there were more stippling around the entrance wound in an uninterrupted pattern with less stippling on the fingers. With

these facts, Dr. Youngs negated his first theory "of the victim's hand being interposed between the end of the barrel of the gun and the head". If the hand had been between the end of the barrel of the gun and her head, Charlotte's fingers would have had more stippling on them and less around the entrance wound and there would not have been an uninterrupted pattern around the entrance wound. But there was less stippling on Charlotte's fingers and more on her head, this evidence proves that Charlotte's hand could not possibly have been between the end of the barrel of the gun and her head. This leaves only the State's expert theory that Charlotte was holding the gun as it discharged. Clearly establishing some type of self inflicted accident/suicide, and not a murder. Dr. Youngs conversation with Det. Woodard clearly stated that it was stippling on Charlotte's left hand and death was as consistent with suicide as it was with homicide (Exhibit A, p. 22, ln. 11 through 24). However, the fact of less stippling on the hand and more on the head unequivocally established that Charlotte was holding the gun when it discharged negating homicide. There were no other theories and there was no evidence of the criminal agency of another or probable cause of a perpetrator. Charlotte removing a cocked, loaded gun from under the pillow and it accidentally discharging has never been disproved.

22. The cause of death was a gunshot would to Charlotte's head. However, the State's expert was not able to determine the manner of death, i.e., how the

gunshot wound had occurred. But as Broom has shown in the above, the only valid theory left, as clearly established by the facts from the State's expert -- is that the victim was holding the gun as it discharged and that is how stippling was on the victim's fingers. However, the State never had Dr. Youngs to testify before the grand jury (Exhibit A, p. 22, ln. 11 through 25; and p. 23, ln. 1 and 2). Broom was tested and found to have no gunpowder residue/stippling on his (Broom's) hands and the State's own expert stated that it was stippling on Charlotte's left hand. In fact, one of the law enforcement personnel while in the hotel room saw stippling on Charlotte's left hand and this officer did some test on Charlotte's hands. However, because of this officer's incompetence and/or his shoddy procedure this police officer by doing the test in reverse order destroyed the stippling that was on Charlotte's left hand. The officer did a neutron test first -- the chemicals use to swab Charlotte's hand washed away the stippling, leaving nothing to be picked up with the paraffin or scotch tape so that it could have been tested.

23. After Det. Woodard had her conversation with the State's expert Dr. Youngs, Det. Woodard returned to the hotel room at 10:05 a.m., June 24, 1981 and took the Singh's statements (Exhibit C) who was in the adjacent hotel room #537. These were the only material witnesses at or near Broom's hotel room #539. Barbara Singh stated in pertinent part: "We was sleeping in bed, I must have been in a deep sleep or something because I never heard no voices or nothing and all at

once I heard this loud noise. To me, it sounded like a commode lid just slam done real hard." Then Kumar Singh stated in pertinent part: "Nope. Nope. We was sleeping. We heard nothing until the loud noise that wake us up, nothing at all. We don't know what the loud noise was... we never suspected it to be a gunshot...". Here again these witness statements to Det. Woodard unequivocally and clearly establish that there is NO evidence showing the criminal agency of another and no probable cause that a crime was committed and there is NOTHING that puts Broom in that hotel room at the time of the fatal gunshot.

24. Nevertheless, after Det. Woodard had her conversation with the State's expert Dr. Youngs, and after Det. Woodard had finished taking the Singh's statements, Det. Woodard swore to by signing the following fabricated Probable Cause Affidavit/Arrest Report that states in pertinent part (Exhibit D):

> ...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 ....

This is a deliberate fabrication and a reckless disregard for the truth. The Singh's statements clearly do not establish what the material statements in this fabricated charging affidavit alleged as sworn to by Det. Woodard. With the fabricated statements removed from the charging affidavit the remaining portion does not

establish probable cause as a matter of law. Frank v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

25. Det. Woodard's actions went beyond the bounds of her authority and she committed perjury. Det. Woodard swore to the falsified/fabricated material statement used to establish the criminal agency of another and probable cause that a crime had been committed. This is contrary to the witness statements (Compare Exhibit D, supra to Exhibit C, supra). Det. Woodard had her mind made up that it was a homicide (Exhibit A, p. 30, ln. 14 through 16), even though there is NO witnesses and NO evidence that a crime was committed, because Broom exercised his constitutional right to remain silent Det. Woodard arrested and charged Broom with first-degree murder because Broom refused to talk to her (Det. Woodard).

26. Det. Woodard had no specific, direct evidence or physical evidence that Broom was in the room at the time of the fatal injury. However, Det. Woodard did admit that a physician called her (Exhibit F, infra) and stated "that he received a call from a woman saying that she shot Charlotte Martz," but he could not recall her name. Det. Woodard never pursued this (Exhibit A, p. 22, ln. 8 through 25; and p. 23, ln. 1 through 17). To couch the Probable Cause Affidavit/Arrest Report in the language used in clearly to manipulate the facts in order to establish probable cause for a charge of first-degree murder. Det. Woodard had already arrested Broom for first-degree murder and Broom had been booked in the Polk

County Jail for first-degree murder, without any evidence. Det. Woodard's tainted sworn affidavit was without a valid witness statement and Det. Woodard was not in the hotel room at the time of the tragedy so Det. Woodard could not of been a material witness. Det. Woodard did not know what happened in that hotel room (Exhibit A, p. 22, ln. 8 through 10; and p. 30, ln. 1 - 16). A review of the Singh's statements (Exhibit C, supra) was taken by Det. Woodard just prior to Det. Woodard swearing to the fabricated affidavit (Exhibit D, supra) clearly establishing Det. Woodard's perjury. Affidavits are invalid if the error; 1) was committed with intent to deceive the magistrate whether or not the error was material to the showing of probable cause; or 2) made not intentional, but the erroneous statement is material to the establishment of probable cause. This makes Det. Woodard's affidavit invalid. The fabricated statements contained in said affidavit states the probable cause and is not just used to show probable cause. said affidavit is void. Franks v. Delaware, 436 U.S. at 156.

27. On June 25, 1981 at 1:15 p.m., a First Appearance Hearing was held as seen by the ORDER FOLLOWING (*****) FIRST APPEARANCE HEARING (Exhibit E) which states:

> 1. X Probable cause to detain the defendant is found based upon _____ sworn complaint _____ affidavit X deposition or testimony under oath a copy of which is filed with the Clerk of the Court.

Rule 3.180(a)(1), Fla.R.Crim.P. mandate that Broom be present at the First Appearance Hearing. However, Broom was locked in a holding cell outside the courtroom and never allowed to participate in said hearing. Even though Broom was the only person for the defense that knew Det. Woodard's affidavit was a lie.

28. ASA Hardy Pickard knew that Det. Woodard's affidavit was falsified/fabricated. Because the State had Det. Woodard's affidavit and the Singh's statement clearly establishing the falsified/fabrication. But, the State never filed these documents with the Clerk of the Court until after the First Appearance Hearing had been completed. The time/date stamp on the Probable Cause Affidavit/Arrest Report (Exhibit D, supra) clearly shows that it was not filed until June 25, 1981 at 2:20 p.m., which was one hour and five minutes after the First Appearance Hearing was completed at 1:15 p.m., June 25, 1981. This not only establishes FRAUD by State action for using evidence that the State knew to be falsified/fabricated. The State also violated Brady and/or Giglio, by keeping material evidence from the defense and by not informing the Court, and the defense.

29. This same day June 25, 1981 at 3:35 p.m., a Motion to Reduce Bond (Exhibit F) was held with Broom present. As soon as Broom was informed by his counsel, which was the first and only time Broom and his counsel had been able to talk, counsel informed Broom how and why he (Broom) was being held. Broom

instantly told his attorney that Det. Woodard was a liar and that her sworn affidavit was a lie. Broom told his attorney that there couldn't have been an argument as alleged in that affidavit for he (Broom) was not in the room at the time the gun discharged. Defense counsel then questioned Det. Woodard as he would have at the First Appearance if Broom had been allowed to be present there. Det. Woodard then admitted that the Singh's did not State what Det. Woodard had swore to as material statements in the affidavit (Exhibit F, supra).

30. This material fabricated affidavit as tainted as it has been establish to be, has never been corrected, removed and/or suppressed. But has been allowed by State action to continue as a valid and truthful probable cause to establish the criminal agency of another as the cause and/or manner of death. However, it is well established law that 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). The prosecutor has an obligation and a duty to correct what has become known to him to be false. By ASA Hardy Pickard not correcting what he knew to be false, ASA Hardy Pickard committed FRAUD on the court using tainted evidence he knew to be such to persecuted an innocent man for first-degree murder without a valid probable cause.

31. ASA Hardy Pickard started his fraudulent and nefarious acts of fraud on the court when ASA Hardy Pickard presented Det. Woodard's perjured affidavit to the court at the First Appearance Hearing as probable cause. Knowing full well that the affidavit was fraudulent, because ASA Hardy Pickard had Det. Woodard's affidavit and the Singh's statements, which established fraud on the court.

32. As seen in Exhibit F, supra, Det. Woodard candidly admitted that the Singh's did not make the statements that she swore to in the affidavit. This admission by Det. Woodard was made in the Honorable Clinton A. Curtis' courtroom at the Bond Reduction Hearing. However, Judge Curtis intervened and stopped the defense counsel's questioning. This act by Judge Curtis removed his neutrality and kept defense counsel from being able to impeach Det. Woodard for perjury and more important Judge Curtis' action kept defense counsel from moving to suppress the then admitted falsified/fraudulent affidavit. Because of Judge Curtis' action and his lack of actions the admitted tainted affidavit was never corrected and/or suppressed as mandated by law. Through State action the tainted affidavit was allowed to continue as a valid and truthful affidavit. This clearly shows a conspiracy with Det. Woodard and ASA Hardy Pickard and possibly also Judge Curtis. At the very least FRAUD on the Court had been committed by Det. Woodard and/or ASA Hardy Pickard. Which ASA Hardy Pickard is noted for doing as seen in Kelly v. Singletary, 222 F.Supp.2d 1357 (S.D. Fla. 2002); State of

Florida v. Melendez, No. CF-84-1016AZ-XX (Tenth Judicial Circuit of Florida) Slip op. Filed December 5, 2001 and Johnson v. State, 2010 WL 121248, 35 Fla.L.Weekly (S)43 (Fla. 2010). For more information on this go to www.freeanthonynow.org to see more of ASA Hardy Pickard FRAUD.

33. ASA Hardy Pickard was present at all hearing including the Bond Reduction Hearing. ASA Hardy Pickard knew that Det. Woodard admitted that the affidavit was tainted. In fact, the affidavit contained material statements from the Singhs that established the criminal agency of another and probable cause that the Singhs did not make. Nevertheless, the state attorney's office drafted an indictment using the basis of Det. Woodard's admitted fraudulent affidavit. The state attorney's office had the Singh's statement and knew that any indictment drafted using said tainted affidavit or evidence taken therefrom would be just as tainted and is void ab initio. Because the State failed to inform the court, the defense and the grand jury of said use. The indictment (Exhibit G) reads 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 ...

The basis for the wording in the indictment came from the admitted tainted affidavit (Exhibit D, supra) this caused the indictment to be just as tainted as the

fraudulent affidavit. Furthermore, State action by ASA Hardy Pickard admits that he utilized Det. Woodard's sworn fraudulent affidavit to influence the grand jury into returning said indictment with their true bill (Exhibit H, Motion to Dismiss Defendant's Motion for Post-Conviction Relief filed February 7, 1986 as ASA Hardy Pickard's Response). This was over four years after Broom could not have found this out through due diligence because of the grand jury secrecy. ASA Hardy Pickard's response states in pertinent part:

> ...Once that indictment was returned, Det. Woodard's probable cause affidavit ceased to play any part in this case. The return of the indictment conclusively established probable cause to try the defendant regardless of the truth or falsity of the allegations in Det. Woodard's affidavit...

However, ASA Hardy Pickard never informed the court, the defense and the grand jury as required by law. As such, the indictment is void ab initio. The State's use of the tainted affidavit which cannot be said that it did not influenced the decision making - process of the grand jury. As such, the State violated due process by knowingly use of perjured evidence i.e., Det. Woodard's tainted affidavit that the State knew to be fraudulent in order to obtain the grand juror's true bill. This was undue prosecutorial influence. Rudd v. ex rel. Christian, 310 So.2d 295 (Fla. 1975).

34. A hearing was held November 4, 1981 (Exhibit I) before Honorable Clinton A. Curtis, where ASA Hardy Pickard testified in pertinent part:

> The grand jury, each member is handed out tablets to make notes in during the course of their discussion. At the conclusion of the day, all of these are taken up and taken down to the State Attorney's Office and put through a shredder.

35. There is no Florida Statute for the grand jury to be recorded. There is however, a statute (905.13, F.S.) which states in part: "Appointment of clerk -- the foreman shall appoint one of the grand jurors as clerk to keep minute of the proceedings." But as ASA Hardy Pickard stated (Exhibit I, supra). "There is no notes, writings, there is nothing about what went on in there..." ASA Hardy Pickard admits that all the grand jurors notes were shredded as were the minutes i.e., "there is no notes, writings there is nothing...".

36. The question here involved more than a mere technicality. It struck at the very heart of the system of jurisprudence and preserves to Broom the right to have the issue of this case determined on their merits in a proper court as contemplated by the fundamental law of this State.

37. The quantum of evidence in this case is insufficient for a valid indictment as a matter of a law. Here, this Court is confronted with a case of perjury, fraud, and/or conspiracy to indict where there is no valid evidence of the criminal agency of another and on probable cause. The end-all, cure-all jury trial does not work when the prosecutor obtained the true bill indictment with tainted evidence known

to be such by him and he never informed the court, the defense and the grand jury of such.

38. It is Broom's contention that, when taken as a whole, the procedures utilized by the investigating agency and the office of the state attorney pre-indictment, during the grand jury presentation and pretrial, together with the evidence or lack of evidence have resulted in a fundamental deprivation of due process rights. Hence this extraordinary writ should be granted.

39. The Florida Constitution, like the United States Constitution provides that no person may be tried for a capital crime without presentment or indictment by a grand jury. See, Florida Constitution Article I, Section 15(a); United States Constitution Amendment V.

40. In Murray v. State, So.3d 1108, 1118 (Fla. 2009), the Florida Supreme Court held: "[A]n indictment results from a hearing only to determine probable cause. It is no more than an accusation, the merits of which will be determined at trial. See Fratello v. State, 496 So.2d 903, 911 (Fla. 4th DCA 1986). Therefore, a court should not for the purpose of deciding whether to dismiss an indictment, "consider the... sufficiency of the evidence upon which an indictment or information is based." *Id.* (quoting State v. Schoeder, 112 So.2d 356, 261 (Fla. 1959)). ... this 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)).

41. In the present case, it is Broom's unwavering contention that the State of Florida engaged in willful misconduct when it obtained an indictment charging him with a capital crime using fabricated and improper evidence during its presentment. Specifically the use of an official fabricated Probable Cause Affidavit/Arrest Report. As has been shown, the falsified/fabricated affidavit in question was, as far as Broom can ascertain, the only evidence presented to the grand jury that could have supported determination of probable cause. Thus, the indictment, regardless of the length of time which has passed, must be dismissed. Because the State never informed the court, the defense and the grand jury of its use of fabricated evidence known to by such by the State.

42. Broom's defense counsel filed numerous motions to glean some understanding of what took place during the grand jury proceeding. Specifically, the defense requested a copy of the list of witnesses that testified before the grand jury and for a transcript of the proceedings or the notes of the grand jury. (Exhibit I, supra). The trial court granted defendant's request for a witness list, however, the State failed or refused to even produce the list of its witnesses. As to the transcript or notes of the grand jury proceedings; the State conveniently failed to have the proceedings transcribed and, most disturbing, destroyed the grand jury

notes and minutes by daily shredding. However, through the deposition of Detective Woodard, Broom was able to ascertain the witnesses who personally testified before the grand jury. None of the identified witnesses were law enforcement or rescue personnel, but instead were character witnesses who had no knowledge of the events in question, who only testified to the parties tumultuous relationship and Broom's character.

43. One of this country's proudest boasts it is observance that the untainted administration of justice is one of the most cherished aspects of our institution of government. See, United States v. DiBernardo, 522 F.Supp. 1315, 1324 (S.D. Fla. 1982). In order to adequately protected this cherished institution several safeguards have been designed into our system of government; two of the most important being an independent grand jury process and the ethical and legal obligations of all attorneys, but especially prosecuting attorneys.

44. The grand jury's historic role "has been to serve as a protective bulwark standing solidly between the ordinary citizen and the overzealous prosecutor" United States v. Pabian, 704 F.2d 1533, 1535 (11th Cir. 1983)(quoting, United States v. Dionisio, 410 U.S. 1, 17, 93 S.Ct. 764, 773, 35 L.Ed.2d 67 (1973), as such under our constitutional scheme, the grand jury serves a "dual function of determining if there is probable cause to believe a crime has been committed and of protecting citizens against unfounded criminal prosecution." United States v.

Hader, 732 F.2d 841, 843 (11th Cir. 1984)(quoting, United States v. Sells Eng'g, Inc., 463 U.S. 418, 423, 103 S.Ct. 3133, 3134, 77 L.Ed.2d 743 (1983).

45. Hand-in-hand with the function of the grand jury is the prosecuting attorney's duties and obligations. The tenor of the case law decisions discussing the role of prosecutors make clear that prosecutors are held to the highest standard because of their unique power and responsibilities. The Florida Bar v. Cox, 794 So.2d 1278, 1285 (Fla. 2001). Attorneys representing the government are burdened with an obligation to zealously represent the government and as a "representative of a government dedicated to fairness and equal justice for all," and "overriding obligation to fairness" to defendant. See, United States v. Campa, 419 F.3d 1219, 1262 (11th Cir. 2005)(quoting United States v. Wilson, 149 F.3d 1298, 1303 (11th Cir. 1998). As part of the prosecuting attorney's obligations, they have a good faith duty to the court, the grand jury and the defendant. United States v. DiBernardo, 552 F.Supp. at 1328. Such an obligation includes a "duty to refrain from improper methods calculate to produce a wrongful conviction." United States v. Crutchfield, 26 F.3d 1098 (11th Cir. 1994)(internal citation omitted). As the United States Supreme Court so eloquently stated more than seventy years ago, the duties of the prosecutor, as representative:

> ...of a sovereignty whose obligation is to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore in a criminal prosecution is not that it shall win a case, but that justice

> shall be done... He may prosecute with earnestness and vigor – indeed, he should do so. But while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use legitimate means to bring about a just one.

Accordingly, based on the facts presented above, the ONLY evidence that could have come close to providing the grand jury with probable cause to indict, was Det. Woodard's admittedly official fabricated Probable Cause Affidavit/Arrest Report requiring the dismissal of the indictment, for ASA Hardy Pickard never informed the grand jury, the court and the defense.

46. Due process is violated if 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. This policy is predicated on the belief that deliberate deception of the court and the jury by the presentation of evidence known by the prosecutor to be false "involves[s] a corruption of the truth-seeking function of the trial process." United States v. Agurs, 427 U.S. 97, 104, 96 S.Ct. 2392, 2398, 49 L.Ed.2d 342 (1976), and is "incompatible with 'rudimentary demands of justice.'" Giglio v. United States, 405 U.S. 150, 153, 92 S.Ct. 763, 765, 31 L.Ed.2d 104 (1972) (citation omitted). Moreover, deliberate deception is inconsistent with any principle implicit in "any concept of ordered liberty." Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959), and with the ethical obligation of the prosecutor to

respect the independent status of the grand jury. Standards For Criminal Justice § 3-3.5, 3-48-4-49 (2d ed. 1980); United States v. Hogan, 712 F.2d 757, 759-60 (2d Cir. 1983); [People v. Pelchat, 62 N.Y.2d 97, 476 N.Y.S.2d 79, 464 N.E.2d 447, 453 (1984)](the "cardinal purpose" of the grand jury is to shield the defendant against prosecutorial excesses and the protection is destroyed if the prosecution may proceed upon an empty indictment).

47. The Florida Constitution and the United States Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Art. I, § 9, Fla. Const. The State violates that section when it requires a person to stand trial and defend himself or herself against charges that it knows are based upon perjured, material evidence. Governmental misconduct that violates a defendant's due process rights under the Florida Constitution requires dismissal of criminal charges. State v. Glosson, 462 So.2d 1082, 1085 (Fla. 1985), cited in Anderson v. State, 574 So.2d 87, 91-92 (Fla. 1991).

48. Also, the Florida Supreme Court (arguing that due process is violated and an indictment should be set aside when a prosecutor permits a Defendant to be tried upon an indictment which he knows is based on perjured, material testimony without informing the court, opposing counsel, and the grand jury). Again upheld in Hurst v. State, 18 So.3d 975, 1003 (Fla. 2009)(citing Anderson v. State, 574 So.2d at 91). In United States v. Basutro, 497 F.2d 781, 784 (9th Cir.

1974)(conviction reversed because prosecutor informed defense attorney of perjured grand jury testimony but did not notify the court or the grand jury); Zeigler v. Crosby, 345 F.3 1300, 1309 (11th Cir. 2003)(acknowledging that Florida law requires the setting aside of the indictment if the perjured testimony was "false in any material respect that would have affected the indictment").

49. Therefore, even though Broom had the protection of a grand jury to determine probable cause to indict, that protection was circumvented. When ASA Hardy Pickard knowingly and willfully committed fraud by presenting falsified/perjured material evidence he knew to be such to the grand jury. Prejudice is presumed in this case, since there can be no doubt that "the structural protection of the grand jury have been so compromised as to render the proceedings fundamentally unfair." Bank of Nova Scotia, 487 U.S. 456-57, 108 S.Ct. 2369, 2374, 101 L.Ed.2d 228, 250 (1988). Accordingly, the indictment must be dismissed and Broom discharged since ASA Hardy Pickard knew the affidavit that he utilized was tainted and he did not inform the Court, the defense and the grand jury. This is the only remedy that will preserve the untainted administration of justice. Because the indictment ASA Hardy Pickard knew was based on fabricated material evidence and he did not inform the Court, the Grand Jury and the Defense.

50. **WHEREFORE**, based upon the aforementioned facts, argument and authorities, Petitioner Anthony W. Broom requests that the Court GRANT this extraordinary writ of habeas corpus; ORDER his immediate release from illegal confinement. Or in the alternative GRANT a show cause ORDER as required in Santana v. Henry, 12 So.3d 843, 844-45 (Fla. 1st DCA 2009), and any other relief that this Court deems just and proper.

For more information on this case go to www.freeanthonynow.org.

Respectfully Submitted,

_____
Anthony Broom, *pro se*

OATH

UNDER PENALTIES OF PERJURY, I declare that I have read the foregoing Petition for Writ of Habeas Corpus and that the facts stated herein are true and correct.

Accord: Florida Statute §92.525 (1996) and
State v. Shever, 628 So.2d 1102 (Fla. 1994)

Executed on this _____ day of _____ 2011, by the undersigned.

_____
Anthony Broom, *pro se*
Mayo Correctional Institution
8784 W. US 27
Mayo, FL 32066

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true copy of this Petition for Writ of Habeas Corpus was placed in the hands of Mayo Correctional Institution officials to forward by U.S. Mail to:

Office of the Attorney General
The Capitol, PL01
Tallahassee, FL 32399

on this _____ day of _____, 2011.

Anthony Broom, *pro se*
DC# 081443
Mayo Correctional Institution
8784 W. U.S. 27
Mayo, FL 32066