

**IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR LAFAYETTE COUNTY, FLORIDA**

ANTHONY W. BROOM,)	
)	
Petitioner,)	
)	Habeas Corpus Case No.: _____
vs.)	L.T. CASE NO.: CF81-1860A1-XX
)	
SCOTT CREWS, Warden)	
Mayo Correctional Institution Annex)	
and State of Florida,)	
)	
Respondent.)	
_____)	

COMPLAINT FOR WRIT OF HABEAS CORPUS

COMES NOW, Anthony W. Broom, in *propria persona*, hereinafter referred to as Broom or Petitioner moving this Honorable Court for its inherent power to grant the Complaint for Writ of Habeas Corpus, pursuant to Article I section 13, Florida Constitution and Article I section 9, United States Constitution.

1. Petitioner shows and establishes by the following that the trial court's order is void and/or illegal.

2. Petitioner alleges that the material facts are undisputed, and, herein demonstrates that the undisputed facts do not establish probable cause of guilt against the accused, where such facts do not establish the criminal agency of another, violating Petitioner's right to due process.

I. JURISDICTION

1. This court has jurisdiction to issue a Writ of Habeas Corpus under Article V section 5(b) of the Florida Constitution.

2. This Court's jurisdiction to consider Petitioner's habeas corpus complaint is very limited. Petitioner was convicted and sentenced in the Tenth Judicial Circuit in and for Polk County, a court not within the territorial jurisdiction of this Court. Nevertheless, this Court has the jurisdiction to review a conviction order that is void and/or illegal. *See State v. ex.rel Perky v. Brown*, 105 Fla. 631, 142 So. 247 (1932). In such a case, "the scope of the reviewing court's inquiry is limited to whether the court that entered the conviction order is void and/or illegal.") Alachua Regional Juvenile Detention Ctr. V. T.O., 684 So.2d 814, 816 (Fla. 1996)

3. A habeas reviewing court cannot "pass on the sufficiency of the form or substance of the order or any other matter going to the propriety of the order. Alachua, 684 So.2d at 816-17. Even under the limited inquiry of Alachua, the reviewing court is permitted to view the detention order in light of the relevant facts and law, *Id.* at 817, if the challenged detention order [is] determined to be in violation of the petitioner's constitutional guarantee of due process. The detention would then clearly be "illegal" and not merely defected, irregular of sufficient in form of substance. *As cited in Murray v. Regier*, 872 So.2d 217, 222 (Fla. 2002).

4. Both Rule 3.800 and Rule 3.850, Fla.R.Crim.P., assume that the conviction

was legal or at least would have been had some error not occurred. Neither rule was designed to address pre-trial fundamental due process violations - a miscarriage of justice - or the trial court's void and/or illegal order.

5. Petitioner is involuntarily imprisoned and held against his will by Scott Crews, Warden at Mayo Correctional Institution Annex (located at 8784 West U.S. Highway 27, Mayo, Florida 32066-3458) in Lafayette County, which is under this Third Judicial Circuit Court's jurisdiction. A Writ of Habeas Corpus is the proper remedy for Petitioner's immediate release. No other remedy is available in this cause.

6. Petitioner is not arguing his innocence or guilt, for the Writ of Habeas Corpus does not act upon the person seeking relief but upon the person who holds him in unlawful custody. Wales v. Whitney, 114 U.S. 564, 574, 5 S.Ct. 1050, 29 L.Ed 277 (1885); Brauden v. 30th Judicial Circuit Court (Ky), 410 U.S. 483, 494-95, 93 S.Ct. 1123, 35 L.Ed. 2d 443 (1973).

7. A complaint for writ of habeas corpus alleging an entitlement to immediate release must be filed in the court where the person is housed. Bush v. State, 945 So.2d 1207, 1216, n.11 (Fla. 2006).

II. CAUSE OF ACTION

1. The writ of habeas corpus is an ancient writ with its origin dating as early as the Magna Carta in A.D. 1215. See William Blackstone 3 Commentaries of the Law of England 133. The modern writ dates to the British Habeas Corpus Act of 1679 and has been

consistently used as a method to obtain jurisdiction over a jailor or other person who is illegally detaining a person so that a court may order the release of the person. *See* 28 Fla.Jur. Habeas Corpus and Postconviction Remedies §1 (2007); Allison v. Baker, 152 Fla. 274, 11 So.2d 578, 579 (1943). Cited in Valdez-Garcia v. State, 965 So.2d 318 (2nd DCA 2007).

2. 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, 22 L.Ed. 2d 281 (1969), as cited in Santana v. Henry, 12 So.3d 843, 844-45 (Fla. 1st DCA 2009) (emphasis added). “The very nature of the writ demands it to be administered with the initiative and flexibility established to insure the miscarriage of justice within its reach are surfaced and corrected. Harris v. Nelson, id at 291. (emphasis added).

3. Because the writ is designed to obtain power over the jailer to order the release of the prisoner, it does not function well as a method to review the legal correctness of a criminal judgment. The court or judge that issued the judgment is not a necessary party to the proceeding and is usually uninvolved in the case.

III. RELIEF SOUGHT

As the writ demands, this Court, based upon the foregoing facts, arguments and authorities, must grant the Complaint for Writ of Habeas Corpus; dismiss the void and/or illegal indictment; and immediately release the Petitioner from the illegal confinement - or, in the alternative, grant any other relief this Court deems just and proper.

IV. FACTS, ARGUMENTS AND AUTHORITIES

Facts From the Scene:

On June 24, 1981, at approximately 3:30 a.m. to 4:00 a.m., Petitioner Broom returned to his motel room from using the coke machine and found his friend, Ms. Charlotte Swenson Martz, with a gunshot wound to the left side of her head (Exhibit C- Sworn Affidavit of Actual Innocence). He had an ambulance and police immediately summoned (Exhibit D - Detective Woodard's Deposition, p.7, L23-24 and p.8, L1-3). The police arrived first but would not enter the room until the gun was secured, so Broom picked the gun up from the floor beside the bed and tossed it onto the couch (Exhibit A - Trial Transcript (TR), p. 32 L1-4 and p.81, L15-25)¹. The police entered and picked up the gun (Exhibit A - 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 A - TR, p.64, L7-9 and p.125, L 19-21) repositioning Ms. Martz's body further down on the bed in order to administer first aid.

The police asked Broom what happened, and he stated: "I have no idea what happened" (Exhibit A- TR, p. 42 L4-9) The first law enforcement personnel that had arrived on the scene were investigating and found only that Ms. Martz was in the room at the time of the tragedy (Exhibit A - TR, p. 32, L 20-21).

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).

There was no criminal agency of another where Officer Quinn surmised suicide (Exhibit A, TR, p. 60, L.23-25 and p. 61, L1). Broom'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 simply to preserve the scene (Exhibit A, TR, p43, L16-25).

Facts When the Lead Detective Arrived on the Scene

No rational trier of facts could have found probable cause for the criminal agency of another beyond a reasonable doubt. In fact, Dr. Youngs' (State's expert pathologist) two theories clearly show that the deceased fired the fatal gunshot (due to 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 (Exhibit A, TR, p.111, L12-25).

Dr. Youngs' other theory was that "the hand had been interposed between the barrel of the gun and the skin" (Exhibit A, TR, p. 112 L21-25 and p.113 L1-6). However, this is not a viable theory (her hand between the barrel of the gun and her head) as her fingers would have blocked the stippling.

Evidence clearly established there was a round, uninterrupted tattooing/stippling around the head wound (Exhibit A. 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 A, TR, p. 113 L. 6 - 13).

If the individual holding the revolver discharged it, they would get residue of this

type on the back of the hand (Exhibit A, TR, p. 113 L6-13). This clearly shows that Dr. Youngs' theory of the deceased holding the gun as it discharged is the only actual theory, the fatal injury the result of a self-inflicted gunshot.

Prior to being briefed by the officers already on the scene, Detective Woodard arrived on the scene and observed Broom sitting in the rear of a squad car. She accusingly stated: "Tony, what have you done now?" (Exhibit D, p.4 L.25 and p. 5, L1-2) This detective, however, never made a case against Broom and never had any part in the misdemeanor charges against him (Exhibit D, p. 5, L. 6-9). The simple fact is that Detective Woodard has a personal dislike for Tony Broom. (Exhibit D, p. 7, L19-22).

Due to her late arrival, Det. Woodard only observed the scene and the body subsequent to the material, 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 before Det. Woodard arrived and took over as lead detective. (Exhibit D, p. 4 L. 8-19). She was later briefed by those officers as to their findings and the evidence (Exhibit A, p. 44 L. 10-11). Those 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 D, p. 30 L. 10-16).

Detective Woodard's shoddy 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 (Exhibit A, 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 A, TR, p. 111 L 12-25), and is just as important as fingerprint evidence, was wiped away, however, by the officer on the scene when conducting the requisite tests but in the wrong order (Exhibit A, TR, p. 155 L. 12-25), leaving only the tattooing after he wiped away the stippling from the fingers/hand.

Because of the inferior police procedures, no fingerprints were recovered from the gun. (Exhibit A, TR, p. 252, L. 7-10). Detective Woodard prepared and packaged the gun herself for the lab (Exhibit A, TR. p.251, L14-16). Detective Woodard had "no specific evidence, direct evidence or physical that Tony Broom was in the room at the time Charlotte was shot other than what [she felt]" (Exhibit A, 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 but, instead, presented testimonial evidence of the body, going as far 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.

Facts of the Death Investigation Report

Detective Woodard fabricated the Death Investigation Report (Exhibit F) and had it

sent with the body. It stated in part:

“According to investigator, the victim and suspect were in Room #539 just prior to the shooting. . . .”

Date/time viewed by investigator was 6-24-81 / 4:34 am report submitted by: Detective Henry and Wooded dated 6-24-81 / 5:45 am.

Detective Henry did not arrive until 45 to 50 minutes after the first law enforcement personnel, or about 4:58 am, which was after the time stated in the above-noted report. Therefore, Det. Henry was not the “investigator” in the report. Detective Henry also stated there were four (4) officers on the scene (Exhibit A, TR, p. 66 L6-9). These other officers were Dennis, Thomas and Quinn who had begun to arrive on the scene by 4:11 am and had surmised suicide based on the scene as they observed it upon their arrival. (Exhibit A, TR p. 28 L 10-12, p. 29 L. 2-15, p.60 L20-25 and p. 61, L1) The fourth officer would have been Detective Woodard who arrived 20 minutes after the first officers (approximately 4:30-4:35 am) (Exhibit D, p.4 L 5-7), this shows that Det. Woodard’s Death Investigation Report timed or 4:34 am was fabricated.

The bullet wound to the head is the undisputed cause of death (Exhibit B – Photo of Entrance Wound). However, the fraud perpetrated in the Death Investigation Report (“that the victim and suspect were in Rm #539 just prior to the shooting”) deprived the medical examiner of an independent analysis and misled him in determining the true and actual manner of death. Without the fraudulent statement in the Death Report, there is no evidence to substantiate that the manner of death was a homicide. In fact, without such

fraudulent statement, there would be no probable cause for the criminal agency of another. With the fraudulent statement removed, only the valid evidence of the victim in the room at the time of the tragedy remaining, the evidence clearly shows some type of a self-inflicted, bizarre accident or suicide.

The first responding officers on the scene surmised suicide, which must be believed unless overcome by some evidence to the contrary. Based on a surmised suicide (Exhibit A, TR, p. 60 L. 23-25 and p. 61 L1), a lot of material exculpatory evidence was compromised and/or destroyed by everyone, including the police first to arrive on the scene, the paramedics, and Broom – all of whom were desperately attempting to save the young woman's life.

Death Investigation Report as Newly Discovered Evidence

The Death Investigation Report is newly discovered evidence which could not have been discovered with due diligence. Even though the Death Investigation Report was prepared in 1981, it is newly discovered evidence because the defense was never provided this document – even after requesting full discovery of the State. In fact, it was only by happenstance that Ms. Diane Heisler (Advocate for Wrongly Convicted) obtained the one page Death Investigation Report with her request to LaTonya Harris while at the Winter Haven Police Department (WHPD) on April 5, 2012 (Exhibit F – Affidavit of Diane Heisler).

The WHPD investigated this present case; however, Petitioner was transferred from

the city of Winter Haven to the Polk County Jail and, with no valid probable cause evidence showing the criminal agency of another, was booked on the charge of first-degree murder of his friend. Apparently, this Death Investigation Report was not sent to the Polk County Prosecutor's office by the WHPD or the State's pathologist, as it was never produced in discovery by the State for the defense.

In fact, to Petitioner's knowledge, no one other than Detective Woodard and the State's pathologist had any idea that a "Death Investigation Report" even existed; that is, until Ms. Heisler mailed Petitioner a copy. Therefore, there can be no lack of due diligence on Petitioner's behalf to discover something he had no reason to know existed.

As will be established, Detective Woodard's personal dislike for petitioner makes this a clear-cut case of malicious prosecution by creating, utilizing, and front-loading fraudulent evidence to establish probable cause for 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 Petitioner due process of law and created a manifest injustice against Petitioner where NO safeguards existed in this case – further denying due process. Justice has not been served where there is no valid probable cause.

No Rational Trier of Facts Could Have Found Essential Elements of a Crime Beyond a Reasonable Doubt

No rational trier of facts could have found probable cause for the criminal agency of

another beyond a reasonable doubt. In fact, the evidence clearly indicates that the deceased fired the fatal gunshot. Moreover, as previously stated and testified to such, Detective Woodard already had a personal dislike for this Petitioner (Exhibit D – Detective Woodard’s Deposition, p. 7 L 19-22) which inhibited her ability to conduct her investigation in any rational 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 A, TR, p. 121 L 14-17).

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. Broom had been forced by the officers to pick it up from the floor and toss it to the sofa in order to get those 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 down on the bed so that 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 A, TR p. 31, L16-21, p. 32, L5-13).

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 states that a round zone of stippling was around the entrance wound (Exhibit A, 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 A, 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. 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 on to her fingers. (Exhibit A, TR, p.113 L 6-10)

Comparing Exhibit A, TR, p. 97 L 14-17 to that of Exhibit A, TR p. 113 L 1-13 clearly indicates a round stippling pattern around the entrance wound (Exhibit B, *supra*). Therefore, it is clearly shown that the hand could not have been interposed between the end of the barrel and the head.

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, with no 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.

Although Petitioner had already stated that he did not want to talk to law enforcement, Detective Woodard, while questioning Broom, informed him that if he (Broom) did not want to talk to them (law enforcement) then they (law enforcement) would have to charge him (Broom) because there were no witnesses (See Exhibit D. p 13 L18-23). Petitioner’s arrest, therefore, violated his right to remain 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 D. p. 22 L. 8-10). She further stated that the physical evidence pertaining to the actual shooting itself is inconclusive (Exhibit D. p. 30 L 1-3). She stated that she considered it being suicide or accident but that she did not think it was. (Exhibit D, 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, 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 but only speculation and conjecture). (Exhibit D,

p. 30 L14-16). The manner of death is unexplained and a court, may not speculate as to how the death occurred.

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 (contrary to the Singh's statements, see Exhibit G, this clearly establishing her perjuring 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 they 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...A FEW MINUTES LATER A LOUD “BANG” WAS HEARD BY WITNESS BARBARA SINGH AND HER HUSBAND KUMAR SINGH...”

Compare Exhibit G to Exhibit H, which unequivocally establishes extrinsic fraud, through State Action, for a crime where clearly there is no probable cause and no criminal agency of another.

Also, the time/date stamp of JUN 25 3:20 pm (Exhibit H) establishes that the Probable Cause Affidavit/Arrest Report and the Singh's statements were not filed with the

Clerk of the Court (required by Florida Statutes) until two hours and five minutes after the First Appearance Hearing ended (Exhibit "I", Order Following First Appearance Hearing). By not filing this fraudulent document with the Clerk of the Court until Petitioner's First Appearance Hearing was over, Defense Counsel could not have known that Petitioner's First Appearance Hearing was based on extrinsic fraud erroneously/fraudulently indicated the criminal agency of another.

Furthermore, Rule 3.180(a)(1), Fla.R.Crim.P., mandates that Petitioner/Defendant be present at his First Appearance Hearing; however, Petitioner was not allowed to be in the courtroom for that hearing, and Petitioner happened to be the only person that would know Detective Woodard's affidavit was fraudulent. The State realized this and, therefore, kept Petitioner out of that courtroom during that hearing. This is proven where Detective Woodard admitted that the affidavit she swore to actually contained material statements that the witnesses did not state to her in their statements (Exhibit "J" – Bond Reduction Hearing).

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.

Broom 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 his counsel that the “affidavit” was falsified and that Detective Woodard was a liar.

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

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, in light of the new evidence shows: “it is more than likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt 513 U.S. at 327, 115 S. Ct. 851”. As cited in House v.

Bell, 126 S. Ct. at 2077.

However, because the Court intervened, Defense Counsel was not allowed to impeach the detective for her perjury in the sworn affidavit, a criminal offense of falsifying a government document. 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 – denying due process of law and creating a manifest injustice.

The foregoing pages illustrate how Detective Woodard and the State front-loaded, or set the stage, for establishing probable cause for 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. The State Attorney's Office, through ASA Pickard, allowed those fraudulent documents to be utilized to obtain a Grand Jury Indictment.

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

STATE-DRAFTED INDICTMENT

The State Attorney, or his assistant, drafts the indictment for the Grand Jury pursuant to Chapter 905.19, Florida Statutes (1979). 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). The prosecutor’s office knowingly and/or intentionally, with reckless disregard for the truth, utilized the proven and admittedly perjured affidavit to draft a tainted indictment. Without said perjured affidavit there is NO probable cause.

Undoubtedly, 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 perjured testimony – which is the modus operandi for ASA/Prosecutor Hardy O. Pickard – 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. This, however, has not been the case with ASA Hardy Pickard.

ASA State Action as Prosecutor

Petitioner provides this Court with a limited portion of the 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 FACTS and LAW of the Court to decide regarding due process rights of Petitioner violated by State Action.

This Court is undeniably in possession of these facts and laws upon full review of

this Complaint establishing the reckless disregard and malicious intent through FRAUD by State Action, violating both Federal and State due process and establishing a manifest injustice.

Petitioner discovered numerous State Actions of fraud perpetrated by ASA Hardy O. Pickard. These acts of fraud are prosecutorial misconduct and reflect Mr. Pickard's modus operandi in the courtroom.

In Kelley v. Singletary, 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." 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 recent Supreme Court case, Johnson v. State, 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 both the trial court and this Court." 44 So. 3d. 51, 73 (Fla. 2010)(emphasis added).

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). Broom's trial was at the same time and same court as Johnson.

As previously illustrated, ASA Hardy Pickard was fully aware that the Probable Cause Affidavit/Arrest Report, sworn to by the investigating officer, was fraudulent due to the fact that it contained material facts that Mr. Pickard knew the witnesses (Singhs) did not state in their statements, as sworn to by Detective Woodard. 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 that withheld evidence

by other State agents, such as law enforcement officers. *See Gorham v. State*, 597 So. 2d. 782 (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 proven and admitted 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 perjured information, yet the State failed to ever inform the Court, the Defense, and the Grand Jury (as required by law). It was utilized to influence the Grand Jury as stated in the State’s Response dated January 20, 1986, the Clerk’s file stamp dated February 7, 1986 (Exhibit “M”).

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 “M”) 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 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.

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. Without probable cause for 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, 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).

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.”)

HEARING HELD NOVEMBER 4, 1981

The hearing held before Judge Curtis on November 4, 1981 unequivocally shows the 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, Fla. Stat. §905.13 (1979))(who took the minutes of the hearing) were all “taken down to the State Attorney’s Office and put through a shredder” (Exhibit L, p 5, L 3-11). This destroyed exculpatory evidence that could have and would have exonerated Broom. This was a violation of 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).

RESPONSE TO POSTCONVICTION MOTION (1-20-86)

It was over five (5) years after Broom’s alleged void or illegal 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 “M”, 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).

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. Said affidavit had already been admitted to being perjurious by its affiant. "Florida law only requires setting aside the indictment if perjury testimony was 'false in any material respect that would have effected the indictment.'" Anderson v. State, 574 So. 2d. 87, 91 (Fla. 1991), and the cases cited therein.

In order for the affidavit to cease to play a part in this case, this clearly establishes that it was playing apart in obtaining the indictment. Once the indictment true bill was obtained, it became then 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."

The ASA never informed the Court, the Defense, and 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 "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 informed 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.*).

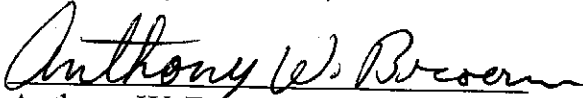
V. CONCLUSION

Petitioner has, herein with complete detail, fully illustrated the manifest injustice that occurred in the present case that has Petitioner wrongly incarcerated as a result of the violation, knowingly and purposefully committed, of his Constitutional right to due process of law guaranteed (or supposed to be) 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.

Petitioner requests this Honorable Court fully examine the contents, facts, and arguments of this Complaint and grant Petitioner a Writ of Habeas Corpus, finding that Petitioner is illegally incarcerated in Lafayette County, Florida at 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.

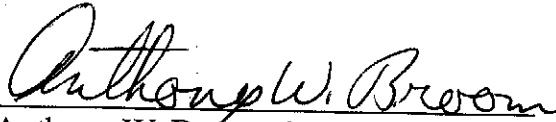
Therefore, Petitioner respectfully requests that he be immediately discharged and/or receive any other relief that the court deems just and proper.

Respectfully submitted,


Anthony W. Broom, in *propia persona*

UNNOTARIZED OATH

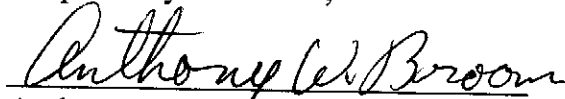
UNDER PENALTIES OF PERJURY, pursuant to §92.525, Florida Statutes, I declare that I have read the foregoing document and the facts stated in it are true and correct.


Anthony W. Broom, in *propia persona*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Extraordinary Remedy for Writ of Habeas Corpus Complaint was placed in the hands of Mayo Correctional Institution Annex officials for mailing, by U.S. Mail, to: State Attorney, Robert L. Jarvis, Jr., P.O. Box 551, Live Oak, FL. 32056 , on this 14 day of August , 2013.

Respectfully submitted,


Anthony W. Broom, in *propia persona*
DC# 081443 / E2180L
Mayo Correctional Institution Annex
8784 West U.S. Hwy. 27
Mayo, Florida 32066