CIRCUIT COURT SIXTH JUDICIAL CIRCUIT
INELLAS COUNTY, STATE OF FLORIDA

July 28, 1987

ANTHONY W. BROOM
Petitioner

vs.

Case No. 86-19114 - 1

LOUIS L. WAINWRIGHT or RICHARD DUGGER, et al.,
Respondents

ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS

This cause came on for hearing upon the Petition for Writ of Habeas Corpus filed by Anthony Broom (hereinafter called Broom). Due to the extensive nature of the case, the court will recap various matters which have occurred therein.

Case History: On 24 June 1981, Broom was arrested and charged with first degree murder in the death of Charlotte S. Martz. The arrest/probable cause report was sworn to and signed by officer Sandra F. Woodard.

On 25 June 1981, a first appearance hearing was had and probable cause was found based upon the arrest affidavit. Broom was continued in custody without bond. On that same day a Motion To Set Bond was filed together with a Motion For Emergency Medical Psychological And Neurological Examinations. An Order granting this motion was entered 25 June 1981, and bond was set at $25,000.

On 26 June 1981 the state filed a Motion For Rehearing relative to the issue of bond and the bond was revoked.

On 27 August 1981 an Indictment charging first degree murder was filed pursuant to a true bill presented by the grand jury. There are no notes available from the grand jury, nor is there available a list of witness who appeared. A written plea was entered and trial was set for 30 November 1981.

The following motions were filed and ruled upon as indicated:

1. Motion to Dismiss The Indictment - denied.
2. Motion to Compel Production granted in part and denied in part.
3. Motion To Compel Transcription and Production of Grand Jury Testimony - denied, there being none.

4. Motion in Limine - granted subject to reconsideration. Motions Number 2 & 3 are attached hereto together with portions of the transcipt of the motion hearing and the Order relating to these matters and are marked as Composite Exhibit 1A, 1B, 1C and 1D, respectively.

On 30 November 1981 trial commenced and on 3 December 1981 the jury returned a verdict of murder in the second degree. On 7 December 1981 a Motion For New Trial was filed; on 8 December 1981 a Motion for Judgment of Acquittal was filed. Said motions were denied on 23 December 1981, at the time of the sentencing hearing, at which time the defendant was sentenced to life.

Notice of Appeal was filed 30 Dec. 1981 and the appellate court affirmed (without opinion) in September 1982. Certiorari was denied. Subsequently a Motion For Post-conviction Relief was filed, together with a Motion to Vacate in Dec. 1985. On 7 Feb. 1986, Judge C. Fulmer denied the Motion to Vacate. That decision was per curiam affirmed on 21 March 1986. A second 3.850 motion was filed and denied on 11 Feb. 1987.

On 23 December 1986, Broom filed this Petition for Writ of Habeas Corpus. The Court denied same on 24 March 1987, but granted a rehearing on 27 May 1984. The Court has been reviewing, rethinking and considering this matter since that date. This has included a reading of the entire court record, the transcripts of all material motion hearings and transcript of the jury trial conducted in this cause.

Broom's Arguments: 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 adduced at trial have resulted in a fundamental deprivation of due process rights and hence habeas corpus should be granted.

The Court's Dilemma: This court must first acknowledge that it has not looked lightly upon the underlying charge and upon the numerous and varied motions which have been filed by Broom in his quest for post-conviction relief.

The Court must also admit that in situations of this type it is very easy to simply hold a cursory review of the file and determine

that Broom has tried and tried again and is merely reshuffling the same old deck of cards.

This Court, in no way, is attempting to indicate that any of the prior judicial rulings whether at the trial or appellate level are incorrect or inaccurate. However this Court does feel that each separate issue raised by Broom at the trial and appellate levels only constitutes a part of the overall picture and that it is obligated at this time to view the entire circumstances as they relate to this petition. Additionally, while Broom has certainly developed some skill in pleading matters he wishes to raise, he still is not an attorney and the court should not restrict him to strict compliance with the rules.

This Court further states that it is not considering the issue of Brooms actual guilt or innocence in this cause. It is only considering whether, when taken as a whole, the totality of the circumstances indicates that the conviction was based upon a fundamental deprivation of due process rights. United States vs Kastenbaum, 613 F.2d. 86 (1986).

In order to make this determination, it is necessary to examine each individual step in the process towards the ultimate conviction. The various exhibits are marked and the references to the record on appeal are designated A.

1. The Probable Cause Affidavit: the affidavit sworn to by Officer Woodard contains the following language: "The...defendant and victim...became involved in an arguement...and a few minutes later a loud "bang" was heard by witness, Barbara Singh and her husband, Kumar Singh." (Exhibit 2A) The implication of the statements is to indicate that there was an argument between the deceased and the defendant, which argument was followed by a shot. The statements of the Singhs (Exhibit 2B) clearly reflect that this is not true, and that furthermore neither of them percieved the bang to be a gun shot. The affidavit also states:"...the defendant pick a...revolver off the floor...and stated "there's the gun"..." At the bond hearing, held on 25 June 1981 (Exhibit 2C) Officer Woodard indicates that the affidavit is incorrect as to the Singh's statements as well as to the statement alleged to have been made by the defendant. 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.

2. The Grand Jury Hearing: The list of witnesses who testified before the grand jury was never given to defense counsel, despite the comments by the state that there was no objection to providing same. (Exhibit 1C,infra,at P-12, L-16 through 24). However the deposition of Officer Woodard taken on Sept. 28, 1981, gives us some idea of who was present. She confirms (Exhibit 4, P-23, L-1 thru 5) that the medical examiner was not called to testify before the grand jury. This view appears to have been confirmed in that during the motion hearings (Ex.1C, infra. at P-14, L-2 through 10), the State did not deny defense counsels comment that defense counsel believed the medical examiner had not testified. Would this testimony have made a difference to the grand jury? No one can positively state, but based upon his trial testimony (Exhibit 4) it certainly would have been valuable and could have given to the grand jury the only concrete view of the circumstances relevant to the homicide, especially as it relates to possible powder burns on the deceased's hand and the inability to determine whether the wound was or was not self-inflicted.

Thereafter in the deposition transcript, (Exhibit 3, P-25, L-1 through 5), Officer Woodard indicates that Ora Lee Eubanks (the deceased's sister), the deceased's brother, Mary Prochaska (a friend of the deceased) and Ted Shackleford (the bouncer at Liquor Mart) testified. From reviewing the trial testimony of these individuals, it is apparent that none had actual knowledge of the homicide, although some could testify to what occurred earlier in the evening and others could only testify as to the state of mind of the deceased and prior difficulties which the deceased had with the defendant.

3. The Investigative Stage: The actions of the investigating law enforcement agency fell far below normal standards and resulted in the loss of evidence which could have been exculpatory and promoted possible evidence which could have been false and prejudicial. The matter of the incorrect and possibly perjured complaint/arrest form has already been discussed. Upon arriving at the scene the officers

required the defendant to pick up the weapon and toss it across the room. (Exhibit 5A) This required him to handle an alleged murder weapon and then potentially destroyed prints which may have indicated the deceased fired the gun. Additionally the officers then handled the weapon, tucking it into one officers waistband (Exhibit 5B, L-3,4,5), removing it and replacing it for photographic purposes (Exhibit 5B, L-6 through 9), replacing it in the waistband, taking it to the station and unloading it (Exhibit 5C) and subsequently sending it off for fingerprint analysis. I take it all this handling by the police was done without latex gloves

Tests which were performed either had little bearing on the case (such as a paraffin test on the spent cartrage) or did not occur until such time as any evidentiary value had been lost (such as not preserving the gun for fingerprint purposes and not doing scrappings of the deceased's hand until the autoposy) or weren't the type needed to ascertain probative information (such as neutron/vs paraffin tests on both the decedant's and defendant's hand) Exhibits 6B and 6C.

6 hrs after the accident

The Court's Perspective: Habeas Corpus is not a remedy to correct procedural or evidentiary errors. The purpose of this remedy is deal with constitutional errors that have resulted in a deprivation of due process rights. Broom has raised certain issues not of which, standing alone, would be sufficient to establish such a substantive due process violation as is required. But this Court must state that it was overwhelmed with the totality of the circumstances. As a general rule, the criminal justice system is designed with internal safeguards to correct any possible mistakes or errors or due process violations.

An arrest affidavit must be presented to a committing magistrate for a probable cause determination. That must presume that the facts contained therein are not perjured. A similiar standard is applied to search warrant affidavits. In Franks vs. Delaware, 98 S.Ct. 2674 (1978), the court discussed the conditions which must be met before a defendant was entitled to an evidentiary hearing. At page 2684, the court states:

> There must be allegations of deliberate falsehood or of reckless disregard for the truth and those allegations must be accompanied by an offer of truth.
>
> ...if these requirements are met and if when material that is subject of alleged

> falsity or reckless disregard is set to to one side, there remains content... to support...probable cause, no hearing is required. On the other hand, if the remaining content is insufficient, the defendant is entitled...to his hearing.

In our system, however, it is possible to correct problems with such probable cause affidavits by submitting the issues to a grand jury for an independent and informed determination of the case.

A definitive statement of the history, jurisdiction, rights and duties of a grand jury is contained in In re Report of Grand Jury, 11 S.2d. 317 (Fla. 1943). The court discusses the fact that the grand jury became an "independent instrument...to uphold the liberty of the people and act as a buffer between them and the crown". At page 318, the court states:

> When they find that the law has been violated, it is their duty to indict but when they find charges made to be without foundation, it is as much their duty to exonerate as it is to indict in the first instance. It is by dispatching in a fair and impartial way matters brought to their attention that the grand jury becomes the buffer between the free citizen and arbitrary power.

The 5th Amendment clause of both the Florida and the United States Constitutions provide for utilization of the grand jury. In Costello vs. United States, 76 S.Ct. 406 (1956), the Court discusses the history of the grand jury system and states that its adoption in our consitituion as the sole method for preferring serious crimes "shows the high place it held as an instrument of justice". And in United States vs. Sears, Robuck & Co., Inc., 719 F.2d. 1386, 1391, (1983), the court states:

> Implicit in this clause is the guarantee that a defendant will be indicted only upon the informed and independent determination of a legally constituted grand jury.
>
> Dismissal of an indictment is therefore only warranted on constitutional grounds if prosecutorial misconduct has undermined the grand jury's ability to make an informed and objective evaluation of the evidence presented to it.

This Court is also cognizant that it is not the job of a prosecutor to present evidence which would negate guilt, as guilt or innocence is

not the function of the grand jury. United States vs. Lasky, 600 F.2d. 768 (1979). Hearsay and other inadmissible evidence may be presented to a grand jury for its consideration and in fact, an indictment may be valid even if it is based solely on hearsay. Costello, supra.

But as the court continued to discuss in In re Report of Grand Jury, supra, "Public office is the most important trust democratic government vests in the citizen." Justice Chapman, in his opinion concurring specially adds a caution.

> The tremendous power by law conferred upon a grand jury should not under any condition become a vehicle or oppression or the instrumentality whereby the group in control should by their action through the grand jury promote private interests...

This caution is obviously more important when the power of the grand jury is coupled with the power of the State. Where, as here, the only matters presented to the grand jury were matters which by hearsay and innuendo established motive for the homicide and the only unbiased view of the physical evidence, that of the medical examiner, was kept from the grand jury, there was no opportunity for them to make an informed and objective evaluation as to whether an indictment for first degree murder should lie.

The ultimate end-all and cure-all in theory is the jury trial itself. There is no way of knowing what prejudice may have occured as a result of the matters previously discussed. The defendant had been in custody continously since the offense (less one day); a jury was advised the charge, brought on the indictment, was first degree murder; the defendant was obligated to defend against a capital offense.

This court is well aware of the law as previously referred to herein and with the law as it relates to presumptions of validity. But this court also feels as did Chief Justice Warren, when he wrote the opinion in Mesarosh vs. United States, 77 S.Ct. 1,8 (1956).

> If (the Court) has any duty to perform... it is to see that the waters of justice are not polluted.

and citing another decision:

> The fastidious administration of justice requires the court to make certain that the

> doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted. Communist Party vs. Subversive Activities Control Board, 351 U.S. 115,124, 76 S. Ct. 663,668.

Broom's claims are neither irrational or perverse. To say that the waters of justice in this case are polluted, is simply to view the totality of the case. The totality of the circumstances clearing 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. For the foregoing reasons:

IT IS ORDERED:

1. that the writ of habeas corpus is granted; within one hundred and twenty days (120) of this order the State shall give petitioner a new trial.

2. that if the petitioner is not retried within one hundred and twenty (120) days, he shall be released from custody;

3. that the petitioner, Anthony Broom, shall be returned forthwith to Polk County, Tenth Judicial Circuit, for a determination of solvency and bond.

DONE AND ORDERED this 28th day of July, 1987, at Clearwater, Pinellas County, Florida.

CLAIRE K. LUTEN
Circuit Judge

Copies furnished to:

Marie King, Assistant State Attorney
Allyn Giambalvo, Assistant Public Defender
Anthony Broom, Petitioner
State Attorney, Tenth Judicial Circuit