IN THE FLORIDA SUPREME COURT

CASE NO.: _____

L.T. CASE NO.: **1D11-3995**

ANTHONY W. BROOM
Petitioner,

-vs-

STATE OF FLORIDA,
Respondent.

THIS APPEAL HAS A GREAT EFFECT ON THE PROPER ADMINISTRATION OF JUSTICE RULE 9.030(a)(2)(B)(ii), FLA.R.APP.P. (2011); THE APPEAL IS TO AN ORDER DENYING REHEARING TO CORRECT A MANIFEST INJUSTICE IN CASE NUMBER 1D11-3995; TO PETITION FOR WRIT OF HABEAS CORPUS WITH NO WRITTEN OPINION OR SHOW CASE GIVEN

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Petitioner, *pro se*

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STATEMENT OF THE CASE

Broom discovered his friend with what appeared to be a gunshot wound to the left side of her head upon his return to his motel room. After having the ambulance and police summoned he attempted CPR on his friend. After the law enforcement officers and the EMT's arrived and took over the CPR, the first law enforcement officers asked Broom, "What happened?," and he stated, "I have no idea what happened." These first law enforcement officers surmised suicide.

A Detective Woodard arrived over 30 minutes later, (who has personal dislike for Broom) and had Broom taken to the Winter Haven Police Department (W.H.P.D.) because she "feels he needs talking to." At the W.H.P.D., Det. Woodard informs Broom if he "didn't want to talk to them then they would have to charge him because there were no witnesses." Broom had already been detained for over 2 hours, and told Det. Woodard that, "she could talk to his attorney." Det. Woodard then told Broom that, "he was being arrested for the first degree murder of Charlotte Martz." Broom was subsequently taken from the W.H.P.D. to the Polk County Sheriff's Department, and booked for first degree murder on the 24th day of June 1981.

Det. Woodard returned to Broom's motel room at the Winter Haven Holiday Inn and took the only "material" witness statement in this case. However, the witnesses, the Singhs are no help to Det. Woodard for her unlawful, and illegal

arrest of Broom because the Singhs stated they, "heard nothing before the loud noise that woke them up." Nevertheless, Det. Woodard swore to the Probable Cause Affidavit/Arrest Report (affidavit) that states in pertinent part, "The defendant and Charlotte Swenson Martz became involved in an argument... and a few minutes later a loud 'BANG' was heard by the witness Barbera Singh and her husband Kumar Singh..."

Fraud was committed at the First Appearance Hearing by the Assistance State Attorney (ASA), Hardy Pickard, when he presented said tainted affidavit as probable cause to the court. Because ASA Pickard had the Singh's statement and Det. Woodard's affidavit clearly establishing Det. Woodard's affidavit contained material statements that, the witnesses did not state. The State did not file this affidavit or the Singh's statement with the Clerk of the Court until 1 hour and 5 minutes after the First Appearance was over. Naturally, the defense could not have known this as the evidence was deliberately not filed with the Clerk of the Court. To further ensure that his fraud was not uncovered, discovered, detected and made manifest ASA Pickard had Broom held in a holding cell outside the courtroom, and he was therefore unable to be present for his First Appearance. This was done intentionally as he is the only person besides Det. Woodard that knows that her affidavit is a lie. Because Broom was not in the hotel room at the time of the fatal gunshot, he knew that there was no argument and he would have stopped the fraud

at the First Appearance. With Broom present he would have refuted that, there was an argument, as disingenuously asserted by Det. Woodard, hence demonstrating the affidavit to be a lie, as the Singh's statement clearly reflect.

Two hours and fifteen minutes after the First Appearance a Bond Reduction Hearing was held with Broom, his attorney and ASA Pickard. As soon as Broom's attorney informed him why, and how he was being held, Broom told his attorney that, "Det. Woodard is a liar, and her affidavit is a lie." On cross examination, Det. Woodard admitted the material statements in the affidavit allegedly made by the Singh's was false, i.e., they did not state or make them. However, no one corrected this now admitted material, tainted affidavit, which is the only probable cause, and the State is not suppose to pursue a charge without valid probable cause.

The State Attorney's Office used this admitted material falsified and fabricated affidavit swore to by Det. Woodard and then admitted to being tainted by her, to draft an indictment for the grand jury. The indictment drafted from the tainted affidavit naturally caused the indictment to be as tainted as the evidence utilized in its drafting, and was presented to the grand jury by ASA Pickard. ASA Pickard also presented the grand jury with Det. Woodard's tainted affidavit, in order to influence the grand jury into returning the indictment with their "true bill." Here again, this caused the "true bill" indictment to be just as tainted as the

evidence used to obtain it. With the grand jury, the court and the defense not being informed the indictment must be dismissed.

The use of Det. Woodard's falsified and fabricated affidavit was admitted to being used by ASA Pickard over five (5) years after Broom's conviction when ASA Pickard responded February 7, 1986, to the Petitioner's post-conviction motion stating in pertinent part:

> "Once that 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 allegations in Det. Woodard's affidavit."

In conclusion, this clearly established "**new evidence**" that no court has addressed in the past 25 years. Also, this statement of the case points out that, this is a "pre-trial" violation now raised post-trial in the habeas corpus, because Rule 3.850 is a post-trial motion to be filed against the judgment and conviction, and can not be used for this pre-trial fatal violation. The indictment must be ruled to be void ab initio and Art. 1, §15(a) of the Florida Constitution mandates a valid indictment to try a capital case. Without a valid indictment Art. 1 §15(a) and Art. 1 §9 of the Florida Const. is violated. There were no safeguards protecting Broom from his unlawful and illegal arrest or through the 30 years of the appeal court's continuing to deny his constitutional due process right.

This Court not only has the authority, but, it has a duty to be on the lookout for manifest injustice. Baker v. State, 878 So.2d 1236 (Fla. 2004).

SUMMARY OF THE ARGUMENT

The Petitioner is being illegal and unlawfully imprisoned since 1981, due to a tainted indictment that must be ruled void ab initio. Because of the prosecutor's improper influence on the grand jury's "true bill," by the FRAUD perpetrated by ASA Hardy O. Pickard on the grand jury and the court. Proof of these facts did not come to light until five (5) years after the illegal and unlawful conviction. Which could not have been discovered through due diligence because of the grand jury secrecy. ASA Pickard's reply on February 7, 1986 to Petitioner's 3.850 motion, clearly and unequivocally shows that the ASA utilized the admitted and proven falsified and fabricated affidavit to influence the grand jury to return the State's tainted drafted indictment with their "true bill." ASA Pickard's unlawful use of the tainted affidavit, known to be such by him, and never informing the court, the grand jury and the defense, influenced the grand jury's finding the "true bill." Therefore, the indictment must be ruled void ab initio and dismissed then the Petitioner should be discharged from his illegal imprisonment.

NATURE OF RELIEF SOUGHT

Pursuant to the Arguments, Authorities and Facts. The Petitioner respectfully request that this Court GRANT this Appeal or in the alternative accept

this Appeal as an Original Petition for Writ of Habeas Corpus and address the merits in the interest of justice, to correct the manifest injustice of this case from its conception. Dismiss the tainted indictment, discharge Petitioner from his illegal and unlawful imprisonment and any other relief that this Court deems just and proper.

ARGUMENTS, FACTS AND AUTHORITY

THE FIRST DCA'S DENIAL CITING *BAKER V. STATE*, 878 SO.2D 1236 (FLA. 2004) IS MISPLACED AND ERRONEOUS. THE DCA FAILED TO ACKNOWLEDGE OR RECOGNIZE THAT, THE CLAIM RAISED IS A PRE-TRIAL VIOLATION BEING RAISED POST-TRIAL FROM NEWLY DISCOVERED EVIDENCE.

As a threshold statement, the Petitioner asserts that he is actually innocent of the crime alleged in the indictment.

Petitioner appeals the First DCA's denial that even failed to give a show cause order why his relief should not be granted.

The issue before the court arose from Petitioner's first post-conviction motion filed December 10, 1985. In ASA Pickard's reply dated February 7, 1986, he admitted for the first time to utilizing Det. Woodard's "proven," falsified and fabricated affidavit (he knew to be such), thus committing fraud, and influencing the grand jury into returning the State's tainted indictment with their "true bill."

This newly discovered evidence was unknown to Petitioner, his attorney and the trial court until five (5) years after his conviction therefore, it could not have been discovered through due diligence because of the grand jury secrecy. No transcripts were taken of the grand jury hearing and the State Attorney's Office shredding all notes, minutes, etc., at the end of each day's hearing. However, no court has or will address this travesty of justice that has continued for the past twenty five (25) years since becoming known to the Petitioner. The Petitioner has been trying to get a court to rule on his being illegally tried without a valid grand jury indictment for the capital offense of first degree murder. This is in violation of Art. 1, Section 15(a) and Art. 1, Section 9 of the Florida Constitution as well as the Fourteenth Amendment to the United States Constitution. This is one of those fundamental rights essential to a fair trial.

The ASA's fraudulent action of presenting the falsified and fabricated affidavit to the grand jury, that he knew to be such, fraudulently established probable cause and Petitioner as the alleged perpetrator. Ruling on the merits of this manifest injustice would not only produce an acquittal on retrial, clearly there would be no trial because the evidence establishes that there is no crime.

The ASA violated the truth seeking function and independent process of the grand jury by fraudulently influencing the grand jury into returning the State's

tainted indictment with their "true bill." The indictment must be set aside for improper influence. Rudd v. State ex rel Christian, 301 So.2d 295 (Fla. 1975).

"The Florida Constitution provides that: '[N]o person shall be deprived of life, liberty or property without due process of law.' Article 1, Section 9 Fla. Const. The State violates that section when it requires a person to stand trial and defend himself or herself against a charge that it knows is based upon perjured material evidence. Government 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) as stated in Anderson v. State, 574 So.2d 87, 91-92 (Fla. 1991).

In fact, as long ago as Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935), the United States Supreme Court made clear: "That, deliberate deception of a court and jurors by the prosecution of known false evidence is incompatible with rudimentary demands of justice." See Giglio v. United States, 92 S.Ct. 763, 405 U.S. 150, 31 L.Ed.2d 104 (1972).

This appeal is to a post-trial habeas corpus petition, and is the only remedy to address the pre-trial violation that, was unknown to Petitioner for over five (5) years after his unlawful and illegal conviction, of being tried without a valid indictment.

Habeas corpus is not just the proper remedy, but it is the only remedy that the Petitioner has to address his unauthorized and illegal imprisonment. For both Rule 3.800 and 3.850 assume that the conviction was legal or at least would have been had not some error occurred. Neither rule was designed to address an illegal imprisonment obtained from a tainted indictment that must be dismissed because it is void ab initio. All other motions are inadequate or ineffective to test the legality of Petitioner's illegal imprisonment.

This Court can either treat this appeal now before the Court as an "All Writ" motion, or merely exercise its inherent authority to sua sponte remedy fundamental error which is apparent on the face of the record, or remedy a manifest injustice by construing this appeal as an original Petition for Writ of Habeas Corpus. In any event, this Court has a duty to correct this manifest injustice now before this Court, in the interest of justice.

As can be seen in the Exhibits and a more in depth argument, see Petitioner's original writ of habeas corpus filed in the First DCA. For more information of this cause see www.freeanthonynow.org.

As this Court in Henry v. Santana, 62 So.3d 1122 (Fla. 2011), held that: "The District Court below ruled correctly..." That is as seen in the District Court in Santana v. Henry, 12 So.3d 843, 848 (1st DCA 2009) which held: "When a petition for writ of habeas corpus alleging that the Petitioner is entitled to

immediate release sets out plausible reasons and a specific factual basis in some detail, the custodian **should be required to respond to the petition**."

Petitioner's original petition for writ of habeas corpus alleging that he was entitled to immediate release and set out plausible reasons and a specific factual basis in detail therefore, the custodian, State of Florida, must give a show cause why relief should not be GRANTED.

CONCLUSION

As has been stated by the foregoing, argument, facts, and authority this Court has the responsibility, and the duty to correct this manifest injustice by ORDERING the grand jury indictment to be dismissed and discharging Petitioner from this unlawful and illegal imprisonment or issue a show cause why relief should not be GRANTED and any other relief that this Court deems just and proper.

Respectfully Submitted,

Anthony W. Broom, DC# 081443

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true copy of the foregoing document was

placed in the hands of Mayo Correctional Institution officials to forward by U.S. Mail to:

Office of the Attorney General
The Capital, PL-01
Tallahassee, FL 32399

on this 16 day of November, 2011.

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Petitioner, *pro se*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, that this document has been prepared on a computer word processor using the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Anthony W. Broom, DC# 081443