# UNITED STATES COURT OF APPEALS
# ELEVENTH CIRCUIT

## APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE HABEAS CORPUS PETITION
## 28 U.S.C. §2244(b)
## BY A PRISONER IN STATE CUSTODY

**Prisoner Number: 081443**

**Name: Anthony W. Broom**
**Institution: Mayo Correctional Institution Annex**
**Street Address: 8784 West U.S. Hwy. 27**
**City: Mayo** **State: Florida** **Zip Code: 32066**

## INSTRUCTIONS--READ CAREFULLY

(1) This Application must be legibly handwritten or typewritten and signed by the applicant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

(2) All questions must be answered concisely in the proper space on the form.

(3) The Judicial Conference of the United States has adopted the 8 ½ x 11 inch paper size for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings must be on 8 ½ x 11 inch paper, otherwise we cannot accept them.

(4) All applicants seeking leave to file a second or successive petition are required to use this form, except in capital cases. In capital cases only, the use of this form is optional.

(5) Additional pages are not permitted except with respect to additional grounds for relief and facts which you rely upon to support those grounds. DO NOT SUBMIT SEPARATE PETITIONS, MOTIONS, BRIEFS, ARGUMENTS, ETC., EXCEPT IN CAPITAL CASES.

(6) In accordance with the "Antiterrorism and Effective Death Penalty Act of 1996," as codified at 28 U.S.C. § 2244(b), effective April 24, 1996, before leave to file a second or successive petition can be granted by the United States Court of Appeals, it is the applicants' burden to make a prima facie showing that he satisfies either of the two conditions stated below and in 28 U.S.C. § 2244(b).

> (b)(1) a claim presented in a second or successive habeas corpus application under [28 U.S.C.] section 2254 that was presented in a prior application shall be dismissed.
>
> (2) a claim presented in a second or successive habeas corpus application under [28 U.S.C.] section 2254 that was not presented in a prior application shall be dismissed unless---
>
> > (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
> >
> > (B)(I) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
> >
> > (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

(7) When this application is fully complete the original and three copies must be mailed to:

> Clerk of Court
> United States Court of Appeals for the Eleventh Circuit
> 56 Forsyth Street, N.W.
> Atlanta, GA. 30303

## APPLICATION

1. (a) Name and location of court which entered the judgment of conviction under attack: Tenth Judicial Circuit, in and for, Polk County, Bartow, Florida

   (b) Case number: CF81-1860A1

2. Date of judgment of conviction: December 3rd, 1981

3. Length of sentence: Life  Sentencing Judge: Clinton A. Curtis

4. Nature of offense or offenses for which you were convicted: Second-Degree Murder

5. Have you ever filed a post-conviction petition, application, or motion for collateral relief in any federal court related to this conviction and sentence?
   Yes (**X**) No ( ) If "yes," how many times? unknown (if more than one, complete 6 and 7 below as necessary)

   (a) Name of court: Tampa Federal Court
   (b) Case number: unknown
   (c) Nature of proceeding: 28 U.S.C. § 2254
   (d) Grounds raised (list <u>all</u> grounds; use extra pages if necessary):

   1. Failure to prove Corpus Delecti - I believe.

   (e) Did you receive an evidentiary hearing on your petition, application, or motion?
   Yes ( ) No (**X**)
   (f) Result: Denied – I think.
   (g) Date of result: Unknown.

6. As to any second federal petition, application, or motion, give the same information: This case is over 30 years old and no court will address the merits. Also, the Florida Department of Corrections does not provide for storage of legal papers of inmate that are not active. As such, numbers 5 through 9 are unable to be answered by the Petitioner. Petitioner will have to rely on the Court's records and computer storage.

   (e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ( ) No ( )
(f)Result: ______________________________________________

______________________________________________

______________________________________________

(g)Date of result: ______________________________________________

7. As to any third federal petition, application, or motion, give the same information:
(a) Name of court: ______________________________________________
(b) Case number: ______________________________________________
(c) Nature of proceeding: ______________________________________________

______________________________________________

(d) Grounds raised (list <u>all</u> grounds; use extra pages if necessary):

______________________________________________

______________________________________________

(e) Did you receive an evidentiary hearing on your petition, application, or motion?
Yes ( ) No ( )
(f)Result: ______________________________________________

______________________________________________

(g) Date of result: ______________________________________________

8. Did you appeal the result of any action taken on your federal petition, application, or motion? (Use extra pages to reflect the additional petitions if necessary)
(1) First petition, etc. No ( ) Yes ( ) Appeal No. ____________
(2) Second petition, etc. No ( ) Yes ( ) Appeal No. ____________
(3) Third petition, etc. No ( ) Yes ( ) Appeal No. ____________

9. If you did <u>not</u> appeal from the adverse action on any petition, application, motion, explain briefly why you did not: ______________________________________________

______________________________________________

______________________________________________

10. State <u>concisely</u> every ground on which you <u>now</u> claim that you are being held unlawfully.
Summarize <u>briefly</u> the <u>facts</u> supporting each ground.

A. Ground one: Actual Innocence
Supporting FACTS (tell your story briefly without citing cases or law):

Claim of innocence is thus "not a constitutional claim, but instead a gateway through which a Habeas Petitioner must pass to have his otherwise Constitutional Claims considered on the merits."

Was this claim raised in a prior federal petition, application, or motion?
Yes ( ) No (**X**) Not that has been addressed.

Does this claim rely on a "new rule of law?" Yes ( ) No (**X**)
If "yes," state the new rule of law (give case name and citation):
Not Applicable.

Does this claim rely on "newly discovered evidence?" Yes (**X**) No ( )
If "yes," briefly state the newly discovered evidence, and why it was not previously available to you: This is physical or scientific evidence that the Trial Jury did not have before it or newly supplemented record. Here, Petitioner has established by the State Expert's theories that one is scientifically and/or physically impossible and the only theory that is possible is stippling on the deceased fingers came out from around the revolver's cylinder and into her fingers as she fired the gun.

## ACTUAL INNOCENCE IS A GATEWAY

## GROUND ONE

### THERE IS NO CRIMINAL AGENCY OF ANOTHER AND PETITIONER IS ACTUALLY/FACTUALLY AND LEGALLY INNOCENT OF MURDER

A "gateway showing 'raise(s) sufficient doubt about [the Petitioner's] guilt to undermine the confidence in the result of the Trial without the assurance that the Trial was untainted by Constitutional Error', hence 'a review of the merits of the Constitutional Claims' is justified. . . ." 513 U.S. at 317, 115 S. Ct. 851; *See* House vs. Bell 547 U.S. 518, 537, 126 S. Ct. 2064, 2077, 165 L. Ed. 2d. 1 (2006).

The State's Expert, Dr. Youngs, the Pathologist that performed the autopsy

surmised two (2) theories as to how the deceased received stippling on the backside of her index and middle fingers of her left hand. He testified (Exhibit A – (Trial Transcripts) Tr. Pg. 121, lines 14-18)[1] that, "It's not possible for me to determine the manner of death in this case. I think that the finding that we have could have been produced in the case of suicide, a homicide, or even a bizarre accident. I can't exclude any of these possibilities."

"It is Constitutional Error when a jury's general guilty verdict could have been based on an illegally inadequate theory." Shower vs. State 86 So. 3d. 1218, 1222 (Fla. 2nd DCA 2012)(citing Yates vs. United States 354 U.S. 298, 312, 77 S. Ct. 1064, 1 L. Ed. 2d. 1356 (1937), *overruled on other grounds by* Burks vs. United States 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d. 1 (1978); U.S. vs. Spellissy 438 Fed. Appx. 780, 782-783 (11th Cir. 2011), as here.

Dr. Youngs' first (1) theory of murder is not substantiated by the physical evidence of the stippling explained, *infra*.

**FIRST THEORY**

"If the hand had been interposed between the barrel of the gun and the skin" (Exhibit A, *supra*. Tr. pg. 112, lines 25-24). That is: "Had the hand been on the side of the head like this (indicates), this is when the gun was discharged, it is possible

[1] All numbers referred to are in the upper right hand corner of the transcript page, which are referred to by Tr. followed with the page number.

that some of the gunpowder residue could have landed on the top of the hand and produced the stippling effect that we saw" (Exhibit A, Tr. pg. 113, Lines 2-6).

This theory is she put her left hand up between the end of the barrel, and her head as someone else fired the fatal gunshot. Stippling come out of the barrel and onto the back of her left hand. Indicating the criminal agency of another.

However, this theory is scientifically impossible. For this theory to be true, the barrel of the gun would have had to be pointed at the back of the deceased's left hand, as she had it beside her head with the end of the barrel pointed between the index and middle fingers when it fired. Stippling coming out of the end of the barrel would be on the backside of the fingers of her left hand and on the left side of her head.

But, here is where the first theory falls apart. For the stippling on the head would not be in a rounded zone surrounding the gunshot wound for the fingers would have blocked some of the stippling and there would not be a rounded zone surrounding the gunshot wound. Stippling would be void around the wound where the fingers blocked it from going into the skin.

At stated by the expert (Exhibit A, Tr. pg. 97, Lines 14-17), *infra*, and as seen in the attached picture (Exhibit B – Photograph of the gunshot entrance wound) there is a round pattern of stippling with NO void space (where the fingers would have been) in the pattern around the entrance wound. Therefore, the first theory is

not a possible theory.

The only other theory is, that Charlotte fired the fatal gunshot. Whether it was some type of bizarre accident or suicide is established by the evidence as seen in the Second Theory.

**SECOND THEORY**

"The gunshot wound itself was rounded, the entrance gunshot wound was six millimeters in diameter and surrounding that there was a zone, a round zone of stippling of the skin and swelling and bluish discoloration or bruising." (Exhibit A, Tr. pg. 97, Lines 14-17).

"Also, in the discharge of some revolvers, gunpowder may be discharged around the cylinder of the revolver onto the hand. If the individual holding the revolver discharges it, they may get gunpowder residue of this type on the back of the hand." (Exhibit A, *supra*, Tr. pg. 113, Lines 6-10).

The theory that Charlotte was holding the gun, discharged the fatal gunshot, and stippling came out around the revolver's cylinder going into the backside of her fingers in the only theory that is consistent with the evidence.

There was no crime or, that is, there was no criminal agency of another – the essential element that must be established before there can be a crime. The theory that she fired the fatal gunshot is consistent with the attached photograph of the entrance gunshot wound and the evidence or lack of evidence in this case.

The illegal charge and indictment is a Denial of Petitioner's Due Process rights under Amendment IV and XIV of the United States Constitution and are void *ab initio.*

These illegally inadequate theories were not previously presented at trial or in light of the new evidence show: "It is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt." This evidence was not presented in Court.

## **CONCLUSION/SUMMATION**

To summarize actual innocence as a gateway to defaulted claims, theories, one and two were presented at Trial. However, the physical and scientific evidence for these two theories were not. It is from the physical and scientific evidence that establishes: "It is more likely than not that no reasonable juror would have convicted Petitioner in light of this new found evidence", presented in this document.

The physical and scientific evidence shows that the revolver's cylinder flared as the fatal gunshot was fired. The flair came out around the cylinder into the backside of the index and middle fingers. This is where stippling residue would be if the index finger was on the trigger when the revolver flared. This unmistakably established some type of a self-inflicted fatal gunshot injury as Charlotte fired the fatal gunshot, not a homicide or murder. This shows there was no criminal agency of another. The deceased has a single fatal gunshot wound to the left side of her

head and the State's Expert noticed stippling on the backside of the index and middle fingers of her left hand, indicating she fired the fatal gunshot from the revolver.

The State's own Expert Pathologist, Dr. Youngs', performed the autopsy on the deceased. He had examined over 100 deaths from, gunshot injuries (Exhibit A, Tr. pg. 115, Lines 2-5) and knew what stippling residue looked like when he saw it. It is his Expert Opinion that it was stippling residue (tattooing) on the backside of the deceased's fingers, just as it was stippling on the left side of her head around the entrance wound. From Dr. Youngs' two (2) theories only the theory that she fired the fatal gunshot is substantiated by the evidence and picture of the entrance wound. There is no evidence of the criminal agency of another.

Broom has established a fundamental miscarriage of justice by showing a colorable claim for actual innocence. Schlup vs. Delo 513 U.S. 298, 115 S. Ct. 851, 867, 130 L. Ed. 2d. 808 (1995)(as cited in Zeigler vs. Crosby 345 F. 3d. 1300, 1307 (11th Cir. 2003).

Evidence was insufficient to show death occurred through the criminal agency of another. As the Florida Supreme Court in Golden vs. State 629 So. 2d. 109, 112 (Fla. 1993) held,

> "Therefore, we hold that the State's proof was insufficient to support the jury's conclusion that Mrs. Golden's death was caused by the criminal agency of another, an essential element of the corpus delecti of homicide."

Accordingly, from the foregoing this case should be reversed, dismissed and Broom immediately discharged and any other relief this Court deems proper.

The following pages show why agencies of the State perpetrated Fraud on the Court, knowing it to be such, but never informed the Grand Jury, the Court and the Defense. Fraudulent evidence was utilized to obtain the Grand Juror's True Bill that was adopted by the Trial Court that the ASA perpetrated knowing it to be Fraud on the Court.

B. Ground two: Fraud on the Court by an Attorney Denied State Prisoner his Federal Rights.

Supporting FACTS (tell your story briefly without citing cases or law): The lead detective committed and admitted to Perjury. The ASA (State) used the Perjury he knew to be such to persuade the Grand Jurors into returning the State's tainted Indictment, never informing the Court, the Defense, and the Grand Jury of such. **5 yrs. After Conviction, Direct Appeal, and Federal Habeas Denial, the State admitted to use of Perjury.**

Was this claim raised in a prior federal petition, application, or motion?
Yes ( ) No (**X**) Not that has been addressed.

Does this claim rely on a "new rule of law?" Yes ( ) No (**X**)
If "yes," state the new rule of law (give case name and citation):
Not Applicable.

Does this claim rely on "newly discovered evidence?" Yes (**X**) No ( )
If "yes," briefly state the newly discovered evidence, and why it was not previously available to you: This is physical evidence that the Trial Jury did not have before it and now is newly supplemented record, shows how the State utilized Fraudulent Material Evidence in a manner that is intentionally false, willfully blind to the Truth or is in reckless disregard for the Truth by an Attorney that committed Fraud on the Court. It was over five (5) years after conviction that the ASA admitted to the use of the fraudulent affidavit to obtain the Grand Jury Indictment True Bill.

## GROUND TWO

**FRAUD ON THE COURT PERPETRATED BY AN ATTORNEY DENIED STATE PRISONER HIS FEDERAL RIGHTS UNDER IV, V, VI, VII, AND XIV AMENDMENTS OF THE UNITED STATES CONSTITUTION**

The State's prosecuting attorney is an agency of the State, and if he knowingly secures a conviction by conscious and deliberate use of perjured testimony, this is sufficient ground [under state action of both State and Federal Due Process Violation] for holding such judgment of conviction null and void. No grosser fraud could be perpetrated upon the Court. The agencies of the State for the enforcement of Law and the Administration of Justice must never be allowed to be prostituted to the defiance of the law and, the effectuation of injustice. Those who minister in the temples of justice keep their hands clean. Skipper vs. Schumacker 169 So. 58, 64 (Fla. 1936).

## FACTS, ARGUMENT, AND AUTHORITIES

**THE SCENE**:

On June 24th, 1981, at approximately 3:30 to 4:00 a.m., Petitioner Broom, returning to his motel room from 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 summoned (Exhibit D – Det. Woodard's Deposition, pg. 7, Lines 23-24 and

pg. 8, Lines 1-3). The police arrived first but would not enter the room until the gun was secure. So Broom picked the gun up from the floor beside the bed and tossed it onto the couch (Exhibit A, Tr. pg. 32, Lines 1-4, and pg. 81, Lines 15-25). The police entered and picked up the gun (Exhibit A, Tr. pg. 85, Lines 21-24) with their bare hands.

The ambulance arrived shortly thereafter and the Emergency Medical Technicians (EMT's) took over the first-aid from Broom (Exhibit A, Tr. pg. 64, Lines 7-19, and pg. 125, Lines 19-21) repositioning Ms. Martz's body further down on the bed.

The Police asked Broom what happened and he stated, "I have no idea what happened" (Exhibit A, Tr. pg. 42, Lines 4-9). These first law enforcement personnel that had arrived on the scene were investigating and finding only the deceased was in the room at the time of the tragedy (Exhibit A, Tr. pg. 32, Lines 20-21) clearly there was no criminal agency of another – Officer Quinn surmised suicide (Exhibit A, Tr. pg. 60, Lines 23-25, and pg. 61, Line 1).

**THE LEAD DETECTIVE ARRIVED ON THE SCENE**

Broom kept going in and out of the room asking how his friend was doing so he was placed in the back of a patrol car to preserve the scene (Exhibit A, Tr. pg. 43, Lines 16-25).

No rational trier of facts could have found the criminal agency of another

beyond a reasonable doubt. In fact, the State's Expert Pathologist's only valid theory as seen on pg. 5 through 11 *supra*, shows the deceased fired the fatal gunshot.

Nevertheless, Det. Woodard arrived and before being briefed by the first Police Officer that had arrived on the scene, she saw Broom and accusingly stated, "Tony have you done now" (Exhibit D, pg. 4, Line 25, and pg. 5, Lines 1-2). However, this Detective never made a case against Broom and never had anything to do with any case against him (Exhibit D, pg. 5, Lines 6-9). But, the fact is, this Lead Detective has a personal dislike for Broom (Exhibit D, pg. 7, Lines 19-22).

Due to her late arrival this Lead Detective only saw the scene and body after everything had been compromised. In fact, it was 20 minutes after the first Law Enforcement personnel arrived before Det. Woodard finally got the scene and took over as Lead Detective (Exhibit D, pg. 4, Lines 8-22). She was briefed by the Police Officers that had been on the scene 20 minutes before she arrived (Exhibit A, Tr. pg. 44, Lines 10-11) as to their finding and the evidence. But, by the time Det. Woodard arrived, the scene and body had been compromised and a lot of exculpatory evidence had been destroyed. The first officers finding that surmised suicide saw the scene and body the way they were when the tragedy occurred. Nevertheless, Det. Woodard dismissed suicide because she had her mind made up it was a homicide (Exhibit D, pg. 30, Lines 10-16).

This Lead Detective's shoddy police procedures allowed the deceased's fingerprints and all the officer's, that handled the gun with their bare hands to be destroyed (Exhibit A, Tr. pg. 32, pg. 80, pg. 82, pg. 126, pg. 127, and pg. 129) after it was in police custody.

Just as important as fingerprints are the stippling as the Pathologist stated was on the deceased's fingers. But, one of the officers on the scene wiped away the stippling by doing the wrong test, leaving only tattooing on the back of the fingers.

No fingerprints were recovered from the gun (Exhibit A, Tr. pg. 252, Lines 7-10) but it was Det. Woodard that prepared and packaged the gun for the lab (Exhibit A, Tr. pg. 251, Lines 14-16).

Det. Woodard had "no specific evidence, direct evidence or physical evidence that Tony Broom was in the room at the time Charlotte was shot other than what you feel," (Exhibit A, Tr. pg. 255, lines 3-9).

Det. Woodard documented evidence after it had been compromised, *e.g.*, the gun and body had been moved when she saw them but she never stated this fact. She presented evidence of the body stating that is where it was when the fatal shot was received (Exhibit E – Det. Woodard's statement pg. 19, Lines 1-8) but she never saw the body before the EMT's moved it down so they could do their first-aid.

**DEATH INVESTIGATION REPORT**

Det. Woodard sent with the body a Death Investigation Report (Exhibit F) stating in part:

> "According to investigator, the victim and suspect were in Rm. # 539 just prior to shooting. . . .Date and time viewed by Investigator was 6-24-81 and time was 4:34 a.m. The Report was submitted by Det. Henry and Woodard dated 6-24-81 time 5:45a.m.

Det. Henry didn't arrive for 45 to 50 minutes after the first law enforcement personnel or about 4:58 a.m., and he stated there were 4 officers on the scene (Exhibit A, Tr. pg. 66, Lines 6-9). These were Officer Dennis, Thomas, and Quinn (Exhibit A, Tr. pg. 29, Lines 2-15) who arrived at 4:12 a.m. (Exhibit A, Tr. pg. 55, Lines 21-22). The fourth officer would have been Det. Woodard that had followed the first officers by over 20 minutes arriving at 4:30 a.m., 4:35 a.m. (Exhibit D, pg. 4, Lines 5-7). Hence, Det. Woodard's Death Investigation Report timed at 4:34 a.m.

The bullet wound to the head was the undisputed cause of death. However, the Fraud perpetrated in the death Report deprived the Medical Examiner from determining the true manner of death. Without the Fraudulent statement in the Death Report there is no evidence that the manner of death was a homicide. The valid evidence shows some type of a self-inflicted bizarre accident or suicide. The first officers on the scene surmised suicide, which must be believed <u>unless</u>

overcome by some evidence to the contrary. Officer Dennis stated only the victim was in the room (Exhibit A, Tr. pg. 32, Lines 20-21). There is no evidence of the criminal agency of another. This investigation is a Miscarriage of Justice.

**WINTER HAVEN POLICE DEPARTMENT**

Det. Woodard instructed that Broom be taken to the Winter Haven Police Department (W.H.P.D.), because she felt he needed to be talked to (Exhibit D, pg. 11, Lines 9-11).

Shortly after Broom was taken to the W.H.P.D., and placed in a holding cell, Det. Woodard arrived and had him take to a room for questioning (Exhibit D, pg. 13, Lines 18-23) stating, in pertinent part,

> Q: Tell me what happened. Did you advise him of his rights? Was he under arrest at that time?
>
> A: No. Well now, wait a minute. He had already said he didn't want to talk to us, and I told him, you know, **if he didn't want to talk to us, we would have to charge him because there were no witnesses.**" (emphasis added).

Det. Woodard was threatening Broom, if he remained silent she would charged him with the murder of his friend. He had already been illegally detained in the backseat of a patrol car at the scene for an hour and a half and for a half our in the holding cell. He had not been allowed to leave for 2 hours. Because Broom exercised his Federal Right to remain silent pursuant to the Sixth Amendment of the United States Constitution, Det. Woodard followed through with her threat and

charged Broom with first-degree murder.

There was no evidence and no witnesses to show the criminal agency of another. There was nothing showing a crime by anyone other than the deceased. Det. Woodard'' arrest and charge of murder is a clear Miscarriage of Justice, Denying Due Process of Law, and Denial of the Defendant's Right to Remain Silent by charging him with murder for doing so.

**LEAD DETECTIVES CONVERSATION WITH PATHOLOGIST**

The body had been transported to the morgue for the Pathologist-Dr. Youngs to perform an autopsy. Revealed through the Pathologist observation were gunpowder stippling residue on the backside of the deceased's index and middle fingers of her left hand. Dr. Young's the State's Expert had examined over 100 deaths from gunshot injuries (Exhibit A, Tr. pg. 115, Lines 2-5) and knows what gunshot stippling residue looks like, even the burn holes in the skin, that it tattooing.

Det. Woodard's conversation with the Medical Examiner (Exhibit D, pg. 22, Lines 11-13) in this case was on June 24th, 1981 at 10:00 a.m. Dr. Youngs stated he did not have an opinion as to what went on in that room (Exhibit D, pg. 22, Lines 14-16).

Dr. Youngs was the State's Expert but he was not called to the scene, nor was he called to the Grand Jury Hearing (Exhibit D, pg. 22, Line 25, and pg. 23,

Lines 1-2). The Expert did not see the scene or where the gun was originally located on the floor by the bed where it would have fallen from the hand of a self-inflicted gunshot injury to the head.

Broom was forced to pick the gun up from the floor and toss it onto the couch in order to get the police to come in and help him (Exhibit A, Tr. pg. 31, Lines 23-25, and pg. 32, Line 1-9).

Det. Woodard was unable to influence Dr. Youngs into stating it was a homicide even with her false statement in the Death Investigation Report. Fraud has been perpetrated throughout this case. (*See* Death Investigation Report, Exhibit F, *supra*.).

**WITNESS STATEMENTS**

Det. Woodard left Broom at the W.H.P.D., with instructions that he be transported to the Polk County Jail, and booked on a charge of First-Degree Murder. She then returned to the motel to try to find some evidence to substantiate her charge of murder.

The only witness to this tragedy were the Singhs staying in the adjacent room #537. Barbara Singh, gave her statement to Det. Woodard which 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 down real hard. . . .(emphasis added).

(Exhibit G – Singh's Statement to Det. Woodard – June 24th, 1981 at 10:05 a.m.).

The Singh's statement left Det. Woodard with no evidence of a crime, not

even prima facia evidence for the criminal agency of another. But Det. Woodard had already arrested, charged, and had Broom taken to the Polk County Jail to be booked for her Charge of First-Degree Murder. Furthering this Miscarriage of Justice.

**PROBABLE CAUSE AFFIDAVIT/ARREST REPORT**

A complaint is, of course, essential to initiate an action. But, the Lead Detective has nothing to justify her Arrest and Charge of First-Degree Murder. The physical evidence to the shooting is inconclusive (Exhibit D, pg. 30, Lines 1-3). Det. Woodard thought about it being a suicide or accident but she didn't think it was (Exhibit D, pg. 30, Lines 10-13). Det. Woodard didn't think it was suicide or an accident but she had no evidence it was murder. She just had her mind made up that it was a homicide (Exhibit D, pg. 30, Lines 14-16) and she had a personal dislike for Tony Broom (Exhibit D, pg. 7, Lines 19-22, *supra*.).

The evidence or lack of evidence shows a false arrest by the Lead Detective – no probable cause. With NO evidence and NO witnesses Det. Woodard committed Perjury swearing, in pertinent part,

> ". . .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. . . ."

Probable Cause Affidavit/Arrest Report (Exhibit H) swore to and signed by

Det. Woodard on June 24th, 1981 – Contrary to the Singh's statements (Exhibit G, *supra.*) clearly establishing Det. Woodard's Perjury of a government document to show a crime was committed.

**FIRST APPEARANCE HEARING**

The individual prosecutor has a duty "to learn of any favorable evidence known to the others acting on the government behalf in the case," including the police. Pattman vs. State 90 So. 3d. 794, 821 (Fla. 2011); Kyles vs. Whitley 514 U.S. 419, 437, 115 S. Ct. 1555, 1567, 131 L. Ed. 2d. 490 (1995).

The day after Broom's arrest, June 25th, 1981, at approximately 1:15 p.m. (Exhibit I – Order Following (*****) First Appearing Hearing) a First Appearance Hearing was held. Present at this hearing was ASA Hardy O. Pickard and Defense Counsel Richard Barest. However Broom, was locked in a holding cell outside the Courtroom. He never signed a waiver of his rights to be at this or any other Hearing. This is another federal violation denying him his Right to be Secure against Unreasonable Seizure and no valid probable cause pursuant to IV and XIV Amendments.

Without Broom being present violated Rule 3.180(a)(1), Fla. R. Crim. P. and Due Process of both the State and Federal Constitutions. Also, the Singhs were not at this First Appearance Hearing – Denying Broom his Federal Right to face his alleged accusers under the VI Amendment. There were no safeguards by the State

to establish the truth of the probable cause affidavit/arrest report. Such as the witnesses presence to substantiate the Statement in the Affidavit.

The prosecutor perpetrated Fraud on the Court by not having the Singhs/witnesses at the hearing. The ASA perpetrated Fraud on the court by utilizing Det. Woodard's perjured affidavit he knew to be such (Pitmann, *supra.*) to show probable cause at the First Appearance Hearing (Exhibit I, *supra.*) stating, in pertinent part,

> "Probable Cause to detain the Defendant is based upon sworn _______ complaint _______ affidavit **X** deposition or testimony under oath a copy of which is filed with the Clerk of the Court.

Fraud on State Courts cannot be the basis of Habeas Relief unless that Fraud amounts to the Denial of Federal Right. Sawyer vs. Collins 986 F. 2d. 1493, 1497 (5th Cir. 1993)(citing Bearfoot vs. Estelle 463 U.S. 880, 893, 103 S. Ct. 3383, 3394, 77 L. Ed. 2d. 1090 (1983).

Fraud on the Court embrace only the Fraud which defiles the Court itself, or is a Fraud perpetrated by Officers of the Court so that the Judicial Machinery cannot perform in the usual manner its impartial task of adjudging cases. In this case we have both Officers of the Court, *i.e.* the Detective and the Prosecutor perpetrated Fraud as Officers of the Court caused the Judicial Machinery to usurped Justice. The ASA knowingly used perjured evidence he knew to be such to commit Fraud on the Court by an Attorney. "(A prosecutor 'shall not institute

or cause to be instituted criminal charges when he knows or it is obvious that the charges are not substantiated by probable cause"). Gerstein vs. Pugh 420 U.S. 103, 121, n. 22, 95 S. Ct. 854, 867, n. 22, 43 L. Ed. 2d. 2d. 54 ____, n. 22 (1975).

Proof of the foregoing is established by Exhibit H, *supra.*, compared to Exhibit G, *supra.* Also see Exhibit J, *supra.*, Det. Woodard admitted to her Perjury in the Probable Cause Affidavit/Arrest Report.

**BOND REDUCTION HEARING**

A Bond Reduction Hearing (Exhibit J) was held June 25th, 1981 at 3:35 p.m., or just 2 hours and 20 minutes after the First Appearance Hearing ended. The Bond Reduction Hearing was held in front of 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 and Broom informed his Counsel that the "Affidavit" was a lie and Det. Woodard was a liar.

There could not have been an argument between Broom and the victim, because he was not in the room at the time of the tragedy. He had left the room and went to the Coke machine.

Upon Defense Counsel learning these facts for the first time, that is, the Affidavit contained Perjury of material statements that the witnesses did not state, to show the criminal agency of another. Once Det. 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: I didn't re-read it.

A: 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, *supra.*, pg. 30, Lines 1-17)

This evidence was not previously presented at Trial and in light of this new evidence shows, "it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt. 513 U.S. at 327, 115 S. Ct.

857" as cited in House vs. Bell, *supra.*, 126 S. Ct. at 2077.

However, because the Judge intervened and stated to Defense Counsel, "she's already said it was her error. Please move on Mr. Barest." 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 stopped from suppressing this Perjured Affidavit. Therefore, it was allowed and did move right along as if it was true and correct. As will be shown *infra*, and Denying Due Process of Law.

**DRAFTING THE INDICTMENT**

The State Attorney or his assistant drafts the Grand Jury Indictment pursuant to Chapter 905.19, Florida Statutes (1979). However, a prosecutor shall not institute or cause to be instituted, criminal charges when he knows it is obvious that the charges are not supported by Probable Cause. Gerstein, *supra.*

Nevertheless, the prosecutor utilized Det. Woodard's admitted perjured Probable Cause Affidavit/Arrest Report, he knew to be such, to draft a tainted indictment.

The admitted perjured Probable Cause Affidavit/Arrest Report (Exhibit H, *supra.*) and is the Fruit of a Poisonous Tree.

The ASA perpetrated Fraud on the Court when he utilized the admitted Perjured Affidavit to draft the Indictment. His Fraud was further perpetuated when

he utilized the tainted Indictment, knowing, or it was obvious that the charge in the Indictment is not supported by valid Probable Cause and is *void ab initio*, Denying Due Process of Law.

**GRAND JURY – INDICTMENT**

The State's drafted Indictment (Exhibit K) shows the Fruits of a Poisonous Tree being used and, 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. . . ."

The Sworn Affidavit by Det. Woodard of June 24th, 1981, was presented to the Grand Jury in order to persuade them into returning their True Bill on the State's drafter indictment (Exhibit K), *supra.*

The perjured Probable Cause Affidavit/Arrest Report (Exhibit H), *supra* was utilized to fraudulently establish the criminal agency of another, as there are no witness(es) or evidence by which to substantiate the perjured statements stating,

The admitted perjured statement (Exhibit H), *supra.* was utilized to influence the Grand Jury as seen in the State's Response dated January 20th, 1981, and the Clerk's filing date of February 7th, 1986, infra, (Exhibit M). The information as stated in the Indictment was drafted by the State Attorney's Office pursuant to s. 905.19, Florida Statutes (1979), and was returned as a True Bill

August 21st, 1981.

Proof that this Perjured Affidavit was presented to the Grand Jury in order to obtain their True Bill on the Indictment is seen in Exhibit M – "MOTION TO DISMISS DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF", **which was filed five (5) years after Defendant's conviction direct appeal and federal habeas corpus was denied**, which states, in pertinent part,

> **"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 of falsity of the allegations in Detective Woodard's Affidavit. . . ."**

In order for something to "**cease** to play a part" in something clearly establishes it was playing a part in obtaining the Indictment. Once the Indictment True Bill was obtained it because the Probable Cause and Det. Woodard's admitted Perjured Probable Cause Affidavit/Arrest Report **ceased** to be needed. Hence, it "**ceased** to play a part."

The ASA as Prosecutor never informed the Court, the Defense, and the Grand Jury of such, which he knew to be Perjury. As the United States Supreme Court held in it finding of Giglio vs. United States 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d. 104 (1972).

Det. Woodard's Perjured Probable Cause Affidavit/Arrest Report was no

longer needed because the Indictment then because the Probable Cause. Murray vs. State 3 So. 3d. 1108 at 1118 (Fla. 2009). However, Det. 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 informing the Court, opposing counsel and the grand jury." *Id.* (quoting Anderson vs. State 574 So. 2d. 87, 91 (Fla. 1991); *See also* Zeigler vs. Crosby 345 F. 3d. 1300, 1309 (11th Cir. 2003)(citing Anderson, *supra.*).

The Grand Jury Indictment (Exhibit K), *supra* was drafted from the "Fruit of a Poisonous Tree" *i.e.*, Det. Woodard's admitted Perjured Probable Cause Affidavit/Arrest Report (Exhibit H), *supra*, and would have had no material value with the Perjury removed in fact, there would be no probable cause. Therefore, the True Bill Indictment obtained from the fruit of the Poisonous Tree would be *void ab initio*.

The prosecutor's use of this True Bill Indictment is Fraud on the Court by an Attorney causing the Indictment to be *void ab initio*. Without a valid Indictment both the State and Federal Constitutions are violated.

Article I, Section 15, Florida Constitution, and Amendment V of the United States Constitution guarantee no person shall be held to answer or tried for a capital crime without a valid indictment. To do so violated the Due Process Article

I, Section 9, Florida Constitution, and Amendments V and XIV, Section 1 of the United States Constitution.

## HEARING HELD NOVEMBER 4th, 1981

A hearing held on November 4th, 1981 before Judge Clinton A. Curtis unequivocally states ASA Hardy O. Pickard, informed the Court that all notes and writings taken by the Grand Jurors and the Secretary (appointed by the Grand Jury Foreman Fla. State. § 905.13 (1979)) took minutes of the hearing which were all "taken down to the State Attorney's Office and put through a shredder" (Exhibit L, pg. 5, Lines 3-11). This destroyed exculpatory evidence that could and would have exonerated Broom. This was a violation of Brady vs. Maryland 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d. 215 (1963).

## JANUARY 20th, 1986 – RESPONSE TO POST-CONVICTION MOTION

It was over five (5) years after Broom's 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, *supra.*, stating, in pertinent part,

> "First, defendant was not prosecuted based upon Det. Woodard's affidavit. Defendant was prosecuted based upon an Indictment returned August 21st, 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 allegations in Det. Woodard's affidavit.

Even if Det. Woodard's Probable Cause Affidavit **ceased** to play any part in this case when the Indictment was returned, Due Process had been violated. Because Det. Woodard's Probable Cause Affidavit contained material statements that were utilized by the Prosecutor to influence the Grand Jury into returning a True Bill. Said affidavit had already been admitted to being Perjury by its Affiant. "Florida Law only requires setting aside the Indictment if the Perjury Testimony was 'false in any material respect that would have effected the Indictment." Anderson vs. State 574 So. 2d. 87, 91 (Fla. 1991)(cited in Zeigler vs. Crosby 345 F. 3d. 1300, 1309 (11th Cir. 2003).

C. Ground three: Court's Lack of Subject Matter Jurisdiction

Supporting FACTS (tell your story briefly without citing cases or law): The Lead Detective admitted committing perjury in the arresting document which the ASA knew of such but utilized said document knowing if to be perjury in order to overreach the Grand Jurors with solid perjured documentation in order for them to return their true bill never informing the Grand Jury, the Court, and the Defense of such Perjury known by the ASA, and the Court lacked Subject Matter Jurisdiction.

Was this claim raised in a prior federal petition, application, or motion?
Yes ( ) No (**X**) Not that has been addressed.

Does this claim rely on a "new rule of law?" Yes ( ) No (**X**)
If "yes," state the new rule of law (give case name and citation):
Not Applicable.

Does this claim rely on "newly discovered evidence?" Yes (**X**) No ( )

If "yes," briefly state the newly discovered evidence, and why it was not previously available to you: this is physical or scientific evidence derived from the facts established from Ground Two and the FACTS put forth herein as will be shown on the CONTINUED pages 31 through 41.

## GROUND THREE

**TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO ENTER JUDGMENT IN THIS CAUSE BASED UPON A PREJUDICIAL / FRAUDULENT INDICTMENT OBTAINED THROUGH THE KNOWING USE OF PERJURED EVIDENCE**

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* Fla. Const. Art. I, § 15(a); U.S. Const. Amend. V. Accordingly, jurisdiction of a court to try an accused defendant is not invoked and does not exist unless the State obtains a valid Indictment. *See* State vs. Anderson 537 So. 2d. 1373, 1374 (Fla. 1989)(holding "jurisdiction to try an accused does not exist under Article I, Section 15 of the Florida Constitution unless there is an extant . . . indictment or presentment filed by the State."); Sadler vs. State 949 So. 2d. 303, 305 (Fla. 5th DCA 2007)(held that in the absence of an indictment or information formally charging defendant with a crime at the time the jury, was sworn and empanelled, the Trial Court had no jurisdiction to try the defendant of these charges); Colson vs. State 717 So. 2d. 554, 555 (Fla. 4th DCA 1998)(arguing with Anderson, but distinguishing it where there was only a "technical defect"); L.C. vs. State 750 So. 2d. 160, 161 (Fla. 3rd DCA 2000)(agreeing with Sadler); Caves vs. State 303 So. 2d. 658, 659 (Fla. 2nd DCA 1974)(holding that "[a] criminal prosecution presupposes the existence of a valid accusation charging a crime against

the defendant . . .such an accusation. . . .is an essential requisite of jurisdiction which cannot be waived"); State vs. Winter 781 So. 2d. 1111, 1114 (Fla. 1st DCA 2001)(agreeing with Anderson). This prerequisite is of such magnitude, that the lack of jurisdiction may be raised at ANY time, and never be waived by the Defendant. *See* United States vs. Sharpe 438 F. 3d. 1257, 1258 (11th Cir. 2006)(court may hear a claim that the indictment fails to invoke the court's jurisdiction at **any time**)(emphasis added); Caves vs. State 303 So. 2d. at 659 (same); L.L.H. vs. State 873 So. 2d. 1252, 1254 (Fla. 5th DCA 2004); Booker vs. State 497 So. 2d. 957 (Fla. 1st DCA 1986); *See also* Fla. R. Crim. P. 3.610(b)(2007)(requiring the court to grant a motion to arrest judgment when the court is without jurisdiction of the cause). Thus as the state and federal courts have consistently held where there is no valid charging document(s), the trial court lacks jurisdiction.

In the present case, it is defendant's unwavering contention that the State of Florida engaged in willful misconduct when it obtained an Indictment charging defendant with a capital crime using false and improper evidence during its presentment. Specifically, the use of false and/or perjured affidavit. As will be shown below, the false and/or perjured affidavit in question was, the **only** evidence presented to the Grand Jury, that could have supported a determination of probable cause regardless of the length of time which has passed, which must be dismissed.

One of this country's proudest boasts is its observance that the untainted administration of justice is one of the most cherished aspects of our institution of government. *See* United States vs. DiBernardo 552 F. Supp. 1315, 1324 (S.D. Fla. 1982). In order to adequately protect 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 of prosecuting attorneys.

The grand jury's historic rule " 'has to serve as a protective bulwark standing solidly between the ordinary citizen and the overzealous prosecutor.' " United States vs. Pabian 704 F. 2d. 1533, 1535 (11th Cir. 1983)(quoting United States vs. Dionisio 410 U.S. 1, 17 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 prosecutions." United States vs. Huder 732 F. 2d. 841, 843 (11th Cir. 1984). *See also* In re Report of Grand Jury 11 So. 2d. 316 (Fla. 1943).

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 makes clear that prosecutors are held to the highest standard because of their unique powers and responsibilities. The Florida Bar vs. Cox 794 So. 2d. 1278, 1285 (Fla. 2001). Attorneys representing the government are

burdened both 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 of fairness" to defendant. *See* United States vs. Campo 419 F. 3d, 1219, 1262 (11th Cir.2005)(quoting United States vs. 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 vs. DiBernardo 552 F. Supp. At 1328. Such an obligation includes a "duty to refrain from improper methods calculated to product a wrongful conviction." United States vs. Crutchfield 26 F. 3d. 1098, 1103 (11th Cir. 1994)(internal citation omitted). As the United States Supreme Court so eloquently stated more than 75 years ago, the duties of the prosecutor, as representative:

> ". . . .sovereignty whose obligation is to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore in a criminal prosecutions 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 every legitimate means to bring about a just one."

Berger vs. United States 295 U.S. 78, 88, 55 S. Ct. 629, 633, 79 L. Ed. 1314 (1935). Accordingly, a prosecutor's reliance on a legal position despite "knowing full well" that it is wrong is "reprehensible" in light of his duty "by virtue of his oath of office." United States vs. Masters 118 F. 3d. 1524, 1525 at n. 4 (11th Cir.

1997)(per curiam); Cf. DeFreitas vs. State 701 So. 2d. 593, 600 (Fla. 4th DCA 1997)(prosecutor must seek justice "with the circumspection and dignity the occasion calls for").

Keeping the Grand Jury's function and the prosecuting attorney's duties and obligations in mind, it is easy to understand that, "[n]othing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp vs. Ohio 367 U.S. 643, 659, 81 S. Ct. 1684, 1694, _____ L. Ed. 2d. ____ (1961). When the "government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law onto himself; it invites anarchy." Olmstead vs. United States 277 U.S. 438, 485, 48 S. Ct. 564, 575, 72 L. Ed. 944 (1928). Accordingly, when the government ignores or fails in its duties and obligations, despite the protection of the Grand Jury, our revered system must fail, usually, as is the case here, to the detriment of the defendant.

On June 24th, 1981, law enforcement was summoned, at Broom's insistence, to the Holiday Inn in Winter Haven, Florida, in response to an alleged gunshot injury. Upon their arrival, law enforcement found Broom attempting to perform life-saving measures on the victim. Broom's efforts ultimately failed and to his great dismay, the young woman passed away.[2]

[2] It is important to note that the Polk County Medical Examiner was never able to determine whether the death was an accident, suicide, or homicide, nor was he called to the Grand Jury. It is also equally important to note that Broom was tested and was found to have NO gunshot residue stippling on his hands. Also, there is no evidence that Broom was in that room at the time of the fatal gunshot injury.

Additionally, no eyewitnesses were ever located and the only witness – other motel patrons – heard nothing prior to a loud noise. Even so, Broom was taken into custody without any evidence other than Broom's presence in the motel room **after** the "loud noise," and the lead detective admitted her personal dislike of him, Broom was charged with First-Degree Capital Murder. Detective Woodard swore to her Probable Cause Affidavit/Arrest Report and immediately arrested Broom with no proof of the criminal agency of another.

Thereafter, on June 25th, 1981, a first appearance hearing was held **without** Broom's presence and based solely on Detective Woodard's affidavit, the Court bound Defendant over for Trial. Evidence wasn't filed with the Clerk of the Court until after the hearing was over as seen by the time and date stamp on the probable cause affidavit/arrest report. Later that same day, a bond hearing was held in the presence of Broom, Defense Counsel, ASA Hardy O. Pickard, and Detective Woodard. During Broom's bond hearing, it became known, through the sworn testimony of Det. Woodard, that her affidavit of probable cause was false and not based on a true and correct rendering of other motel patron's statements.

Subsequently, ASA Pickard convened a Grand Jury to hear Broom's case on August 21st, 1981.[3] The Grand Jury ultimately returned a "True Bill" formally

[3] The Court should be aware that any photographs of the alleged crime scene were NOT representation of the scene, but purposely staged to reproduce what Det. Woodard wanted and needed the scene to look like prior to her arrival so it would show the criminal agency of another.

charging Broom with First-Degree Murder.

Broom's Defense Counsel filed numerous Motions to glean some understanding of what took place during the Grand Jury proceedings. Specifically, Defendant requested a copy of the list of witnesses that testified before Grand Jury and for a transcript of the proceedings or the notes of the Grand Jury. The Trial Court granted defendant's request for a witness list, however, the State failed or refused to ever produce the list of its witnesses. As to the transcript notes of the Grand Jury proceedings, the State conveniently failed to have proceedings transcribed and, most disturbing, destroyed the Grand Jury's notes and minutes by having them put through a shredder on a daily basis. However, through the deposition of Det. Woodard, Defendant 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.

Years after Broom's wrongful conviction and after his Direct Appeal and Federal Habeas Corpus had been denied, he became aware of the fact that the State, through ASA Pickard, presented the admittedly Perjured Affidavit of Probable Cause to the Grand Jury for its consideration when the State on January 20th, 1986 or the Court's filing date of February 7th, 1986 (Exhibit M), *supra* made an "off-

handed" comment concerning the applicability of the Probable Cause Affidavit in securing the Indictment. The State's comment shows that the State used the Affidavit, in lieu of live testimony when it stated that the Probable Cause Affidavit **ceased** to play a role in the case once the Grand Jury returned its "True Bill" against the Defendant. These findings based on the State's comment, is not only logical but probable given the extent to which the State went to prevent Broom from gleaning any information concerning the evidence presented to the Grand Jury and Det. Woodard's deposition testimony concerning who testified on behalf of the State. 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 Perjured Probable Cause Affidavit requiring the dismissal of the Indictment when the State failed to inform the Court, the Grand Jury, and the Defense of its use of said Perjured Affidavit, when the State knew it to be Perjury.

The Standard for dismissing an Indictment based on Prosecutorial Misconduct has then been articulated as to whether the misconduct "subsequently influenced the Grand Jury's decision to Indict," or whether the Court has "grave doubt that the [grand jury's] decision to Indict was free from the substantial influence of [the prosecutor's misconduct]." Bank of Nova Scotia vs. United States 487 U.S. 250, 256, 108 S. Ct. 2369, 2374, 101 L. Ed. 2d. 228 (1988); *See also* United States vs. Hyder 732 F. 2d. 841, 845 (11th Cir. 1984)(stating that an Indictment should be

dismissed where knowing perjury, relating to a material matter, has been presented to the Jury); United States vs. Basutro 497 F. 2d. 781, 784 (9th Cir 1974)(conviction reversed because prosecutor informed Defense Counsel of perjured Grand Jury Testimony but did not notify the Court or Grand Jury); Zeigler vs. Crosby 345 F. 3d. 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 effected the Indictment"); Anderson vs. State 574 So. 2d. 87, 91 (Fla. 1991)(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).

"Since facts disclosed in an affidavit attached to the original Motion for New Trial and accepted as true were basically false and such false statements constituted fraud practiced on the Court, the Court has authority to entertain a Petition for Rehearing and Vacate a New Trial Order." State vs. Crew 477 So. 2d. 984 (Fla. 1985). And "A final order procured by fraudulent testimony [evidence] against a defendant in a criminal case is deserving of no protection and due process requires that he be given every opportunity to expose the fraud and obtain relief from it." State vs. Glover 564 So. 2d. 191, 193 (Fla. 5th DCA 1990). There is no difference in evidence given before a Grand Jury than before a petit jury. Basatro, *supra.* at 786.

Therefore, even though the defendant has the protection of a Grand Jury to determine probable cause to Indict, that protection was circumvented when ASA Pickard knowingly and willfully committed fraud by presenting false/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 protections of the grand Jury have been so compromised as to render the proceedings fundamentally unfair." Bank of Nova Scotia 487 U.S. at 256-57, 108 S. Ct. 2374; Cf. United States vs. Axanhos 135 F. 3d. 723, 727 (11th Cir. 1998)(grand jury proceedings forged documents to grand jury because **government was unaware of forgery** and other directly implicated defendant)(emphasis added). Accordingly, the Indictment must be dismissed and the defendant immediately discharged since without the Indictment, the Court lacked subject matter jurisdiction to enter judgement. This is he only remedy that will preserve the untainted Administration of Justice.

D. Ground four: The State perpetrated fraud misstating the issue(s) of the Lower Court's Granting Petition for Writ of Habeas Corpus

Supporting FACTS (tell your story briefly without citing cases or law): Circuit Court Judge Luten made an independent finding from the record issued a Writ of Habeas Corpus for Due Process of Law violations.

Was this claim raised in a prior federal petition, application, or motion?
Yes ( ) No (**X**) Not that has been addressed.

Does this claim rely on a "new rule of law?" Yes ( ) No (**X**)
If "yes," state the new rule of law (give case name and citation):
Not Applicable.

Does this claim rely on "newly discovered evidence?" Yes ( ) No (**X**)

If "yes," briefly state the newly discovered evidence, and why it was not previously available to you: ______________________________

## GROUND FOUR

**THE BEDROCK OF ANGLO-AMERICAN JURISPRUDENCE "IS TO SEEK JUSTICE." HOWEVER, THE STATE PERPETRATED FRAUD INTENTIONALLY MISSTATING THE ISSUES(S) THE LOWER COURT GRANTED HABEAS CORPUS RELIEF ON**

The ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS (Exhibit N) clearly states on page two "Broom's argument":

> "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 (emphasis added).

Judge Claire K. Luten, for the Sixth Judicial Circuit Court, Pinellas County had jurisdiction over the facility to address Broom's illegal detention because said facility is in Pinellas County and under the Sixth Circuit Court's jurisdiction, where he was being detained.

Judge Luten's Court clearly understood and addressed Broom's argument, which established that the Court that entered the Order was without jurisdiction to

do so and/or the Order is void or illegal. *See* Alachua Regional Detention Center vs. T.O. 684 So. 2d. 814 (Fla. 1996).

The District Court never addressed Broom's issues raised in his Habeas Corpus granted by the Luten's Court. In fact, the District Court misstated the issue(s) granted by the Sixth Judicial Circuit Court. The District Court held that Habeas Corpus is not available to attack the judgment and sentence. State vs. Broom 523 So. 2d. 639 (Fla. 2nd DCA 1988). As clearly seen in Judge Luten's Order Granting Broom Habeas (Exhibit N, *supra.*) on page 2 "Broom's Argument" does not attack his judgment and/or sentence.

Judge Luten's Order further states, "[t]hat it is not considering the issue of Broom's actual guilt or innocence in this case. It is only considering whether, when taken as a whole, the totality of the circumstances indicates that the conviction was based upon fundamental deprivation of due process rights." When the Court that entered the Order (as in this cause) is without jurisdiction to so or the Order is void or illegal (as in this cause), Due Process is violated. Hence, Judge Luten's Order Granting said document.

Judge Luten's ORDER examined each individual step in the process towards the ultimate conviction (not the conviction itself). Starting with "The Probable Cause Affidavit": is proven by the witness statements not to be true and the affiant herself admits the witnesses did not state what she swore to in the Probable Cause

Affidavit. "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.

This shows the only probable cause was the perjured affidavit sworn to by the Lead Detective. Due Process was denied when the State utilized this perjured affidavit at the First Appearance Hearing and then before the Grand Jury never informing them, the Court, and the Defense of the Perjury which the Prosecutor knew to be such.

Even though the ASA stated at the November 4th, 1981 hearing, *supra*. He was ordered to give the Defense a copy of the witnesses that testified before the Grand Jury, but was never given. However, Det. Woodard's Deposition gave the Defense some idea who was present. Det. Woodard confirms that the Medical Examiner was not called to testify before the Grand Jury. Being the ASA never gave Defense the list of people that testified before the grand Jury, Det. Woodard's deposition stating who testified before the Grand Jury had to be used. As such, a review of the Trial Testimony of these individuals it appears that none had actual knowledge of the alleged 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.

Here again nothing established Probable Cause or the criminal agency of

another.

Then Judge Luten's Order addresses the Investigative Stage finding 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. Broom was forced to pick up the gun and toss it onto the sofa in order to get the Police to come in and help. Broom had picked the gun up by its barrel but the officers on the scene handled it with their bare hands and there were several officers that did this destroying any of the deceased's prints on the gun. Also, the neutron vs. paraffin test were done in reverse order destroying the stippling on the deceased's fingers of her left hand leaving only the burn holes for the Pathologist who was an Expert and found the burn holes on the deceased's left hand were stippling residue remains or tattooing (burn holes).

Judge Luten's Order then addresses the Court's perspective. Clearly stating that Habeas Corpus if for Constitutional Errors resulting in a deprivation of Due Process Rights. This Order further states that the Court was overwhelmed with the totality of the Due Process circumstances. Going on to state that Criminal Justice is designed with safeguards to correct mistakes, or errors, or Due Process violation. This did not happen in this case.

This Habeas Order also correctly states in our system of lack of Probable Cause

can be corrected by submitting the issue to a Grand Jury for an Independent and Informed determination of the case. The Grand Jury becomes an "independent instrument. . . .to uphold the liberty of the people and act as a buffer between them and the crown." Nor is it the job of the prosecutor to present evidence which would negate guilt, as guilt or innocence is not the function of the Grand Jury. Hearsay and other inadmissible evidence may be presented to a grand Jury for its consideration and in fact, an Indictment may be valid even it is based solely on Hearsay.

But as the Court continued to explain in Judge Luten's Order, the Grand Jury had no opportunity to make an informed and objective evaluation as to whether an Indictment for First-Degree Murder should lie. Also, the State used perjured evidence never informing the Court, the Grand Jury, and the Defense.

The Order then addressed the ultimate end-all and cure-all in theory is the Jury Trial. Here the Order only states, "There is no way of knowing what prejudice may have occurred as a result of the matters previously discussed." Judge Luten's Order closes with,

> "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 feeling affects Officer Woodard, whatever noble reasons directed the action of the state, whatever was being sought by anyone. . . .justice was not found."

Nowhere in Judge Luten's Habeas ORDER has she addressed the judgment, conviction, or sentencing, as the District Court stated in State vs. Broom 523 So. 2d. 639 (Fla. 2nd DCA 1988). The foregoing clearly shows the State perpetrated Fraud by intentionally misstating Judge Luten's Order granting Habeas Relief, denying Due Process of Law.

There has been NO safeguards in this cause and Due Process had been thwarted by the District Court's egregious findings in State vs. Broom, *supra*.

In the Interest of Justice this unlawful and illegal conviction should be reversed and dismissed with an Order immediately discharging Broom, and any other relief that this Court finds just and proper.

D. Ground five: Florida Supreme Court violated Due Process and Equal Protection by erroneously ruling on the Issue(s) Granted in the Writ of Habeas Corpus

Supporting FACTS (tell your story briefly without citing cases or law): the sole function of habeas corpus in a criminal case is the granting relief from unlawful imprisonment or custody.

Was this claim raised in a prior federal petition, application, or motion?
Yes ( ) No (**X**)

Does this claim rely on a "new rule of law?" Yes ( ) No (**X**)
If "yes," state the new rule of law (give case name and citation):
Not Applicable.

Does this claim rely on "newly discovered evidence?" Yes ( ) No (**X**)

If "yes," briefly state the newly discovered evidence, and why it was not previously available to you: ______________________________

______________________________

## GROUND FIVE

**FLORIDA SUPREME COURT VIOLATED DUE PROCESS AND EQUAL PROTECTION WHEN IT EXPRESSLY RETAINED JURISDICTION ON A HABEAS CORPUS PETITION TO PURSUE SANCTIONS**

Florida Constitution Article I, Section 21 states,

> "The Courts shall be open to every person for redress of any injury and justice shall be administered without Sale, Denial, or Delay.

and;

Our United States Constitution, Amendment I states, in pertinent part,

> "Congress shall make. . . .and to petition the Government for a redress of grievances."

Polston, C.J., and Pariente, Lewis, Quince, Labarge, and Perry, J.J. and the Florida Supreme Court Clerk, Thomas D. Hall, committed malfeasance in Office in denying Due Process and Equal Protection by Florida Supreme Court Justices, and Broom shows the following:

Ground five is being filed with the factual information/exhibits attached hereto as Exhibits O, P, Q, and R. Clearly establishing that this Ground Five is obviously not unfounded and/or frivolous and is being submitted under oath, indicating said Justices and Clerk are guilty of Malfeasance in Office denying Due Process and Equal Protection of the law, and is guilty of willful or persistent failure to perform Judicial Duties with conduct unbecoming members of the judiciary, demonstrating a present

unfitness to hold Office and/or Public Trust. That is, said Justices and Clerk departed from the essential requirements of law, etc, as shown by the following.

On November 6th, 2011, Petitioner Broom, filed with the Florida Supreme Court an ALL WRIT Petition. However, on December 12th, 2011 (Exhibit O) the Court held that it would treat the ALL WRIT PETITION as an Original Petition for Writ of Habeas Corpus. As seen by the Florida Supreme Court, "*Per Curiam*" at the top of page number 2 of Exhibit P, which states, in pertinent part, "In disposing of the petition in this case, we expressly retained jurisdiction to pursue possible sanctions. . . ." As such, the Court not only had the obligation but the duty to address the merits of the issue(s) raised in the Habeas Corpus. As a matter of law, the Court shall address the legality of the unlawful present detention or it departs from the essential requirement of law, a Miscarriage of Justice. By doing otherwise the aforementioned Justice denied Due Process and Equal Protection of the Law of both the State and Federal Constitutions, a Miscarriage of Justice by Malfeasance in Office.

The aforementioned Justices have misplaced their function in Habeas Corpus. In fact, the only function of Habeas Corpus for the Court is to test the legality of the person's present detention or custody. McCrae vs. Wainwright 439 So. 2d. 864 (Fla. 1983) states at 870:

> "The prerogative writ of habeas corpus is to inquire into the legality of a person's present detention. Sneed vs. Mayo 69 So. 2d. 654 (Fla. 1954).

Habeas Corpus is not for retaining jurisdiction, so sanctions can be imposed. This is an abuse of the Habeas Corpus Writ by the aforementioned Justices and Order/Sanctions. This is Malfeasance in Office and the Courts ruling must be dismissed as frivolous, or vacate said Order as null and void in the Interests of Justice and Judicial Fairness.

Upon receiving the Court's *Per Curiam* dated May 3rd, 2012, Petitioner filed a timely Motion for Rehearing (Exhibit Q, with exhibits) dated May 14th, 2012. Clearly stating Petitioner was never given an opportunity to respond. This shows a departure from the essential requirements of law by the Court. Rehearing was denied (Exhibit R) and is a furtherance Malfeasance in Office. Said Order must be reversed and stricken as frivolous ruling by the Court.

The aforementioned Justices failed to adhere to the fact,

> "The sole function of habeas corpus is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." Pierre vs United States 525 F. 2d. 933, 936 (1976)

*See also* Jones vs. Florida Parole Com'n 48 So. 3d. 704 (Fla. 2010); and Martin vs. Florida Parole Com'n 951 So. 2d. 84 (Fla. 1st DCA 2007) *review dismissed* 954 So. 2d. 675 (Fla. 2007) clearly stating,

> "The fundamental characteristic of habeas corpus is an assertion of continued unlawful detention."

It should also be noted that the Standard of Review for imposing sanctions is

"Abuse of Discretion." However, an Abuse of Discretion goes both ways *i.e.*, it is a double-edged sword as depicted in Lady Justice's right hand. For it is just as much if not more, an Abuse of Discretion for the Florida Supreme Court or any court to impose sanctions using the filing of Habeas Corpus. Habeas Corpus mandates a court to address the unlawful detention, not impose sanctions. However, in all filing Petitioner has filed, NO Court (other that the Luten's Court in 1986) has address Broom's unlawful detention per his Habeas Petitions. All courts have an obligation to address unlawful detention per Habeas Corpus. NOT rubber stamp DENIED of DISMISSED this thwart justice.

Broom's unlawful detention is based on "State Action" of Perjury, use and perpetration of fraud, fraudulent documents, etc. These actions denied Due Process of Law with the State never informing the grand Jury, the Court, and the Defense of what the State knows to be such, violating Giglio vs. United States 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d. 104 (1972).

The power bestowed upon the Courts by the Constitution(s) cannot be enlarged or abridged by the Legislature. State ex rel Buckwalter vs. City of Lakeland 112 Fla. 200, 150 So. 508, 512 (1933)(citing State ex rel Robinson vs. Durand 36 Utah 93, 104 P. 760 (1908). Due to the Constitution and quasi-criminal nature of Habeas Corpus proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the

validity of a detention. The Legislature cannot impose limitations on Habeas Corpus petitions. Any application to a Habeas Petition by the Legislative Courts, or rules violate the Doctrine of Separation of Powers. The feverently guarded right to Petition for Habeas Corpus is absolutely clear that, "[a]lthough habeas corpus petitions are technically civil actions, they are unlike other traditional civil actions."

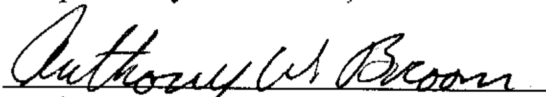
The aforementioned Justices' ruling in this cause is clearly Malfeasance in Office. The aforementioned Justices' said Ruling/Order must be reversed/dismissed in the Interest of Justice. To correct this Miscarriage of Justice some Court must rule on the merits of Broom's unlawful detention as a Matter of Law and Fairness. No Court has a right/authority to turn a blind eye or a deaf ear when Justice is being Denied and a person is unlawfully detained in violation of the Constitution(s).

"Liberty has a price the protected will never know." But as a disabled combat Vietnam Veteran, awarded "The Distinguished Flying Cross", baptized under fire, I know that price for Liberty/Freedom. The Miscarriage of Justice in this case needs to be corrected.

This Court has the inherent authority and power to Right a Wrong - Justice cries for a Fair Hearing and Redress of the issues in this case. (*See* Exhibit N, *supra*. - Luten's Order) and any other relief that this Court deems just and proper.

**WHEREFORE**, based upon the aforementioned arguments, grounds and authorities, Petitioner, Anthony W. Broom request that this Court utilize its inherent power address the merits raised in the foregoing grounds dismiss the Indictment, and Order his immediate release from illegal confinement, or in the alternation direct the lower District Court to grant such relief and other relief the court deems just and proper.

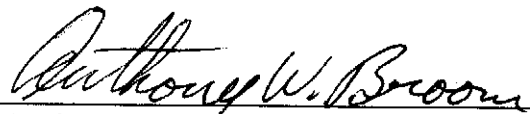
Respectfully submitted,



Anthony Broom, *in propia persona*
081443/E2108L - Petitioner
Mayo Correctional Institution Annex
8784 West U.S. Hwy 27
Mayo, FL 32066

## OATH/VERIFICATION

**I HEREBY CERTIFY** that I am the Petitioner in the above pleading and have read the foregoing document and that the facts stated therein are true and correct.



Anthony Broom, *in propia persona*
081443 - Petitioner

## PRO SE LITIGANT STATEMENT

The Petitioner, **ANTHONY W. BROOM**, submits this Petition as a *pro se* litigant prisoner, unskilled in the science of law and wishes his Petition and Entreaties to The Honorable Court to be received as such. The Petitioner moves this Honorable

Court not to let, or permit form override substance, or procedural technicalities to defeat fairness, and justice in that The Honorable Court treats this Petition as whatever vehicle needed for relief that The Honorable Court deems just and proper.

The Court in Hall vs. Bellmon 935 F. 2d. 1106 (10th Cir. 1991) explained that:

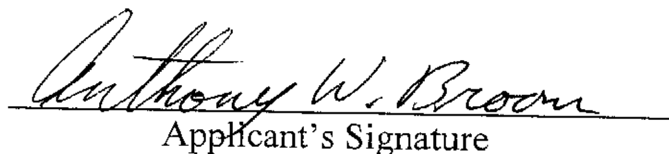
> "A *pro se* litigants pleadings are to be construed liberally and held to a less stringent standard drafted by lawyers . . . . if a Court can reasonably read the pleading to state a valid claim on which the Litigant could prevail, it should do so despite the Appellant's failure to cite legal authority, his confusion of various legal theories, his poor syntax, and sentence construction, or his unfamiliarity with pleading requirements." (citations omitted) (emphasis added).

*See Also* Haines vs. Kerner 404 U.S. 519 (1972)

## PROOF OF SERVICE

Applicant must send a copy of this application and all attachments to the attorney general of the state in which applicant was convicted.

I certify that on July 15, 2013, I mailed a copy of this Application* and all attachments to Office of the Attorney General – Pamela Jo Bondi at the following address: Criminal Division, PL-01, The Capitol, Tallahassee, FL. 32399-1050.



Applicant's Signature

* Pursuant to Fed. R. App. P. 25(a), "Papers filed by an inmate confined in an institution are timely filed if deposited in the institution's internal mail system on or before the last day of filing. Timely filing papers by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid.

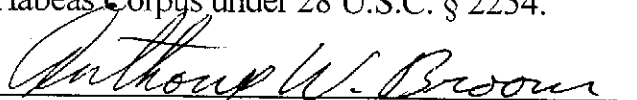
## PROOF OF SERVICE

**I, ANTHONY W. BROOM**, certify if this Court issues a show cause or order me to, I will mail by U.S. Mail, if more copies are needed by this Court please notify Petitioner and more copies will be furnished by U.S. Mail.

Please find enclosed 4 copies (54 pages each) of this Application for Leave to File a Second or Successive Habeas Corpus Petition, and 1 copy (104 pages) of Exhibit A-R and a copy of all the foregoing to: The Office of the Attorney General of the State of Florida, Criminal Division, PL-01, The Capitol, Tallahassee, FL. 32399-1050.

Anthony Broom, *in propia persona*
081443/E2108L - Petitioner
Mayo Correctional Institution Annex
8784 West U.S. Hwy 27
Mayo, FL 32066

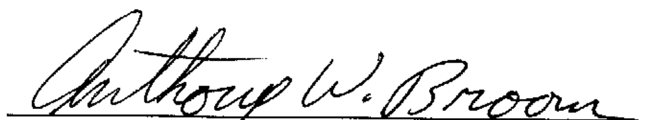
Wherefore, applicant prays that the United States District Court of Appeals for the Eleventh Circuit grant and Order Authorizing the district Court to Consider applicant's Second or Successive Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.



Applicant's Signature

I declare under Penalty of Perjury that my answers to all the questions in this Application are true and correct.

Executed on July 15, 2013
[date]



Applicant's Signature