

reluctantly agreed after both Smith and the State Attorneys agent told her that if she didnt both her and her kids would be in danger. (PCR 8146-48)

Because of what ~~they~~ told her, during that time Hanzel testified that "I lived in constant fear. Every night I would lie on the floor in my children's room unable to sleep!" Hanzel testified that only then did she agree to provide the deliberately false testimony to corroborate Frances Smith's otherwise unsupported testimony. (PCR 5985-86, PCR 8143-47) See also, attached Appendix B.

Hanzel also specifically testified that she had asked Frances Smith if what Frances was saying is what really happened and Appellant actually did kill the two people, and that Frances Smith admitted to her that it was not true. (PCR 8143-44, 8252-55) (PCR 5984-86) ("When I asked Frances if that is what really happened she told me that she didnt really know what happened outside, but that (Appellant) had told her the guy went nuts and (Appellant) had to hit him")

Appellant respectfully interjects at this point that the standard of law on recantation of a material witness is that if the Court finds the recantation is supported by the evidence, a new trial must be granted if the change of testimony undermines confidence in the verdict, and establishes a reasonable belief that in light of the change of testimony, the outcome would had been different.

It must be strenuously emphasized that Deborah Hanzel is not only recanting her own material testimony, but also providing substantial new evidence that key witness Frances Smith had coerced her to provide that false testimony - and that Frances Smith admitted to her that Smith's story of premeditated murder was not true, and that in fact the only thing Smith actually knew was that prior to trial Appellant told Smith that Moore/Lamberson "went nuts" and that Appellant "had to hit" Moore/Lamberson in self defense. (PCR 8143-44, 8152-55, 5984-86)

Certainly if Hanzel had provided this testimony that she was coerced to provide false testimony and that key witness Frances Smith admitted to her that Smith was lying herself, and that in truth Appellant had told Smith that Appellant acted in self defense when Moore/Lamberson "went nuts", then the jury would have had substantial reasonable doubt as to the credibility of Frances Smith's testimony - which was the very foundation of the states wholly circumstantial case, and the jury would had been legally precluded from finding Appellant guilty.

To support Deborah Hanzel's testimony Appellants counsel called upon William MacMillian, a records custodian for Verizon (communication's telephone company), and introduced into evidence the 1983-84 phone records that substantiate Hanzel's claims that her and Frances Smith were in communication during the relevant time. Further, these records conclusively show that contrary to Hanzel's trial testimony, but consistent with Hanzel's current testimony, she did not receive any "collect" phone calls from Appellant - thus substantiating Hanzel's current testimony that her trial testimony claiming Appellant called her collect, and admitted to killing the man for the car could not be true. (PCR 8308-17, 8316) (V42/8312-15)

Appellant (Lambrix) did then personally take the witness stand and corroborated Ms. Hanzel's testimony by testifying that Appellant did not tell Hanzel that Appellant killed anyone, and that consistent with Hanzel's current testimony, Appellant did tell Frances Smith that Appellant acted in involuntary self defense when Appellant came upon Moore/Lamberson violently assaulting Bryant, and when Appellant attempted to compel him to stop this assault, Moore/Lamberson "went nuts" and came at Appellant, forcing Appellant to swing at Moore/Lamberson in self defense. (PCR 8319-50) (V42/8319-52)

Incredibly, in the final order denying relief, See Order, PCR 7881-83, the lower court factually found that Appellant did not testify and that the state did not have an opportunity to cross-examine Appellant. This factual finding is directly and conclusively in contradiction to the record, as Appellant clearly did personally testify, and the state did cross-examine Appellant. (PCR 8317-50) (V42/8319-52)

Examination of the actual record shows that Appellant did provide comprehensive testimony of what actually transpired outside resulting in the deaths of Moore/Lamberson and Bryant, and that upon cross-examination the state did not and could not provide any evidence to dispute, or otherwise discredit, Appellants testimony that Appellant acted in involuntary self defense. PCR 8339-50, V42/8341-52)

In fact, the only evidence the state did produce and present to challenge, or otherwise refute, the testimony provided by Deborah Hanzel, William MacMillian, and Appellant was the testimony of Frances Smith - which the lower court subsequently found was NOT CREDIBLE. (PCR 7870-85, V40/7881-83). Thus, the state provided virtually no credible evidence to dispute Deborah Hanzel's testimony or the evidence Appellant presented to support Hanzel's testimony.

In the final order denying relief on this claim the lower court stated only that "the court stands by its ruling of July 8, 2003 and nothing the court has heard since has caused it to reach a contrary conclusion" (PCR 2883). At no time did the lower court even attempt to adequately weigh the credibility of the testimony and evidence provided AFTER that July 8, 2003 order was rendered as it was not until February 9, 2004 that Hanzel testified for the first time that she was actually coerced to provide that crucial false testimony and that key witness Frances Smith had admitted to her that Smith's story of premeditated murder was not true.

Clearly, the lower court's order on this claim denying relief is not supported by "competent, substantial evidence" and constitutes an "abuse of discretion". See, State v. G.H., 549 So2d 1148 (Fla. 3d DCA 1989) (recognizing that the trial judge cannot reject unrebutted testimony because the decision would not be based on competent and substantial evidence).

Appellant recognizes that this court has previously instructed that recanted testimony is "exceedingly unreliable", Green v. State, 975 So2d 1090, 1101 (Fla. 2008), and that "if the court is not satisfied that the recanted testimony is true, it has a duty to deny the defendant a new trial", Consalvo v. State, 937 So2d 555 (Fla. 2006); Armstrong v. State, 642 So2d 730, 735 (Fla. 1994). However, this court has also specifically recognized that "when it appears that, on a new trial, the witness' testimony would change to such an extent that a different result is probable ... relief should be granted" Jones v. State, 709 So2d 512, 521 (Fla. 1998); Armstrong v. State, 642 So2d, at 735. See also, State v. Spaziano, 692 So2d 174 (Fla. 1997) (death sentenced prisoner granted new trial when material witness recanted and change of testimony undermined confidence in verdict).

As in Spaziano, Id., at 176-77, in the instant case Deborah Hanzel was a key material witness for the state, and in fact the only witness who provided testimony to corroborate the primary key witness, Frances Smith. As stated above, Hanzel testified to two specific admissions of guilt she then claimed Appellant made. Now Hanzel has unequivocally recanted both of those statements, testifying that in truth Appellant never told her that Appellant killed anyone. (PCR 1006, 2287-99, 2295)

The question now is whether Hanzel's unequivocal recantation is true, and if this recantation is credible, would Hanzel's testimony change to such an extent as to make a different result probable. Appellant submits that both these questions must

be answered in the affirmative.

As stated above, Deborah Hanzel is not trying to help Appellant, but only came forth to ease her own conscience. Hanzel was not an accomplice, or "jailhouse snitch", she had nothing to gain by being a witness, and in fact Hanzel has no criminal history. Although reluctant, Hanzel is a credible witness.

Hanzel's recantation is supported by independent and unrefuted testimony. At trial, Hanzel testified that Appellant told her that Appellant "killed two people back there" (DA-R 2245). State witness Preston Branch was in the truck at the time, and testified that Appellant actually did not say he killed anyone - that Appellant only said that "there were two bodies buried back there." (DA-R 2418-2420) Now Hanzel admits that Appellant never said he killed anyone, but that Frances Smith had coerced her to provide that deliberately false evidence. (PCR 2287-99) Hanzel's recantation is independently supported by the original testimony of Preston Branch.

Hanzel then testified at trial that Appellant phoned her collect at her house, and that during this phone call Appellant admitted to killing "the ~~the~~ man" for the car. (DA-R 2248-49). Now Hanzel admits that this crucial testimony was deliberately fabricated at the behest of key witness Smith so as to provide false testimony to corroborate Smith's own otherwise unsupported testimony. (PCR 5985-86, 8143-47). Hanzel's current recantation is conclusively supported by the testimony and documentary evidence (phone records) that show that Hanzel did not receive any "collect" phone calls from Appellant, thus her trial testimony could not had possibly been true, and her recantation is supported by irrefutable evidence.

In that this irrefutable evidence supports the credibility of Hanzel's recantation, the question then becomes whether Hanzel's current testimony, if it had been presented at Appellant's trial, might reasonably have changed the outcome.

In the current post conviction proceedings, Hanzel has specifically testified that the State's key witness Frances Smith and an agent of the State Attorney's office deliberately coerced her to provide that material false testimony AND that key witness Smith specifically admitted to her that Smith's story of alleged premeditated murder was not true, and that Smith knew that Appellant actually acted only in self defense when Moore/Lamberson "went nuts" and attacked Appellant. (PCR 8143-45, 8152-55, 5984-86). See also, attached 'Appendix B'

Had Deborah Manzel provided this testimony at trial, there can be no question that the result would had been different. The state concedes that the "entire case, premeditation and everything" was built upon the testimony of key witness Frances Smith. If the jury had heard testimony that in fact key witness Smith and the state were attempting to coerce false testimony and that Smith had admitted that her own testimony was not true, then the states entire wholly circumstantial theory of premeditated murder would had been rejected by the jury - and Appellant acquitted.

In fact, had Deborah Manzel told the jury that key witness Smith was attempting to coerce her into providing false testimony and that Smith herself admitted that Appellant was forced to act in self defense when Moore/Lamberson "went nuts", then under applicable law that testimony would had established a "reasonable hypothesis of innocence" legally precluding a conviction for premeditated murder.

There is no question that this was a wholly circumstantial case. There were no eyewitnesses, no physical or forensic evidence, and no confessions. Key witness Smith admits that she did not see or hear anything that transpired outside. (PCK 1819-20, 1932). Had the jury heard that Smith told Manzel that Appellant was compelled to hit Moore/Lamberson only after Moore/Lamberson "went nuts", a reasonable hypothesis of innocence of premeditated murder would had been established. See, Ballard v State, 923 So2d 475, 482 (Fla. 2006), quoting Davis v State, 90 So2d 629 (Fla. 1956);

"It is the actual exclusion of the hypothesis of innocence which clothes circumstantial evidence with the force of proof sufficient to convict. Circumstantial evidence which leaves uncertain several hypotheses, any of which may be found and some of which may be entirely consistent with innocence, is not adequate to sustain the verdict of guilt. Even though the circumstantial evidence is sufficient to suggest a probability of guilt, it is not thereby adequate to support a conviction if it is likewise consistent with a reasonable hypothesis of innocence?"

This Court addressed a very similar scenario in Coulen v. State, 696 So2d 1046 (Fla. 1993). In Coulen, the defendant was convicted of premeditated murder and sentenced to death. This Court vacated that conviction upon finding that the victim's death was equally consistent with "an escalating <sup>ing</sup> fight" and not premeditated intent. Coulen, id., at 1049. See also, Bingham v. State, 995 So2d 207, 211 (Fla. 2008) ("Where the State's

proof fails to exclude a reasonable hypothesis that the homicide occurred other than by premeditated design, a verdict of first degree murder cannot be sustained")

Although in Appellant's case there are two victims, this Court has consistently held this standard of law applicable in cases involving multiple victims. See, e.g., Randall v. State, 760 So2d 892, 902 (Fla. 2000) (two victims killed by strangulation); Kirkland v. State, 684 So2d 732 (Fla. 1996); Hocfort v. State, 617 So2d 1046 (Fla. 1993), see also, Ballard v. State, Supra, 923 So2d, at 480-81 (two victims killed in single event)

The evidence supports Deborah Hanzel's unequivocal recantation and that had the jury known of this evidence, the result would have been different. The record clearly shows that the State provided virtually no credible evidence to dispute or otherwise discredit Hanzel's testimony. The only evidence the State presented to refute Hanzel's claim was the testimony of key witness Frances Smith - which the lower court specifically found "not credible" (PCR 7823-30)

In the State's current Answer Brief (pg 59) the State now attempts to disingenuously argue that the record shows that Appellant had personally told Frances Smith that he would have "Debbie" call her, explaining the phone calls between Hanzel and Smith. But as the State knows from prior post conviction proceedings this "Debbie" was not Deborah Hanzel as Hanzel has never gone by, or been referred to as "Debbie". Rather, as the State knows, "Debbie" is actually Appellant's oldest sister - not Deborah Hanzel.

Then the State argues that this Court must reject Appellant's own testimony (PCR 8319-50) (V42/8319-52) even though the State did not and could not provide any evidence to dispute or otherwise discredit Appellant's testimony (PCR 8339-50, V42/8341-52) as, the State now argues "there is nothing in the record which supports this theory (of self defense), only Lamberson's own self-serving testimony twenty years after his conviction".

As fully detailed in the proceeding "Statement of the Case and Facts", supra, pg 18-25, the record does support Appellant's long and consistently pled claim of self defense, and the State's own medical examiner conceded that there was virtually no evidence to support the key witness' claim that Appellant "hit the man on the back of the head and choked the girl".

Further, the testimony of Deborah Hanzel that key witness Smith had told her that Appellant was forced to hit Moore/Lamberson only after Moore/Lamberson "went nuts" supports Appellant's claim of self defense, and is entirely consistent with the

the State's own medical examiners testimony. See, <sup>Supra</sup> ~~infra~~, pgs 20-21.

The State's assertion that the fact that Appellant did not provide this testimony of self-defense "until twenty years after his conviction" and thus cannot be credible is outrageous under the circumstances. As the State concedes, See, Lambrix v. Singletary, 72 F3d 1560 (11th Cir. 1996) Appellant did explicitly assert Appellants desire to testify at trial, only to be prohibited from doing so.<sup>27/</sup>

Appellant has specifically raised this alleged deprivation of the Right to Testify at trial in both of Appellants prior state post conviction proceedings. In each of these prior proceedings Appellant did specifically assert, by sworn affidavit, this long and consistently pled claim of self defense.

However, as the record shows, in Appellants original state post conviction "Rule 3.850" appeal initiated in October, 1988 the lower court summarily denied relief without any evidentiary hearing. In a 4 to 3 ruling, this Court subsequently upheld that summary denial, Lambrix v State, 534 So2d 1151 (Fla, 1988). Appellants counsel subsequently filed a "successive" post conviction appeal in the lower Court specifically arguing that Appellant was actually innocent, again raising this claim of self-defense. But again the lower Court summarily denied the Rule 3.850 motion without an evidentiary hearing, and this Court affirmed that denial. Lambrix v State, 698 So2d 247 (Fla, 1996)

The evidentiary hearing Appellant received in the lower Court in the instant post conviction proceeding was the first time the State provided Appellant with any form of evidentiary hearing. To now suggest that Appellants testimony is somehow less than credible because Appellant did not provide this testimony earlier when the record clearly shows that Appellant was never provided an opportunity to testify earlier is unethical and outrageous.

In fact, the lower Court specifically recognized that the State itself has been aware of Appellants long and consistently pled claim of self defense since at least 1986, and numerous newspaper articles have been published specifically addressing Appellants claim of self defense since at least 1988. (These articles can be viewed at www.southerninjustice.com, click on "newspaper articles")

---

Footnote 27: please see "Footnote 15" and "Footnote 16" at page 17, Supra (addressing this deprivation of Appellants Right to Testify at trial.)

This is exactly the kind of prosecutorial misconduct that has plagued this case, of which Appellants counsel specifically argued in the "Initial Brief" (pgs 52-56) and has in fact been the grounds upon which a formal complaint was filed with the Florida Bar against State Counsel, Asst Attorney General Carol M. Pittman. (Please see, Florida Bar Complaint, file # 2008-11,545 (13b), filed against Carol M. Pittman, Asst Attorney General)

In the State's "Answer Brief" Asst Attorney General Pittman now argues that there is no evidence to support the allegations of prosecutorial misconduct. But in fact, the record does show that the State has consistently engaged in a "win by any means necessary" campaign to obstruct Appellants ability to meaningful pursue post conviction relief, and the full and fair litigation of the instant claims.

As argued by Appellants counsel, see, Initial Brief pg 52-56, the State did, by deliberate intent and design, attempt to unethically intimidate Deborah Hanzel from testifying at the evidentiary hearing. As the record shows, Hanzel was brought down by order of the Court to testify. Only then, in open court, the State suddenly argued that the Court should appoint legal counsel to represent Hanzel, as if Hanzel provided testimony contrary to what she testified to at trial, the State would seek prosecution against Hanzel for perjury. (PCR 8129-30)

The State now argues that this obvious pretense could not have "intimidated" the witness, as Hanzel was not actually physically present. But as the record shows, these proceedings were conducted in a small "hearing" room (not a large courtroom), and Hanzel was only a few feet away, right outside the door - there's no question that the State intended for Hanzel to hear this exchange.

The State then argues that the record shows that Appellants counsel did not object at the time - but as the record clearly shows, no objection was necessary as the Court itself realized what the State was unethically attempting to accomplish, and Judge Corbin immediately shut the State down. (PCR 8130)

But the damage was done, when Deborah Hanzel - already a reluctant witness who didn't want to get involved - took the stand, she was obviously shaken by the States unethical promise to prosecute her if she admitted she lied at trial. Hanzel did unequivocally state that she was coerced to provide false testimony and that contrary to her (trial) testimony Appellant never told her Appellant killed anyone. (PCR 8057-58, 8193-44), but when the State cross-examined her, Hanzel became

visibly frightened and reluctant to directly admit she lied at trial. (V42/8165, 8169, 8174) Clearly the State's intent to unethically intimidate Hanzel was accomplished.

The State then argues that Appellants' claim that the State unethically interfered with the testimony of Frances Smith is unfounded. But again, the record is clear that, as the lower court recognized, the State improperly and unethically instructed key witness Frances Smith not to answer questions posed to her by Appellants' counsel.

The State asserts that their conduct was proper, and that there is no record support for this allegation. But as the record plainly shows, Appellants' counsel did specifically raise this issue of prosecutorial misconduct - and the lower court specifically found the State's action's improper and admonished the State for this misconduct. See, Order PCr 7828-30 ("It is improper for a lawyer to instruct a witness not to answer a question posed at a deposition"). The lower court specifically told the State that their conduct was beyond the order previously rendered - then the court itself ordered that the deposition would be redone in the court's presence to ensure that the State did not engage in further unethical misconduct. (PCr 7828-31)

Incredibly, as the record shows, even after the court explicitly admonished the State for improperly obstructing the questioning of key witness Smith (PCr 7829-30), the State then secretly met with key witness Smith under the pretense of a "non-investigation" shortly prior to the court ordered deposition. (PCr 9043-50). Not surprisingly, after this "secret" meeting, key witness Smith's suddenly suffered a miraculous degradation regarding the details of the affair she admitted to having, and when she did subsequently testify, the court found her 'not credible' specifically because she was vague, uncooperative, and evasive. (PCr 7823-38)

As detailed by Appellants' counsel in the 'Initial Brief' (pgs 52-56) throughout these post conviction proceedings the State has engaged in a consistent campaign of "win by any means necessary" prosecutorial misconduct by obstructing the discovery process, unethically intimidating witnesses, and interfering and obstructing court ordered depositions. Appellant has been substantially prejudiced by the State's misconduct, as these witnesses have been intentionally frightened and become reluctant to testify.

As this court recognized in State v. Higgins, 788 So2d 238, 245 (Fla, 2001), quoting Strickler v. Greene, 527 US 263, 289-90 (1999),

"A prosecutor is 'the representative not of an ordinary party to a contro-

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

This Court has repeatedly recognized the virtual epidemic of prosecutorial misconduct in capital (death-sentenced) cases, See, e.g. Ruiz v. State, 743 So2d 1, 9 (Fla. 1999), and has explicitly warned state counsel of "the dire consequences", Ruiz, at 9, if "this 'win by any means necessary' misconduct continues. But in truth, the state continues to act with complete impunity, unconcerned with this Court's rhetorical threat of 'dire consequences' because although prosecutorial misconduct is the primary cause for compelling this Court to vacate capital convictions, not even once has any state counsel actually been subjected to formal disciplinary actions after being found to have engaged in unethical misconduct in a capital case.

Although a prosecutor is obligated to "prosecute with earnest and vigor", they may not use "improper methods calculated to produce a wrongful conviction", as such misconduct "so infects the (proceeding) with unfairness as to make the resulting conviction a denial of due process" and reversal of the conviction is necessary. Darden v. Wainwright, 477 US 168, 181 (1986) (emphasis added)

In Arbalaz v. Butterworth, 738 So2d 326, 327 (Fla. 1999) this Court recognized its own "constitutional responsibility to ensure that the death penalty is administered in a fair, consistent, and reliable manner". See also, Jones v. State, 740 So2d 520, 523 (Fla. 1999), quoting Skull v. State, 569 So2d 1251, 1252 (Fla. 1990) ("the term 'due process' embodies a fundamental conception of fairness that derives ultimately from the natural rights of all individual individuals" (emphasis added)

More specifically; in the context of capital post conviction proceedings, in Arbalaz v. Butterworth, supra, 738 So2d, at 331, quoting Monge v. California 524 US 721, 118 S.Ct 2246, 2252-53 (1998) and State v. Dixon, 283 So2d 1 (Fla. 1973) this Court stated that;

"our adversarial system of criminal justice depends almost entirely upon the procedural fairness and integrity of the process. This Court and the United States Supreme Court have held that the integrity of the process is of unique and special concern in cases where the state seeks to take the life of the defendant" (emphasis added)

In reviewing whether the lower court's final order denying relief on the instant claim that material witness Deborah Manzel has recanted, this Court must take into consideration the fact that immediately prior to Manzel's testimony the state unethically, and by deliberate intent, intimidated this witness with the threat of criminal prosecution if she did recant her trial testimony. (PCR 8129-31)

As to the State's argument that the lower court's order is supported by "competent, substantial evidence" as key witness Frances Smith also testified, denying that she had coerced Manzel to provide false testimony to corroborate Smith's own fabricated story (V43/8351-52), Appellant submits that the lower court specifically found Ms. Smith's entire testimony "not credible" (PCR 7870-85, V40/7881-83), and in fact, the State produced virtually no credible evidence to refute Deborah Manzel's recantation.

Last, as argued by Appellant's counsel, Appellant submits that this Court cannot accept the lower court's factual finding denying this claim, as the lower court did not allow Appellant a full and fair opportunity to present the available evidence that will substantiate Deborah Manzel's claim that key witness Frances Smith and an agent of the state Attorney's office worked together to coerce Manzel to provide false testimony to corroborate key witness Smith's otherwise unsupported testimony that Appellant acted with actual premeditated intent to kill, as opposed to self defense.

Manzel's previously unavailable (and newly discovered evidence) testimony that both the key witness and the State engaged in a deliberate conspiracy and collaboration to wrongfully convict and condemn Appellant, knowing all along that Appellant actually acted in self defense and did not commit any act of murder, is the foundation for Appellant's specifically pled claim, see "Argument III" <sup>Infra</sup>, and this Court must accept Appellant's pled allegations of a conspiracy and collaboration as true at this juncture. Lightbourne v. State, 549 So2d 1364, 1365 (Fla. 1989); Scott v. State, 657 So2d 1129, 1132 (Fla. 1995)

The specific evidence Appellant sought to present in "Argument III" <sup>Infra</sup>, that an actual conspiracy and collaboration to manipulate and fabricate material evidence with the intent to wrongfully convict Appellant will corroborate Manzel's testimony that she was coerced to provide false testimony. Appellant is entitled to a full and fair opportunity to present this corroborating evidence before any credibility determination as to Manzel's own claims is made.

In Roberts v. State, 678 So2d 1232 (Fla. 1996), quoting Johnson v. Singletary, 647 So2d

106, 111 (Fla. 1994) this Court recognized that the capital post conviction appeal must be remanded to the lower court for further evidentiary proceedings so that the defendant can present additional evidence to "demonstrate the corroborating circumstances sufficient to establish the trustworthiness of the (newly discovered evidence)." Id., at 111

Recently in Tompkins v. State, 33 Fla. 5 897, 901 (Fla. November 7, 2008), relying upon Lightbourne v. State, 742 So2d 238 (Fla. 1999) this Court recognized that "when an important witness has recanted his or her testimony", Tompkins, id., at 901, the case must be remanded for an evidentiary hearing "to determine whether newly recanted testimony, when considered cumulatively with all the post-trial evidence ... required (relief)."

Appellant is entitled to the presentation of the additional evidence available that will corroborate Manzel's claims so that this Court can "consider cumulatively" all the post trial evidence. See, Kyles v. Whitley, 514 US 419, 436 (1994), Jones v. State, 709 So2d 512, 521-22 (Fla. 1988); Swafford v. State, 679 So2d 736, 739 (Fla. 1994)

Appellant submits that the evidence already before this Court is sufficient to entitle Appellant to relief from these wrongful convictions, as Manzel has unequivocally recanted her material testimony. Manzel specifically testified that she was coerced to provide that crucial false testimony, and that in fact, Appellant "never" told her he killed anyone. Manzel's testimony is supported by competent, substantial evidence, which the lower Court improperly ignored.

As the record reflects, the state has provided virtually no evidence to dispute or otherwise discredit Manzel's testimony that she was coerced to provide material false testimony by both key witness Frances Smith and an agent of the State Attorney's office, and that they knew Appellant had acted in self defense only after Moore/Lamberson "went nuts" and Appellant "had to hit him".

Under these circumstances Appellant is now entitled to relief. However, if this Court concludes that the evidence already before this Court is not itself sufficient, then this Court must remand this case back before the lower court to allow Appellant an opportunity to fully present the additional available evidence as is fully argued on "Argument III", Infra, that cumulatively will provide substantial support for Manzel's own recantation. See, Roberts v. State, supra; Tompkins v. State, supra, Lightbourne v. State, supra

### ARGUMENT III

#### Newly Discovered Evidence Shows That The State Conspired And Collaborated With The Key Witness To Wrongfully Convict And Condemn Appellant By Fabricating Material Evidence And Coercing False Testimony In Violation of Appellants Due Process Rights Under The Florida And Federal Constitution

Appellant provides the following as a necessary supplement to the "Initial Brief" submitted by Appellant's appointed counsel, specifically incorporating the facts and law pled therein, at pages 57-20 by instant specific reference. See, Peete v. State, 748 So2d 253, 255 (Fla. 1999) (recognizing that "capital post conviction defendants pro se supplemental to appointed counsel's 'Initial Brief' was far more helpful and comprehensive than the Initial Brief submitted by counsel"), Hill v. State, 656 So2d 1271 (Fla. 1995) (allowing supplemental pro se brief)

Appellant does now seek to provide the necessary supplemental argument of fact and law relevant to alleged specific deprivations of applicable Federal rights for the purpose of "exhausting" these pled claims before the state courts. See, Jimenez v. Fla. D.O.C., 481 F.3d 1337, 1342 (11th Cir., 2007) quoting Duncan v. Henry, 513 US 364, 366 (1995) ("Appellant 'must alert state courts to any federal claims to allow the state courts an opportunity to review and correct the claimed violations of his federal rights'")

In the Initial Brief submitted by appointed counsel, counsel inexplicitly failed to advise this Court of the specific deprivations of Appellant's Federal rights relevant to the instant claim. Appellant does now provide this Court with the necessary argument and applicable assertion of deprivation of Federal rights.

Both the Florida and Federal constitution explicitly recognizes that "no person shall be deprived of life, liberty, or property without due process" U.S. Constitution, 5th Amendment, applicable to the States through the 14th Amendment.

This Constitutional concept of Due Process protects the individual from fundamentally unfair governmental practices. As recognized in Napue v. Illinois, 360 US 264, 269 (1959) and Giglio v. United States, 405 US 150, 154 (1972), the state is constitutionally prohibited from using false evidence to wrongfully convict a person. See also, Craig v. State, 685

So2d 1224, 1226-27 (Fla. 1997) (explaining how serious this Court must take a claim asserting the unlawful fabrication of material evidence used to convict a capital defendant)

This constitutional concept of due process is, at its very core, about "fundamental fairness". In Zimmerman v. Burch, 494 US 123, 125 (1990) the Supreme Court recognized that "the due process clause encompasses ... a guarantee of fair procedure". Florida has also long recognized this concept. Lawson v. Woodruff, 134 <sup>Fla.</sup> So. 437, 181 So. 81 (1938) (recognizing that the Florida Constitution's "due process clause protects against any and all abuses, and arbitrary, discriminatory, or essentially unfair exercise of governmental power, authority, or duty of any nature or character whatsoever") See also, Jones v. State, 740 So2d 520, 523 (Fla. 1999) quoting Skull v. State, 569 So2d 1251, 1252 (Fla. 1990) ("the term due process embodies a fundamental conception of fairness that derives ultimately from the natural rights of all citizens")

Appellant respectfully submits that virtually nothing can possibly offend this Constitutional concept of "fundamental fairness" under the Florida and Federal Constitution's Due Process Clause more than for an agent of the State to abuse the power of the State to deliberately fabricate evidence with the purpose and intent of wrongfully convicting and condemning an innocent man. See, e.g. United States v. Cotton, 535 US 625, 633-34 (2002) (recognizing that Due process requires the Courts to address allegations "sufficiently serious to affect the fairness, integrity, or public reputation of judicial proceedings") As this Court itself recognized in Arbalaz v. Butterworth, 738 So2d 326, 327 (Fla. 1999) "we have a constitutional responsibility to ensure that the death penalty is administered in a fair, consistent, and reliable manner." More specifically, this Court stated that, Arbalaz, Id., at 331, quoting Monge v. California, 524 US 721, 118 S.Ct 2246, 2252-53, (1998) and Dixon v. State, 283 So2d 1 (Fla. 1973) that;

"our adversarial system of criminal justice depends almost entirely upon the procedural fairness and integrity of the process. This Court and the United States Supreme Court have held that the integrity of the process is of unique and special concern in cases where the state seeks to take the life of the defendant."  
(emphasis added)

Above all else, this Court has both as a matter of judicial obligation and moral conscience, the inherent duty to protect the very integrity of our judicial system by protecting against fundamentally unfair practices that, if uncorrected, will serve to

undermine the public's confidence in our judicial system. The standard of law has long been, as stated in In Re Winship, 397 US 358, 364 (1970) "it is critical that the moral force of the criminal law not be diluted by (practices) that leaves people in doubt whether innocent men are being condemned". As Justice Harlan further noted, "this standard is bottomed on a fundamental value determination of our society that it far worse to convict an innocent man than to let a guilty man go free".

As fully argued <sup>fore</sup> before the lower Court, and by Appellant's counsel in the "Initial Brief" now pending before this Court, Appellant has specifically pled that newly discovered evidence now shows that the State's key witness Frances Smith and an agent of the State Attorneys Office, specifically lead investigator Miles "Bob" Daniels, did deliberately conspire and collaborate to manipulate and fabricate false evidence and testimony with the <sup>specific</sup> purpose and intent to have Appellant wrongfully convicted and condemned to death, and that the entire wholly circumstantial theory of alleged premeditated murder presented to the jury was deliberately manufactured by this conspiracy and collaboration, with the intent to convict and condemn Appellant of a crime Appellant is innocent of.

The lower Court summarily denied this specifically pled claim without an evidentiary hearing. Pursuant to Freeman v. State, 761 So2d 1055, 1061 (Fla. 2000) this Court must now accept Appellant's pled allegations as true for the purpose of determining whether the Appellant is entitled to a full and fair evidentiary hearing. Freeman, Id., at 1061 "in cases where there has been no evidentiary hearing (on a particular claim) we must accept the factual allegations made by the defendant to the extent that they are not refuted by the record." See also, Scott v. State, 657 So2d 1129, 1132 (Fla. 1995) (same), Lightbourne v. State, 549 So2d 1364, 1365 (Fla. 1989) (accord).

As the record reflects, Appellant fully presented the instant claim to the lower Court originally on February 9, 2004 as "Claim VI". Subsequently, pursuant to the lower Court's Specific Order, on November 18, 2004 this claim was incorporated into a consolidated "Amended Motion To Vacate Judgment, Etc - Claim VI, VII, and VIII". See, PCR 6781-7019.

On August 19, 2005 the lower Court held a "Huff" hearing on this consolidated Motion to Vacate, at which time the state erroneously argued that the instant claim was based upon - and entirely dependent upon - the question of whether key witness Smith actually had a sexual relationship with investigator Daniels. (PCR 8444-8540)

Appellant's counsel specifically argued that this claim could not, and was not,

based exclusively upon key witness Smith's admission of having an intimate relationship "of a sexual nature" with Investigator Daniels, as Smith did not provide that previously undisclosed information until almost two months AFTER this claim was filed.

This instant claim of alleged conspiracy and collaboration to wrongfully convict Appellant was filed on February 9, 2004 after witness Deborah Manzel provided a sworn affidavit (attached as "Appendix B") in December 2003 specifically claiming that key witness Smith and an agent of the State Attorney's Office, who was not Asst State Attorney Randlell McGruther, or FDLE Agent Connie Smith (PCR B147, B154-56) (thus, by process of elimination had to be Inv. Daniels) had coerced her to provide deliberately false material testimony to corroborate Smith's own otherwise unsupported testimony (PCR B145-47), and that when Manzel specifically asked key witness Smith if her story that Appellant killed the victims was true, Smith told Manzel "she didn't really know what happened outside, but that Lambrix had told her the guy went nuts and that (Lambrix) had to hit him." (PCR B152, B143-44, B155)

It was not until two months later that key witness Smith revealed that she had had a personal relationship "of a sexual nature" with SAO Inv. Daniels "while Lambrix was being prosecuted," and that they deliberately concealed this information. (PCR B273-80) Clearly, this startling revelation of the relationship between key witness Smith and SAO Inv. Daniels provided substantial support for Manzel's previous testimony that both Smith and Daniels worked together to coerce her to provide material false testimony.

More importantly though, this revelation of the relationship between Smith and Daniels compelled Appellant's counsel to look more closely at Inv. Daniels' own involvement and influence over this capital case. As the record plainly reflects, Inv. Daniels was actually the very person who swore out the original "Affidavit" that formally initiated these capital charges against Appellant (DA-R 297-301) and then subsequently personally acted as the lead investigator, and personally supervised the entire investigation and development of the wholly circumstantial evidence used to convict Appellant (PCR 1920-1967), assisted only by his colleague SAO Investigator Carla Mitan. (DA-R 1921-16)

Incredibly, several years after this claim was filed, in July 2006, SAO Inv. Daniels testified in court that during the time Appellant was being prosecuted, although married to "Joan", he was also having an undisclosed sexual relationship with SAO Inv. Carla Mitan while they worked together on this case. (PCR B894)

Based upon this previously undisclosed newly discovered evidence that key witness Smith and SAO Inv Daniels worked together to coerce Hanzel to provide false testimony, and that at the time they knew Appellant was compelled to act in involuntary self-defense only after Moore/Lamberson "went nuts", and then the subsequent startling revelation that SAO Inv. Daniels was having a personal relationship with both key witness Smith and fellow SAO Inv. Carla Mitar during the time Appellant was being prosecuted, it was incumbent upon Appellant's counsel to then look closely at every aspect of SAO Inv. Daniels involvement and influence in this capital case.

The State now argues that the specific evidence Appellant sought to present to the lower court (i.e., expert witnesses, ect) are not "newly discovered evidence" as the content and substance of these witnesses anticipated testimony was available at time of Appellant's trial. But the state conveniently ignores the fact that SAO Inv. Daniels deliberately concealed his personal relationship with key witness Smith and SAO Carla Mitar from Appellant's trial counsel, thus Appellant's trial counsel had no reason to question SAO Inv. Daniels own objectivity in the pretrial investigation and development of the wholly circumstantial evidence used to convict and condemn Appellant.

It was only after the newly discovered evidence of SAO Inv Daniels personal involvement in assisting key witness Smith to coerce Hanzel into providing crucial false testimony and the subsequent revelation that during the time Appellant was being prosecuted SAO Inv. Daniels was having a personal relationship "of a sexual nature" with both key witness Smith and fellow SAO Inv. Carla Mitar that Appellant's counsel had any "cause" to look into SAO Inv Daniels involvement and influence over this capital case. For that reason, this claim is clearly based upon "newly discovered evidence".

What Appellant's counsel discovered was mind-boggling. The collective wealth of evidence fully detailed (and incorporated herein by specific ~~date~~ reference) in the "Initial Brief" (pgs 57-70) leaves no question that SAO Inv. Daniels and key witness Smith did conspire and collaborate together to manipulate and fabricate virtually all of the wholly circumstantial evidence the state used to convict and condemn Appellant, and that both Inv. Daniels and key witness Smith did so specifically with the intent and purpose to have Appellant wrongfully convicted and condemned to death for a capital crime they knew Appellant did not commit as they knew that Appellant was and is actually innocent of premeditated murder.

The State argues that since the lower court specifically found that witness Hanzel did not unequivocally recant her testimony, and that key witness Smith's own claim of having a sexual relationship with SAO Inv. Daniels was "not credible," Appellant has not presented any credible evidence to support "opening the door" to this claim.

However, the State completely ignores this Court's own clearly established law that before a lower court can render a factual determination upon the credibility of either ~~the~~ the alleged recantation of a material witness, or newly discovered evidence (such as the relationship between key witness Smith and SAO Inv. Daniels), the past conviction defendant MUST be provided an opportunity to present evidence that would corroborate those specifically pled allegations. See, Roberts v. State, 678 So2d 1232 (Fla. 1996), quoting, Johnson v. Singletary, 647 So2d 106, 111 (Fla. 1994) (remanding capital post conviction appeal back to lower court so that defendant can present additional evidence to "demonstrate the corresponding circumstances sufficient to establish the trustworthiness of the newly discovered evidence")

As this court recently re-affirmed in Tompkins v. State, 33 <sup>FLW</sup> FLW 897, 901 (Fla., November 7, 2000), relying upon Lightbourne v. State, 742 So2d 238 (Fla. 1999), "when an important witness has recanted his or her testimony," the case must be remanded for further evidentiary hearings "to determine whether the newly recanted testimony, when considered cumulatively with all the post-trial evidence, required (relief)." Id. at 901

The substantial wealth of irrefutable evidence Appellant's counsel sought to present in this claim, ie, the numerous expert witnesses whose testimony collectively establish that key witness Smith and SAO Inv. Daniels did work together to coerce false testimony and fabricate material evidence with the intent to wrongfully convict Appellant, would also have provided corroborating evidence that Hanzel actually was coerced to provide false testimony, and that key witness Smith and SAO Inv. Daniels actually did have a personal relationship "of a sexual nature", as Smith claimed they did.

Consistently Appellant's counsel has argued that before the lower court could make a factual determination on Hanzel's alleged recantation, or Smith's subsequent admission of a personal relationship with SAO Inv. Daniels, the court must allow Appellant to first present the evidence specifically identified in this claim, and proffered into the record. See "Initial Brief", pgs 57-70.

Last, the State argues that even if it is recognized that witness Hanzel did

recant, under Ragsdale v State, 720 So2d 203 (Fla. 1998) it would be legally insufficient to warrant relief, as state witness Preston Branch also testified at trial, and corroborated Manzel's claim that Appellant did confess to actually killing the victims.

The States assertion simply is not true. Although Preston Branch - who was Frances Smith's own cousin, and at the time Deborah Manzel's boy friend - did testify as a state witness at trial (DA-R 2410-2422), and was physically present when witness Hanzel claimed Appellant told her that Appellant "killed two people" back there (DA-R 2445) Branch actually testified that Appellant did not say anything about "killing" anyone, and in fact, Appellant only said (while intoxicated) that "there were two dead bodies buried back there" (DA-R ~~2418~~ 2418-22)

The States assertion that Preston Branch's testimony somehow corroborated Hanzel's own testimony, therefore her current recantation is not legally sufficient, simply is not consistent with the actual record. Appellant does not deny saying that there were two bodies buried back there, as Branch testified. (DA-R 2418-22). Rather, the issue is whether Appellant told Hanzel that Appellant "killed two people" - and that is the material testimony that Hanzel has now unequivocally recanted.

What must be strenuously emphasized is that Hanzel did not simply recant that material testimony. Rather, as the record shows, Hanzel specifically testified that key witness Smith and SAO Inv Daniel's deliberately coerced her to provide that false testimony, and that key witness Smith specifically told Hanzel that Smith's claim that Appellant acted with premeditated intent to steal the vehicle was not true. Then subsequently key witness herself admitted that she was having a sexual relationship with SAO Inv Daniel's during the prosecution of this case.

Collectively this newly discovered evidence did provide a sufficient foundation for the instant claim that the key witness and the state did knowingly engage in a conspiracy and collaboration to wrongfully convict and condemn Appellant for a capital crime they knew Appellant was and is actually innocent of. These specifically pled allegations, supported by the evidence proffered before the lower court See, "Initial Brief", pgs 57-70, do establish a claim of deliberate deprivation of Appellants state and Federal Constitutional "Due Process" rights, and Appellant is entitled to have this case remanded to the lower court for a full and fair opportunity to present the substantial wealth of evidence in support of this pled claim.

## ARGUMENT IV

### Newly Discovered Evidence Shows That Appellant Was Deprived of a Fair Trial Before An Impartial Tribunal In Violation of the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution

Appellant provides the instant argument as a necessary supplement to the "Initial Brief" previously submitted to this Court by appointed counsel, and does now specifically incorporate the argument provided therein as "Argument IV" (pgs. 57-70) herein by this specific reference.

The primary purpose of the instant supplemental argument is to clearly state that the instant claim is presented to this Court as both a violation of Appellant's protected rights under both Florida law and the Federal Constitution. As the record shows, Appellant did specifically present this claim to the lower Court, explicitly arguing that the alleged deprivation of a fair trial before an impartial tribunal violated Appellant's protected rights under both state law, and the Federal Constitution. See, PCR 1-62, and PCR 1669-1719.

However, Appellant's presently appointed counsel inexplicitly has failed to present this instant claim to this Court as an alleged violation of both Appellant's state and Federal rights. For the purpose of ensuring that this instant claim has been fully and properly "exhausted" before the state courts in the event subsequent Federal Court review proves necessary, see, Jimenez v. Fla. D.O.C., 481 F3d 1337, 1342 (11th Cir. 2007) ("A petitioner must alert state courts to any Federal claims to allow the state courts an opportunity to review and correct the claimed violations of his federal rights"; Duncan v. Henry, 513 U.S. 364, 365 (1995); Baldwin v. Reese, 541 US 27 (2004)).

Appellant has specifically argued that newly discovered evidence establishes that at the time of Appellant's trial the presiding Judge, Richard M. Stanley, harbored substantial and previously undisclosed bias against Appellant that effectively served to, and resulted in, the deprivation of Appellant's constitutional right to a fair trial before an impartial tribunal. Pursuant to Freeman v. State, 761 So2d 1055, 1061 (Fla. 2000), this Court must accept the factual allegations as true at this juncture. Freeman, Id., at 1061 "In cases where there has been no evidentiary hearing (on a particular claim) we must accept the factual allegations made by the defendant to the extent that

they are not refuted by the record? See also, Scott v. State, 657 So2d 1129, 1132 (Fla. 1995)

Appellant's State and Federal rights to a fair trial before an impartial tribunal are well established and recognized. As the U.S. Supreme Court has explained in Strickland v. Washington, 466 U.S. 668, 685 (1984) "a fair trial is one which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding". See also, Bracey v. Gramley, 117 S.Ct 1793, 1797 (1997) ("the floor established by the Due Process clause clearly requires a fair trial in a fair tribunal before a judge with no actual bias against the defendant or interest in the outcome of the particular case.")

This Constitutionally established procedural due process guarantee of the right to a neutral and detached judiciary "conveys to the individual a feeling that government has dealt with him fairly (and) ... minimizes the risk of mistaken deprivations of protected interests." Carry v. Phipps, 425 U.S. 247, 263 (1978); see also, Marshall v. Jericho, Inc. 446 U.S. 238, 242 (1980) ("the neutrality requirement helps to guarantee that life, liberty, and property will not be taken on the basis of an erroneous or distorted conception of the facts or law. At the same time it preserves both the appearance and reality of fairness, 'generating the feeling so important to a popular government, that justice has been done'")

As the Eleventh Circuit recognized in Porter v. Singletary, 49 F.3d 1483, 1487-88 (11th Cir. 1995) "the law is well-settled that a fundamental tenet of due process is a fair and impartial tribunal". See also, Knapp v. Kinsey, 232 F.2d 458, 465 (6th Cir. 1956) ("fairness requires an absence of actual bias or prejudice in the trial of the case. if this basic principle is violated, the judgement must be reversed.")

The instant case involves the very same Judge, Richard Stanley, that this Court has previously found had improperly failed to disclose his substantial bias against capital defendants in Porter v. State, 723 So2d 191 (Fla. 1998), resulting in this Court vacating Porter's two death sentences. In Porter, Judge Stanley only presided over Porter's 1984 capital re-sentencing and thus this Court only granted Raleigh Porter relief from the two death sentences.

In contrast, Judge Richard Stanley presided over Appellant's entire trial, both the innocence/guilt phase and the subsequent sentencing phase. For this reason, Appellant is specifically arguing relief from both the unlawfully obtained capital

convictions and sentences of death. See, Initial Brief "Argument IV" (pgs 71-80)

Appellants counsel originally initiated this claim before the lower court on January 16, 1998 (PCR 1-62) after becoming aware of the newly discovered evidence of Judge Stanley's bias through the litigation of Porter v. State, Case No. 78-199-CF (Fla. 20th Cir. Ct., 1997). In Porter v. Singletary, 49 F3d 1483 (11th Cir. 1995) the Federal Court granted Raleigh Porter a stay of execution upon newly discovered evidence that Judge Stanley harbored substantial bias specifically against Porter. Subsequently, the Federal Court relinquished Porter's case back to the state court for evidentiary proceedings.

In January 1997 Judge Stanley (by then retired) was compelled to submit to a deposition prior to a court-ordered evidentiary hearing. During this January 1997 deposition Judge Stanley made numerous remarks and specific comments clearly indicating, for the first time, that his bias encompassed a substantial prejudice against all capital defendants. The specific details of Judge Stanley's remarks are fully set forth at PCR 1-62 and PCR 1669-1719 (incorporated herein by specific reference). These details formed the foundation of Appellants instant claim.

Appellants counsel moved to immediately depose Judge Stanley, (PCR 8) and filed a "Notice of Taking Deposition of Judge Stanley" in November, 1998 (PCR 197-202), only to have the state file a "Motion To Strike Notice of Taking of Judge Stanley's Deposition" (PCR 212-15), which the lower court inexplicitly granted, (PCR 1097-1104), prohibiting Appellants counsel from taking Judge Stanley's deposition.

Concerned that Appellant would be deprived of the opportunity to depose Judge Stanley, Appellants counsel renewed the request to depose in January, 2001 (PCR 1433) but the lower court took no further action. On June 29, 2001 a status hearing was held at which time the lower court advised Appellants counsel that Judge Stanley recently died, thus making the request to depose Judge Stanley moot.

Subsequently, at the states encouragement, the lower court summarily denied the instant claim upon the specific finding that Appellant failed to provide any evidence that supported a finding that Judge Stanley harbored undue bias specifically against Appellant, thus Appellants claim was deemed to be "legally insufficient" (PCR 1159-60). The lower court re-iterated that finding in the final order denying relief in November, 2007 (PCR 7823-38).

Appellants counsel timely presented this claim to this court, See, Initial

Brief, 'Argument IX' (pgs 71-80), arguing that the facts and evidence support a finding of actual bias, depriving Appellant of a fair trial before an impartial jury.

Specifically, Appellants counsel argued that the lower court erroneously ignored unrefuted evidence that Judge Stanley did harbor actual bias against Appellant personally. As the record reflects, in November 1998 Appellants counsel did provide the lower court with an affidavit of Hon. Robert Jacobs, III (PCR 1720-23). In this Affidavit, Mr. Jacobs detailed specific circumstances of actual bias manifested by Judge Stanley during Appellant's capital trial. (PCR 1720-23). (For the convenience of this Court, the affidavit provided by Robert Jacobs, III is now attached as 'Appendix E')

Mr. Jacobs was Appellant's trial counsel, and undoubtedly in a position at the time of trial to have had personal knowledge of the facts provided in that Affidavit, which collectively established the existence of actual bias harbored by Judge Stanley that did directly affect the outcome of this capital trial. Clearly, this was sufficient evidence to establish entitlement to a full and fair evidentiary hearing and the opportunity and the right to depose Judge Stanley. See, Bracey v. Gramley, 520 US 899 (1997) (recognizing that post conviction defendant is entitled to depose trial judge upon sufficient showing of cause)

However, as the record shows, for 3 1/2 years the lower court and the state thwarted Appellants repeated requests to depose Judge Stanley and the lower court did not address this matter until shortly after Judge Stanley died in 2001, at which time the court declared the issue "moot". Then inexplicitly ignoring the additional evidence provided by Robert Jacobs, III sworn affidavit, the lower court declared the entire claim legally insufficient and summarily denied relief (PCR 1159-60, PCR 7823-38)

To further compound the prejudice resulting directly from the lower courts improper denial of a timely evidentiary hearing, now over 10 years after Appellant moved for a full evidentiary hearing, Appellants primary witness in support of this claim has also died, thus Robert Jacobs, III is now no longer available.

Clearly, as Appellants counsel has specifically argued, this inexcusable delay in providing Appellant a meaningful opportunity to timely pursue post conviction relief on this claim has resulted in substantial and irreversible prejudice now entitling Appellant to relief from these unconstitutionally obtained convictions. See Jones v State, 740 So2d 520, 522-23 (Fla, 1999) (Vacating capital conviction and sentence

of death upon finding that undue delay in processing and providing post conviction review irreparably prejudiced petitioners due process right to meaningful post conviction review)

The lower Courts inexcusable delay effectively obstructed, impeded and denied Appellant the constitutionally protected "due process" right to meaningful and timely<sup>29</sup> post conviction review. See Holland v. State, 503 So2d 1250 (Fla. 1987) citing to Louisiana v. Michael, 350 US 91, 93 (1955) ("Due process guarantee's a defendant a 'reasonable opportunity to have the issue as to the claimed right heard and determined by the state court'")

Appellant has established actual and irreparable prejudice resulting from the undue delay and deprivation of a meaningful opportunity to develop and present the evidence necessary to support this claim. See, Rogers v. State, 511 So2d 526, 531 (Fla. 1987) (recognizing that once a defendant has established prejudice resulting from an undue delay "the Court must balance the demonstrable reasons for the delay against the gravity of the particular prejudice on a case-by-case basis"); Scott v. State, 581 So2d 887, 891 (Fla. 1991), quoting United States v. Toubey, 665 F.2d 579, 581 (5th Cir. 1982) ("the outcome turns on whether the delay violates the fundamental conception of justice, decency and fair play embodied in the Bill of Rights and the fourteenth Amendment")

The "gravity of the particular prejudice" in the instant case, and "the violation of the fundamental conception of justice" in this case is clearly reflected in the record. This Courts consistently recognized law is clear - a post conviction defendants factual allegations must be accepted and assumed to be true unless the record refutes them. Freeman v. State, 761 So2d 1055, 1061 (Fla. 2000), Scott v. State, 657 So2d 1129, 1132 (Fla. 1995)

Appellants counsel specifically stated allegations of fact supporting Appellants claim that Judge Richard Stanley did harbor undisclosed pervasive bias and prejudice against Appellant, denying Appellant a fair trial before and impartial tribunal. See, PCR 1-62, PCR 1669-1719). The record does not refute these pled factual allegations. Additionally, Appellants counsel supported these pled allegations with the Affidavit of Robert Jacobs, III, which detailed specific prejudice resulting from Judge Stanley's bias. PCR 11720-

---

Footnote 29: It must be emphasized that on two separate occasions Appellant (pro se) even petitioned this Court by way of "Petition for Writ of Mandamus" to compel the lower Court to provide timely review of Appellants post conviction claims after years of delay. Lambrix v. State, 900 So2d 553 (Fla. 2005) and Lambrix v. State, \_\_\_ So2d \_\_\_ (Fla. 2007) (Fla. Ct Case # SC06-0038)

1723). The state did not provide any evidence to refute these pled allegations.

The actual prejudice directly resulting from the obstruction and denial of an opportunity to depose Judge Stanley prior to his death cannot be overstated. As the record shows when Judge Stanley was compelled to give a deposition in Raleigh Porter's case, it was Judge Stanley's own responses that conclusively established his own extreme bias and predisposition to sentence capital defendants only to death. See, PCR 1-67, PCR ~~1720~~<sup>1669</sup>-1729). Subsequently, this Court relied upon Judge Stanley's own admissions of bias to grant Porter relief. Porter v. State, 723 So2d 191 (Fla. 1998)

Had Appellants counsel been afforded an opportunity to depose Judge Stanley - as Appellants counsel sought to do for 3 1/2 years prior to Judge Stanley's death, then there is no reason to believe that Judge Stanley's own responses and admissions of extreme bias against Appellant would had also conclusively established Appellants claim.

Equally so, Appellants counsel specifically provided additional evidence to support this claim in the form of the Affidavit of Robert Jacobs, III (PCR 1159-60) (PCR 7823-38), which the lower Court implicitly ignored. (PCR 1159-60, PCR 7823-38) Mr. Jacobs provided specific first hand knowledge of how Judge Stanley's extreme bias and hostility manifested itself at virtually every stage of Appellants trial, beginning with jury selection, all the way through the jury's verdict and subsequent imposition of death sentences.

The State asserts that Mr. Jacobs affidavit improperly relies upon adverse judicial rulings to support the claim of judicial bias. But that is not correct. As fully detailed in Mr. Jacobs affidavit (PCR 1720-23) (attached Appendix E<sup>9</sup>), Mr. Jacobs specifically stated that because of Judge Stanley's extreme bias and hostility towards the defense, as trial counsel, Mr. Jacobs was unable to approach Judge Stanley, thus precluding any judicial ruling.

As fully set forth in Mr. Jacobs affidavit (PCR 1720-23) as a direct and exclusive result of Judge Stanley's pervasive bias and hostility towards Appellant, Appellant was denied the fundamental constitutional right to be tried by a fair and impartial jury. See, Duncan v. Louisiana, 391 US 145, 153 (1968) (quoting the Sixth Amendment, "the accused shall enjoy the right to... a public trial by an impartial jury"), Mu'Min v. Virginia, 500 US 415, 431 (1991) (voir dire enables court to select impartial jurors and assists counsel in exercising peremptory challenges)

As Mr. Jacobs attested to (PCR 1720-21) because of Judge Stanley's manifestation of pervasive bias against Appellant during initial jury selection, Appellants trial counsel

were unable to establish and expose "cause" to strike numerous jurors who actually did serve on Appellants jury even though they harbored obvious bias against Appellants.

Specifically, as the record substantiates, Mr. Jacobs was precluded from fully exploring Jury Foreman Snyder's own admission during voir dire that he questioned the concept of the presumption of innocence as Jury Foreman Snyder felt that the police always do their job right. See record DA-R 1471-72<sup>39</sup>. Based upon Foreman Snyder's own voir dire response, he should have been removed for cause. See, Turner v. State, 645 So2d 444, 447 (Fla. 1994), relying upon Singer v. State, 109 So2d 7, 23-24 (Fla. 1959). See also, Irvin v. Dowd, 866 US 717, 722-23 (1961) (vacating capital conviction and death sentence because jury included jurors who had expressed fixed opinions as to defendants innocence or guilt); United States v. Amerson, 938 F2d 116, 117-18 (8th Cir. 1991) (manifest error in refusing to excuse for cause juror who indicated during voir dire that juror would give added weight to police credibility).

Additionally, Mr. Jacobs specifically attested to the fact (PCR 1720) that because of Judge Stanley's pervasive bias and hostility towards the defense, Mr. Jacobs was unable to expose Juror Winburn's obvious personal bias and have Juror Winburn removed for cause.

As the record reflects, Appellant was tried in a very small, rural community of Glades County, Florida only two months after a first jury trial ended in a "hung jury". Prior to voir dire the prosecutor himself conceded that it would be difficult to impanel a jury (DA-R 1430-31). During jury selection virtually every juror admitted to be exposed to extrajudicial knowledge of this case through community gossip and local newspaper.

But Appellants trial counsel was not allowed to fully expose the jurors personal bias's. See Affidavit of Robert Jacobs, III (PCR 1720-23) (attached as "Appendix E"), see also, King v. State, 390 So2d 315, 319 (Fla. 1980) ("purpose of voir dire examinations is to obtain a fair and impartial jury to try the issues in the cause"); Jordan v. Lippman, 763 So2d<sup>F2d</sup> 1265, 1279 (11th Cir. 1985) ("voir dire must be adequate to unearth potential prejudice"). As Mr. Jacobs stated

"Juror Winburn admitted during voir dire to being the stepfather of Glades County Sheriff's deputy Alan Green. At the time of Mr. Lambrix's trial Deputy Green was under F.B.I. investigation because of a complaint made on behalf of Mr. Lambrix

---

Footnote 30: (voir dire exchange) "Prosecutor: have you formed any opinion at this point as to any guilt or innocence?", Mr. Snyder: "I really cant say. I dont know. I usually think the police do their work right. Thats just how I feel about it." (DA-R 1471-72)

that Deputy Green had beaten Mr. Lambrix while he was in his jail cell. Because I was accurately aware of the very real risk of contaminating the entire jury pool, I was prevented from fully developing this cause for challenging Juror Winburn. Mr. Winburn was eventually empaneled on the jury." (PCR 1720-21)

As Mr. Jacobs fully stated (PCR 1720-23) Judge Stanley's pervasive bias and hostility towards the defense clearly manifested itself throughout the jury selection process, resulting in at least 4 jurors being empaneled that harbored personal bias that if properly exposed would had required their removal for cause. See Turner v State, 645 So2d 444, 447 (Fla. 1994), relying upon, Singer v State, 109 So2d 7, 23-24 (Fla. 1954) ("juror should be excused if there is any reasonable doubt about the juror's ability to render an impartial verdict.") See also, Ritter v Jimenez, 343 So2d 659, 661-62 (Fla. 3d DCA, 1977)

Clearly, Mr. Jacobs sworn affidavit upon the specific facts of how Judge Stanley's pervasive bias and hostility manifested itself throughout Appellants capital trial provided sufficient evidence to warrant an evidentiary hearing on this issue. See, Swafford v State, 670 So2d 736 (Fla. 1996), Card v State, 652 So2d 433 (Fla. 1995), Robert v. State, 678 So2d 1232 (Fla. 1996), Lightbourne v State, 742 So2d 238 (Fla. 1999)

At that time, Appellant would had been entitled to subject Judge Stanley to a pre-hearing deposition pursuant to Bracey v. Gramley, 117 Sct 1793, 1797 (1997). But because the lower court and the state obstructed and impeded Appellants ability to compel a timely hearing and the presentation of this evidence, now both Judge Stanley and Robert Jacobs, III have died and are not available. Appellant clearly has established actual prejudice resulting from this obstruction, and pursuant to Jones v state, 740 So2d 520, 522-23 (Fla. 1999), Appellant is now entitled to have Appellants capital convictions and sentences of death fully vacated.

The States argument that the lower court specifically found this claim to be procedurally barred as "untimely" simply is not correct. Although the state did attempt to assert this argument in the lower court, the lower court specifically rejected this argument and recognized this claim was timely filed. See Order, PCR 1159-60)

Basically the state attempts to now argue that Appellant did not file this claim before the lower court within one year of the newly discovered evidence becoming available. See, Glock v. State, 776 So2d 243 (Fla. 2001) ("any claim of newly discovered evidence must be brought within one year of the date such evidence was

disclosed, or could have been discovered through the exercise of due diligence'). Mills v State, 684 So2d 801, 804-05 (Fla. 1996) (accord)

As the lower court plainly recognized, and is clearly supported by the record, Appellants counsel did timely file this claim. (PCR 1159-60). The state attempts to argue that this newly discovered evidence of Judge Stanley's bias was discoverable upon publication of Porter v Singletary, 49 F3d 1483 (11th Cir. 1995), but then concedes that, in fact, the newly discovered evidence Appellant specifically relies upon to support the instant claim actually was not available until Judge Stanley gave a deposition in Raleigh Porter's capital case on January 17, 1997. By the state's own admission that one-year filing deadline did not begin to count until January 17, 1997.

As the record shows (PCR 1-62) Appellants counsel did submit the instant claim to the lower court on January 16, 1998 (See, Order, PCR 1159-60) Further, the state conveniently ignores the fact that, as the lower court recognized, in March, 1997 Appellant filed a pro se "Notice of Intent to Present Claims" pursuant to McFarland v. Scott, 512 US 849, 854-55 (1994) specifically requesting the appointment of post conviction counsel<sup>31</sup>. When the lower court did not timely appoint post conviction counsel as required under Fla. Statutes § 27.701-702, see also, Spalding v. Duggar, 526 So2d 71, 72 (Fla. 1988), Appellant petitioned this court for appointment of post conviction counsel specifically to present and pursue this claim, and this court assigned "CERC-South" to represent Appellant, then dismissed that petition as "moot". Lambert v. Judge Reese, 705 So2d 902 (Fla. 1998)

Clearly, Appellant did exercise due diligence in timely presenting this claim to the lower court, and as the lower court specifically recognized there is no merit to the state's assertion that this instant claim is untimely. See, Order PCR 1159-60.

For the reasons stated above, and as fully pled in the "Initial Brief" submitted to court by Appellants counsel, Appellant is entitled to relief on this claim as the facts and evidence irrefutably show that the state and the lower court unduly impeded and obstructed Appellants ability to present this claim, resulting in irreparable prejudice requiring relief under Jones v. State, 740 So2d 520 (Fla. 1999)

---

Footnote 31: As the record reflects, from 1989 to 1995 Appellant was represented by the Federally funded "Volunteer Lawyers Resource Center", but in July 1995 Congress abruptly eliminated their funding, leaving Appellant without representation until late 1997.

## ARGUMENT II

### Appellant Is Entitled To A Directed Acquittal of the Capital Conviction's Under The Federal Fundamental Miscarriage of Justice, And The Florida Manifest Injustice Doctrine's, As Appellant Is Actually Innocent of Premeditated Murder, Alternatively Appellant Is Entitled To A New Trial Under The Fifth, Eighth And Fourteenth Amendments of the U.S. Constitution

Appellant provides the instant argument as a necessary supplement to the 'Initial Brief' previously submitted to this Court by appointed counsel as 'Argument V' (pgs 81-97), specifically incorporated herein by instant reference. See, Peede v. State, 746 So2d 253, 255 (Fla. 1999) (recognizing that "capital post conviction defendants pro se supplement to appointed counsel's 'Initial Brief' was far more helpful and comprehensive than the Initial Brief submitted by counsel"); See also, Hill v. State, 656 So2d 1271 (Fla. 1995)

With respect to this Court and counsel, Appellant submits that Counsel's argument as contained within the 'Initial Brief' has failed to adequately present the relevant facts and applicable law necessary for this Court to fully and fairly review the instantly pled claims. Appellant seeks to now apprise this Court of the material and relevant facts, as well as applicable law, inexplicitly not argued by counsel.

As the lower Court recognized, "This case is perhaps the most complicated criminal matter ever to come before this Court." (PCR 7870). In the interest of fundamental fairness, justice and the integrity of these proceedings; See, Arbalaz v. Butterworth, 738 So2d, 326, 327 (Fla. 1999), recognizing this Court's own "constitutional responsibility to ensure that the death penalty is administered in a fair, consistent and reliable manner" Id, at 327, as "our adversarial system of criminal justice depends almost entirely upon the procedural fairness and integrity of the process;" Id. at 331

Appellant submits that appointed counsel has inexplicitly neglected to specifically argue that under the constitutionally recognized "Fundamental Miscarriage of Justice" doctrine as set forth in Houston v. Bell, 126 S.Ct. 2064 (2006) and Schulp v Delo, 513 US 298 (1995), Appellant is now entitled to have the capital convictions and sentences of death vacated in their entirety, with a specific finding of directed acquittal of these capital charges

This complete entitlement to relief by way of directed judgement of acquittal is based upon Appellant's actual innocence as under applicable state law Appellant is both factually and legally innocent of premeditated murder and was entitled to entry of Judgement of Acquittal as the State wholly failed to prove the wholly circumstantial theory of alleged premeditated murder beyond a reasonable doubt.

As the record reflects, at the conclusion of the State's wholly circumstantial case Appellant's trial counsel did timely present the lower Court with a comprehensive "Motion for Judgement of Acquittal", specifically arguing that the State failed to present any actual evidence of premeditated intent to kill Moore/Lamberson, and completely failed to prove beyond a reasonable doubt that Alesha Bryant actually died as the result of any criminal act, much less that Appellant was responsible for Alesha Bryant's death. (DA-R 2461-62). The trial Court, Judge Richard Stanley, denied this Motion for Judgement of Acquittal.

Incredibly, Appellant's appointed "direct appeal" counsel, Ray LeGrande, did not raise the erroneous counsel of this timely and properly preserved Motion for Judgement of Acquittal on Appellant's "direct appeal". As the applicable facts and law fully argued below establish, had Appellant's counsel presented this claim upon direct appeal, Appellant clearly would have been entitled to relief from these wrongful convictions.

It must be noted that in Federal habeas proceedings before the U.S. District Court in August, 1991 it was established that prior to Mr. LeGrande's appointment to Appellant's "direct appeal", Mr. LeGrande had virtually no experience in capital cases. At that time, both former Florida Supreme Court Chief Justice Alan Sundberg and Miami criminal defense attorney Roy Black testified in Appellant's behalf as "expert witnesses," characterizing Mr. LeGrande's "direct appeal" representation as perhaps the most ineffective representation they had ever seen in a capital case.

In fact, both this Court and the U.S. Supreme Court have previously recognized the incompetency of Appellant's direct appeal counsel. See, Lambrix v. State, 641 So2d 847 (Fla 1994) (recognizing that although Appellant's trial counsel properly preserved Espinosa claim that Appellant was unconstitutionally sentenced to death, because Appellant's direct appeal counsel failed to present the claim on direct appeal, Appellant was procedurally barred from relief); Lambrix v. Singletary, 520 US 518 (1997) (by marginal 5 to 4 vote, affirming lower Courts ruling that direct appeal counsel's

failure to raise claim on direct appeal procedurally barred Appellant from relief)

Appellant concedes that direct appeal counsel's failure to raise the denial of Appellant's Motion for Judgment of Acquittal on direct appeal would procedurally bar subsequent review of this claim. But the recognized exception to this rule is that if the post conviction defendant can produce newly discovered evidence that raises a "colorable claim of innocence sufficient to undermine confidence in the verdict," Schulp v. Delo, 513 U.S. 298 (1995), then petitioner would be entitled to overcome any otherwise applicable "procedural bars" under the "Fundamental Miscarriage of Justice" doctrine, and would be entitled to full review of the procedurally barred claim. See also, House v. Bell, 126 S.Ct. 2064, 2075-77 (2006) ("In appropriate cases, the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration" Id. at 2076.

Although Florida has never specifically recognized this constitutionally based "Fundamental Miscarriage of Justice" doctrine, this Court has recognized a comparable "Manifest Injustice" concept that the fundamental tenet of Due Process embodied in the Florida Constitution, and in effect in post conviction proceedings, is to ensure that any fundamental injustice is adequately corrected. See, Reddick v. State, 190 So2d 340, 350 (Fla. 1966), citing to Sunal v. Large, 332 U.S. 174 (1946) ("In exceptional cases where there 'has been a fundamental miscarriage of justice' for which no other adequate remedy is presently available, the writ is effectual"), See also, Haag v. State, 591 So2d 614, 616 (Fla. 1992) ("both simplicity and fairness are equally promoted by the right to habeas relief that emanates from the Florida Constitution... the fundamental guarantees enumerated in Florida's Declaration of Rights should be available to all through simple and direct means, without needless complication or impediment, and should be fairly administered in favor of justice")

In Baker v. State, 878 So2d 1236, 1246 (Fla. 2004) (Anstead, J., esp. concurring) this Court emphasized the importance of correcting manifest injustices;

"In our attempts to efficiently regulate a system for addressing post conviction claims we must constantly keep in mind that we <sup>are</sup> dealing with the Writ of Habeas Corpus, the Great Writ, which is expressly set out in Florida's constitution. That Writ is enshrined in our Constitution

to be used as a means to correct manifest injustices, and its availability for use when all other remedies have been exhausted has served our society well over many centuries. This Court will of course remain alert to claims of manifest injustice, as will all Florida Courts. As we reaffirmed in Harvard v. Singletary, 733 So2d 1020, 1024 (Fla. 1999) "we will continue to be vigilant to ensure that no fundamental injustices occur."

It would be utterly inconceivable to imagine any "manifest injustice" greater than the execution of an innocent man. As fully set forth below, and supported by the record, both the irrefutable facts and applicable law clearly show that Appellant is actually innocent of the wholly circumstantial case of premeditated murder of which Appellant has been wrongfully convicted of, and condemned to death for.

Appellant recognizes that a claim of exemption of procedural bars based upon the "fundamental miscarriage of justice" doctrine established in Schulz v. Delo, supra, and House v. Brill, supra, requires the presentation of newly discovered evidence sufficient to establish a "colorable claim of innocence" that, if true, would undermine confidence in the verdict.

Appellant submits that the instant claim is specifically based upon a wealth of newly discovered evidence that was not previously available in any prior post conviction and/or appellate proceeding. As the collective presentation of the proceeding claims establishes, See, Argument I thru IV, newly discovered evidence shows that the State improperly failed to disclose the nature of the personal relationship between key witness Smith and SAO Inv. Daniels, failed to properly disclose that key witness Smith was given a deal of immunity from prosecution in exchange for her testimony against Appellant, See, Argument I, and violated U.S. v. Giglio by knowingly allowing key witness Smith to present false material testimony.

Additionally, newly discovered evidence now shows that key witness Smith and SAO Inv. Daniels deliberately coerced Deborah Hanzel to provide material false testimony and that key witness Smith and Inv. Daniels engaged in a conspiracy and collaboration to manipulate and fabricate circumstantial evidence with the intent and purpose of having Appellant wrongfully convicted of premeditated murder that they knew Appellant was actually innocent of. See, Argument II.

To corroborate the above newly discovered evidence Appellant has produced and

professed into the record, see, Initial Brief, Argument III (pgs. 57-70) evidence of numerous expert witnesses, providing "reliable scientific evidence" and irrefutable physical evidence to support this "fundamental miscarriage of justice" claim.

The State argues that the lower Court has already rendered a factual determination that this alleged newly discovered evidence, in its entirety, is "not credible." However, in the preceding arguments, Appellant has established that the lower Courts factual findings are not supported by the measure of "competent, substantial evidence" required, and that as in Mordenti v. State, 894 So2d 161 (Fla. 2004); Floyd v. State, 902 So2d 775 (Fla. 2005); Cordova v. State, 826 So2d 968 (Fla. 2002) and Rogers v. State, 785 So2d 373 (Fla. 2001) this Court must reject the lower Court findings of fact, and recognize that the newly discovered evidence does entitle Appellant to relief.

Equally so, the State conveniently ignores the fact that the lower Court failed to provide Appellant any evidentiary hearing on specifically pled "Argument III" (conspiracy and collaboration to wrongfully convict claim) and "Argument IV" (denial of a fair trial before an impartial tribunal claim). The evidence Appellant sought to present in support of these claims would had corroborated the newly discovered evidence presented in Argument I and Argument II, and the lower Courts factual determinations rendered before Appellant could present this corroborating evidence was error. See, Roberts v. State, 678 So2d 1232, (Fla. 1996)

Therefore, Appellant has presented sufficient newly discovered evidence raising a colorable claim of innocence, sufficient to undermine confidence in the verdict, as required under Schulp v. Delo and House v. Bell, Supra. Having met this burden of providing newly discovered evidence, including reliable scientific evidence that corroborates the pled claims, Appellant is now entitled to have any procedural bar applicable to the full review of Appellant's original Motion for Judgment of Acquittal fully set aside, and this claim reviewed upon the merits, just as if it was originally filed in Appellant's direct appeal.

At the onset, Appellant would respectfully acknowledge that this Court is constitutionally obligated to independently review the sufficiency of evidence to support a capital conviction in which a sentence of death has been imposed. Muehleman v. State, 503 So2d 310, 313 (Fla. 1987); Jones v. State, 963 So2d 180, 184 (Fla. 2007), quoting Fla. R. App. Proc. 9.142 (a)(6) "In death penalty cases, whether or not insufficiency of the evidence, or propor-

tionality is an issue presented for review, the Court shall review these issues and, if necessary, remand for appropriate relief.

Although this Court did not specifically address the sufficiency of evidence in the published opinion affirming Appellants convictions and sentences of death on direct appeal, see Lambrix v. State, 494 So2d 1143 (Fla. 1986), it must be assumed that this Court did fulfill its constitutional obligation. But as this Court has often recognized, this Court's obligatory independent review is not a substitute for counsel's own duty to fully present a claim to the court - nor should it be.

Had Appellants direct appeal counsel properly and fully presented this issue to the Court on direct appeal, specifically arguing that the lower Courts denial of Appellants Motion For Judgment of Acquittal was erroneous as the wholly circumstantial evidence of premeditated murder was legally insufficient as a matter of law, then it must be assumed that this Court would have followed applicable law and Appellants capital convictions and sentences of death would have been vacated.

Appellant acknowledges that for the purpose of determining whether the State's evidence presented in support of premeditated murder was legally sufficient to support the conviction, this Court must accept that evidence, and all reasonable inferences thereof, in a light most favorable to the State. Casciminski v. State, 944 So2d 1018 (Fla. 2008). See also, Bigham v. State, 995 So2d 207 (Fla. 2008) ("even viewing the facts in a light most favorable to the State, we conclude the State's evidence was not sufficient to prove that (the victim's) death was caused by premeditated murder")

As this Court has repeatedly recognized, in cases such as Appellants where the States entire case of alleged premeditated murder was based upon wholly circumstantial evidence, a special standard of law must apply. See Heiney v. State, 447 So2d 210, 212 (Fla. 1984), quoting McArthur v. State, 351 So2d 973, 976 (Fla. 1977) ("where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence.")

Under this long established standard of law, Appellant is factually and legally "actually innocent" of premeditated murder, and entitled to relief under both the "Fundamental Miscarriage of Justice" and the "Manifest Injustice" doctrines. Unless this

Court now provides the relief Appellant is constitutionally entitled, Appellant will be executed for a crime of premeditated murder Appellant is actually innocent of

Under this special standard of review applicable to cases solely predicated upon circumstantial evidence, a conviction cannot be sustained unless "the evidence is (1) 'consistent with the defendant's guilt' and (2) 'inconsistent with any reasonable hypothesis of innocence'." Delgado v. State, 948 So2d 681, 689-90 (Fla. 2006), quoting, Orme v. State, 677 So2d 258, 261 (Fla. 1996) As this Court recently stated in Balford v. State, 923 So2d 475, 482 (Fla. 2006), quoting Davis v. State, 90 So2d 629 (Fla. 1956);

"It is the actual exclusion of the hypothesis of innocence which clothes circumstantial evidence with the force of proof sufficient to convict. Circumstantial evidence which leaves uncertain several hypotheses, any of which may be sound and some of which may be entirely consistent with innocence, is not adequate to sustain a verdict of guilt. Even though the circumstantial evidence is sufficient to support a probability of guilt, it is not thereby adequate to support a conviction if it is likewise consistent with a reasonable hypothesis of innocence."

There is no question that the State's entire case of alleged premeditated murder was wholly circumstantial. As the State has specifically stated, "the entire case, premeditation and everything, is proven in (Frances Smith's) testimony. And there has never been any question about that." (PCR 1950, DA-R 2510)

But the trial record also plainly shows that Frances Smith admitted that she actually did not see or hear anything that transpired outside leading up to and resulting in the deaths of Moore/Lamberson and Bryant. (DA-R 1819-20, 1932) and that all that she actually did know was that immediately before Appellant went outside with Moore/Lamberson and Bryant all three were "laughing, joking, and playing around" while drinking from a bottle of whiskey (DA-R 2205) and that there was nothing to suggest any animosity between the parties.

Rather, Frances Smith testified that only after the deaths of Moore/Lamberson and Bryant, Appellant told her that Appellant "hit the man in the back of the head and ~~choked~~ choked the girl" (DA-R 2212-13), but that Appellant "never said why."

Smith's testimony was directly contradicted at trial by the State's own medical examiner, Dr. Robert Schultz, who testified that Moore/Lamberson was not hit in the

back of the head, but that all 8 blows (4 to each side) were administered to the front of forehead, consistent with a continuous side-by-side motion (DA-R 1788-89), "resulting in severe fractures to the skull and bones around the eyes and cheek (DA-R 2058-59) Dr. Shultz found no evidence of defensive wounds. This irrefutable testimony shows that Moore/Lamberson was actually facing Appellant, as if coming at Appellant, and the virtual absence of any defense wounds clearly supports a reasonable hypothesis that Moore/Lamberson was actually the aggressor - not the victim.

As for Frances Smith's trial testimony that Appellant told her that Appellant had "choked the girl" (DA-R 2213) then placed her "face down in a pond" (DA-R 2225), again the state's own medical examiner Dr. Shultz testified that there was actually no injuries found on Alerisha Bryant to indicate that she had been 'choked,' or placed in a pond. (DA-R 1966-71). Nor was there any evidence that a pond existed.

More importantly, as Appellant's trial counsel specifically argued in the post-trial Motion for Judgment of Acquittal, (DA-R 2461-62), Dr. Shultz conceded that he actually found no evidence that Alerisha Bryant was even the victim of a homicide - much less that Appellant was responsible for her death.

Rather, Dr. Shultz testified that Alerisha Bryant's death was "probable manual strangulation" (DA-R 2073-77), a conclusion he reached only because Bryant was not shot, stabbed, or beaten to death, so that only left probable strangulation. (DA-R 2046-50) (DA-R 2073-77). Dr. Shultz's speculation as to the cause of death completely failed to prove beyond a reasonable doubt that Alerisha Bryant was even murdered, as argued by Appellant's trial counsel. (DA-R 2461-62). See, In Re Winslop, 397 US 358, 364 (1970) (Due Process requires that the state prove every element of the crime beyond reasonable doubt); Flore v. White, 531 US 225, 228-29 (2001) (accord);

To support this circumstantial theory of premeditated murder, at trial key witness Frances Smith testified that after Moore/Lamberson was dead, Smith claimed that she personally seen Appellant go through Moore/Lamberson's pockets, but admitted that she did not actually see Appellant remove anything (DA-R 2221). But state witness Sam Johnson, a Medical Examiners investigator who helped exhume the body, testified that they found money and a watch in the very same pockets Frances Smith claimed she seen Appellant go through (DA-R 1992-2016)

Last, at trial the state argued that Appellant killed the two people to take the

car, based upon the testimony of both Frances Smith and Deborah Hanzel. But as the record reflects, neither Smith or Hanzel actually said that Appellant exhibited, or otherwise expressed, any actual preconceived intent to commit a crime to take the vehicle. This Court must closely examine their actual testimony.

As the trial record actually reflects, key witness Smith NEVER testified that Appellant expressed any intent to kill either victim to steal this vehicle. What Smith actually testified to was that after Moore/Lamberson and Bryant were already dead, she repeatedly asked Appellant why, but Appellant "refused to talk about it", and only said "at least now we have a car." (DA-R 2244-45)

State witness Deborah Hanzel then testified that during a subsequent phone conversation she asked Appellant "Did you really kill the man for the car", to which Hanzel claimed Appellant responded "that was part of the reason" (PCR 2019) This ambiguous response, even if assumed to be true, simply does not exclude the reasonable hypothesis of innocence<sup>32</sup> that Appellant took the vehicle only after the deaths to facilitate fleeing the scene, and it cannot be ignored that the evidence presented at trial shows that in fact, key witness Smith actually kept possession of the vehicle, not Appellant (DA-R 2249) See, Peck v. State, 395 So2d 492, 499 (Fla. 1980)<sup>32</sup>

The standard of law is clear; Heiney v. State, 447 So2d 210, 222 (Fla. 1984) quoting McArthur v. State, 351 So2d 973, 979 (Fla. 1977) ("where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless it is inconsistent with ANY reasonable hypothesis of innocence")

Although Appellant did not actually testify at trial, even though Appellant clearly did express the desire to testify, see, Lambrix v. Singletary, 72 F3d 1500 (11th Cir. 1997) Appellant did testify in post conviction proceedings (PCR 8319-50). At that time Appellant detailed how Appellant was forced to act in spontaneous, involuntary self defense

---

Footnote 32: See, Scully v. State, 533 So2d 1137, 1143 (Fla. 1988) ("while it is true that Scully took Villegas' car following the murder, it has not been shown beyond a reasonable doubt that the primary motive for this killing was pecuniary gain. As in Peck v. State, 395 So2d 492, 499 (Fla. 1980), it is possible that the car was taken to facilitate escape rather than as a means of improving his financial worth. The record simply does not support the conclusion that (the victim) was murdered for her car.")

when unexpectedly attacked by Moore/Lamberson as Appellant attempted to stop Moore/Lamberson from fatally assaulting Aletsha Bryant (PCR 8321-38) As the record further shows the state had a full and fair opportunity to cross-examine Appellant upon this claim of self defense, but the state did not and could not impeach or otherwise discredit Appellant. (PCR 8339-50)

As the state concedes, for the purpose of determining whether "any reasonable hypothesis of innocence" exists, applicable law DOES NOT require a capital defendant to actually present evidence to support a reasonable hypothesis as the state has the burden of proving premeditation by circumstantial evidence to the exclusion of ANY reasonable hypothesis of innocence - not the Appellant.

The State now argues that under Cochran v. State, 547 So2d 928 (Fla. 1989) the jury could have simply rejected Appellant's claim of self defense. But as this Court recognized in McArthur v. State, 351 So2d 972, 976, n.12 (Fla. 1977), for at least the last 60 years the law in this state has been "the version of events related by the defense must be believed if the circumstances do not show that version to be false," relying upon Holton v. State, 87 Fla. 65, 99 So. 244 (Fla. 1924) See also, Fowler v. State, 492 So2d 1344, 1345-47 (Fla. 1st DCA, 1986) (providing comprehensive analysis on this standard of law)

Appellant's unimpeached claim of self defense provided in post conviction proceedings (PCR 8317-50) clearly establishes that a reasonable hypothesis of innocence does exist that is equally consistent with the state's wholly circumstantial case. In that the circumstantial evidence does not exclude this reasonable hypothesis of a spontaneous event occurring, compelling Appellant to act in self defense, Appellant was and is legally entitled to a judgement of acquittal upon these charges. Long v. State 689 So2d 1055, 1057-59 (Fla. 1997) (In order for this state to prove premeditated, first degree murder through circumstantial evidence, the evidence must be inconsistent with any reasonable hypothesis of innocence"); Bigham v. State, 995 So2d 207 (Fla. 2008) ("where the state's proof fails to exclude a reasonable hypothesis that the homicide occurred other than by premeditated design, a verdict of first degree murder cannot be sustained"); Coolen v. State, 696 So2d 1046 (Fla. 1993)

Appellant would also respectfully submit that Appellant's actions after the deaths of Moore/Lamberson and Bryant, i.e., concealing the bodies and fleeing the scene in the vehicle, cannot be viewed as evidence of pre-conceived plan. See, Carpenter

V. State, 785 So2d 1182 (Fla. 2001) (finding circumstantial evidence of premeditated murder legally insufficient even though Carpenter attempted to conceal body after death); Bigham v. State, 995 So2d 207 (Fla. 2008) (circumstantial evidence of premeditated murder legally insufficient even though Bigham attempted to conceal crime)

Finally, assuming in arguendo that this Court does find that the evidence presented at trial was legally sufficient to establish that Appellant was responsible for the death of Alisha Bryant, the facts still do not exclude a reasonable hypothesis that her death was the result of a spontaneous event, and not premeditated murder.

This Court has consistently overturned jury verdicts of premeditated murder based on circumstantial evidence involving multiple victims, i.e., Ballard v. State, 923 So2d 975 (Fla. 2006), and victims of strangulation; Bigham v. State, supra, Green v. State, 715 So2d 940 (Fla. 1998); Randall v. State, 760 So2d 892 (Fla. 2000), Horfert v. State, 617 So2d 1046 (Fla. 1993). As this Court recently explained in Bigham v. State, 995 So2d, at 212-13;

"Prior to Green, and in a case that also involved death by strangulation, we concluded that the evidence of premeditation was insufficient despite evidence that the strangled victim was found partially nude and the defendant had a history of strangling women while raping them. Horfert v. State, 617 So2d 1046 (Fla. 1993). Subsequently, we found insufficient evidence of premeditation in two strangulation murders in Randall v. State, 760 So2d 892 (Fla. 2000). In Randall, we relied upon our earlier decision in Kirkland v. State, 684 So2d 782 (Fla. 1996), also holding that evidence of premeditation was lacking in a strangulation case. Randall, 760 So2d, at 902. Hence, we have concluded in a number of cases that evidence of premeditation was insufficient even though the defendant had killed the victim by strangulation." (emphasis added)

Appellant submits that based upon the above and foregoing, and as supported by the record before this court, as a matter of long established and recognized Florida law, Appellant is actually innocent of premeditated murder in both the deaths of Moore/Lamberson and Bryant, and under the "Fundamental Miscarriage of Justice", or alternatively, Florida's "Manifest Injustice" doctrine Appellant is now entitled to relief from these wrongful convictions.

As Appellant's trial counsel specifically argued in the timely filed and properly

preserved "Motion For Judgement of Acquittal", the state's wholly circumstantial case of alleged premeditated murder as to the death of clarence Moore, aka Lawrence Lamberson completely failed to present any credible or competent evidence sufficient to exclude the reasonable hypothesis that Moore/Lamberson's death was actually the product of a spontaneous confrontation inconsistent with premeditated murder. In fact, as argued above and supported by the evidence, the states wholly circumstantial evidence completely failed to - and in fact, is consistent with - the reasonable hypothesis that, as Appellant testified (PCR 8317-39) Moore/Lamberson was actually the aggressor (not the victim) and that Appellant was compelled to respond in involuntary self defense.

As to the tragic death of Alisha Bryant, as specifically argued by Appellants trial counsel in the Motion For Judgement of Acquittal (at DA-R 2461-62), the state completely failed to prove beyond a reasonable doubt that Alisha Bryants death was actually the product and result of any criminal act. The States own medical examiner, Dr Shultz, testified that he could find no actual evidence that Alisha Bryant was the victim of a homicide, and that he only assumed that Bryant died of "probable manual strangulation" because she was obviously dead, and she didn't die of gunshot wounds, or stabbing, or blunt trauma (DA-R 2046-50, 2073-74)

Speculation of a probable cause of death simply is not proof beyond a reasonable doubt, and therefore, the state failed to prove beyond a reasonable doubt that Alisha Bryant was actually the victim of a homicide. As argued by trial counsel, Appellant was entitled to entry of Judgement of Acquittal.

However, assuming in arguendo that this Court finds that the evidence was sufficient to establish that Alisha Bryant actually was the victim of a homicide, the state still did not prove that Alisha Bryant actually died at the hands of Appellant to the exclusion of a reasonable hypothesis that, as Appellant subsequently testified (PCR 8317-39), Moore/Lamberson actually killed Bryant, not Appellant. The only evidence the State presented that attributed Bryants death to Appellant was that Frances Smith testified that Appellant "told her" that Appellant had "choked the girl" (DA-R 2212-13) - but Medical Examiner Dr Shultz testified that he found virtually no evidence that Bryant was "choked" (PCR 1266-71)

But again, assuming in arguendo that this Court did find that Alisha Bryant

did die of "strangulation", and that Appellant was responsible, that still does not exclude the reasonable hypothesis that Bryant's death was the product of a spontaneous event and not premeditated murder.

The record shows that key witness Smith testified that immediately before Appellant went outside with Moore/Lamberson and Bryant, all three were "laughing, teasing, and playing around" while drinking from a bottle of whiskey (DA-R 2205). Smith testified that Appellant "looked normal" and did not have the alleged murder weapon (a common fire iron) at that time. (PCR 1822-23). Key witness Smith also testified that she actually did not see or hear anything that transpired outside (DA-R 1819-20, 1932).

This specious testimony simply does not exclude the reasonable hypothesis that Bryant died as the result of a spontaneous event, not premeditated murder. As a matter of applicable law, the evidence simply is not legally sufficient to support the wholly circumstantial theory of premeditated murder. Appellant was and is entitled to entry of Judgment of Acquittal as to the death of Alisha Bryant.

Appellant submits that the "newly discovered evidence" specifically presented in the preceding "Argument I thru IV", individually and collectively, establish a "colorable claim of innocence" sufficient to undermine confidence in the verdict, and therefore Appellant is now entitled to the "Fundamental Miscarriage of Justice" exception to otherwise applicable procedural bars under Schubert v. Delo, supra, and House v. Bell, supra. Although Appellant concedes that appointed ~~post conviction~~ direct appeal counsel inexplicitly did not raise the claim relating to the timely filed and properly preserved "Motion for Judgment of Acquittal" in Appellant's "direct appeal", a full and fair review of this claim will establish that both factually and legally Appellant is entitled to relief, as Appellant is actually innocent of premeditated murder in the deaths of Clarence Moore, aka Lawrence Lamberson and Alisha Bryant.

Alternatively, Florida's own "Manifest injustice" doctrine, under the Florida Constitution's Due Process Clause; See, Baker v. State, 878 So2d 1236, 1246 (Fla. 2004), quoting Harvard v. Singletary, 733 So2d 1020-24 (Fla. 1999) does not require production of newly discovered evidence as a prerequisite to entitlement to relief, and only requires that Appellant establish that a "manifest injustice" exists, and that absent relief from this court, Appellant will suffer the ultimate of any

conceivable injustice possible - actual execution for a crime that under Florida law Appellant is actually innocent of.

Based upon the above-stated facts and applicable law, Appellant is now entitled to a full and fair review of original trial court's denial of the "Motion For Judgement of Acquittal" that Appellants "direct appeal" counsel inexplicitly failed to present to this Court on Appellants direct appeal, and a determination upon the facts and law as to whether the State's wholly circumstantial evidence of premeditated murder was legally sufficient to support the capital convictions.

Appellant submits that as supported by the record, the state of Florida did not fulfill its burden of proving Appellant acted with premeditated intent to effect the deaths of either (or both) Clarence Moore aka Lawrence Lamberson, or Aleisha Bryant, and Appellant is entitled to entry of Judgement of Acquittal on both of these contemporaneous capital convictions. See, Bigham v. State, 995 So2d 207, 212-13 (Fla. 2008) ("where the State fails to exclude a reasonable hypothesis that the homicide occurred other than by premeditated design, a verdict of first degree murder cannot be sustained"); Heiney v. State, 447 So2d 210, 212 (Fla. 1984), cert. ing. McArthur v. State, 351 So2d 973, 979 (Fla. 1977) ("where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless it is inconsistent with any reasonable hypothesis of innocence.")

The State correctly asserts that in Schulp v. Delo, 513 U.S. 298, 324 (1995) the Supreme Court recognized that "a substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare." But the facts and applicable law clearly show that this capital case does represent that "extremely rare" case in which the judicial system has failed to protect against the wrongful conviction, and even invidible execution, of a capital defendant who is actually innocent, both factually and legally, of the crime of premeditated murder.

It is still not too late for this "fundamental miscarriage of justice" to be corrected before the most inconceivable injustice - the execution of an innocent man - is carried out. Appellant is entitled to the full review of the sufficiency of evidence sought herein, and upon such review, Appellant is entitled to

relief from these wrongful convictions by way of directed acquittal of both counts of capital, premeditated murder.

### Conclusion

The preceding claims of entitlement to relief, 'Arguments I thru V' present substantial violations of Appellants protected State and Federal Constitutional rights. As fully stated above, both individually and collectively these pled claims establish that Appellant has been wrongfully convicted and condemned to death for the two contemporaneous charges of premeditated murder that as a matter of both fact and applicable law Appellant is actually innocent of.

This Court must first determine whether the States wholly circumstantial evidence of premeditated murder was legally sufficient to exclude every reasonable hypothesis of innocence, and if not, Appellant is constitutionally entitled to a directed acquittal of these capital charges under the "Fundamental Mis carriage of Justice" and/or the "Manifest Injustice" doctrine.

If upon full and fair review of the sufficiency of evidence this Court determines that the wholly circumstantial evidence was and is legally sufficient to support the capital convictions and sentences of death, this Court must then address the merits of each of the claims of "newly discovered evidence" ('Arguments I thru IV') and Brady/Giglio to determine whether Appellant is now entitled to relief from the convictions, and remand this case for a new trial.

Appellant respectfully requests relief in the form of a directed acquittal of both counts of capital, premeditated murder. If this Court determines that Appellant is not entitled to a directed acquittal, then alternatively Appellant seeks relief in the form of vacating both capital convictions with an Order to remand this case for a new trial.

Respectfully Submitted,

Cary Michael Lambrix

Cary Michael Lambrix 482053  
Union Correctional Institution  
7819 NW 228th St. (P5111)  
Raiford, Florida 32026-4440

Certificate of Service

I, Cary Michael Lambrix, do hereby certify that a true and correct copy of the above and foregoing "Appellant's Supplemental Pro Se Appeal Brief", and all attachments contained therein, has been duly served upon and provided to; William Hennis, Attorney, Capital Collateral Regional Counsel, 101 NE 3rd Ave. (Ste 400) Ft Lauderdale, Florida 33301; Carol Dridman, Asst Attorney General, Dept of Legal Affairs, 3507 East Frontage Rd (Ste # 200) Tampa Florida, 33607, and Cynthia Ross, Asst State Attorney, P.O. Box 399, Ft. Myers, Florida 33902-0399 by US Mail upon this 8<sup>th</sup> day of April, 2009

Cary Michael Lambrix

Cary Michael Lambrix 482053  
Union Correctional Institution  
7819 NW 228th St (P5111)  
Raiford, Florida 32026-4440

STATE OF FLORIDA )  
 ) ss.  
COUNTY OF POLK )

AFFIDAVIT OF MARY LAMBRIX

Before me this day personally appeared Mary Lambrix. Who being duly sworn, deposes and says:

1. My name is Mary Lambrix and I am the sister of Cary Michael Lambrix. I live in Polk County Florida.
2. During the time when the police were looking for Cary after what happened in Labelle, they came to my house to ask if I had seen him. They came back late at night, they woke my children up. The Police would question my friends as they left my house. They kept thinking that Cary was staying here. I told them I did not know where he was. This continued for quite some time.
3. I was pregnant at the time all of this happened. I was so worried and sick about the police coming to my house that I eventually lost the baby.
4. I did go to visit Cary after he was arrested, while he was in jail in Moorehaven. He was in a tiny cell and we had to talk through the bars. The whole time I was there a guard was standing around watching. I never was able to see or talk to Cary by myself.
- ~~5. It is hard for me to remember a lot of details, it was such a stressful time that I get~~  
sick to my stomach just thinking about it. I know that I was truthful with the police when they asked me about Cary. I did not know where he was. Cary never asked me to lie to anyone. I did not ever lie about Cary to anyone.

MEI

Appendix A  
Exhibit A

6. Growing up Cary and I were very close, he was always the kind of person to help others.

FURTHER AFFIANT SAYETH NAUGHT.

Mary Lambrix

SIGNATURE OF MARY ELIZABETH LAMBRIX

Sworn to and Subscribed to before me this 21<sup>st</sup> day of May, 2006 by Mary Elizabeth Lambrix, who is personally known to me or has shown me the following identification:

Stacie K Brown  
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:

10

2008

STATE OF FLORIDA                    )  
  )  
COUNTY OF HILLSBOROUGH        )        ss.

**AFFIDAVIT OF DEBORAH HANZEL**

I, Deborah Hanzel, having been duly sworn, hereby states as follows:

1. My name is Deborah Hanzel and I currently live at 9512 Ripley Rd., #8, Thonotosassa, FL, 33592. I testified in Mr. Lambrix's trial in 1984, and again in an evidentiary hearing held in October of 2002.

2. I testified at Mr. Lambrix's trial in 1984 that Mr. Lambrix called me on the telephone and indicated to me that he killed the victims in part so that Mr. Lambrix could take the car. This did not really happen. Mr. Lambrix never at any time told me or in any manner indicated to me that he killed the victims in order to get the car. Furthermore, he never told me at any time or in any manner indicated to me that he killed the victims at all.

3. When all this happened in 1983, I was recently divorced and living with Preston Branch, who was Frances Smith's cousin. I do not remember specific dates, but I know that after Frances went to the police and told them that Mr. Lambrix had killed those people it took several weeks before they found and arrested him. Frances knew that Preston and I were cooperating with the police and she called me at home several times to talk about it. During one of these telephone calls, Frances told me that she was afraid that the police wouldn't believe her story and that, as a result, she feared Mr. Lambrix would eventually come after all of us. The police working on this case also told me Mr. Lambrix might come after my children and me. Because of the stories the police and Francis Smith were telling me about Mr. Lambrix, I was convinced that he likely would come after my children and me. During this time, I lived in constant fear. Every night I would lie on the floor in my children's room unable to sleep. The police and Francis Smith persuaded me to believe that Mr. Lambrix was a serious and credible threat to my children and me.

4. When Frances called me, she asked me to back up her story about the car and about Mr. Lambrix going crazy on the guy who owned the car. She kept saying that Mr. Lambrix was going to come and get anyone who testified against him but that if I would back up her story by telling the police that Mr. Lambrix told me that he killed the people in order to steal their car, I wouldn't have to worry about Mr. Lambrix coming after me or my children. When I asked Frances if that was what really happened, she told me she didn't really know what happened outside but that Mr. Lambrix had told her that the guy went nuts and he had to hit him.

5. I told Francis that I would think about it. I reluctantly agreed to tell the police that when Mr. Lambrix had called me, I asked him about the murder and he told me that he killed the man for the car. While Mr. Lambrix did call me, he never told me or indicated

Appendix B

to me that he killed anyone or that he killed the guy in order to get the guy's car. Because I so feared for my and my children's safety, I told this to the police even though it was not true.

6. The state attorneys added to my fear and anxiety by telling me that Mr. Lambrix had raped the girl while he was killing her and stepped on the victims' chests to make sure they were dead. They also told me that he had deliberately tried to kill his wife and kids by running them off the road. Because I was so scared for my children's safety, I did what Frances had asked me to do.

7. After testifying in Mr. Lambrix's trial, I tried to block out all that had happened in an effort to move on with my life. I thereafter assumed that Mr. Lambrix had been executed. However, in 1998, I was contacted by members of Mr. Lambrix's defense team and learned that he was living on death row. Because I was still so frightened of Mr. Lambrix, when they asked me about my trial testimony in which I testified that Mr. Lambrix told me on the telephone that he killed the guy in order to get the car, I told them that I did not remember such a telephone conversation ever occurring. However, I did not tell them that Francis Smith asked me to back up her story by falsely telling police that Mr. Lambrix told me on the telephone that he killed the man for the car. Because of my fear of Mr. Lambrix, after giving the 1998 statement to Mr. Lambrix's defense team, I moved to Tennessee in order to avoid having to get involved in this case. I believed that Mr. Lambrix, after all this time, might still come after me and hurt me if he were to be released from prison. Despite my attempt to avoid this case, an investigator for Mr. Lambrix found me in 2002. Again, as in 1998, when asked by members of the defense team about my trial testimony in which I testified that Mr. Lambrix told me on the telephone that he killed the guy in order to get the car, I told them that I did not remember such a telephone conversation ever occurring. I did not tell them that Francis Smith asked me to back up her story by falsely telling police that Mr. Lambrix told me on the telephone that he killed the man for the car.

8. After testifying last year (October, 2002) in the evidentiary hearing, I moved from Tennessee where I was living and returned to Florida where I had lived and worked for many years. Since returning to Florida I have spent much time reflecting on what happened 20 years ago. The familiar surroundings have brought back a lot of memories about this case that I tried so desperately to block out. I have driven out by the house where Preston Branch and I lived. I have talked to many of my old friends.

9. Twenty years ago, I was a very weak minded person. I could not even live alone. Now, as my friends and I have talked about this case, I realize that because I was so afraid that my children were in danger, I would have told the police whatever they wanted to hear in order to protect my children from what I believed at the time to be a very real threat of physical harm from Mr. Lambrix. I now believe that the police, the state attorney, and Francis Smith were trying to scare me and make me feel like I had to testify for my own safety, and for the safety of my kids.

10. I have been blocking out these memories for many years. I am just now starting to remember how things happened over 20 years ago. I cannot run from the truth. I do not want to feel the guilt anymore. I realize that after so many years my memory of everything that took place is not perfect. However, I clearly remember that Francis Smith persuaded me to make up the claim that Mr. Lambrix called me and admitted to killing the man for the car. I reluctantly agreed because, due to the fear instilled in me by Frances Smith and state officials, I believed it was necessary to keep my children and myself from coming to any harm.

FURTHER AFFIANT SAYETH NAUGHT.

Deborah Hanzel 12-23-03  
SIGNATURE OF DEBORAH HANZEL AND DATE

Sworn, or affirmed to and subscribed before me this 23<sup>rd</sup> day of December, 2003 by Deborah Hanzel who is personally known to me.

Stacie R. Brown 10/17/2003  
SIGNATURE AND DATE OF NOTARY AND SEAL.



Stacie R. Brown  
MY COMMISSION # CC975805 EXPIRES  
October 17, 2004  
BONDED THRU TROY FAIN INSURANCE, INC.



STATE OF FLORIDA     )  
                              )  
GLADES, SS.            )

AFFIDAVIT OF ROBERT R. JACOBS, II

I, ROBERT R. JACOBS, II, having duly sworn or affirmed, do hereby depose and say:

1. I am presently the Deputy Public Defender in the Twentieth Judicial Circuit.

2. In 1983, I served as one of Cary Michael Lambrix's defense attorneys in both his first trial for two counts of first degree murder, which ended in a mistrial, as well as his second trial, which ended in the imposition of two death sentences.

3. Both of Mr. Lambrix's trials occurred in Glades County, Florida, a small, close-knit community that was subjected to extensive pretrial publicity regarding the allegations made against Mr. Lambrix.

4. Much of that pretrial publicity concerned allegations that at the time Mr. Lambrix was arrested, he had walked away from a work release program where he was serving a sentence for issuing worthless checks.

5. Because of the above described facts concerning pretrial publicity, the size and composition of Glades County, and the first mistrial, prior to Mr. Lambrix's second trial, I moved for individual voir dire. Despite the circumstances and the State's concession that it would be difficult to empanel an impartial jury, the trial judge, Richard M. Stanley, denied my motion.

6. Because this was a well-grounded motion, I believed then, and I still believe that Judge Stanley's denial was based upon bias he harbored against my client, Mr. Lambrix.

Appendix E

7. As a result of Judge Stanley's denial, my voir dire was severely restricted because I feared that certain questions would contaminate the entire venire. This resulted in the empaneling of several biased jurors. Specific examples follow:

a. Juror Winburn admitted during voir dire to being the step-father of Glades County Sheriff's Deputy Alan Green. Deputy Green, at the time of Mr. Lambrix's trial, was under investigation by the F.B.I. because of a complaint made on behalf of Mr. Lambrix that Deputy Green had beaten him while he was in his jail cell. Because I was acutely aware of the very real risk of contaminating the entire jury pool, I was prevented from fully developing this cause for challenging Juror Winburn. Mr. Winburn was eventually empaneled on the jury.

b. Juror Snyder expressed a decided bias in favor of law enforcement. In my opinion, exposing the jury to Mr. Snyder's opinions very likely infected the entire venire with a pro-law enforcement bias. As if this were not damaging enough, I was forced to limit my follow-up questions of Mr. Snyder for fear of what he might say next. Neither could I challenge Mr. Snyder based upon his comments. While his bias would have been sufficient cause to do so, I felt that it would give the remainder of the jury pool the false impression that the defense was somehow "anti-law enforcement."

c. Juror Walsh admitted to being the roommate of a Glades County sheriff's deputy. In choosing not to challenge

her for cause, I was forced to make the same strategic decision that I made concerning Juror Snyder.

8. Had Judge Stanley not expressed his bias against Mr. Lambrix by denying my motion for individual voir dire, these three biased jurors would never have been empaneled.

9. Judge Stanley's bias was also evinced by his restricting my cross-examination of the State's primary witness, Frances Smith.

10. When the time came to cross examine Ms. Smith, I attempted to impeach her testimony with prior inconsistent statements she had made while in police custody. In those inconsistent statements, Ms. Smith (i) denied being with Mr. Lambrix the week the murders allegedly occurred; (ii) said she knew nothing about how Mr. Lambrix came to possess one of the alleged victims' car; (iii) stated she was never in LaBelle with Mr. Lambrix; and (iv) stated that she knew nothing of the alleged victims. Each one of these statements directly contradicted testimony she gave during the trial. Judge Stanley, however, improperly precluded me from using the inconsistent statements to impeach Ms. Smith.

11. Since Ms. Smith made the inconsistent statements while in custody for allegedly aiding and abetting Mr. Lambrix after he had walked away from a work release program, the State objected to my delving into these statements on cross-examination. The State's rationale was that I would be opening doors for the State, thereby allowing the State Attorney to bring out why she was in custody.

12. Judge Stanley accepted this clearly disingenuous objection and severely circumscribed my cross-examination of Ms. Smith. For the following reasons it was clear to me that Judge

Stanley's ruling was motivated by his bias against Mr. Lambrix:

a. The rationale for the State's objection was quite obviously disingenuous.

b. It was plainly untenable to suggest that I would have been the least bit concerned, as a matter of strategy, with keeping from the jury the fact that Mr. Lambrix had been incarcerated for issuing worthless checks when he was on trial for his life.

c. Most of the jurors had already made it abundantly clear they knew from the news media that Mr. Lambrix had been missing from a work release program at the time of the alleged murders and his arrest.

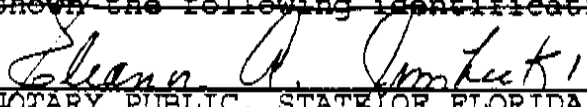
13. Thus, neither the State nor Judge Stanley had Mr. Lambrix's interest in mind when their combined efforts prevented me from using readily available prior inconsistent statements to impeach the State's primary witness.

14. In my opinion, had Judge Stanley not manifested his bias against Mr. Lambrix in the above described manner, there is a strong likelihood that the outcome of his trial would have been different.

Further affiant sayeth naught.

  
\_\_\_\_\_  
ROBERT R. JACOBS, II

Sworn to or affirmed and subscribed before me this 28<sup>th</sup> day of October, 1998. The affiant is personally known to me ~~or has~~ shown the following identification: \_\_\_\_\_

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
My commission expires:



Eleanor A. Gembicki  
MY COMMISSION # 00387268 EXPIRES  
October 8, 2000  
BONDED THRU TROY FARM INSURANCE, INC.