23-7563

CASE NO: USA 11-22-12225

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

SANFORD BENJAMIN GLOSTER, PETITIONER

V.

ELEVENTH CIRCUIT COURT OF APPEALS, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Sanford Benjamin Gloster # D07542
Tomoka Correctional Inst.
3950 Tiger Bay Road
Daytona Beach, Florida 32124

QUESTIONS PRESENTED

1. Does the admission of false evidence in substitute for the true and correct evidence, which itself was not originally stated to, by sworn deposition, constitute the Cause and Prejudice Doctrine bringing Giglio/Brady violations under Due Process Clause U.S.C.A. Const. Amends. 5, 14?

2. Did A.E.D.P.A. legislation create an air of unbalance in the judicial system for Petitioner who seeks Habeas Corpus relief, while actively exhausting all State remedies for Federal Review of petition under Section 2254(d)(1), the two separate bases for review of State Court decisions: the "Contrary To" clause and the "Unreasonable Application" clause, violations of U.S.C.A. Const. Amends. 5, 14?

3. Does the evidence suppressed by the prosecutor for regulating "prejudice" for purposes of "Procedural Default" Doctrine and materiality under the "Brady" Doctrine, violate Petitioner's Due Process Clause and United States Constitutional rights under U.S.C.A. Const. Amends. 5, 14?

LIST OF PARTIES

All parties appear in the caption of the case on the front cover.

TABLE OF CONTENTS

PAGE NO:

Options Below.....

Jurisdiction.....

Constitution and Statutory Provisions Involve.....

Statement of the Case.....

Reason for Granting Writ.....

Conclusion.....

Proof of Service.....

INDEX OF APPENDICES

APPENDIX A	Order denying Certificate of Appealability – 09 Jan 2023
APPENDIX B	Middle District of Florida Court Order – 03 Jun 2022
APPENDIX C	Motion for Rehearing to Eleventh Circuit Court of Appeals/Reconsideration – 01 May 2023
APPENDIX D	Application for Criminal Indigent Status
APPENDIX E	Civil Docket for Case No.: 8:19-CV-02394-WFJ-SPF Document 18 Middle District of Florida 8:19-CV-02394-WFJ-SPF

TABLE OF CONTENTS

PAGE NO:

Options Below..... 1
Jurisdiction..... 2
Constitution and Statutory Provisions Involves..... 3
Statement of the Case..... 4-8
Reasons for Granting Writ..... 9-18
Conclusion..... 19
Proof of Service..... 20

INDEX OF APPENDICES

APPENDIX A	Order denying Certificate of Appealability – 09 Jan 2023
APPENDIX B	Middle District of Florida Court Order – ~~09 Jan 2023~~ 06 03 2022
APPENDIX C	United States Court of Appeals, Eleventh District, Reconsideration – 01 May 2023
APPENDIX D	Application for Criminal Indigent Status
APPENDIX E	Civil Docket for case no.: 8:19-CV-0234-WFJ-SPF Document 15 Middle Dist. of Florida 8:19-CV-02394-WFJ-SPF

TABLE OF AUTHORITIES CITED

CASES:	PAGE:
Amadeo v. Zant, 486 U.S. 214, 222-23, 229 (1989).....	18
Arizona v. Fulminante, 499 U.S. 279 (1991).....	18
Artuz v. Bennett, 531 U.S. 48, 121 S. Ct. 364 (2000).....	18
Bond v. Moore, 309 F. 3d 770, 772 (11th Cir. 2000).....	17
Brady v. Md. 373 U.S. 83 (1965).....	9, 10
Brecht v. Abrahamson, 507 U.S. 619, 648 (1993).....	10, 18
Brinegar v. U.S., 338 U.S. 160 (1949).....	11
Chapman v. Calif., 386 U.S. 18, (1967).....	10
Coleman v. Thompson, 501 U.S. 722, 729-32, 735 (1991).....	18
Conley v. U.S., 415 F. 3d 183, 191 (1st Cir. 2005).....	9
Davis v. Alaska, 515 U.S. 308, 94 S. Ct. 1103 (1974).....	12
Delgado v. Lewis, 223 F. 3d 976, 981-82 (9th 2003).....	15
Dobbs v. Zant, 506 U.S. 357, 359 (1993).....	18
Fisher v. Texas, 169 F. 3d 295, 300-02 (5th Cir. 1999).....	15
Giglio v. U.S., 405 U.S. 150 (1972).....	11
Gray v. Netherland, Infra U.S. @ 165-66 (1996).....	15
Green v. Sec'y Dept. of Corrects., 877 F. 3d 1244, 1248-49 (11th Cir. 2017).....	18
Hudson v. Hunt, 235 F. 3d 892, 895 (4th 2000).....	14
Jackson v. Virginia, 44 U.S. 307 (1978).....	11
Kotteakos v. U.S., 24 F. 2d 82 (7th 1946).....	16
Larrison v. U.S., 24 F. 2d 82 (7th 1928).....	12
Leland v. Or, 343 U.S. 790 (1952).....	11
Lindh v. Murphy, 520 U.S. 320, 117 S. Ct. 2059 (1997).....	15

TABLE OF AUTHORITIES CITED

CASES:	PAGE:
McQuiggins v. Perkins, 569 U.S. 383, 386 (2018).....	15
Mooney v. Holohan, 294 U.S. 103, 55 S. Ct. 340 (1935).....	12
Napue v. Peo. Of Ill., 360 U.S. 264, 79 S. Ct. 1173 (1959).....	12
O'Neal v. McAnich, 513 U.S. 432 (1995).....	15
Parker v. Head, 244 F. 3d 831, 835 (11th Cir. 2001).....	13
Pyle v. Ks., 317 U.S. 213, 63, S.Ct. 177 (1942).....	12
Rose v. Lundy, 455 U.S. 508, 102 S. Ct. 1198 (1982).....	16
Sanders v. Sec'y, Dept. of Corrects, 2019 U.S. Dist. Lexis 8864 (M.D. Fla. 2019).....	13
Satterfield v. Texas, 486 U.S. 249 @ 257 (1998).....	18
Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 85 (1995).....	18
Steed v, Heard, 219 F. 3d 1298, 1300 (11th Cir. 2000).....	17
Strickler v. Green, 527 U.S. 263, n.5 (3rd Cir. 2005).....	9
U.S. v. Cronic, 466 U.S. 648, 104 S. Ct. 2039 (1984).....	12
U.S. v. Gaudin, 515 U.S. 506, 522-23 (1995).....	9
V.I. v. Fahie, 419 F. 3d 249, 253 n.5 (3d Cir. 2005).....	9
Williams v. Taylor, 259 U.S. 362, 412, 120 S. Ct. 1495 (2000)....	13, 15
In re. *Winship*, 397 U.S. 358 (1970).....	11

OTHER AUTHORITIES:

	PAGE:
FEDERAL STATUES AND RULES OF EVIDENCE	
R. 103(d)	8
R. 104(b)(e), Article IV Relevance	9
R. 401(a)(b)	8, 9
R. 403	8, 9
R. 901(a)	15
STATE STATUTES:	
Florida Rules Criminal Procedure 3.850	13
Florida Rules Criminal Procedure 3.853 (DNA Testing)	13
Florida Rules Criminal Procedure 3.850(b)(1)	17
Florida Rules Criminal Procedure 3.850 b(1)(2),h(1,2)	17
CONSTITUTIONAL PROVISIONS:	
Fifth Amendment of the United States Constitution	11, 12, 16
Sixth Amendment of the United States Constitution	3
Fourteenth Amendment of the United States Constitution	3, 11, 12, 16
FEDERAL AUTHORITY:	
28 U.S.C. §§ 2244(b)(3)(4)	12
A,E,D,P,A	12, 13
28 U.S.C. § 2254(d)	13
28 U.S.C. § 2252(d)(1)	13, 14
28 U.S.C. § 2254(d)(2), (d)(1)	15
28 U.S.C. § Pre A.E.D.P.A., A.E.D.P.A	passim
28 U.S.C. §2244(d)(2)	15, 18
28 U.S.C. §2244(1)(A)	15, 17
28 U.S.C. § 1254(a)	2

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari is issued to review the judgment below.

OPINIONS BELOW

The opinion of the highest State Court to review merits appears at Appendix A to the Petition and is reported at 2011-3527, 22-12252-J Second DCA, Eleventh Circuit Court of Appeals respectfully.

CORRECTED JURISDICTION STATEMENT

On January 09, 2023, the Eleventh (11th) Circuit Court of Appeals of Atlanta, Georgia entered a written opinion in Case No. 22-12252-J (Appendix – A) for which a timely petition for rehearing was denied on 01 May 2023 (Appendix – C).

The jurisdiction of this most Honored Court is invoked under R, 28 U.S.C. § 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause of the Fourteenth Amendment of the United States Constitution; U.S.C.A. Const. Amend. XIV Due Process.

Contrary to Clause of the Fourteenth Amendment of the United States Constitution; U.S.C. Const. Amend XIV Due Process.

Unreasonable Application Clause of the Fourteenth Amendment of the United States Constitution; U.S.C.A. Const. Amend. XIV Due Process.

Confrontation Clause of the Sixth Amendment of the United States Constitution; U.S.C.A. Const. Amend. VI.

STATEMENT OF THE CASE

On April 9, 2009, Sanford Benjamin Gloster was charged by Indictment with First Degree Premeditated Murder in violation of Florida Statutes 782.04(1)(R. 22).

On March 9, 2011, Appellant – at the time – filed a Motion to Dismiss on basis of immunity from prosecution. Pursuant to Florida Statutes Section 776.032, which alleged Appellant has no duty to retreat prior to the use of deadly force in self defense. (R. 39-42). A hearing was scheduled on Appellant's Motion; however, because Appellant withdrew the motion, the hearing did not occur and no ruling was entered on the motion at that time. (R. 200; T. 615-15).

On June 13, 2011, Appellant's jury trial began. The State called Grace Gloster, who testified she was married to Appellant while living with her ex-husband David Grove during the time of March 14, 2009. (T. 138-39). She stated Appellant did not know where she was living at the beginning of their separation and she never told him; he found out due to a D.U.I. that Mr. Grove received, driving the car she was using. (T. 140, 158-59). Ms. Gloster stated that on the day of March 19, 2009 she saw Appellant drive up to the house and pull in the driveway. (T. 140). She called him and asked why he was there and he stated he needed to talk to her about the divorce paperwork she wanted to go over before presenting them to the Appellant's attorney. She told him she said everything she needed to say about the divorce in the days before and that he needed to leave. At that time David Grove emerged from the

front door approaching Appellant. Ms. Gloster stated she went out back to smoke a cigarette. (T. 141, 146). When she came back inside she saw the front door open and she could see Appellant's care outside. (T. 147). She ran to the front door where she saw Mr. Grove lying on the ground outside and she saw Appellant kicking him. (T. 147-48). She then screamed at Appellant, "Stop, what are you doing here" and she ran back in the house and called 911. (T. 149). Ms. Gloster testified she did see a bat and remembers picking it up with the hopes of scaring Appellant away from Mr. Grove. (T. 149). She stated it was possible that Mr. Grove had a bat because there were two bats. (T. 150). Ms. Gloster stated Mr. Grove did not fight back or say anything. (T. 151). So she walked outside with the bat, she saw Appellant still kicking Mr. Grove and he said "If you hit me with that bat, that I would kill you too." (T. 151). Ms. Gloster stated Mr. Grove did not fight back or say anything. (T. 151). According to Ms. Gloster, when Appellant stopped kicking Mr. Grove, he walked to his car and then came back and stomped on Mr. Grove several more times and he said something about him being dead. (T. 152). Appellant then left, and she saw Mr. Grove bleeding from his mouth and nose, but he was not speaking or moving. (T. 153, 156).

During Ms. Gloster's testimony, the State introduced the 911 call made by Ms. Gloster, in which Appellant is heard stating, "He's dead" and "This man is attacking – he attacked me." (T. 160-68). During cross examination, Ms. Gloster testified

Appellant knew Mr. Grove had been violent with her because he had seen injuries on her, Appellant knew Mr. Grove would become violent when he was using drugs, and appellant knew Mr. Grove carried a bat. (T. 174). She acknowledged that he had filed the divorce papers, that the divorce was amicable, and that they had discussed the terms of the divorce on the Sunday prior to the incident. (T. 174).

The State called Officer Michelle Williams, who was the first officer on the scene. (T. 197). She testified when she arrived she found Ms. Gloster standing outside in a robe and she pointed over to the foyer area to an injured person. (T. 197). Officer Williams observed the victim had severe head and face trauma, and a lot of blood, and when she checked for pulse there was none. (T. 198).

The State called paramedic Daniel Fagnan, who stated he arrived and he could immediately tell that he would need advanced life saving transport for the victim. (T. 204). Collected evidence from inside the residence and area were photographed. (T. 242). Mr. Brando from Crime Scene Investigation, observed blood splatter approximately five feet on the wall outside and on the ceiling above the victim. (T. 252).

The State called Sgt. Sharon Foshay, who testified she was sent to locate Appellant. (T. 265). She testified they pulled up his address and went to the residence at 12:15 p.m. with additional deputies. (T. 266). When they arrived, she observed his vehicle present and when they knocked on the door, Appellant opened the door and

was placed in handcuffs and detained. (T. 267). Appellant complained of having been injured and the sergeant was responsible for taking appellant to the hospital. (T. 274).

The second baseball bat Ms. Gloster refers to as a "Louisville Slugger" regular size bat was never recovered from the crime scene and was never presented to the jury after Motion for Dismiss of Discovery by defense counsel on June 9, 2009 was submitted to the Court.

The State called Deputy Daniel McGill, who testified he was given at the Appellant's 4651 Manor Drive residence a pair of boots and a wallet. (T. 287). He also obtained articles of clothing – work uniform- in the residence by the washer and dryer. He observed what was thought to be blood on them, but no analysis was done, nor did McGill witness the altercation between Appellant and the victim. (T. 291).

Prior to the calling of the next witness, Appellant objected to the admission of the video tape containing Appellant's interview with law enforcement based upon officers commenting on the evidence on tape. (T. 308-57).

The Court determined that portion was not more prejudicial than probative because it was a repetition of what Appellant had stated to law enforcement. (T. 351).

The State called pathologist Dr. Mainland, who testified she went to the scene on Laurel Dale Drive to examine the body of the victim. (T. 408). She determined the cause of death was blunt force trauma to the head, which was not consistent with a fall. (T. 416).

The State called Detective David Schram, he met Appellant at the hospital. (T. 434). Appellant was read Miranda warnings and signed a waiver to have his property at residence searched. (T. 435). Appellant was cooperative during the interview. Schram observed injuries inflicted to the appellant. (T. 436).

The State called Detective Jose Lugo, where he came into contact with appellant. (T. 626). Appellant had a welt on the back of his head one two inches wide, and three to four inches long, and the detective stated in his experience, it was consistent with being hit with a bat. (T. 627). Appellant, was then medically cleared at the hospital. (T. 628). Appellant at some point did inquire as to whether a man named David was okay. (T. 628).

Defense rested its case after detective's testimony. The defense renewed Motion for Acquittal, but the Court again denied, stating this matter will go to jury trial.

On June 16, 2011, the jury returned a verdict of guilty as charged. (T. 82). Appellant was sentenced to life in the Department of Corrections. (R. 90).

REASONS FOR GRANTING THE PETITION

The threshold questions presented to this most Honorable Court is why the State prosecutor allowed false evidence to be presented to the Court and known false testimony to be given in a cover-up misleading the jury. This happening, was not in compliance with Federal Rules of Evidence R. 103(d).

Then not altering and notifying the Court the "Louisville Slugger" regular size baseball bat that was stated to by key witness for the State in deposition, previous to trial was now lost and destroyed, due to spoliation of evidence creating a "broken chain of custody," in violation of Federal Rules of Evidence R. 104(b)(e), and Article IV Relevance and its limits test for relevant evidence, R. 401(a)(b), 403. See *U.S. v. Gaudin*, 515 U.S. 506, 522-23 (1995) A "Court's failure to submit." See also *Conley v. U.S.*, 415 F. 3d 183, 191 (1st Cir. 2005). *Id. Brady*, 373 U.S. @ 87; quoting Government Suppression of Evidence in Bad Faith May Suggest Materiality. See *V.I. v. Fahie*, 419 F. 3d 249, 253 n.5 (3d Cir. 2005). *Strickler v. Greene*, 527 U.S. 263, 280 (1999). Proof beyond reasonable doubt is constitutionally required.

The one key piece of evidence Louisville Slugger baseball bat, exculpatory and material fro purposes of *Brady* Doctrine and "prejudicial for purposes of procedure/default doctrine because the report would have provided Petitioner with fair opportunity to impeach the key witness.

In *Chapman v. Calif.*, 386 U.S. 18 (1967) *Id.* 21, quoting, The *Chapman* Standard protects those rights that are rooted in the "Bill of Rights," ordered and championed in Congress... See *Brecht v. Abrahamson*, 507 U.S. 619, 648, @ 645 (1993).

The four prongs of the Brady Doctrine have been met through action taken by the State. The four elements of satisfying Brady 1) Key exculpatory evidence - material in nature – has withheld from Court. 2) Knowledge of its existence and whereabouts known to State prosecutor was suppressed. 3) The "Louisville Slugger" bat was material for the defense in bringing an acquittal for the accused. 4) Accused has been prejudiced from the actions by the State. The outcome would have been different had the jury not been misled.

From the framing of the occurrence in a light unfavorable to the Petitioner, the evidence was impeaching.

See T. 671, 5, State prosecutor relies on false evidence T. 671, 10-25, giving instructions and failing to discuss adequate provocation by Mr. Grove's act of aggression, traumatizing Petitioner. Suppression of evidence is a *Brady* violation. *Brady v. Md.*, 373 U.S. 83 (1965).

Motion Demand for Discovery was field by defense on June 14, 2009. The "Louisville Slugger" baseball bat, State's key witness picked up and handled,

swinging and inflicting injuries to the head of Appellant and possibly the victim. Both the Appellant and victim had injuries consistent with being hit with a bat.

The State has failed to prove Appellant's guilt beyond a reasonable doubt, from false evidence/testimony. *In re. Winship*, 397 U.S. 358 (1970); *Jackson v. Virginia*, 44 U.S. 307 (1979); *Brinegar v. U.S.*, 338 U.S. 160 (1949); *LeLand v. Or.*, 343 U.S. 790 (1952).

At the time of trial, Petitioner had no knowledge of contradicting/false statements and inconsistencies between State key witness Law Enforcement Interviews – newly discovered – where State's key witness in contradicting her in-court testimony and deposition. (State prosecutor had knowledge of that, at the time of trial in key witness testimony, perjury would be committed.

The three elements (prongs) in Giglio were met by State prosecutor. 1) Knowingly allowed false testimony into trial. 2) Prosecutor failed to correct false testimony. 3) False testimony that was material to the outcome of trial proceedings, affecting the jury's fair decision making.

No objection was made by defense, which cumulatively prejudiced Petitioner. *Giglio v. United States*, 405 U.S. 150 (1972).

The perjury committed, caused due process violations under U.S.C.A. Const. amend 5, 14. See *U.S. v. Giglio*, 150, 154 92 S. Ct. 763 (U.S. 1972). In *Mooney v.*

Holohan, 294 U.S. 103, 55 S. Ct. 340 (1935), applying the knowledge component that the prosecutor had knowledge of perjury.

Known use of perjured testimony is equivalent to *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824 (1967), in *Napue v. People, State of Ill*, 360 U.S. 264, 79 S. Ct. 1173 (1959), *Id.* @ n.n. (2-8); See *Pyle v. Ks.*, 317 U.S. 213, 63 S. Ct. 177 (1942) and *U.S. v. Cronic*, 466 U.S. 648, 104 S. Ct. 2039 (1984); See *Larrison v. U.S.*, 24 F. 2d 82 (7th Cir. 1928) *Id.* @ n.9, quoting; testifying falsely regarding a material fact may constitute "obstruction of justice" such as will enhancement of defendant's defense level under oath on material matters which is not due to confusion or mistake justifies sentence enhancement. See *Cronic*, 466 U.S. 648, 104 S. Ct. 2039 (1984), *Id.* @ 12, 13, similarly see *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105 (1974) 13.

With the true and correct evidence and testimony now undisclosed, is newly discovered. Motion for a New Trial – it seems – after objection under the Contemporaneous Objection Rule was protocol, to preserve these issues for appellate review. A Due Process violation U.S.C.A. 5, 14.

A.E.D.P.A. set out in 28 U.S.C. §§ 2244(b)(3)(4), the "Unreasonable Application" Clause and the Due Process Clause of the U.S. Constitution.

Broad changes undertaken by A.E.D.P.A. enactment concerning Federal Habeas Corpus activity. Supersedes prior Federal Habeas Corpus legislation –

including an unsettled number arcane and untouched. A.E.D.P.A. engages by intricate methods with the A.E.D.P.A. constitutional doctrine.

The Standard of Review under A.E.D.P.A., I, Iv is in *Sanders v. Secretary , Department of Corrections,* 2019 U.S. Dist. LEXIS 8864 (M.D.) (Fla. 2019), this Honorable Court held that pursuant to the A.E.D.P.A., habeas relief may not be granted with respect to a claim adjudicated on the merits in State Court unless the adjudication of the claim resulted in a decision that contrary to, or involved an unreasonable application of, established Federal law, as determined by the Supreme Court of the United States, resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in the State Court proceedings. (See 28 U.S.C. § 2254(d).

The phrase "clearly established" Federal law, "encompasses only the holdings of the United States Supreme Court as of the time of the relevant State Court decision," see *Williams v. Taylor*, 259 U.S. 362, 412, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). Section 2252(d)(1) provides two separate bases for reviewing State Court decisions; the contrary to and unreasonable application clauses articulate independent considerations a Federal Court must consider.

The meaning of the clauses was discussed by the Eleventh Circuit Court of Appeals in *Parker v. Head*, 244 F. 3d 831, 835 (11th Cir. 2001).

Under the "Contrary To" clause, a Federal Court may grant the Writ if the State Court arrives at a conclusion opposite to that reached by the United States Supreme Court on a question of law, if the State Court decides a case differently than the United States Supreme Court has on a set of "materially indistinguishable facts." *Id.*

"Under the 'unreasonable application' clause, a Federal Habeas Court may grant the Writ if the State Court identifies the correct governing legal principle from the United States Supreme Court's decisions, but unreasonably applies that principle from the United States Court's decisions, principle to the facts of the prisoner's case. If the Federal Court concludes that the State Court applied Federal law incorrectly, habeas relief is appropriate only if that application was "objectively unreasonable." *Id.*

Under Section § 2254(d)(2) a Federal Court may grant a Writ of Habeas Corpus if the State Court's decision "was based on an unreasonable determination of the facts" in light of the evidence presented in the State Court proceeding.

In reference to: Federal Habeas Practices/Procedure Vol. # 2 at Cap. § 32.2 quoting; Prerequisites to Sec. § 2254(d)(1) a application; "If a claim is not adjudicated on the merits," a Federal Court is obliged to employ the traditional pre A.E.D.P.A. standard of de novo review legal and mixed legal – factual rulings. See *Hudson v. Hunt*, 235 F. 3d 892, 895 (4th 2000) "Our review is de novo" because

State Court decision "was not application on the merits." *Williams v. Taylor*, 529 U.S. 362 (2000); See *Delgado v. Lewis*, 223 F. 3d 976, 981-82 (9th Cir. 2000) quoting "State Court judgments cannot be insulated from habeas review, simply by failing to provide any reasoned explanation for the disposition."

In the instant case, when an allegation is made against a government official who is responsible for violating a State or Federal constitutional rule of law, this invokes the jurisdiction and review of the Federal Court, who are the legal gatekeeper and protector of the "Bill of Rights," to ensure such government actions do not undermine or be in direct conflict with the procedure inherent authority of the Federal/State constitutional right.

The U.S. Constitution protects its citizens from the abuse of judicial authority. See *Chapman v. California*, 385 U.S. 18 (1967) *Id. 21. See Brecht v. Abrahamson,* 507 U.S. 619 at 645 (1993), the application standard is now the one the Court fashioned in 1946 in *Kotteakos v. United States*, 328 U.S. 750 (1946), quoting "Or the phrase the *Brecht* Court most frequently extracted from *Kotteakos*, the standard for determining whether habeas relief must be granted is whether ... the error had substantial and injurious effect or influence in determining the jury's verdict." See *O'Neal v. McAnich*, 513 U.S. 432 (1995), *Id.* @ 436.

The previous Court, made an unreasonable ruling based on what evidence reveals from the face of the record and Court documentation that Appellant's Fla. R.

Crim. P. Rule 3.850, 3.853 (DNA Testing) with Memorandum of Law attached to support each motion – could not be a product of a procedurally barred ruling, according to 28 U.S.C. § 2244(d)(2). A Show Cause Order was issued by the Court in February 2015.

See Federal Rules of Evidence Rule 901(a), quoting: "The State has strict duty to preserve all material evidence, lack of doing so impairs opposing party's defense."

Appellant proceeded to expose the concealment/non-disclosure of evidence by the prosecutor, in compliance with the "Exhaustion Doctrine." See *Rose v. Lundy*, 455 U.S. 509, 102 S. Ct. 1198 (1982), *Id.* @ 520. Appellant made it his solemn duty to stay directly in and in constant reliance in accordance with the "Exhaustion Doctrine." See *Fisher v. Texas*, 169 F. 3d 295, 300-02 (5th Cir. 1999); see also *Gray v. Netherland,* infra 518 U.S. @ 165-66 (1996); quoting "Because Procedural Default is an affirmative defense for the Commonwealth... In *Lindh v. Murphy*, 520 U.S. 320, 117 S. Ct. 2059 (1997), *Id.* @ changed in A.E.D.P.A.. See *McQuiggins v. Perkins*, 569 U.S. 383, 386 (2018) *Id.* @ under A.E.D.P.A., 28 U.S.C.S. § 2244(d)(1)(A). Appellant, through due diligence was presented - while at the time awaiting the evidentiary hearing – a box of records from the Hillsborough County Sheriff's Office, containing police reports, depositions, and Court records that reveals non-disclosed information/knowledge not presented at the

time of trial that would lead to Appellant's innocence, the *Giglio/Brady* violations and fraud on the Court, which was allowed, deprived Appellant a fair and just trial, with rights of protection undermined under U.S.C.A. Const. Amends. 5, 14. Under the Doctrine of Equitable Tolling, Appellant was proceeding by all due diligence to expose violations of constitutional rights against him while at the same time awaiting the decision on the evidentiary hearing appeal, which was received ten and a half months later.

Appellant then filed his Amended Motion for Post Conviction Relief under *Giglio/Brady* Fla. R. Crim. P. 3.850(b)(1). Then in the effort to exhaust all State remedies, Appellant filed a second/successive Motion for Post Conviction Relief pursuant to Fla. R. Crim. P. 3.850 b(1,2), h (1,2). Under 28 U.S.C. § 2244(d)(1)(A). See *Bond v. Moore*, 309 F. 3d 770, 772 (11th Cir. 2002) at II, Standard of Review. See *Steed v. Head*, 219 F. 3d 1298, 1300 (11th Cir. 2000).

Unlike the case in *Steed*, Appellant had to diligently bring to light and expose facts of the prosecutor's coverup of false and contradicting statements of State's key witness, to expose fraud and perjury.

The extraordinary circumstances that beset the Appellant, the inability to verify research in progress, due to the facility from – time to time – locking down due to administrative and code enforcement adherence.

Under 28 U.S.C. § 2244 tolling, see *Artuz v. Bennett*, 531 U.S. 4, 8, 121 S. Ct. 364 (2000), *Id.* Habeas Corpus III, 28 U.S.C. § 2244(d)(2). See *Green v. Sec'y Dept. of Correct.*, 877 F. 3d 1244, 1248-49 (11th Cir. 2017), *Id.* @ Time Limitations under § 2244(1).

See *Coleman v. Thompson*, 501 U.S. 722, 729-32, 735 (1991), *Id.* @ Default Rule, in reference: Federal Habeas Practice Procedures, the Adequacy Requirement. See *Dobbs v. Zant*, 506 U.S. 357, 359 (1993) and *Amadeo v. Zant*, 486 U.S. 214, 222-23, 229 (1988), see in *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851 (1995), *Id.* The Standard of *Schlup*, ... In the instant case Appellant is innocent of first degree premeditated murder.

Appellant has been prejudiced causing the jury to become biased and opinionated well before deliberations, and the jury not having been given the true and correct account of the occurrence. Appellant respectfully pleads to this most high and Honorable Court to view Appellant's case in a light favorable and similar to that in *Arizona v. Fulminante*, 499 U.S. 279 (1991) and the one in *Satterfield v. Texas*, 486 U.S. 249 @ 257 (1998), *Id.* "Automatic Rule of Reversal" and *Brecht v. Abrahamson*, 507 U.S. 619 (1993).

CONCLUSION

This most high and Honorable Court may and should review the decision of the Florida Courts in the exercise of its Certiorari jurisdiction.

Respectfully submitted,

Sanford Benjamin Gloster # D07542