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CLERK, SUPREME COURT.

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 78907

LEO ALEXANDER JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, STATE OF FLORIDA

EMERGENCY APPLICATION FOR STAY OF EXECUTION
PENDING THE PRESENTATION AND DISPOSITION OF
APPELLANT'S APPEAL FROM THE DENIAL OF HIS
MOTION FOR FLA. R. CRIM. P. 3.850 RELIEF

LARRY HELM SPALDING
Capital Collateral Representative
Florida Bar No. 0125540

THOMAS H. DUNN
Assistant CCR
Florida Bar No. 871753

OFFICE OF THE CAPITAL COLLATERAL
REPRESENTATIVE
1533 South Monroe Street
Tallahassee, FL 32301
(904) 487-4376

COUNSEL FOR APPELLANT

PRELIMINARY STATEMENT

This case is before the Honorable Court on the appeal of the circuit court's denial of Rule 3.850 relief and the underlying applications for a stay of execution and an evidentiary hearing. A death warrant is currently pending against Mr. Jones, and his execution is scheduled for November 13, 1991, at 7:00 A.M. Given the time constraints involved in this action, Mr. Jones' counsel cannot provide this Court with a professionally proper brief. This application for a stay of execution therefore presents the reasons why the circuit court's denial of a stay of execution and the evidentiary hearing was improper. Mr. Jones requests the opportunity to present oral argument. In order to ensure that his rights to full, fair and judicious consideration of his post-conviction claims will not be lost, and that his efforts to vindicate the constitutional guarantees which he hereby asserts will not be rendered illusory, Mr. Jones requests and urges that this Court permit oral argument, enter a stay of execution, and thereafter grant an evidentiary hearing.

Citations in this stay application designate references to the records, followed by the appropriate page number, as follows: "R. ___" -- Record on Direct Appeal to this Court; "PC-R. ___" -- Record on Appeal from denial of the 1986 Motion to Vacate Judgment and Sentence; "H. ___" -- Transcript of hearing conducted in the circuit court on November 10, 1991. All other citations will be self-explanatory or will otherwise be explained.

INTRODUCTION

Mr. Jones is innocent of the offense for which he was convicted and sentenced to death. The circuit court refused to hear the evidence, summarily denying Mr. Jones' Rule 3.850 motion without permitting an evidentiary hearing. The evidence is summarized in this Introduction, and will be related to Mr. Jones' claims for relief in the discussion of the individual issues presented below.

Leo Jones is innocent of the offense for which he awaits execution. The murder was committed by another man, Mr. Glen Schofield who, in the years since Mr. Jones' conviction and death sentence, has bragged to numerous people that he shot and killed Officer Szafranski and that Leo Jones is on death row for something he did not do. Mr. Schofield's confessions are consistent with evidence uncovered at the time of trial, and with evidence which has only since been uncovered.

This evidence when viewed cumulatively presents a compelling case of innocence. By the State's own admission, the evidence if presented to a jury would "create a debatable question" (H. 59). Despite this admission, the State argues, and convinced the circuit court to rule, that Mr. Jones should be executed without a full and fair opportunity to investigate, develop and evaluate this evidence at a full and fair evidentiary hearing.

Mr. Jones was convicted and sentenced to death for the May 23, 1981, murder of Jacksonville police officer Thomas Szafranski. The murder occurred in Jacksonville at the

intersection of 6th and Davis Streets at about 1:00 a.m. Officer Szafranski was driving the third car of a trio of police cars and was shot as he was about to turn from 6th Street onto Davis Street going north, following the other two police cars which had already turned north onto Davis. After he was shot, Officer Szafranski's car came to a stop partially in the 6th and Davis intersection.

Immediately after the shooting, numerous police cars converged on the scene. No one had witnessed the actual shooting. Some witnesses indicated the shots had come from the area of a vacant lot which was on the east side of Davis, directly in front of 6th Street (App. 19); others said the shots had come from a downstairs apartment of an apartment building on the east side of Davis, south of the vacant lot (App. 19).

Attention focused on the apartment building, which police began searching. In an upstairs apartment, police found Mr. Jones and Mr. Bobby Hammond, who were taken into custody and transported to the police department. After hours of interrogation, beatings, and coercion, Mr. Hammond told police that he had seen Mr. Jones leave the apartment with a gun, heard a shot, and then seen Mr. Jones return to the apartment with a gun. Mr. Hammond also told police that a man named Glen Schofield had been in the apartment that night (App. 13). Mr. Hammond was released immediately after giving these statements.

Also after hours of interrogation, beatings, and coercion, Mr. Jones signed a statement written by Detective Eason,

admitting involvement in the shooting. Mr. Jones was charged with murder, and ultimately tried, convicted, and sentenced to death.

The only evidence against Mr. Jones at trial was his presence in the Davis Street apartment, the presence of guns in his apartment, Bobby Hammond's coerced statement, which he retracted several times, and Mr. Jones' supposed statement, which he also retracted. Tests on the bullet recovered from the scene proved inconclusive in terms of linking the bullet to any of the rifles seized from Mr. Jones' apartment (R. 1048). Other evidence indicated that Mr. Jones had not committed the offense. For example, police performed a neutron activation test on Mr. Jones' hands, checking for the presence of gunpowder residue which would indicate he had recently fired a gun. The test was negative (R. 1074-75). A witness, Early Gaines, who lived in a nearby apartment told police:

Sometime after midnight tonight I was laying in my bed when I heard two gunshots just outside my window. Right after that I heard someone shuffling around in that same area like someone was running or moving fast. The next thing I knew a lot of police cars were outside.

(App. 14). Notes from police files indicate that Mr. Gaines "heard someone running down alley right after shooting" (App. 14).

Police considered Mr. Schofield to be a suspect in Officer Szafranski's murder early on in their investigation. Police notes indicate that Mr. Schofield was listed as a suspect in the

case (App. 15). Police reports reflect that during interrogation approximately nine hours after the offense, Bobby Hammond informed Detective Eason that Glen Schofield had been in Mr. Jones' apartment on the evening of the offense (App. 13). The next day, May 24, Detective Eason began attempting to locate Mr. Schofield (Apps. 12, 13). He summarized these activities in this report as follows:

The writer ran a N.C.I.C. Check on the subject Glen Schofield on 5-25-81 and found that he was wanted for Violation of Probation. The writer obtain photographs of the suspect and had a Police Bulletin with the description of the suspect and information in regards to this writer wanting to talk with the suspect concerning the shooting of Officer Szafranski distributed throughout the Sheriff's Office and through the State of Florida.

(App. 13) (emphasis added). All of this was done by Detective Eason after he allegedly obtained a confession from Mr. Jones -- a confession which did not implicate Mr. Schofield. Why?

On June 2, Detective Eason learned that Mr. Schofield was being held in the St. Johns County Jail and went to interview him (App. 13). Mr. Schofield admitted he had been at Mr. Jones' apartment the night of the offense, but denied involvement in the shooting (App. 13).

On June 3, Detective Eason, accompanied by Detective Moneyhun, interviewed Mr. Schofield again (App. 13). Mr. Schofield provided the same information regarding the night of the shooting, but also told the detectives that his girlfriend's name was Patricia Ferrell and provided three phone numbers where

Ms. Ferrell might be reached "in case [the detectives] needed her in the investigation" (App. 13). After Detective Eason informed Assistant State Attorney Ralph Green about the interviews with Mr. Schofield, Mr. Green asked that a sworn statement be taken from Mr. Schofield (App. 13). When asked to give a sworn statement concerning his prior statements about the murder, Mr. Schofield, on advice of counsel, refused to give a sworn statement.

Mr. Schofield was important enough to the State to be subpoenaed to appear before the grand jury. A praecipe for the subpoena, bearing Mr. Jones' case number, and the subpoena are in the State's files (App. 16). Mr. Schofield's significance is also reflected by the fact that he was listed as a witness by both the State and the defense (Apps. 17, 18).

Despite the facts that Mr. Schofield was a suspect who was investigated by the police, that the State subpoenaed him to appear before the grand jury, and that the State listed him as a witness, defense counsel did little or nothing to investigate Mr. Schofield's involvement in the murder. At the 1986 evidentiary hearing, defense counsel testified:

[Defense Counsel:] I went to St. Augustine and interviewed Schofield in the jail down there and the lady that testified today, today is the first time I've ever known her to be identified by name who said she was Schofield's girlfriend. It was the Schofield story came up at some time well into the case about Schofield had been in the apartment and that some girl, his girlfriend had picked him up. I tried to find out through everyone in the family who that was. The comment was that it was a girl that lived out east, which

I took to mean the eastside. Nobody knew her name. Said, well, we can find her, I need to talk to her, and she was supposed to have picked him up some five or six blocks away from the shooting area.

Q From whom did you hear that?

A From different -- it was a rumor on the street and there was people in his family or friends of his that told me that and that's what prompted me to find Schofield who was incarcerated in St. Johns County and I went down there and talked to Schofield.

Q Do you remember what Schofield was doing in the St. Johns County Jail?

A Yes, Schofield was charged with robbing a -- I think it was a savings and loan and escape and there might have been some other charges. He was under a high degree of security when I talked to him, but the jailers would not live [sic] me alone with him because he had escaped from that jail and there were very paranoid about him getting away from them again. I remember that because I seldom have that problem interviewing clients. They stood right by the door, out of earshot because they didn't know me in St. Johns County that well and Schofield was totally uncooperative.

Q Did he talk to you at all?

A Yeah.

Q What did he say?

A He told me -- to clean it up a little bit -- he was not very nice. He told me that he knew Leo Jones, he never admitted being there that day, but he said he was aware of Leo's problems and unless I could guarantee him some help on his case he wasn't interested in helping any other person and I asked him about his girlfriend and who that was and he told me right, very quickly, it was none of my business and invited me to leave unless I could help him.

Q Did the thought occur to you that Mr. Schofield might have been involved in the homicide of Officer Szafranski?

A Oh, sure. I had heard the rumor that Schofield might have been the one who did the shooting and was trying to pursue that through the girlfriend or somebody else that he might have -- nobody else ever professed any knowledge of Schofield being around there that night with the exception of Bobby Hammond and he changed stories on me through [sic] or four times so I couldn't put any believeability in Bobby Hammond.

(PC-R. 215-17).

Q Okay. You also listed Mr. Schofield as a possible witness, did you not?

A Yes, because I was in hopes that Schofield would, since it was such a serious crime, that Schofield, if he knew anything that was exculpatory, that we could use him. That's why we listed everybody, the best we knew, so that if we had to supplement the discovery the state would not be in a position to say they were surprised and I tried to list everybody that I had any idea we would be using.

(PC-R. 218-19).

Although a police report indicated that Mr. Schofield admitted having been in Mr. Jones' apartment the night of the murder, defense counsel simply accepted Mr. Schofield's statement that he had not been there that day. Although defense counsel had "heard the rumor" that Mr. Schofield might have committed the crime and knew that a girlfriend of Mr. Schofield's might have relevant information, defense counsel just left it to Mr. Jones' family to figure out who this girlfriend was and to locate her. He never asked Detective Eason about his interview of Mr. Schofield. Had counsel questioned Detective Eason about his

interviews with Mr. Schofield, he could have discovered that Ms. Ferrell was Mr. Schofield's girlfriend/alibi for that evening. Defense counsel, moreover, had the information he needed to locate Mr. Schofield's girlfriend: a police report listing three phone numbers for her (App. 13).

Had defense counsel performed adequately and reviewed the police reports, he could have located Mr. Schofield's girlfriend, Patricia Ferrell. Ms. Ferrell, now Ms. Owens, had a great deal to say regarding Schofield's activities at the time of Officer Szafranski's murder.

Ms. Ferrell would have told counsel that she was not an alibi witness for Mr. Schofield at the time of Officer Szafranski's murder. More importantly, on the morning after the killing Mr. Schofield had asked her to be his alibi for the period of time covering the shooting of Officer Szafranski. By then, she had heard about the shooting, and had also heard rumors that Mr. Schofield was responsible for the shooting, and she confronted him with that information. Mr. Schofield did not deny these allegations. Instead he said, "what do you think? Do you think I'm going to say something that will put me in prison for the rest of my life?" (App. 1). Mr. Jones' jury did not hear this compelling evidence which clearly implicates Mr. Schofield as the actual perpetrator of the murder.

Ms. Ferrell also could have provided counsel with a motive for why Mr. Schofield would shoot Officer Szafranski. According to Ms. Ferrell, Mr. Schofield was upset about the police

harassing him and interfering with his drug sales prior to the homicide. Mr. Jones' jury heard none of this compelling information.

The information readily available from Patricia Owens (had counsel but dialed the phone numbers appearing in the police reports) would certainly have required follow up investigation. Patricia Owens would certainly have been asked to identify friends and acquaintances who may have possessed additional evidence linking Glen Schofield to the homicide. One such acquaintance, Linda Atwater, would have identified Mr. Schofield at the scene as carrying a gun and complaining about the police who were after him moments before the police arrived to investigate the homicide. Ms. Atwater relates that she saw Mr. Schofield running up the stairs of Mr. Jones' building carrying a rifle or shotgun. Mr. Schofield told her that "them crackers are after me." As Ms. Atwater drove off, she saw police cars arriving at the scene.

With any follow up investigation, counsel also could have located Catherine Dixon, the girlfriend of Mr. Schofield's close friend Tony Brown (Schofield and Brown were arrested together and charged with robbery shortly after the Szafranski homicide). Ms. Dixon also had a great deal to say about Mr. Schofield's activities the night of Officer Szafranski's murder. Ms. Dixon relates that she and Mr. Brown were with Mr. Schofield earlier that evening but split up around 8 or 9 that night. Mr. Schofield was supposed to meet them later in the Davis Street

area but never showed up. The next morning Ms. Dixon woke to find a rifle in the closet. When she asked Mr. Brown about the rifle, he told her it was a 30-30, but would not tell her whose gun it was. She believed Mr. Schofield had brought it there sometime the previous night and indicated that he was always bringing guns into her house. Ms. Dixon said the rifle had a scope on the top (App. 3).

Additional evidence has been discovered indicating that Mr. Schofield warranted the label "suspect" because he indeed was the person who shot and killed Officer Szafranski. Witnesses have now come forward who saw Mr. Schofield leaving the scene with a rifle. Mr. Daniel Cole and Ms. Denise Reed have provided compelling evidence that they were near the scene at the time Officer Szafranski was shot, heard the shot, and saw Mr. Glen Schofield running from the area behind Mr. Jones' apartment with a rifle in his hand.

Mr. Cole explained under oath:

On May 22, I went to the Center Theater with my former girlfriend, Denise Reed. When we missed the last bus, we had to walk home. As we walked down 4th Street sometime after midnight and crossed Madison Street, Denise and I heard a shot. Within minutes of hearing the shot, we saw Glen Schofield running from the area behind Leo Jones' house down Madison Street. Schofield looked at us as he ran towards the Blodgett Homes holding a rifle in his hand.

We continued to walk down 4th Street to Davis and then headed towards 6th and Davis Streets, where we saw a police car in the middle of the street. When we reached 5th Street, a police officer told us to walk to 6th and Davis and put our hands on the

building wall of a store across the street from a two-story apartment building. We saw several people standing in front of the bar, next door to the apartment building. The police did not ask Denise or I for a statement. We stood at 6th and Davis until the police put two men in police cars and drove off. My girlfriend, who knew both men, told me that the man without shoes and socks was Leo Jones.

After the police drove off with Leo and Bobby, we were told to go home. Denise and I talked about what we had seen as we walked home. We decided not to say anything because we knew that Glen Schofield was dangerous and still on the street. I feared for Denise's safety as well as my own. Based on what I knew about Schofield, we had good reason to fear him.

I had heard that Schofield killed somebody and had served time for the murder. Everybody who knew him feared him because he was the type of person to threaten you with violence and carry out what he said.

For years, I have thought about what I saw but have been too afraid to say anything until now. Although I know that Glen Schofield is in prison, I am still concerned about giving this statement. However, I feel certain that Schofield killed the police officer and that Leo Jones is innocent of this crime.

(App. 4).

Ms. Reed, in a sworn affidavit, confirmed what Mr. Cole had provided:

On May 22, my former boyfriend, Daniel Cole, and I walked home from a movie after missing the bus.

As we walked down 4th Street, we saw Glen Schofield running down Madison Street with a rifle in his hand. I have known Glen Schofield since I was a young child and I am sure the person running down Madison Street was Glen. We continued to walk down 4th

Street to Davis Street. At Davis Street, near 6th, we saw a police car diagonally parked on Davis Street.

Danny and I decided to walk towards the car to find out what happened. As we did, we were confronted by several angry police officers. They said that they were not leaving until they got the nigger who fired the shot. I was not only very frightened to tell what I saw to the police officers -- who felt certain that Leo Jones did the shooting -- but also I was afraid of Glen Schofield.

I have known of Glen Schofield for many years and knew he was a person to be feared. He had a reputation for violence. I heard that he killed someone before this incident happened and several years after the officer was shot. Glen had a relationship with one of my childhood friends, who he once held hostage along with their children.

I did not come forward for other reasons. I was never sure about the value of the information, or that my testimony would be significant. I also discussed what I saw with my mother and other family members, who feared for my safety. I married in 1983 and shared this information with my husband, who feared the police community as well as Glen Schofield and his gang.

Although I am older now -- I was 22 years old, then -- I am still frightened about saying what I know. I do believe if I do not speak out now, an innocent man will be executed.

(App. 5). Mr. Jones' jury did not hear any of this evidence concerning Mr. Schofield. This evidence would have caused a reasonable doubt concerning Mr. Jones' guilt, or in the words of the State, would have created "a debatable question."

The significance of this evidence becomes even greater when combined with evidence that Mr. Schofield has admitted to the

murder of Officer Szafranski to numerous people, at different times and locations. These reports of Mr. Schofield's admissions have surfaced in different ways: through the public defender's office; the state attorney's office; undersigned counsel's office; and apparently even at the Governor's office. This is not a case of an isolated report of a third party confession. These are six unrelated individuals who are reporting that Mr. Schofield admitted on different occasions to killing Officer Szafranski. Such numerous unrelated reports cannot be summarily dismissed. Moreover, it cannot be ignored that numerous leads have not yet been investigated and that several of the reports were received on Friday, November 8, 1991.

Mr. Schofield has spent most of the past ten years incarcerated. During that time he has admitted to killing Officer Szafranski to his girlfriend and at least five different inmates.¹

Ms. Patricia Owens reports that:

In 1989, Glen got out of prison and bragged to me and others about killing the police officer a lot of times. I believed Glen killed the police officer because he liked to hurt people. He had all kinds of guns in his possession, including rifles. Several of the rifles had scopes.

(App. 1). One of the inmates Mr. Schofield confessed to was Mr. Paul Marr:

¹Mr. Richardson reports overhearing this admission of Mr. Schofield which obviously means it was being told to someone else. Mr. Prince reports that others were present when Mr. Schofield admitted guilt to him.

I, Donorena Harris, am employed as an investigator by the Office of the Capital Collateral Representative (CCR), a State of Florida agency located at 1533 S. Monroe St., Tallahassee, FL 32201. CCR represents Florida's indigent death-sentenced prisoners in collateral proceedings. I investigate the cases of CCR clients who are seeking post-conviction relief.

I interviewed Paul Marr October 10, 1991, in the course of CCR's representation of Leo Jones.

Mr. Marr recounted conversations he had with Glen Schofield during 1985 at the Union Correctional Institution, where both Marr and Schofield were incarcerated. Marr and Schofield worked in the kitchen together and also lived in the same dorm.

Glen Schofield sought out Marr to assist him with his legal case. During their discussions of the case which led to Schofield's imprisonment, Marr said Schofield described other crimes which he committed.

Schofield described to Marr how he killed a Jacksonville police officer who had been harrassing him and escaped a police blockade. Earlier, Schofield saw the police officer in the neighborhood and went to an apartment building where he obtained a rifle of some calibre. According to Marr, Schofield shot the officer while he was in his police cruiser. Schofield returned the rifle to the apartment, exited through the back door of the apartment building and ran a few blocks, where he was picked up by a woman friend. Marr said Schofield described the events of the police shooting on several occasions and boasted about escaping detection.

Schofield was concerned about future investigations because at least two or three people knew he did the shooting, including a woman friend, whose husband was a former death row inmate, and the woman who picked him up and could place him at the scene, according to Marr. Marr said Schofield was also concerned about Leo Jones' family, who

were conducting their own investigation and looking for witnesses.

Marr found the name of Leo Jones' attorney, wrote to him and offered to testify about what he knew, provided that his testimony would not be known to Schofield. Marr said that he feared Schofield, who bragged about the murders and other violent crimes that he committed. Marr said he personally witnessed Schofield attempting to stab other inmates. Marr said he was transferred in late 1985 to Apalachee Correctional Institution and never saw Schofield again.

Mr. Pittro states that Mr. Schofield also admitted killing Officer Szafranski:

In 1985 I was incarcerated at Union Correctional Institution. At that time I was living in the Southwest Unit. I also worked in the Southwest Unit kitchen.

While working in the Southwest kitchen I met an inmate by the name Glen Scofield. he worked in the kitchen with me.

Scofield was the type of inmate to talk big and brag. He often talked about drugs, girls, and how he was able to commit crimes and not get caught. On more than one occasion Scofield talked to me about the time he killed a Jacksonville police officer and got away with it.

Scofield told me that he shot the Jacksonville police officer and killed him. Scofield stated that the police officer was harrassing him for a long time. He then described how he took a high calibre rifle and shot the Jacksonville police officer. Scofield then told me that he ran through an apartment building and out the back to get away from the police.

Scofield also told me that a man by the name of Leo Jones was busted for killing the police officer. Scofield made it very clear that Leo Jones had nothing to do with the killing of the police officer. Scofield also

told me that Leo Jones was sentenced to death for killing the police officer.

Scofield was very convincing every time he told me about his killing the Jacksonville police officer. Scofield made it very clear that he did not like the police officer and shot and killed him.

No one ever asked me about my conversation with scofield. If I had been asked, I would have told the truth.

(App. 6).

After filing the emergency motion to vacate on November 8, 1991, undersigned counsel learned that the State has had information since May 1990 that Mr. Schofield had admitted shooting Officer Szafranski to Mr. Michael Edward Richardson. During the late afternoon of November 8, 1991, undersigned counsel received information from Assistant State Attorney John Jolly concerning his discovery of information which he felt an ethical duty to disclose to Mr. Jones's counsel. The information was the existence of a report of an admission by Mr. Schofield that he had shot and killed Officer Szafranski. Mr. Jolly, to his credit, immediately provided undersigned counsel with this information.

The information provided establishes that on May 12, 1990, Assistant State Attorney Laura Starratt received information from Mr. Michael Edward Richardson that Mr. Schofield claimed responsibility for the shooting of Officer Szafranski. Although it is unclear whether that information was initially provided by Mr. Richardson in way of a letter or was verbally reported to Ms.

Starratt, the information was reduced to writing on May 12, 1990, by either Mr. Richardson or Ms. Starratt. (Attachment C, Amendment to Motion to Vacate Judgment and Sentence).

On July 16, 1990, the Office of the State Attorney reported this information to the Jacksonville Sheriff's Office. The Sheriff's Office interviewed Mr. Richardson on July 17, 1990, during which time he reported hearing Mr. Schofield admit to killing Officer Szafranski. A formal report was prepared by the Sheriff's Office and labeled as "confidential." The report is reproduced below:

CONFIDENTIAL

This information is unquestionably material exculpatory evidence -- evidence that the State had an affirmative duty to disclose. For eighteen (18) months, the State withheld this critical evidence. Finally, on the eve of Mr. Jones's execution, Mr. Jolly complied with the State's constitutional duty to disclose this information. Undersigned counsel commends Mr. Jolly and in no way means to impute any wrongdoing on his part. Mr. Jolly was just assigned to Mr. Jones's case and immediately disclosed the information upon discovering it. However, he did only what the State should have done in May 1990.

Undersigned counsel is now faced with additional exculpatory evidence which was withheld from Mr. Jones by the State. This evidence must be investigated and may lead to additional exculpatory information. Mr. Richardson has not been interviewed by undersigned counsel or anyone from counsel's office. Mr. Jones has no idea if the report contains everything that Mr. Richardson knows. In fact, as the State argued before the circuit court, no one familiar with Mr. Jones' case has interviewed Mr. Richardson. It appears that Mr. Richardson's report is contemporaneous with Mr. Schofield's admission and that others may well have heard the admission also, as Mr. Richardson reports overhearing this information. All of this information gives Mr. Richardson's contemporaneous report to the state authorities added credibility. In fact, additional evidence is being discovered as this pleading is being prepared.

Mr. Franklin Prince, attests:

1. I am Franklin Delano Prince. I am an inmate at Union Correctional Institution.

2. In April 1985, I was moved from the Florida State Prison to Union Correctional Institution, where I met Glen Schofield.

3. Sometime during 1985 or 1986, Glen Schofield told me he killed a Jacksonville police officer and that Leo Jones was in prison for that murder.

4. Glen Schofield confessed to killing the Jacksonville police officer to many people, including another inmate named John Davis.

(Attachment A, Amendment to Emergency Motion to Vacate Judgment and Sentence).

Mr. Prince is aware of other persons to whom Mr. Schofield has confessed his involvement in the shooting of Officer Szafranski. Although Mr. Prince was able to provide the name of one such person, counsel's investigator was not able to obtain additional names as prison officials ended the investigator's visit with Mr. Prince.

Undersigned counsel also learned late on November 8, 1991, that the Governor's Office may have received additional exculpatory evidence within recent weeks. This information was obtained by Ms. Donna Harris, an investigator with the Office of CCR:

I am Donorena Harris, a State of Florida investigator employed by the Office of the Capital Collateral Representative.

On November 8, 1991, I interviewed Franklin Delano Prince at the Union Correctional Institution (UCI). I drafted an affidavit during the course of the interview. At 4:50 p.m., as Mr. Prince was about to

provide the names of other UCI inmates who heard Glen Schofield confess to the murder of a Jacksonville police officer, I was asked to leave the prison by a UCI Classifications Officer. The officer said Mr. Prince needed to be returned to his cell for supper.

Mr. Prince did provide the name of one UCI inmate, John Davis, who heard the confession of Glen Schofield. John Davis, according to Prince, wrote Governor Chiles several weeks ago about the confession of Glen Schofield.

(Attachment B, Amendment to Motion to Vacate Judgment and Sentence). Undersigned counsel intends to make a formal request for this evidence from the Governor's Office on November 12, 1991, the next day that the Governor's Office is open. If this information exists, additional investigation will obviously have to be undertaken.

Despite the cumulative effect of this compelling evidence of Mr. Jones' innocence -- and Mr. Schofield's guilt -- the circuit court refused to consider much of the evidence because of procedural bars and rejected some of it on the merits because it "would not conclusively prove that a jury would not have convicted the Defendant." In short, the State and the circuit court below would have Mr. Jones executed because he did not produce this evidence sooner -- evidence which the State conceded "would create a debatable question" among jurors. Even the circuit court judge speculated "off the record" that this evidence would cause this Court to have to look at the cumulative weight of all this evidence and the numerous confessions to different people at different times. Both the State and the

circuit court hide behind procedural niceties in order to avoid dealing with the cumulative effect of this compelling evidence.

The evidence connecting Mr. Schofield to the shooting would also have provided crucial support for Mr. Jones' testimony that he signed the statement written by Detective Eason only to get the police to stop beating him, particularly in light of other available evidence which Mr. Jones' jury did not hear that demonstrated that Mr. Jones was severely beaten by the police. For example, in a deposition, Bobby Hammond described the treatment he and Mr. Jones received from the police:

Q When you got to the police station, where was it that you saw Leo get hit?

A In the parking lot.

Q Was that underneath the building, or on the street?

A Underneath the building.

Q And who was hitting him?

A The same two officers that was hitting me.

Q The black officer and the other officer?

A Right. They was saying that I think he did it.

Q Talking about who?

A Leo.

Q All right.

A I think he did it, so they went over and started hitting on him. You know, I was looking and I seen them hit him in the stomach and in the arm, and I don't know what

else they did in the room, because when I seen him he got two bruises up here.

Q He didn't have those bruises before that night, did he?

A No. When I seen him, he didn't have them. When I seen him in that little room over here, and I look at him, you know.

Q Did you get hit anymore at the police station?

A Yes.

Q Who hit you down there?

A It was the same two and another one.

Q Were they uniformed officers?

A Uniformed.

Q Did the detectives ever hit you?

A No.

Q It was the uniformed guys?

A The detective was the one who told them to stop. Detective Eason.

Q And where were they hitting you?

A They were hitting me everywhere. On the arm, face, back. You know, they put a chair and told me to sit down, I was handcuffed, and every time I'd go to sit down, they'd pull the chair back.

Q Is that the uniformed officers?

A Yes.

Q Why were they doing that?

A I don't know.

Q Were they asking you questions that you weren't answering?

A No, they weren't asking me questions. They were telling me to sit down so they could ask me some questions, and I would go to sit down, and I seen them kept, you know. So I kept turning around, and they said for me to sit down, we ain't going to hit you. At times they would swing, and one of them kicked me, you know. I think it was a sergeant or something. All I remember was that it was three officers, you know, that I seen doing all the hitting.

Q All right. Did they take you anyplace between Davis Street and the police station? Did you stop anywhere on the way, or did you go straight?

A Yeah. We went to Springfield Bank.

Q All right.

A The Springfield Bank over here on Main Street for the black officer to pick up his car.

Q All right.

A And the other officer, he brought me in. I was telling him that the black officer put the handcuffs on hard, and that they were going to stop my circulation right here. I was telling him that they were tight, would he loosen these up. And he told me to shut up. We were riding along and an officer came up and I was telling him that them things are on too tight, and he just turned my arm and pushed me against that little iron thing on the steps.

Q Did you get hit over at Springfield when you were stopped over there? Did anything happen to you over there?

A No. The only thing he did was hit me with the flashlight, that was it, that's when they left me alone and go over to Leo and said that I think he did it. They got Leo out of the car and hit on him.

Q Did you hear Leo make any statements to them? Did you hear him say

anything while you were close enough to hear him?

A I didn't hear nothing.

Q All right. They got you down here, and how long did they keep you over at the police station, talking to you?

A About two or three hours. I know it was a long time. I couldn't tell the time. I don't know.

Q All right. You gave them a statement over there at 2:30 Saturday afternoon, and this thing happened like Friday night, early Saturday morning?

A Yes.

Q And this was like 2:30 the next afternoon?

A Yes.

Q Were you at the police station all the time, from the time you were arrested until you gave them the statement?

A No. I went to the hospital. They carried me to the hospital and then come back.

Q Did they take y'all together to the hospital?

A No, in separate cars.

Q But you were over there at the same time?

A Yeah, we go there at the same time.

Q Did they treat you at the hospital?

A They give me a shot because of my eye.

Q What was wrong with your eye?

A It was swollen, bruised.

Q What was that from?

A Beating. They got pictures of them. Not at this hospital, but the other one where I went and got an operation.

Q When was is that you first told them that Leo -- what you told them about Leo going out with the gun and coming back in, and that kind of thing?

A When I told them?

Q Yes.

A I told them -- like I said, I didn't want to get involved, so I told them that I didn't see nothing. And they, you know, that you seen something. He said that you ain't going to lay down there and heard a shot and not hear.

Q Did you originally tell them that you didn't hear a shot and you didn't know anything?

A Yeah, at first. And then he said -
- I told him, you know.

Q Why did you change your mind and tell them?

A I was tired of them beating on me. Man, they scared me and they was beating on me.

Q Did they promise to do anything else to you, like charge you with first degree murder or anything like that?

A Yeah, that too. They said, you know, that you don't know what you got yourself into. One officer told them, you know, the same two that were beating me, he said that he was going to kill me if his partner died, or something. You know, he was going to kill me. He called me and told me that I wasn't no nigger, you know, something like that. I kept on trying to talk to him, you know, and he told me to shut up. So I shut up.

* * *

Q Did you ever ask for an attorney?
To talk to an attorney?

A No, I never did. They just asked me, you know, if I needed an attorney, and I was saying to myself, for what, I didn't do nothing, you know.

Q So, they told you that you could have an attorney?

A What?

Q They told you that you could have an attorney?

A No -- yeah, they did, they gave me a little sheet of paper and told me to read it.

Q Did you read it?

A Yes. I read it and signed the thing about I have the right to remain silent, you know.

Q Did you understand what that meant?

A What?

Q Did you understand that you didn't have to talk?

A What?

Q Did you understand, from reading that paper, that you did not have to talk to them anymore? You didn't have to answer any questions?

A Was that what that was for?

Q Did you know that then?

A I didn't know that. I didn't know that.

Q Did you get hit or beat after you signed that?

A I was beat up then.

Q No. Did you get hit any after you signed it?

A After I signed that paper, no. No, no, no. I didn't get hit no more. Because like I said, I was talking to Mr. Eason then. The detective.

Q Did they tell you that Leo had made a statement, or said anything to them?

A The only thing is that they come in there and said that Leo said that you did it. You know, and I shook my head and said, no, man, I don't believe that there, just like that there.

Then they go and asked me if I wanted some water, and I said, "Yeah, I'll go ahead and get some." They turned it on and I get down there and they'd let it go. So I just turned around, you know. They asked Leo if he wanted some water and they did him the same way.

Q How did you know he did that same thing to Leo?

A Because I was right there in the hallway when they were bringing Leo out of the room.

* * *

Q Did you get injured in any other way during the time you were being questioned over there? You told me about getting hit and kicked, but did you get hurt in any other way?

A No. They was just putting these up there and I was feeling pain and all that there.

Q Let me ask you this, Bobby, if the police had not been hitting on you, would you have given them that statement that you did?

A What's that?

Q That statement that you gave them on the Twenty-third, the sworn statement?

A If they hadn't hit me?

Q Yes.

A Like I said, I didn't want to be involved. I wouldn't have gave it to them, I didn't want to be involved. With them hitting on me and the man putting the gun -- they had me handcuffed, and they came in there and sat down with the gun.

Q Who did that?

A An officer.

Q Which one was he, the white one or the black one?

A The white one.

Q The same on that was at the house?

A Yes.

Q He sat down at the police station over here?

A Put me in the chair and had me handcuffed. I was telling the other police officer that -- would he loosen them up, right here. I got a dead nerve there.

Q What, from the handcuffs?

A Yeah. They was on so tight.

Q All right.

A And he tried to make me talk. Then he sat down with the gun, you know, pointing it at me, man.

Q Was that a pistol?

A A pistol. A .357 Magnum.

Q Pointed it at your face?

A Yeah. I turned around and said, "Man, don't do me like that there."

Q What did he say to you when he pointed the gun at you?

A He didn't say nothing. But the other officer said -- had me handcuffed, and he said, "Let me take the handcuffs off before you shoot him." But he never did take them off.

Q How many times did they do that with gun routine?

A They did that twice. They sat down and did it one time, and I was on the other side of the wall and they put it at my head.

Q Did you think they were going to shoot you?

A I don't know.

Q Were you afraid that they were going to shoot you?

A Yes. Afraid to death.

Q Did the policeman make you any other promises or what they would do for you if you cooperated and gave a statement?

A What kind of promises?

Q Like not prosecute you or turn you loose, that kind of thing?

A No. The only thing they said was that they wanted to know all I seen and we'll let you walk out of here today, because he said that he told my brother. When I was in the hospital, he said that Bobby didn't do nothing, the only thing is if he just let us know what he seen and we'll let him go.

Q I see. After you gave the statement, at 2:30 in the afternoon, did you get to go home that afternoon?

A Yes.

(R. 354-72). Mr. Hammond provided similar testimony at the hearing on the Motion to Suppress (Transcript of Hearing on Motion to Suppress, pp. 58-82).

The brother, Arty Hammonds, that Bobby referred to in his deposition, was never contacted by Mr. Jones' counsel regarding his observations of Bobby following the beating Bobby endured at the hands of the police. However, Arty Hammonds stated:

I am Arty Hammonds, Jr. My younger brother, is Bobby Hammonds.

I was called by one of my relatives early Sunday morning, May 23rd, and told that Bobby was in jail.

I went to the Duval County Jail where I found Bobby. I was told by Detective Eason that everybody rushed in and went crazy. I thought Eason meant that the police officers shot Bobby. When I saw Bobby, I understood what Eason was saying.

I could hardly recognize Bobby when I saw him. His head was a mass of blood knots. His face was swollen and he had a lot of cuts on his face. Bobby was also in shock. He could hardly talk and sounded confused. Bobby was obviously very frightened. Bobby tried to tell me what happened, but Eason and another officer cut Bobby off and would not let him talk to me.

Later, when Bobby came home, I asked him how he got hurt. He told me that a black officer along with several officers bet him with their fists and their rifle butts in Leo's apartment. First, Bobby said they bet him when he was on the couch, and then they took him to another room in the apartment and beat him some more. The black officer began to kick Bobby and told him to "cry, nigger, cry."

At some point, Bobby said the police officers, "I'm having chest pains." Bobby

said they stopped beating him and took him to the hospital.

I was never contacted by anyone or asked what I knew about the injuries inflicted on my brother, Bobby. If I had been asked, I would have been willing to tell what is contained in this affidavit.

(App. 11).

Other people who saw Mr. Jones the day after his arrest can also attest to the injuries he received from the police. Mr. Jones' mother describes:

When Leo got arrested I went to see him at the jail the next day. I didn't even recognize him because his mouth was so swollen and his face was bashed up. He told me that the police had beat him up while he was handcuffed. He said they pulled a chair out from under him when he tried to sit down and stomped his back, and threw water in his face. He told me that he was not involved in the shooting, but that he had told the police he was involved to get the police to stop beating him. You can still see an injury on his ear from that beating.

(App. 9).

A public defender who saw Mr. Jones the day after his arrest described similar injuries:

Comes now the Affiant, William P. White, III, after having been duly sworn and states as follows:

On May 23, 1981, serving in my capacity as Chief Assistant Public Defender, I was attending weekend bond hearings in courtroom 9 of the Duval County Courthouse in Jacksonville, Florida. On the calendar that Saturday morning was an individual named, Leo Alexander Jones, charged with Attempted murder in the first degree, Grand Theft, Possession of a Controlled Substance and Battery on a Law Enforcement Officer. This was the same individual represented by me in

clemency proceedings before the Governor of the State of Florida at this time.

On May 23, 1981, I had the opportunity to observe Mr. Jones prior to the arrival of his privately retained attorney. Mr. Jones had abrasions on his face and neck and appeared to be in a daze. He represented to me that he had been beaten on two separate occasions by law enforcement officers of the Jacksonville Sheriff's Office following his arrest earlier that same morning. Prior to learning that Mr. Jones' family had retained private counsel, I made arrangements to have an investigator from the Office of the Public Defender photograph Mr. Jones in order to preserve any evidence of physical injury. When Mr. Jones' attorney arrived in the courtroom I had no further direct contact with Mr. Jones or his case until I was appointed by Judge Soud [sic] in this clemency proceeding.

(App. 10).

Additionally, a mental health professional has examined Mr. Jones and found damage which may have resulted from the beating.

(App. 21).

Finally, this Court cannot forget what Mr. Jones' "confession" said. This confession consisted of two sentences, provided no details, and was recorded in the handwriting of Detective Eason. This is the "confession":

I, Leo Jones, on 23 May, 1981, took a rifle out of the front room of my apartment and went down the back stairs and walked to the front empty apartment and shot the policeman through the front window of the apartment. I then ran back upstairs and hid the gun or rifle and then the police came,"

(R. 1100). Mr. Jones' confession lacks any specific facts.

After receiving this two sentence confession, Detective Eason claims to not have questioned Mr. Jones any further. Why did he

not ask Mr. Jones which rifle was used? Why was the confession not tape recorded? Why would Mr. Jones agree to "come clean" and confess but provide only a two sentence confession? More importantly, why did Detective Eason after receiving this "confession" from Mr. Jones feel it was necessary to re-enact the crime to ensure it could have occurred as reported in Mr. Jones "confession" (App. 13)? Did they have reason to question the veracity of the "confession". Mr. Jones' jury was never told of this "curious" re-enactment.

The State went to great lengths to try to show the evidence conformed with Mr. Jones' "confession". Officer Mundy was allowed to testify as to his conclusion that the window sill in the downstairs vacant apartment had a mark in the wood which in his opinion was made by the recoil of a heavy rifle (R. 314-20). Officer Mundy had absolutely no training or expertise in this area and the State never submitted the window sill for expert evaluation.

Moreover, testimony of Officer Warniment with the Florida Department of Law Enforcement questioned the veracity of Mr. Jones' confession. Officer Warniment testified about certain triangulation tests that he performed at the murder scene attempting to pinpoint the path and origin of the bullet. He testified that based on the position of Officer Szafranski's car, the shot would have originated from the vacant field just north of Mr. Jones' apartment building and not from the building. Officer Warniment's testimony concerning the shots coming from

the vacant lot is also consistent with witness testimony presented at trial and during the original post-conviction proceedings which placed the shots coming from the vacant lot.

Clearly, this evidence indicating that Mr. Schofikeld committed the offense would have made all the difference to Mr. Jones' defense. Not only would such evidence have created reasonable doubt on its own, but also such evidence would have cast considerable doubt on the key components of the State's case. This evidence cannot be ignored. This evidence presents a colorable showing of factual innocence which demands that a stay of execution be entered and the case be remanded for an evidentiary hearing.

**A STAY OF EXECUTION SHOULD BE
GRANTED IN ORDER TO AFFORD MR.
JONES THE FULL, FAIR, AND
MEANINGFUL CONSIDERATION OF THE
MERITS OF HIS POST-CONVICTION
CLAIMS TO WHICH HE IS ENTITLED.**

Mr. Jones is entitled to a full, fair, and adequate opportunity to vindicate his constitutional rights pursuant to the post-conviction process established under Rule 3.850. See, e.g., Holland v. State, 503 So. 2d 1250 (Fla. 1987). Florida law, Holland, supra; Fla. R. Crim. P. 3.850, as well as the federal constitution guarantee Mr. Jones that opportunity. See Michael v. Louisiana, 350 U.S. 91, 93 (1955) (Due Process Clause guarantees defendant "a reasonable opportunity to have the issue as to the claimed right heard and determined by the state court."), quoting Parker v. Illinois, 333 U.S. 571, 574 (1948); Case v. Nebraska, 381 U.S. 336, 337 (1965) (Clark, J.,

concurring)(federal constitution guarantees defendant "adequate corrective [state-court] process for the hearing and determination of [his] claims of violation of federal constitutional guarantees); see also id. at 340-47 and nn.5-6 (Brennan, J., concurring)(same). Florida extended the right to seek Rule 3.850 relief; it must "assure the indigent defendant an adequate opportunity to present his claims fairly." Ross v. Moffitt, 417 U.S. 600, 616 (1974). Having extended the right to seek redress under Rule 3.850, the State must provide a forum, and that forum's consideration of Mr. Jones' claim must comport with due process. Bounds v. Smith, 430 U.S. 817 (1977); Evitts v. Lucey, 469 U.S. 387 (1985).

The right to an "adequate opportunity" to seek "adequate corrective process" is what Mr. Jones' motion invokes. However, Mr. Jones' life hangs in the balance. Although Mr. Jones is entitled to the opportunity to seek to vindicate his rights pursuant to Rule 3.850 (see infra), it will be the death warrant which will define the type of justice he receives.

Florida provides a mechanism pursuant to which Mr. Jones may seek to vindicate his rights, see Fla. R. Crim. P. 3.850. The Legislature has provided counsel, see Fla. Stat. sec. 27.701, et. seq. (1985), and thus promised Mr. Jones the effective assistance of an advocate in that process. Spalding v. Dugger, 526 So. 2d 71 (Fla. 1988). However, as discussed below, the process will fail in Mr. Jones' case, unless this Court exercises its lawful authority to stay this execution, and to permit him to properly

present his claims. Mr. Jones sets forth herein facts which demonstrate "he might be entitled to relief under Rule 3.850," State ex. rel. Russell v. Schaffer, 467 So.2 d 698, 699 (Fla. 1985); therefore a stay of execution is proper to permit consideration of the claims for relief. Mr. Jones can and will show the wrongfulness of his convictions and death sentence if given an adequate opportunity. This Court has the authority, and constitutional duty, to provide it. State v. Crews, 477 So. 2d 984 (Fla. 1985). Due process, equal protection, the sixth amendment, and the eighth amendment's "need for reliability in the determination that death is the appropriate punishment," Woodson v. North Carolina, 428 U.S. 280, 304 (1976), countenance no less. This Court should not allow a human being to be put to his death before his substantial claims of innocence have fully, fairly, and properly been heard, especially when the claims asserted are as substantial as those herein presented.

The right to an "adequate opportunity" to be heard and "adequate corrective process" is not lost simply because this pleading is not Mr. Jones' first application for post-conviction relief, and neither can it be ignored that a stay of execution is warranted on the basis of the nonfrivolous nature of Mr. Jones' claims. See, e.g., Harich v. State, No. 73,930 (Fla. March 30, 1989) (granting stay of execution to post-conviction litigant whose capital conviction and sentence previously affirmed in Rule 3.850 proceedings); Lightbourne v. Dugger, No. 73,609 (Fla. Jan. 31, 1989) (granting stay of execution to post-

conviction litigant whose capital conviction and sentence previously affirmed in Rule 3.850 proceedings); Hall v. State, No. 73,029 (Fla. Sept. 1988) (granting stay of execution to post-conviction litigant whose capital conviction and sentence had been previously affirmed in Rule 3.850 proceedings); Clark v. State, No. 72,303 (Fla. April 1988) (granting stay of execution to post-conviction litigant whose capital conviction and sentence had been previously affirmed in Rule 3.850 proceedings); Johnson v. State, No. 72,231 (Fla. April 1988) (granting stay of execution to post-conviction litigant whose capital conviction and sentence had been previously affirmed during state and federal post-conviction proceedings); State v. Sireci, 502 So. 2d 1221, 1224 (Fla. 1987) (affirming circuit court's grant of stay of execution in case involving successive post-conviction motion and denying State's motion to vacate stay), subsequent history in, State v. Sireci, 536 So. 2d 231 (Fla. 1988) (granting post-conviction relief); State v. Crews, 477 So. 2d 984, 984-85 (Fla. 1985) (affirming circuit court's grant of stay of execution to successive post-conviction litigant and denying State's motion to vacate stay because "[t]he State has failed to show an abuse of the trial court's discretion in finding that the files and records do not conclusively show that the defendant is entitled to no relief . . .").

In Mr. Jones' case, as in Lightbourne and Harich, the "files and records" do not "conclusively" show that he is entitled to "no relief." A stay is proper in order to permit full

consideration of his claims. See also Thompson v. Dugger, 515 So. 2d 173 (Fla. 1987) (granting stay of execution and relief to successive post-conviction litigant although identical claim had been rejected earlier by state and federal courts); Riley v. Wainwright, 517 So. 2d 656 (Fla. 1987) (granting stay of execution and post-conviction relief to litigant presenting successive post-conviction proceeding); Downs v. Dugger, 514 So. 2d 1069 (Fla. 1987) (same); McCrae v. State, 510 So. 2d 874 (Fla. 1987) (granting relief to post-conviction litigant presenting third motion to vacate pursuant to Rule 3.850).

The facts upon which Mr. Jones' claims are predicated were unknown to Mr. Jones. Trial counsel failed to comply with his constitutionally mandated duty and learn of these facts. Henderson v. Sargeant, 926 F.2d 706 (8th Cir. 1991); Chambers v. Armontrout, 907 F.2d 825 (8th Cir. 1990) (en banc); Code v. Montgomery, 799 F.2d 1481 (11th Cir. 1986). Collateral counsel failed to comply with his statutorily mandated duty and learn of these facts. Spalding v. Dugger. These facts establish Mr. Jones' innocence of the homicide charged. The ends of justice require consideration of these facts now. McCleskey v. Zant, 111 S. Ct. 1454 (1991) (habeas relief appropriate in successor petition where constitutional violation caused conviction of one who is innocent of the crime). "Fundamental fairness" may override State's interest in finality. Moreland v. State, 582 So. 2d 618, 619 (Fla. 1991). "The doctrine of finality should be abridged only when a more compelling objective appears, such as

ensuring fairness." exists. Witt v. State, 387 So. 2d 922, 925 (Fla. 1980).

It would be a gross miscarriage of justice to refuse to consider Mr. Jones' claims. It would be fundamentally unfair to execute an innocent man. Mr. Jones, an innocent man, was tried and convicted of a crime he did not commit. As has recently been explained:

In our system of justice, a fundamental miscarriage of justice occurs when a person is found guilty of a crime even though the jury had reasonable doubt about his guilt. This premise could never be more true than in a capital case. The Supreme Court, in applying the actual innocence exception, has looked to whether correction of the constitutional error at retrial probably would result in a different outcome. See Smith, 477 U.S. at 538, 106 S.Ct. at 2668 (considering whether constitutional error served "to pervert the jury's deliberations concerning the ultimate question"); cf. Kuhlmann v. Wilson, 477 U.S. 436, 454 & n. 17, 106 S.Ct. 2616, 2627 n. 17, 91 L.Ed.2d 364 (1986) (plurality opinion) (allowing successive habeas petition on grounds of "ends of justice" when review of all probative evidence on retrial would cause jury to have reasonable doubt).

Henderson v. Sargent, 926 F.2d 706, 713 (8th Cir. 1991). An innocent person must show "a fair probability" that the trier of the facts would have entertained a reasonable doubt of his guilt. Kuhlmann v. Wilson, 477 U.S. 436, 454 n. 17 (1986) ("the prisoner must 'show a fair probability that, in light of all the evidence . . . the trier of the facts would have entertained a reasonable doubt of his guilt.'").

Mr. Jones' allegations, which must be taken as true, Lightbourne v. Dugger, 549 So.2d 1364 (Fla. 1989), establish that evidence was not presented to the trier of fact which would have had to entertain a reasonable doubt as to guilt. A full evidentiary hearing is required, see, e.g., Arango v. State, 437 So. 2d 1099 (Fla. 1983); Demps v. State, 416 So. 2d 808 (Fla. 1982); Smith v. State, 461 So. 2d 1354 (Fla. 1985), for the files and records do not conclusively show that Mr. Jones is entitled to "no relief" on his claims -- claims which could not earlier have been brought. Sireci, supra.

Plainly, the facts upon which Mr. Jones' claims are based were unknown to the movant or his attorney and could not have been reasonably ascertained. The interests of justice mandate that a stay of execution be granted and that the claims be fully determined on their merits after full and fair evidentiary development: the constitutional errors herein asserted "precluded the development of true facts" and "perverted the jury's deliberations concerning the ultimate question[s] whether in fact [Leo Jones was guilty of first-degree murder and should have been sentenced to die.]" Smith v. Murray, 477 U.S. 527, 537 (1986) (emphasis in original). Under such circumstances, no procedural bars can be applied, for the ends of justice require that the claims be heard. McCleskey; Moreland; Witt.

Mr. Jones' claims are properly before the Court. A stay of execution and full and fair factual and legal resolution are required.

CLAIM I

MR. JONES WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT PHASE OF HIS CAPITAL PROCEEDINGS, IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS.

Leo Jones is innocent of the offense for which he awaits execution. The murder was committed by another man, Glen Schofield, who, in the years since Mr. Jones' conviction and death sentence, has bragged to numerous people that he murdered Officer Szafranski and that Leo Jones is on death row for something he did not do. The evidence of Schofield's confessions which has come to light since Mr. Jones' trial is discussed in other portions of this pleading and warrants careful, judicious consideration.

However, there was also evidence of Schofield's guilt which was readily available at the time of Mr. Jones' trial. This evidence would have raised more than a reasonable doubt regarding Mr. Jones' guilt. It was not made known to Mr. Jones' jury for one simple reason: trial counsel failed to investigate the key evidence which would have exonerated Mr. Jones, ignoring the signals that an investigation of Schofield's involvement was required. Trial counsel's failure to fulfill his duties undermines confidence in the outcome of Mr. Jones' trial, and will result in the execution of an innocent man unless this Court acts.

Police considered Glen Schofield to be a suspect in Officer Szafranski's murder early on in their investigation. Police

notes indicate that Schofield was listed as a suspect in the case (App. 15). Police reports reflect that during interrogation approximately nine hours after the offense, Bobby Hammond informed Detective Eason that Glen Schofield had been in Mr. Jones' apartment on the evening of the offense (App. 13). The next day, May 24, Detective Eason began attempting to locate Schofield (Apps. 12, 13).

On June 2, Detective Eason learned that Schofield was being held in the St. Johns County Jail and went to interview Schofield (App. 13). Schofield admitted he had been at Mr. Jones' apartment the night of the offense, but denied involvement in the shooting (App. 13).

On June 3, Detective Eason, accompanied by Detective Moneyhun, interviewed Schofield again (App. 13). Schofield provided the same information regarding the night of the shooting, but also told the detectives that his girlfriend's name was Patricia Ferrell and provided three phone numbers where Ferrell might be reached "in case [the detectives] needed her in the investigation" (App. 13). After Detective Eason informed Assistant State Attorney Ralph Green about the interviews with Schofield, Green asked that a sworn statement be taken from Schofield (App. 13).

Schofield was important enough to the State to be subpoenaed to appear before the grand jury. A praecipe for the subpoena, bearing Mr. Jones' case number, and the subpoena are in the State's files (App. 16). Schofield's significance is also

reflected by the fact that he was listed as a witness by both the State and the defense (Apps. 17, 18).

Despite the facts that Schofield was a suspect who was investigated by the police, that the State subpoenaed him to appear before the grand jury, and that the State listed him as a witness, defense counsel did little or nothing to investigate Schofield's involvement in the murder. At the 1986 evidentiary hearing, defense counsel testified:

[Defense Counsel:] I went to St. Augustine and interviewed Schofield in the jail down there and the lady that testified today, today is the first time I've ever known her to be identified by name who said she was Schofield's girlfriend. It was the Schofield story came up at some time well into the case about Schofield had been in the apartment and that some girl, his girlfriend had picked him up. I tried to find out through everyone in the family who that was. The comment was that it was a girl that lived out east, which I took to mean the eastside. Nobody knew her name. Said, well, we can find her, I need to talk to her, and she was supposed to have picked him up some five or six blocks away from the shooting area.

Q From whom did you hear that?

A From different -- it was a rumor on the street and there was people in his family or friends of his that told me that and that's what prompted me to find Schofield who was incarcerated in St. Johns County and I went down there and talked to Schofield.

Q Do you remember what Schofield was doing in the St. Johns County Jail?

A Yes, Schofield was charged with robbing a -- I think it was a savings and loan and escape and there might have been some other charges. He was under a high degree of security when I talked to him, but the jailers would not live [sic] me alone

with him because he had escaped from that jail and there were very paranoid about him getting away from them again. I remember that because I seldom have that problem interviewing clients. They stood right by the door, out of earshot because they didn't know me in St. Johns County that well and Schofield was totally uncooperative.

Q Did he talk to you at all?

A Yeah.

Q What did he say?

A He told me -- to clean it up a little bit -- he was not very nice. He told me that he knew Leo Jones, he never admitted being there that day, but he said he was aware of Leo's problems and unless I could guarantee him some help on his case he wasn't interested in helping any other person and I asked him about his girlfriend and who that was and he told me right, very quickly, it was none of my business and invited me to leave unless I could help him.

Q Did the thought occur to you that Mr. Schofield might have been involved in the homicide of Officer Szfranski?

A Oh, sure. I had heard the rumor that Schofield might have been the one who did the shooting and was trying to pursue that through the girlfriend or somebody else that he might have -- nobody else ever professed any knowledge of Schofield being around there that night with the exception of Bobby Hammond and he changed stories on me through [sic] or four times so I couldn't put any believeablility in Bobby Hammond.

(PC-R. 215-17).

Q Okay. You also listed Mr. Schofield as a possible witness, did you not?

A Yes, because I was in hopes that Schofield would, since it was such a serious crime, that Schofield, if he knew anything that was exculpatory, that we could use him. That's why we listed everybody, the best we

knew, so that if we had to supplement the discovery the state would not be in a position to say they were surprised and I tried to list everybody that I had any idea we would be using.

(PC-R. 218-19).

Although a police report indicated that Schofield admitted having been in Mr. Jones' apartment the night of the murder, defense counsel simply accepted Schofield's statement that he had not been there that day. Although defense counsel had "heard the rumor" that Schofield might have committed the crime and knew that a girlfriend of Schofield's might have relevant information, defense counsel just left it to Mr. Jones' family to figure out who this girlfriend was and to locate her. Defense counsel, however, had the information he needed to locate Schofield's girlfriend: a police report listing three phone numbers for her (App. 13). See Henderson v. Sargeant, 926 F.2d 706, 711 (8th Cir. 1991) ("Reasonable performance of counsel includes an adequate investigation of the facts of the case, consideration of viable theories, and development of evidence to support those theories. Counsel has a duty . . . to investigate all witnesses who allegedly possessed knowledge concerning [the defendant's] guilt or innocence.").

Had defense counsel performed adequately and reviewed the police reports, he could have located Mr. Schofield's girlfriend, Patricia Ferrell. Ms. Ferrell, now Ms. Owens, had a great deal to say regarding Schofield's activities at the time of Officer Szafranski's murder:

1. I am Patricia Owens. I live in Jacksonville, Florida. I was formerly Patricia Ferrell.

2. I had an 11-year relationship with Glen Schofield, who I met in Jacksonville. Glen had just come to Jacksonville from prison when we met in 1979. Glen and I started going together and within a few months, we started going together.

3. After living in Jacksonville for a year, we moved to New Jersey. Glen and I returned to Jacksonville in the spring of 1981 and moved into the Emerson Arms Apartments. Glen spent no time at home with me, preferring to hang out around 4th and Davis where he sold drugs.

4. Glen complained to me about how he was being harassed by the police. Glen said there was a police officer who was always going around bothering people. Glen meant the police officer was bothering the people on the corner selling drugs. Glen made these statements before and after a Jacksonville police officer was killed in 1981.

5. On the day that the police officer was killed, Glen came home around 6 or 7 a.m. I had not seen Glen since Friday or Saturday. He changed his clothes and left. After Glen left our apartment, I heard from several people that a police officer was killed early that day.

6. The next time I saw Glen was Monday around 10 a.m. He told me, "when those people come here, tell them I was here." Glen meant for me to tell the police that he was at home with me when the officer was killed. I told Glen that I knew that a police officer was killed. I had heard in the street that Glen who killed the police officer and I asked him did he do it. Glen said, "what do you think? Do you think I'm going to say something that will put me in prison for the rest of my life?" A week later, Glen robbed a bank and went to prison for eight years.

7. In 1989, Glen got out of prison and bragged to me and others about killing the police officer a lot of times. I believed Glen killed the police officer because he liked to hurt people. He had all kinds of guns in his possession, including rifles. Several of the rifles had scopes.

8. I was never questioned about the 1981 police shooting. If I had been asked, I would have been willing to provide the information contained in this affidavit.

(App. 1).

The information readily available from Patricia Owens (had counsel but dialed the phone numbers appearing in the police reports) would certainly have required follow up investigation. Patricia Owens would certainly have been asked to identify friends and acquaintances who may have possessed additional evidence linking Glen Schofield to the homicide. One such acquaintance, Linda Atwater, would have identified Mr. Schofield as carrying a gun and complaining about the police who were after him moments before the police arrived to investigate the homicide:

1. I am Linda Atwater. I live in Jacksonville, my home all of my life.

2. I went to Leo Jones' apartment in 1981 on the day a Jacksonville police officer was killed. I was at Leo's apartment to borrow money from him. I had seen Leo Friday night and asked him if he could loan me \$250 to pay my rent. He told me he did not have the money on him but I was to come to his apartment the next day.

3. I arrived at Leo's apartment sometime after midnight. I went into the apartment and sat down while Leo counted the money. I heard someone else moving around in the apartment, but i [sic] did not see who it

was. Leo gave me the money and said he would see me later. Leo was in a good mood and smiled at me as I was leaving.

4. On my way down the stairs, Glen Schofield passed me running upstairs. Glen was really mad. He was holding a big gun. The gun looked like a rifle or shotgun. I asked Glen, "why are you running up the stairs like that?" Glen said, "Them crackers are after me." I assumed Glen was talking about the police because I saw the police shake him down on 3rd and Davis earlier that day. While a police officer was searching the person with Glen, I saw Glen throw his drugs on the ground.

5. I got in my car, which was parked on the corner of 6th and Davis, across the street from Leo's apartment. As I drove off, I saw three police cars and one or two more down the street. As I got farther down the street, past 6th and Davis, I looked back and saw lots of flashing police car lights. I knew something was wrong, but I did not turn around and go back to 6th and Davis to Leo's apartment to find out what happened.

6. I was dating Leo at the time. I knew Patricia Owens. No one ever questioned me about the police officer shooting.

(App. 2).

With any follow up investigation, counsel also could have located Catherine Dixon, the girlfriend of Schofield's close friend Tony Brown (Schofield and Brown were arrested together and charged with robbery shortly after the Szafranski homicide). Ms. Dixon also had a great deal to say about Schofield's activities the night of Officer Szafranski's murder:

1. I am Catherine Joann Dixon. I was born and raised in Jacksonville.

2. I was in the vicinity of Sixth and Davis Streets when a Jacksonville police officer was killed. My boyfriend, Tony

Brown, and I were at the Brother's Barbecue Restaurant on Davis Street when we heard the shots. After the shots were fired, Tony and I went home to our apartment located at 969 North Liberty. We were waiting on Tony's friend, Glen Schofield, to take us home. But after he never showed up we walked on home. By the time of the shooting, we had not seen Glen for several hours.

3. Tony and I had been with Glen and his girlfriend earlier that night. We split up around 8 or 9 that night and had planned to meet up later. Glen knew to look for us in the Davis Street area.

4. After I woke up the next morning, I saw a rifle in my bedroom closet. I asked Tony "Whose gun is this?" Tony would not say. I also asked him, "What kind of gun is this?" and he said it was a 30-30. I knew that Glen had brought the gun to my house probably sometime during the night while we were out. Glen liked guns and was always bringing them to our house. I know that Tony did not bring the gun to the house because we were together most of that day. Anyway, Tony never kept a gun in my house because my thirteen year old daughter lived with us.

5. I did not think any more about the gun because Tony and I planned an all day beach trip. We left during the morning for Fernandina Beach and returned that night. During the drive back to Jacksonville, we had an argument. As soon as the car pulled up in front of my apartment, I jumped out of the car and headed into my house. I grabbed the rifle, which was a 30-30 with a scope on top, and ran to my neighbor's house. Tony was so mad I thought he might shoot me. As soon as I got inside of my neighbor's house and she saw the gun, she stopped me and told me to take it out of her house. When I stepped outside of the house, Tony came up behind me. As he grabbed for my hand, the gun went off.

6. Tony took the gun and I never saw it again. Soon after that day, Tony and Glen Schofield were arrested for robbing a bank. Tony has been in jail or prison ever since.

(App. 3).

Defense counsel's failure to investigate and present evidence such as the testimony of Ms. Owens, Ms. Atwater, and Ms. Dixon could only have resulted from neglect. Code v. Montgomery, 799 F.2d 1481 (11th Cir. 1986). No strategic reason could account for counsel's omissions. Chambers v. Armontrout, 907 F.2d 825 (8th Cir. 1990) (en banc). Indeed, the defense at trial was that someone else committed the murder. At the 1986 evidentiary hearing, defense counsel testified:

Q Now, you were approaching the trial of the murder case and you have given us some idea of what your strategy was for the trial, but if you could capsulize for us that strategy at this point?

A Well, Leo Jones did not commit the murder and any other person in the world could have had a potential to commit the murder, that his confession was coerced, that it was not a freely and voluntarily given confession and it should be taken, I think, as the instruction goes with great caution or weighed with great caution and so forth and that was basically it, that he just did not do it. The circumstances and the facts presented by the state did not add up to the fact that Leo Jones beyond a reasonable doubt committed the murder.

Q Would you say that the night that this crime occurred was an emotionally charged night from the standpoint of the Police Department?

A No question about it in my mind.

Q Would you also say that your defense was based very much on the thought that the police had probably jumped to a conclusion in assuming that your client had committed the crime?

A Oh, yeah, because they had a man in custody and the biggest problem we had then was that they had him -- they way that Mr. Jones and Mr. Hammond had conducted themselves in comparison to the other citizens in the other apartments was not consistent with -- was not consistent with guilt -- I mean with innocence and that the police had assumed immediately that they had the right people and they didn't -- didn't conduct a search of the area. Once they got Jones they quit.

Q Right.

A In other words, I thought they could have done a better job for searching for alternatives to the crime being solved and that was one of the -- they got him, they jumped to that conclusion and that's it.

(PC-R. 289-91). Testimony from witnesses such as Ms. Owens, Ms. Atwater, and Ms. Dixon was certainly consistent with this defense.

Counsel's failure to telephone Patricia Owens (Ferrell) deprived Mr. Jones of powerful evidence in his defense. The only evidence against Mr. Jones was a "confession," which counsel argued was involuntary as a result of beatings Mr. Jones received from the police, and the presence in Mr. Jones' apartment of a rifle, which was never connected to Officer Szafranski's shooting. Evidence connecting Schofield to the shooting would have thoroughly negated the probative value of Mr. Jones having a rifle in his apartment, particularly in light of Mr. Jones' testimony that the guns in the apartment belonged to Schofield (R. 1214). Evidence was received that gunpowder residue tests on Mr. Jones' hands produced negative results (R. 1074-75).

Other available evidence was and is consistent with the testimony of Ms. Owens, Ms. Atwater, and Ms. Dixon. A witness, Early Gaines, who lived in a nearby apartment told police:

Sometime after midnight tonight I was laying in my bed when I heard two gunshots just outside my window. Right after that I heard someone shuffling around in that same area like someone was running or moving fast. The next thing I knew a lot of police cars were outside.

(App. 14). Notes from police files indicate that Mr. Gaines "heard someone running down alley right after shooting" (App. 14).

Evidence connecting Schofield to the shooting would also have provided crucial support for Mr. Jones' testimony that he signed the statement written by Detective Eason only to get the police to stop beating him, particularly in light of other available evidence demonstrating that Mr. Jones was severely beaten by the police. For example, in a deposition, Bobby Hammond described the treatment he and Mr. Jones received from the police:

Q When you got to the police station, where was it that you saw Leo get hit?

A In the parking lot.

Q Was that underneath the building, or on the street?

A Underneath the building.

Q And who was hitting him?

A The same two officers that was hitting me.

Q The black officer and the other officer?

A Right. They was saying that I think he did it.

Q Talking about who?

A Leo.

Q All right.

A I think he did it, so they went over and started hitting on him. You know, I was looking and I seen them hit him in the stomach and in the arm, and I don't know what else they did in the room, because when I seen him he got two bruises up here.

Q He didn't have those bruises before that night, did he?

A No. When I seen him, he didn't have them. When I seen him in that little room over here, and I look at him, you know.

Q Did you get hit anymore at the police station?

A Yes.

Q Who hit you down there?

A It was the same two and another one.

Q Were they uniformed officers?

A Uniformed.

Q Did the detectives ever hit you?

A No.

Q It was the uniformed guys?

A The detective was the one who told them to stop. Detective Eason.

Q And where were they hitting you?

A They were hitting me everywhere. On the arm, face, back. You know, they put a chair and told me to sit down, I was handcuffed, and every time I'd go to sit down, they'd pull the chair back.

Q Is that the uniformed officers?

A Yes.

Q Why were they doing that?

A I don't know.

Q Were they asking you questions that you weren't answering?

A No, they weren't asking me questions. They were telling me to sit down so they could ask me some questions, and I would go to sit down, and I seen them kept, you know. So I kept turning around, and they said for me to sit down, we ain't going to hit you. At times they would swing, and one of them kicked me, you know. I think it was a sergeant or something. All I remember was that it was three officers, you know, that I seen doing all the hitting.

Q All right. Did they take you anyplace between Davis Street and the police station? Did you stop anywhere on the way, or did you go straight?

A Yeah. We went to Springfield Bank.

Q All right.

A The Springfield Bank over here on Main Street for the black officer to pick up his car.

Q All right.

A And the other officer, he brought me in. I was telling him that the black officer put the handcuffs on hard, and that they were going to stop my circulation right here. I was telling him that they were tight, would he loosen these up. And he told me to shut up. We were riding along and an officer came up and I was telling him that

them things are on too tight, and he just turned my arm and pushed me against that little iron thing on the steps.

Q Did you get hit over at Springfield when you were stopped over there? Did anything happen to you over there?

A No. The only thing he did was hit me with the flashlight, that was it, that's when they left me alone and go over to Leo and said that I think he did it. They got Leo out of the car and hit on him.

Q Did you hear Leo make any statements to them? Did you hear him say anything while you were close enough to hear him?

A I didn't hear nothing.

Q All right. They got you down here, and how long did they keep you over at the police station, talking to you?

A About two or three hours. I know it was a long time. I couldn't tell the time. I don't know.

Q All right. You gave them a statement over there at 2:30 Saturday afternoon, and this thing happened like Friday night, early Saturday morning?

A Yes.

Q And this was like 2:30 the next afternoon?

A Yes.

Q Were you at the police station all the time, from the time you were arrested until you gave them the statement?

A No. I went to the hospital. They carried me to the hospital and then come back.

Q Did they take y'all together to the hospital?

A No, in separate cars.

Q But you were over there at the same time?

A Yeah, we go there at the same time.

Q Did they treat you at the hospital?

A They give me a shot because of my eye.

Q What was wrong with your eye?

A It was swollen, bruised.

Q What was that from?

A Beating. They got pictures of them. Not at this hospital, but the other one where I went and got an operation.

Q When was it that you first told them that Leo -- what you told them about Leo going out with the gun and coming back in, and that kind of thing?

A When I told them?

Q Yes.

A I told them -- like I said, I didn't want to get involved, so I told them that I didn't see nothing. And they, you know, that you seen something. He said that you ain't going to lay down there and heard a shot and not hear.

Q Did you originally tell them that you didn't hear a shot and you didn't know anything?

A Yeah, at first. And then he said -
- I told him, you know.

Q Why did you change your mind and tell them?

A I was tired of them beating on me. Man, they scared me and they was beating on me.

Q Did they promise to do anything else to you, like charge you with first degree murder or anything like that?

A Yeah, that too. They said, you know, that you don't know what you got yourself into. One officer told them, you know, the same two that were beating me, he said that he was going to kill me if his partner died, or something. You know, he was going to kill me. He called me and told me that I wasn't no nigger, you know, something like that. I kept on trying to talk to him, you know, and he told me to shut up. So I shut up.

* * *

Q Did you ever ask for an attorney? To talk to an attorney?

A No, I never did. They just asked me, you know, if I needed an attorney, and I was saying to myself, for what, I didn't do nothing, you know.

Q So, they told you that you could have an attorney?

A What?

Q They told you that you could have an attorney?

A No -- yeah, they did, they gave me a little sheet of paper and told me to read it.

Q Did you read it?

A Yes. I read it and signed the thing about I have the right to remain silent, you know.

Q Did you understand what that meant?

A What?

Q Did you understand that you didn't have to talk?

A What?

Q Did you understand, from reading that paper, that you did not have to talk to them anymore? You didn't have to answer any questions?

A Was that what that was for?

Q Did you know that then?

A I didn't know that. I didn't know that.

Q Did you get hit or beat after you signed that?

A I was beat up then.

Q No. Did you get hit any after you signed it?

A After I signed that paper, no. No, no, no. I didn't get hit no more. Because like I said, I was talking to Mr. Eason then. The detective.

Q Did they tell you that Leo had made a statement, or said anything to them?

A The only thing is that they come in there and said that Leo said that you did it. You know, and I shook my head and said, no, man, I don't believe that there, just like that there.

Then they go and asked me if I wanted some water, and I said, "Yeah, I'll go ahead and get some." They turned it on and I get down there and they'd let it go. So I just turned around, you know. They asked Leo if he wanted some water and they did him the same way.

Q How did you know he did that same thing to Leo?

A Because I was right there in the hallway when they were bringing Leo out of the room.

* * *

Q Did you get injured in any other way during the time you were being questioned over there? You told me about getting hit and kicked, but did you get hurt in any other way?

A No. They was just putting these up there and I was feeling pain and all that there.

Q Let me ask you this, Bobby, if the police had not been hitting on you, would you have given them that statement that you did?

A What's that?

Q That statement that you gave them on the Twenty-third, the sworn statement?

A If they hadn't hit me?

Q Yes.

A Like I said, I didn't want to be involved. I wouldn't have gave it to them, I didn't want to be involved. With them hitting on me and the man putting the gun -- they had me handcuffed, and they came in there and sat down with the gun.

Q Who did that?

A An officer.

Q Which one was he, the white one or the black one?

A The white one.

Q The same one that was at the house?

A Yes.

Q He sat down at the police station over here?

A Put me in the chair and had me handcuffed. I was telling the other police officer that -- would he loosen them up, right here. I got a dead nerve there.

Q What, from the handcuffs?

A Yeah. They was on so tight.

Q All right.

A And he tried to make me talk. Then he sat down with the gun, you know, pointing it at me, man.

Q Was that a pistol?

A A pistol. A .357 Magnum.

Q Pointed it at your face?

A Yeah. I turned around and said, "Man, don't do me like that there."

Q What did he say to you when he pointed the gun at you?

A He didn't say nothing. But the other officer said -- had me handcuffed, and he said, "Let me take the handcuffs off before you shoot him." But he never did take them off.

Q How many times did they do that with the gun routine?

A They did that twice. They sat down and did it one time, and I was on the other side of the wall and they put it at my head.

Q Did you think they were going to shoot you?

A I don't know.

Q Were you afraid that they were going to shoot you?

A Yes. Afraid to death.

Q Did the policeman make you any other promises or what they would do for you if you cooperated and gave a statement?

A What kind of promises?

Q Like not prosecute you or turn you loose, that kind of thing?

A No. The only thing they said was that they wanted to know all I seen and we'll let you walk out of here today, because he said that he told my brother. When I was in the hospital, he said that Bobby didn't do nothing, the only thing is if he just let us know what he seen and we'll let him go.

Q I see. After you gave the statement, at 2:30 in the afternoon, did you get to go home that afternoon?

A Yes.

(R. 354-72). Mr. Hammond provided similar testimony at the hearing on the Motion to Suppress (Transcript of Hearing on Motion to Suppress, pp. 58-82).

The brother, Arty Hammonds, that Bobby referred to in his deposition, was never contacted by Mr. Jones' counsel regarding his observations of Bobby following the beating Bobby endured at the hands of the police. However, Arty Hammonds stated:

1. I am Arty Hammonds, Jr. My younger brother, is Bobby Hammonds.

2. I was called by one of my relatives early Sunday morning, May 23rd, and told that Bobby was in jail.

3. I went to the Duval County Jail where I found Bobby. I was told by Detective Eason that everybody rushed in and went crazy. I thought Eason meant that the police officers shot Bobby. When I saw Bobby, I understood what Eason was saying.

4. I could hardly recognize Bobby when I saw him. His head was a mass of blood knots. His face was swollen and he had a lot of cuts on his face. Bobby was also in shock. He could hardly talk and sounded confused. Bobby was obviously very frightened. Bobby tried to tell me what happened, but Eason and another officer cut Bobby off and would not let him talk to me.

5. Later, when Bobby came home, I asked him how he got hurt. He told me that a black officer along with several officers beat him with their fists and their rifle butts in Leo's apartment. First, Bobby said they beat him when he was on the couch, and then they took him to another room in the apartment and beat him some more. The black officer began to kick Bobby and told him to "cry, nigger, cry."

6. At some point, Bobby said the police officers, "I'm having chest pains." Bobby said they stopped beating him and took him to the hospital.

7. I was never contacted by anyone or asked what I knew about the injuries inflicted on my brother, Bobby. If I had been asked, I would have been willing to tell what is contained in this affidavit.

(App. 11).

Other people who saw Mr. Jones the day after his arrest can also attest to the injuries he received from the police. Mr. Jones' mother describes:

When Leo got arrested I went to see him at the jail the next day. I didn't even recognize him because his mouth was so swollen and his face was bashed up. He told me that the police had beat him up while he was handcuffed. He said they pulled a chair out from under him when he tried to sit down and stomped his back, and threw water in his face. He told me that he was not involved in the shooting, but that he had told the police he was involved to get the police to stop beating him. You can still see an injury on his ear from that beating.

(App. 9).

A public defender who saw Mr. Jones the day after his arrest described similar injuries:

Comes now the Affiant, William P. White, III, after having been duly sworn and states as follows:

On May 23, 1981, serving in my capacity as Chief Assistant Public Defender, I was attending weekend bond hearings in courtroom 9 of the Duval County Courthouse in Jacksonville, Florida. On the calendar that Saturday morning was an individual named, Leo Alexander Jones, charged with Attempted murder in the first degree, Grand Theft, Possession of a Controlled Substance and Battery on a Law Enforcement Officer. This was the same individual represented by me in clemency proceedings before the Governor of the State of Florida at this time.

On May 23, 1981, I had the opportunity to observe Mr. Jones prior to the arrival of his privately retained attorney. Mr. Jones had abrasions on his face and neck and appeared to be in a daze. He represented to me that he had been beaten on two separate occasions by law enforcement officers of the Jacksonville Sheriff's Office following his arrest earlier that same morning. Prior to learning that Mr. Jones' family had retained private counsel, I made arrangements to have an investigator from the Office of the Public Defender photograph Mr. Jones in order to preserve any evidence of physical injury. When Mr. Jones' attorney arrived in the courtroom I had no further direct contact with Mr. Jones or his case until I was appointed by Judge Soud [sic] in this clemency proceeding.

(App. 10).

Additionally, a mental health professional has examined Mr. Jones and found damage which may have resulted from the beating.

(App. 21).

Clearly, testimony indicating that Schofield committed the offense would have made all the difference to Mr. Jones' defense. Not only would such evidence have created considerable reasonable

doubt on its own, but also such evidence would have cast considerable doubt on the key components of the State's case.

Under Strickland v. Washington, 466 U.S. 668, 686 (1984), ineffectiveness of counsel is proven when the defendant can show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Counsel's failures in Mr. Jones' case demonstrate that Mr. Jones' trial did not produce a just result. Where an adversarial testing does not occur and confidence is undermined in the outcome, relief is appropriate. Id., at 688. Given a full and fair evidentiary hearing, Mr. Jones will prove the result of his trial was unreliable and the prejudice he has suffered because of counsel's deficient performance. He is entitled at a minimum, to an adequate evidentiary hearing on this claim.

Courts have repeatedly pronounced that "[a]n attorney does not provide effective assistance if he fails to investigate sources of evidence which may be helpful to the defense." Davis v. Alabama, 596 F.2d 1214, 1217 (5th Cir. 1979), vacated as moot, 446 U.S. 903 (1980). See also Chambers v. Armontrout, 907 F.2d 825 (8th Cir. 1990) (en banc); Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982) ("[a]t the heart of effective representation is the independent duty to investigate and prepare"); United States v. Gray, 878 F.2d 702 (3rd Cir. 1989); Henderson v. Sargent, 926 F.2d 706, 712 (8th Cir. 1991) (given "counsel's complete failure to pursue a viable defense, we find trial

counsel ineffective for failing to investigate the plausible defense theory that [another person] committed the murder"). Likewise, courts have recognized that in order to render reasonably effective assistance an attorney must present "an intelligent and knowledgeable defense" on behalf of his client. Caraway v. Beto, 421 F.2d 636, 637 (5th Cir. 1970). Thus, an attorney is charged with the responsibility of presenting legal argument in accord with the applicable principles of law. Harrison v. Jones, 880 F.2d 1279 (11th Cir. 1989).

In particular, counsel have been found to be prejudicially ineffective for failing to impeach key state witnesses with available evidence, Nixon v. Newsome, 888 F.2d 112 (11th Cir. 1989); Moffett v. Kolb, 930 F.2d 1156 (7th Cir. 1991); and for failing to investigate the possibility that other people had motive and opportunity to commit the crime. Henderson v. Sargent, 926 F.2d 706 (8th Cir. 1991).

Counsel's failure to investigate and present evidence of Schofield's involvement in the offense deprived Mr. Jones of his constitutional right to present a defense as guaranteed by the sixth and fourteenth amendments. See Washington v. Texas, 388 U.S. 14, 17 (1967); Chambers v. Mississippi, 410 U.S. 284, 285 (1973). A fair adversarial testing did not occur.

In Strickland v. Washington, 466 U.S. 668, 696 (1984) (emphasis added), the Supreme Court held:

A number of practical considerations are important for the application of the standards we have outlined. Most important, in adjudicating a claim of actual

ineffectiveness of counsel, a court should keep in mind that the principles we have stated do not establish mechanical rules. Although those principles should guide the process of decision, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.

Even if counsel provides effective assistance at trial in some areas, the defendant is entitled to relief if counsel renders ineffective assistance in his or her performance in other portions of the trial. Horton v. Zant, 941 F.2d 1449 (11th Cir. 1991). See also Kimmelman v. Morrison, 477 U.S. 365 (1986). Even a single error by counsel may be sufficient to warrant relief. Kimmelman v. Morrison; Atkins v. Attorney General, 932 F.2d 1430 (11th Cir. 1991).

Mr. Jones' trial counsel rendered deficient performance. As a result, Mr. Jones was prejudiced. The jury and judge did not hear evidence necessary for an adversarial testing. Confidence in the fundamental fairness of the guilt-innocence determination is undermined. Since the files and records do not conclusively establish that Mr. Jones is entitled to no relief, a stay of execution and an evidentiary hearing are required.

Moreover, since the facts presented in this motion establish the fair probability that Mr. Jones would have established a reasonable doubt as to his guilt in the minds of the trier of fact, fundamental fairness demands that this motion be

entertained on the merits. Moreland v. State; Witt v. State.

Rule 3.850 relief must issue.

CLAIM II

NEWLY DISCOVERED EVIDENCE ESTABLISHES THAT MR. JONES IS INNOCENT OF THE OFFENSE FOR WHICH HE WAS CONVICTED AND SENTENCED TO DEATH, AND THUS HIS CONVICTION AND DEATH SENTENCE VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS.

Evidence uncovered since the time of Mr. Jones' capital trial establishes that Mr. Jones is innocent of the offense for which he was convicted and sentenced to death. Consideration of this evidence is required, for it establishes that Mr. Jones' conviction and death sentence violate the eighth and fourteenth amendments.

Mr. Jones was convicted and sentenced to death for the May 23, 1981, murder of Jacksonville police officer, Thomas Szafranski. The murder occurred in Jacksonville at the intersection of 6th and Davis Streets at about 1:00 a.m. Officer Szafranski was driving the third car of a trio of police cars and was shot as he was about to turn from 6th Street onto Davis Street going north, following the other two police cars which had already turned north onto Davis. After he was shot, Officer Szafranski's car came to a stop partially in the 6th and Davis intersection.

Immediately after the shooting, numerous police cars converged on the scene. No one had witnessed the actual shooting. Some witnesses indicated the shots had come from the area of a vacant lot which was on the east side of Davis,

directly in front of 6th Street (App. 19); others said the shots had come from a downstairs apartment of an apartment building on the east side of Davis, south of the vacant lot (App. 19).

Attention focused on the apartment building, which police began searching. In an upstairs apartment, police found Mr. Jones and Bobby Hammond, who were taken into custody and transported to the police department. After hours of interrogation, beatings, and coercion, see Claim I, supra, Hammond told police that he had seen Mr. Jones leave the apartment with a gun, heard a shot, and then seen Mr. Jones return to the apartment with a gun. Hammond also told police that a man named Glen Schofield had been in the apartment that night (App. 13). Hammond was released immediately after giving these statements.

Also after hours of interrogation, beatings, and coercion, see Claim I, supra, Mr. Jones signed a statement written by Detective Eason, admitting involvement in the shooting. Mr. Jones was charged with murder, and ultimately tried, convicted, and sentenced to death.

The only evidence against Mr. Jones at trial was his presence in the Davis Street apartment, the presence of guns in his apartment, Bobby Hammond's coerced statement, which he retracted several times, and Mr. Jones' supposed statement, which he also retracted. Other evidence indicated that Mr. Jones had not committed the offense. For example, police performed a neutron activation test on Mr. Jones' hands, checking for the

presence of gunpowder residue which would indicate he had recently fired a gun. The test was negative (R. 1074-75). A witness, Early Gaines, who lived in a nearby apartment told police:

Sometime after midnight tonight I was laying in my bed when I heard two gunshots just outside my window. Right after that I heard someone shuffling around in that same area like someone was running or moving fast. The next thing I knew a lot of police cars were outside.

(App. 14). Notes from police files indicate that Mr. Gaines "heard someone running down alley right after shooting" (App. 14).

Police considered Glen Schofield to be a suspect in Officer Szafranski's murder early on in their investigation. Police notes indicate that Schofield was listed as a suspect in the case (App. 15). After Bobby Hammond informed Detective Eason that Glen Schofield had been in Mr. Jones' apartment on the evening of the offense (App. 13), Detective Eason began attempting to locate Schofield the next day, May 24 (App. 13).

On June 2, Detective Eason learned that Schofield was being held in the St. Johns County Jail and went to interview Schofield (App. 13). Schofield admitted he had been at Mr. Jones' apartment the night of the offense, but denied involvement in the shooting (App. 13).

On June 3, Detective Eason, accompanied by Detective Moneyhun, interviewed Schofield again (App. 13). Schofield provided the same information regarding the night of the

shooting, but also told the detectives that his girlfriend's name was Patricia Ferrell and provided three phone numbers where Ferrell might be reached "in case [the detectives] needed her in the investigation" (App. 13). After Detective Eason informed Assistant State Attorney Ralph Green about the interviews with Schofield, Green asked that a sworn statement be taken from Schofield (App. 13). When asked to give a sworn statement, Mr. Schofield refused. (App. 13).

Schofield was subpoenaed by the State to appear before the grand jury. A praecipe for the subpoena, bearing Mr. Jones' case number, and the subpoena are in the State's files (App. 16). Schofield was listed as a witness by both the State and the defense (Apps. 17, 18).

Since the time of Mr. Jones' trial, evidence has been discovered indicating that Schofield warranted the attention of the police because he indeed was the person who shot and killed Officer Szafranski. Witnesses have now come forward who saw Schofield arriving at the scene with a rifle, vowing to get back at the police for harrassing him, who saw Schofield fleeing the scene carrying a rifle, and who heard Schofield confess to the murder.

One such witness is Linda Atwater, who has attested:

1. I am Linda Atwater. I live in Jacksonville, my home all of my life.

2. I went to Leo Jones' apartment in 1981 on the day a Jacksonville police officer was killed. I was at Leo's apartment to borrow money from him. I had seen Leo Friday night and asked him if he could loan me \$250

to pay my rent. He told me he did not have the money on him but I was to come to his apartment the next day.

3. I arrived at Leo's apartment sometime after midnight. I went into the apartment and sat down while Leo counted the money. I heard someone else moving around in the apartment, but i [sic] did not see who it was. Leo gave me the money and said he would see me later. Leo was in a good mood and smiled at me as I was leaving.

4. On my way down the stairs, Glen Schofield passed me running upstairs. Glen was really mad. He was holding a big gun. The gun looked like a rifle or shotgun. I asked Glen, "why are you running up the stairs like that?" Glen said, "Them crackers are after me." I assumed Glen was talking about the police because I saw the police shake him down on 3rd and Davis earlier that day. While a police officer was searching the person with Glen, I saw Glen throw his drugs on the ground.

5. I got in my car, which was parked on the corner of 6th and Davis across the street from Leo's apartment. As I drove off, I saw three police cars and one or two more down the street. As I got farther down the street, past 6th and Davis, I looked back and saw lots of flashing police car lights. I knew something was wrong, but I did not turn around and go back to 6th and Davis to Leo's apartment to find out what happened.

6. I was dating Leo at the time. I knew Patricia Owens. No one ever questioned me about the police officer shooting.

(App. 2).

Two other witnesses saw Schofield fleeing from the scene carrying a rifle:

1. My name is Daniel Cole. I was born and raised in Jacksonville.

2. On May 22, I went to the Center Theater with my former girlfriend, Denise

Reed. When we missed the last bus, we had to walk home. As we walked down 4th Street sometime after midnight and crossed Madison Street, Denise and I heard a shot. Within minutes of hearing the shot, we saw Glen Schofield running from the area behind Leo Jones' house down Madison Street. Schofield looked at us as he ran towards the Blodgett Homes holding a rifle in his hand.

3. We continued to walk down 4th Street to Davis and then headed towards 6th and Davis Streets, where we saw a police car in the middle of the street. When we reached 5th Street, a police officer told us to walk to 6th and Davis and put our hands on the building wall of a store across the street from a two-story apartment building. We saw several people standing in front of the bar, next door to the apartment building. The police did not ask Denise or I for a statement. We stood at 6th and Davis until the police put two men in police cars and drove off. My girlfriend, who knew both men, told me that the man without shoes and socks was Leo Jones.

4. After the police drove off with Leo and Bobby, we were told to go home. Denise and I talked about what we had seen as we walked home. We decided not to say anything because we knew that Glen Schofield was dangerous and still on the street. I feared for Denise's safety as well as my own. Based on what I knew about Schofield, we had good reason to fear him.

5. I had heard that Schofield killed somebody and had served time for the murder. Everybody who knew him feared him because he was the type of person to threaten you with violence and carry out what he said.

6. For years, I have thought about what I saw but have been too afraid to say anything until now. Although I know that Glen Schofield is in prison, I am still concerned about giving this statement. However, I feel certain that Schofield killed the police officer and that Leo Jones is innocent of this crime.

(App. 4).

1. I am Denise Reed. I was born and raised in Jacksonville.

2. On May 22, my former boyfriend, Daniel Cole, and I walked home from a movie after missing the bus.

3. As we walked down 4th Street, we saw Glen Schofield running down Madison Street with a rifle in his hand. I have known Glen Schofield since I was a young child and I am sure the person running down Madison Street was Glen. We continued to walk down 4th Street to Davis Street. At Davis Street, near 6th, we saw a police car diagonally parked on Davis Street.

4. Danny and I decided to walk towards the car to find out what happened. As we did, we were confronted by several angry police officers. They said that they were not leaving until they got the nigger who fired the shot. I was not only very frightened to tell what I saw to the police officers -- who felt certain that Leo Jones did the shooting -- but also I was afraid of Glen Schofield.

5. I have known of Glen Schofield for many years and knew he was a person to be feared. He had a reputation for violence. I heard that he killed someone before this incident happened and several years after the officer was shot. Glen had a relationship with one of my childhood friends, who he once held hostage along with their children.

6. I did not come forward for other reasons. I was never sure about the value of the information, or that my testimony would be significant. I also discussed what I saw with my mother and other family members, who feared for my safety. I married in 1983 and shared this information with my husband, who feared the police community as well as Glen Schofield and his gang.

7. Although I am older now -- I was 22 years old, then -- I am still frightened about saying what I know. I do believe if I

do not speak out now, an innocent man will be executed.

(App. 5).

Other witnesses have stated that Schofield was in the area of 6th and Davis Streets the night of Officer Szafranski's murder, that Schofield harbored a grudge against the police, that Schofield asked a girlfriend to give him an alibi for that night, and that Schofield hid a gun at a friend's house that night. For example, Patricia Owens has attested:

1. I am Patricia Owens. I live in Jacksonville, Florida. I was formerly Patricia Ferrell.

2. I had an 11-year relationship with Glen Schofield, who I met in Jacksonville. Glen had just come to Jacksonville from prison when we met in 1979. Glen and I started going together and within a few months, we started going together.

3. After living in Jacksonville for a year, we moved to New Jersey. Glen and I returned to Jacksonville in the spring of 1981 and moved into the Emerson Arms Apartments. Glen spent no time at home with me, preferring to hang out around 4th and Davis where he sold drugs.

4. Glen complained to me about how he was being harassed by the police. Glen said there was a police officer who was always going around bothering people. Glen meant the police officer was bothering the people on the corner selling drugs. Glen made these statements before and after a Jacksonville police officer was killed in 1981.

5. On the day that the police officer was killed, Glen came home around 6 or 7 a.m. I had not seen Glen since Friday or Saturday. He changed his clothes and left. After Glen left our apartment, I heard from several people that a police officer was killed early that day.

6. The next time I saw Glen was Monday around 10 a.m. He told me, "when those people come here, tell them I was here." Glen meant for me to tell the police that he was at home with me when the officer was killed. I told Glen that I knew that a police officer was killed. I had heard in the street that Glen killed the police officer and I asked him did he do it. Glen said, "what do you think? Do you think I'm going to say something that will put me in prison for the rest of my life?" A week later, Glen robbed a bank and went to prison for eight years.

7. In 1989, Glen got out of prison and bragged to me and others about killing the police officer a lot of times. I believe Glen killed the police officer because he liked to hurt people. He had all kinds of guns in his possession, including rifles. Several of the rifles had scopes.

8. I was never questioned about the 1981 police shooting. If I had been asked, I would have been willing to provide the information contained in this affidavit.

(App. 1).

Catherine Dixon, the girlfriend of Schofield's close friend Tony Brown, also knew about Schofield's activities the night of Officer Szafranski's murder:

1. I am Catherine Joann Dixon. I was born and raised in Jacksonville.

2. I was in the vicinity of Sixth and Davis Streets when a Jacksonville police officer was killed. My boyfriend, Tony Brown, and I were at the Brother's Barbecue Restaurant on Davis Street when we heard the shots. After the shots were fired, Tony and I went home to our apartment located at 969 North Liberty. We were waiting on Tony's friend, Glen Schofield, to take us home. But after he never showed up we walked on home. By the time of the shooting, we had not seen Glen for several hours.

3. Tony and I had been with Glen and his girlfriend earlier that night. We split up around 8 or 9 that night and had planned to meet up later. Glen knew to look for us in the Davis Street area.

4. After I woke up the next morning, I saw a rifle in my bedroom closet. I asked Tony "Whose gun is this?" Tony would not say. I also asked him, "What kind of gun is this?" and he said it was a 30-30. I knew that Glen had brought the gun to my house probably sometime during the night while we were out. Glen liked guns and was always bringing them to our house. I know that Tony did not bring the gun to the house because we were together most of that day. Anyway, Tony never kept a gun in my house because my thirteen year old daughter lived with us.

5. I did not think any more about the gun because Tony and I planned an all day beach trip. We left during the morning for Fernandina Beach and returned that night. During the drive back to Jacksonville, we had an argument. As soon as the car pulled up in front of my apartment, I jumped out of the car and headed into my house. I grabbed the rifle, which was a 30-30 with a scope on top, and ran to my neighbor's house. Tony was so mad I thought he might shoot me. As soon as I got inside of my neighbor's house and she saw the gun, she stopped me and told me to take it out of her house. When I stepped outside of the house, Tony came up behind me. As he grabbed for my hand, the gun went off.

6. Tony took the gun and I never saw it again. Soon after that day, Tony and Glen Schofield were arrested for robbing a bank. Tony has been in jail or prison ever since.

(App. 3).

Schofield has also confessed to committing the murder:

1. My name is Frank Pittro. I am presently incarcerated at Martin Correctional Institution.

2. In 1985 I was incarcerated at Union Correctional Institution. At that time I was

living in the Southwest Unit. I also worked in the Southwest Unit kitchen.

3. While working in the Southwest kitchen I met an inmate by the name Glen Schofield. He worked in the kitchen with me.

4. Schofield was the type of inmate to talk big and brag. He often talked about drugs, girls, and how he was able to commit crimes and not get caught. On more than one occasion Schofield talked to me about the time he killed a Jacksonville Police Officer and got away with it.

5. Schofield told me that he shot the Jacksonville police officer and killed him. Schofield stated that the police officer was harassing him for a long time. He then described how he took a high calibre rifle and shot the Jacksonville police officer. Schofield then told me that he ran through an apartment building and out the back to get away from the police.

6. Schofield also told me that a man by the name of Leo Jones was busted for killing the police officer. Schofield made it very clear that Leo Jones had nothing to do with the killing of the police officer. Schofield also told me that Leo Jones was sentenced to death for killing the police officer.

7. Schofield was very convincing every time he told me about his killing the Jacksonville police officer. Schofield made it very clear that he did not like the police officer and shot and killed him.

8. No one ever asked me about my conversations with Schofield. If I had been asked, I would have told the truth.

(App. 6).

1. I, Donorena Harris, am employed as an investigator by the Office of the Capital Collateral Representative (CCR), a State of Florida agency located at 1533 S. Monroe St., Tallahassee, FL 32201. CCR represents Florida's indigent death-sentenced prisoners

in collateral proceedings. I investigate the cases of CCR clients who are seeking post-conviction relief.

2. I interviewed Paul Marr October 10, 1991, in the course of CCR's representation of Leo Jones.

3. Mr. Marr recounted conversations he had with Glen Schofield during 1985 at the Union Correctional Institution, where both Marr and Schofield were incarcerated. Marr and Schofield worked in the kitchen together and also lived in the same dorm.

4. Glen Schofield sought out Marr to assist him with his legal case. During their discussions of the case which led to Schofield's imprisonment, Marr said Schofield described other crimes which he committed.

5. Schofield described to Marr how he killed a Jacksonville police officer who had been harrassing him and escaped a police blockade. Earlier, Schofield saw the police officer in the neighborhood and went to an apartment building where he obtained a rifle of some calibre. According to Marr, Schofield shot the officer while he was in his police cruiser. Schofield returned the rifle to the apartment, exited through the back door of the apartment building and ran a few blocks, where he was picked up by a woman friend. Marr said Schofield described the events of the police shooting on several occasions and boasted about escaping detection.

6. Schofield was concerned about future investigations because at least two or three people knew he did the shooting, including a woman friend, whose husband was a former death row inmate, and the woman who picked him up and could place him at the scene, according to Marr. Marr said Schofield was also concerned about Leo Jones' family, who were conducting their own investigation and looking for witnesses.

7. Marr found the name of Leo Jones' attorney, wrote to him and offered to testify about what he knew, provided that his

testimony would not be known to Schofield. Marr said that he feared Schofield, who bragged about the murders and other violent crimes that he committed. Marr said he personally witnessed Schofield attempting to stab other inmates. Marr said he was transferred in late 1985 to Apalachee Correctional Institution and never saw Schofield again.

(App. 7).

Counsel for Mr. Jones is continuing to investigate evidence establishing Mr. Jones' innocence of the offense for which he was convicted and sentenced to death. This investigation is ongoing, for each discovery is producing additional indications that further witnesses exist who must be located and interviewed.

Another witness to whom Glen Schofield confessed that he shot Officer Szafranski has been located. That witness, Franklin Prince, attests:

1. I am Franklin Delano Prince. I am an inmate at Union Correctional Institution.
2. In April 1985, I was moved from the Florida State Prison to Union Correctional Institution, where I met Glen Schofield.
3. Sometime during 1985 or 1986, Glen Schofield told me he killed a Jacksonville police officer and that Leo Jones was in prison for that murder.
4. Glen Schofield confessed to killing the Jacksonville police officer to many people, including another inmate named John Davis.

(Attachment A).

Mr. Prince is aware of other persons to whom Mr. Schofield has confessed his involvement in the shooting of Officer Szafranski. Although Mr. Prince was able to provide the name of

one such person, counsel's investigator was not able to obtain additional names as prison officials ended the investigator's visit with Mr. Prince:

1. I am Donorena Harris, a State of Florida investigator employed by the Office of the Capital Collateral Representative.

2. On November 8, 1991, I interviewed Franklin Delano Prince at the Union Correctional Institution (UCI). I drafted an affidavit during the course of the interview. At 4:50 p.m., as Mr. Prince was about to provide the names of other UCI inmates who heard Glen Schofield confess to the murder of a Jacksonville police officer, I was asked to leave the prison by a UCI Classifications Officer. The officer said Mr. Prince needed to be returned to his cell for supper.

3. Mr. Prince did provide the name of one UCI inmate, John Davis, who heard the confession of Glen Schofield. John Davis, according to Prince, wrote Governor Chiles several weeks ago about the confession of Glen Schofield.

(Attachment B).

As Ms. Harris's affidavit indicates, further information regarding Mr. Schofield's confessions may be in the possession of the Florida Governor's office. However, as Ms. Harris's affidavit also indicates, the possibility that such information exists was not learned until approximately 4:50 p.m. on Friday afternoon. Thus, since Monday, November 11 is a holiday, the possibility that the State possesses additional exculpatory evidence cannot be confirmed until Tuesday morning, November 12.

All of this information has only recently been uncovered by counsel for Mr. Jones, and is the result of just a superficial investigation. Schofield's presence at the scene in possession

of a rifle, his animosity toward the police, his other suspicious behavior, his confessions, and his recent contradictory statements (App. 8) are more than mere coincidence. This newly discovered evidence supports what Mr. Jones has contended all along -- that someone else committed the murder. This evidence, if available at the time of trial, would most certainly have affected the outcome. This evidence establishes that an innocent man, Leo Jones, was wrongfully convicted. Fundamental fairness demands that Mr. Jones' claim be heard. Moreland v. State, 582 So. 2d 618 (Fla. 1991).

Mr. Jones' request for relief based upon newly discovered evidence is properly before this Court. Richardson v. State, 546 So. 2d 1037 (Fla. 1989). As the Florida Supreme Court noted in Richardson:

There is no principled reason why some claims based on newly discovered evidence must be brought under rule 3.850 and others must be brought under coram nobis. We believe the only currently viable use for the writ of error coram nobis is where the defendant is no longer in custody, thereby precluding the use of rule 3.850 as a remedy. See Dequesada v. State, 444 So.2d 575 (Fla. 2d DCA 1984); 28 Fla.Jur.2d Habeas Corpus § 158 (1981).

For these reasons, we hold that all newly discovered evidence claims must be brought in a motion pursuant to Florida Rule of Criminal Procedure 3.850, and will not be cognizable in an applicaiton for a writ of error coram nobis unles the defendant is not in custody. We recede from Hallman and its progeny to the extent inconsistent with this holding. Therefore, we deny Richardson's application for leave to petition for a writ of error coram nobis. Richardson may, however, file a motion pursuant to Florida

Rule of Criminal Procedure 3.850 in the trial court for all claims which are properly cognizable under that rule.

At the time of his previous Rule 3.850 motion, Richardson was not the law, and Mr. Jones was denied his ability to present a newly discovered evidence claim. Now, Mr. Jones properly presents this claim and is entitled to an evidentiary hearing. He has provided information which must be taken "at face value" and accepted as true. It thus is "sufficient to require an evidentiary hearing." Lightbourne v. Dugger, 549 So. 2d 1364 (Fla. 1989); Smith v. Dugger, 565 So. 2d 1293 (Fla. 1990).

Mr. Jones urges this Court to recognize the importance this evidence would have had on the outcome of the trial. This evidence unquestionably undermines confidence in the reliability of Mr. Jones' conviction, a conviction which resulted in a sentence of death. The eighth amendment recognizes the need for increased scrutiny in the review of capital verdicts and sentences. Beck v. Alabama, 477 U.S. 625 (1980). Such matters cannot be treated through mechanical rules and stiff principles.

The Supreme Court noted, in the context of ineffective assistance of counsel, that the correct focus is on the fundamental fairness of the proceeding:

A number of practical considerations are important for the application of the standards we have outlined. Most important, in adjudicating a claim of actual ineffectiveness of counsel, a court should keep in mind that the principles we have stated do not establish mechanical rules. Although those principles should guide the process of decision, the ultimate focus of inquiry must be on the fundamental fairness

of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.

Strickland v. Washington, 466 U.S. 668, 696 (1984) (emphasis added).

The evidence presented in this Rule 3.850 motion demonstrates that the result of Mr. Jones' trial is unreliable. Richardson and Rule 3.850 provide to this Court the authority to "produce just results." The Supreme Court has repeatedly held that because of the "qualitative difference" between death and imprisonment, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Woodson v. North Carolina, 428 U.S. 280, 305 (1976); Beck v. Alabama, 447 U.S. 625 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); Gardner v. Florida, 430 U.S. 349, 357-58 (1977); Gregg v. Georgia, 428 U.S. 153, 187 (1976); Reid v. Covert, 354 U.S. 1, 45-56 (1957) (Frankfurter, J., concurring); id. at 77 (Harlan, J., concurring). This requirement of enhanced reliability has been extended to all aspects of the proceedings leading to a death sentence, including those phases specifically concerned with guilt, Beck v. Alabama, 447 U.S. 625, 637-38 (1980); sentence, Lockett v. Ohio, 438 U.S. 586, 604 (1978); appeal, Gardner v. Florida, 430 U.S. 349, 360-61 (1977); and post-conviction proceedings. Amadeo v. Zant, 108 S. Ct. 1771 (1988).

Accordingly, a person who is threatened with or has received a capital sentence has been recognized to be entitled to every safeguard the law has to offer, Gregg v. Georgia, 428 U.S. 153, 187 (1976), including full and fair post-conviction proceedings. See, e.g., Shaw v. Martin, 613 F.2d 487, 491 (4th Cir. 1980); Evans v. Bennet, 440 U.S. 1301, 1303 (1979) (Rehnquist, Circuit Justice).

The eighth amendment mandates this Court not dismiss this newly discovered evidence. Mr. Jones submits that it more than sufficiently questions the reliability of his conviction and death sentence. There exists a fair probability that had this evidence but been presented to the jury a reasonable doubt would have been entertained. Kuhlman v. Wilson, 477 U.S. 436, 454 n. 17 (1986). Fundamental fairness demands Rule 3.850 relief. Moreland v. State, 582 So. 2d 618 (Fla. 1991); Witt v. State, 387 So. 2d 922 (Fla. 1980). When viewed in conjunction with the evidence never presented because of trial counsel's deficient performance, there can be no question that his conviction cannot withstand the requirements of the eighth amendment and fourteenth amendment due process. Mr. Jones is entitled to a full and fair evidentiary hearing at which time he can establish his right to a new, fair trial, for the outcome of the original proceedings is constitutionally unreliable. A stay of execution, an evidentiary hearing and, thereafter, Rule 3.850 relief are proper.

CLAIM III

**THE STATE'S INTENTIONAL WITHHOLDING OF
MATERIAL EXCULPATORY EVIDENCE VIOLATED MR.
JONES' FIFTH, SIXTH, EIGHTH AND FOURTEENTH
AMENDMENT RIGHTS, THE FLORIDA CONSTITUTION,
CHAPTER 119 OF THE FLORIDA STATUTES, AND THE
FLORIDA RULES OF CRIMINAL PROCEDURE.**

Leo Jones is innocent of the offense for which he awaits execution. The murder was committed by another man, Glen Schofield. On November 8, 1991, Mr. Jones provided this Court with compelling evidence that Mr. Jones was innocent of this offense and that Mr. Schofield was the actual perpetrator. See Emergency Motion to Vacate Judgment and Sentence and Consolidated Emergency Application for Stay of Execution.

After filing the above-mentioned motion to vacate, undersigned counsel learned that the State has information since May 1990 that Mr. Schofield had admitted shooting Officer Szafranski to Mr. Michael Edward Richardson. During the late afternoon of November 8, 1991, undersigned counsel received information from Assistant State Attorney John Jolly concerning his discovery of information which he felt a duty to disclose to Mr. Jones's counsel. The information was the existence of a report of an admission by Mr. Schofield that he had shot and killed Officer Szafranski. Mr. Jolly, to his credit, immediately provided undersigned counsel with this information.

The information provided establishes that on May 12, 1990, Assistant State Attorney Laura Starratt received information from Mr. Michael Edward Richardson that Mr. Schofield claimed responsibility for the shooting of Officer Szafranski. Although

it is unclear whether that information was initially provided by Mr. Richardson in way of a letter or was verbally reported to Ms. Starratt, the information was reduced to writing on May 12, 1990, by either Mr. Richardson or Ms. Starratt. See Attachment C.

On July 16, 1990, the Office of the State Attorney reported this information to the Jacksonville Sheriff's Office. The Sheriff's Office interviewed Mr. Richardson on July 17, 1990, during which time he reported hearing Mr. Schofield admit to killing Officer Szafranski. A formal report was prepared by the Sheriff's Office and is reproduced below:

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This information is unquestionably material exculpatory evidence -- evidence that the State had an affirmative duty to disclose. For eighteen (18) months, the State withheld this critical evidence. Finally, on the eve of Mr. Jones's execution, Mr. Jolly complied with the State's constitutional duty to disclose this information. Undersigned counsel commends Mr. Jolly and in no way means to impute any wrongdoing on his part. Mr. Jolly was just assigned to Mr. Jones's case and immediately disclosed the information upon discovering it. However, he did only what the State should have done in May 1990.

Undersigned counsel is now faced with additional exculpatory evidence which was withheld from Mr. Jones by the State. This evidence must be investigated and may lead to additional exculpatory information. In fact, additional evidence is being discovered as this pleading is being prepared.

Moreover, undersigned counsel also learned late on November 8, 1991, that the Governor's Office may have received additional exculpatory evidence within recent weeks. This information was obtained by Ms. Donna Harris, an investigator with the Office of CCR:

1. I am Donorena Harris, a State of Florida investigator employed by the Office of the Capital Collateral Representative.

2. On November 8, 1991, I interviewed Franklin Delano Prince at the Union Correctional Institution (UCI). I drafted an affidavit during the course of the interview. At 4:50 p.m., as Mr. Prince was about to provide the names of other UCI inmates who heard Glen Schofield confess to the murder of a Jacksonville police officer, I was asked to

leave the prison by a UCI Classifications Officer. The officer said Mr. Prince needed to be returned to his cell for supper.

3. Mr. Prince did provide the name of one UCI inmate, John Davis, who heard the confession of Glen Schofield. John Davis, according to Prince, wrote Governor Chiles several weeks ago about the confession of Glen Schofield.

(Attachment B). Undersigned counsel intends to make a formal request for this evidence from the Governor's Office on November 12, 1991, the next day that the Governor's Office is open. If this information exists, additional investigation will obviously have to be undertaken.

The prosecution's suppression of evidence favorable to the accused violates due process. Brady v. Maryland, 373 U.S. 83 (1967); Agurs v. United States, 427 U.S. 97 (1976); United States v. Bagley, 105 S. Ct. 3375 (1985). Thus, the prosecutor must reveal to defense counsel any and all information that is helpful to the defense, whether that information relates to guilt/innocence or punishment, and regardless of whether defense counsel requests the specific information. United States v. Bagley, supra. It is of no constitutional importance whether a prosecutor or a law enforcement officer is responsible for the misconduct. Williams v. Griswald, 743 F.2d at 1542. The obligation to disclose continues after a conviction has been returned; in fact, the obligation continues so long as the defendant has legal avenues to pursue to challenge his conviction in reliance on the exculpatory evidence. Monroe v. Butler, 690 F. Supp. 521 (E.D. La. 1988). The State's action of withholding

exculpatory evidence violated Mr. Jones's fifth, sixth, eighth and fourteenth amendments. Monroe v. Butler, 883 F.2d 331 (5th Cir. 1988).

There can be little doubt that material evidence was withheld from Mr. Jones -- evidence which would have made a difference to his post-conviction proceedings -- evidence which establishes his right to an evidentiary hearing and ultimately a new trial. The undisclosed evidence is certainly cognizable in Rule 3.850 proceedings. Richardson v. State, 546 So. 2d 1037 (Fla. 1989). The State's action precluded presentation of this evidence in a Rule 3.850 motion. Its disclosure now requires consideration of this newly-discovered evidence along with all other evidence of Mr. Jones's innocence in order to determine whether a new trial is warranted, and in order to determine whether Mr. Jones's execution would violate the eighth amendment.

Mr. Jones is entitled to a full, fair and adequate opportunity to vindicate his constitutional rights pursuant to the post-conviction process established under Rule 3.850. See, e.g., Holland v. State, 503 So. 2d 1250 (Fla. 1987). Florida law, Holland, supra; Fla. R. Crim. P. 3.850, as well as the federal constitution guarantee Mr. Jones that opportunity. See Michael v. Louisiana, 350 U.S. 91, 93 (1955) (due process clause guarantees defendant "a reasonable opportunity to have the issue as to the claimed right heard and determined by the state court."), quoting Parker v. Illinois, 333 U.S. 571, 574 (1948); Case v. Nebraska, 381 U.S. 336, 337 (1965) (Clark, J.,

concurring) (federal constitution guarantees defendant "adequate corrective [state-court] process for the hearing and determination of [his] claims of violation of federal constitutional guarantees); see also id. at 340-47 and nn.5-6 (Brennan, J., concurring) (same). Florida extended the right to seek Rule 3.850 relief; it must "assure the indigent defendant an adequate opportunity to present his claims fairly." Ross v. Moffitt, 417 U.S. 600, 616 (1974). Having extended the right to seek redress under Rule 3.850, the State must provide a forum, and that forum's consideration of Mr. Jones' claim must comport with due process. Bounds v. Smith, 430 U.S. 817 (1977); Evitts v. Lucey, 469 U.S. 387 (1985).

Moreover, Mr. Jones's claim requires consideration not just of this one piece of newly-discovered evidence, but of the cumulative effect of all the evidence of Mr. Jones's innocence. See Derden v. McNeel, 938 F.2d 605 (5th Cir. 1991).

A stay of execution, full and fair evidentiary resolution, and post-conviction relief are appropriate.

CONCLUSION

Mr. Jones' claims are properly before the Court. He therefore respectfully urges that a stay of execution and a full and fair evidentiary hearing be granted.

WHEREFORE, Mr. Jones respectfully requests an order staying his execution, and vacating his unconstitutional capital conviction and sentence of death.

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first class postage prepaid, to all counsel of record on November 12, 1991.

LARRY HELM SPALDING
Capital Collateral Representative
Florida Bar No. 0125540

THOMAS H. DUNN
Assistant CCR
Florida Bar No. 871753

OFFICE OF THE CAPITAL COLLATERAL
REPRESENTATIVE
1533 South Monroe Street
Tallahassee, Florida 32301
(904) 487-4376

By:


Counsel for Appellant

Copies furnished to:

Mark Menser
Assistant Attorney General
Department of Legal Affairs
111-29 North Magnolia Drive
Tallahassee, FL 32301