IN THE SUPREME COURT OF FLORIDA

CASE NO. 81,346

LEO ALEXANDER JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

INITIAL BRIEF OF APPELLANT

MARTIN J. MCCLAIN
Florida Bar No. 0754773
Chief Assistant CCR

GAIL E. ANDERSON
Florida Bar No. 0841544
Assistant CCR
1533 South Monroe Street
Tallahassee, Florida 32301
(904) 487-4376
Attorneys for Appellant

PRELIMINARY STATEMENT

This proceeding involves the appeal of the circuit court's denial of Mr. Jones' motion for post-conviction relief. The motion was brought pursuant to Fla. R. Crim. P. 3.850.

The following symbols will be used to designate references to the record in this appeal:

"R" -- record on direct appeal to this Court;

"TR." -- trial transcript (paginated separately from record on direct appeal);

"PC-R" -- record on first 3.850 appeal to this Court;

"H" -- circuit court hearing on stay of execution held November 10, 1991;

"PC-R2." -- record on instant 3.850 appeal;

"Supp. PC-R2." -- supplemental record on instant 3.850 appeal;

"T." -- transcript of 1992 evidentiary hearing (paginated separately from record on instant 3.850 appeal);

"Def. Ex." -- exhibits submitted at the evidentiary hearing[1];

"App." -- appendix to Rule 3.850 motion.

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[1]Counsel moved in this Court to have the record supplemented with several exhibits which were proffered at the evidentiary hearing but not admitted into evidence. When notified that this supplementation had been completed, counsel sent a staff member to the clerk's office to obtain copies of the exhibits so that counsel could refer to them accurately. However, it appears that the Duval County clerk's office has transmitted the wrong exhibits. Counsel has attempted to refer to these exhibits as accurately as possible and will be filing a renewed motion to supplement the record with the correct exhibits.

REQUEST FOR ORAL ARGUMENT

Mr. Jones has been sentenced to death. The resolution of the issues involved in this action will therefore determine whether he lives or dies. This Court has not hesitated to allow oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument would be more than appropriate in this case, given the seriousness of the claims involved and the stakes at issue. Mr. Jones, through counsel, accordingly urges that the Court permit oral argument.

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STATEMENT OF THE CASE AND FACTS

On November 8, 1991, Mr. Jones sought Rule 3.850 relief based on newly discovered evidence. The circuit court denied relief on November 10, 1991. This Court reversed and remanded for an evidentiary hearing. Jones v. State, 591 So. 2d 911 (Fla. 1991).

The evidentiary hearing was held in the circuit court in September, 1992. On December 11, 1992, the circuit court ruled against Mr. Jones and filed an Order Denying Motion for Post-conviction Relief. Mr. Jones filed a motion for rehearing. The circuit court denied rehearing. This appeal followed.

Leo Jones is innocent of the offense for which he awaits execution. The murder was committed by another man, Glenn Schofield who, in the years since Mr. Jones' conviction and death sentence, has confessed 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).

A. BACKGROUND

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 Sixth 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 Sixth 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 Sixth and Davis intersection. (See Def. Ex. 1).

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 Sixth 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 Hammonds, who were taken into custody and transported to the police department. After hours of interrogation, beatings, and coercion, Mr. Hammonds 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. Hammonds also told police that a man named Glenn Schofield had been in the apartment that night (Def. Ex. L. at 18). Mr. Hammonds 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. The statement was two sentences long, contained no details, and provided only the barest inculpatory information (R. 1097-1101). Although Mr. Jones signed the confession, he refused to sign a waiver of rights (R. 1106).

Bobby Hammonds testified in a pretrial deposition and at the motion to suppress hearing that he and Mr. Jones had been severely beaten after their arrest and that he had made statements implicating Mr. Jones only to get the police to stop beating him. (See R. 354-72). Mr. Hammonds' brother confirms that when he saw Mr. Hammonds the day of the arrest, Mr. Hammonds had been badly beaten (App. 11). Mr. Jones' mother and an assistant public defender who saw Mr. Jones the day after his arrest confirm that Mr. Jones also had been badly beaten (Apps. 9, 10).

In a deposition, Bobby Hammonds 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.

(R. 361-66).

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.

(R. 368).

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.

(R. 369-71). Mr. Hammonds provided similar testimony at the hearing on the Motion to Suppress (Transcript of Hearing on Motion to Suppress, pp. 58-82). Mr. Hammonds also confirmed this account in a video-taped statement proffered to the lower court (Supp. PC-R2., video-taped deposition of Bobby Hammonds). The lower court refused to consider this statement (PC-R2. 278), and

also refused to issue a subpoena for Mr. Hammonds to testify at the evidentiary hearing (T. 361).

Bobby Hammonds' brother, Arty Hammonds, observed the injuries Bobby suffered following the beating Bobby endured at the hands of the police:

> 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).

Mr. Jones' "confession" is a two-sentence statement written by Detective Eason, not Mr. Jones. The statement is extremely brief, providing only the barest information. It contains no details such as which gun was used or why the officer was shot. After the statement was taken, the detectives continued investigating, including reenacting the way the shooting was supposed to have occurred (Def. Ex. L. at 19).

The only evidence against Mr. Jones at trial was his presence in the Davis Street apartment, the presence of guns in his apartment, Bobby Hammonds' coerced statement, which Mr. Hammonds has recanted several times,[2] and Mr. Jones' supposed

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[2]In testimony at the pretrial hearing on a motion to suppress, Hammonds testified that he did not see Mr. Jones carrying a rifle the night of the murder, either before or after the gunshot (Transcript of Motion to Suppress, 09/11/81, pp. 54-56). Hammonds also testified that his statement to Detective Eason was not the truth, but that "I was scared because they were threatening me, man, beating me" (Id. at 57). Upon questioning by the prosecutor, Hammonds testified:

(continued...)

statement, which he also retracted. The State's theory at trial

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[2](...continued)

> Q. Mr. Hammond, did you tell Detective Eason in the afternoon, after -- that is after the arrest occurred and after you went down to the police station, did you tell Detective Eason that you saw Leo Jones with a rifle before you heard the gunshot?
> A. Did I tell Detective Eason that I seen Leo Jones with a rifle after the gunshot?
> Q. Before you heard the gunshot.
> A. No. I ain't seen him before. I tried to tell you that. You told me that. You came at me like that before and said --
> Q. I just --
> A. You put that in my mouth and I told you that before I came here.

(Id. at 66)(emphasis added).

> Q. Did you see Leo Jones with a rifle immediately after the gunshot that you heard outside?
> A. Did I see him with a gun?
> Q. Yes.
> A. After the gunshot?
> Q. Yes, sir.
> A. No, I ain't seen him.
> Q. Not at all?
> A. (No response)
> Q. Not at all?
> A. No, I ain't seen him with a gun.
> Q. You did not see him with a rifle?
> A. I didn't see him with one.
> Q. Sir?
> A. No, sir.

(Id. at 67). Hammonds reiterated that his statement to Detective Eason was not true but he made it because "[t]hey had threatened me, man. I was scared. They threatened my life, man" (Id. at 73).

At the evidentiary hearing, Mr. Jones proffered an affidavit from Hammonds in which Hammonds stated that his trial testimony was not true (T. 359; Def. Ex. H). The court refused to allow Hammonds to testify (T. 361). Mr. Jones also proffered a videotaped statement from Hammonds which the court refused to consider (Supp. Pc-R2., Videotaped deposition of Bobby Hammonds).

was that Mr. Jones had come down from his apartment to a vacant apartment on the ground floor, fired the shots from a window of the vacant apartment, and then immediately run back upstairs to his apartment. 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). Mr. Jones testified that the guns in the apartment belonged to Glenn Schofield (R. 1214). Bobby Hammonds testified at trial that Glenn Schofield was in Mr. Jones' apartment that night and that Schofield left the apartment about 12:15 a.m. (R. 914-15).

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.

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

On the night of the shooting Officer Dyal said he heard shots but could not determine where they originated with specificity (R. 733). Officer Bryan testified that he found

rifles with expended shells in them (R. 995). The guns belonged to Glenn Schofield (R. 1215-20). Officer Warniment, a firearms examiner with FDLE, could not determine if the bullet found in Officer Szafranski's car was fired from the guns in the apartment (R. 1034, 1037-1041, 1048). Randy Desolet, an FDLE gunshot residue expert, could not determine that Leo Jones had fired any weapon on the night of the shooting (R. 1069, 1074). Additionally, these experts never did a triangulation that would have shown where the bullet came from.

Nathaniel Hamilton, who lived directly across the hall from Mr. Jones, heard shots fired from the vacant lot not Mr. Jones' apartment (R. 1160, 1162). Betty Jackson, who lives in the neighborhood, also heard shots fired from the vacant lot (R. 1170, 1172). Annie Nelson, who lived in the building next to Mr. Jones' building, heard the shot through her open window (R. 1190-93). She stated that the shot could not have come from Mr. Jones' building (R. 1193).

Police considered 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 (Def. Ex. L). Police reports reflect that during interrogation approximately nine hours after the offense, Bobby Hammonds informed Detective Eason that Glenn Schofield had been in Mr. Jones' apartment on the evening of the offense (Def. Ex. L at 18). The next day, May 24, Detective Eason began attempting to

locate Mr. Schofield (Def. Exs. L, M). He summarized these activities in a 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.

(Def. Ex. L at 20) (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 Schofield.

On June 2, Detective Eason learned that Schofield was being held in the St. Johns County Jail and went to interview him (Def. Ex. L at 20-21). Schofield admitted he had been at Mr. Jones' apartment the night of the offense, but denied involvement in the shooting (Id. at 21).

On June 3, Detective Eason, accompanied by Detective Moneyhun, interviewed Schofield again (Def. Ex. L at 21-22). 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" (Id. at 22). After Detective Eason informed Assistant State Attorney Ralph Greene about the interviews with Schofield, Mr. Greene asked that a sworn statement be taken from Schofield (Id.). When asked to give a

sworn statement concerning his prior statements about the murder, Schofield, on advice of counsel, refused to give a sworn statement (Id.).

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 (Def. Ex. P). Schofield's significance is also reflected by the fact that he was listed as a witness by both the State and the defense in Mr. Jones' trial (Def. Exs. Q, R).

Katherine Dixon could have testified that Schofield missed an engagement with friends on the night of the murder and that he possessed a rifle:

> she and her boyfriend, Tony Brown, were waiting at their apartment to meet Schofield on the night of the murder, but he never showed up. The following morning she saw a gun in the closet. Brown told her it was a 30-30 rifle but refused to tell her who owned the gun. Brown took the gun, and she never saw it again. Soon after, Brown and Schofield were arrested for robbing a bank.

Jones, 591 So. 2d at 914.

Although Schofield told police that his girlfriend, Patricia Ferrell, could provide him with an alibi (Def. Ex. L at 22), the police never interviewed Ms. Ferrell. Ms. Ferrell (now Owens) now states that she was not with Schofield during the time in question, but that later Schofield did ask her to provide an alibi for him (T. 213-215). Ms. Owens also states that Schofield often complained about the police hassling him (Def. Ex. E).

At the evidentiary hearing, Ms. Owens testified that Schofield was not home the night of the murder and that the next time she saw him Schofield told her to lie about where he had been and to say the two had been together, if anyone asked (T. 209-217). Ms. Owens understood his statements to mean:

> that if an officer or anybody asked [her] where he was at [the time of the shooting] to tell them that he was with [her]. From when he left and while I did not see him, he wanted me to say he was with me. This is what he meant.

(T. 217). At that time she asked Schofield about the police officer's death, to which he responded:

> that do I think that he was going to say anything to go to prison for the rest of his life.

(T. 216).[3]

B. EVIDENCE THAT SCHOFIELD WAS AT THE SCENE OF THE MURDER

Witnesses place Schofield at the scene of Officer Szafranski's murder, carrying a rifle. Daniel Cole and Sharon Denise Reed were walking down a street near Mr. Jones' apartment building when they heard a shot. Mr. Cole and Ms. Reed saw Glenn Schofield fleeing the scene of Officer Szafranski's shooting with a rifle in his hand. Mr. Cole testified:

> as we approached Fourth and Madison, we notice we seen somebody running toward us. . . [a]bout a good half block from me. . . [a]t that time I notice that he had shotgun in his hand. . . A rifle or either a shotgun. . .[It was] Glenn Schofield. . . I know him. . .

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[3]Prior to her conversation with CCR investigator Donna Harris in 1991, Ms. Owens had not discussed the events with anyone from the police, the State, or the defense (T. 221).

> [And] [h]e was running from the left-hand side, getting ready to run through Blodgett Homes. . . [A]t that time me and Denise [Reed], we walked toward Davis Street and at the time when we got on Fifth Street a policeman approached us. . . stopped me and Sharon and. . . he told us to put our hands up against the wall. . . And then after that when they searched us and everything, because they had went upstairs, went across the street to where Leo was living. . . we noticed that they had went over to Leo's house and was bringing him and just got Bobby downstairs and put them in the car. . .

(T. 73-81).

Mr. Cole stated that after watching the police and rescue units cover the area:

> [M]e and Sharon, we decided we would walk on home and as we walked home, we was talking about what we had seen. . . At the time they [the police] didn't ask no questions. . . We talked about we wasn't going to discuss [seeing Schofield] with nobody. . . Because due to the fact at the time I was -- I was scared of her safety and also mine. . . Because Mr. Schofield's background, his violent background. . . He was just violent. . .

(T. 81-83).

The night of the shooting Mr. Cole was accompanied by Ms. Sharon Denise Reed (T. 125). Ms. Reed's testimony basically mirrored that of Mr. Cole. On the night in May of 1981 when the police officer was killed, Ms. Reed and Mr. Cole were going home from the Center Movie Theater after midnight (T. 126-27). As they walked on Fourth Street, they heard a shot and then saw someone running on Madison Street toward Fourth Street (T. 129-30). At the intersection of Madison and Fourth, Ms. Reed recognized the running person to be Glenn Schofield (T. 130-31).

Schofield was carrying a rifle (T. 131), and running very fast (T. 139). Ms. Reed and Mr. Cole continued walking and approached Sixth and Davis where they saw a police car sitting in the middle of the intersection, frantic police officers filling the area, and Mr. Jones being led into a police car (T. 132-34). Ms. Reed was not questioned by the police about what she had seen and did not volunteer any information because she was afraid of Schofield, his penchant for violence, and the police (T. 135). On the way home, Ms. Reed thought about whether she should say anything about what she had seen but decided not to "[b]ecause I was afraid ... [of] the polices, plus I was afraid of Schofield" (T. 139). When she got home she called her mother, Martha Bell, and told her about what she had seen (T. 140-142). Ms. Reed's mother, Mrs. Martha Bell, testified that on the night that Officer Szafranski was killed, her daughter, Ms. Reed, phoned her and said that she had seen Mr. Schofield running from the scene with a rifle in his hand (T. 177-188).[4]

C. GLENN SCHOFIELD'S NUMEROUS CONFESSIONS TO THE MURDER

Schofield has confessed numerous times to numerous people that he, not Leo Jones, killed Officer Szafranski. In prison in

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[4]Later, Ms. Reed discussed the matter with her husband and decided to maintain her silence, even though Schofield was in prison, because she still feared him (T. 142-144). In 1991, after Mr. Jones' death warrant had been signed and the media had published reports of Mr. Jones' pending execution, a relative of Ms. Reed's informed Mr. Jones' counsel that Ms. Reed might know something (T. 144). After being contacted, Ms. Reed was still hesitant to disclose what she knew (T. 144-147). When Ms. Reed decided to come forward, Mr. Cole agreed to go along with her decision.

the mid-1980's, Mr. Schofield confessed to Paul Marr, Frank Pittro, Franklin Prince, and others. Mr. Jones introduced Schofield's Department of Corrections records, which establish that Schofield was incarcerated at the times and places about which the witnesses testified (Def. Ex. 3). In 1989, after his release from prison, Schofield confessed to his girlfriend, Patricia Owens. In 1990, apparently while in jail, he confessed to Michael Richardson. Each of these confessions contained details of the offense consistent with the evidence at trial and the information provided by other witnesses. The confessions were made to many different people, at different times and places.

Before and during the evidentiary hearing, the prison inmate witnesses to whom Schofield had confessed and who Mr. Jones planned to present were housed in the Duval County Jail. While in the jail, these witnesses were questioned by Detective Housend, who was assisting the State at the evidentiary hearing. Detective Housend brought Schofield with him when he questioned Mr. Jones' witnesses. As a result of this, Mr. Jones' counsel requested a protective order from the court in order to prevent Schofield from harassing Mr. Jones' witnesses (PC-R2. 76). The circuit court granted this motion (PC-R2. 79).

At the evidentiary hearing, Mr. Jones proffered the prior Rule 3.850 testimony of Paul Marr (Def. Ex. 2), because the circuit court would not permit Mr. Marr to testify (T. 265). Mr. Marr testified in 1986 that Mr. Schofield had confessed his

involvement in Officer Szafranski's shooting. The two men lived and worked together while incarcerated in the Union Correctional Institution (UCI) (PC-R2. 355, Def. Ex. 2). Schofield approached Mr. Marr because he believed Mr. Marr could help him with a legal issue (Def. Ex. 2).

Mr. Marr said that Schofield:

> told me that the man on death row was not the person that killed the officer, that it was him that killed the man and that he had went upstairs in an apartment building, retrieved a rifle from a gun case which contained three firearms, went downstairs and shot the officer somewhere in [the] downstairs area. . . . [Schofield] said he hated cops and he referred to them as pigs and he wanted to kill every -- he wanted to kill up a bunch of them.

(Def. Ex. 2).

Mr. Marr said Schofield feared he would be tried for the crime because other people knew he had shot the police officer. Schofield stated to Mr. Marr that:

> he was very concerned about a female [Patricia Owens] that he felt knew that he did it, but he didn't mention a name, and he was also concerned about the testimony of a cousin [Bobby Hammonds], I believe to be, of Mr. Jones who had made former statements that he did this, but then fled the State of Florida. . . He said he was also concerned about the fact that some individual that had just gotten off death row's wife knew he did this.

(Def. Ex. 2).

Patricia Ferrell Owens, Schofield's girlfriend, testified that in 1989, after his release from prison, Schofield often talked about the murder with specificity and about having gotten

away with the murder while someone else did time for the crime (T. 218-20). Schofield "would talk about the killing of the police officer. . . . He talked about it a lot" (T. 219). Schofield "would talk about it and say that [the officer] was shot through his window or windshield or something of this sort and he just went on and on and on" (T. 220).

Mr. Jones presented the testimony of Frank Pittro, who testified that in 1986, he was in the Union Correctional Institution in the same unit as Glenn Schofield (T. 269-270). Pittro and Schofield worked in the kitchen together (T. 271). Schofield told Mr. Pittro that he had shot an officer and that Leo Jones was arrested for that shooting (T. 272). Schofield said, "it was better [Mr. Jones] than himself" (T. 272). Schofield told Pittro that he shot the officer with a "[h]igh-powered rifle" and "said he was in a house, that after he shot the shot he left out the back way" (T. 273). Schofield also told Pittro that the murdered officer "kept harassing him on the streets about dealing drugs" (T. 274).[5]

Mr. Jones presented the testimony of Michael Richardson. Mr. Richardson had previously told an Assistant State Attorney that while in jail he had heard Glenn Schofield confess to the

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[5]As a result of revealing information regarding Schofield's confessions, Mr. Pittro's well-being and safety were threatened when four inmates assaulted Mr. Pittro with knives because he refused to recant his affidavit (T. 276-282). Later, just before Mr. Pittro testified, Detective Housend also attempted to have Mr. Pittro recant his affidavit regarding the Schofield confessions by trying to convince him that Mr. Jones was the shooter (T. 293-294). Schofield too approached Mr. Pittro about recanting his affidavit (T. 285-6).

murder of Officer Szafranski (T. 311-322). Mr. Richardson had told the same information to a Detective with the Jacksonville Sheriff's Department (T. 333-334, 338, 343-344). Furthermore:

> A representative of that department interviewed Richardson, who confirmed that he had overheard Schofield telling how he committed the crime.

Jones, 591 So. 2d at 914. At the evidentiary hearing, Richardson denied having heard Schofield confess to the murder (T. 315). However, another inmate who was transported to the hearing with Richardson testified that in route to the evidentiary hearing Richardson said that Schofield had confessed to the murder (T. 409-412).

Mr. Jones presented the testimony of Donald Perry, to whom Glenn Schofield had confessed that he killed Officer Szafranski. The two men grew up together and knew each other throughout their lives (T. 380). The two met again after having not seen each other for several years because Mr. Perry had to see a heart specialist at the Lake Butler correctional facility where Schofield was then incarcerated (T. 380-384). Mr. Perry told the court about the closeness of their relationship:

> Your Honor, what you got to understand, that me and Schofield is like brothers. We from the same gang, same neighborhood, came up, done all -- we done so much together, you know, and he knows that when I ask him about that, you know, you know, he [confided in] me, you know, he told me that he done it. He said, yeah, man, everybody know I done it, you know. He said, I don't try to hide it that I did do it, you know. He said, but I'm afraid to come because I think the prosecutor office will bring charges against me.

(T. 393-394).

Mr. Perry testified:

> immediately asked him why he won't come back and tell the truth about Mr. Leo Jones, you know, and at that time he (Schofield) would talk to me because we trust one another, you know, because we (were) comrades. We go way back, you know. He said, look, he said, he, man, said, I done it, man, there ain't no secret about it, I done it, but I'm scared.
>
> . . . .
>
> I asked him, I said -- I say, hey, Schofield, I said, Glenn, why you won't come back and tell the truth about Mr. Leo Jones. He said, Don, check this out. He said, man, I done it. He said, I killed the cop, he said, but I'm scared, man, if I come back that the prosecutor is going to bring charges against me. He went on and said that, man, that he really want to come back and tell the truth. He told me he done it. He didn't try to hide it or nothing like that, you know.
>
> Q. And when you say he told you he done it, what --
>
> A. He said he killed the cop.
>
> Q. Was that the end of your conversation?
>
> A. No. We started talking about, you know, the past. I told him, I said, I said, Schofield, man, you've got a man's life on the line, you know. I said, man, you're sending an innocent man to the electric chair, you know. He said, Don, between me and you, he said, man, I'm going to come back, I'm going to tell I done it. He said, but what I'm scared of is that they will bring charges against him. He, I told him, you know, that's -- they ain't got the risk, man. He going around bragging about [how] he done it, confessed to me he done it, you know. I like, my belief, you know, if you do something, you stand the consequences, you do it, you sure do.

(T. 384-86).

> I believe [Jones is] innocent because Schofield say [Jones is] innocent. . .
>
> [Schofield] confessed that he done it but he was afraid. . .

(T. 392, 394). Mr. Perry believed the confession his lifetime friend Glenn Schofield had given because:

> you have to understand when he said that he done it, you know, we was looking right in one another's eyes, you know, and he wasn't lying. He wasn't lying.

(T. 395).

Mr. Jones presented the testimony of Franklin Prince who met Glenn Schofield at the Union Correctional Institution in 1986 (T. 398-399). Mr. Prince was engaged in a conversation about the police officer's killing with a fellow inmate:

> and Schofield told the fellow that he didn't know what he was talking about, that he [Schofield] had did the crime. I said, well, why you telling us that? Why you won't tell the officials that? And he said the officials wouldn't believe him.
>
> . . . .
>
> [He] [t]old me personally that he did the crime with everybody else standing around, too.

(T. 408, 423-424).

The judge wanted to know why Mr. Prince waited to come forward and the following ensued:

> THE COURT: Are you saying that's why you waited five or six years regarding this statement by Schofield [because you thought it was bragging]?

A. No, sir. What really made me come forward, I read it in the paper where I think the Florida Star, I had read it in the paper about the Florida Star and what he had -- something about Schofield and Leo Jones was in that Florida Star, I think it was. Something like that. I believe that motivated me to just go forward with it.

(T. 431).

Stanley Willie gave a sworn statement which explained and recounted the following:

I am an inmate at the New River West Correctional Institution.

1. Currently, I am a patient at the Jacksonville Memorial Hospital. On Thursday, September 10, a tracheostomy operation was performed on my throat. I am unable to speak. I cannot testify at the Leo Jones hearing about conversations I had with Glen Schofield about the shooting of a Jacksonville police officer.

2. I met Glen Schofield at the Duval County Jail sometime during August or September, 1990. We were cellmates.

3. Sometime during August and September, 1990, Glen told me that Leo Jones did not kill the Jacksonville police officer. Glen said that they, meaning the police, got the wrong man. Glen said the officer was shot and killed with a rifle.

4. In the Fall of 1991, I heard on the television news that the state was going to execute Leo Jones. Then, I was an inmate at the Tomoka Correctional Institution. I went to my classification officer, Clay Lambert, and reported the 1990 conversation I had with Glen. I told Mr. Lambert that Glen Schofield said that Leo Jones did not kill the Jacksonville police officer.

5. I have never met Leo Jones.

(Def. Ex. J). This evidence was discovered in 1991, but the judge refused to consider it (T. 223).

Mr. Jones proffered the testimony of Andrea Jackson. In the fall of 1991, Ms. Jackson was in the Duval County Jail with Barbara Schofield, Glenn Schofield's sister, whom Jackson knew from the streets (T. 251-252). After hearing a TV news report of Mr. Jones' pending execution, Barbara Schofield said that Mr. Jones had nothing to do with the officer's shooting; "they were executing the wrong man, that he didn't do it, he didn't have anything to do with it" (T. 252-254). Barbara Schofield said that Glenn Schofield had told her he had shot the officer (T. 254).

Ms. Jackson then stated:

> She [Barbara Schofield] started with a story that Mr. Jones was in an apartment or a house and Schofield had came to the house and Jones was on the sofa asleep or was going to sleep and that there was something going on with the -- there was a lot of police officers around the area and that Schofield came down and shot the police officer and ran.

(T. 254-255). Ms. Schofield said that her brother had confessed to two other people that she knew of -- Patricia Owens, his girlfriend, and one of his parents or grandparents (PC-R2. 255). Ms. Schofield did not tell anyone in authority about what her brother had done because she feared him (PC-R2. 256).

D. THE NEWLY DISCOVERED EVIDENCE

Mr. Jones presented evidence demonstrating that the testimony of Daniel Cole and Denise Reed and the confessions by

Schofield were unavailable previously and thus were newly discovered. Judith Dougherty, an attorney, testified that in November of 1988, she was the investigator supervisor at CCR (T. 374). In 1988, when CCR first became involved in Mr. Jones' case, Ms. Dougherty traveled to Jacksonville to investigate guilt/innocence and penalty phase issues in Mr. Jones' case (T. 375-376). Ms. Dougherty spoke to Mr. Jones' family members and neighbors who believed Mr. Jones was innocent but could not provide any specific leads to investigate (T. 376) Ms. Dougherty also went to the bar on Davis Street near where the shooting occurred and interviewed people there but again was provided no specific leads (T. 376).

Ms. Donna Harris, a CCR investigator, testified that she began investigating the guilt/innocence and penalty phase issues in Mr. Jones' case in the summer of 1991 (T. 437). She too went to Jacksonville to meet with Mr. Jones' family during the summer of 1991 (T. 437-438). Again, although family members believed Mr. Jones to be innocent, they could provide Ms. Harris with no specific information or leads (T. 438). The evidence discussed above was discovered only after Mr. Jones' death warrant was reported by the media and witnesses began contacting Mr. Jones' family and counsel (T. 438). Furthermore, Ms. Harris testified extensively about the aforementioned witnesses that supported the dates they testified about as to when they were initially located, why they came forward when they did, and the new evidence they offered (T. 438-478).

E. THE LOWER COURT'S RULINGS

The lower court determined that the testimony of Daniel Cole, Sharon Reed, Martha Bell, Andrea Hicks Jackson, Frank Pittro, Michael Richardson, Franklin Prince and Donald Perry constituted newly discovered evidence (PC-R. 228). The court also determined that Patricia Owens' testimony regarding Schofield's 1989 statement was newly discovered (Id.). The lower court further determined that Ms. Owens' testimony regarding Schofield's statements at the time of the murder, the testimony of Linda Atwater, the prior testimony of Paul Marr and the affidavit of Stanley Willie did not constitute newly discovered evidence (PC-R. 229).

The lower court also determined that the testimony of Daniel Cole, Sharon Reed and Martha Bell was admissible (PC-R. 229). However, the court determined that the testimony of Patricia Owens, Andrea Jackson, Frank Pittro, Donald Perry and Franklin Prince was not admissible under §90.804(2)(c), Fla. Stat. (1991)(PC-R. 234). The court also concluded that exclusion of this testimony did not violate Chambers v. Mississippi, 410 U.S. 284 (1973)(PC-R. 234-51).

The court refused to consider proffered evidence which corroborated the newly discovered evidence. Thus, the court refused to consider evidence that Schofield was in Mr. Jones' apartment on the night of the offense, evidence that a witness heard a person running down the alley by Mr. Jones' apartment building right after the shooting, evidence that witnesses said

the gunshot came from the vacant lot, not Mr. Jones' apartment building, evidence that police considered Schofield to be a suspect, and evidence that Schofield asked Ms. Owens to provide him a false alibi for the night of the offense. The lower court also refused to consider Hammonds' recantation of his trial testimony, or Hammonds' testimony that he and Mr. Jones were beaten until they confessed.

After excluding the corroborating evidence and Schofield's confessions, the lower court ruled that the newly discovered evidence presented in the testimony of Daniel Cole, Denise Reed and Martha Bell did not entitle Mr. Jones to a new trial (PC-R. 262-68). The court ruled that the newly discovered evidence "does not invalidate the defendant's confession" (PC-R. 262). According to the lower court, the testimony of Cole and Reed "does not exonerate the defendant" (PC-R. 263). The lower court stated, "The defendant's newly discovered and admissible evidence would not cause a juror to conclude the defendant did not shoot Officer Szafranski with a 30-30 caliber Marlin lever action rifle" (PC-R. 263-64). The lower court also stated, "None of the defendant's newly discovered and admissible evidence would cause a juror to believe the defendant did not intend to shoot a police officer when he told Officer Ritchey he intended to shoot a police officer" (PC-R. 264). Finally, the court stated, "None of the defendant's newly discovered and admissible evidence would cause a juror to believe the gunshots were not fired by the defendant from the apartment building in which the defendant

resided" (PC-R. 264). The lower court concluded that even if Schofield's confessions were admissible, these confessions would not entitled Mr. Jones to relief because "this evidence does not exonerate the defendant" (PC-R. 267). The lower court denied relief (PC-R. 268).

F. CONCLUSION

On the night of the shooting Glenn Schofield was at Mr. Jones' apartment (R. 914-15). The guns in Mr. Jones' apartment belonged to Schofield (R. 1214). After the shooting, witnesses in nearby apartments heard someone running down the alley (Def. Ex. N). After the shooting, Glenn Schofield ran by Mr. Cole and Ms. Reed, who saw him with a rifle and identified him (T. 73-81, 125-34). Because of the shooting and his escape he missed an engagement with friends, but he did have time to hide the gun in the friends' closet. Jones, 591 So. 2d at 914. Days later Schofield told his girlfriend, Patricia Owens, to support a false alibi for him (T. 209-217). In the years following, Schofield confessed to Patricia Owens, his girlfriend; Donald Perry, his life-long friend; Paul Marr, a man Schofield sought legal advice from regarding the shooting; Michael Richardson; Stanley Willie; Frank Pittro, a man to whom Schofield gave intimate details about the shooting and the escape that only the killer would know; Franklin Prince; and his sister Barbara Schofield.

SUMMARY OF ARGUMENT

Newly discovered evidence establishes that Mr. Jones is innocent of the offense for which he is convicted and sentenced

to death. This evidence entitled Mr. Jones to a new trial and sentencing. At the evidentiary hearing, Mr. Jones presented newly discovered evidence that Glen Schofield was seen fleeing the scene of Officer Szafranski's murder carrying a rifle and that Glen Schofield has confessed numerous times to committing the murder. Mr. Jones also presented evidence corroborating Schofield's confessions, such as the fact that just days after the murder Schofield asked his girlfriend to provide him a false alibi for the night of the murder. All of this evidence would probably have resulted in Mr. Jones' acquittal because the evidence raises a reasonable doubt about Mr. Jones' guilt.

The circuit court denied relief, first ruling that Schofield's confessions were not admissible under Chambers v. Mississippi. Although determining that admission of Schofield's confessions would not impair the State's interest in preserving evidentiary rules, the lower court nevertheless ruled that evidentiary rules outweighed Mr. Jones' right to present a defense. A state hearsay rule cannot defeat that constitutional right. Further, the lower court failed to consider that Schofield's confessions are admissions which the State could present against Schofield if he were on trial. Fairness requires that Mr. Jones be given the same opportunity to present a defense that the State is given to present a prosecution. Several of the lower court's erroneous conclusions resulted from the lower court's erroneous refusal to admit or consider evidence corroborating Schofield's confessions. Consideration of this

evidence was necessary to a proper ruling on Mr. Jones' claim. Finally, although finding that the evidence presented by Mr. Jones was newly discovered, the lower court applied an erroneous standard in determining whether Mr. Jones was entitled to relief. Rather than determining whether the evidence probably would have raised a reasonable doubt and thus produced an acquittal, the lower court required Mr. Jones to "invalidate" the State's evidence at trial. The lower court also failed to consider the effect of this evidence on the penalty phase outcome. The lower court erred in numerous respects, and Mr. Jones is entitled to relief.

ARGUMENT

NEWLY DISCOVERED EVIDENCE ESTABLISHES THAT MR. JONES' CONVICTION AND DEATH SENTENCE ARE UNRELIABLE AND THAT HE IS THEREFORE ENTITLED TO A NEW TRIAL AND RESENTENCING.

This Court ordered the circuit court "to have an evidentiary hearing on the claims that are based upon newly discovered evidence." Jones, 591 So. 2d at 916. The Court's opinion set out the standard for analyzing Mr. Jones' claim once the evidence was heard:

> At the hearing, the trial judge should consider all newly discovered evidence which would be admissible and determine whether such evidence, had it been introduced at the trial, would have probably resulted in an acquittal. In reaching this conclusion, the judge will necessarily have to evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial.

Jones, 591 So. 2d at 916.

In Jones, this Court adopted a new standard for evaluating claims of newly discovered evidence, receding from the "conclusiveness test" of Hallman v. State, 371 So. 2d 482, 485 (Fla. 1979). The Court pointed out that the circuit court's initial ruling on Mr. Jones' newly discovered evidence claim was "clearly correct under the Hallman standard" because "[i]n light of Jones' confession as well as the other evidence introduced at the trial, it could not be said that newly discovered evidence would have conclusively prevented Jones' conviction." Jones, 591 So. 2d at 916. The Court ordered an evidentiary hearing under the new standard, a recognition that if Mr. Jones' allegations were true, Mr. Jones would be entitled to relief under the new standard.

The circuit court failed to apply the new standard to Mr. Jones' claim, contrary to this Court's directive. In fact, mirroring this Court's recitation of how Mr. Jones' claim would not meet the rejected Hallman standard, the circuit court stated: "[E]ven if a juror accepted [the testimony regarding Schofield's confessions] as true, the defendant would not be entitled to a new trial. Although the testimony of Frank Pittro, Donald Perry, Franklin Delano Prince and Patricia Owens implicates Schofield in the crime if accepted as true, this evidence does not exonerate the defendant in view of the defendant's confession and the circumstantial evidence connecting the defendant to the crime for which he was convicted" (PC-R2. 267)(emphasis added). The

circuit court clearly applied the rejected Hallman standard rather than the Jones standard.

Under the new standard enunciated by this Court, Mr. Jones is entitled to a new trial and sentencing. Evidence that Schofield was seen fleeing the scene of Officer Szafranski's murder with a rifle in his hand and that Schofield has confessed to the murder numerous times clearly creates a reasonable doubt regarding Mr. Jones' guilt. Of course, if there is a reasonable doubt about guilt, a criminal defendant is entitled to an acquittal. Thus, the evidence presented at the hearing would probably result in Mr. Jones' acquittal, and he is entitled to a new trial.

However, the circuit court denied relief, making several erroneous rulings in addition to applying the wrong standard. For example, the court determined that the testimony presented at the evidentiary hearing regarding Schofield's confessions was not admissible evidence. In so ruling, the court determined that the State's interest in its evidentiary rules outweighed Mr. Jones' interest in presenting the evidence, even though the lower court determined that admitting Schofield's confessions would not subvert evidentiary rules. The court's decision ignored Mr. Jones' weighty interest in his constitutional right to present a defense. A state hearsay rule cannot defeat that constitutional right. Chambers v. Mississippi, 410 U.S. 284 (1973). The lower court's erroneous Chambers analysis is discussed in Section A.1 of this brief.

Further, the lower court failed to consider that Schofield's confessions are admissions which the State would certainly be entitled to present as evidence if Schofield were on trial. Fairness requires that Mr. Jones be given the same opportunity to present a defense that the State is given to present a prosecution. The lower court's erroneous analysis in this regard is discussed in Section A.2 of this brief.

Schofield has confessed to the specific crime for which Mr. Jones was convicted, and Schofield can be connected to the specific crime -- he was at Mr. Jones' apartment the night of the murder, left the apartment shortly before the shooting, and after the shooting was seen fleeing the scene carrying a rifle. Additionally, at the evidentiary hearing, Mr. Jones proffered further evidence which corroborates Schofield's confessions and the testimony of witnesses who saw Schofield at the scene (Def. Exs. L, M, N, O, P, Q, R), but the lower court erroneously did not consider this evidence. The lower court also refused to consider other evidence such as Paul Marr's prior testimony regarding Schofield's confession and Bobby Hammonds' recantation of his trial testimony. The lower court's erroneous rulings excluding evidence are discussed in Section B of this brief.

Glen Schofield's confessions would be critical to Mr. Jones' defense at trial. The prosecution's evidence was weak and circumstantial. No evidence directly connected Mr. Jones to the

crime.[6] Mr. Schofield's confessions establish a reasonable doubt that Mr. Jones did not commit the crime.

The lower court found that the evidence presented by Mr. Jones was newly discovered, but then applied an erroneous standard in determining whether Mr. Jones was entitled to relief. Rather than determining whether the evidence probably would have raised a reasonable doubt and thus produced an acquittal, Jones, the lower court required Mr. Jones to disprove or "invalidate" the State's evidence at trial. While the lower court speculated that a jury could reject the newly discovered evidence, the court never considered whether the evidence would raise a reasonable doubt and thus whether the evidence would probably result in Mr. Jones' acquittal. Further, the lower court wholly failed to consider the effect of this evidence on the penalty phase outcome. These errors are discussed in Section C of this brief.

A. GLEN SCHOFIELD'S CONFESSIONS ARE ADMISSIBLE

1. Chambers v. Mississippi.

The lower court determined that Glen Schofield's confessions to Officer Szafranski's murder were not admissible and thus,

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[6]As the lower court noted at the hearing, Bobby Hammonds' trial testimony that he saw Mr. Jones leave his apartment with a rifle was substantially impeached by Mr. Hammonds' recantations of that testimony. Because of this recognition, the court would not issue a subpoena for Mr. Hammonds to testify at the evidentiary hearing and would not accept a proffer of Mr. Hammonds' testimony. However, Mr. Jones' counsel obtained a videotaped statement from Mr. Hammonds in which Mr. Hammonds states that he did not see Mr. Jones leave the apartment with a rifle, that he and Mr. Jones were severely beaten by police, and that Mr. Hammonds implicated Mr. Jones only out of fear of the police. A copy of the videotape was provided to the circuit court, which refused to consider it.

although the confessions were newly discovered, they could not be considered in determining whether Mr. Jones is entitled to a new trial. In making this determination, the lower court ruled that the confessions were hearsay that did not satisfy the requirements of §90.804(2)(c), Fla. Stat., because Mr. Jones had not shown that Schofield was unavailable. The lower court also ruled that the confessions were not admissible under Chambers v. Mississippi, 410 U.S. 284 (1973). The lower court erred.

Mr. Jones has a constitutional right to present a defense. A state hearsay rule cannot defeat that constitutional right. Failure to admit and consider Schofield's confessions at Mr. Jones' trial would deny Mr. Jones his right to fairly present a complete defense, in violation of the Sixth, Eighth, and Fourteenth Amendments. See Washington v. Texas, 338 U.S. 14 (1967); Crane v. Kentucky, 476 U.S. 683, 690 (1986); Pointer v. Texas, 380 U.S. 400 (1965).

Chambers v. Mississippi, 410 U.S. 284 (1973), made clear that due process requirements supersede the application of state hearsay rules:

> [T]he testimony was ... critical to Chambers' defense. In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

Chambers, 410 U.S. 294, 302 (emphasis added). See also Rock v. Arkansas, 107 S. Ct. 2704 (1987); Taylor v. Illinois, 108 S. Ct. 646 (1988). Where as here the testimony contains sufficient

indicia of reliability, and directly affects the ascertainment of guilt or innocence, the strict application of an evidentiary rule cannot be employed to reject the evidence. Chambers.

In Chambers, the Supreme Court determined that due process overcame Mississippi's hearsay rule because the hearsay statements at issue there bore indicia of reliability. The statements in Chambers were made spontaneously, were corroborated by other evidence (such as testimony that the declarant was seen at the scene of the shooting with a gun and that the declarant had made a number of independent confessions), and were "self-incriminatory and unquestionably against interest." Chambers, 410 U.S. at 300-01. All of these indicia of reliability are present in Mr. Jones' case. Significantly, in Chambers, the Supreme Court considered the declarant's availability as a condition favoring the admission of the hearsay statements.

In Chambers, the Supreme Court stated, "The hearsay statements involved in this case were originally made and subsequently offered at trial under circumstances that provided considerable assurance of their reliability." 410 U.S. at 300. The first of these circumstances was that each statement was "made spontaneously to a close acquaintance." Id. Here, Schofield's statements were made in a similar manner. After his release from prison in 1989, Schofield confessed to committing the murder to Patricia Owens, who had been Schofield's girlfriend since 1979. Schofield "would talk about the killing of the police officer.... He talked about it a lot" (T.219). Schofield

also confessed to numerous fellow prison inmates. In 1985, Schofield told Frank Pittro, with whom Schofield worked in the kitchen at Union Correctional Institution (T.270-71), that he (Schofield) had "shot a police officer" and "they arrested Mr. Jones for it" (T.272). Schofield said he shot the officer with a "[h]igh-powered rifle" and that "he was in a house, that after he shot he left out the back way" (T.273). Schofield also confessed to Donald Perry, whom Schofield had known since the two grew up together in Jacksonville (T.380). While Schofield and Perry were at the same prison in 1992, the subject of Mr. Jones came up and Schofield said, "I killed the cop, ... but I'm, scared, man, if I come back that the prosecutor is going to bring charges against me" (T.385). In 1986, Schofield spontaneously confessed to several fellow inmates, including Franklin Prince. Because Mr. Jones' case was in the news at the time, Prince and several other inmates were discussing it (T.400,408). Schofield "came up to all of us in the group.... [a]nd said that we didn't know what we was talking about" (T.400). Schofield said "that he had did the crime" (T.408). Thus, as in Chambers, Schofield spontaneously confessed to committing the murder and made these confessions to "close acquaintances."

The second circumstance indicating the reliability of the statements in Chambers was that each statement "was corroborated by some other evidence in the case." 410 U.S. at 300. In Chambers, that evidence included that the declarant "was seen with a gun immediately after the shooting" and that the declarant

was known to own a gun similar to the murder weapon. Similar evidence exists in Mr. Jones' case. Bobby Hammonds told police that Schofield was at Mr. Jones' apartment on the night of the murder (Def. Ex. L at 18). At trial, Mr. Jones testified that the guns in his apartment belonged to Schofield (R. 1214). Police considered Schofield a suspect in the murder even after Mr. Jones' "confession" (Def. Exs. L, M, O). Schofield asked Patricia Owens to provide him with a false alibi for the night of the murder (T. 209-17). Owens testified that Schofield owned several guns, including rifles (T. 222). Katherine Dixon stated that Schofield did not show up for a meeting with her and her boyfriend, Tony Brown, on the night of the murder, but that the next morning a 30-30 rifle was in her apartment (App. 3). Brown refused to say who owned the gun, which Brown removed from the apartment shortly before he and Schofield were arrested for bank robbery (Id.). Most significantly, Denise Reed and Daniel Cole saw Schofield running away from the scene of the murder carrying a rifle (T. 73-81, 125-34). Again, as in Chambers, this evidence corroborates Schofield's confessions to the murder.[7] Such

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[7]Counsel for the State has recognized that these matters corroborate Schofield's confessions. In Johnson v. State, counsel for the State argued that the third party confession at issue there was not corroborated by other evidence, in contrast to Mr. Jones' case where corroboration exists: "In Jones v. State, supra, for example, the alternate suspect was a fellow named Schofield who was independently known to have been at the scene of the crime, with a gun, on the day of the crime." Johnson v. State, Fla. Sup. Ct. No. 83,701, State's Response to Application for Stay of Execution Pending Appeal and Consolidated Motion to Relinquish, p. 4. See also Johnson v. State, No. 78-1869-C (Fla. 1st Judicial Circuit), State's Response to Second (continued...)

corroborating evidence was considered in Chambers in order to determine the reliability of the confessions, but in Mr. Jones' case, the lower court refused to consider the corroboration.[8]

Another factor considered in Chambers as indicative of the reliability of the statements was "[t]he sheer number of independent confessions." 410 U.S. at 300. Here, Schofield has confessed numerous separate times to separate individuals over a period of years.

The Chambers Court also concluded that the statements were reliable because "each confession here was in a very real sense self-incriminatory." 410 U.S. at 300-01. Schofield's statements also are "in a very real sense self-incriminatory." The statements are at least as detailed as Mr. Jones' "confession," which is the basis of Mr. Jones' conviction. Schofield's statements say that he committed the crime for which Mr. Jones was convicted, that he shot the police officer with a high-powered rifle, that he shot the officer through the windshield of the officer's car, that he ran out the back way to escape the scene, and that he was afraid of being prosecuted for the murder.

Finally, the Chambers Court considered the declarant's availability to testify as indicating the reliability of the statements: "McDonald was present in the courtroom.... He could

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[7](...continued)
Successive Motion for Postconviction Relief, p. 23 (in Jones, Schofield "was actually linked to the crime scene").

[8]The circuit court's erroneous refusal to consider corroborating evidence is discussed in Section B.

have been cross-examined by the State, and his demeanor and responses weighed by the jury." 410 U.S. at 301. In Mr. Jones' case, Schofield also was available to testify (T. 523). The State certainly could have called him as a witness to deny or explain the statements. At a trial of Mr. Jones, the State would have a similar opportunity to present Schofield's testimony.[9] At the evidentiary hearing the State had exclusive access to Schofield, who refused to speak to Mr. Jones' counsel (T. 507). In fact, the State took Schofield to confront Mr. Jones' inmate witnesses in an attempt to intimidate Mr. Jones' witnesses into refusing to testify (PC-R2. 76).

Mr. Jones' case is strikingly similar to Chambers. All of the circumstances indicating the reliability of the statements in Chambers are present in Mr. Jones' case regarding Schofield's statements. The lower court erred in refusing to consider Schofield's confessions.

Courts in other states have recognized that, under Chambers, state evidentiary rules must yield to the defendant's right to present a defense. In a case involving the discretion of a trial court to allow a party to open its case after that party had rested, the Supreme Court of Connecticut said that "unyielding adherence to procedure, without regard to other factors ..., is

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[9]Indeed, counsel for the State has recognized that Schofield's availability supports Mr. Jones' claim. In Johnson v. State, the State argued, "Jones is also distinguishable because the alleged 'real killer' in that case is alive and available to testify." Johnson v. State, Fla. Sup. Ct. No. 83,701, State's Response to Application for Stay of Execution, etc., at 4.

not consistent with the responsibility of the trial court to exercise its discretion in a manner that enhances the likelihood of a fair and informed verdict." State v. Carter, 636 A. 2d 821, 829 (Conn. 1994). The trial court had committed an abuse of discretion by excluding evidence proffered by the defense and therefore "significantly impaired the defendant's ability to present his defense to the jury, and furthered no legitimate interest of the court or of the state." Id. at 830.

In a case involving the application of a rape shield statute, a Virginia Court of Appeals wrote that when a rule "excludes relevant, material evidence, due process will be satisfied only if the evidence excluded has low probative value and high prejudicial effect." Neeley v. Commonwealth, 437 S.E. 2d 721, 725 (Va. App. 1993). The court emphasized that even if relevant, material evidence did not fall within the enumerated exceptions of the state rape shield law, "when exclusion of such evidence would deny the defendant the constitutional right to a fair opportunity to present evidence probative of his defense" it must be admitted. Id. at 726.

Relying also on the critical right of a criminal defendant to present witnesses and the rule of Chambers that the strict application of rules of evidence cannot, as a matter of fundamental fairness, prevent the eliciting of reliable exculpatory evidence from a witness, a New Jersey court recently found that even evidence otherwise protected by a psychologist-patient privilege was erroneously excluded from a trial. The

court held that the defendant's "legitimate need for critical evidence" was "far more compelling than the interests in confidentiality." State v. L.J.P., 637 A. 2d 532 (N.J. Super. Ct. App. Div. 1994).

Florida courts have likewise recognized that state evidentiary rules must yield to the defendant's right to present a defense. In McCoy v. State, 580 So. 2d 181 (Fla. 1st DCA 1991), the trial court's refusal to allow the defendant to call a detective as an adverse witness and impeach him through use of prior inconsistent statements regarding identification of the defendant was held to deny the defendant due process of law. In McCoy, the court explained that it must carefully examine the facts of the case and admit the evidence where "factors unique to this case indicate that the failure to allow the jury to consider the prior deposition testimony deprived the defendant of a fair trial." Id. at 185. "The instant case is one where there are numerous significant factors which require [the evidence] to be admitted." Id. Mr. Jones' case is also one where there are numerous significant factors which require that all the evidence excluded by the lower court be admitted and considered.

In Card v. State, 453 So. 2d 17 (Fla. 1984), this Court upheld the trial court's exclusion of certain hearsay statements. There, the defendant offered the testimony of a witness who had overheard other people planning to commit a crime which sounded very similar to the crime for which the defendant was on trial. This Court distinguished Chambers:

> We find no similarity between the instant case and Chambers. This case does not involve a confession to the specific crime but, rather, a discussion, prior to the crime, about committing a similar crime. There is no corroborating evidence and no assurances whatever of the reliability of the statement. Also, section 90.804(2)(c), Florida Statutes (1981), states:
>
> A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement.
>
> We find that the appellant was not denied a fair trial by exclusion of the hearsay evidence.

453 So. 2d at 21 (emphasis added). In later proceedings in that same case, the Eleventh Circuit denied relief for a similar reason: "Card has not shown a sufficient nexus between the statements overheard by [the proffered witness] and the crime for which Card was charged." Card v. Dugger, 911 F.2d 1494, 1515 (11th Cir. 1990). In Mr. Jones' case, however, Schofield has confessed to the specific crime, and a "nexus" to the specific crime exists -- Schofield's presence at the scene carrying a rifle. Schofield's confessions are admissible.

In concluding that Schofield's confessions were not admissible under Chambers, the lower court determined that the State's interest in preserving its rules of evidence outweighed Mr. Jones' right to present a defense (PC-R2. 234-251). On Mr. Jones' side of this balancing, the lower court considered "the probative value of the statements on the central issue, the reliability of the statements, whether the statements are capable

of evaluation by the trier of fact, whether the statements are the sole evidence on the issue or merely cumulative, and whether the statements constitute a major part of the attempted defense" (PC-R2. 239). On the State's side of this balancing, the lower court considered "the purpose of the rule [of evidence], its importance, how well the purpose applies in the case at hand" and determined that it "must give due weight to the substantial State interest in preserving orderly trials, in judicial efficiency and in excluding unreliable or prejudicial evidence" (Id.).

Employing this analysis, the lower court determined that Schofield's confessions are probative on the issue (PC-R2. 240), that Schofield's confessions are capable of evaluation by the trier of fact (PC-R2. 246), and that Schofield's confessions are a major part of Mr. Jones' defense because "[w]ithout the statements Schofield may have made to others concerning his involvement in the murder of Officer Szafranski, the defendant has little evidence concerning Schofield's possible involvement in the murder of Officer Szafranski" (PC-R2. 247). Having found these factors in Mr. Jones' favor, the lower court devoted most of its attention to the reliability of Schofield's confessions (PC-R2. 240-45).[10]

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[10]The lower court also determined that Schofield's confessions are not the sole evidence on the issue because of the testimony of Denise Reed, Daniel Cole, Martha Bell and Michael Richardson (PC-R2. 246). However, as the lower court recognized, Schofield's confessions are the most significant evidence on this issue (See PC-R2. 247).

Regarding reliability, the lower court concluded that Schofield's confessions are not reliable because they were not made contemporaneously with the murder (PC-R2. 241), because "there is little corroborating evidence supporting the statements" (id.), and because Schofield's confessions "are not necessarily declarations against Schofield's penal interest" (PC-R2. 241-42). The lower court did not, however, consider all of the confessions in assessing the individual admissibility of each confession. This erroneous refusal denied Mr. Jones consideration of corroborating evidence. The lower court did note that Schofield's availability to testify made Schofield's confessions "more reliable" (PC-R2. 244). Yet, it then failed to give that finding any weight. The lower court's conclusion that Schofield's confessions were inadmissible was erroneous.

The lower court concluded that since Schofield's confessions were not made contemporaneously with the murder, the statements "are less than reliable" (PC-R2. 241). However, the lower court failed to consider that the statements were made to close acquaintances whom Schofield believed he could trust and that Schofield made numerous independent confessions to separate people at separate times. Further, the lower court refused to consider that just days after the murder, Schofield asked Patricia Owens to provide him with a false alibi and that when Ms. Owens asked if he was involved in the officer's murder, Schofield asked if Ms. Owens thought "he was going to say anything to go to prison for the rest of his life" (T. 216).

The lower court also concluded that Schofield's confessions are not reliable because "there is little corroborating evidence supporting the statements" and "the alleged statements do not complement any physical evidence which might connect Schofield to the murder" (PC-R2. 241). First, the lower court failed to consider that Schofield's confessions are at least as detailed as Mr. Jones' "confession," upon which Mr. Jones' conviction is based. Schofield's confessions say that he committed the crime for which Mr. Jones was convicted, that he used a high-powered rifle, that he shot the officer through the windshield of the officer's car, that he ran out the back way to escape the scene, and that he was afraid of being prosecuted for the murder. Second, and significantly, the lower court refused to consider the evidence corroborating Schofield's confessions. The lower court refused to consider that Schofield was at Mr. Jones' apartment the night of the murder and left shortly before the murder occurred, that the guns in Mr. Jones' apartment belonged to Schofield, that immediately after the shooting witnesses heard someone run down the alley by the apartment building, that witnesses saw Schofield fleeing the scene carrying a rifle, and that Schofield asked his girlfriend to provide him a false alibi for the night of the murder. All of this evidence provides substantial corroboration for Schofield's confessions, but the lower court refused to consider it.

The lower court also concluded that Schofield's confessions were "not necessarily" against Schofield's interest. However,

Schofield himself recognized that the statements were against his interest, telling Donald Perry, "I killed the cop, . . . but I'm, scared, man, if I come back that the prosecutor is going to bring charges against me" (T. 385). Further, just days after the murder, when Patricia Owens asked Schofield if he was involved in the shooting, he responded by asking if she thought "he was going to say anything to go to prison for the rest of his life" (T. 216). Schofield certainly believed making statements about committing a murder put him in danger of being prosecuted and thus certainly believed the statements were against his interest. Finally, Schofield's statements are at least as, if not more, inculpatory as Mr. Jones' "confession," which was sufficient to convict Mr. Jones. Schofield's confessions are against his interest.

In assessing the State's interests in preserving the rules of evidence, the lower court determined that the purpose of the hearsay rule is "to prevent the trier of fact from hearing evidence which is unreliable or untrustworthy" (PC-R2. 247). However, the lower court then determined that since Schofield is available to testify, "the defendant may present the statements Schofield may have made to others concerning his involvement in the murder of Officer Szanfranski <u>without entirely subverting</u> the rationale of the declaration against penal interest exception to the rule against hearsay" (PC-R2. 250)(emphasis added).

Having determined that allowing admission of Schofield's confessions would not subvert the purpose of the hearsay rule,

the lower court nevertheless concluded that the State's interest in preserving evidentiary rules outweighed Mr. Jones' interest in presenting a defense (PC-R2. 250-51). This conclusion turns logic and due process on their heads -- the lower court concluded that although the admission of Schofield's confessions would not impair the State's interest, that interest nevertheless was paramount to Mr. Jones' interest in defending himself. If admission of the confessions would not impair evidentiary rules, exclusion of the evidence furthers no legitimate State interest. Thus, Mr. Jones' interest is defeated for no rational reason.

Schofield's confessions are significant evidence in Mr. Jones' defense. Those confessions are probative regarding Mr. Jones' guilt or innocence. Those confessions were made to numerous separate people at numerous separate times. Those confessions are corroborated by substantial evidence. Those confessions raise a reasonable doubt as to Mr. Jones' guilt. Yet, no jury has been allowed to hear this evidence and return a verdict as to whether a reasonable doubt exists. Under Chambers, the confessions are admissible. Mr. Jones must be given his right to have a jury decide whether a reasonable doubt is present. Sullivan v. Louisiana, 113 S. Ct. 2078 (1993).

2. Fundamental Fairness

Mr. Jones should be accorded the same right to present evidence against Glen Schofield as the State would enjoy if Schofield were on trial. The trial court at the evidentiary hearing denied Mr. Jones that right by refusing to consider the

confessions of Glen Schofield to the murder for which Mr. Jones has been convicted and sentenced to death, in violation of Mr. Jones' due process rights.

This Court has ruled that where a defendant seeks to present evidence which inculpates a third party and exculpates the defendant, such evidence should be admitted as if the third person were on trial. In a case involving Williams rule evidence, this Court held that if "a defendant's purpose is to shift suspicion from himself to another person, evidence ... should be of such nature that it would be admissible if that person were on trial for the present offense." State v. Savino, 567 So. 2d 892, 894 (Fla. 1990). In Crump v. State, 622 So. 2d 963 (Fla. 1993), this Court further ruled that the test for admissibility of evidence regarding other suspects to a crime, when offered by the defendant wrongfully charged with the crime, is whether such evidence would be admissible against the other suspect were he on trial. Fairness requires this Court to employ a similar analysis regarding the compelling evidence of Mr. Jones' innocence refused by the lower court in this case.

The evidence of Schofield's confessions is critically relevant to the issue of Mr. Jones' guilt or innocence. In Rivera v. State, 561 So. 2d 536 (Fla. 1990), this Court ruled that a defendant may seek to exculpate himself by introducing similar fact evidence about another suspect if that evidence is relevant under the same standards of relevancy used to determine admissibility of "any other evidence offered by the defendant."

Rivera, 561 So. 2d at 539. Further, this Court cautioned that where such evidence tended in any way to establish a reasonable doubt of a defendant's guilt, it would be error to deny its admission. Id. at 539; Estrano v. State, 595 So. 2d 973 (Fla. 1st DCA 1992); In Interest of K.C., 582 So. 2d 741 (Fla. 4th DCA 1991). It was error for the lower court to refuse to admit and consider the substantial evidence of Schofield's confessions.

Schofield's confessions are precisely the kind of evidence a jury would want to hear in order to determine Mr. Jones' guilt or innocence. As the lower court found, those confessions are probative and are capable of evaluation by the trier of fact (PC-R2. 240, 246). A jury is certainly capable of assessing evidence such as Schofield's confessions and would want to have the opportunity to do so:

> More is involved here doctrinal incongruities. Law courts depend for such effectiveness as they have on the cooperation of the wider community, and trials must be conducted in a way that will earn the cooperation and support of people of good will in every walk of life. Excluding from one man's trial another man's confession to the offense charged is no means to that end. Dissenting in *Donnelly v. United States,* 228 U.S. 243, 33 S.Ct. 449, 57 L.Ed. 820 (1913), Mr. Justice Holmes wrote:
>
> > The confession of [another] . . . that he committed the murder for which [Donnelly] was tried [and convicted] coupled with circumstances pointing to its truth, would have a very strong tendency to make anyone outside of a court of justice believe that Donnelly did not commit the crime.
>
> 228. U.S. at 277, 33 S.Ct. at 461.

Baker v. State, 336 So. 2d 364, 369 (Fla. 1976).

Additionally, refusing to allow Mr. Jones to present Schofield's confessions although the State would be allowed to present those confessions against Schofield could result in a perversion of justice. The State could obtain a conviction of Mr. Jones, who would not be allowed to introduce Schofield's confessions. The State could then turn around and prosecute Schofield, using his confessions against him, and obtain a conviction of Schofield. Thus, by manipulating the rules of evidence, the State could obtain convictions of both Mr. Jones and Schofield, although Mr. Jones' jury would never have been permitted to evaluate all of the relevant evidence.

Schofield's admissions to the murder of officer Szafranski are just that, admissions. Were Schofield on trial, these admissions would clearly be admissible against him. In conjunction with the testimony of the eyewitnesses who saw Schofield at the scene with a weapon, the evidence of Schofield's confessions would probably result in Schofield's conviction for murder. It is just as probable that those confessions would result in Mr. Jones' acquittal.

B. THE EVIDENCE CORROBORATING SCHOFIELD'S NEWLY DISCOVERED CONFESSIONS SHOULD HAVE BEEN CONSIDERED BY THE LOWER COURT

At the evidentiary hearing, Mr. Jones presented substantial evidence corroborating Schofield's newly discovered confessions. For example, Mr. Jones presented the testimony of Paul Marr, to whom Schofield had confessed his involvement in the murder and whose testimony Mr. Jones had unsuccessfully attempted to present

in his first Rule 3.850 proceeding. Mr. Jones also attempted to present the testimony of Bobby Hammonds, who would have testified that his trial testimony implicating Mr. Jones was not true and that his and Mr. Jones' statements to the police were coerced by police brutality. Finally, Mr. Jones also attempted to present evidence other than Schofield's confessions which implicated Schofield in the murder. This evidence included matters such as Patricia Owens' testimony that Schofield asked her to provide a false alibi for the night of the murder, evidence that a witness heard someone running down the alley by Mr. Jones' apartment building right after the murder, evidence that the police considered Schofield a suspect in the murder, and evidence that Schofield was known to possess guns similar to the murder weapon.

The lower court refused to consider any of this evidence. Regarding Paul Marr, the lower court ruled that although Marr's testimony was "newly discovered in the sense that it could not have been known at the trial," reliance on Marr's testimony was procedurally barred because it was known at the time of Mr. Jones' first Rule 3.850 proceeding (T. 265). Regarding Bobby Hammonds, the lower court recognized that Hammonds had provided several conflicting accounts regarding the night of the murder (T. 355-56) and that Hammonds had been impeached at trial with his prior sworn testimony in which he stated he had not seen Mr. Jones with a rifle on the night of the murder (T. 357-58). Therefore, the court concluded that Hammonds' recantation of his trial testimony was not newly discovered evidence (T. 358).

Regarding the other evidence, the lower court ruled that it would not consider any of this evidence because it was not newly discovered (T. 486, 488, 489, 490, 492, 494, 583). These rulings were erroneous, and Mr. Jones was denied a full and fair opportunity to prove his claim.

At the evidentiary hearing, Mr. Jones argued that in order for his claim to be fairly assessed, the corroborating evidence should be considered even if it was not newly discovered (T. 547, 558). In Johnson v. Singletary, 19 Fla. L. Weekly S337 (Fla. May 19, 1994), this Court remanded for an evidentiary hearing regarding a third party's newly discovered confessions to the homicide. In Johnson, the lower court had permitted the State to present evidence indicating that the third party could not have been the murderer, but the defense was not permitted a similar opportunity. 19 Fla. L. Weekly at S339 and n.3. Johnson contended that he was entitled to an evidentiary hearing "at which he could demonstrate the corroborating circumstances sufficient to establish the trustworthiness of [the third party's] statements." Id. at S339. The Court's decision remanding for an evidentiary hearing clearly contemplated providing an opportunity to present such corroboration. In ordering the hearing, the Court stated, "At the hearing, Johnson may only introduce evidence that would tend to prove that [the third party] committed the murder." 19 Fla. L. Weekly at S339 n.4. In concurrence, Justice Overton emphasized, "I do not believe we can conclude that corroborative evidence of the

hearsay statements is lacking until we afford Johnson an opportunity to present evidence on this issue." Id. at S339. Clearly, Mr. Jones should have been permitted to present evidence corroborating the reliability of Schofield's statements.

The lower court's refusal to consider the corroborating evidence resulted in the lower court reaching several erroneous conclusions. For example, as discussed above, the failure to consider the corroborating evidence resulted in the lower court's erroneous Chambers analysis. Further, the failure to consider the corroborating evidence led the lower court to speculate that a juror could discount the testimony of witnesses such as Daniel Cole, Denise Reed and Martha Bell because Reed and Bell were acquainted with Mr. Jones' family (PC-R2. 261-62) and the testimony of the prison inmates to whom Schofield confessed because they are prison inmates and because "the testimony of the inmates is lacking in corroboration" (PC-R2. 266). However, as the corroborating evidence ignored by the lower court shows, Schofield's confessions did not just come out of the blue from someone unconnected to the crime. Those confessions came from a person who was at the scene, who owned the rifles in Mr. Jones' apartment, whom police suspected was involved in the shooting, and who asked his girlfriend to provide him with a false alibi for the night of the shooting. Finally, as discussed below, the lower court's refusal to consider the corroborating evidence contributed to the lower court's application of an erroneous standard to Mr. Jones' claim.

C. MR. JONES IS ENTITLED TO RELIEF.

1. The Evidence Is Newly Discovered

The circuit court found that the evidence presented by Mr. Jones was newly discovered. The court found that the testimony of Daniel Cole, Sharon Reed, Martha Bell, Andrea Jackson, Frank Pittro, Michael Richardson, Franklin Prince and Donald Perry was newly discovered because "[t]he testimony of each did not exist at the time of the defendant's trial" (PC-R. 228). The court also found, "the testimony of Patricia Owens concerning statements Schofield made to her once he was released from prison qualifies as newly discovered evidence" (Id.). Mr. Jones' evidence is newly discovered.

2. The Circuit Court Applied An Incorrect Standard To Mr. Jones' Claim

In ordering an evidentiary hearing, this Court held that Mr. Jones is entitled to relief if the newly discovered evidence "would have probably resulted in an acquittal." Jones, 591 So. 2d at 916. For a criminal defendant to be entitled to an acquittal, there must be a reasonable doubt about guilt. Thus, if the evidence presented by Mr. Jones raises a reasonable doubt, Mr. Jones would be entitled to an acquittal. The circuit court did not apply this standard.

Rather than apply the standard mandated by this Court, the circuit court required Mr. Jones to "invalidate" the State's evidence at trial (PC-R2. 262), and "exonerate the defendant" (PC-R2. 263, 267). The circuit court's order discusses each piece of the State's case at trial which the circuit court found

significant and requires Mr. Jones to disprove each piece individually (PC-R2. 262-64), rather than assessing whether, in light of all the evidence, a reasonable doubt exists. Thus, the circuit court required that the evidence "invalidate" Mr. Jones' confession (PC-R2. 262). However, what the circuit court should have done is determine, in light of all the evidence, including Mr. Jones' and Mr. Hammonds' testimony regarding the beatings they received from police, whether the evidence regarding Schofield fleeing the scene with a rifle and Schofield's confessions raises a reasonable doubt regarding the validity of Mr. Jones' two-sentence "confession."

The circuit court concluded, "The defendant's newly discovered and admissible evidence would not cause a juror to conclude the defendant did not shoot Officer Szafranski with a 30-30 caliber Marlin lever action rifle" (PC-R2. 263-64). This is so, according to the circuit court, because "Reed's testimony and Cole's testimony requires a juror to draw the inference that because Schofield was armed and in the vicinity shortly before Officer Szafranski was shot, Schofield must have shot Officer Szafranski. However, the jury made a similar inference at trial with respect to the defendant" (PC-R2. 263). Thus, according to the circuit court, if there are equal inferences that Mr. Jones was the shooter and that Schofield was the shooter, Mr. Jones has not "exonerated" himself. However, the question should be, in light of all the evidence, does the evidence showing Schofield

was at the scene with a rifle raise a reasonable doubt regarding whether Mr. Jones committed the shooting? It clearly does.

In the same vein, the circuit court concluded that the newly discovered evidence would not cause a juror to believe the gunshots "were not fired by the defendant from the apartment building in which the defendant resided" (PC-R2. 264). Although recognizing that there was conflicting evidence at trial regarding whether the shots came from the apartment building or the vacant lot (see id.), the circuit court required Mr. Jones to disprove the State's apartment building theory rather than consider, in light of all the evidence, whether the evidence regarding Schofield's presence at the scene carrying a rifle raises a reasonable doubt regarding the State's theory.

Similarly, the circuit court concluded that the newly discovered evidence would not "cause a juror to believe the defendant did not intend to shoot a police officer when he told Officer Ritchey he intended to shoot a police officer" (PC-R2. 264). Again, the circuit court required Mr. Jones to disprove this bit of the State's evidence, rather than considering, in light of all the evidence, whether evidence regarding Schofield's presence at the scene carrying a rifle and Schofield's own animosity towards police for harassing him about drug dealing creates a reasonable doubt.

The lower court also speculated that a jury could reject the testimony of Cole, Bell, Owens and the prison inmate witnesses (PC-R2. 261-62, 265-67). The court did not find that the

witnesses were not credible, but only that a jury "could" reject their testimony (PC-R2. 262, 266, 267). The lower court, of course, did not consider that a jury could accept the witnesses' testimony. Again, the lower court applied the wrong standard to Mr. Jones' claim, refusing to evaluate whether the newly discovered evidence raises a reasonable doubt. It was not for the circuit court to determine the guilt or innocence of Mr. Jones; it was not for the court to weigh the new evidence as though it were a jury, determining what is true and what is false. The circuit court's duty was the very narrow one of ascertaining whether there was new evidence fit for a new jury's judgment. See Jones v. State. More properly the issue was whether honest minds, capable of dealing with evidence, would have probably reached a different conclusion, because of the new evidence, from that of the first jury? Id. Surely, there is a reasonable probability that a jury hearing the newly discovered evidence would have acquitted Mr. Jones. Whether a jury would ultimately acquit Mr. Jones is for a jury to decide after hearing all the relevant testimony. The circuit court's role is not to usurp that jury function. Whether testimony could be accepted or rejected is an issue which must be submitted to a jury, not one which a judge may determine for the jury.

Finally, the circuit court concluded that even if Schofield's confessions were admitted, "this evidence does not exonerate the defendant in view of the defendant's confession and the circumstantial evidence connecting the defendant to the

crime" (PC-R2. 267). If Schofield's confessions, as well as the evidence showing Schofield was at the scene carrying a rifle, were admitted, there would be even stronger evidence against Schofield than there has ever been against Mr. Jones. As the circuit court recognized, aside from his statement, only circumstantial evidence connects Mr. Jones to the offense. Considering all the evidence, as the circuit court was required to do, the evidence of Schofield's confessions and his presence at the scene carrying a rifle raises a substantial reasonable doubt about Mr. Jones' guilt.

3. Mr. Jones Is Entitled To Resentencing

In denying relief, the lower court failed to consider whether the newly discovered evidence would be admissible at a penalty phase or the effect of this evidence on the outcome of a penalty phase. Schofield's confessions would clearly be admissible at Mr. Jones' penalty phase. Evidence is admissible at a capital penalty phase "regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements". Fla. Stat. §921.141(1)(emphasis added). In Garcia v. State, 622 So.2d 1325 (Fla. 1993), this Court ordered resentencing because at the penalty phase trial counsel had failed to introduce a co-defendant's hearsay statement that he, not Garcia, was the triggerman in the homicide. 622 So.2d at 1329. Clearly, Schofield's confessions would be admissible at Mr. Jones' penalty phase. Garcia. Indeed, the United States Supreme Court has held

that the exclusion at a capital penalty phase of a codefendant's confession that he alone committed the murder violates due process. Green v. Georgia, 442 U.S. 95 (1979). See also Kyles v. Whitley, 55 Cr. L. 3037 (Apr. 25, 1994)(certiorari granted on question whether evidence relevant to guilt/innocence is also relevant to capital penalty phase). Schofield's confessions are relevant to the circumstances of the offense, to rebutting aggravating circumstances and to Mr. Jones' personal moral culpability, and thus the Eighth Amendment requires that the confessions be admitted and considered at the penalty phase. See Penry v. Lynaugh, 488 U.S. 74 (1989); Lockett v. Ohio, 438 U.S. 586 (1978).

Schofield's confessions and the other newly discovered evidence establishing that Schofield was seen fleeing the murder scene carrying a rifle would have a profound impact at Mr. Jones' penalty phase. Such evidence would probably result in a life sentence for Mr. Jones because it would demonstrate that the truly culpable person--Schofield--had never been charged with the crime and that Mr. Jones lacked the level of culpability necessary for him to receive a death sentence.

CONCLUSION

Based upon the record and the discussion herein, Mr. Jones respectfully urges that this Court reverse the lower court's order and grant Mr. Jones a new trial and sentencing.

I HEREBY CERTIFY that a true copy of the foregoing brief has been furnished by United States Mail, first class postage prepaid, to all counsel of record on August 18, 1994.

Gail E. Anderson

MARTIN J. MCCLAIN
Florida Bar No. 0754773
Chief Assistant CCR

GAIL E. ANDERSON
Florida Bar No. 0841544
Assistant CCR
1533 South Monroe Street
Tallahassee, Florida 32301
(904) 487-4376
Attorneys for Defendant

Copies furnished to:

Mark Menser
Assistant Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, FL 32399-1050