IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,829

OMAR BLANCO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This proceeding involves an appeal of the circuit court's denial, following an evidentiary hearing, of Mr. Blanco's second motion for post-conviction relief brought pursuant to Fla. R. Crim. P. 3.850. This appeal is being presented simultaneously with the direct appeal in Case No. 85,118, in which Mr. Blanco appeals reimposition of the death penalty following the vacation of his death sentence by the United States Court of Appeals for the Eleventh Circuit. See Blanco v. Singletary, 943 F. 2d 1477 (11th Cir. 1991).

As only one Record on Appeal was prepared for both the direct appeal and the instant appeal, references to the record on appeal in this case will be marked by the letter "R" followed by the appropriate page number. All other citations will be self-explanatory.

REQUEST FOR ORAL ARGUMENT

Mr. Blanco 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. Blanco, through counsel, accordingly urges that the Court permit oral argument.

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STATEMENT OF THE CASE

Omar Blanco's conviction for first-degree murder and death sentence were affirmed by this Court on direct appeal. Blanco v. State, 452 So. 2d 520 (Fla. 1984), cert. denied, 469 U.S. 1181 (1985). Mr. Blanco then sought postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, the denial of which was affirmed by this Court, as was a petition for a writ of habeas corpus. Blanco v. Wainwrisht, 507 So. 2d 1377 (Fla. 1987).

Mr. Blanco then sought a writ of habeas corpus in federal court. The federal district court denied relief as to the conviction, but granted the writ as to the death sentence, finding that Mr. Blanco received ineffective assistance of counsel. Blanco v. Duqqer, 691 F. Supp. 308 (S.D. Fla. 1988). Both parties appealed, and the United States Court of Appeals for the Eleventh Circuit affirmed the denial of relief as to the guilt phase, and affirmed the granting of the writ as to the penalty phase. Blanco v. Singletary, 943 F. 2d 1477 (11th Cir. 1991).

During the pendency of the resentencing proceedings before the lower court, Mr. Blanco filed a Motion for Evidentiary Hearing on Newly Discovered Evidence, seeking a new trial pursuant to Rule 3.850 (R. 2934-2937). On January 25, 1994, the lower court granted an evidentiary hearing on Mr. Blanco's allegations (R. 2949). An evidentiary hearing was conducted on February 24, 1994 (R. 504 et. seq.). The trial court denied Mr. Blanco's request for postconviction relief in an order dated May

5, 1994 (R. 3407). A timely notice of appeal was filed. This Court held the instant appeal in abeyance pending the resolution of Mr. Blanco's resentencing proceedings.

Mr. Blanco's resentencing proceedings commenced before the jury on April 18, 1994. The trial court, in accordance with the jury's recommended sentence of death, entered an order sentencing Mr. Blanco to the death penalty (R. 3515 et. seq.). In his sentencing order, Judge Goldstein found two (2) aggravating circumstances --prior violent felony and during the course of a felony (R. 3517). As to mitigating factors, Judge Goldstein found that Mr. Blanco's capacity to conform his conduct to the requirements of the law was substantially impaired -- a statutory mitigating circumstance -- as well as some fifteen (15) nonstatutory mitigating factors (R. 3518-21). A timely notice of appeal followed in the direct appeal. Both appeals are now before the Court.

INTRODUCTION

Omar Blanco did not commit the murder for which he was convicted and ultimately resentenced to death. During the pendency of the resentencing proceedings ordered by the United States Court of Appeals for the Eleventh Circuit, see Blanco v. Singletary, 943 F. 2d 1477 (11th Cir. 1991), significant evidence came to light which established that Mr. Blanco did not commit murder. Based on the new information, Mr. Blanco filed a Rule 3.850 motion, seeking a new trial or, at a minimum, that the evidence establishing his innocence be presented to the resentencing jury. Both requests were denied.

Since the time of Mr. Blanco's trial, an individual by the name of Enrique Gonzalez has confessed numerous times to the murder of John Ryan.[1] During the evidentiary hearing below, Mr. Blanco presented a sworn statement from Zenaida Blanco, in which she explained that a woman named Maria del Carmen Guerra, from Los Arabos, Cuba, the same town where the Blanco family lives, told her that she knew Enrique Gonzalez and had spoken to him in a Cuban prison. Maria del Carmen Guerra then wrote a

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[1]Omar Blanco and Enrique Gonzalez were acquaintances, and were alleged to have been involved in a prior robbery together. See Blanco v. State, 438 So. 2d 404 (Fla. 4th DCA 1983). Thalia Vezos, who witnessed the shooting of her uncle (and the victim in this case), John Ryan, described to police that the shooter's face had "large pores in his skin" (R. 1315). After Gonzalez' confessions to the instant crime came to light, a photograph of Gonzalez was obtained and shows that Gonzales has large pores in his skin like acne (R. 1316). Thalia Vezos acknowledged that the photograph of Gonzalez was "similar" to her uncle's shooter (R. 1316).

letter to Mr. Blanco's resentencing attorney, detailing her conversation with Enrique Gonzalez:

> Today I am doing this letter to you because Zenaida asked me to tell you what Enrique Gonzalez and I talked about, in the prison. I spoke with Enrique several times. When I visited my nephew in the Cigoida prison he was together with Enrique and that is how I met him. We spoke and I told him that I was married to a man from Los Arabos. We spoke about other things but when I told him that I am married in Arabos, he told me that he knows a man from the town of Arabos, that they lived together in Florida, the United States, and that he was named Omar Blanco, and then I said to Enrique that Omar is the son of my friend, then he told me that Omar was a Prisoner carrying out a sentence for the crime that he committed, that Omar is innocent, that the crime he himself had committed. I became interested and we continued talking about how the crime happened and Enrique told me that he did the crime, that he had killed a man in his house. He told me that he did not want to kill him, but the man surprised him in the house and wanted to take away the gun and during this struggle he shot him 7 times. He told me that he went to rob with some others, and I told Zenaida all of this, and Zenaida asked me to tell you that she and her husband Horacio wanted to talk with Enrique and when I went for the visit I told him and he told me no. I asked him please that the parents of Omar wanted to talk about their son and he told me no. I asked him for the address and he also would not give it to me and, like Zenaida asked me to ask him his second name, I asked him and he also refused to give it to me. It appears to me that he got afraid and for this reason he refused because he is afraid that they could take him to the United States.

(Exhibit E, introduced at evidentiary hearing conducted on 2/24/94) (emphasis added).

MS. Guerra's nephew, Julio Guerra, also wrote a letter to Mr. Blanco's resentencing attorney, detailing how Enrique Gonzalez confessed to the crime for which Omar Blanco was convicted and sentenced to death:

> I was together with Mr. Enrique Gonzalez, he is still there but he has years to go. He is like a crazy man for he thinks they are going to take him to the United States for the crime that he committed there , , . .
>
> [Enrique Gonzalez] told me that he did the murder for which Omar is imprisoned. I told him I don't know because they could have been mistaken and that he was a scum for not communicating with Omar's parents that when I got out, I would tell Omar's parents that you are the murderer and that when I got out I did it but Omar's parents already knew it and through Horacio, Omar's father, I learned that you were here with other lawyers and that you were not able to see Enrique. I think and I and told Omar's parents that the United States government would reclaim him and send him there. He has told many people that he killed a man, that he did not want to kill him but when the man saw him in the house, they fought over the weapon that Enrique had and for this reason he killed him because the weapon fired 7 times. He told me evervthins that he had gone to rob. To the extent that I can help you, I am at your disposal and you can count on me. Omar does not deserve to pay for something that Enrique did and his parents are suffering a lot and their son and relatives and everyone around here. His parents are trying to talk to Enrique but Enrique does not want to. This is what I am able to say nd I do it with much sincerity, with best wishes and my regards.

(Exhibit F, introduced at evidentiary hearing conducted on 2/24/94) (emphasis added) .

As the evidence presented during the evidentiary hearing demonstrates, admissible and credible testimony, supported by

corroborating evidence, is now available which establishes that Omar Blanco is not guilty of first-degree capital murder. Had this evidence been presented at the time of trial, it probably would have produced an acquittal.

SUMMARY OF THE ARGUMENT

1. Newly discovered evidence of innocence establishes that Mr. Blanco is entitled to a new trial under the standard announced by this Court in Jones v. State, 591 so. 2d 911 (Fla. 1991). The lower court erred as a matter of fact and law in denying Mr. Blanco's motion for a new trial. The evidence presented below was credible and admissible evidence, corroborated by independent evidence, establishing Mr. Blanco's innocence. All of the evidence presented below, alone and in conjunction with the evidence proffered to the lower court which corroborates the new evidence, raises a reasonable doubt about Mr. Blanco's guilt, and therefore would probably have produced an acquittal at trial.

2. The lower court judge failed to disqualify himself from Mr. Blanco's case, and erred in denying the motion to disqualify. The motion to disqualify set forth legally sufficient facts warranting the lower court's disqualification. The denial of a writ of prohibition by the District Court of Appeals for the Fourth District should be revisited by this Court, particularly in light of its opinion in Duest v. Goldstein, where the writ was granted against the same lower court judge under the same facts as alleged by Mr. Blanco. The lower court order denying relief should therefore be reversed, and remanded for consideration before a fair and impartial judge.

ARGUMENT I

NEWLY DISCOVERED EVIDENCE ESTABLISHES THAT MR. BLANCO'S CONVICTION IS UNRELIABLE AND THAT HE IS THEREFORE ENTITLED TO A NEW TRIAL.

In Jones v. State, 591 So. 2d 911 (Fla. 1991), this Court set out the standard for analyzing Mr. Blanco's claim that newly-discovered evidence of innocence rendered the result of his trial unreliable:

> 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. At the evidentiary hearing, Mr. Blanco presented conclusive evidence that, had it been presented to the jury at the time of trial, "would have probably resulted in an acquittal." The trial court erred as a matter of fact and law in denying Mr. Blanco's request for relief.

The first witness presented by Mr. Blanco at the evidentiary hearing was Carmen Congora.[2] At the time that Mr. Blanco had been arrested, Ms. Congora explained that she had been living with her husband, Ray Alonso, and three other friends (R. 524). Omar Blanco lived "close" by (R. 524). Ms. Congora remembered the night of the crime for which Omar Blanco was arrested, and

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[2]Prior to the commencement of the evidentiary hearing, the State Attorney's investigator took Ms. Congora away from outside the courtroom "to talk to her" (R. 507).

testified that on that night, she remembered the arrival at home of her husband with two other men:

Q. Did you or did you not see your husband come home that night?

A. Yes.

Q. And who was with him?

A. Fidelito and Kiki.

Q. What is Kiki's real name?

A. Enrique Gonzalez.

Q. What did Kiki do when he came home?

A. He took a pullover off. It was full of blood and he threw it in the garbage.

(R. 525-526) (emphasis added). Later on during her testimony, Ms. Congora reiterated:

Q. Now, about the shirt that you just talked about, are YOU confused about that?

A. No.

Q. Do you remember for sure?

A. Yes, I remember almost everything.

Q. And are YOU saying this just to help Omar Blanco?

A. No.

Q. Are YOU saying this to help the prosecutor?

A. No one. I'm telling the truth.

(R. 527-528) (emphasis added).

Ms. Congora emphasized that she did not see Omar Blanco on the night of the crime (R. 529), and that she had never seen Omar Blanco with blood on his shirt (R. 541). However, with respect

to Enrique Gonzalez, there was no question in her mind that he had taken off his blood-covered shirt (R. 529), and "[h]e had it in his hand" (R. 32).[3] This information is newly-discovered evidence.

Ms. Congora's testimony also established that the information about the blood shirt is newly discovered because, in fact, it was suppressed by the State. Ms. Congora testified that she had previously told an investigator from the Broward County State Attorney's Office that she saw Enrique Gonzalez come home that night with a blood shirt:

> Q. Have you told people about the shirt before?
>
> A. THE INTERPRETER: She did say to a detective.
>
> BY MS. DOUGHERTY:
>
> Q. Okay. You did tell a detective?
>
> A. Yes.
>
> Q. And who is the detective YOU spoke with?
>
> A. Walter.
>
> Q. Walter Le Graves? The man that is seated here at the front?
>
> A. Yes.

[3] Ms. Congora indicated that Enrique Gonzalez was identifiable because he had pimples on his face, like "holes in his face" (R. 529). At the hearing, Mr. Blanco introduced into evidence a Broward County Sheriff's Office report which included a statement from Thalia Vezos describing the killer as having a "somewhat dark complexion with large facial pores" (Defense Exhibit 6-B) (R. 596). Ms. Congora also acknowledged that her husband Ray Alonso was jealous of Omar Blanco because he believed that Mr. Blanco was having an affair with her (R. 549).

(R. 535-36) (emphasis added). Walter Le Graves, the "detective" who suppressed the evidence, is the investigator for the State Attorney's Office who conducted the investigation into the homicide for which Mr. Blanco was later convicted and sentenced to death.[4]

Mr. Blanco also presented the testimony of Roberto Alonso at the evidentiary hearing. Mr. Alonso is the brother of Ray Alonso, who **was** married to Carmen Congora (R. 552) . Mr. Alonso testified that when he was released from the immigration center in Atlanta,' he came to Hollywood to live with his brother. On the day of the crime, Mr. Alonso had seen Omar Blanco early in the morning and they went bicycle riding (R. 557-58). Mr. Alonso last saw Mr. Blanco around 4:00 PM that afternoon.

Mr. Alonso testified that he saw his brother Ray later that night with Enrique Gonzalez:

> Q. Okay. Now, going back to when you were living with your brother, did there ever

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[4]Investigator Le Graves is also the individual who took Ms. Congora **away** from the courtroom prior to her testimony in order "to talk to her" (R. 507).

'During the State's cross-examination of Mr. Alonso, there was confusion about when Mr. Alonso was released from his INS immigration hold. The State showed Mr. Alonso a prior deposition in which he stated that he was released from "the Atlanta Prison" on February 2, 1982, in an attempt to show that Mr. Alonso could not have been in Broward County in January, 1982, and was therefore lying (R. 571). Mr. Alonso explained that he "made a mistake" (R. 571). Mr. Alonso's testimony that he was in Broward County in January **was** corroborated by documentation from the Immigration and Naturalization Service, which indicates that Mr. Alonso's immigration hold was lifted on January 7, 1982 (R. 2214). The INS documentation ws proffered to the trial court below (R. 2214).

come a time when anybody came into the home and said anything about a killing?

A. Yes.

Q. And who was that?

A. Mr brother went to pick up Enrisue, and Fidel. And when he brousht them to our apartment any my brother asked him why did you go after the guy with a gun.

Q. Okay. Your brother, Ray, was asking who?

A. Enrique Gonzalez.

Q. Does Enriuue have another name?

A. Yes, Kiki.

(R. 556) (emphasis added). Mr. Alonso also recounted that Enrique Gonzalez said "[t]hat he didn't want to go after [the victim] but the guy came and the gun went off a lot of times. The gun went off and it shop a lot of times" (R. 556).

Mr. Alonso **also** corroborated Carmen Congora's testimony about the bloody shirt, as well **as** the fact that Gonzalez [aka Kikil and Fidel were armed:

Q. Okay. Does Mr. Alonso remember if anyone had any blood on them?

A. Enrique had a bunch of blood on the left side of his shirt. That's why he took his clothes off any my brother took it and put in a garbage - one of those green containers where you put trash.

Q. Okay. A dumpster.

A. **Yeah.** The one that the trucks pick up, like this.

Q. Okay. Did anyone have weapons that evening?

A. Yes. A pistol and a .38 revolver.

Q. Who had the guns?

A. The pistol? Enrique had it. And Fidel had the revolver.

(R. 556-57) (emphasis added).[6]

Mr. Blanco also introduced newly discovered evidence of innocence in the form of documentary evidence. Mr. Blanco provided the court with the statement of his mother, Zenaida Blanco.[7] In the statement, Mrs. Blanco, who resides in Los Arabos, Cuba, related that she had met a woman named Mamita. Mamita informed Ms. Blanco that when she had gone to visit her son Julio in prison, she met Enrique Gonzalez, who told her that he did the murder for which Omar Blanco was in prison (R. 596).

Mr. Blanco also introduced exhibits E and F, two letters sent from Cuba which corroborate Zenaida Blanco's statement regarding Enrique Gonzalez' involvement in the murder and further establish Omar Blanco's innocence. The first letter, postmarked from Los Arabos, Cuba, was written by Maria del Carmen Guerra, who is Mamita. The letter provides:

Mr. Hilliard Moldof:

Many greetings and I hope that you are well, thanks to God.

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[6]Roberto Alonso further corroborated Carmen Congora's testimony that Enrique Gonzales had dark and greasy skin, and "looks like he had juvenile acne . . . [w]hen you have like boils and you squeeze them you have like little holes left" (R. 587-88).

[7]Mrs. Blanco's statement was introduced as Defense Exhibit D.

I am Mamita, the fried of Zanaida, the mother of Omar Blanco.

My name is Maria del Carmen Guerra. My address is Calle Ricardo Trajillo # 16, Los Arabos.

Today I am doing this letter to you because Zenaida asked me to tell you what Enrique Gonzalez and I talked about, in the prison. I spoke with Enrique several times. When I visited my nephew in the Cigoida prison he was together with Enrique and that is how I met him. We spoke and I told him that I was married to a man from Los Arabos, he told me that he knows a man from the town of Arabos, that they lived together in Florida, the United States, and that he was named Omar Blanco, and then I said to Enrique that Omar is the son of my friend, then he told me that Omar was a prisoner carrying out a sentence for the crime that he committed, that Omar is innocent, that the crime he himself had committed. I became interested and we continued talking about how the crime happened and Enrique told me that he did the crime, that he had killed a man in his house. He told me that he did not want to kill him, but the man surprised him in the house and wanted to take away the gun and during this struggle he shot him 7 times. He told me that he went to rob with some others, and I told Zenaida all of this, and Zenaida asked me to tell you that she and her husband Horacio wanted to talk with Enrique and when I went for the visit I told him and he told me no. I asked him please that the parents of Omar wanted to talk about their son and he told me no. I asked him for his address and he also would not give it to me and, like Zenaida asked me to ask him his second name, I asked him and he also refused to give it to me. It appears to me that he got afraid and for this reason he refused because he is afraid that they could take him to the United States.

Well, Zenaida told me that she could not give you my name and address, but it is that those from over there where Zenaida lives know me as Mamita and Zenaida asked me to write to

you and tell you what Enrique told me, and so I am doing it. I am here at your disposal.

Sincerely,

s/Maria del Carmen (Mamita)

(Exhibit E) .

The second letter introduced into evidence, also postmarked from Los Arabos, Cuba, was written by Julio Guerra and provides:

Mr. Hilliard Moldof:

Greetings and I hope that you are well, thanks to God.

I am Julio Guerra, the nephew of Mamita who was imprisoned. Mr name is Julio Guerra, my address Calle Ricardo Trajillo 48, Los Arabos. With much emotion I do this letter in order to let you know that last July I left prison, upon leaving I recounted to the parents of Omar that I had met Mr. Enrique Gonzalez and what he had told me about Omar, and for this reason I am writing to you since Omar's parents asked that I write you and explain what I learned, and with much love I do this.

I was together with Enrique Gonzalez, he is still there but he has years to go. He is like a crazy man for he thinks that they are going to take him to the United States for the crime that he committed there. We talked a lot about Omar, for I am a friend of Omar's family and of Omar. He himself says that he did the murder, that he denies it but he is sick from the nerves, he lives afraid. That he is affected with a lot of fear can be seen. I asked him to talk to Omar's parents that he write to them and tell them what he had told me and he refused because he is afraid that they will take him to the United States.

He told me that he did the murder for which Omar is imprisoned. I told him I don't know because they could have been mistaken and that he was a scum for not communicating with Omar's parents that when I got out, I would

> tell Omar's parents that you are the murderer and that that when I got out I did it but Omar's parents already knew it and well Horacio, Omar's father, I learned that you were here with other lawyers and that you were not able to see Enrique. I think and I told Omar's parents that the United States government would reclaim him and send him there. He has told many people that he killed a man, that he did not want to kill him but when the man saw him in his house, they fought over the weapon that Enrique had and for this reason he killed him because the weapon had fired 7 times. He told me everything that he had gone to rob. To the extent that I can help you, I am at your disposal and you can count on me. Omar does not deserve to pay for something that Enrique did and his parents are suffering a lot and their son and relatives and everyone around here. His parents are trying to talk to Enrique but Enrique does not want to. This is what I am able to say and I do it with much sincerity, with best wishes and my regards.
>
> s/Julio Guerra.

(Exhibit F) .

The testimony and evidence presented by Mr. Blanco clearly establishes that it was Enrique Gonzalez who committed the murder. None of the evidence adduced by the State contradicted the unequivocal testimony of Carmen Congora and Roberto Alonso to the effect that it was Enrique Gonzalez who came home on the night of the murder with a bloody shirt which was subsequently thrown in a dumpster, that he fit the description of the killer, and that he has subsequently confessed to the murder on several different occasions.

At the evidentiary hearing, the State presented only the testimony of three jail snitches -- Eduardo Chong, Carlos Ruiz,

and Jorge Gonzalez. None of the testimony elicited from these snitches bore any indicia of credibility nor did it comport with the evidence produced at Mr. Blanco's trial. Chong testified that, although his relationship with Omar Blanco had been "the best" (R. 606), his opinion about Mr. Blanco changed when he began saying that Chong was a snitch (R. 615).[8] Chong testified that before this betrayal occurred, Omar Blanco "told me he was innocent that he had never committed that crime that he was accused of" (R. 606). Chong revealed that he was now testifying against Mr. Blanco because he was "hurt by what he did" (R. 615) and "to show him that he lost a friend and a family" (R. 641). Chong also explained that he wrote a letter to the State Attorney's Office was "not only because [Omar Blanco] hurt me, he also hurt my wife" (R. 618). Chong's testimony in no way contradicted the evidence presented by Mr. Blanco, nor did the evidence provided by snitch Carlos Ruiz. In fact, Ruiz acknowledged that Omar Blanco never said he was there or that he had committed the murder (R. 645; 649). Similarly, snitch Jorge Rodriguez testified on behalf of the State that Mr. Blanco never told him anything about his case and never indicated that he had committed the murder (R. 652).

The lower court found that the testimony of Congoro and Alonso was not believable because it was "totally inconsistent"

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[8]Chong later acknowledged that he was in fact a snitch (R. 621). Chong also stated that he spoke with State Attorney's Office Investigator Le Graves "more than one time" about this case (R. 633).

with the testimony adduced at trial (R. 3406). Evidence of Mr. Blanco's innocence is naturally "inconsistent" with the State's case for guilt which was presented at the original trial. However, the testimony of Congora and Alonso is not "inconsistent" with significant pieces of evidence both presented at trial as well as proffered during the evidentiary hearing, evidence which was overlooked and/or ignored by the lower court.

For example, at trial and also at the resentencing, the State presented the results of a gunpowder residue test which revealed the presence of gunpowder residue on Mr. Blanco's hands. However, Thalia Vezos testified at trial and at the resentencing that the shooter (who she later identified as being Mr. Blanco) was wearing socks on his hands. If Mr. Blanco was the shooter and wearing socks on his hands, he could not have gunpowder residue on his hands.[9] No gunshot residue test was conducted on Enrique Gonzalez.

In connection with the evidence presented at the evidentiary hearing, Mr. Blanco proffered a number of materials which corroborated Mr. Blanco's claim (R. 2213 ***et. seq.).*** First, Mr. Blanco proffered a document from the Immigration and Naturalization Service which showed that Roberto Alonso's immigration hold **was** released on January 7, 1982 (R. 2214); this is significant because there was some confusion during his

[9]At the resentencing proceeding, lab technician John Matheson testified that when he conducted the residue test on Mr. Blanco, he was not wearing gloves or any other protection on his hands, in violation of the protocol for the proper administration of the antimony test (R. 1351; 1353).

testimony about whether he was in Broward County as of January, 1982, when the crime occurred. Mr. Blanco further proffered handwritten notes from the Florida Department of Law Enforcement which revealed that "much dirt, sand, and vegetable matter" were discovered in Mr. Blanco's shoes, a fact which supported his testimony that he was running on the beach at the time the crime occurred (R. 2214; 2224-25) . To corroborate this point, Mr. Blanco introduced a statement from witness German Berrios (Exhibit A). Mr. Berrios' statement included the fact that Mr. Blanco often "rode a bicycle in the area where he was arrested, that he ran ten, twelve miles a day, that he was in very good shape" (R. 592) and had previously seen Mr. Blanco running on the beach late at night. This statement, along with the FDLE notes, corroborate Mr. Blanco's innocence and the testimony adduced at the evidentiary hearing. None of this evidence was known by Mr. Blanco's jury.

Mr. Blanco also proffered for the trial court's consideration the BOLO prepared by the Ft. Lauderdale Police Department from January, 1982, which shows the assailant's description to be approximately 5'10", black curly hair, wearing a gray or light green jogging suit, dark complexion, with a mustache (R. 2214); Mr. Blanco also proffered the booking report from January 1982, showing that the Sheriff's Office listed Mr. Blanco as being 5'8" tall and weighing 140 pounds (R. 2215). To corroborate the accuracy of the latter report, Mr. Blanco proffered as a booking report prepared by the Broward County

Sheriff's Office dated July 20, 1981, in which the Sheriff's Office again lists Mr. Blanco as being 5'8" and weighing 140 pounds (R. 2215).

Finally, Mr. Blanco proffered a Ft. Lauderdale Police Department report prepared by an Officer Gardner which shows that a latent print was discovered on the hall side of the bedroom door, where the incident occurred, and that the latent print did not match Omar Blanco, Thalia Vezos, John Ryan, or any of the officers on the scene (R. 2215). The latent print discovered at the murder scene was never compared to the fingerprints of Enrique Gonzalez.

In addition to finding the testimony of Carmen Congora and Roberto Alonso incredible because their testimony was "totally inconsistent" with the fact that Mr. Blanco was found guilty at trial, the lower court determined that Enrique Gonzalez's confessions would not be admissible at a retrial of Mr. Blanco (R. 3406). The lower court order failed to explain the legal basis for such a ruling. The court's conclusion, however, is erroneous. Mr. Blanco has a constitutional right to present a defense. Failure to admit and consider Gonzalez's confessions at Mr. Blanco's trial would deny Mr. Blanco his right to fairly present a complete defense, in violation of the Sixth, Eighth, and Fourteenth Amendments. See Washinston 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, 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. Blanco's case.

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." Id. at 300. The first of these circumstances was that each statement was "made

spontaneously to a close acquaintance." Id. Here, Gonzalez's confessions were made to his cellmate in a Cuban prison, as well as to individuals whom Gonzalez knew to be friendly with Mr. Blanco's family. As in Chambers, Gonzalez 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." Id. 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. Blanco's case, as explained above. Thalia Vezos testified that Gonzalez's photograph was "similar" to the shooter. Other evidence, described more fully above, corroborated Gonzalez's confessions, such as the fact that Gonzalez was seen by two individuals on the night of the murder with bloody clothing which he threw into the garbage. No one saw blood on Omar Blanco's clothing.

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

Mr. Blanco's case is strikingly similar to Chambers. All of the circumstances indicating the reliability of the statements in

Chambers are present in Mr. Blanco's case regarding Gonzalez's confessions. The lower court erred in refusing to consider Gonzalez's confessions. A jury should be made aware of Gonzalez's confessions.

Gonzalez's confessions are significant evidence in Mr. Blanco's defense. Those confessions are probative regarding Mr. Blanco's 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. Blanco's 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. Blanco must be given his right to have a jury decide whether a reasonable doubt is present. Sullivan v. Louisiana, 113 S. Ct. 2078 (1993).

Moreover, Mr. Blanco should be accorded the same right to present evidence against Enrique Gonzalez as the State would enjoy if Gonzalez were on trial. 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, the 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. Blanco's innocence refused by the lower court in this case.

The evidence of Gonzalez's confessions is critically relevant to the issue of Mr. Blanco's 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 consider Gonzalez's confessions.

Gonzalez's confessions are precisely the kind of evidence a jury would want to hear in order to determine Mr. Blanco's guilt or innocence. A jury is certainly capable of assessing evidence such as Gonzalez'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.
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> 228. U.S. at 277, 33 S.Ct. at 461.

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

Under the Jones standard, Mr. Blanco is entitled to a new trial. Evidence corroborated by two witnesses that Enrique Gonzalez came home on the night of the murder in question covered in blood and removed his bloody shirt and threw it in a dumpster, and that Gonzalez has confessed to the murder numerous times would clearly create a reasonable doubt regarding Mr. Blanco's guilt. If there is a reasonable doubt as to guilt, a defendant is entitled to an acquittal. The evidence presented below would probably result in Mr. Blanco's acquittal, and he is therefore entitled to a new trial.

ARGUMENT II

THE TRIAL COURT ERRED IN DENYING MR. BLANCO'S MOTION TO DISQUALIFY, AND THE FOURTH DISTRICT COURT OF APPEALS ERRED IN DENYING A WRIT OF PROHIBITION.

Subsequent to the denial of Mr. Blanco's motion for postconviction relief, but while Mr. Blanco's case was still pending before Judge Goldstein, Mr. Blanco filed a motion to disqualify Judge Goldstein (R. 3474 *et. seq.*).[10] Judge Goldstein denied Mr. Blanco's motion as legally insufficient in a written order dated October 28, 1994 (R. 3505). Thereafter, because Judge Goldstein still had jurisdiction over Mr. Blanco's case and had not yet sentenced Mr. Blanco to death, Mr. Blanco sought a writ of prohibition to the Fourth District Court of Appeals (Attachment 1), and filed an accompanying appendix (Attachment 2). Mr. Blanco also sought a stay of proceedings from the Fourth District Court of Appeals (Attachment 3). In an unpublished order dated January 5, 1995, the Fourth District Court of Appeals denied the writ (R. 3507).

Mr. Blanco's motion alleged facts which provide more than a reasonable fear that he will not receive a fair proceeding before Judge Goldstein, and which therefore were legally sufficient to require his disqualification. On September 26, 1994, Mr. Blanco's resentencing counsel, Hilliard Moldof, was present in Judge Goldstein's courtroom during a proceeding before Judge

[10]The motion was signed by both resentencing counsel and CCR counsel, who was representing Mr. Blanco in the postconviction proceedings.

Goldstein in another capital case which had been remanded for a resentencing and assigned to Judge Goldstein's division.[11] When the defendant in that case appeared in front of Judge Goldstein, the defendant recognized Judge Goldstein has an Assistant State Attorney who had assisted at his trial in 1983. Up to this point, Mr. Blanco's counsel was unaware that Judge Goldstein had worked on murder cases with his former boss, State Attorney Satz.

When counsel was alerted to the fact that Judge Goldstein had been an Assistant State Attorney in 1983 and had worked on murder cases with State Attorney Satz,[12] he realized that Judge Goldstein was a prosecutor in the Broward County State Attorney's Office, working for and under the supervision of Michael Satz, not only at the time of Mr. Blanco's trial and original sentencing proceedings, but also during Mr. Blanco's clemency and post-conviction proceedings, proceedings which eventually resulted in Mr. Blanco's case being remanded for a new jury

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[11]That case involved Lloyd Duest, whose death sentence was, like Mr. Blanco's, vacated by the Eleventh Circuit Court of Appeals. Based on the same facts, Mr. Duest filed a motion to disqualify Judge Goldstein. After Judge Goldstein denied the motion, Mr. Duest sought a writ of prohibition to the District Court of Appeal for the Fourth District. That Court granted the writ because not only did Judge Goldstein participate in the proceedings against Mr. Duest, "he was a supervisor at the time the state sought the death penalty in this case, and as supervisor one can infer that he approved or at least concurred in that decision." Duest v. Goldstein, 654 So. 2d 1004 (Fla. 4th DCA 1995). The Court noted that "[i]n a death penalty case, the question of judicial bias is of particular importance, since the judge will be called upon to make what is literally a life-or-death decision." Id.

[12]In fact, Judge Goldstein had been employed by the Broward County State Attorney's Office from August 1, 1976, through May 6, 1988.

sentencing proceeding by the Eleventh Circuit Court of Appeals.[13] The fact that Judge Goldstein was an Assistant State Attorney under Michael Satz during the entirety of Mr. Blanco's original trial, sentencing, and postconviction proceedings was never disclosed to Mr. Blanco by Judge Goldstein at any time following his assignment to this case. Judge Goldstein certainly had an obligation to disclose these facts to Mr. Blanco, particularly given the severity of the penalty at issue in these proceedings. See Fla. R. Jud. Admin. 2.160 (i); Pistorino v. Ferguson, 386 So. 2d 65 (Fla. 3d DCA 1980).

The reasonable fear that Mr. Blanco has regarding Judge Goldstein's bias is heightened by the fact that the prosecutor prosecuting Mr. Blanco, Michael Satz, was Judge Goldstein's employer and the person to whom he was directly responsible as an Assistant State Attorney,[14] not to mention a close personal friend to whom he was greatly indebted. This is not a case where Judge Goldstein worked together with a prosecutor appearing before him; Judge Goldstein worked for the elected State Attorney appearing before him in a capital case. Mr. Blanco had a

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[13]Carolyn McCann, an Assistant State Attorney who assisted State Attorney Satz in seeking another death sentence against Mr. Blanco, represented the State of Florida as well as Harry Singletary, Secretary of the Florida Department of Corrections, in the state postconviction and federal habeas corpus proceedings in Mr. Blanco's case. See Blanco v. Singletary, 943 F. 2d 1477 (11th Cir. 1991).

[14]Like Assistant State Attorney McCann, Mr. Satz was involved in Mr. Blanco's case prior to the remand from the Eleventh Circuit Court of Appeals. In fact, Mr. Satz, as the State Attorney, served as the trial prosecutor in this case.

reasonable fear that Judge Goldstein could not be fair and impartial in deciding the issues in his case, including the ultimate decision of whether he will live or die, because of this relationship with State Attorney Satz, the elected prosecuting official of Broward County, Judge Goldstein commented on his personal feelings toward Mr. Satz, his former boss and the prosecutor seeking Mr. Blanco's death in the electric chair, in his letter of resignation from the State Attorney's Office in 1988:

> As you are aware, I have worked for you since you were elected State Attorney in 1976. Since then, I have worked in a variety of positions in the office and I am very much indebted to you for an enioyable 12 years of experience and learning. I have appreciated the trust that you have shown in my abilities by giving me the authority to sign informations, by appointing me to fulfill executive assignments and by selecting me to be a supervisor in the felony trial division. More than anvthinq else, thoush, I have awwreciated and admired vour intesritv as a person and as a public servant. I have been proud to tell my friends, neishbors, and acquaintances that I work for vou as an Assistant State Attornev. I would not want to leave this office for any other employment other than that which would also serve the people of the State of Florida.

(R. 3483).

The true facts regarding the nature and extent of the personal relationship between Judge Goldstein and State Attorney Satz, when considered together with their prior twelve-year association and the fact that State Attorney Satz was not merely a co-worker to Judge Goldstein but rather a close personal friend to whom he was indebted, instill a reasonable fear in Mr. Blanco

and therefore require Judge Goldstein's disqualification. Duest v. Goldstein, 654 So. 2d 1004 (Fla. 4th DCA 1995); Chastine v. Broome, 629 So. 2d 293, 295 (Fla. 4th DCA 1993) (while the fact that trial judge and prosecutor worked together in the Office of the State Attorney alone may not warrant disqualification, other relevant facts concerning relationship "may be viewed in conjunction with the prior association in analyzing whether, from the defendant's viewpoint, he had a reasonable fear of not receiving a fair and impartial trial and sentencing decision in his death penalty case").

Mr. Blanco also sought Judge Goldstein's disqualification based on the opinions in Mitchell v. State, 642 So. 2d 1109 (Fla. 4th DCA 1994), and Gonzalez v. Goldstein, 633 So. 2d 1183 (Fla. 4th DCA 1994). Specifically in Mitchell, the Court noted that Judge Goldstein "does not shrink from announcing fixed ideas on what he will do in a given case before he hears the evidence and arguments of the parties in open court." Mitchell, 642 So. 2d at 1112.[15] The Court noted in the Gonzalez case that Judge Goldstein's ex parte discussion with defense counsel wherein he indicated that he would not listen to any mitigation evidence presented but would instead sentence the defendant to the maximum sentence "is the paradigm of judicial bias and prejudice."

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[15]The Court made further note of Judge Goldstein's practice of deliberately arranging his docket so that criminal defendants would have to sit in jail for several weeks before a court appearance was scheduled, as well as his conducting ex parte contact with probation or community control officers to discuss pending cases. Mitchell, 642 So. 2d at 1113.

Gonzalez, 633 So. 2d at 1184. In fact, the Court specifically acknowledged that it "could not imagine a more telling basis for a party to fear that he will not receive a fair hearing." Id. The Mitchell Court correctly noted that "[t]he role of a sentencing judge is to impose the sentence," Mitchell, 642 So. 2d at 1113, and nowhere are the concepts of fairness and impartiality more important and inviolate as in a capital case. Further, nowhere should the reasonableness of a defendant's fear that the judge will not be fair and impartial be considered with the greatest degree of sensitivity as in a capital case. Chastine v. Broome, 629 So. 2d at 294. In Mr. Blanco's case, Judge Goldstein had the duty and responsibility to independently consider and weigh the aggravating circumstances presented by State Attorney Satz against the mitigating circumstances presented by Mr. Blanco in order to determine whether the death penalty should be imposed in this case, as well as the evidence presented as to Mr. Blanco's innocence, evidence which was hotly challenged by State Attorney Satz. Based on the fact that Judge Goldstein has an announced predilection in favor of imposing the maximum sentence in cases and of ignoring evidence presented in mitigation, Mr. Blanco had a reasonable fear that he will not receive a fair hearing before this Judge. Relief is proper.

CONCLUSION

On the basis of the argument presented herein, and on the basis of what was submitted to the Rule 3.850 trial court, Omar Blanco respectfully submits that he is entitled to relief from his unconstitutional conviction for murder, and to all other relief which the Court deems just and proper.

I HEREBY CERTIFY that a true copy of the foregoing INITIAL BRIEF has been furnished by United States Mail, first class postage prepaid, to all counsel of record on August 6, 1996.

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IN THE DISTRICT COURT OF APPEALS

IN AND FOR THE FOURTH DISTRICT OF FLORIDA

NO. _____

OMAR BLANCO,

Petitioner,

v.

THE HONORABLE BARRY E. GOLDSTEIN
Circuit Judge, Seventeenth Judicial Circuit,
In and For Broward County, Florida,

Respondent.

PETITION FOR EXTRAORDINARY RELIEF AND FOR A WRIT OF PROHIBITION

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COUNSEL FOR PETITIONER

Petitioner, **OMAR BLANCO,** by and through undersigned counsel, petitions this Court for a writ of prohibition prohibiting the Honorable Barry E. Goldstein, Judge of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, from hearing any further proceedings in the matter of State of Florida v. Omar Blanco, Case No. 82-453CF10A, and for an order requiring Judge Goldstein's immediate disqualification. Mr. Blanco submits this petition, premised on Rule 2.160 of the Florida Rules of Judicial Administration, in order to protect his rights granted by the Due Process and Equal Protection Clauses of the Fourteenth and Eighth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution. As grounds for this relief, Mr. Blanco alleges:

I. JURISDICTION

This is an original action under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

II. STATUS OF PETITIONER

Petitioner Omar Blanco's case is currently pending before Respondent in the Circuit Court of the Seventeenth Judicial Circuit,, in and for Broward County, Florida. Mr. Blanco was convicted of first-degree murder and related offenses in Broward County Circuit Court in 1983. The Florida Supreme Court affirmed the convictions and sentence of death on direct appeal. Blanco v. State, 452 So. 2d 520 (Fla. 1984), cert. denied, 469 U.S. 1181 (1985). Mr. Blanco then filed a motion for postconviction relief pursuant to Fla. R. Crim. P. 3.850, which, along with a petition

for state habeas corpus relief, was denied by the Florida Supreme Court. Blanco v. Wainwriaht, 507 So. 2d 1377 (Fla. 1987). Subsequently, Mr. Blanco filed a petition for a writ of habeas corpus in Federal District Court. The District Court denied relief on claims relating to Mr. Blanco's conviction, but granted the writ with respect to sentencing issues. Blanco v. Dugger, 691 F. Supp. 308 (S.D. Fla. 1988). The Eleventh Circuit Court of Appeals affirmed the ruling of the district court, and remanded the case for a jury resentencing. Blanco v. Singletary, 943 F. 2d 1477 (11th Cir. 1991).

Mr. Blanco's case was sent back to Broward County Circuit Court, and Judge Barry Goldstein was assigned to hear the case. These resentencing proceedings 'are currently pending. On September 29, 1994, a timely Motion to Disqualify Judge and Supporting Points of Authority was filed. The State filed a response on October 20, 1994. On October 28, 1994, Judge Goldstein held a hearing on the motion, after which he ore tenus denied the motion as legally insufficient. A written order to that effect was subsequently entered. Having established a basis for disqualification in his motion, Mr. Blanco now seeks this opportunity to petition this Court for a writ of prohibition to prohibit Judge Goldstein from proceeding on this case.

III. REASONS FOR GRANTING THE WRIT

Mr. Blanco is entitled to the constitutional guarantees of Due Process, Equal Protection, as well as full and fair sentencing proceedings, including the fair determination of the

issues by a fair and impartial judge. Suarez v. Dugger, 527 So. 2d 191, 192 (Fla. 1988). The facts which serve as the basis for this Writ are certainly more than "sufficient to warrant fear on [Mr. Blanco's] part that he would not receive a fair hearing by the assigned judge." Suarez, 527 So. 2d at 192.

Initially, Mr. Blanco would note that this Court has recognized that it is appropriate to analyze this case with a higher degree of sensitivity to the fear instilled in Mr. Blanco due to Judge Goldstein's inability to be impartial and provide a fair proceeding because this is a capital case. Chastine v. Broome, 629 So. 2d 293 (Fla. 4th DCA 1993) (the court "should be especially sensitive to the basis for the fear, as the defendant's life is literally at stake, and the judge's sentencing decision is in fact a life or death matter"). In denying Mr. Blanco's motion, Judge Goldstein ignored this Court's admonition.

Mr. Blanco's motion alleged facts which provide more than a reasonable fear that he will not receive a fair proceeding before Judge Goldstein, and which therefore were legally sufficient to require his disqualification. On September 26, 1994, Mr. Blanco's resentencing counsel, Hilliard Moldof, was present in Judge Goldstein's courtroom during a proceeding before Judge Goldstein in another capital case which had beenremanded for a resentencing and assigned to Judge Goldstein's division. When the defendant in that case appeared in front of Judge Goldstein, the defendant recognized Judge Goldstein as an Assistant State

Attorney who had assisted at his trial in 1983. Although defense counsel was aware Judge Goldstein has been an Assistant State Attorney, up to this point, Mr. Blanco's counsel was unaware that Judge Goldstein had worked on murder cases with his former boss, State Attorney Satz.

When counsel was alerted to the fact that Judge Goldstein had been an Assistant State Attorney in 1983 and had worked on murder cases with State Attorney Satz,[1] he realized that Judge Goldstein was a prosecutor in the Broward County State Attorney's Office, working for and under the supervision of Michael Satz, not only at the time of Mr. Blanco's trial and original sentencing proceedings, but also during Mr. Blanco's clemency and post-conviction proceedings, proceedings which eventually resulted in Mr. Blanco's case being remanded for a new jury sentencing proceeding by the Eleventh Circuit Court of Appeals.[2] The fact that Judge Goldstein was an Assistant State Attorney under Michael Satz during the entirety of Mr. Blanco's original trial, sentencing, and postconviction proceedings was never disclosed to Mr. Blanco by Judge Goldstein at any time following his assignment to this case. Judge Goldstein certainly had an

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[1] In fact, Judge Goldstein had been employed by the Broward County State Attorney's Office from August 1, 1976, through May 6, 1988.

[2] Carolyn McCann, an Assistant State Attorney presently assisting State Attorney Satz in seeking another death sentence against Mr. Blanco, represented the State of Florida as well as Harry Singletary, Secretary of the Florida Department of Corrections, in the state postconviction and federal habeas corpus proceedings. See Blanco v. Singletary, 943 F. 2d 1477 (11th Cir. 1991).

obligation to disclose these facts to Mr. Blanco, particularly given the severity of the penalty at issue in these proceedings. See Fla. R. Jud. Admin. 2.160 (i); Pistorino v. Ferguson, 386 So. 2d 65 (Fla. 3d DCA 1980)'.

The reasonable fear that Mr. Blanco has regarding Judge Goldstein's bias is heightened by the fact that the prosecutor currently seeking the death penalty against Mr. Blanco, Michael Satz, was Judge Goldstein's employer and the person to whom he was directly responsible as an Assistant State Attorney,[3] not to mention a close personal friend to whom he was greatly indebted. This is not a case where Judge Goldstein worked together with a prosecutor appearing before him; Judge Goldstein worked for the elected State Attorney appearing before him in a capital case. Mr. Blanco has a reasonable fear that Judge Goldstein cannot be fair and impartial in deciding the issues in his case, including the ultimate decision of whether he will live or die, because of this relationship with State Attorney Satz, the elected prosecuting official of Broward County. Judge Goldstein commented on his personal feelings toward Mr. Satz, his former boss and Mr. Blanco's prosecutor who seeks Mr. Blanco's death in the electric chair, in his letter of resignation from the State Attorney's Office in 1988:

> As you are aware, I have worked for you since you were elected State Attorney in 1976.

"Like Assistant State Attorney McCann, Mr. Satz was involved in Mr. Blanco's case prior to the remand from the Eleventh Circuit Court of Appeals. In fact, Mr. Satz, as the State Attorney, served as the trial prosecutor in this case.

> Since then, I have worked in a variety of positions in the office and I am very much indebted to you for an enjoyable 12 years of experience and learning. I have appreciated the trust that you have shown in my abilities by giving me the authority to sign informations, by appointing me to fulfill executive assignments and by selecting me to be a supervisor in the felony trial division. More than anything else; though, I have appreciated and admired your integrity as a person and as a public servant, I have been proud to tell my friends, neighbors, and acquaintances that I work for you as an Assistant State Attorney. I would not want to leave this office for any other employment other than that which would also serve the people of the State of Florida.

(Appendix ___).

The true facts regarding the nature and extent of the personal relationship between Judge Goldstein and State Attorney Satz, when considered together with their prior twelve-year association and the fact that State Attorney Satz was not merely a co-worker to Judge Goldstein but rather a-close personal friend to whom he was indebted, instill a reasonable fear in Mr. Blanco and therefore require Judge Goldstein's disqualification. Chastine v. Broome, 629 So. 2d 293, 295 (Fla. 4th DCA 1993) (while the fact that trial judge and prosecutor worked together in the Office of the State Attorney alone may not warrant disqualification, other relevant facts concerning relationship "may be viewed in conjunction with the prior association in analyzing whether, from the defendant's viewpoint, he had a reasonable fear of not receiving a fair and impartial trial and sentencing decision in his death penalty case").

In conjunction with the above facts, Mr. Blanco also seeks Judge Goldstein's disqualification based on this Court's opinions in Mitchell v. State, 19 Fla. L. Weekly D1872 (Fla. 4th DCA, Sept. 9, 1994), and Gonzalez v. Goldstein, 633 So. 2d 1183 (Fla. 4th DCA 1994). Specifically in Mitchell, this Court noted that Judge Goldstein "does not shrink from announcing fixed ideas on what he will do in a given case before he hears the evidence and arguments of the parties in open court." Mitchell, 19 Fla. L. Weekly at D1874.[4] The Court has also noted in another case that Judge Goldstein's ex parte discussion with defense counsel wherein he indicated that he would not listen to any mitigation evidence presented but would instead sentence the defendant to the maximum sentence "is the paradigm of judicial bias and prejudice." Gonzalez, 633 So. 2d at 118.4. In fact, the Court specifically acknowledged that it "could not imagine a more telling basis for a party to fear that he will not receive a fair hearing." Id. The Mitchell Court correctly noted that "[t]he role of a sentencing judge is to impose the sentence," Mitchell, 19 Fla. L. Weekly at D1874, and nowhere are the concepts of fairness and impartiality more important and inviolate as in a capital case. Further, nowhere should the reasonableness of a defendant's fear that the judge will not be fair and impartial be

[4]The Court made further note of Judge Goldstein's practice of deliberately arranging his docket so that criminal defendants would have to sit in jail for several weeks before a court appearance was scheduled, as well as his conducting ex parte contact with probation or community control officers to discuss pending cases. Mitchell, 19 Fla. L. Weekly at D1874.

considered with the greatest degree of sensitivity as in a capital case, as this Court has previously noted. Chastine v. Broome, 629 So. 2d at 294. In Mr. Blanco's case, Judge Goldstein has the duty and responsibility to independently consider and weigh the aggravating circumstances presented by State Attorney Satz against the mitigating circumstances presented by Mr. Blanco in order to determine whether the death penalty should be imposed in this case. Based on the fact that Judge Goldstein has an announced predilection in favor of imposing the maximum sentence in cases and of ignoring evidence presented in mitigation, Mr. Blanco has a reasonable fear that he will not receive a fair hearing before this Judge.

The United States Supreme Court has recognized the basic constitutional precept of a neutral, detached judiciary:

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See Carev v. Piphus, 435 U.S. 247, 259-262, 266-267, 98 S.Ct. 1042, 1043, 1050-1052, 1053, 1054, 55 L.Ed.2d 252, (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See Mathews v. Eldridge, 424 U.S. 319, 344, 96 S.Ct. 893, 907, 47 L.Ed.2d 18 (1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," Joint Anti-Fascist Committee v.

> McGrath, 341 U.S. 123, 172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951)(Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980).

Due process guarantees the right to a neutral detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests." Carey v. Piphus, 425 U.S. 247, 262 (1978). The United States Supreme Court has explained that in deciding whether a particular judge cannot preside over a litigant's trial:

> the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was "such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused." Ungar v. Sarafite, 376 U.S. 575, 588, 84 S.Ct. 841, 849, 11 L.Ed.2d 921 (1964). "Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties," but due process of law requires no less. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955).

Taylor v. Haves, 418 U.S. 488, 501 (1974). The purpose of the disqualification rules direct that a judge must avoid even the appearance of impropriety:

> It is the established law of this State that every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to

> scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. Crosby v. State, 97 So.2d 181 (Fla. 1957); State ex rel. Davis v. Parks, 141 Fla. 516, 194 so. 613 (1939); Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Mickle v. Rowe, 100 Fla. 1382, 131 So. 3331 (1930).
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> * * * *
>
> The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause who neutrality is shadowed or even questioned. Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Asuiar v. Chappell, 344 So.2d 925 (Fla. 3d DCA 1977).

State v. Steele, 348 So. 2d 398 (Fla. 3d DCA 1977).

In the instant case, Mr. Blanco has a reasonable fear that he will not receive a fair hearing before Judge Goldstein because of the aforementioned circumstances. The facts alleged in this motion are "sufficient to warrant fear on [Mr. Blanco's] part that he would not receive a fair hearing by the assigned judge." Suarez, 527 So. 2d at 192. A fair hearing before an impartial tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133 (1955). "Every litigant[] is entitled to nothing less than the cold neutrality of an impartial judge." State ex

WHEREFORE, based on the foregoing reasons, Mr. Blanco, through undersigned counsel, respectfully requests that this Court grant a Writ of Prohibition in this capital case against Respondent Judge Goldstein.

I HEREBY CERTIFY that a true copy of the foregoing Writ of Prohibition has been furnished by United States Mail, first class postage prepaid, to all counsel of record on November 30, 1994.

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BY: _____
Counsel for Petitioner

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,)

vs.)

Cesar Blanco)

_____)

CASE NO.: 82-453 CF10

JUDGE: Goldstein

ORDER APPOINTING SPECIAL PUBLIC DEFENDER

THIS CAUSE came on for consideration, and the Court, being fully advised in the premises, finds and adjudges that: the above-named Defendant (hereinafter referred to as Defendant) is insolvent, unable to employ counsel, and, therefore, indigent; that Defendant is entitled to counsel in this case; and that for good cause by reason of conflict of interest (at trial or on appeal), breakdown of the attorney-client relationship, an appeal involving the death penalty, or otherwise. Thereupon, it is

ORDERED and ADJUDGED as follows:

1. If the Public Defender or other counsel of record has previously entered an appearance or been appointed to represent Defendant at any stage of the proceedings, he/she is hereby granted leave to withdraw, In such event, he/she shall forthwith forward all pleadings, discovery, and other documents in his/her file to the Special Public Defender hereinafter named, and thereupon he/she is 'discharged of further responsibility to Defendant without 'the necessity of filing any motion, withdrawal, or other pleading.

2. Hilliard Moloof, Esq., a member in good standing of the Florida Bar, whose mailing address and office telephone are set forth below, is hereby appointed as Special Public Defender to-represent the Defendant in this case. Said attorney (omit one) is/is not a Contract Special Public Defender.

3. The type of case is as follows (one of the following categories **MUST** be checked by the Court, Clerk, or appointed counsel):

_____ Appellate. Capital Felony	_____ Misdemeanor
_____ Appellate Non-Capital Felony	_____ Traffic Misdemeanor
✓ Capital Felony	_____ Juvenile
_____ Life Felony	_____ Mental Health
_____ Non-Capital Felony	_____ Other

4. This approved form of Order and the approved Order of Compensation of Special Public Defender MUST be used in each case. No fees or costs will be paid to the appointed attorney until the approved forms have been completed, signed, and filed.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this 10 day of June, 19 82. _____/nunc pro tunc to _____, 19 ___.

_____
Circuit/County Judge: Barry E. Goldstein

Hilliard Moloof LSN# 315878
111 SE 2 Ave Fort Lauderdale FL _____ (305) 1/13-2001
Address or P.O. Box Number City Zip Telephone No.

Original (White) — CLERK, Green — PUBLIC DEFENDER, Canary — COURT ADMINISTRATOR, Pink — STATE ATTORNEY. Goldenrod — ATTORNEY

P133-D

copies furnished to:

The Honorable Barry E. Goldstein
Broward County Courthouse
201 S. E. 6th Street, Room 535
Ft. Lauderdale, FL 33301

Michael Satz
State Attorney
Office of the State Attorney
201 S. E. 6th Street, 6th Floor
Ft. Lauderdale, FL 33301

Office of the Attorney General
1655 Palm Beach Lakes Boulevard
Third Floor
West Palm Beach, FL 33401-2299

IN THE DISTRICT COURT OF APPEAL
IN AND FOR THE FOURTH DISTRICT OF FLORIDA

NO. 94-03421

OMARBLANCO

Petitioner,

v.

THE HON. BARRY E. GOLDSTEIN, ETC.

Respondent.

RECORD APPENDIX

HILLIARD MOLDOF, ESQUIRE
1311 SE 2 Avenue
Ft. Lauderdale, FL 33316
(305) 462-1005

INDEX TO RECORD APPENDIX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. MAIL to:

Honorable Barry E. Goldstein
The Broward County Courthouse
Room 6850
201 S.E. 6th Street
Fort Lauderdale, Florida 33301

Michael Satz
State Attorney
Office of the State Attorney
201 S.E. 6th Street
Fort Lauderdale, Florida 33301

Office of the Attorney General
1655 Palm Beach Lakes Boulevard
Third Floor
West Palm Beach, Florida 33401-2299

Judith Dougherty, Esq.
Assistant CCR
1533 South Monroe Street
Tallahassee, Florida 32301

this 23 day December, 1994.

HILLIARD E. MOLDOF, P.A.
1311 S.E. 2ND AVENUE
FORT LADUERDALE, FLORIDA 33301

HILLIARD E. MOLDOF, ESQ.