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IN THE SUPREME COURT

OF FLORIDA

WALTER GALE STEINHORST,	:	Appeals No. 86,109
Appellant,		C. Circ. Case Nos. 77-708 and 77-709
vs.	:	
STATE OF FLORIDA,	:	
Appellee,	:	

APPELLANT'S INITIAL BRIEF

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I. PRELIMINARY STATEMENT

Appellant, WALTER GALE STEINHORST (hereinafter "Mr. Steinhorst") respectfully appeals to this Court fiom the Order of Fourteenth Judicial Circuit Court Judge, the Honorable Don T. Sirmons, entered on June 16, 1995 (hereinafter "Circuit Court Order"). The Circuit Court Order failed to follow the Order of Remand by this Court, entered on April 21, 1994 (hereinafter "Supreme Court Order"). This Court directed that

> if the trial court determines that the "facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence," Fla. R. Crim. P. 3.850(b)(1), then it should grant the motion for postconviction relief, vacate the 3.850 judgment entered by Judge Turner, and conduct a new evidentiary proceeding pursuant to rule 3.850 and this Court's opinion in Steinhorst, **498** So. **2d** at 414-15.

The Circuit Court committed reversible error by violating the Supreme Court Order by requiring Mr. Steinhorst to show more than due diligence, and by either ignoring or misstating the record.[1]/ The record clearly establishes that neither Mr. Steinhorst or his counsel[2]/ knew of Judge Turner's conflict of interest and that a reasonable and diligent attempt was made to investigate the matter. Also, the record clearly establishes that prior to 1988 the **Bay** County Court files in this case and the case of co-defendant Charlie Hughes were, in the words of every witness, "a mess" and that portions of the files were kept in different places. **As** a consequence, the portion of the Hughes file containing Judge Turner's recusal was not provided to Mr. Steinhorst's attorneys during their investigations. Therefore, Mr. Steinhorst respectfully requests this Court to vacate Judge Turner's June **23,** 1988 Order

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1 **As used herein, "the record" consists of the Record** of **Appeal (hereinafter referred to as "ROA"), including the Reporter's Transcript of Hearing of October 13, 1994, Appellant's Initial** Brief **dated October 28, 1993, Answer Brief of Appellee dated December 10, 1993, Appellant's Reply Brief dated** January **21, 1994, and Appellant's supporting affidavits and exhibits.**

2 **The** Legal **Team includes attorneys and paralegals from the Office of the Capital Collateral Representative, The Volunteer Lawyers Resource Center, and the law** firm of **Fried, Frank, Harris, Shriver & Jacobson.**

(the "June 1988 Order") and remand this case for a new 3.850 hearing before a new judge with no prior connection to this case.

II. STATEMENT OF THE CASE AND OF THE FACTS

For purposes of this appeal, the history of this case is summarized as follows:

- In Bay County Circuit Court case 77-708 and 77-709, Mr. Steinhorst was sentenced to death and the findings and conclusions were entered, on August 8, 1978, after the conclusion of the trial of co-defendant David Goodwin on May 26, 1978. The third co-defendant, Charlie Hughes, was a fugitive from justice until 1981. Mr. Steinhorst's conviction and sentence was affirmed on direct appeal in 1982.

- On February 13, 1986, Mr. Steinhorst filed in the Circuit Court a Motion for Post-Conviction Relief, pursuant to Florida Rule of Criminal Procedure 3.850. Without ever having seen, let alone read, the trial record or **any** briefs and without holding any evidentiary hearing, Circuit Court Judge W. Fred Turner denied the motion in a one page order dated March 24, 1986. Neither Mr. Steinhorst nor his attorneys received notice from the Circuit Court that his Rule 3.850 motion had been denied. On November 14, 1986, Mr. Steinhorst requested a stay of execution and moved the Circuit Court to vacate its order of March 24, 1986 and reconsider his Rule 3.850 motion. On November 20, 1986, Judge Turner granted Mr. Steinhorst's request to vacate the March 24, 1986 order, acknowledging that the order was never properly served, but at the same time again summarily denied both the Rule 3.850 motion and the request for a stay of execution.

- On November 21, 1986, Mr. Steinhorst appealed the denial of the Rule 3.850 motion to this Court and requested a stay of execution. On November 26, 1986, this Court granted Mr. Steinhorst's request for a stay of execution, vacated the Circuit Court's order of November 20, 1986, and remanded the case for further proceedings. Steinhorst v. Florida, 498 So. 2d 414 (Fla. 1986).[3]

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[3] In so holding, this Court observed that Judge Turner had not even bothered to "examine the trial record and did not have the record before him when ruling on appellant's . . . motion," in violation of Rule

Footnote continued

• Pursuant to the remand order, on September **16-18, 1987,** Judge Turner conducted an evidentiary hearing on Mr. Steinhorst's Rule **3.850** motion and on June **23, 1988** denied the motion (the "June **1988** Order").[4] On July **5, 1988,** Mr. Steinhorst filed a notice of appeal with this Court regarding the Circuit Court's denial of his Rule 3.850 motion.

• In September **1991**, members of the Legal Team reviewed case files located at the Bay County Courthouse to gather information for Mr. Steinhorst's pending federal habeas petition. During their review, the Legal Team for the first time discovered an order by Judge Turner in which he recused himself from the case of one of Mr. Steinhorst's co-defendants, Charlie Hughes (the "Recusal Order"). In the Recusal Order, dated July 9, **1981,** Judge Turner revealed that he "represented the Estate of one of the alleged victims in this case and has indicated to Counsel that he would recuse himself from this cause upon request." **(ROA** at **1596.)** At no time prior to September **1991** did the Legal Team know of Judge Turner's conflict of interest.

• On October 4, 1991, Mr. Steinhorst filed in the Circuit Court a Motion for Relief from Judgment pursuant to Florida Rule of Civil Procedure 1.540(b)(4),[5] seeking to have Judge Turner's judgment on the Rule **3.850** motion declared null and void due to the

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Footnote continued from previous page

3.850. Steinhorst v. State, **498** So. 2d 414,415 (Fla. 1986). Consequently, Judge Turner also violated Rule 3.850 by failing to attach portions of the record conclusively showing that Mr. Steinhorst was not entitled to any relief.

4 In the course of reviewing materials for the record on appeal with the Assistant State Attorney, appellant's counsel learned that yet again Judge Turner had failed to read the trial record. The deputy clerk of the trial court informed defendant's counsel that the clerk's office did not have the transcript of Mr. Steinhorst's original trial because the trial court had never received that transcript back from the Supreme Court and it had no copy. Judge Turner confirmed this omission in his sua sponte order dated August 3, 1988 by acknowledging that "the original trial transcript . . . is lodged in the Supreme Court of Florida." (See, Record on Appeal ("ROA") at 799.)

5 Fl. R. Civ. P. 1.540(b)(4) provides in relevant part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: . . . (4) the judgment or decree is void."

judge's undisclosed conflict of interest.[6] On February 12, 1993, after a telephone status conference call with counsel, the court entered an Order of Procedure directing that the State of Florida respond within thirty (30) days to defendant's Motion for Relief From Judgment. The Order of Procedure also directed Mr. Steinhorst to file his Reply within thirty (30) days from service of the State's response.

- On April 9, 1993 -- five days before Mr. Steinhorst's reply to the State's motion was due -- Judge Don T. Sirmons denied Mr. Steinhorst's Rule 1.540 motion without holding any hearing or providing Mr. Steinhorst any opportunity to reply to the State's motion to dismiss and response to Mr. Steinhorst's Motion for Relief from Judgment,

- On April **24,** 1993, Mr. Steinhorst filed a motion for rehearing. On July **8,** 1993, the Circuit Court set aside its April 9, 1993 Order in order to clarify its ruling and pending motions. The Circuit Court then denied Mr. Steinhorst's Rule 1.540 motion, reasoning that it was not the proper method to collaterally attack a criminal judgment and sentence and that it was untimely.

- On August 2, 1993, Mr. Steinhorst appealed the denial of the Rule 1.540 motion to this Court. On April 21, 1994, this Court entered the Supreme Court Order remanding the case to the Circuit Court. Steinhorst v. State**, 636** So. 2d 499 (1994). This Court determined that although Rule 1.540 was not applicable in this case, the Circuit Court should have treated Mr. Steinhorst's motion as a Rule 3.850 motion, This Court noted that a Rule 3.850 motion would not be barred as untimely or successive if "facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been

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6 **Mr. Steinhorst's Motion for Relief** From **Judgment was originally assigned to Judge** N. **Russell Bower. Judge Bower indicated that he would recuse himself in order to avoid** any **appearance of impropriety, as he had previously worked in the State Attorney's office. On December 4, 1992, Judge Bower entered an Order recusing himself, and the matter was reassigned to Chief Judge** Don **T.** Sirmons on **December 7, 1992.**

ascertained by the exercise of due diligence." **636** So. 2d at 500 (**ROA** at 1409)(citing Fla. R. Crim. P. 3.850(b)(1)).[7]

Accordingly, this Court remanded the case to the Circuit Court to conduct an evidentiary hearing to determine whether the information regarding Judge Turner's conflict, specifically whether his recusal from the Hughes case was reasonably available to Mr. Steinhorst and "were unknown to [Mr. Steinhorst] or [his] attorney and could not have been ascertained by the exercise of due diligence." 636 So. **2d** at 501 (ROA at 1411).

- On October 13, 1994, the Circuit Court, Chief Judge Sirmons presiding, conducted an evidentiary hearing pursuant to the Supreme Court Order. Judge Sirmons directed Mr. Steinhorst and the State to submit post-hearing briefs. On June 16, 1995, Judge Sirmons denied Mr. Steinhorst's Rule 3.850 motion, finding, contrary to the undisputed evidence put forth at the hearing, that Judge Turner's recusal "could have been ascertained by the exercise of due diligence of the movant or movant's counsel" and, therefore, Mr. Steinhorst had waived his right to tecuse Judge Turner.

- On July **17,** 1995, Mr. Steinhorst timely filed his notice of this appeal.

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7 Concerned with the possibility of a due process violation, this Court continued: "**A** judge who is recused from a codefendant's case must also be recused from another codefendant's case if the reasons for recusal apply equally to both. There is no other conclusion that is consistent with one of the most important dictates of due process: that proceedings involving criminal charges, and especially the death penalty, must be both and appear to be fundamentally fair." **636** So. 2d at 500-501 (**ROA** at **1410).** Failure to recuse oneself "present(s) grave due process concerns. . . ." Id at 500 (**ROA** at **1410).**

Justice Kogan, in the concurring opinion, was particularly concerned with the implications of Judge Tuner's conflict of interest. "The appearance of impropriety at issue here was so grave that I believe due process has been seriously violated, creating fundamental error under the due process clause of the Florida Constitution. A Judge who has represented the estate and family of a murder victim never should preside over the 3.850 proceeding of the alleged murderer, and especially where that same judge was recused from the case of a co-perpetrator on the exact same issues. . . . I . . . believe the violation [in this instance] is so grave here that the due process claim is nonwaivable under any construction of the facts." 636 So. 2d at 501.

III. FACTS RELEVANT TO THIS APPEAL

It is undisputed that neither Mr. Steinhorst nor any member of his Legal Team were aware prior to September 1991, that Judge Turner had represented the estate of one of the victims and had by Order dated July 9, 1981, recused himself from the Hughes case.[8] In addition, Assistant State Attorney Alton Paulk did not know about Judge Turner's conflict either, although State Attorney James Paul Appleman did. (ROA at 1494.) However, the State never informed Mr. Steinhorst or his attorney of that fact. (ROA at 1495.) Most importantly, Judge Turner never disclosed it. (ROA at 1495.)

From the time Stephen D. Alexander, Mr. Steinhorst's attorney, became involved in Mr. Steinhorst's defense in 1982, he and the Legal Team conducted an extensive and thorough review of the records, and sought interviews with anyone associated with the case, in order to ascertain every fact related to Mr. Steinhorst's case. (ROA at 1468.) Specifically, Mr. Alexander and the Legal Team spent "an extraordinary amount of time conducting [an] investigation," including (1) personally making several trips to Florida to interview Mr. Steinhorst's former attorney, and various witnesses and investigators; (2) reviewing files at the state and federal courts; (3) reviewing files at the State Attorney General's office; (4) filing a Freedom of Information Act with the FBI, to review the FBI's information from its related investigation; (5) reviewing records obtained from filing a request under § 119 Fla. Stat. with various government and law enforcement agencies; and (6) attempting, to no avail, to obtain files from the State Attorney's office. (ROA at 1468-1469.) During every facet of Mr. Steinhorst's representation, Mr. Alexander and the Legal Team's investigation exceeded due diligence. The Circuit Court's finding that the Legal Team failed to exercise due diligence is wholly unfounded, and is in direct contravention of the factual record.

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8 Indeed, Judge Sirmons so found in the Circuit Court decision and Order. (ROA at 1440.)

A. The Legal Team Diligently Searched The Court Records

The Circuit Court's decision held that the Legal Team "simply overlooked the recusal order contained in the court file during the course of their [1986] review" and that "through due diligence, [Judge Turner's] potential conflict, by virtue of his recusal order, . . . was reasonably available to defense counsel . . . ." (ROA at 1442.) The undisputed facts, however, do not support this finding.

In 1986, after Mr. Alexander became aware through the media that a death warrant had issued, Mr. Alexander and other members of the Legal Team "spent the next twenty days, literally, twenty-four hours a day" together working on Mr. Steinhorst's case. (ROA at 1472.) Prior to this time, Mr. Alexander did not even know that Judge Turner was assigned to the case. (ROA at 1473.)

Mr. Alexander directed two members of the Legal Team, Christian Cox and Paul Harvill, to review all of the files at the Bay County Courthouse.[9] Both Ms. Cox and Mr. Harvill had been trained to specifically **look** for any conflict of interest, and were aware that Mr. Alexander was looking for a way to have Judge Turner recused from the case. (ROA at 1505, 1507; ROA at 1602-1*603,* **Cox** 1 Affidavit at **73.**) Mr. Alexander specified that they were to obtain a copy of the Order denying Mr. Steinhorst's 3.850 motion, and to investigate "every which way [the Legal Team] could get Judge Turner's decision overturned" or whether "there was some way in which [the Legal Team] could get Judge Turner to recuse himself or get him removed from the case." (ROA at 1472-1473.)

On November **8, 1986,** Ms. Cox traveled to the criminal division of the clerk's office. (ROA at 1504.) Upon her arrival, she asked a court clerk, "Dawn", for "all of the files" in the

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9 Ms. **Cox** and **Mr. Harvill were employed as paralegals/investigators with the Capital Collateral Representative ("C.C.R.").**

Steinhorst/Sandy Creek case.[10]/ (ROA at 1504, 1506, 1509; ROA at 1599-1600, Cox 1 Affidavit at ¶¶3, 4; **ROA** at 1602, Cox 2 Affidavit, **72.)** Dawn returned with one box of documents, which Ms. Cox subsequently reviewed, "examining every page" of the files given to her. (ROA at 1504-1505.) Ms. Cox did not see anything which would indicate Judge Turner's conflict of interest; with her training and background she would have realized its importance and brought it to the attention of her supervisor and Mr. Alexander. (ROA at 1507-1508; ROA at 1602-1603, Cox 2 Affidavit at ¶3.)

At the direction of her supervisor, Ms. Cox returned the next day to further review the files. Ms. Cox requested spoke with a supervisor, Patty Smith, about the case docket sheet. Ms. Smith returned with the docket sheet and said to Ms. Cox "I don't know how accurate this is, but it should be all in there." (ROA 1601, Cox 1 Affidavit at ¶8.)

At no time was the Legal Team advised that the Steinhorst/Sandy Creek files were actually kept in three separate locations, on three different floors, and that the clerks who presented the files to the Legal Team did not have access to the files in one of these locations, a vault located in the Courthouse basement, (ROA at 1578-1581.) The vault held all inactive cases files, including the files relating to co-defendant Hughes' separate trial. (ROA at 1580-1581, 1584-1585.) Thus, unbeknownst to the Legal Team, the Recusal Order in the Hughes case was presumably locked in the basement vault at the time Ms. Cox and Mr. Harvill reviewed the Steinhorst/Sandy Creek files. (ROA at 1584-1585.)

One week later, on November 19, 1986, Paul Harvill, an investigator with C.C.R., also was sent to the Bay County Courthouse to further review the court files. Mr. Harvill asked for all of the files relating to Mr. Steinhorst's case. "After several inquiries and double

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10 This **clerk is presumed to be Dawn Schoenauer, a clerk** who **was still employed at the Bay** County **Courthouse at the time of the I994 evidentiary hearing. (ROA at 1582.) Interestingly,** when **given** the **opportunity to call** Ms. **Schoenauer to testify at the evidentiary hearing, the Prosecution** chose **not** to **do so because it "didn't know if she [could] add or subtract anything in this case." (ROA at 1591.)**

The co-defendants' cases are referred to collectively as the "Sandy Creek" case and were all low **numbered to case 77-708. (ROA at 1504., 1563-1564.**

checks [he] was assured by Gloria Tharpe (a court clerk) that all records related to the Steinhorst case had been made available to [him]. She checked among other places, the storage room, the evidence vault as well as the Judge's chambers." (ROA at 1604, Affidavit of Paul Harvill ("Harvill Affidavit") at ¶3.) However, neither the Recusal Order nor Hughes' file was in the files given to Mr. Harvill.

In 1988, Gloria Tharpe, a clerk with the Bay County Courthouse, was assigned to prepare the record for Mr. Steinhorst's appeal of the order denying his 3.850 motion. Prior to this time, the clerk's office did not separate out the co-defendant's documents. (ROA at 1550.) In fact, Ms, Tharpe testified that as late as September **1987,** the so-called "filing system" consisted of merely putting the documents in a box. **"I don't think [the documents were] in any real file folder or anything. It was.. . a confusing file at that time."** (ROA at 1550.) In August 1988, Ms. Tharpe consulted with her supervisor who agreed that the Sandy Creek file should be reorganized by separating the documents according to each defendant's name and maintaining each defendant's documents in separate files arranged chronologically. (ROA at 1551-1552.).

In 1991, other members of the Legal Team, attorney Anne Jacobs and paralegal Ian Haigler, visited the Courthouse to review Mr. Steinhorst's files in preparation for the filing of Mr. Steinhorst's federal habeas petition. Mr. Haigler twice went to the Courthouse in 1991, first alone, and then with Ms. Jacobs, (**ROA** at 1518.) Mr. Haigler returned with Ms. Jacobs in September 1991. Ms. Jacobs and Mr. Haigler "specifically asked for . . . all the files on all of the defendants . . . ." (ROA at 1529. See also ROA at 1521.) The clerk returned with five boxes of documents and several large loose file folders, (ROA at 1519.) Ms. Jacobs and Mr. Haigler spent several hours reviewing the documents, even staying after the clerks' office officially closed, all the while continuously inquiring whether they had been given all of the files. (**ROA** at 1520-1521**.)** The clerks repeatedly assured them that they had been given all of the **files** relating to the Sandy Creek case. (ROA at 1522.) Very late in the day, and only after Ms. Jacobs again asked whether they had been given all of the files on each of the co-

defendants did the clerks return with another set of files they found "downstairs." **(ROA** at **1531.)** **In** this set of files, labeled "Hughes files", Ms. Jacobs discovered the Recusal Order.[11] Ms. Jacobs subsequently telephoned Mr. Alexander, informing him of the Recusal Order.

The above undisputed facts demonstrate that the Circuit Court's finding that the legal team simply overlooked the recusal order is clearly erroneous.

B. The Legal Team Diligently Attempted to Contact Counsel For Hughes

The Circuit Court further found that

> at no time did defense counsel seek to talk directly by letter, phone or personally to the defense counsel who handled the Hughes case as to what happened in that case. Instead this evidence on point is that they "heard" that Hughes defense counsel said he didn't want to cooperate, If contacted defense counsel in the co-defendant's case could have easily advised them of Judge Turner's status in that case.

(ROA at 1441.) Again, the undisputed record below disproves this finding.

Since Mr. Alexander became involved in the case, he and the legal team attempted to contact every attorney involved in the case. (ROA at 1489.) During the investigation period, Mr. Alexander personally tried, to no avail, to contact Mr. Daniels, co-defendant Hughes' counsel. (ROA at **1489.)** Mr. Alexander also instructed other members of the Legal Team to contact Mr. Daniels. (ROA at **1489.)** Eventually, a member of the Legal Team successfully contacted Mr. Daniels. (ROA at 1489.) During their conversation, Mr. Daniels indicated to the Legal Team member that he did not want to cooperate in Legal Team's investigation; this was subsequently relayed to Mr. Alexander. (ROA at **1489,)**

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11 **As discussed** infra, **the files were** not **so labeled prior** to 1988. **(ROA at 1560.)**

The above undisputed facts clearly establish that the Legal Team sought to speak with Hughes' defense counsel about the case but was informed by Mr. Daniels that he did not wish to cooperate.

IV. SUMMARY OF ARGUMENT.

The Circuit Court committed reversible error by failing to follow the orders of this Court on remand. Specifically, the Circuit Court: (1) required that Mr. Steinhorst should do more than due diligence as required by the Supreme Court Order, and **(2)** ignored or misstated the record in finding that Mr. Steinhorst and the Legal Team failed to exercise due diligence in discovering the Recusal Order. Mr. Steinhorst requests relief from these reversible errors in the form of vacating Judge Turner's Order denying relief and remanding the case for a new Rule 3,850 proceeding. Because of the complexity and importance of the matters at issue in this appeal, appellant also respectfully requests oral argument of this appeal. See attached Request for Oral Argument.

V. ARGUMENT

A. The Court Erred In Imposing A Greater Burden On Defendant Than That Set Forth By This Court

This Court remanded the instant case to the Circuit Court to conduct an evidentiary hearing to ascertain whether under Rule 3.850(b) the Legal Team exercised "due diligence" in discovering Judge Turner's conflict of interest, Steinhorst v. State, ***636 So.*** 2d 498,501 (Fla. 1994) (ROA at 1411). Rule 3.850 as applicable to Mr. Steinhorst, provides that he must file his post-conviction motion within two years of the final judgment or sentence. Fl. R. Crim. P. 3.850(b). If not brought within this limitations period, the motion is barred as untimely or successive unless "the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of ***due diligence.***" Fl. R. Crim. P. 3.850(b)(1) (emphasis added).

Due diligence is "a measure of care, prudence, activity, and assiduity as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances." Blacks Law Dictionary 411 (5th ed. 1979). The Supreme Court-imposed standard (the "Steinhorst Standard") mandates that "if the relevant records were not ***reasonably*** available to Steinhorst and the conflict could not be ascertained by the exercise of ***due diligence,*** then the prior recusal would constitute newly-discovered evidence properly cognizable in a 3.850 motion." Steinhorst v. State, **636** So. 2d at 500 (ROA at 1410) (emphasis added); Walker v. State, 661 *So,* 2d 945 (1995).[12] **As** demonstrated below, the record shows that Steinhorst met this standard. The prior unavailable Recusal Order thus constitutes "newly-discovered evidence" under Rule 3.850(b)(1).

The Circuit Court committed reversible error when it failed to impose a due diligence standard and instead imposed a stricter standard on Mr. Steinhorst. Accordingly, Mr. Steinhorst requests that this Court vacate Judge Turner's Order, and remand this case for a new Rule 3.850 hearing.

1. The Circuit Court Erred by Considering The Intentions of The Court Clerks Rather Than Due Diligence of Mr. Steinhorst

The Circuit Court committed reversible error by finding that Mr. Steinhorst did not exercise due diligence in discovering the Recusal Order because: (1) the Bay County court clerks had not denied Mr. Steinhorst's counsel access to the court files; and **(2)** the clerk's office never attempted to conceal or hide the information from the Legal Team. (ROA at 1441, 1442.) Although the clerks did not intentionally deprive the Legal Team access, the clerk's intentions are irrelevant if, as here, the clerks nevertheless denied the Legal Team access to the court files. By emphasizing the intent of the clerks and not focusing on the

12 **Walker v. State is the only reported case which has used the Steinhorst Standard in evaluating a Rule 3.850 motion. As in the Supreme Court Order, this Court remanded the Walker case to the Circuit Court to conduct an evidentiary hearing on the issue of due diligence. Apparently the Circuit Court decision is still pending; no further decision is reported as of the date of this Initial Brief.**

actual effect of their actions, the Circuit Court failed to address the purpose of this Court's remand -- to determine whether Mr. Steinhorst exercised due diligence in discovering the Recusal Order. Instead the Circuit Court used a higher standard than due diligence -- indeed, an impossible standard to meet -- that was in direct contravention of the instructions of this court.

The record unequivocally demonstrates that in **1986** the Legal Team was not given access to ***all*** of the relevant files because: (1) both the State and Defense witnesses acknowledged that the files were "a mess", were not "organized," and were simply thrown into one or more boxes; **(2)** the State's own witnesses acknowledge that, unbeknownst to the Legal Team, the files were kept in at least three separate locations; and (3) the clerks who produced the files to the Legal Team did not have access to all of the files in the case.[13] (ROA at 1504, 1523, 1542, 1550-1551, 1560, 1564, 1576-1579, 1581, 1584, 1587.) Ms. Tharpe testified to this undisputed fact:

> Q: And I believe your testimony was when they were given to you that they were a mess?
> **A:** Yes, sir.
> *Q:* And that the filing system was just simply to put pieces of paper in a box?

13 Indeed, even at the time of the hearing, and after the "reorganization" of the files by Ms. Tharpe, neither the State nor Ms. Tharpe could assure the Court that all of the files were present in the Court. As Ms. Tharpe testified,

> Q: Do you know, sitting here today on the stand, whether or not every piece of paper that's been filed in connection with any one of these defendants in post-conviction or any transcripts that are in those boxes, all the records are there today?
> **MR. PAULK:** Stipulate she can't say that, Judge. I'm objecting to the materiality of it. Two we're involved in is the judge's recusal.
> **MR. ALEXANDER:** My question is whether these files are as of today complete.
> MR. PAULK: I withdraw the objection.
> THE WITNESS: I'm *sorry,* would you repeat that --
> Q: (Mr. Alexander continuing) Can you state that in fact these files that you had some responsibility for maintaining that you've testified are in fact the complete files of every piece of paper that's been filed in connection with all **Mr.** Steinhorst' [sic] proceedings?
> A: I don't think I can swear that it's every piece of -- it's the file that was kept in the clerk's office.

(ROA at 1558-1559.)

A: Somewhat.

Q: **And** there weren't any labels on the **box** before you put the labels on them, were there.

A: No.

(ROA at 1560.) Also, the Sandy Creek files were kept in at least three separate locations. (ROA at 1576-1581.) Most importantly, not all clerks had access to all of the files. Ms. Baker testified,

> Q: Do you know if in fact whatever clerk, whether it was Dawn or Ms. Smith, that got the files went to all of those three locations and got files from all those three locations to give to Ms. Cox?
>
> **A:** Ms. Smith would not have been able to get it from the vault.
>
> Q: I see. And you don't know what files were in the vault.
>
> **A:** No, I don't.
>
> Q: Would Dawn have been able to get them from the vault?
>
> **A:** No.
>
> Q: What files were down in the vault in '86?
>
> **A:** **A** portion of the Sandy Creek.
>
> Q: But what types of files would have been put in the vault?
>
> A: First degree murder case, anything which had evidence on it.
>
> Q: I think your testimony, and correct me if I'm wrong, things were active, they were kept up because there were requests; right?
>
> A: That's correct.
>
> Q: In 1986 was Mr. Hughes' case active?
>
> **A:** Not that I recall.
>
> Q: Is it possible that Mr. Hughes' case files were in the vault in 1986?
>
> A: It's possible.

(ROA at 1584-1585.)

As noted above, Stephen D. Alexander, Mr. Steinhorst's counsel, directed members of the Legal Team to travel to the Courthouse to review the Sandy Creek case files immediately after learning that Judge Turner had denied Mr. Steinhorst's Rule 3.850 motion without a hearing. (ROA at 1471, 1472.) The record indisputably establishes that Christian Cox and Paul Harvill of the Legal Team each requested, on two separate occasions, all of the files relating to the Sandy Creek **case.** (ROA at 1504, 1506, 1509; **ROA** at 1599-1600, Cox 1 Affidavit, ¶¶3, 4; ROA at **1602,** Cox 2 Affidavit, **72.)** Ms. **Cox** and Mr. Harvill diligently

reviewed each page of every document given to them by the court clerks. (ROA at 1504, 1506, 1509; ROA at 1599-1600, Cox 1 Affidavit, ¶¶3, 4; ROA at 1602, Cox 2 Affidavit, ¶2.) At no time during the two separate reviews did Ms. Cox or Mr. Harvill see the Recusal Order. (ROA at 1507-1508; ROA at 1602-1603, Cox 2 Affidavit at ¶3.) As the clerk, Dawn, who provided the files to Ms. Cox and Mr. Harvill did not have access to all of the files, which were in disarray and kept in several different locations, it is clear that the Recusal Order was never made available to the Legal Team.

Moreover, at no time during Ms. Cox's two day review did the clerk or supervisor indicate that the Sandy Creek case files were maintained in different locations. Ms. Cox did not know, and could not have known or learned, that the Sandy Creek files were kept in three separate locations, on three different floors, and that neither the court clerk nor her supervisor had access to the Sandy Creek file in one of these locations, a vault located in the Courthouse basement. (ROA at 1578-1581.) Nor did Ms. Cox have any reason to believe that anything less than all of the files had been given to her after she asked for them.

In fact, the evidentiary hearing transcript and the record as a whole indisputably show that no one at the Clerk's Office could confirm that the Recusal Order was in fact made available to the Legal Team. Rather, the record shows that during the Legal Team's review in 1986, the Recusal Order was apparently locked in the basement vault with the rest of Hughes' inactive files. (ROA at 1580-1581, 1584-1585, 1588-1590.)

The Legal Team's inability to discover the Recusal Order was not due to a lack of due diligence in reviewing the Sandy Creek files. Rather, it was for reasons completely beyond the control of the Legal Team. The courthouse clerk and supervisor erroneously informed Ms. Cox that she was given all of the Sandy Creek files. Mr. Steinhorst should not suffer prejudice due to the State's mistakes. Dobbs v. Zant, 506 U.S. 357, 113 S. Ct. 835 (1993) (failure to discover trial transcript because of State's erroneous assertion to petitioner that a transcript was not prepared should not prejudice petitioner; court permitted petitioner to use transcript in subsequent habeas petition). The Legal Team exercised due diligence by

reviewing all the Sandy Creek files that were reasonably available. It could do no more and, in law, was required to do no more. The clerk's and supervisor's mistake cannot minimize or negate the due diligence exercised by the Legal Team.

2. The Circuit Court Imposed An "Extreme" Diligence Standard on Mr. Steinhorst Rather Than a Due Diligence One

The Circuit Court erred by imposing a higher standard of conduct than due diligence when evaluating the steps the Legal Team took in discovering the Recusal Order. The Circuit Court felt it important that "defense counsel sought no relief from the Court to make sure that all records were available to it or to correct any perceived problems of access to court records during the course of [the Legal Team's] review in 1986." (**ROA** at 1442.) Moreover, the Circuit Court concluded that the Legal Team failed to examine the Courthouse files between **1988** and 1991. (ROA at 1442.)

That the Legal Team did not seek judicial relief to ensure it had complete access to all of the files is not indicative of a lack of due diligence in reviewing the files, The clerk's office is the proper place for the Sandy Creek files, and a reasonable person who was given repeated assurances from both a clerk and a supervisor after requesting all documents concerning a particular well-known case would not consider it reasonable or necessary to seek additional assurances from the Court. The Legal Team would have had no reason to seek relief from the Court, as it had no knowledge that it was not given all of the files. Indeed, the court, like the Legal Team, is dependent on the clerk's office for accurate case file information. The Circuit Court cannot use hindsight to require the Legal Team to discover the Recusal Order at a time when the Legal **Team** had no idea that the clerk's office failed to make available all of the Sandy Creek files, or that Judge Turner had a conflict of interest. U.S. v. Gates, 10 F.3d 765, 767-768 (11th Cir. 1993) (due diligence does not require that a person presuppose an end in requesting relief from a court). That is not the "due diligence"

standard ordered by this Court on remand; rather, this is a higher standard erroneously imposed by the Circuit Court on Mr. Steinhorst.[14]

B. The Circuit Court's Decision Was Clearly Erroneous Because It Was Based On Incorrect Findings Of Fact

The Circuit Court committed reversible error by ignoring or misstating the evidence in the record, The Circuit Court must consider the entire record when reviewing a capital case. Dobbs v. Zant, 506 U.S. at 359, 113 **S.** Ct. at **836** (review of capital sentence requires review of entire record, including trial transcript; Court of Appeals committed reversible error by refusing to review previously undiscovered sentencing transcript). Moreover, the due diligence standard is not an inflexible one; it should meet the ends ofjustice. McCallum v. State, ***559*** So. 2d 233 (Fla. 1990).

1. Only by Ignoring or Misstating The Record Could The Circuit Court Have Found That The Legal Team Failed To Contact Co-Defendant Hughes' Counsel

The Circuit Court based its decision on an incorrect finding that it was "important that at no time did defense counsel seek to talk directly by letter, phone or personally to the defense counsel who handled the Hughes case as to what happened in that case." (ROA at 1441.) The record flatly contradicts this finding.

The undisputed facts show that contrary to the Circuit Court's finding, defense counsel Stephen Alexander tried, without success, to speak to Mr. Daniels, Hughes' defense counsel. (ROA at **1489.)** Moreover, a member of the Legal Team did eventually contact Mr. Daniels, who indicated that he did not wish to cooperate with Mr. Steinhorst's counsel.

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14 **Great or high diligence is that degree** of **"care, prudence, and assiduity as persons of unusual prudence and discretion exercise in regard to any and all of their own affairs." Blacks Law Dictionary 411-412 (5th ed. 1979).**

(ROA at **1489,)** It was this member who told Mr. Alexander that Mr. Daniels did not want to cooperate, (ROA at **1489.)**

The evidence on this point is not, as the Circuit Court states, that the Legal Team "heard" that Hughes' defense counsel said he did not want to cooperate. Rather, it was a member of the Legal Team who informed Mr. Alexander that Mr. Daniels was uncooperative. This is direct knowledge, rather than hearsay or rumor. The Circuit Court indisputably misstated the record. Consequently, the Circuit Court's assertion that "[i]f contacted, defense counsel in [the Hughes] case could have easily advised them of Judge Turner's status in that case" is both speculative and blatantly incorrect. **(ROA** at **1441.)** The Circuit Court's reasoning is also flawed in that it assumed that had the Legal Team met with Hughes' counsel, the conflict would have been disclosed. Unaware of the conflict, the Legal Team would have had no reason to even discuss Judge Turner with Hughes' counsel, since the Legal Team knew only that Judge Bodiford had presided at Hughes' **1981** trial.

Moreover, even if the Legal Team, as the Circuit Court asserts, "heard" from an outside source that Mr. Daniels refused to cooperate, and did not actually contact Mr. Daniels itself, that fact would not be dispositive. The due diligence standard, in connection with establishing newly discovered evidence, may be satisfied even where the appellant shows that an attempt to discover the evidence through a witness would have been to no avail. McCallum v. State, **559** So. 2d **233,234** (due diligence standard met where witness' affidavit shows he would have initially refused to speak for fear of retribution).[15]/

Notwithstanding the Legal Team's actual attempt to obtain information from Mr. Daniels, he refused to cooperate with the Legal Team. The fact that Mr. Daniel refused

15 **In McCallum v. State, the defendant moved the court for a new trial, citing that a witness' affidavit providing exculpatory evidence qualified as "newly discovered evidence." This** Court, **agreeing with the defendant, reasoned that even** if **sought at the time** of **trial,** the **witness' testimony could not have obtained because the witness feared retaliation. 559 So. 2d at 234.**

to cooperate is not indicative of a lack of due diligence by the Legal Team. The Circuit Court's finding to the contrary, therefore, is clearly erroneous.[16]

2. <u>The Circuit Court's **Finding That, In 1986. All Files Were Kept In A Single,** Chronological Filing System Is Clearly Erroneous</u>

The Circuit Court further based its decision on an incorrect conclusion that, prior to **1988,** all files were kept in a single filing system in chronological order. **(ROA** at **1441.)** The record is replete with testimony from witnesses for both Mr. Steinhorst and the State that, prior to **1988,** the file was "a mess," kept in three separate locations located in three different floors of the Courthouse, and that documents were just thrown into a box when filed. (ROA at **1504, 1523, 1542, 1550-1551, 1560, 1564, 1576-1579, 1581, 1584, 1587.)** In **1986,** the files were not in the same condition "in terms of organization and neatness" as they were at the evidentiary hearing. (ROA at **1580.)**

Both Christian Cox and Paul Harvill examined the files in September **1986.** Ms. Cox testified that when given the files, the clerk volunteered that they were "a mess." **(ROA** at **1504.)** Ms. **Cox's** testimony is substantiated by the testimony of State witnesses Gloria Tharpe and Reena Goss Baker. Ms. Tharpe testified that the files were "confusing" -- that they were <u>not</u> in chronological order and that the so-called "filing system" entailed simply throwing the documents in an unlabeled box. **(ROA** at **1550-1551, 1560, 1564.)** "[I]f we filed something we would just put it in the box. I don't think it was in any real file folder or anything." (ROA at **1550.)**

In fact, in **1986** the files were not even maintained in one location. **As** Ms. Baker testified, the files were kept in three separate locations, on three different floors of the courthouse, and that the court clerks did not even have access to the location in which Hughes' files were located. **(ROA 1578-1584.)** In **1986,** unbeknownst to the Legal Team,

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16 **The State did not call Mr. Daniels, or put on any evidence concerning whether Mr. Daniels' even remembered Judge Turner's recusal.**

"[a] portion of the Sandy Creek files" was held in the basement vault. (ROA at 1584.) Cases with the most activity, such as Mr. Steinhorst's, were maintained in the clerk's office, whereas inactive cases, such **as** Mr. Hughes', were stored in the basement vault. (ROA at 1576-1581.) Moreover, neither of the clerks who gathered the materials for Ms. Cox's review would have been able to get the files from the vault. (**ROA** at 1584,)

Also, the record indisputably shows that immediately prior to Ms. Cox's review, numerous people had access to the files which inevitably led to additional disorganization. Ms. Cox testified that upon her arrival at the Bay County Courthouse, Dawn told her that the day before, "there had been a dozen phone calls about this case." (ROA at 1504; **ROA** at 1599, Cox 1 Affidavit, ¶3.) Patty Smith also told Ms. Cox that there had been numerous phone calls and requests for the files. (**ROA** at 1600-1601, Cox 1 Affidavit, ¶6.) Gloria Tharpe also testified that "there was always someone looking at the files." (ROA at 1541.) The record demonstrates that even if the files, as the Circuit Court contends, were initially in order, by the time Ms. Cox reviewed them, numerous people had gone through the files and the files undoubtedly became disorganized. More importantly, as the State's own witnesses testified, neither Dawn nor Ms. Smith would have had access to all of the Sandy Creek files. (ROA at 1584-1585.)

Based on the record, and in particular the testimony of the court clerks, the Circuit Court's finding that in **1986** the files at the Bay County Courthouse were in one filing system arranged in chronological order is clearly erroneous.

3. The Circuit Court's Finding That The Defense Counsel Merely Overlooked The Recusal Order Is Erroneous

Finally, the Circuit Court *Order also* ***based*** its decision *on an* incorrect finding that "[t]he evidence establishes . . . that the defense counsel and/or his staff simply overlooked the recusal order contained in the court file during their [1986] review." (ROA at 1442.) The record, however, contradicts the Circuit Court's finding.

Ms. **Cox** testified that in 1986 she was aware that the Legal Team wanted to recusc Judge Turner. As a paralegal with C.C.R., she was trained to specifically look "for any documents or evidence that would indicate any possible bias on the part of the judge hearing the case." (ROA at 1602-1603, Cox **2** Affidavit, 73.) Ms. Cox spent over eight hours examining <u>every</u> **<u>page</u>** of the files given to her by the clerk. (ROA at 1504-1505; ROA at 1602-1603, Cox 2 Affidavit, ¶3.) Ms. **Cox** did not see any Recusal Order; had she "seen <u>any</u> indication, in the record whatsoever, that Judge Turner had a conflict of interest or any other basis for an allegation of bias, [she] **. . .** would have brought it to the immediate attention of [her] supervisor" and Mr. Alexander, as she knew Judge Turner's reputation and knew that the Legal Team did not want Judge Turner presiding over this case. (ROA at 1602-1603, **Cox** 2 Affidavit, ¶3 (emphasis in original), <u>See also</u>, ROA at 1505-1508.) (ROA at 1506.)

The full record further contradicts the Circuit Court's conclusion by establishing that Ms, Cox was never given access to the Recusal Order. **As** detailed above, the testimony shows that in 1986 Charlie Hughes' files, including the Recusal Order, were kept in the Courthouse vault, to which the clerks, who provided Ms. **Cox** with the case files, did not have access; the Recusal Order was presumably never given to Ms. Cox, (**ROA** at 1584-1585, 1589-1590.)

Even as late as 1991, the Recusal Order remained in the vault, segregated from the rest of the files. Anne Jacobs, an attorney with V.L.R.C. and a member of the Legal Team, testified that in 1991 she went to the Bay County Courthouse to review the files in preparation for the filing of Mr. Steinhorst's federal habeas petition. (ROA at 1528.)

When Ms. Jacobs, along with V.L.R.C. paralegal Ian Haigler, arrived at the Courthouse, she requested all of the files concerning the Sandy Creek case. (ROA at 1529-1531.) During her review, Ms. Jacobs and Mr. Haigler persistently inquired whether these were any additional files as the files did not appear to be complete. Specifically, although she was given separate files for Mr. Steinhorst and several co-defendants, she did not see a separate file for co-defendant Hughes. (ROA at 1529.) Late in the day the clerk returned

with another set of files on co-defendant Hughes, which Ms. Jacobs was told had been located "downstairs." It was this set of files in which she discovered the Recusal Order. (**ROA** at 1530.)

Obviously, if the files were located in one location, the clerk would have given Ms. Jacobs the files containing the Recusal Order from the outset. Only because of her persistent request for assurances that she had been given all the files did the clerk discover that additional files were in fact in the basement -- files containing the Recusal Order. Moreover, the clerk's office has in the past temporarily lost, mislaid and misfiled documents and files. (ROA at 1559.)

The United States Supreme Court was confronted with a similar fact pattern in Dobbs v. Zant, 506 **U.S. 357,** 113 **S.** Ct. 835 (1993). In Dobbs, the petitioner was permitted to rely on a sentencing transcript not previously discovered or asserted as a basis of relief in his habeas petition. The Court reasoned that use of the transcript was permitted because "delay [in discovering the transcript] resulted substantially from the State's own erroneous assertions that closing arguments had not been transcribed" and because petitioner legitimately relied on the State's assertions. 506 U.S. at 359, 113 S. Ct, at **836.**

In the instant case, the Legal Team exercised due diligence in discovering Judge Turner's conflict of interest. Through no fault of its own, the Legal Team did not **make** this discovery until its review in 1991.[17]/ Like the petitioner in **Dobbs,** Steinhorst should not be penalized for legitimately relying on the court clerks' continual assertions that all files were made available to it.

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17 The **Circuit Court, without further explanation, faulted the Legal Team for failing to review the Courthouse files between 1988 and 1991. Yet there would have been no reason for the Legal Team to have done** so, **as Mr. Steinhorst's case was on appeal** to **this Court** from **the denial of his 3.850 motion by Judge Turner.**

C. After Discovery of the Recusal Order. Mr. Steinhorst Timely Sought Relief

Mr. Steinhorst exercised due diligence within the appropriate limitations period, The Circuit Court's finding that "the records of recusal were ascertainable by the exercise of due diligence prior to the two year time ban of Rule **3.850(b)** and is not new evidence. , . . and that [Mr. Steinhorst] waived his right to recuse Judge Turner" is without legal merit. **(ROA** at **1442.)**

Under Rule **3.850,** the two year limitations period "begins to run at the time such [newly discovered] facts are discovered or could have been reasonably discovered through the exercise of due diligence." Graddy v. State, **1996** Fla. App. LEXIS **212, *2** (January **7, 1996),**[18] citing Adams v. State, **543** So. 2d **1244** (Fla. **1989).** When exercising due diligence, a party must act "promptly upon receipt of the information that forms the basis of the allegations . . . ." **U.S.** v. Cerrella, **529** F. Supp. **1373, 1377** (S.D. Fla. **1982**) (in context of disqualifying a judge under federal rules).

In accordance with Rule **3.850,** the Legal Team exercised due diligence in discovering Judge Turner's conflict of interest as soon as it had information that such a conflict existed -- in September **1991** when it discovered the Recusal Order. (ROA at **1522-1523, 1531-1533;** ROA at **1607,** Haigler Affidavit, **74.)** Discovery of the Recusal Order was the Legal Team's first indication that such a conflict existed; the limitations period thus **began** to run at this time, Mr. Steinhorst filed a motion to vacate Judge Turner's Order immediately thereafter, in October **1991.**

The Circuit Court correctly found that "[t]he evidence establishes that [the Legal Team] did not know of Judge Turner's recusal . . . ." (ROA at **1440.)** Moreover, the Legal Team did not even suspect, nor have reason to suspect, that Judge **Turner** had **a** conflict of interest and had in fact recused himself from a co-defendant's case. (ROA at **1475, 1505, 1507-1508; ROA** at **1603,** Cox 2 Affidavit, **74;** ROA at **1607,** Haigler Affidavit, **74.)** The

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18 **Graddv v. State is not final until the time expires to file a rehearing motion and, if filed, is disposed of.**

Circuit Court cannot expect the Legal Team to discover something it did not even suspect existed, despite diligent efforts to uncover any basis for recusing Judge Turner. U.S. v. Gates, 10F.3d at 767-768.W

As the Circuit Court correctly concluded, the Legal Team wanted to find a valid legal reason to recuse Judge Turner as early as 1986, when it learned that he had denied Steinhorst's initial Rule 3.850 motion without conducting any type of hearing. (**ROA** at 1475-1476, 1483.) Accordingly, had the Recusal Order been in the Sandy Creek given to the Legal Team in 1986, obviously not only would have used it to challenge Judge Turner's denial of the Rule 3.850 motion, but also would have used it to recuse Judge Turner from the case. (**ROA** at 1475; ROA at 1603, Cox **2** Affidavit, ¶4.)

Despite the Legal Team's due diligence in reviewing the Courthouse files, Judge Turner's conflict of interest was not discovered, nor could it have reasonably been discovered in **1986** due to the messy and disorganized state of the files. **As** the record shows, the files containing the Recusal Order were not given to the Legal Team until their subsequent review in September 1991. It was only then, in 1991, that the limitations period began to run. Mr. Steinhorst exercised due diligence and filed his motion to vacate on the ground of Judge Turner's conflict of interest well within the limitations period.

VI. CONCLUSION

For all of the foregoing reasons, Mr. Steinhorst respectfully requests that this Court vacate the Circuit Court's June 16, 1995 Order and remand this case with instructions to, in the words of this Court, "vacate the 3.850 judgment entered by Judge Turner, and conduct a

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19 The court in U.S. v. Gates found that the State incorrectly asserted that a witness' affidavit did not constitute newly discovered evidence. The State argued that the Defendant could have obtained the witness' affidavit had he requested the court to grant the witness immunity in exchange for his testimony at trial. The Court rejected this argument, reasoning that the defendant is not required to make such a request; to do so would expect the defendant to unreasonably presuppose that the witness would give exculpatory testimony.

new evidentiary proceeding pursuant to rule 3.850 and this Court's opinion in Steinhorst, **498 So.** 2d at 414-15"[20] before a new judge with no prior connection to this case.

DATED: February 15,1996

Respectfully submitted,

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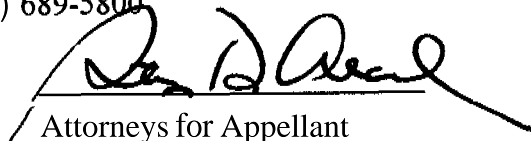
By: 

Attorneys for Appellant

20 **636** *So.* 2d **at** 501 (**ROA at 1411**).

IN THE SUPREME COURT
OF FLORIDA

. . . . X
WALTER GALE STEINHORST,

Appellant,

vs.

STATE OF FLORIDA,

Appellee, :
- X

Appeals No. 86,109
(Circ. Case Nos. 77-708
and 72,695)

REQUEST FOR ORAL ARGUMENT

Pursuant to Rule of Appellate Procedure 9.320, appellant hereby requests oral argument on his appeal of the denial of his post-conviction motion under Florida Rule of Criminal Procedure 3.850. The issues presented in the appeal involve allegations of fundamental error in the proceedings that resulted in appellant's convictions and sentence of death. Appellant respectfully submits that this Court's consideration of the issues raised will

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be enhanced by oral argument given the complexity of the questions presented and their importance to this Court's capital punishment jurisprudence.

Date: February 15, 1996

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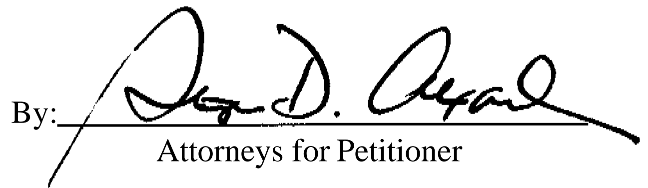
By: 
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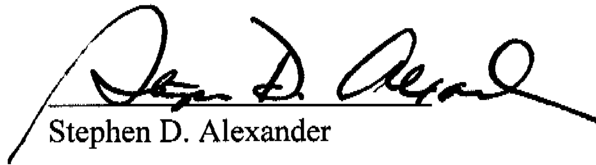
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Appellant's Initial Brief has been furnished by U.S. Mail to Alton **O.** Paulk, **Esq.,** Office of the State Attorney, P.O. Box 1040, Panama City, Florida 32402-1040, and Robert **A,** Buttenvorth, Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050, this 15th day of February, 1996.



Stephen D. Alexander

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