IN THE SUPREME COURT OF FLORIDA

GERALD D. MURRAY

case no: SC 17-707

V.

Lower ct. case no: 92-3708

STATE OF FLORIDA

WRIT OF HABEAS CORPUS / MOTION FOR NEW TRIAL / SUCCESSIVE 3.851; REQUEST RELINQUISHMENT TO TRIAL COURT TO APPOINT CONFLICT FREE COUNSEL AND LEAVE TO AMEND

COMES NOW, GERALD D. MURRAY, and files this motion to Prevent claims from being Procedurally barred based on Counsels negligence in failing to Act with diligence in addressing Newly Discoverid evidence of Actual innocense, And to Protect mr. murrays Due Process Rights of the 6th, 8th and 14th Amend. of the U.S. constitution and corresponding Florida const. and submits as follows:

1. That Mr. murray has Pending in the Fla. Sup. ct. Two(2) motions requesting conflict Free counsel that were filed on sept. 15, 2017 and nov. 6, 2017. To mr. murrays knowledge no action has been taken on either motion.

2. within the motions mr. murray stated that NOV. 21, 2017 was the Deadline to raise the new evidence claim of actual innocense. mr. murray was mistaken and NOV. 20, 2017 is the correct Deadline. To date, counsel has taken no action in addressing these claims and based on counsels failure to act with Diligence, Mr. Murray

has no other Alternative except to file these claims himself in this motion requesting conflict counsel.

3. That Mr. Murray request that conflict Free counsel be appointed and this court relinquish Jurisdiction to the trial court to appoint counsel and, that New Counsel be allowed to file a motion in the trial court addressing these new evidence claims supporting actual innocense.

To denie such, will force Mr. Murray to Languish under a wrongfull conviction for a crime he's actually innocense of and new evidence must be addressed now.

4. That Mr. Murray will leave witnesses names out of these issues because, several witnesses fear for their lives if They expose who the True Perpatrators are. Therefore, Mr. Murray will only refer to them as witness #1, 2 etc.... and what relavent testimony they will provide to support Mr. Murrays claims. The true names can be provided to the trial court once any motion to protect their identity is filed in the court.

5. The following issues will support Mr. Murrays actual innocense and once conflict Free counsel is appointed, They be granted leave to Amend these claims but not limited too;

A) Standard of Review - Procedural Posture.

That Mr. Murrays initial 3.851 motion was Denied in Part and Granted in Part. All Guilt/innocense phase issues were denied, and based on Hurst a new Penalty Phase was granted.

That mr. Murray has now discoverd new evidence establishing Actual innocense and is relavent to numerous claims that were denied relief on April 4, 2017. The Procedural posture of murrays case best fits filing a new Trial motion Alternatively, Habeas corpus as no other legal avenue is available to timely address new evidence proving actual innocense after 27 years.

Additionally, the new evidence [must] be reviewed to determine its relavence to numerous claims Denied on April 4, 2017. To not address the new evidence now will cause Piecemeal litigation where at some point, the new evidence relavence will need to be determined its relavance to claims denied.

(1) motion for new Trial - Fla. R. Crim. Proc. 3.590 - 3.600 states that a motion for new trial [may] be filed within 10 days..... and in the discretion of the court may be amended at any other time before the motion is determined. However, murrays case is outside the 10 Day window but, the Fla. Sup. Ct. has allowed Defendants to file new trial motions outside the 10 Day window. SEE: Farina v. State 191 So. 3d 454 (Fla. 2016); In Willacy v. State 640 So. 2d 1079 (Fl 1994) The court Temporarily relinquished to the trial court for an evidentiary hearing on new trial motion, one (1) year after conviction. SEE also; State v. Glover 564 So. 2d 191 (Fla. 5DCA 1990) The state appealed and argued the trial court was without Jurisdiction to consider an untimely second or subsequent motion for new trial filed after the 10 Day Period provided in Fla. R. C. P. 3.590(a) and was with out Jurisdiction to consider a motion for rehearing. The court held, "A final order procured by fraudulent testimony against a Defendant in a criminal case deserves no Protection and Due Process requires that the Defendant be given every opportunity to expose fraud and obtain relief from it U.S.

const 5th and 14th Amendment.

(2) Habeas Corpus - The traditional purpose of the writ of Habeas Corpus is to furnish a speedy hearing and remedy to one whose liberty is unlawfully restrained. Murray v. Regier 872 So.2d 217, 221 (Fla.2002); Thomas v. Duggar 548 So.2d 230 (Fla.1998).

That the court has Jurisdiction to issue a writ of Habeas Corpus and Grant a motion for Judgement of Aquittal Alternatively, a new Trial. The Defendant in Huggins v. State 788 So.2d 238 (Fla.2001) was convicted and while his direct appeal was pending, discoverd Brady violation by the state. The Defendant filed a writ of Habeas Corpus and the Fla. Sup. ct. remanded Jurisdiction back to the trial court since it had Jurisdiction to issue a writ of Habeas Corpus.

(3) Successive 3.851 motion - Does not fit squarely with the Posture of mr. murrays case because, he has been granted a new Penalty phase. The sup. ct. addressed this exact issue in Farina v. State 191 So.3d 454 (Fla.2016) "while the purpose of Fla. R. Crim. P. 3.851 is to bring orderly structure to motions for collateral relief, review of newly discoverd evidence claims that could result in a new trial should not be Post Poned until after resentencing or the appeal of that Sentence. Certainly, if a Defendant awaiting resentencing sought to present evidence that another witness admitted to the crime for which the Defendant was convicted, that motion should not await resentencing".

6. Based on Counsels negligence in failing to Act with Diligence in raising new evidence supporting actual innocense, mr. Murray is forced to file the claims himself to prevent procedural

bar of those claims. The claims are as follows but not limited to, and conflict Free Counsel must be permitted leave to Amend these claims; NOV. 20, 2017 is the one(1) year Deadline to file such.

ISSUE I

Newly Discoverd evidence consisting of an affidavit from [Witness #1] Demonstrates that Mr. Murray is innocent of the crimes he has been Wrongly convicted of, and the new evidence entitles Murray to a Judgment of Aquittal Alternatively, a new trial where Murray has been denied a fundamentally fair trial in Violation of the 5th, 6th and 14th Amend. of the U.S. const. and corresponding Fla. const.

The newly discover'd evidence when reviewed with other admissible evidence not introduced at trial establishes there is a reasonable likelihood Mr. Murray will be aquitted upon a retrial. Again Mr. Murray will only refer to Witnesses by number and not name to protect their identity because the Witnesses fear for their lives if they provide testimony in this case. Mr. Murray has attached the [Redacted] affidavit of Witness #1 to Protect his identity.

A. The exculpatory statements from Witness #1

In an affidavit dated Sept. 15, 2017, Witness #1, a Person of interest during the original homicide investigation concerning the instant case, stated the following:

I, [Witness #1] worked for Walter Holton in the early 90's doing odd Jobs. Holton Sold large amounts of cocaine with a cuban friend from Miami, who drove a Porsche. Both men were dangerous if you crossed them and

were both known to put contract hits out on people who crossed them. I was questioned by Police about a sailboat necklace that was possibly connected to the homicide. I got the sailboat necklace from Angela Smith, who was the girlfriend of Walter Holton at the time. She told me that she got it from his cuban friend, who told her to "never get rid of it." I did not tell police where I got the necklace from, because I was afraid of Walter Holton and his cuban friend. My DNA was collected by the Police and I was cleared of any involvement with the homicide case. (SEE: EX-1 - Witness #1 Redacted affidavit)

(Witness #1) further admitted to Mr. Murrays investigator (Witness #2) on this date he was known as "LilJack" in the 90's and sold large amounts of cocaine for Holton, who went by the nickname of "Tony". Witness #1 was very close to Holton and Holton trusted him. Witness #1 says that there is a "code" on the streets that prevent People from implicating others in crimes, and as such; he has been reluctant to sign an affidavit for this case. However, Witness #1 has decided to cooperate, as Holton is now deceased and he knows that Gerald Murray is innocent of this murder. Witness #1 says that he has decided to do the right thing for Murray and help him; even if it places him in danger. Witness #1 explained that Angela Smith lied when she provided an alibi for Holton - that she was with Holton the night victim ms. Marylin Vest was murdered. He is Postive about this because Witness #1 was selling cocaine for Holton that night and knew Holton was not with ms.

Smith. Witness #1 also drove cars for Holton during this time and cannot deny he drove Holtons El camino on more than one occasion. Witness #1 remembers this vehicle was damaged after They hit a mailbox belonging to the house that was robbed. Witness #1 admitted he knows Holton killed Ms. Vest, and [not] Mr. Murray. Holton murdered Ms. Vest because she threatened him after one of her friends had a drug-related conflict with Holton. Holton took the sailboat necklace from Ms. Vest, as well as another item that she kept in her bra. Witness #1 knows of at least two (2) other homicides Holton committed, but was hesitant to describe them for fear of being implicated. Witness #1 remembers two detectives told him they thought Holton was involved in this murder during their interview of him. Witness #1 also told investigator (Witness #2) that he wanted to say something "off the record". Witness #1 stated that "Regarding the sailboat necklace", he heard that it was a "nice boat" and it was "Good on Top" and "Really nice down below", Witness #1 stated that, if Mr. Murray was granted an evidentiary hearing or New trial, he'd be willing to testify on his behalf.

B. Other Admissible evidence not introduced At Trial and Relavent to Witness #1 Affidivit and statements

That the new evidence provided by Witness #1, when reviewed inconjunction with other admissible evidence not presented to the Jury establishes Murray Actual innocense.

The new evidence also discredits the states key witness (Anthony Smith) and the microscopic hair analysis conducted in this case entitling Murray a Judgement of Aquittal (J.O.A) alternatively, a new trial.

(1) on Sept. 17, 1990 witness#1 pawned a chain with a sailboat Pendant at Jimmies Pawn Shop, and used his identification and was with a white female in her late 20's, Approx. 5'6" with Sandy blond hair. This was one (1) day after ms. Vest murder was discover'd.

(2) on Sept. 27, 1990 Detectives went to ms. Vest place of employment and the Sailboat Pendant was shown to Cheryl Leigh White and she identified the Pendant being exactly the same as the victim wore. The Pendant was also shown to Debbie Kolb Smith, ms. Smith advised that she was very familiar with the Victims sailboat Pendant because, her mother-in-Law had one exactly the same.

(3) on Sept. 18, 1990 Edward Pierce was interviewed by Detectives and stated that, around 4:30 am on Sept. 16, 1990 he was driving by the victims residence and noticed a light Sky blue Ford Ranchero, early 70's model parked in the field next to the victims residence and that he didnt see anyone around the Vehicle. Pierce was shown Photos of Walter Holtons Ford Ranchero and identified it as being the same vehicle he saw parked next to victims home.

(4) on oct. 2, 1990 Angela Lynn Wood was interviewed by Detectives (Holtons girlfriend) and stated she was with Holton on the weekend of the incident and they went to Sleep around 2300. Angela stated she got up the next morning at 0700 and looked out the window and saw Tony's (Holton) car was missing. Angela stated Holton NEVER mentioned his car was used in any homicide.

(5) on Sept. 16, 1990, Two(2) hours after Angela Wood noticed Holton car was gone, Holton then reported that his Ford Ranchero was stolen from his home and he left the keys in the ignition. A report was written by officer B.S. Dubberly and off. Dubberly noted in the report that a murder occurred at a nearby residence during the same time Frame. After being reported stolen, that same day, Holtons car was recover'd at 6827 N. main St. by Jim Butler and was located in the rear of Butlers used car lot. The police report noted that Det. Conn was called and advised of the recovery. Det. Conn stated it **was not** necessary to have the vehicle processed by an evidence Technician and the vehicle was stored at Tims Towing. It was Thought this vehicle was involved in another crime (Signal 5) but Det. Conn stated she checked and found this to be untrue.

The location where Holtons car was recover'd is 16 miles from the crime scene; 1.52 miles from K&P motors where Holton was employeed and; .65 mile from witness #1 mothers Home.

(6) on sept. 17, 1990 Det. Conn then requested the vehicle be processed and evid. Technician G. Powers Processed the vehicle and found Three(3) finger Prints. Clearly this delay in processing the vehicle caused critical evidence to be destroyed.

(7) on Sept. 26, 1990 Detectives interviewed Walter Holton and Holton stated that, he works with K&P motors at 25th and main street (16 miles from crime scene and 1.52 miles where his stolen car was recoverd). He was currently in a Half way house and had Just been released from

Prison on may 30, 1990 after spending 3 1/2 in Prison on a 12 year sentence for distributing Cocaine. Holton stated that he was staying on Julington creek the night of the incident with a white female named Angela Smith and they were there all night. on sept. 15, 1990 he Parked his car in the drive way and left the keys in it. When he woke up approx. 0750 sunday morning his car was gone. Holton stated when he received his car back, the Padded dash board was missing.

on Sept. 27, 1990 Holton was again questioned by Detectives and gave witness #1 as a Possible suspect who could have stole his vehicle.

on oct. 2, 1990 Holton was again interviewed by Detectives and stated that; witness #1 called two days ago and asked if Holton had sent money to his father who is in Prison. Holton told witness #1 about his stolen car and the homicide and witness #1 acted surprised.

on oct. 4, 1990 Holton was again interviewed. Holton stated that he's known witness #1 all of his life. several months Ago witness #1 gave Holton a ride to his Julington creek home and witness #1 knew where he was staying. Holton gave witness #1 name as a possibility of who may have stolen his car because witness #1 knew where his car was, also witness #1 mother lives in the area near 59th and main st. where the stolen vehicle was found. Holton made the statement to Detectives that he has been by the victims residence several times and saw that it was Dark around her residence. He has said to himself how easy it would be to Burglarize the victims residence. Holton also gave the name Timmy Pendergrass as another

Possible Suspect who could have stolen his vehicle.
(8) on Dec. 17, 1990 Detectives interviewed Witness #1 and where he got the sailboat Pendant from. Witness #1 stated from a girl who works at Southern Bell, He did not know her name. That he Pawned it at Jimmies Pawn shop. Witness #1 also stated that he goes by his mothers house about once a week and he last spent the night at his mothers house on or about the time he pawned the sailboat Pendant. (This would have been around the time of the crime and his mothers home is .65 of a mile where Holtons car was located). Witness #1 also stated to Detectives he usually smokes marlboro light cigarettes. (A maraboro cigarette pack was found at the crime scene and a marlboro light cigarette butt was found. DNA test was conducted on the cigarette butt in 2003 with No result).
(9) on Dec. 13, 1990 Detectives interviewed witness #1 mother who stated, it is unknown if he was at her house in Sept. 1990, Theres a Possibility he was. (Holtons stolen car was found near witness #1 mothers home)
(10) That numerous empty liquor bottles were found in the kitchen (on the floor) and in the bedroom of ms. Vest home. A bottle of Grenache; empty bottle of Seagrams; empty bottle of Rum; ushers scotch bottle; empty pill bottle and a syringe was found underneath the victim on her bed.
The reasonable conclusion is, Holton and "the cuban" Spent time drinking and shooting up cocaine while in the process of murdering MS. Vest. These bottles have never been tested for DNA or the Syringe for Drugs or DNA.

(11) The new evidence by witness #1 exculpate Mr. Murray, affirming that he bears no responsibility for the crimes he was convicted of. Instead, witness #1 statements indicate that only Holton committed these crimes. With this new evidence, all that is left of the states case against Mr. Murray is at most, a snitch, Anthony Smith, who admittedy attempted to Blackmail the state into reducing his sentence, admitted to "attempting" to seek the states assistance in comitting Fraud on the Court and that They (The state) could say Smith didnt understand his Plea agreement and could place the blame on smiths attorney and resentence Smith, (Mr. Murrays not suggesting the State went along with Smiths attempts), Smith admittedly Perjured himself and, admitted to obtaining facts of Mr. Murrays case from watching Americas most wanted. That Smith is [only] continuing his shenanigan that Mr. Murray "confesed" is hoping that the State will assist him with a sentence reduction and/or Parole for his "substantial" assistance because, As Smith Put it to the Court, "he is the states case against Murray" and the state owes him. Should Smith tell the Truth, That Murray never "confessed", Smith will then lose all hopes of any Sentence reduction and must continue to lie.

At a new trial, Mr. Murray would beable to expose Smith for the liar and Defrauder he is. Witness #1 testimony would, and does, expose Smiths lies and a J.O.A would be Granted or, Mr. Murray will be aquitted by a Jury. Witness #1 statements are credible and he has nothing to gain only to lose because, his life is at stake providing these statements in open court and,

Didnt Come forward sooner because he feared he'd be killed. Even today he fears for his life and is why his identity must remain confidential.

(12) At a new(if) the court allowed Q20 and Q42 to be admissible over objection and motion in Limine based on; the states failure to Authenticate the evidence FlaStat. 901.1, 90.102 and 90.103; more prejudice than Probative; Defence expert inability to examine these hairs after the State instructed Mike DeGugliemo to use ALL the evidence and save none for the Defence; The States concession in Post-conviction proceeding they attempted to find out who actually handled and mounted the hair evidence but this attempt was unsucceful and the hair evidence would be inadmissible State v. Scott 33 S.W. 3d 746, 760-61 (Tenn 2000); State v. Gannon 254 S.W. 3d 287, 297 (Tenn 2008). Then Murray could argue:

The new evidence questions the reliability of the microscopic hair analysis and Agent Dizinnos testimony. It could be argued to a Jury that numerous suspects (including Holton) hairs were never microscopically examined and, The scientific community requires [ALL] Possible Donors hairs be examined. This wasnt done nor was the victims boyfriends hairs even collected and tested. That the hair evidence belongs to Holton and/or other suspects that have never been tested to Murrays Knowledge.

That it could be argued that the state intentionally instructed Mike DeGugliemo to use All the evidence so the Defence couldnt impeach Agent Dizinno microscopic exam, and the State couldnt risk a Defence microscopic

expert rebutting Dizinnos examination.

That zero Ø Defence witnesses were called at Mr. Murrays last trial and at a new trial with witness#1 testimony, the Defence could present a Defence expert Challenging Microscopic hair analysis and its unreliability and that the new evidence supports the arguement that; The hairs in this case have been mixed-up, contaminated, alter'd, confused, Tamperd with [or] That Agent Dizinno's exam was Flawed and incorrect and the hairs Didnt microscopically match Mr. Murray. An expert could inform the Jury about the importance of testing ALL possible Donors and without such, the exam in this case is unreliable. (SEE: Ensuring scientific validity; www.whitehouse.gov.(2016)

That it could be argued to a Jury that a True Conspiracy Theory between the State and Police to wrongfully arrest and convict Mr. Murray existed. The new evidence by witness#1 supports this Theory inconjunction with, all the false testimony used to wrongly convict Mr. Murray such as Anthony Smith. That the State has turned a blind eye to such to ensure Mr. Murray is convicted and Denied Due Process. The State ridiculed the Conspiracy Theory at Mr. Murrays last trial in Closing arguements with its trial by Ambush tatics but, The new evidence supports a Conspiracy Theory Defence and Mr. Murrays entitled to present such Defence before a Jury.

That a defence expert could explain to a Jury that the Microscopic exam in this case was Flawed and unreliable where, The FBI lacked protocols, Lacked quality assurance guidelines in the hair and fiber unit, that analyst

within the hair unit were [all] operating under different standards when conducting hair exams, That Agent Dizinno failed Proficiency testing of microscopic hair analysis rendering his exam in this case unreliable and, hair analysis hasn't been validated and is often wrong.

That if the court allowed Q-20-42 over objection for failure to Authenticate, mr. Murray could impeach Agent Dizinno with his False testimony in prior proceeding concerning his Forged initials on all the evidence. Agent Dizinno testified in mr. Murrays first Trial that, ALL the evidence had his initials that **he** wrote and could recognize the evidence based on such (First Trial T.S. p. 13-18). Dizinno Continued to Mislead the Court in mr. Murrays Second Trial (T.S. p. 13-18, 21-30); Third Trial (T.S. p. 13-17) and mr. Murrays Fourth trial (p. 904-905, 913). It wasn't until **AFTER** ALL The evidence was introduced in Murrays Fourth Trial before Dizinno admitted it was not his writting on the evidence and "Some one" placed his initials on the evidence (Fourth trial T.S. p. 940). Clearly, Dizinno intentionally misled the court and he has No idea where or what Q-20, Q-42 is, where it came from, whether its been Tampered with, Alterd, mixed-up, confused or misplaced rendering it unreliable and inadmissible. However, more evidence between the State and its witnesses to conspire together to misled the court and Juries. Yet the State Turns a blind eye to this False testimony and chain of custody to ensure it obtains a conviction. (The State argued on Direct appeal these Arguements were not developed or Preserved; State Answer brief p. 15, 21, 24, 32, 39, 52, 55, 60, 62)

(13) At a new trial counsel can file a motion in Limine to Preclude the State from introducing any evidence from Taylors case in an attempt to Prejudice mr. murray. If denied, mr. Murray can file motions to exclude that evidence based on the states inability to Authenticate the evidence, that the State submitted False testimony to establish Chain of custody and, The States misconduct of Turning a Blind eye when its evidence establishes Probable Tampering and/or Altering evidence.

The State Presented testimony at mr. Murrays fourth trial by evidence Tech. G. Powers, who testified that a Turquoise blouse was recoved from the crime from under the victims head.

The State Then Presented testimony by FDLE Agent Hanson who testified the Turquoise blouse tested Postive for semen (Blood Type A)

However, Murray has discoverd that Powers testimony was false and the state has ignored and Turned a blind eye to such. That the state is conspiring with its witnesses to submitt Fraudulent evidence and testimony and, these pleadings through-out establish a Pattern by the Prosecutor and its witnesses.

A police report list numerous items collected from the scene and was written by evid. Tech G. Powers. In the report it list item-#10 as a white blouse with blood stains under the victims head on the floor. FDLE documents list this exhibit as a white blouse with blood stains as well. However, The exhibit that was introduced by the state at trial was a Turquoise blouse Not a white blouse, mr. Murray has reviewed the crime scene

Video that clearly depicts a white blouse under the Victims head with blood on it, not a Turquoise blouse.

The State is unable to Authenticate the "Turquoise" blouse and allowed evid. Tech. Powers to testify untruthfully regarding the evidence collected. The State is unable to say whether the Turquoise blouse is from this case or, someother case and would be inadmissible in any future Proceeding. Again, theres a continious Pattern by the state and all its witnesses to provide false testimony in an attempt to Authenticate evidence and establish a chain of custody. The Crime Scene Video Shows beyond any Doubt it was a white blouse under the victims head not, a Turquoise blouse.

Additionally, Hanson's testimony that the Turquoise blouse tested Postive for semen is unreliable. Not only did the turquoise blouse not come from this crime but, Hansons notes reveal that the Turquoise blouse had a Alchol substance on it that could cause a false Postive for semen and, those results are unreliable, and inadmissible in any future Proceedings. Clearly the states witnesses have shown a Pattern of "Coloring" there testimony to Authenticate evidence and establish a false chain of custody.

Additionally, Holtons blood has never been tested to determine if it matched any evidence recoverd (alledgally) from the Turquoise blouse. Again, witness #1 supports the allegations that the state and its witnesses have conspired together to wrongfully convict Mr. Murray.

(14) once again, the Pattern of manipulating evidence and testimony has continued by the Prosecutor, and its witnesses. At trial the State introduced a White Garment (Tube Top)

States EX-54 and introduced a photo showing a sink stopper on the counter of a sink and argued to the Jury that, because the sink stopper was sitting on the sink, it "shows" someone washed something in the sink.

That the State misled the Jury intentionally and its own evidence establishes such. Prior to collecting any evidence from the crime scene, a video of the scene was made. That video clearly establishes, as well as, photos that there wasn't any "sink stopper" on the sink Prior to evidence being collected from the sink. someone at the crime scene had to put the sink stopper on the sinks edge. That "someone" collecting evidence must have washed something and placed the stopper on the Sinks edge.

That the evidence collected at the crime scene isn't the same evidence introduced at trial. evid. Tech. Powers testified that he collected a "white nightie" from the Sink however, FDLE testified to receiving a Tube Top. The State hasn't explained this discrepencie and the Tube Top would be inadmissible at any future proceeding because it cant be Authenticated.

(15) That at a new trial Mr. Murray cannot be retried for Theft where Judge Arnold Previously aquitted Mr. Murray of theft, Double Jeopardy prohibits such.

That a Fundamental Error went uncorrected at Mr. Murrays Fourth trial and can be corrected at anytime inconjunction with a Double Jeopardy violation. Mr. Murray was charged with Burglary with a Theft and at the close of all evidence during the guilt Phase, the trial court ruled it would not allow the Jury to decide Theft. In essence, the

trial court aquitted Mr. Murray of Theft. However, the Double Jeopardy and Fundamental error occurred when instructing the Jury on murder and Burglary, the court allowed the Jury to be instructed that Mr. Murray could be convicted of murder and Burglary if a "Theft" ocurred. Mr. Murray had allready been aquitted of Theft Therefore, Theft couldnt be reasons to convict for murder and/or Burglary. This can be litigated as a seperate claim once conflict free counsel is appointed.

(16) At a new trial counsel can move to Dismiss the sexual battery charge where FDLE tested swabs submitted from the medical examiners office but, those swabs Didnt confirm a sexual battery ocurred. Swafford v. State 125 So.3d 760, 776 (Fla. 2013).

(17) That the states Latest DNA testing in Dec. 10, 2016 lead to the true Perpatrators of The crime [or] the evidence has been contaiminated, mixed-up, or Tamper'd with. That Murray has Argued the evidence is unreliable and cant be Authenticated and the court denied/ignored those objections. The DNA of atleast four (4) unknown suspects appear and Holton and other suspects DNA types havent been provided to the Defence pursuant to Brady / Giglio ; This issue cant be fully litigated until Discovery is provided.

Additionally, The DNA test supports witness #1 Statements leading to the true perpatrators in this case. Hair from the victims body matched Ms. Vest and another unknown suspect. The State has ignored this evidence. The Fla. Sup. Ct. in Murray II found Contaimination to be a problem with the evidence.

C. Legal Standard - The Fla. Sup. Ct. in Richardson v. State 546 So.2d 1037, 1039 (Fla. 1989) explained that claims based on newly discoverd evidence are cognizable on Post-conviction review. To obtain a new trial based on newly discoverd evidence; 1) the evidence must not have been known by the trial court, the parties, or counsel at the time of the trial, and it must appear that the defendant or defence counsel could not have known of it by the use of due diligence; 2) that newly discoverd evidence must be of such a nature that it would probabley produce an aquittal or yield a less severe sentence on retrial. A Defendant can only learn of new evidence when the witness chooses to disclose it. Burns v. State 858 So.2d 1229, 1230 (Fla. 1DCA 2003).

To reach a conclusion of Probable aquittal on retrial or likihood of a reduced sentence, the trial court is required to consider all evidence that would be admissible at trial and then evaluate the weight of both the newly discoverd evidence and the evidence that was introduced at trial. Robinson v. State 770 So.2d 1167 (Fla. 2000). Importantly, as the Fla. Sup. Ct. held in Lightbourne, and more recently in Swafford, a Post conviction court must even consider testimony that was previously excluded as procedurally barred or presented in another Post conviction proceeding in determining if there is a Probability of an aquittal. Swafford v. State 125 So. 3d 760, 775-76 (Fla. 2013); Lightbourne v. State 742 So.2d 238, 247 (Fla. 1999). In other words, this analysis requires a prospective approach as to how all evidence (even evidence previously found to be procedurally barred) would affect the Jury's verdict.

D. The evidence was unavailable at the time of trial Through Due Diligence.

Because witness#1 only decided to disclose this evidence until recently, mr. murray could only learn of this evidence when this witness chose to disclose it. witness#1 explained in his affidavit and statements to witness#2 that Holton was a very Dangerous person who had put a "hit" out on him before. That he feard Holton and even today, fears for his safty if he testifys in mr. murrays case. this satisfies the "Due Diligence" standard of this newly discoverd evidence claim. SEE: Nordelo v. State 93 So.3d 178, 185 (Fla.2012); Burns v. State 858 So.2d 1229, 1230 (Fla. 1DCA 2003); Walker v. State 185 So.3d 561 (Fla. 1DCA 2016); Blackmon v. State 102 So.3d (Fla. 4DCA 2012); Jimenez v. State 997 So.2d 1056, 1064 (Fla. 2008); Wilson v. State 188 So.3d 82, 85 (Fla. 3DCA 2016).

E. Witness#1 new statements would Probably Produce an Acquittal on retrial.

Witness#1 statements exculpate mr. murray, affirming that he bears no responsibility for the crimes he was convicted of. Instead, witness#1 statements indicate that only Holton comitted these crimes and, that angela smith gave a false alibi for Holton. The only evidence left is anthony smith, who has admitted to comitting Fraud on the court and attempting to get the state to conspire with him in his Fraudulent acts. However, a suspicion is insufficient to sustain a Conviction:

Evidence which furnishes nothing stronger than a suspicion, even though it would to Justify the suspicion that the Defendant Comitted the crime, is not sufficient to sustain a Conviction..... Ballard 923 So.2d at 482

(quoting Davis v. State 90 So.2d 629, 631, 32 (Fla. 1956).

Because a newly discoverd evidence claim requires a prospective analysis, (in other words what evidence could be presented in a new trial, including evidence previously found to be Procedurally barred). Witness #1 testimony is presented to a Jury, Mr. Murray will be aquitted, or more likely, the States case will not survive a J.O.A and Mr. Murray will not be brought to trial at all. See: Hildwin v. State 141 So.3d 1178 (Fla. 2014)

In addition to witness #1 testimony, Mr. Murray has outlined other admissible evidence supporting actual innocense not previously presented to a Jury (see: p. 7 thru 19 of This motion) If such was presented Mr. Murray would be aquitted.

This Court should apply the manifest injustice standard when reviewing this new evidence claim and this court has the responsibility to correct that manifest injustice if it can. see: Williams v. State 316 So.2d 267, 274 (Fla. 1975); U.S. v. Quintana 300 F.3d 1227, 1232 (11th Cir 2002). Lago v. State 975 So.2d 613, 614 (Fla. 3DCA 2008).

ISSUE II

Trial Counsel was ineffective in failing to Discover Witness #1 and his exculpatory statements and, in not Presenting other evidence of Actual innocense

Although Mr. Murray has raised the new evidence in claim number 1, Murray raises the claim in the alternative that trial counsel should have discoverd such, should the court decide it could have been discoverd sooner.

Additionally, Murray argues that trial counsel was ineffective in not presenting other evidence of actual innocense (See: page 7 thru 19) of this motion. Had trial counsel submitted such facts and arguements, mr. Murray would have been aquitted.

mr. Murray request leave to Fully plead this claim once conflict counsel is appointed as mr. Murray has had on Two (2) days to write this motion to ensure the issues werent time barred.

Issue III

That the State has violated Brady / Giglio in not Disclosing exculpatory and Impeachment evidence

Again, Due to time constraints, mr. Murray request leave to Fully Plead these claims once conflict free counsel is appointed. The State has failed to Disclose impeaching / exculpatory evidence and mr. Murray adopts and incorparates his arguements made in his Sept. 15, 2017 and Nov. 13, 2017 motions Pending in this Court, which address what evidence the State has failed to disclose.

Wherefere, mr. Murray request this court to order the following, but not limited too;

(1) That This court accept these issues as timely filed based on counsels failure to act with Diligence in filing Such,

(2) Relinquish Jurisdiction for appointment of Conflict

free Counsel,
(3) That conflict free counsel be permitted to file a new trial motion in the lower court addressing the new evidence of actual innocense and,
(4) order the Lower Court to determine how the new evidence is relavent to claims denied on April 4, 2017 of mr. murray 3.851 motion that was denied.

Respectfully submitted.

Gerald D. Murray

Gerald D. Murray 291140
Union Corr. Inst.
P.O. Box 1000
Raiford Fl 32083

Certificate of Service

I Gerald D. Murray hereby certify that a True copy has been Provided to the below on this 20th Day of Nov. 2017 by U.S. mail.

Jennifer Donahue
off. Att. General
PL-01 The Capitol
Tallahassee Fl 32399

Rick Sichta esq
301 W. Bay St. suite 14124
Jax Fl 32202

Chief Judge Mahon
Duval County Ct. house
501 W. adams Street
Jax, Fl 32202

Bernie DeLaRionda
Asst. State Att.
311 W. Monroe St
Jax Fl 32202

Clerk of Court
Duval County Ct. house
501 W. adams St
Jax Fl 32202

Clerk of Court
Fla. Sup. Ct
500 S. Duval Street
Tallahasse Fl 32399

EX-1

Affidavit Witness # 1

[redacted] INVESTIGATIONS

AFFIDAVIT

Re: Case Number 16-1992-CF-03708-AXXX-MA

Name of Affiant: [redacted] (Last) [redacted] (First) [redacted] (Middle)

Address: [redacted] (City) [redacted] (State) [redacted] (Zip Code)

Telephone #: [redacted] (Cell) ( ) (Home) ( ) (Work)

State of Florida
County of Duval

I, [redacted] (Name of Affiant) do hereby make the following statement, consisting of 1 page(s)
To [redacted] Investigations:

I, [redacted] worked for Walter Holton in the early 90's doing odd jobs. Holton sold large amounts of cocaine with a Cuban Friend from Miami, who drove a Porsche. Both men were dangerous if you crossed them and were known to put contract hits out on people who crossed them. I was questioned by Police about a sailboat necklace that was possibly connected to a homicide. I got the sailboat necklace from [redacted], who was the girlfriend of Walter Holton at the time. She told me that she got it from his Cuban friend, who told her to "never get rid of it". I did not tell the police where I got the necklace from, because I was afraid of Walter Holton and his Cuban friend. My DNA was collected by the police and I was cleared of any involvement with the homicide case.

I have read each page of this statement. Each page bears my signature. If there are any corrections, each correction bears my initials. I hereby certify that the facts contained herein are true and correct to the best of my knowledge.

[redacted]
Signature of Affiant

State of Florida
County of Marion

Sworn to and subscribed before me this 15 day of September, 2017.

Personally Known ____ or Produced Identification X
Type of Identification produced: FL DL Card

[redacted]
Notary Public – State of Florida

My Commission Expires: [redacted]

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION # FF 999942
EXPIRES: August 6, 2020
Bonded Thru Budget Notary Services

In the Supreme Court of Florida

Gerald D. Murray

V.

State of Florida

case NO: SC17-707

NOV 20, 2017

Dear clerk, Please find enclosed a motion for writ of Habeas Corpus / New trial / Successive 3.851 and Request for Relinquishment to the trial court to appoint conflict free counsel to address newly discoverd evidence of actual innocense.

Enclosed original and 1 copy.

Please Note: I currently have 2 motions Pending requesting conflict free counsel filed Sept 15, 2017 and Nov. 13, 2017.

FILED
JOHN A. TOMASINO
DEC - 5 2017
CLERK, SUPREME COURT
BY

Thank You.

Gerald Murray

Gerald Murray 291140
Union Corr. Inst.
Po Box 1000
Raiford, Fl 32083