IN THE SUPREME COURT OF FLORIDA

CASE NO. SC01-24

LOWER TRIBUNAL CASE NO. 87-8047

RICHARD HAROLD ANDERSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA

REPLY BRIEF OF THE APPELLANT

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PRELIMINARY STATEMENT

This brief is filed on behalf of the Appellant Richard Harold Anderson in reply to the Answer Brief of the Appellee, the State of Florida. The record on appeal concerning the original trial court proceedings shall be referred to as "R ___" followed by the appropriate page numbers. The post-conviction record on appeal will be referred to as "PC-R ___" followed by the appropriate page numbers. The evidentiary hearing transcripts will be referred to as "EH ___" followed by the appropriate page numbers. The Initial Brief of the Appellant will be referred to as "IB ___" followed by the appropriate page numbers. The Answer Brief of the Appellee will be referred to as "AB ___" followed by the appropriate page numbers. Appellant will rely upon his arguments in the Initial Brief of Appellant on Arguments I-B, II-A and II-B, III, IV and V.

ARGUMENT I

THE TRIAL COURT'S RULING FOLLOWING THE POST-CONVICTION EVIDENTIARY HEARING WAS ERRONEOUS.

The Appellee presents an answer which misses the law and facts regarding the two major issues before this Court as to this claim.

A. Perjured Testimony Before the Grand Jury.

The Appellee presents a request to overturn the paragraph 5 finding in the Evidentiary Court's August 25, 2000, ruling "[T]hat at least one day after the Grand Jury testimony the FDLE knew that Connie Beasley Hunt had committed perjury before the Grand Jury and that said knowledge is then chargeable to the State Attorney's Office." (Final Order, PC-R 533-538; as modified, PC-R 557-59; 560-64)(AB 8 and 14-16).

The Appellant previously conceded in the Initial Brief (IB at 17) and the Appellee is correct when it states that there was an Evidentiary Hearing failure to prove the knowing presentation of perjured testimony to the Grand Jury as was narrowly drawn in the 3.850 motion and Huff order. (AB 14) (Order, PC-R 498-502).

However, a simple denial of Claim I would have been sufficient if that was the sole impact of the testimony and evidence presented at the Evidentiary Hearing.

To the contrary, the Evidentiary Court did not consider that failure to be the end of the claim or of the consideration of the Appellant's constitutional rights. In fact, it is obvious that the Evidentiary Court was disturbed by what it heard and saw.

The Evidentiary Court consequently expanded its findings to include the State's "at least one day" post-grand jury knowledge of Beasley Hunt's perjury and the court's position "... that the

better practice would have been to return to the Grand Jury, and get a new indictment." (paragraph 7, Final Order, PC-R 537).

The basis for the Evidentiary's Court's finding of known perjury by July 16, 1987, was not specifically outlined but, clearly, it was the impact of analyst Parker's July 15, 1987, report and opinion that swayed the court. In particular, as noted and as the Evidentiary Court found, Parker's opinion contradicted Beasley's Hunt's July 24, 1987, statements and trial testimony about the details of the shooting of Robert Grantham.

The Evidentiary Court summarized the importance and handling of Leroy Parker's role in the case as the FDLE Crime Lab analyst as follows:

> "That FDLE Crime Lab analyst, Leroy Parker, prepared a report and signed it on July 15, 1987 (the same day of the Grand Jury testimony). Upon later review and analysis Mr. Parker's opinion (which was based upon the blood patterns in the vehicle) contradicted Beasley Hunt's testimony." (Final Order, PC-R 536).

The Evidentiary Court was referring to Parker's trial and Evidentiary Hearing testimony that Grantham was most likely shot by a person standing outside the driver's door and that his body was removed through the passenger side door. (R 1738-40)(EH 103-04). This contradicted Beasley's "final" testimony that Anderson was in the rear seat directly behind Grantham when

Grantham was shot in the driver's seat. Parker himself learned about Beasley's contradictory explanation only at the time of the trial when he appeared as a defense witness. (EH 107; 111).

The Appellant, of course, believes that the Evidentiary Court erred in finding "[T]hat the subsequent determination after the Indictment was returned that the witness had lied in some particulars to the Grand Jury is not a factor..." (paragraph 4, Final Order, PC-R 537).

Beasley's lies were a factor and this case turns on the following. If, in fact, the State had returned with Beasley Hunt to the Grand Jury after July 16 or July 24, 1987, the State would have been compelled to present Analyst Parker as a Grand Jury witness. Because material components of her "explanation" of the shooting of Grantham would be contradicted by Parker, it is inconceivable that Beasley Hunt would have been believed. The results could not have "again" been the same as the Evidentiary Court surmised.

It is how the State proceeded to trial without Parker that tells the true impact of the State ignoring his analysis and opinion. This purposeful ignoring of Parker's work took place in the context that only nine (9) days elapsed from the time of his July 15, 1987, report to the July 24, 1987, plea agreement

with Connie Beasley.

The State, through its FDLE agents, had turned its focus on the Appellant once it identified the telephone call linkage to Appellant's condominium. (testimony of Agent Parker, EH 196-97). It trapped itself into going with what ever perjured explanation Connie Beasley was presenting instead of dealing with Agent Parker's analysis that contradicted Beasley's as to the details of the shooting.

It is remarkable that Parker's fellow FDLE agents did not make any effort to follow up with Parker in an effort to understand the significance of his findings that the shooter of Grantham was likely standing outside the driver's door of the car. FDLE did not provide Parker with any additional information about the case; for example, he never was provided a copy of the medical examiner's report which would have shown the location of the wounds on the victim's body. (R 1739-40)(EH 102).

It is clear that the State Attorney's Office recognized the contradiction in Parker's report when compared to Beasley's "final" explanations because it chose not to use Parker as a witness for the State.

The trial record, of course, reveals that Parker was,

instead, subpoenaed and called to testify by the defense. Parker himself noted that this was more than an unusual situation when he testified at the Evidentiary Hearing:

> "A. Because I think when I got a subpoena from defense attorney, it was somewhat strange to get a subpoena from a defense attorney to come to testify in the case. And I remember coming down early in the morning and sitting around all day until in the afternoon when I testified. Usually when I do cases, the subpoena comes from the State Attorney's Office to come down and testify and then you are cross examined by the defense attorney. So this was an unusual case. That much I can remember." (EH 112).

It is incomprehensible that the due process constitutional rights of Appellant can really turn on a one day difference as to the time the State knew of Beasley's perjured Grand Jury testimony.

It is incomprehensible that the due process constitutional rights of Appellant can turn on the fact that Parker mailed his report to the FDLE office in Tampa (EH 114) instead of calling his fellow agents or the prosecutors by telephone on or at least by July 15, 1987.

When presented with Appellant's direct appeal, this Court stated that "until now Florida has not directly addressed the specific issues raised when the state presents false testimony to the grand jury or discovers before trial that the indictment

upon which a defendant is to be tried is based upon perjured testimony." Anderson v. State, 574 So.2d 87, 90 (1991).

Recently, this Court referred to the Anderson precedent regarding perjured grand jury testimony as follows:

> "This Court held that "due process is violated if a prosecutor permits a defendant to be tried upon an indictment *which he or she knows is based on perjured, material testimony* without informing the court, opposing counsel, and the grand jury." Evans v. State, 26 Fla.L.Weekly S823 (Fla. Dec. 13, 2000)(emphasis added in original), citing Anderson, 574 So.2d 87, 91 (1991).

The State is wrong when it says that the Evidentiary Hearing testimony "elicited nothing that was not known before [sic] at trial" (AB p.19) and that "all of this was known to the jury who heard her testimony and by this Court when it affirmed judgment and sentence." (AB 18). What was not known at trial in 1988 or by this Court in 1991 was the resulting context: for the State to inform the court, opposing counsel and the original grand jury and return for a new indictment would mean presenting the conflicting and contradictory testimony of FDLE analyst Parker and Beasley.

Appellant argues here that given the full picture, a grand jury would have accepted Parker's background, experience and position as an FDLE analyst and rejected anything that Beasley would have presented on second try.

The law is the same today as in 1987 and 1991. The due process clause of the Florida constitution is violated by the State when "...it requires a person to stand trial and defend himself against charges that it knows are based upon perjured, material evidence. Governmental misconduct that violates a defendant's due process rights under the Florida constitution requires dismissal of criminal charges. State v. Glosson, 462 So.2d 1082, 1085 (Fla. 1985) as cited in Anderson, 574 So.2d 87, 91-92 (1991).

B. Testimony at the Evidentiary Hearing Reflect Errors in Portions of the Holdings of this Court on Direct Appeal.

The Answer Brief of the Appellee outlines how many times and in what circumstances Beasley lied and correctly noted that Beasley also lied about the location and disposition of the victim's body (AB 17) among a multitude of others details and matters (AB 17 and 18). Overlooked by the State is how these multiple lies by Beasley

affect two key errors made by this Court in its direct appeal opinion.

Reference is, namely, to this Court's finding that "[I]n every statement Beasley made, she consistently accused Anderson of the murder." Anderson, 574 So.2d at 92. In fact, Beasley

did not accuse the Appellant of the murder when first questioned by FDLE agents on June 4, 1987. (IB 9-10; testimony of Agent Velboom, EH 126-28; 147). The Evidentiary Court noted this fact when it summarized that "FDLE Agent Velboom testified that he first interviewed Connie Beasley Hunt on June 4, 1987, at which time she denied knowing anything about the victim's disappearance or the disposition of the victim's body..." (Final Order, PC-R 534). Connie Beasley, therefore, was not consistent in every statement.

Secondly, reference is to this Court's finding that "... Beasley's grand jury testimony, although false in part, was not false in any material respect that would have changed the indictment." Anderson, 574 So.2d at 92. In fact, the material aspects of motive and opportunity were repeatedly changed by Beasley. (IB 18-19; testimony of Agent Davenport, EH 192-94).

CONCLUSION AND RELIEF SOUGHT

Based on the forgoing, the lower court improperly denied Rule 3.850 relief to Richard Harold Anderson. This Court should order that his conviction and sentence be vacated and remand the case for such relief as the Court deems proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Reply Brief of the Appellant has been furnished by U.S. Mail, first class postage prepaid, to The Honorable Robert J. Simms, Circuit Court Judge, Hillsborough County Courthouse, 419 Pierce Street - Room 391, Tampa, Florida 33602; Robert J. Landry, Esq., Assistant Attorney General, Office of the Attorney General, Westwood Building, Seventh Floor, 2002 North Lois Avenue, Tampa, Florida 33607; Shirley Williams, Esq., Assistant State Attorney, Office of the State Attorney, Hillsborough County Courthouse, Fourth Floor, 800 East Kennedy Blvd., Tampa, Florida 33602; and Richard Anderson, DOC# 042115; P5218S, Union Correctional Institution, Post Office Box 221, Raiford, Florida 32083 on this _____ day of January, 2002.

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CERTIFICATE OF COMPLIANCE

We hereby certify that the foregoing Initial Brief of Appellant was generated in Courier New 12-point font pursuant to Fla.R.App.P. 9.210.

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