IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

Case No.: 05-2007-CF-049458-AXXX

STATE OF FLORIDA,
Plaintiff,

vs.

CHRISTOPHER J. WOOD,
Defendant.

MOTION FOR POSTCONVICTION RELIEF

COMES NOW, the Defendant, CHRISTOPHER J. WOOD, in proper person, pursuant to Fla. R. Crim. P. 3.850(b)(1), moves this Honorable Court to vacate his judgment, conviction, and sentence based on newly discovered evidence, and states:

1. On July 12th 2007, after a jury trial, I was found guilty of: Count 1, Kidnapping; Count 2, Felony Battery; Counts 3, 6, 7 and 8, Sexual Battery; and, Counts 4 and 5, Sexual Battery by use of Great Force.

2. On October 11th 2007, this court sentenced me to: 30 years in the custody of Department of Corrections for Count 1; 5 years in the custody of the Department of Corrections for Count 2; 15 years in the custody of the Department of Corrections for Counts 3, 6, 7 and 8; and, 51.75 years in the custody of the Department of Corrections to be followed by life probation for Count 4 and 5.

3. The judgment, conviction and sentence was affirmed on appeal on August 5th, 2008. Wood v. State, 987 So.2d 1229 (Fla. 5th DCA 2008).

4. Subsequently, I have filed several postconviction motions:

a) a rule 3.850 motion, denied January 8th, 2009. Affirmed on appeal on May 12, 2009. Wood v. State, 11 So.3d 966 (Fla. 5th DCA 2009);

b) a second rule 3.850 motion, denied April 19th, 2011. The Appeal was voluntarily dismissed in order to give this court jurisdiction to rule on the Motion To Vacate Orders Or Judgment And Sentence Due To Fraud Committed Upon This Court, And Request For Hearing, which was denied April 23, 2012; and

c) an Amended First Rule 3.850 motion, which was dismissed on September 26, 2011 for lack of jurisdiction due to the above mentioned appeal. The issue was affirmed on appeal March 13th, 2012. Wood v. State, 2012 WL 889561 (Fla. 5th DCA March 13, 2012).

d) a Motion to Vacate Orders or Judgment, conviction And Sentence Due To Fraud Committed Upon This Court, And Request For Hearing was filed in this Court on January 5th, 2012, denied on April 23, 2012, and is currently pending appeal in the 5th District Court of Appeal.

5. I now file the instant motion for postconviction relief raising claims of newly discovered evidence and a cumulative error claim.

6. The issue raised in ground one was raised in the Amended First Rule 3.850 motion which was dismissed on September 26th, 2011, due to a lack of jurisdiction. However, the issue was never decided on the merits.

7. The issues raised in this motion were not raised in any previous motion because they were unknown at the time they were filed.

8. The Honorable Charles M. Holcomb presided over the trial and sentencing. The Honorable John M. Griesbaum ruled on the first rule 3.850 motion. The Honorable Robert T. Burger ruled on the second rule 3.850 motion and the Amended First rule 3.850 motion. And, the Honorable Charles Crawford ruled on the Motion to Vacate Orders or Judgment, Conviction

And Sentence Due To Fraud Committed Upon This Court, And Request For Hearing.

9. Jeffrey Nuss, from the Office of the Public Defender, represented me during trial; Private Attorney, John Albert, represented me during sentencing; Allison Havens, from the Office of the Public Defender, represented me during my Direct Appeal. All other pleadings have been filed pro se.

JURISDICTION

This Court has concurrent jurisdiction to rule on the merits of this motion despite the order denying the Motion To Vacate Orders Or Judgment And Sentence Due To Fraud Committed Upon This Court, And Request For Hearing, which is currently pending appeal because the issue raised within the two motions are unrelated.

The issue of concurrent jurisdiction was most recently and thoroughly addressed in *Bryant v. State*, 32 Fla. L. Weekly D102, WL 28713 (Fla. 2d DCA 2012) when Bryant appealed the dismissal of his rule 3.850 motion in which he raised the ground of newly discovered evidence. The post conviction court dismissed his motion for lack of jurisdiction because he had a pending appeal on an earlier order denying postconviction relief. The *Bryant* Court reversed and remanded for the postconviction court to consider Bryant's motion on the merits because it had concurrent jurisdiction.

The Bryant court further explained that "concurrent jurisdiction exists when a second post conviction motion raises new issues unrelated to those reviewed in a first postconviction motion pending an appeal at the time of filing of the second motion, *regardless of the types of motions*. *Id.* at *1 (Emphasis Added). Additionally, the *Bryant* Court expressly receded from its contrary holdings in, for example, *Ruth v. State*, 635 So.2d 1061 (Fla. 2d DCA 1994), and explained that the Fifth District has now followed suit in the "clear trend in favor of concurrent jurisdiction." *Id.* at * 3. See *Boule v. State*, 64 So.3d 753 (Fla. 5th DCA 2011).

STATEMENT OF FACTS

I was arrested on January 14th, 2007, after my wife[1] reported that I raped her, tied her to a tree and video taped the event when we "stopped for a beer and bathroom brake" while canoeing (see initial statement to police of Amy Wood). She said she met me on the side of the road next to a canal in our neighborhood and was going to help me "do some work." (See initial statement of Amy Wood to police). Later she testified that she was going to the woods that day to help me steal a boat motor so we could sell it and pay our mortgage. (see deposition of Amy L. Wood).

At trial, I explained that my wife and I were having financial trouble and decided to make an extreme pornographic movie in order to sell online and pay out mortgage which was due the following week. I explained that we both prepared for making the movie and to sell it,[2] and she brought the video equipment to the canoe when she met me that afternoon. After unsuccessfully making the video due to my lack of acting experience and lack of erection, I expressed the desire to leave but she repeatedly tried to get me to stay and make the movie so "that son-of-a-bitch will never get our house" (see end of video for these statement).

Upon leaving the wooded area I handed her the video and canoed to where the car was parked, whereupon I dropped her off and paddled further away to put the canoe up in the woods. I was riding home with her because it was dark and I rode my bicycle there.[3] Therefore, she waited approximately 10 minutes for me at the car where she put the video in the trunk of the car "to keep it safe". (see Amy's deposition).

After arriving at her parents' house, who were watching our children, she told me to "wait outside while [she] got the children so we could go home." (see Amy's Deposition). However, she called the police instead.

---

[1] My wife and I have since divorced, however, for the purpose of clarity and convenience I will refer to her as Amy or my wife in this motion.

[2] The title "Rape Island Video" was written in her handwriting on the video cassette.

[3] It was 4.5 miles from out home and thus impossible for me to carry all the equipment as she claims.

When the police arrived, I told them exactly what we were doing and explained that her parents must have found out and called the police because they never liked me anyways. However, the police informed me that it was my wife who was pressing charges. Confused, I explained that what she said was not true and our computer would, among other things, prove she was lying. They informed me they would collect the computer, which they did not do, and I was arrested, demanded speedy trial, and was convicted.[4]

HEARING ON NEWLY DISCOVERED EVIDENCE

Newly Discovered Evidence "is anything which tends to prove or disprove a material fact." *Regan v. State*, 787 So.2d 261 (Fla. 1st DCA 2001). When a trial court is ruling on a Motion For Postconviction Relief based on newly discovered evidence, it is required to accept the allegations as true. *McLin v. State*, 827 So.2d 948 (Fla. 2002). Rule 3.850 does not require supporting affidavits attached to postconviction motion alleging newly discovered evidence, only a brief statement of supporting facts. *Butler v. State*, 946 So.2d 30, 31 (Fla. 2d DCA 2006).

"To obtain a new trial based on newly discovered evidence, a defendant must establish two things: First, the defendant must establish that the evidence was not known by the trial court, the party, or counsel at the time of trial and that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal." *McLin* at 992. "Newly discovered evidence satisfies the second prong of this test if it weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Heath v. State*, 3 So.3d 1017, 1023-24 (Fla. 2009).

In determining whether newly discovered evidence requires a news trial, the trial court

[4] My apologies for the length of this motion and the number of caselaw. However, it is said that, *argumentum ab auctoritate est fortissimum in lege.*

must "consider all newly discovered evidence which would be admissible and must evaluate the weight of both the newly discovered evidence and the evidence which was introduced at trial. This determination includes consideration of evidence that goes to the merits of the case as well as impeachment evidence." *Hurst v. State*, 18 So.3d 975, 992 (Fla. 2009).

"Although cases may exist where the newly discovered evidence is obviously immaterial to the verdict, ordinarily, an evidentiary hearing is required for the trial court to properly determine whether the newly discovered evidence is of such nature that it would probable produce an acquittal on retrial. [And], so the appellate court can fully evaluate the quality of the evidence which demonstrably meets the definition of newly discovered evidence." *McLin* at 948.

Therefore, "summary denial is rarely appropriate if the trial court needs to assess the credibility of the new testimony" or evidence. *Id.* at 954. This is because there is "no opportunity for the trial court to evaluate the witness demeanor" *Id.* at 955. The court in *McLin* mandates "an evidentiary hearing unless the allegations are conclusively refuted by the record" *Id.* If the trial court finds the testimony is "inherently incredible" it cannot base this determination upon the claim by using the statement or affidavit if the record does not conclusively refute them. *Id.*

For example, an evidentiary hearing was required in *Londeverde v. State*, 971 So.2d 1030 (Fla. 4th DCA 2008). Finding codefendants statement was not inherently incredible because it would have been material to defendant's "independent act" defense. See also, *McCray v. State*, 933 So.2d 1226 (Fla. 2006) to determine if alleged recantation of testimony by witness was newly discovered evidence, and *Jackson v. State*, 646 So.2d 792 (Fla. 2d DCA 1994) to determine the credibility of fellow inmate that claims codefendant confessed to framing

defendant.

Therefore, the grounds raised in the instant motion, which are all incorporated by reference into this analysis, are all issues which require an evidentiary hearing to evaluate the credibility and weight of the newly discovered evidence and the evidence which was introduced at trial.

EVALUATING THE WEIGHT OF THE EVIDENCE

In considering the aforementioned responsibility of the trial court when considering newly discovered evidence and evaluating the weight of both the newly discovered evidence and the evidence which was introduced at trial, it appears from an abundance of case law that this can only be accomplished by the original trial judge who heard the testimony and evidence at trial. In this case that would be Judge Holcomb. However, due to his retirement and the passage of time of 5 years, this presents a problem and a new trial should therefore be granted.

It is well settled that "it is virtually impossible for any judge other than the actual trial judge to properly entertain a challenge to a jury verdict based upon the weight where as here, the credibility of the witness played such an important role. ... [A] careful consideration of the credibility of the witnesses cannot be adequately accomplished by a mere reading of the cold trial transcripts." *Sanford v. State*, 687 So.2d 315, 317 (Fla. 3d DCA 1997). "The demeanor, physical appearance, gestures, voice intonations, etc. of the witness while testifying are ... critical factors which bear on the credibility of the witness. And such factors clearly cannot be captured or articulated on a trial transcripts. Only the judge who actually presided over [the] trial and observed the witnesses will know what significance, if any, such factors played in the outcome of the trial." *Id.* at 317. A "successor judge generally does not have the authority to entertain [this evaluation] based on the greater weight of the evidence because a successor judge would be forced to rely on a 'cold' record." *State v. May,* 703 So.2d 1097 (Fla. 2d DCA 1997),

see also *Turner v. State*, 993 So.2d 996, 997 (Fla. 2d DCA 2007) (Holding in a "postconviction proceeding a successor judge may not rule on matters based on the credibility of witnesses that he has not heard.") *Acker v. State*, 823 So.2d 875, 876 (Fla. 2d DCA 2002) (holding that a successor judge who did not hear the witnesses or rule on their credibility could not sign a written order revoking probation). Additionally, see, *Johnson v. State*, 118 So.2d 806 (Fla. 1960) (holding that "where prosecutrix is solo witness her testimony must be carefully scrutinized so as to avoid unmerited conviction for rape.")

Therefore, since judge Holcomb is the only judge who has the authority to entertain this evidence, he should, according to law, be the one who hears this motion, "even if that requires the temporary assignment of retired judge [Holcomb] to sit as an associate judge in the case, or [grant me] a new trial because the trial court is unable to effectively provide the required evaluation of the weight of the evidence." *Kelly v. State*, 637 So.2d 972 (Fla. 1st DCA 1994). A new trial is expressly warranted if Judge Holcomb is unable to hear the motion because the "motion rests on the determination of credibility [and] resolution of conflicts." *May*, 703 So.2d at 1100.

However, even if the trial court temporarily assigns Judge Holcomb to this case, there is still the problem of the 5 years since trial. This "passage of time now makes this task much more difficult for him or any other trial judge" to review and evaluate the evidence that is required by law. *Kelly*, 637 So.2d at 977 (Holding the passage of 5 years since the original judge heard the testimony presented a problem with evaluating and weighing the testimony). See also *Turner*, supra, (holding that even if the original trial judge were available to evaluate and weigh the evidence and testimony, the proceedings should be held *de novo* "because so much time [2½ years] ha[d] past." *Id.* at 998.

Therefore, in considering this law, Judge Holcomb's unavailability, the passage of time, and because this case stands or falls upon the determination of one witness, my wife's, credibility, and because the evidence was and is now more so conflicting, a new trial should be granted in this case if the trial court is unable to effectively provide the required evaluation of the weight of the evidence.

Redacted

These entire pages have been redacted:

10

11

12

13

14

15

16

17

18

19

20

GROUND THREE – Conflict of Interest

I Have Acquired Newly Discovered Evidence In The Form Of A Conflict Of Interest Between Myself And Judge Griesbaum During The Time Which He Ruled On My First Postconviction Motion, Thus Rendering That Order Invalid.

The Honorable Charles M. Holcomb presided over my trial and prior to his retirement I filed my first 3.850 motion along with a motion to expedite ruling because of Judge Holcomb's retirement and the fact that he is the only judge who could weigh the weight of the evidence in a ground which was raised in the motion.

However, on January 9th, 2009, the Honorable John M. Griesbaum entered an order on the rule 3.850 motion summarily denying it as facially and legally insufficient without so much as a response from the State. On November 17th, 2010, an evidentiary hearing was held for a ground raised in my second rule 3.850 motion, whereupon I recognized Judge Griesbaum and questioned him on his identity. He confirmed: his home address; *Id.* at 4; that I worked for him, *Id.* at 10; that I caused damage to his home, *Id.* at 10; and that I knew his wife, *Id.* at 10. Subsequently, I filed a Motion To Disqualify Judge Griesbaum due to the extrajudicial conflict of interest between us which he granted on December 3rd, 2010. I did not know who Judge Griesbaum was prior to the ruling on my first 3.850 motion. Had I known, I would have filed a

Motion to Disqualify Judge Griesbaum prior to the ruling of my First 3.850 Motion.

I now raise the issue of newly discovered evidence, in that, the order entered on my first rule 3.850 motion by Judge Griesbaum was done so while he was biased against me due to our conflict of interest. It was discovered that Judge Griesbaum was the same John Griesbaum I had a conflict of interest with on November 17th, 2010 when he confirmed who he was. At no time prior to this could I have obtained this information with due diligence because I never suspected that Judge Griesbaum could be John Griesbaum until the day I saw him in court, where I recognized him, put the two names together, and asked him to confirm his identity. However, now that I am aware of this newly discovered evidence, it will probably produce an acquittal on a rehearing of the motion because the motion will be considered by an unbiased court.

The only case law concerning this ground is from our Supreme Court in *Steinhorst v. State*, 636 So.2d 498 (Fla. 1994) which states:

> "If on postconviction motion, trial court determines that facts on which claim that judge who ruled on prior motion should have been recused were unknown to movant or movant's attorney, and could not have been ascertained by exercise of due diligence, then trial could should grant motion for postconviction relief, and conduct new evidentiary *motion* on defendant's petition." *Id.* (Emphasis Added)

In that case, Steinhorst filed his first 3.850 motion which was denied by Judge Turner. He appealed and it was affirmed by our Supreme Court. After Judge Turner was no longer on the case, Steinhorst filed a second rule 3.850 motion seeking to have the judgment on the first rule 3.850 motion rendered "null and void" due to Judge Turner's conflict of interest at the time he entered his ruling. Successor judge Sirmons summarily denied Steinhorst's motion on procedural and substantive grounds. However, on appeal, the Supreme Court reversed and remanded stating 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 on a 3.850 motion." *Id.*at 500.

The court reasoned that, "there is no other conclusion that is consistent with one of the most important dictates of due process: That proceedings involving criminal charges must both be and appear to be fundamentally fair." *Id.* at 501 (citing *Scull v. State*, 569 So.2d 1251, 1252 (Fla. 1992). The court noted that:

> "One of the most basic tenets of Florida law is the requirement that all proceedings affecting life, liberty, or property must be conducted according to due process. Art I, § 9, Fla. Const.... '[D]ue Process' embodies a fundamental conception of fairness that derives ultimately from the natural rights of all individuals." *Id.* at 500-01.

The Supreme Court concluded instructing 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 vacating the 3.850 order entered by Judge Turner, and conduct a new evidentiary proceeding pursuant to rule 3.850." *Id.* at 500.

The State's only challenge to the issue was that it did not conform to the statute regarding recusal procedures. However Justice Kogan settled this argument when he, specially concurring, wrote: "The appearance of impropriety at issue here was so great that I believe due process has been seriously violated creating fundamental error under the due process clause of the Florida Constitution. [ ] No matter what section 38.06 says, a Statue cannot supercede a provision of the Constitution." *Id* at. 501. "We should not be parties to such an obvious miscarriage of justice, especially when the only remedy sought is a postconviction hearing before an unbiased court." *Steinhorst v. State*, 695 So.2d 1245, 1250 (Fla. 1997).

In the instant ground, this is all that I am requesting; a ruling on my first 3.850 motion before an unbiased court. The testimony from Judge Griesbaum once I confronted him concerning who he was shows that there was a direct conflict of interest between us years ago

while I worked for him. The conflict of interest in Steinhorst that was considered "so great" was Judge Turner previously representing the victim's estate. Surely, the direct conflict of interest between Judge Griesbaum and I could also be considered "great" enough to warrant relief.

Additionally, if it is argued that, "Judge Griesbaum's" order of recusal states that he "denies all allegations in the motion" and that I am a "desperate individual" who "has nothing to lose" and files "false documents ... lying under oath." Then this argument would be in error because the order is clearly incorrect. Judge Griesbaum confirmed in open court the situation which caused the conflict of interest between us. Furthermore, this order which states these inaccurate and contradictive remarks, is impermissible. It is well settled that "[i]n ruling on [a motion to disqualify], the judge cannot pass on the truth of the factual allegations set forth in the sworn motion or affidavit." *City of Hollywood v. Witt*, 868 So.2d 1214, 1217 (Fla. 4th DCA 2004). The Judge "has no right to pass upon the truth or falsity of the facts alleged therein; neither can he adjudicate the question of his disqualification." *Dickerson v. Parks*, 140 So. 459, 462 (Fla. 1932). Therefore, since it was confirmed that there was a previous situation resulting in a conflict of interest between Judge Griesbaum and I; and this was not discovered until I recognized him in open court, where, subsequently he recused himself. Then it is reasonable that I could not have obtained this information prior to this hearing or prior to him ruling on my first 3.850 motion even with due diligence. Because of this, this Court should grant this motion and vacate the judgment entered on the first 3.850 motion and conduct new evidentiary proceedings pursuant to rule 3.850.

GROUND FOUR – Recantation

I Have Obtained Newly Discovered Evidence In The Form Of A Witness, Kenneth Mullins, Recanting Part Of His Testimony.

Kenneth Mullins was a witness called on my behalf to testify primarily to the location of

the canoe my wife and I used the day of the filming and the surrounding area. His testimony showed that the distance from the car, where I dropped my wife off after filming, to where he later picked up the canoe, which I had stashed in the woods after dropping my wife off at the car, was so great that my wife had at least 10 minutes alone where she could have easily got in the car and left me. Thus easily making her escape she claimed she was trying so desperately to do because of the supposed rape. *Id.*

Mr. Mullins also testified that he has known me and my wife for close to ten years. And, when my counsel asked him: "Are you aware of any pornographic movies with Mrs. Wood and Mr. Wood on them?" He answered: "No I am not". *Id.* at 317. However, during a phone conversation with Mr. Mullins, during the month of May, 2012, Mr. Mullins informed me that my lawyer should have asked him whether he knew of any movies that my wife and I made, not whether he had seen any movies that my wife and I made. I told him that my lawyer did ask him whether he knew of our movies, however he said that this was incorrect.

About a week later, I sent Mr. Mullins a copy of the transcripts showing my lawyer asking if he knew of any movies not whether he had seen any movies. I then asked that, if this was wrong, would he recant that part of his testimony and correct it with the right answer. This he did, and, declared that either the transcripts were wrong or he misheard the question. He further stated that, if he misheard then he is recanting his answer and provided the answer that, not only did he know we made prior bondage movies, but had also seen pictures of us in the act.

This is a material fact that would probably produce an acquittal on retrial because this case involved me making a bondage-pornographic movie with my wife. She stated that she had never made pornographic movies with me before, nor was there ever any bondage acts between us. *Id.* I, on the other hand, testified that we made several bondage movies over the span of 5

years though never one this extreme.

Mr. Mullin's statement would not only impeach my wife on these two contradictions but would also show that the videos my wife claims she "beat with a hammer", "burned", and "buried in the back yard" were these bondage movies which she claims never existed, thus proving them to be exculpatory evidence which she destroyed and which the State knew existed. (See Ground 10 in my first 3.850 motion).

Mr. Mullin's statement is also material because the jury, during deliberation, sent out a question asking, "is there any verification of prior made porn videos as attested to?" *Id.* at 563. In response, the State argued that, "they should rely on the evidence and testimony presented at trial and only to that." *Id.* at 565. The court agreed and that was what the jury was instructed. However, the only testimony presented at trial about the videos existing was my testimony. Had the jury heard Mr. Mullin's testimony that, not only was he aware of prior videos, but they were bondage in nature and he had seen pictures showing the same. Then they would have been able to consider evidence which corroborated my testimony and impeachment evidence to my wife's testimony.

Surely the jury was searching for a reason, or as they put it and underlined it on the question sent to the court, "other possible motives not mentioned in this case." *Id.*at 563. Because it did not make sense to them that I would just, one day out of the blue, kidnap my wife, tie her to a tree, rape and torture her while video taping the event to sell on the internet without her consent or knowledge. They wanted to see if there was any verification of prior made videos between us to show this was not a crazed random event but something planned between a husband and wife because we had done it many times in the past. This jury question shows the jury was in a state of deliberating my wife's and my credibility because the facts did not make

sense. And had they heard Mr. Mullin's testimony confirming this fact then they would have found me more credible, because why would my wife lie about past videos if not to cover up the truth, and found me not guilty. Therefore, it would produce an acquittal on retrial.

There is no affidavit of Mr. Mullins attached to this motion because "rule 3.850 does not require supporting affidavits attached to postconviction motions alleging newly discovered evidence, only a brief statement of supporting facts." *Butler v. State*, 946 So.2d 30, 31 (Fla. 2d DCA 2006). However, Mr. Mullins will testify in Court to the above stated facts.

As for the question of whether I exercised due diligence in order to obtain this information from Mr. Mullins, I had tried contacting Mr. Mullins by phone several times after my trial until recently. I had even written him several letters asking him to contact me so I could question him on what my wife said to him after my arrest. Additionally my aunt had tried to make contact with Mr. Mullins through a mutual friend, Samuel Gheen. However, no one had ever been able to contact Mr. Mullins nor had he returned my requests for letters until recently in May 2012 when we talked for the first time since before I was arrested. And, of course, this recantation was unknown to me, my counsel, the trial court, and the State at the time of trial because Mr. Mullins just recanted the error due to his misunderstanding.

GROUND FIVE – Impeachment Evidence

I Have Obtained Newly Discovered Evidence From A Witness, [redacted] Whose Information Will Completely Impeach My Wife And Produce An Acquittal On Retrial.

[redacted] is a friend of my wife and has known her since Middle School. [redacted] says that approximately two days before my wife and I made this movie, [redacted] talked to her in the Wal-Mart parking lot in Titusville. During their conversation, [redacted] claims she told [redacted] that we had made bondage movies in the past, had sold them online, and that we were about to make a "snuff" movie to sell online to pay out mortgage. She also informed [redacted] that she was thinking of

divorcing me because of our financial problems and that she has cheated on me at least twice in the past.

This is very strong impeachment evidence because this prior statement contradicts everything she said at trial and provides evidence of being biased against me and having a motive. First, my wife claims we never made pornographic movies before, let alone bondage moves (AW 35). Then she claims she knew nothing about the making of this movie (TT 305-6). However, just days before making this movie she is bragging to her friend about making prior bondage movies as well as making this "snuff" movie to sell and pay our mortgage. Not only does this impeach my wife on her prior inconsistent statements but it also corroborates everything I have said since the moment I was arrested that we have made prior movies and that this was a consensual act that me and my wife planned several days in advance. The fact that she lied about selling our prior made movies just goes to support that she has no problem lying to anyone about anything as long as it conforms to her objective at that moment.

The second form of impeachment value is that she had an idea to divorce me prior to making this movie because of our financial state. This, coupled with the fact that her mother admits offering to buy her a house and pay her bills if she left me (VR 18), but my wife saying that she could not (VR 18) because I had enough evidence to put her in jail and get custody of our children (AW 19), shows a very strong motive that was obviously on her mind. Especially, when her mother told her this after denying her request to borrow money to pay our mortgage. (All of which was raised in my first 3.850). On top of this, she admitted to having previous affairs with other people, which is more impeachment evidence.

Obviously, my wife had no interest in a future with me and was just waiting for the right time to separate. One that was not a divorce because I had that evidence against her, so she turns

my idea around on me and creates this video with me to use as evidence to have me arrested, gain custody of our property, home, and children while her parents buys her "whatever she needed" (VR 18). Of course, she brags to her friend about this just prior to making the video. Maybe she did this because she really did not have her mind made up to have me arrested until she got to her parents front door as she claims. (TT 82). This would further explain why she was so upset when the police arrived and she said "it doesn't matter who's here" (TT 165) when the police told her she had nothing to fear because they were there. It appears she was really upset because she was going through with her crazy plan to get rid of me, not because she was just raped by me. This makes a lot more sense then me video taping myself raping her and then entrusting her with the video until I sold it online, all without her consent or knowledge. Therefore, had the jury heard this information from [redacted] I would have been acquitted.

Of course, neither my counsel nor I nor the Court was aware of [redacted] testimony at the time of trial or we would have presented it during trial. It was not until recently that [redacted] where I asked if anyone had any information about my case, and [redacted] said [redacted] had information. Furthermore, I believe I have gone far and above the due diligence requirement. I have a website at freechristopherwood.com supporting my release and asking if anyone has information about my case or any situation involved therein. [redacted] I even send letters at random to people in the Titusville area (see Exhibit C). Therefore, no one can say that I have not used due diligence to obtain this newly discovered evidence.

Additionally, there is no affidavit of [redacted] attached to this motion because "rule

3.850 does not require supporting affidavits attached to postconviction motions alleging newly discovered evidence, only a brief statement of supporting facts." *Butler v. State*, 946 So.2d 30, 31 (Fla. 2d DCA 2006). However, [redacted] will testify in court to the above stated facts.

[redacted] testimony is obviously material, and is admissible. In *Davis v. State*, 31 So.3d 277, 2787 (Fla. 2d DCA 2010), Davis received information from another person who stated that the State's key witness told him he had testified falsely at Davis' trial in exchange for a deal. The trial court denied Davis' newly discovered evidence motion stating that Davis never received the information himself and his claim was merely based on inadmissible hearsay. The Second District reversed stating that the trial court's reasoning is erroneous because the fact that Davis' allegations relay on hearsay does not render his claim insufficient. See also *State v. Mills*, 788 So.2d 249, 250 (Fla. 2004) (holding that Mills witness who stated that Mill's codefendant informed him that he had committed the crime, not Mills, was admissible "if only for impeachment."

In *Williams v. State*, 961 So.2d 229, 235 (Fla. 2007), our Supreme Court held that a statement to a third party "could be introduced under section 90.608 Florida Statute (2006) to impeach [the witness] through prior inconsistent statements ... and to show bias." See also *Breedlove v. State*, 413 So.2d 1, 6 (Fla. 1982) (finding that "merely because a statement is not admissible for one purpose does not mean it is inadmissible for another purpose."); *Dias v. State*, 812 So.2d 487, 495 (Fla. 4th DCA 2002) (holding that "[a] statement inadmissible as hearsay can still be admissible for another reason, such as for impeachment purposes.").

And a case a little more on point with the instant case is *Tarner v. State*, 938 So.2d 635 (Fla. 5th DCA 2006) where alleged victim accused defendant of non-consensual sex after her current boyfriend saw pornographic pictures of them. On appeal, the Fifth District reversed for a

new trial finding that the defendant could admit a previous conversation between the alleged victim and another person to show that she was previously aware of the pornographic pictures between her and the defendant when she testified at trial that she knew nothing about them, and that she only became aware of them when her boyfriend saw them. The Court reasoned that this previous statement showing knowledge of the pictures could show that she only called the police to placate her angry boyfriend. See also *Fitzpatrick v. State*, 900 So.2d 495, 515 (Fla. 2005) holding that hearsay rule did not preclude admission of statement made by victim at the hospital, where statements were not offered into evidence to prove truth of matter asserted but rather for impeachment purposes.

Wherefore, these statements are admissible for at least impeachment purposes, they were not known at the time of trial not could they have become known with due diligence, and these statements would absolutely produce an acquittal on retrial.

GROUND SIX – Cumulative Error

If, Standing Alone, The Individual Errors Raised In The Instant Motion And The First Rule 3.850 Motion And Other Pleadings Are Considered Harmless, Then The Cumulative Effect Of Such Errors Are Such To Have Denied Me A Fair Trial.

Where multiple errors are discovered in a jury trial, a review of the cumulative effect of those errors is appropriate because "even though there [may have been] competent substantial evidence to support a verdict, and even though each of the alleged errors, standing alone, could be considered harmless, the cumulative effect of such errors may be such as to deny defendant a fair and impartial trial that is the inalienable right of all litigants in this state and this nation." *Brooks v. State*, 918 So.2d 181, 202 (Fla. 2005).

"The court must also consider the weight of the errors to the totality of the evidence against a defendant." *Jackson v. State*, 575 So.2d 181, 189 (Fla. 1991) "If the evidence against

the [defendant] is extremely weak, error that would otherwise be considered harmless may be considered prejudicial." 3 Fla. Jur. 2d Appellate Review Section 365.

Therefore, a "cumulative analysis must be conducted so that the trial court has a 'total picture' of the case." *Roberts v. State*, 840 So.2d 962, 972 (Fla. 2003). Additionally, in order to state a facially sufficient cumulative error claim, the defendant must "explain what the alleged cumulative errors are, and what their impact is on [the] case." *Anderson v. State*, 822 So.2d 1261, 1268 (Fla. 2002). This includes the errors raised in a previously filed 3.850 motion as well as the newly discovered evidence raised in a second 3.850 motion.

In *Roberts*, supra, the defendant raised a number of *Brady* claims in his first postconviction motion which were denied. He later filed a second postconviction motion alleging newly discovered evidence and a cumulative error ground. The Supreme Court stated that, "if the trial court determining on remand that [the newly discovered evidence] is credible, then the *Brady* claims raised in Robert's first postconviction motion must be considered in a cumulative analysis." *Id.* at 972.

In my first rule 3.850 motion, I raised 18 grounds of ineffective assistance of counsel and one ground of cumulative error.[5] Almost all grounds were denied due to a lack of showing of prejudice to warrant relief. First, as stated in *Roberts*, supra, and *Anderson*, supra, I will briefly explain each of these 18 errors and what their impact was on this case, then briefly explain the grounds alleged herein and what their impact was on this case so this Court can get a "total picture" of the case to properly assess the cumulative impact of all the errors in this case. *Id.*

[5] In denying the cumulative error claim this court found that since there were no errors in the previous 18 grounds then there was no need to consider them cumulatively. However, this was error because the court stated in its denial that there were errors in most of the grounds but there was not a sufficient showing of prejudice to warrant relief.

FIRST 3.850 MOTION

For reference: **(TT = Trial Transcript; VR = Venera Rodger's Deposition; AW = Amy Wood Deposition)**

In **Ground One**, I raised the claim that counsel was ineffective for failing to object to a sleeping juror who was sleeping during trial and who also showed signs of being sleepy from the first day of trial and throughout trial.

The prejudice I suffered from this sleeping and sleepy juror is: First, it is unknown what portion of the trial this juror slept through, as well, if there were other times he slept. And, second since he was sleeping and sleepy throughout trial it is unlikely he paid close attention to the testimony at trial and was unable to fully weigh the credibility of my wife's testimony with the evidence. Therefore, had counsel brought this situation to the court's attention, this juror would have been replaced with an alternate juror who could fulfill his obligation as a juror.[6]

In **Ground two**, I raised the claim that counsel was ineffective for failing to impeach my mother-in-law for being biased against me and lay the foundation to impeach my wife by eliciting her deposition testimony where she said that she never liked me because I came from a poor family, that she never wanted her daughter to marry me, told her daughter that she should get out of the relationship, then when my wife asked her if we could borrow money to pay our mortgage, she told my wife that she would not loan her any money but would buy her a house, pay her bill, and give her "whatever help [her and our kids] needed ... if she would leave [me]." (VR at 18).

The prejudice I suffered from this was the jury never got to hear a true motive for my wife lying other than my mother-in-law saying she did not like me. The jury knew that we were

[6] A claim of counsel failing to object to a sleeping juror is a legally and facially sufficient claim requiring an evidentiary hearing to determine prejudice to the defendant. *Terrell v. State*, 9 So.3d 1284 (Fla. 4th DCA 2009).

making this movie to pay our mortgage but what they did not hear is that just prior to this, my wife asked her mother for the money so we did not have to make this movie and sell it. Nor did the jury hear that my mother-in-law denied her request for money and told her that she would give her anything she needed if she would leave me. With this, the jury could have seen that there was a motive for my wife to lie, which they asked about, (see TT at 563), where she had a choice of either making this movie and selling it which would only pay one mortgage payment, or, have me arrested[7] and her mother would buy her a house and pay all her bills (which they did).[8]

In **Ground Three**, I raised the claim that counsel was ineffective for failing to impeach my wife's father as being biased and laying the foundation for impeaching my wife on the same issues as stated above, as well as for failing to question him concerning me spending the morning with him cutting down a large pine tree and what time we were finished.

The prejudice I suffered from this is the same as stated above in Ground Two, however, additionally counsel could have impeached my wife where she said I spent the whole day out at the scene setting up the equipment in her deposition and at trial. (AW at 48, 51, 108). However, then she changes this story saying she saw me later that morning. (TT 105-06). With her father's statement, corroborating mine, the jury could have seen that I was not out there all day and it would have been impossible to do all that my wife said I did in such a short amount of time and therefore I had to have her help in bringing the equipment out there and setting it up. Had the jury heard this, they would have found it more believable that I rode my bike out to the canoe, repaired the canoe then my wife and I left, after she brought the equipment, to go to the scene and set up for the filming, all after I helped her father. Not that I spent the whole day out

[7] It is explained in Ground 4 why my wife could not divorce me and had to come up with another way to leave me.
[8] See *Jones v. State*, 577 So.2d 606 (Fla. 4th DCA 1991) (holding it is relevant for the jury to hear the alleged victim's parents were unhappy with her relationship with the defendant to show a motion to lie about the charges).

there and did everything myself.

In **Ground Four**, I raised the claim that counsel was ineffective for failing to impeach my wife for being biased against me and having a motive to lie by showing that her parents were giving her full financial support as they promised because she left me, as well as impeaching her for having an additional material motive by showing her obsessive behavior over our personal and real property as soon as I was arrested, and lastly by showing she had a motive to put me in jail to get custody of our children[9] because she admitted in her deposition that I had enough evidence to put her in jail and I would get the children. (AW at 19).

The prejudice I suffered from this is the jury never got to see why she could not just divorce me, which she told her mother after she offered her full financial support for leaving me, (VR at 18), because I had evidence against her that would put her in jail and I would get the children and our property, so she had to have me arrested. Additionally, the jury never got to see that she turned my idea around on me and it is her who ended up with "evidence" against me and she now has our property and the custody of our children.[10]

In **Ground Five**, I raised the claim that counsel was ineffective for failing to know how to impeach my wife with a prior inconsistent statement, and, after the judge took the jury out and instructed my counsel how to properly impeach, he still failed to understand the process of impeaching a witness and abandoned any further attempt to impeach my wife again. (Please read pages 123-130 of trial transcript).

The prejudice I suffered from this is clear. This entire trial hinged upon impeaching my

---

[9] See *Hebel v. State*, 756 So.2d 143 (Fla. 2d DCA 2000) holding, in a sexual battery case against defendant's wife, that it was proper to cross-examine wife on custody issue to show that she feared defendant might be awarded custody of their children in order to show a motive to lie about the rape.

[10] See *Green v. State*, 691 So.2d 49 (Fla. 4th DCA 1997) (Holding that alleged victim's statement that she would "think of a way to get rid of" the defendant was admissible, noting that "the victim's motive to fabricate the charges goes to the crux of the defense ... [that] testimony was crucial to establish the victim's motive for lying about rape.) *Id.* at 50.

wife. She contradicted herself almost every time she told the story or a situation. Her contradictions were so many and so severe that, had counsel known how to impeach her on them the jury would have seen.

In **Ground Six**, I raised the claim that counsel was ineffective for failing to impeach my wife on her contradictions and inconsistencies to show she is not credible. I cannot list all of them here because there is a 50 page limit to this motion, however, to give the court an idea, here are a few:

- She said the items were not hers and she took nothing out to the scene (AW at 25). Then at trial she said she might have brought water (TT 48). However in the video we are talking about "our" items that "we brought out here". (See end of video).
- She said that she asked me why "I" was leaving everything out at the scene when we were leaving and that "I" told her that it was because we were coming back out there (AW at 71-72). However, the video shows me trying to clean everything up and "her" telling me to leave everything out there because we were going back out there the next day to finish the movie. (See end of video).
- She said I told her that if anyone saw us out there she was to lie to them and say we were looking for a place to go camping (TT 263-64). However, the video shows her commenting on how nice the scene was and how we should go camping out there. Then I, being surprised say, "really, you want to go camping out here?" (See end of video).
- She said it was not a pre-arranged event and she asked her mother to baby sit that day an hour before she met me. (AW at 12-13). However her mother and I both say it was planned ahead of time on either Wednesday or Thursday (VR at 20).
- She said she does not drink beer. (AW at 31). However, in her statement to the police

she said we stopped the canoe for a beer break when I attacked her.

- She claims that she was tied to the tree with her toes barely touching the ground. (TT 62-63). However, the video shows her loosely tied by her hands and to the tree enough that she was free to walk around flat footed.
- She claims first that I put the butt end of a large hunting knife in her vagina (see police statement), then she claims that I put the blade of the knife in her vagina so deep that I left it there and she remembers moving around and getting it to fall out and having the butt end hitting the ground. (TT 68-69). However, not only was there no evidence of this from her examination, but the video, which was recording from when I tied her to the tree until I untied her from the tree, never shows any of this and this is exactly when she said it happened.
- She claims that at least 4 golf balls tied to a string were forced into her vagina causing her "intense pain". (TT 71-72). However, the video shows that two golf balls totaling 1.68 inches wide and 3.36 inches long were slowly eased into her vagina and thus could not cause pain let alone "intense pain".
- She claims that we never made prior bondage movies but tells an elaborate and very contradicting story about how she "found" videos which she never watched but knew who and what was in them, and how she beat them with a hammer, burned them then buried them in our backyard, and she did this either a year before my arrest, at the time of my arrest, or 5 months after my arrest. (AW at 35, 42-46, 72).
- She claims that I never allowed her to touch the computer but then explains how she always was on it. That she never went to the house after my arrest and therefore could not erase the computer hard-drives, but then explains that she did go back to the house on

a number of occasions. Additionally, she continually contradicts herself regarding this issue. (AW 8-10). See Ground 11.

- She claims that I tortured her on the ride home and made her promise to lie to her parents if they questioned her about why we were late and why she was so dirty, telling them that our car broke down and she had to hike through the Woods to get my father to help us fix the car. (AW at 62-66). Then she somewhat contradicts this at trial. (TT 279-80). However, at the end of the video she asks where the cell-phone was because she was going to call her parents and tell them why we were late picking up our children. She then proceed to tell me that she thought of telling them a lie; that our car broke down. Then I tell her that she should not lie to her parents and to just tell them the truth, that we were working, which we were, on making a movie to sell. Thus proving that she can come up with some very elaborate and detailed stories that are not true, like me raping her, and are contradicted by the video.
- She also claims that she had only one drama class in college and no other, (TT 306), thus trying to hide that she had experience in acting and producing. However, as her school records show, she not only had that one year in college but she also had 3 years in drama and 2 years in the thespian society and one year in television production.

The prejudice I suffered from her lies is clear, had the jury seen that my wife was lying about everything, from when we planned this event, to what she took out to the scene, to what was allegedly done to her and how, to her trying to convince me to make the movie, to me torturing her to lie, to not having acting and producing skills, then the jury would have seen that she was simply lying to cover up that we had planned to make this movie together and now, for whatever reason, she was trying to switch everything around and blame it all on me trying to

deny she had any involvement or the knowledge to ever create and sell the movie.[11]

In **Ground Seven**, I raised the claim that counsel was ineffective for failing to object to the state's use of known false testimony, a *Giglio* violations, when they solicited the statements from my wife that she was tied with her toes barely touching the ground; I put a knife all the way in her vagina and left it there; and, that I put "at least 4" golf balls in my wife's vagina (TT 68-72). The State knew these statements were false because they viewed the video which recorded the entire time where my wife claims these things happened.

I was prejudiced by these false statements because *allegetio contra factum non est admittenda,* and because the jury viewed the event as she described it, hanging from a tree by her hands with her toes barely touching the ground with a knife in her vagina and several golf balls in her causing intense pain, when in fact the evidence proves these events never happened.

In **Ground Eight**, I raised the claim that counsel was ineffective for failing to object to a large number of hearsay statements from my wife where she was alleging that I was saying things that did not occur but corroborated her story.

I was prejudiced by this because the jury took these statements as true when they were indeed false and the only evidence that proves they were false is the video which only records a few of the contradictions yet they were never pointed out.

In **Ground Nine**, I raised the claim that counsel was ineffective for failing to object to a number of statements constituting prosecutorial misconduct during closing arguments. First, prosecutor repeated all of the hearsay statements not objected to by counsel, then prosecutor

---

[11] In *Jones v. State*, 709 So.2d 512 (Fla. 1998), the Court found testimony like my wife's with inconsistencies, contradictions and "statements that could not be true" to be "something less than credible" *Id.* at 522, because the witness stated he saw the person in the bush, but then did not see him in the bush. Saw the person shoot the man, but then did not see him shoot the man, contradicted what the evidence clearly showed; then consistently stated, just like my wife, "I'm not really sure." The Court said this type of testimony "lacks any credibility" *Id.* at 523. Thus *allegars contraria non est audiendus.*

expressed her opinion on what a number of our statements meant, then they misquote a number of statements and commented on facts not in evidence. However, the two main issues in this ground are when the State said the jury would hear me and my wife talking about a boat motor on the video, and that the jurors would hear my wife asking me about wipes on the video.

The prejudice I suffered from these statements are: The jury reheard all the hearsay statements my wife claimed I made; the jury heard the prosecutor's opinion of what my wife and I meant when we were talking, which the prosecutor curved to support their story; the same holds true for the misquotes and facts not in evidence. However, the comment about the boat motor is a major issue because the state claims that my wife and I were going out in the Woods to get a boat motor, not make a movie. Then, in closing argument, the State told the jury, "if this is suppose to be same great rape film, why are they talking about a boat motor in it?" (TT 513). However, there was no mention of a boat motor in the video and the State even informed the Court of this prior to closing argument. Though, because the State said it, the jury believed them and the video supported the State's cliam. As for the comment about the wipes, the State, during closing argument, told the jury that on the video they can hear my wife ask me if I had wipes in our bag, when, in fact, the video shows us setting up to make the movie (in the beginning of the video) and my wife ask about the wire and if I brought light out there. The State tried to make the jury believe they were hearing about wipes, not lights, because they saw my wife asking about lights, in the woods, in the middle of the day. It would clearly show we were there to make a movie, (i.e. lights, camera, action), not get a boat motor.

In **Ground Ten**, I raised the claim that counsel was ineffective for failing to move for a dismissal of the charges due to known key exculpatory evidence, our prior made bondage videos, never being collected resulting in their destruction.

I was prejudiced by this evidence not being collected because it would have impeached my wife showing we had a history of making bondage movies when she claimed she never participated in bondage nor made movies. These videos would have also shown the jury that this was not a one time crazy event planned by me because we had a history of making these movies, when the jury inquired about our prior made video. (TT at 563).[12]

In **Ground Eleven**, I raised the claim that counsel was ineffective for failing to move for the dismissal of the charges due to key exculpatory evidence, our computer, being destroyed and never being disclosed to me. As I was being arrested, I told the police, on record, what my wife and I were doing and that I can prove it with our computer which had our research, movies, buy info, etc. on it, as well it contained the evidence I had against her of being involved in illegal activities on-line, and pictures and videos of her being an unfit mother so I would get custody of our children and put her in jail, all of which she knew of and wanted to find. Approximately one week later *my wife* finally turns the computer over to the police with the hard-drives cleaned. In her deposition she told several contradictive stories about her access to the computer and how it could not have been tampered with (AW at 8-11). Even still the State failed to disclose the computer, which I specifically requested, so we could run additional test on it.

The prejudice I suffered from this is that I was unable to show that she accessed the computer and internet to research this movie and the buyers for it, thus proving she had a hand in it and impeaching her. Additional impeachment could have been done with showing our variety of pornographic material on the computer and her accessing it, as well as the damaging impeachment evidence against her which would have shown a motive.[12]

---

[12] *State v. Hill*, 467 So.2d 845 (Fla. 4th DCA 1985) ("There is no material difference between the destruction of evidence by the State's affirmative act, and its destruction by the State's failure to act where it has the ready means of preserving evidence with a minimum of inconvenience." *Id.* at 849. The destruction of favorable evidence,

In **Ground Twelve**, I raised the claim that counsel was ineffective for failing to move for a dismissal when the police failed to collect exculpatory impeachment evidence from the scene when they left the beer cans and a stocking tied to a cord.

I was prejudiced by the failing to collect these items because had they been collected we could have had them tested for DNA and shown that my wife's DNA was on several beer cans thus impeaching her by showing she did drink beer when she claims she did not. As well we could have showed that my wife's DNA was on the stocking tied to the cord, thus impeaching her by showing she participated in prior bondage.[12]

In **Ground Thirteen**, I raised the claim that counsel was ineffective for failing to move for a judgment of acquittal on count 5 because there was no evidence that I inserted a bottle of Tabasco sauce in her vagina especially while she was tied to the tree when the video camera was recording, or any time thereabouts. Additionally, my wife said in her deposition that, if I did do it, I did it later that night a mile away by the boat. (AW at 49-50).

I was prejudiced by this because, had counsel properly moved for a J.O.A. on this issue, the court would have seen there was no evidence to the event taking place as alleged in the information, and in fact, quite the contrary, my wife said it could have happened by the boat later that night. Additionally, there was no evidence that the bottle ever contained Tabasco sauce. Therefore, the information was faulty and the court would have dismissed Count 5.[13]

In **Ground Fourteen**, I raised the claim that counsel was ineffective for failing to move for a dismissal on Count 5 when the court committed a fundamental error by instructing the State to change the charge from a bottle of Tabasco Sauce to a Tabasco Sauce Bottle because they

---

including impeachment evidence, violates due process regardless of the good faith or bad faith of the State. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

[13] Proof at trial must substantially confirm to the allegations in the indictment or information in order that defendant not be prejudiced in preparation of defense. *Ross v. State*, 664 So.2d 1004 (Fla. 4th DCA 1995).

failed to prove it contained Tabasco sauce. (TT 440-45). This instruction came right before both the State and I submitted final arguments to the jury.

I was prejudiced by this because, not only was it a serious error for the court to direct the course of the prosecution's case[14], but my whole defense on Count 5 was that there was no evidence that it was ever a bottle of Tabasco sauce, maybe a small bottle containing sex oil because that is what we had at our house, but never a bottle of Tabasco sauce. Besides, I knew that no one would ever believe that a woman could walk around, have sexual intercourse, canoe, drive a car, talk to police for hours and not know she had an open bottle of Tabasco sauce in her vagina. Maybe a small bottle, but that is not what the information stated nor is that what is in the evidence that the State produced during trial. Therefore, had counsel objected to this charge, we could have argued the above and I would have been, at least, found not guilty of Count 5 or the Court would have dismissed it.

In **Ground Fifteen**, I raised the claim that counsel was ineffective for failing to renew the J.O.A. after the jury returned with a verdict of guilty.

I was prejudiced by this because the court, at sentencing, expressed its doubt concerning the evidence, (ST at 80-81), and would have granted the JOA had he been given the opportunity. However, I do admit that, standing alone, this is a very weak argument.

In **Ground Sixteen**, I raised the claim that counsel was ineffective for failing to timely object to the video being entered into evidence without it first being authenticated. The State submitted the video and video tape after my wife authenticated the video tape but not the video.

I was prejudiced by this because counsel thought the video was also authenticated and when he went to cross-examine her on all of her contradiction from her trial testimony and

---

[14] A judge cannot direct the course of the prosecution. *McFadder v. State*, 540 So.2d 844 (Fla. 3d DCA 1989). Additionally, the "court cannot grant leave to amend the information during trial if doing so would prejudice the substantial rights of the defendant." *State v. Clements*, 903 So.2d 919, 922 (Fla. 2005).

deposition testimony, the State objected arguing that the video was not in evidence and a great discussion ensued (TT 193-203) where the court explained that counsel never objected to the video being submitted along with the video tape. Counsel was then left to call my wife and impeach his own witness after the video was played, which he could not do, as seen above. Had he been able to cross-examine her on the contradictions, *maybe*, he could have impeached her.[15]

In **Ground Seventeen**, I raised the claim that counsel was ineffective for failing to call material witnesses, our neighbors, who were in court waiting to testify that: I was a loving father to our children, and my wife was an unfit mother, which they also were going to testify to at our potential divorce and my wife was told this, thus showing a motive; they saw her selling everything we owned the day after my arrest until the day she filed for a divorce, six weeks later, showing a material motive; they knew about the prior made videos which I asked them to get and turn over to the police after my arrest; (ST 59); that my wife called them prior to my arrest and, while sounding happy, told them she was having me arrested and asked them not to bail me out for a while.

I was prejudiced by this because the jury could have seen a motive wherein my wife had people willing to testify against her in a potential divorce whereby she would lose custody of our children. Additionally, the jury would have seen a material motive by her wanting me to sit in jail for a while, while she sold our property before filing for a divorce.

In **Ground Eighteen**, I raised the claim that counsel was ineffective for failing to file a motion for new trial wherein he could have asked the trial Judge to act as an additional juror and weigh the weight of the evidence produced at trial.

I was prejudiced by this because I lost the only judicial review of the weight of the evidence presented at trial. This is a fundamental right that I have that only the trial judge who

heard the case can perform. This is why I specifically moved for the Court to expedite ruling on this motion so Judge Holcomb could perform this task. This is so serious of an issue that, in cases where the evidence is weak, a new trial will be granted to the defendant. *Kelly v. State*, 16 So.3d 196 (Fla. 1st DCA 2009). In this case, Judge Holcomb would have definitely granted me a new trial had he been afforded the opportunity because of what he said of my sentencing hearing before he sentenced me to the minimum:

> This was a very unusual case and a very serious case. I've given it a lot of thought. I remember the evidence very well. Some very puzzling aspects of the case. One thing that's very unusual is we have a videotape of the event. Another thing that's unusual is the defendant allowed the victim to maintain possession of the video, which is very unusual. The very evidence against him.[15] I've considered that. He allowed her out of his sight to get the children at her parents house also. An anomaly in view of this crime. I don't understand some of these things. *Id.* at 80-81.

Therefore, I was greatly prejudiced by counsel not filing this motion raising this ground. In fact, the prior ruling on this ground in the first 3.850 motion was highly improper because it was not done so by the original trial judge. See *Kelly*, supra.

Motion For Return Of Property

In a motion for return of property filed February 24th, 2011, and an amendment to that motion recently filed, I requested the return of all my property because it was either illegally taken or the fruits of an illegal search, in that, the record clearly shows by testimony that [redacted] Had

[15] Despite this Court's prior ruling on the First 3.850 motion, especially regarding this ground, my wife's testimony provides that she had possession of the video from when we were leaving the woods, while we canoed back to the car (TT 280), when I dropped her off at the car where she put it in the trunk of the car (TT 137) and waited for me while I put the canoe up until I was arrested. (TT 284).

a forfeiture hearing been properly held within 60 days of my arrest I could have shown the above and my property would have been returned to me and my charges dismissed. See *Plaisted v. State*, 46 So.3d 148 (Fla. 5th DCA 2009) and the cases cited therein, especially *Alvarez v. City of Hialeah*, 900 So.2d 761 (Fla. 3d DCA 2005) (Holding that where a Fourth Amendment challenge has been raised that question must be addressed first and independently of the question of whether there was a nexus between the seized property and unlawful activity.) (see also the cases cited in the Amended Motion For Return Of Property filed in this case).

In the instant motion, I have raised five claims of newly discovered evidence.

In **Ground One**, I raised the claim of jury misconduct where two jurors violated their oath [redacted]

In **Ground Three**, I raised the claim that at the time of the ruling of my first 3.850 motion, I was unaware that Judge Griesbaum had a conflict of interest with me. I was prejudiced by this because, had I known who he was prior to the ruling I would have moved to disqualify him and he would have recused himself, then an unbiased court would have entered a ruling on

my First 3.850 motion granting me either a new trial or a dismissal of my charges.

In **Ground Four**, I raised the claim that witness Kenneth Mullins recanted part of his testimony, correcting his answer, now clarifying that not only did he know of our prior made bondage videos but he had seen pictures depicting the same.

I was prejudiced by his previous answer because he thought my counsel asked him if he had seen the movies and he answered "no" when in fact my counsel asked if he had known of the movies. The jury, never having the confirmation they requested on the prior videos, had to rely solely on my testimony that we had made them without any corroborating testimony or other proof.

In **Ground Five**, I raised the claim of a new witness who states that two days prior to my arrest my wife told [redacted] we were making a "snuff" movie to sell online and pay our mortgage, that we had made previous movies, that she was thinking about divorcing me because of the financial troubles, and that she had had at least (2) affairs since we were married.

I was prejudiced by the jury not hearing this testimony because had they heard it they would have seen my wife is not credible because: she lied about not making previous movies, and not knowing about making this one; she had a motive because she was cheating on me; and, she wanted to divorce me for our financial trouble. Therefore, the jury would have acquitted me.

Wherefore, when taking these errors into consideration as a whole, this court can see that there is at least a "reasonable probability" that the combined effect of the errors improperly contributed to my conviction, and, combined with those errors, there is a "reasonable probability" that the newly discovered evidence would produce an acquittal on retrial, especially when considering the totality of the evidence, or the lack thereof against me.

RELIEF SOUGHT

WHEREFORE, I respectfully moves this Honorable Court to:

1. Grant this motion for postconviction relief, vacate the judgment, conviction, and sentence as entered, and remand this cause for de novo jury trial proceeding; or, in the alternative,
2. Order the respondent to show cause as to why this motion should not be granted; and thereafter, prior to the adjudication of this motion,
3. Order a full and fair evidentiary hearing with the defendant present in order for him to sustain, if necessary, his burden of proof and persuasion; or in the alternative,
4. Grant any other or further relief as this court deems necessary in the interest of justice.

Respectfully submitted on this 11th day of July 2012.

CHRISTOPHER J. WOOD, pro se
DC # 990846
Franklin Correctional Institution
1760 Hwy. 67 North
Carrabelle, FL 32322-2157

OATH

I HEREBY SWEAR, UNDER THE PENALTY OF PERJURY, pursuant to Fla. Stat. Section 92.525 that I have read the foregoing motion and the facts stated herein are true and correct.

CHRISTOPHER J. WOOD, pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I placed an original and true and correct copies of this document in the hands of _____ Mailroom Personnel, at Franklin Correctional Institution on this 17th day of July 2012 for mailing via prepaid first class United States mail to: **(1)** The Clerk of Court, 400 South St., 2nd Floor, P. O. Box 999, Titusville, Florida 32781; **(2)** The Office of the State's Attorney, 400 South St., Titusville, Florida 32780; **(3)** The Honorable Charles M. Holcomb, the Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida 32940; and **(4)** The Honorable Charles M. Holcomb, P.O. Box 236564, Cocoa, Florida 32923.

CHRISTOPHER J. WOOD, pro se