IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:07-HC-2192-H

GEORGE EARL GOODE, JR.,	)
	)
Petitioner	)
	)
v.	)
	)
	)
GERALD BRANKER, Warden Central Prison, Raleigh North Carolina,	))
	)
Respondent	)

PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT

Petitioner George Earl Goode, Jr through counsel, pursuant to Fed.R.Civ.P. 60(b)(2),(3) and (6) and upon such terms as are just, moves this Court to enter an Order granting Petitioner further relief from the judgment, entered by the Court on October 21, 2009, incorporated by reference with the entire record before this Court. [1]

QUESTIONS PRESENTED

Should this Court grant Petitioner a new trial as additional relief from the judgment entered by this Court on October 21, 2009 in light of recent revelations that the N.C. State Bureau of Investigation (SBI) has engaged in a widespread and longstanding practice of misstating the results of forensic tests, concealing evidence favorable to the defense, and withholding material and potentially exculpatory evidence from numerous criminal defendants.

Should this Court grant Petitioner a new trial as additional relief from the judgment entered by this Court on October 21, 2009 in light of recent revelations that the Blood Stain

[1] The State's Record Index was previously filed as Document 17 on about March 7, 2008 and covers documents listed as A1 through J12.

Pattern Analysis portion of the Serology Section of the SBI laboratory has been shut down completely, when SBI Agent Deaver, a prominent witness for the State in Petitioner's case, testified as a blood stain pattern analysis expert in the guilt-innocence phase of Petitioner's capital trial and in post-conviction proceedings.

Should this Court grant Petitioner a new trial as additional relief from the judgment entered by this Court on October 21, 2009 because SBI Agent Deaver, a prominent witness in Petitioner's capital trial and post conviction proceedings, gave false and misleading evidence not only in Petitioner's case, but in several other cases, discussed herein.

Should this Court grant Petitioner a new trial as additional relief from the judgment entered by this Court on October 21, 2009 because the SBI lab admittedly had a policy, at the time Petitioner was tried for his life, and during his post-conviction proceedings, to withhold evidence from defendants amounting to *Brady* and *Napue* violations.

Should this Court grant Petitioner a new trial as additional relief from the judgment entered by this Court on October 21, 2009 in light of recent revelations that a judge has ordered a contempt of court hearing for SBI Agent Deaver, a prominent State's witness in Petitioner's case, both at his capital trial and at post-conviction proceedings, after finding that he gave what appeared to be false and misleading testimony before the N.C. Innocence Inquiry Commission in 2009, similar to the false and misleading testimony he gave during Petitioner's death penalty trial.

STATEMENT OF THE CASE

On October 21, 2009, this Court found that Petitioner received ineffective assistance of counsel in violation of his Sixth Amendment rights at the penalty phase of trial and had been sentenced to death in violation of his constitutional rights.[2] Trial

[2] Petitioner timely filed his Petition for Writ of Habeas Corpus in this Court on Oct. 12, 2007.

counsel had failed to accept a recess offered by the trial judge and make further efforts to find a blood spatter expert, knowing that the State was going to offer SBI Agent Deaver to testify as a blood spatter expert (also referred to as a blood stain pattern analysis expert) directly undercutting the heart of the defense that Petitioner was not a participant in the stabbings of the victims in the case, as evidenced by the fact that Petitioner did not have any blood on him.

A writ of habeas corpus vacating Petitioner's death sentence was issued. Mr. Goode was re-sentenced to two consecutive terms of life imprisonment on April 1, 2010, pursuant to the judgments entered by the Superior Court of Johnston County, North Carolina in the two first degree murder cases. Petitioner was also sentenced to a consecutive forty (40) years for robbery with a dangerous weapon.

Petitioner is seeking a new trial as additional relief from this Court in light of recent revelations that the N.C. State Bureau of Investigation has engaged in a widespread and longstanding practice of misstating the results of forensic tests, concealing evidence favorable to the defense, and withholding material and potentially exculpatory evidence from numerous criminal defendants, including three defendants who have been executed; four defendants currently on death row; 80 defendants currently incarcerated; 190 defendants convicted and Petitioner, George Earl Goode, Jr., sentenced to death until he was re-sentenced to two life sentences subsequent to this Court granted habeas relief on October 21, 2009. Ex. 1, Swecker-Wolf-Report; *Scathing SBI Audit Says 230 Cases Tainted by Shoddy Investigations*, NEWS AND OBSERVER, August 19, 2010. [3]

In response, the Attorney General has initiated further review of the SBI Lab, including a legal review of every section to see if current procedures follow state law and a separate audit

[3] Recent newspaper articles regarding the SBI are attached as Exhibit 2.

that will examine past cases. *SBI Lab get interim director; more audits coming, Cooper says*, WFAE.org, September 8, 2010. [4] The call for a full audit was first raised by the North Carolina Conference of District Attorneys. *DA's demand full SBI audit*, NEWS AND OBSERVER, August 28, 2010. And Conference of District Attorney's president Seth Edwards has expressed concern that the problems may extend beyond the SBI Lab: "At this point, everything at the SBI is open for discussion." *SBI bloodstain analysis team went leaderless for 21 years*, NEWS AND OBSERVER, September 9, 2010.

Although this Court granted habeas relief on an ineffective assistance of counsel claim, it found that SBI Agent Deaver's testimony at Petitioner's trial falsely portrayed to the jury that he conducted a test for blood which indicated blood, not some substance that might be blood on petitioner's boot. This Court found that Agent Deaver did not name the test he conducted or explain that the test he used was only a screening test nor did he qualify or clarify his testimony to correctly describe the limitations of the test or its results. This Court found that the prosecutor reinforced the misleading testimony by arguing during closing to "think about the blood on the boots." The misleading testimony was imputed to the State. Order p. 26.

However, with regards to Petitioner's claim that the State withheld material exculpatory evidence by failing to reveal that the test Agent Deaver performed on Petitioner's boot merely produced only a "very slight" reaction and there was not a sufficient quantity of substance on the boot to perform a Takayama test, which is a conclusive test for the presence of blood, this Court found that even if the State improperly withheld Agent Deaver's report, Petitioner was unable to show a reasonable probability that the result of the proceeding would have been different had the information been disclosed to the defense. Order, p. 33. Because of the newly discovered

[4] A second interim director was later appointed by the Attorney General. The new interim director, Judge Joe R. John, Sr., is continuing to identify problems as the SBI's investigation and review is ongoing. See N.C. Dept. of Justice News Releases of Oct. 13, 2010; Sept. 8, 2010; Aug. 27, 2010; et al, available *at* http://www.ncdoj.com/News-and-Alerts/News-Releases-and-Advisories.aspx (last visited Oct. 18, 2010).

evidence and in view of the fact that the State later claimed to do additional testing on the same evidence, Agent Deaver's report claiming there was not a sufficient quantity of substance on the boot to perform a Takayama test would now appear to be false and misleading.

In addition, the misconduct appears to be more than just the work of a rogue agent. Instead, Agent Deaver's testimony and actions are the product of the broader cultural problems and failure of leadership at the SBI, coupled with a policy that allowed for per se *Brady* violations and convictions based on false evidence. The shocking nature and scope of these developments is such that Petitioner deserves a new trial. His consecutive life sentences, followed by a consecutive forty (40) year sentence for armed robbery should not be allowed to stand until it can be determined exactly what evidence the SBI mishandled or concealed in his case and how that may have impacted the outcome of his capital trial. It is impossible to minimize the import of damaging, false and misleading testimony about "blood" evidence provided by Agent Deaver during the guilt-innocence phase of Petitioner's capital trial, given that no test for blood was actually conducted, in view of the newly revealed pattern of SBI Lab wrongdoing.

Other evidence linking the Petitioner to the crime was merely circumstantial, including unreliable snitch evidence and a witness with a 30 year history of mental problems. Surely, a jury learning that Agent Deaver and the SBI Lab have been disgraced; that Agent Deaver may have committed perjury, not just once, but numerous times; that the bloodstain pattern analysis unit at the SBI lab has been suspended in its entirely; and that the Attorney General has called for a full audit of each and every portion of the SBI lab, would find that this newly discovered evidence, intertwined with misrepresentation and misconduct by the State, had a substantial and injurious effect on the determination of the jury at Petitioner's trial. SBI policies and practices regarding the withholding of evidence and other egregious failures would be presented to a jury. At a new

trial, unsubstantiated opinions from unqualified SBI agents, would not be relevant.[5] The jury had a right to know whether SBI employees were instructed to keep certain information out of laboratory reports; withhold evidence from prosecutors or defense counsel; or decline to perform tests which might hurt the State's case. The jury had a right to know that Agent Deaver, a prominent State witness, qualified as an expert, was giving false and misleading testimony not only in Petitioner's case, but in many others.[6]

The newly discovered evidence could not have been discovered in time to move for a new trial under Rule 59.

Newly Discovered Evidence

The Swecker-Wolf Report

1. On August 18, 2010, the Office of the Attorney General released the results of an independent review of the Forensic Biology Section of the SBI Crime Laboratory (SBI Lab) conducted by Chris Swecker and Michael Wolfe. Ex. 1, Swecker-Wolf Report. The review was ordered by the Attorney General in the aftermath of the February, 2010 exoneration of Gregory Taylor by the North Carolina Innocence Inquiry Commission. Swecker is a North Carolina attorney and former Assistant Director of the FBI's Criminal Investigative Division at the time of his retirement in charge of the FBI Laboratory. Wolf was the FBI Inspector in charge of overseeing the overhaul of the FBI Laboratory in 1998-1999. Ex. 1, p. 2, n. 2.

2. Swecker and Wolf identified 230 cases in which SBI Crime Lab agents misreported the results of forensic tests for the presence of blood. In these cases, agents reported the results of presumptive tests which yielded "positive indications for the presence of blood" but

[5] At Mr. Goode's capital trial, Agent Deaver opined, while testifying as a blood stain pattern analyst, that Mr. Goode could have been actively involved in the stabbing of two victims without getting blood on him. As mentioned above, the bloodstain pattern analysis portion of the Serology Dept. of the SBI lab has been suspended until higher standards and credentials are set. *See*, Ex. 3

[6] Research has shown that expert witness testimony is valued by a jury. (cites omitted)

omitted the results of subsequent confirmatory tests where the results were "negative" or "inconclusive." Ex. 1, p. 3. In other words, Swecker and Wolf found hundreds of cases in which SBI agents wrote reports suggesting that a substance was or could be blood when, in fact, subsequent and more sophisticated testing revealed that the substance could not be blood. In addition, Swecker and Wolf conducted a limited review of the SBI Lab's DNA program, which consisted of a review of five cases brought to their attention by defense attorneys including Petitioner's case. Ex. 1, pp. 22-25. They found "serious errors on the part of DNA Analysts."[7] Ex. 1, p. 4.

3. Although Swecker and Wolf's review was limited, it revealed systematic flaws in the review of physical evidence that could implicate all analysis performed by the SBI Lab.

> This report raises serious issues about laboratory reporting practices from 1987-2003 and the potential that information that was material and even favorable to the defense of criminal charges was withheld or misrepresented. The factors that contributed to these issues range from poorly crafted policy; lack of objectivity, the absence of clear report writing guidance; inattention to reporting methods that left too much discretion to the individual Analyst; lack of transparency; and ineffective management and oversight of the Forensic Biology Section from 1987 through 2003.

Ex. 1, p. 4. Swecker commented to the Charlotte Observer that, "what surprised me was the sort of the looseness there, specifically with policy regarding reporting results. What was created was a very subjective environment with cases." *SBI practices stun former high-ranking FBI official*, CHARLOTTE OBSERVER, August 20, 2010.

4. Reaction to the Swecker-Wolf Report has been loud, swift and broad-based. The Governor lamented "real problems with the SBI crime lab procedures." *Reaction to the SBI crime lab review*, WRAL.com, August 19, 2010. Former Chief Justice I. Beverly Lake was

[7] Swecker conceded in his August 18, 2010 press conference that he is not a DNA expert. http://www.wral.com/news/video/8153801/#/vid8153801 The full extent of the problems with DNA analysis at the SBI Lab are not known yet at this time.

stunned: “I’m absolutely shocked and astounded at the depth of the problem. That’s horrendous. That’s a terrible indictment on the state of North Carolina.” *Id*.

5. The Attorney General called the report “troubling.” *Id*.; *SBI review finds flawed NC cases, including several local cases*, STAR NEWS, August 18, 2010. He has promised changes and has removed or suspended several SBI analysts and both SBI Director Robin Pendergraft and SBI Lab director Jerry Richardson. *Id*.; *New SBI chief removes lab director, suspends more analysts*, NEWS AND OBSERVER, August 21, 2010. New SBI Director Greg McLeod has promised a review of the firearm and toolmark unit of the SBI Lab in light of recent concerns. *SBI’s bullet tests cold cases, indeed*, NEWS AND OBSERVER, August 27, 2010.

6. Prosecutors have also taken the Swecker-Wolf Report seriously:

- Branny Vickory, District Attorney for Greene, Lenoir, and Wayne counties, stated, “This is mind-boggling. It is really a nightmare for everyone. I don’t know how we are going to make this right.” *Scathing SBI Audit Says 230 Cases Tainted by Shoddy Investigations*, NEWS AND OBSERVER, August 19, 2010.
- Ann Kirby, a former Johnston County prosecutor who now works in the Craven County District Attorney's Office, stated “it’s an absolute betrayal to us as prosecutors. To find out that people we relied on so heavily in so many cases were slanting results—by their own accord or by the instruction of supervisors—is the ultimate betrayal. We are not playing a game here. These are people’s lives.” *Leaders calling for SBI cleanup*; NEWS AND OBSERVER, August 15, 2010.
- Cumberland County District Attorney Ed Grannis said the SBI’s reputation had been “badly tarnished” and the problems may take years to fix. *Local prosecutors say there wasn’t tampering in SBI evidence*, FAYETTEVILLE OBSERVER, August 19, 2010.

- Jim Woodall, District Attorney for Orange and Chatham counties, has called for a moratorium on executions in light of the scandal. *DA: Report puts death penalty in question*, WCHL1360.com, August 21, 2010.

7. The North Carolina Conference of District Attorneys has called for a full audit of all units of the SBI Lab. *DA's demand full SBI audit*, NEWS AND OBSERVER, August 28, 2010. In addition, prosecutors across the state are undertaking their own reviews of cases:

- Beaufort County District Attorney Seth Edwards, who is also the president of the North Carolina Conference of District Attorneys, promised, "we will endeavor to review all 190 cases to make sure justice has been served." *SBI review revives death penalty concerns*, WRAL.com, August 19, 2010.
- Union County District Attorney John Snyder responded to the revelations with: "we've been out there asserting things as fact that just weren't." *Id.* Snyder has promised to review all homicide cases in which defendant did not confess for SBI mistakes. *Union County DA Will Review Cases*, NEWS AND OBSERVER, August 18, 2010. "The irony is, we have the best science being made here in North Carolina [at university and corporate labs], but down the road at the SBI lab, we have bad science being used to take away someone's liberty." *Id*. Of analysts who craft reports to fit a prosecution theory, he stated, "that's not science; that's creation."
- District Attorneys in Onslow, Wake, Bertie, Halifax, and Henderson counties have also expressed concern and promised to review cases in their districts. *Five cases under review*, ROANOKE-CHOWAN NEWS-HERALD, August 28, 2010; *Reaction to the SBI crime lab review*, WRAL.com, August 19, 2010; *Onslow County case among those cited in crime lab report*, JACKSONVILLE DAILY NEWS,

August 28, 2010; *Three local cases in SBI review*, ROANOKE RAPIDS DAILY HERALD, August 24, 2010; *Doubt cast on '92 child abuse case*, TIMES NEWS, August 25, 2010.

8. The executive director of the North Carolina Police Benevolent Association stated, "undoubtedly, no further laboratory testing can be trusted under the current control of the SBI leadership." *State police group urges criminal probe of SBI*, NEWS AND OBSERVER, August 19, 2010. Conservative columnist Rick Martinez called the SBI Lab "a professional embarrassment." *Flights of evasion*, NEWS AND OBSERVER, August 26, 2010.

Withholding of Evidence

9. The Attorney General ordered the Swecker-Wolf review only after it became clear that SBI Agent Duane Deaver withheld exculpatory serology evidence in the case of Gregory Taylor. Gregory Taylor was convicted of first-degree murder in Wake County in 1993. An important piece of evidence used to convict Taylor was an SBI Lab report written by Agent Deaver reporting that tests performed on Taylor's vehicle revealed "chemical indications for the presence of blood." Proceedings initiated by the North Carolina Innocence Inquiry Commission revealed that, in fact, Deaver had also conducted more a sensitive confirmatory test for blood on the same items, and the results of that test were negative. Deaver did not report the negative results in his report, and the jury was led to believe that the substance on Taylor's car was blood. Deaver testified that the way he reported the serology results was consistent with SBI "policy." Taylor was exonerated at a hearing. Ex. 1, pp. 6-7.

10. Swecker and Wolf confirmed that Deaver's withholding of evidence in the Gregory Taylor case was not an isolated incident and that, in fact, this practice was commonplace. Swecker and Wolf identified 932 cases in which at least one presumptive test for blood was conducted with positive results. Ex. 1, p. 9. In 230 of those 932 cases, they found "at

least one instance where the lab notes reflected that a positive presumptive test for the presence of blood was followed by a confirmatory test that yielded results that were 'negative,' 'inconclusive' or 'no result,' but did not include this information in the final report." *Id.* In other words, the rate of misreporting was nearly 25%.

11. The Gregory Taylor case and Swecker-Wolf report are not the only instances of the SBI withholding exculpatory evidence.

- Alan Gell spent nine years on death row before being exonerated in 2004 based on exculpatory evidence withheld by SBI Special Agent Dwight Ransome. The Attorney General contracted with Swecker to review Ransome's conduct in several homicide investigations. Swecker noted Ramsome's pattern of sloppiness, practice of omitting information from investigative files, and lack of supervision. He urged the Attorney General to investigate five cases in which Ransome's files contained potentially exculpatory evidence to ensure that the evidence was turned over to prosecutors. Ex. 4.
- The Attorney General has ordered a special review of the case of Floyd Brown, who has filed a civil rights lawsuit against the SBI on grounds that Agent Mark Isley fabricated a confession against him. Doctors at Dorthea Dix say Brown is too mentally retarded to have made the statement Isely claims he did. A Superior Court judge dismissed charges against Brown in 2007. *SBI ignores years of warnings on confession called 'fiction,'* NEWS AND OBSERVER, August 18, 2010.
- In a 2007 Davie County case, an SBI blood spatter analyst changed a report in order to support the prosecution's theory. Agent Gerald Thomas had written an initial report stating that a particular bloodstain was likely made by "a bloody hand" but, after a meeting with the prosecutor, changed the language to "a pointed

object, consistent with a knife." Thomas failed to report the meeting, made no notation in the revised report that there had ever been another version, and dated the new report with the same date as the original. In this case, diligent defense counsel uncovered the deception before trial, and the defendant was acquitted of murder. Said one juror of the SBI's evidence: "politically, socially, religiously, I'm conservative; I'm a law-and-order man. But I don't know what other word to use but a fraud." *Fantastic tales told in blood; a jury stunned by SBI's acts*, NEWS AND OBSERVER, August 19, 2010.

- A 2008 SBI memo advises that original versions of lab reports that have been changed are not to be disclosed to defense attorneys unless they are specifically requested. *Witness for the prosecution: Lab loyal to law enforcement*, NEWS AND OBSERVER, August 16, 2010.

12. The new trial that Petitioner seeks would reveal false and misleading evidence and withheld exculpatory evidence, including evidence impeaching the credibility of the SBI witnesses and impeaching the reliability of the forensic evidence presented by the State. That evidence would have a substantial effect or influence in the jury's determination.

13. Agent Deaver's misconduct that this Court found to be "false and misleading" and was imputed to the State appears to be more than just the work of a rogue agent one time, but rather the product of the broader cultural problems and failure of leadership at the SBI, coupled with policies that resulted in per se *Brady* violations and *Napue* violations. [8]

[8] False testimony used by the State in securing a conviction may have an effect on the outcome of the trial. *Napue v. Illinois* 360 U.S. 264, 272 (1959).

Lack of Objectivity

14. The Swecker-Wolf Report repeatedly criticizes the SBI Lab for a lack of objectivity. Ex. 1. pp. 4, 19, 29. Swecker and Wolf recount with concern how Mark Nelson, the Forensic Biology Section Chief from December 1, 1986 to April 1, 2002, and at the time of Defendant's trial, "articulated to reviewers that he considered the primary consumer of the lab reports to be law enforcement." Ex. 1. p. 19. One of the Swecker-Wolf recommendations is to implement training of SBI employees in order to "specifically dispel any belief that the SBI laboratory and its personnel serve to support investigating officer and prosecutors only." Ex. 1, p. 29.

15. Recent reporting in the News and Observer has shown that SBI practices, training manuals, and directives have perpetuated a mindset that SBI agents and analysts are not neutral scientists but members of the prosecutorial team.

- SBI Lab analysts are encouraged to collaborate and communicate with local law enforcement and prosecutors but are told that they must let prosecutors know before speaking with defense counsel. *Witness for the prosecution: Lab loyal to law enforcement*, NEWS AND OBSERVER, August 16, 2010.
- A 2007 manual teaching analysts how to testify in court states, "Tell the D.A. in advance of any weaknesses in the case so that the trial of the case can be planned to minimize the weaknesses' impact." The SBI has recently suspended use of this manual. *Id.*; *New SBI director suspends use of training manual*, NEWS AND RECORD, August 12, 2010.
- SBI Lab analysts "depend on prosecutors to provide favorable feedback on their courtroom testimony as part of a certification requirement for the lab. In hundreds of feedback forms reviewed by the N&O, prosecutors offered glowing

responses." *Witness for the prosecution: Lab loyal to law enforcement*, NEWS AND OBSERVER, August 16, 2010.

16. Petitioner had no way to determine the extent to which the SBI evidence in his case was tainted by an institutional culture biased towards the prosecution. Based on the recent revelations about the SBI, however, it is clear that all the SBI agents, analysts, and technicians involved in Petitioner's case were, at the very least, encouraged by Lab culture and policy to help the State at the expense of the defense or were instructed to highlight strengths in the state's case and downplay the State's weaknesses. The jury never had the opportunity to hear that SBI employees working on Petitioner's case believed that their certification or employment status were dependent on their ability to satisfy prosecutors, which left the jury unable to accurately weigh the risk of biased or unreliable testimony by the SBI agents.

Lack of Scientific Validity

17. When SBI Lab analysts testify, they are qualified as experts and held out to jurors as scientists. However, "there are important differences between the quest for truth in the courtroom and the quest for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law, on the other hand, must resolve disputes finally and quickly." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 50 U.S. 579, 596-97 (1993).

18. The Swecker-Wolf Report, however, casts serious doubt on the scientific validity of the work performed by the SBI and the scientific approach of the SBI Lab analysts. Without a scientifically valid foundation, opinions offered in the court room will necessarily fail to serve the truth-seeking function of the adversarial process.

- Swecker and Wolf found that serology analysts were inconsistent in their understanding of whether the Takayama confirmatory test for the presence of blood could produce an inconclusive result. The SBI training manual made no

reference to the possibility of an inconclusive result, yet a 1997 Molecular Genetics Section Administrative Order specifically instructed analysts to omit inconclusive results from reports.[9] Some analysts judged a result to be inconclusive, as opposed to negative, when they subjectively concluded that the requisite salmon colored crystals were "trying to form" or must not have formed because the sample size was insufficient. Ex. 1, pp. 17-22.

- SBI analysts justified their failure to report the results of negative serology tests with the argument that a negative result did not mean that blood was **not** present. Ex. 1, p. 19. In an interview with the News and Observer, retired serology analyst Jed Taub stated: "we didn't report the negative result of a confirmatory test because, really, it's misleading. We couldn't be sure it wasn't blood, so those tests really didn't matter. People are so spacey about blood. If there was a misunderstanding, that's the fault of the [defense] attorney. We can't forestall every idiot." *Ex-SBI analyst defends withholding test results*, NEWS AND OBSERVER, August 20, 2010.

19. Furthermore, in their limited review of the SBI's handling of DNA evidence, Swecker and Wolf found "disturbing" mistakes made in five North Carolina cases, including Petitioner's case. Ex. 1, pp. 22-25.

- Francisco Laboy – The lab produced genetic profiles which identified both the defendant and the victim as being of the wrong gender. Ex. 1, p. 23.

[9] The Molecular Genetics Section is a former name of what is now called the Forensic Biology Section of the SBI Lab; it has also been know as the Serology Section. *See* Swecker-Wolf Report at 1, n. 1.

- Petitioner, George Earl Goode, Jr. – SBI Agent Deaver falsified his report and testified falsely about his results. This case also involved the failure to properly preserve evidence and document chain of custody. Ex. 1, pp. 23-24.
- Leslie Lincoln – The lab analyst "inadvertently switched" the known DNA samples of the victim and the defendant, resulting in a report that erroneously identified bodily fluid on a piece of evidence as having come from the defendant when it came from the victim.. Ex. 1, p. 23
- Terrance Elliot – During testing, the SBI allowed cross-contamination to occur between different items of evidence. The defendant is currently on death row. Ex. 1, p. 24.
- Dwayne Dail – The original lab report omitted the fact that two hairs found at the crime scene were not consistent with the defendant's hair. Mr. Dail was later exonerated by DNA evidence after serving 18 years in prison. *Id.*

20. The following additional examples further demonstrate the SBI lab's lack of interest in the rigors of science:

- Jerry Richardson, who was until recently from the director of the SBI Lab, does not have a science degree. He graduated from N.C. State with a BA in communications. *New SBI chief removes lab director, suspends more analysts,* NEWS AND OBSERVER, August 27, 2010.
- In 2007, a Davie County man was acquitted of murder after the jury watched a video showing SBI blood spatter analysts Gerald Thomas and Duane Deaver conducting unscientific tests designed to produce a result supporting the prosecution's theory. Since the acquittal, the bloodstain pattern expert hired by the defense has shown the video to colleagues, all of whom have been 'aghast'

and have deemed the work unscientific. The Attorney General has suspended the work of the bloodstain pattern analysts. *Fantastic tales told in blood; a jury stunned by SBI's acts*, NEWS AND OBSERVER, August 19, 2010. *See also*, Ex. 3.

- In a 2006 murder trial, SBI firearm and toolmark analyst Beth Desmond testified with "absolute certainty" that two bullets were shot from the same gun. Independent analysts say that such bullet comparison is subjective and have been unable to replicate Desmond's conclusions upon examination of the same bullets. The SBI has refused to reanalyze the bullets. *SBI relies on bullet analysis that critics deride as unreliable*, NEWS AND OBSERVER, August 18, 2010. The Attorney General has now ordered an examination of the work of the firearm and toolmark unit of the SBI Lab. *SBI's bullet tests cold cases, indeed*, NEWS AND OBSERVER, August 27, 2010.
- In June, the North Carolina Supreme Court chastised the SBI Lab for failing to conduct laboratory tests on pills suspected of being controlled substances. *State v. Ward*, 364 N.C. 133, 694 S.E.2d 738 (2010). Instead, SBI analysts were identifying drugs simply by looking at them. At issue, specifically, was the visual inspection of pills by Special Agent Irvin Lee Allcox, a chemist in the SBI Lab for over 24 years. *Id.* at 740. Wrote Justice Brady: "It is difficult to view [Agent Allcox's] testimony as reflecting anything other than a technique for 'cutting corners.' Thus, even Agent Allcox's own testimony casts an unsettling shadow of doubt on the reliability of mere visual inspection as a method of proof." *Id*. at 745-46.

21. Had a jury been provided with the information necessary to assess the scientific validity of the work performed by the SBI agents, analysts, and technicians involved in

Petitioner's case, and had a jury been informed that essentially no quality control was in place, that information would have had a substantial and injurious effect or influence in the jury's determination of the guilt of Mr. Goode.

22. It is clear that SBI leadership have failed to exercise adequate oversight. The Swecker-Wolf Report repeatedly notes the SBI's failure to provide guidance to analysts. Ex. 1, pp. 17, 26-27. For example, the bloodstain pattern analysis team, which included Duane Deaver and has now been suspended, operated for 21 years without leadership or written policies. *SBI bloodstain analysis team went leaderless for 21 years*, NEWS AND OBSERVER, September 9, 2010. The Swecker-Wolf report shows that when guidance was issued to analysts, it was often inconsistent and confusing. Ex. 1, pp. 21-22, 26-27. Unfortunately, defendants such as Petitioner have borne the burden of this lack of oversight for decades.

23. In addition, Swecker and Wolf uncovered no evidence that the SBI policies, practices, and training materials they examined in their investigation of the serology section had ever been subjected to legal review. Ex. 1, p. 27. At this revelation, the Attorney General replied, "That concerns me greatly." *New SBI chief removes lab director, suspends more analysts*, NEWS AND OBSERVER, August 27, 2010. The Attorney General has now initiated a legal review of all sections of the SBI Lab. *SBI Lab get interim director; more audits coming, Cooper says*, WFAE.org, September 8, 2010.

24. The SBI Lab is accredited by ASCLD-LAB. The News and Observer has reported that ASCLD-Lab audits the SBI Lab every five years. *Inspectors missed all SBI faults*, NEWS AND OBSERVER, August 26, 2010. Inspectors examine five cases from each analyst, and those cases are selected by SBI supervisors. *Id.* ASCLD-LAB is headed by two former SBI agents. *Id.* Almost every year the SBI Lab has sought accreditation, it has had to fix policies or remediate cases in order to pass. *SBI lab analysts taught in-house, away from peers*, NEWS AND

OBSERVER, August 9, 2010. In addition, the Swecker-Wolf Report references a Quality Assurance Program within the SBI. Ex. 1., p. 30.

25. It is clear that the problems at the SBI outlined in the Swecker-Wolf report and News and Observer have impacted criminal cases There is no question that improper SBI practices and agent testimony have led to wrongful prosecutions and convictions. Problems with forensic evidence are not confined to North Carolina. A 2009 study looked at 137 cases from across the nation in which defendants had been exonerated by post-conviction DNA testing and found that 60% of these wrongful convictions were based, at least in part, on invalid forensic testimony regarding testing ranging from serological analysis to bite mark comparison. Ex. 5, Brandon L. Garrett and Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 V.A. L. REV. 1 (2009).

26. The Swecker-Wolf Report was not a comprehensive audit of the SBI Lab.[10] Ex. 1, p. 30. The scope of the review was limited, encompassing only the question of "how SBI Serology Analysts reported the results of serology tests for the presence of blood" from 1987 to 2003, in addition to "a limited review of the SBI Laboratory DNA program." Ex. 1, pp. 3,4. In addition, the Attorney General has suspended the work of the bloodstain pattern analysts. *Fantastic tales told in blood*; *a jury stunned by SBI's acts*, NEWS AND OBSERVER, August 19, 2010.

27. There is good reason now to believe that problems at the SBI have not been confined to tests conducted for the presence of blood and that the Swecker-Wolf Report may be just the tip of the iceberg. Five of the six contributing factors cited by Swecker and Wolf are broadly-applicable administrative problems: "poorly crafted policy; lack of objectivity; the

[10] The SBI Lab consists of many sections, including Forensic Biology, Drug Chemistry, Documents and Digital Evidence, Evidence Control and Administrative Services, Firearm and Toolmark, Latent Evidence, Molecular Genetics, and Trace Evidence; plus a Quality Assurance Office. Ex. 1 p. 16, n.17.

absence of clear report writing guidance; inattention to reporting methods that left too much discretion to the individual Analyst; lack of transparency." Ex. 1, p. 4. Indeed, the picture painted by the Swecker-Wolf Report is one of an agency whose very culture has been characterized by a profound lack of objectivity, leadership, and scientific rigor.

28. Before the recent revelations, Petitioner could not know whether further examination of other SBI evidence would uncover more misconduct similar to that found already in the serology section. Petitioner now wonders, in light of the recent revelations, whether the SBI Lab performed any other analyses, the results of which have never been revealed, or whether the SBI declined to perform analyses which may have rendered exculpatory or mitigating evidence.

29. The jury in Petitioner's trial had a right to know that the agents who worked on his case were biased, poorly supervised, inappropriately trained, or led to understand that their job security depended on helping the State win convictions.

30. The jury in Petitioner's trial heard nothing about the policies and procedures that shed light on the honesty, objectivity, scientific proficiency, and leadership of the SBI as a whole. Seth Edwards, Beaufort County District Attorney and president of the North Carolina Conference of District Attorneys, has acknowledged that the recent revelations about the SBI could make a difference to jurors' consideration of SBI evidence: "The mindset has changed. We'll encounter jurors who won't believe in the SBI anymore." *Distrust of SBI appears in court*, NEWS AND OBSERVER, August 24, 2010; *see also SBI review revives death penalty concerns*, WRAL.com, August 19, 2010 and *Flagged SBI tests include Pitt cases*, DAILY REFLECTOR, August 18, 2010 (containing similar statements from Clark Everett, Pitt County District Attorney, and Jim Woodall, District Attorney for Orange and Chatham counties and past president of the NC Conference of District Attorneys).

31. The new trial that Petitioner seeks would reveal false and misleading evidence and withheld exculpatory evidence, including evidence impeaching the credibility of the SBI witnesses and impeaching the reliability of the forensic evidence presented by the State. That evidence would have a substantial effect or influence in the jury's determination.

32. Agent Deaver's misconduct that this Court found to be "false and misleading" and was imputed to the State appears to be more than just the work of a rogue agent one time, but rather the product of the broader cultural problems and failure of leadership at the SBI, coupled with policies that resulted in per se *Brady* and *Napue* violations.

ARGUMENT

Introduction

Rule 60(b) allows a party to seek relief from a final judgment, and request opening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence. Gonzalez v. Crosby, 545 U.S. 524 (2005). Rule 60(b)(2) requires newly discovered evidence that, with reasonable diligence could not have been discovered in time to move for a new trial under Rule 59(b); rule 60(b)(3) requires fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; grounds for relief under Rule 60(b)(6) are any other reason that justifies relief. Rule 60(b)(6) exists so that courts may "vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott* v. U.S. 335 U.S. 601 (1949). Relief is justified under each sub-section of Rule 60(b).

Petitioner is entitled to relief under Rule 60(b)(2)

In order to get relief under Rule 60(b)(2), the evidence a) must be, in fact, newly discovered, i.e., discovered since the trial; b) facts must be alleged from which the court may infer diligence on the part of the movant; c) the evidence relied on must not be merely cumulative or impeaching; d) it must be material to the issues involved; and e) it must be such,

and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal. *U.S. v. Custis*, 988 F.2d 1355 (4th Cir. 1993).

The newly discovered evidence in Petitioner's case satisfies each element of the test. The newly discovered evidence did not come to light until August 2010, some ten months after this Court granted habeas relief to Petitioner. Petitioner could not have anticipated the existence of such evidence. There was no lack of diligence attributable to the defense. The new evidence undermines and impeaches the very foundation of the government's case. As the court in *Custis* notes, where a case turns on the testimony of one witness whose credibility is greatly compromised by the newly discovered evidence, a new trial would be justified. See *Id*. at 1359. See also *United States v. Atkinson*, 429 F.Supp. 880, 887 (E.D.N.C. 1977) (holding that newly discovered evidence that "sufficiently impugns the veracity and credibility" of the uncorroborated testimony of the "only witness who testified to petitioner's participation" in a drug transaction warranted a new trial.) The Seventh Circuit Court of Appeals in *Unites States v. Taglia* noted:

> Nothing in the text or history of Rule 33, or of the cognate rule (Rule 60(b)), supports a categorical distinction between types of evidence; and we cannot see the sense of such a distinction. If the government's case rested entirely on the uncorroborated testimony of a single witness who was discovered after trial to be utterly unworthy of being believed ... the district judge would have the power to grant a new trial in order to prevent an innocent person from being convicted.
>
> The judicial language that seems to exclude impeaching testimony from the scope of Rule 33 thus illustrates the tendency to overgeneralize. It is easy to confuse a practice with a rule.

922 F.2d 413, 415 (7th Cir. 1991).

Here the new evidence constitutes evidence that is not "merely impeaching," it is evidence that undermines and impeaches the heart of the government's case: the credibility of

the State and its witnesses. In *United States v. Lipowski*, the court granted a new trial on the basis of newly discovered evidence where the impeaching evidence "could have been the proverbial 'straw that broke the camel's back' with respect to [the key witness's] credibility." 423 F.Supp. 864, 867 (S.D.N.Y. 1976).

This Court had already found a *Napue* violation, stating that testimony by Agent Deaver falsely portrayed to the jury that he conducted a test for blood which indicated blood, not some substance which might be blood, was on Petitioner's boot. See Order, p. 25. This Court further found that the prosecutor reinforced the misleading testimony by arguing during closing to "think about the blood on the boots." Order, p. 25; St.Ct. Rec. Vol. 12 of 45 at 193. This Court imputed the misleading testimony of SBI agent Deaver to the State. Order p. 26. What has only now become apparent is that the SBI has engaged in a widespread and longstanding practice of misstating the results of forensic tests, concealing evidence favorable to the defense, and withholding material and potentially exculpatory evidence from numerous criminal defendants.

The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors at the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. *Id*.at 269. Although habeas relief was granted to Petitioner on October 21, 2010, this Court found that a new trial was not warranted because there was not a reasonable likelihood the false evidence could have affected the verdict. Order p. 21.

It is well established that a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. Petitioner argued before this Court that the State's presentation of false evidence violated *Napue v. Illinois*, 360 U.S. 264 (1959). This Court found a *Napue* violation, but did not find that a new trial was warranted. Order p. 21. Petitioner respectfully urges this Court to reconsider the import of that

evidence (blood on the boot) along with Deaver's opinions (lack of blood doesn't mean you weren't involved in the killings) upon the jury given the newly discovered evidence described herein.

The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. *Napue* at 269. In order to prevail on his *Napue* claim, Petitioner was required to prove that "the false testimony used by the State in securing the conviction of Petitioner may have had an effect on the outcome of the trial." Although this Court concluded that there was not a reasonable likelihood of a different outcome at trial based on Deaver's false and misleading evidence about the blood he claimed to find on petitioner's boot, the newly discovered evidence, as outlined in this motion, demonstrates that these new revelations concerning Agent Deaver and the entire SBI, coupled with the false testimony used by the State in securing the conviction of Mr. Goode, may have had an effect on the outcome of his trial. *Napue* at 272. It also seems likely that this new evidence, even alone, would have had a substantial and injurious effect or influence in determining the jury's verdict. *Brecht v. Abrahamsom*, 507 U.S. 619 (1993).

Not only would the jury have heard that Agent Deaver's reliance on merely a presumptive test for blood was false and misleading, they would have heard that he gave false and misleading testimony in many other cases; that his blood stain pattern analysis interpretations were not based in science; that he was part of an institution whose culture was biased towards the prosecution and whose very culture has been characterized by a profound lack of objectivity, leadership, and scientific rigor; and that he may be held in contempt for perjuring himself before the Innocence Commission. They would have heard that a policy existed at the SBI which resulted in per se *Brady* and *Napue* violations. That information would easily have

been used to undermine Agent Deaver's testimony and impeach his credibility, and other State witnesses, thus having a substantial and injurious effect in determining the jury's verdict.

With regards to Petitioner's claim that the State withheld material exculpatory evidence by failing to reveal that the test Agent Deaver performed on Petitioner's boot produced only a "very slight" reaction and there was not a sufficient quantity of substance on the boot to perform a Takayama test, which is a conclusive test for the presence of blood, this Court found that even if the State improperly withheld Agent Deaver's report, Petitioner was unable to show a reasonable probability that the result of the proceeding would have been different had the information been disclosed to the defense. Order, p. 33. Because of the newly discovered evidence and in view of the fact that the State later claimed to do another presumptive test followed by DNA testing, Agent Deaver's report claiming there was not a sufficient quantity of substance on the boot to perform a Takayama test appears to be false, satisfying both 60(b)(2) and 60(b)(3). The SBI training manual made no reference to the possibility of an inconclusive result, yet a 1997 Molecular Genetics Section Administrative Order specifically instructed analysts to omit inconclusive results from reports. Some analysts judged a result to be inconclusive, as opposed to negative, when they subjectively concluded that the requisite salmon color crystals were "trying to form" or must not have formed because the sample size was sufficient. Ex.1, pp. 17-22. In addition, Swecker's report demonstrates that false and misleading testimony offered by Deaver was not isolated to this case.

Moreover, Deaver's misconduct now appears to be more than just the work of a rogue agent but rather the natural product of the broader cultural problems and failure of leadership at the SBI. The shocking nature and scope of these developments is such that Petitioner deserves a new trial. His two consecutive life sentences and his consecutive forty (40) year sentence for robbery with a dangerous weapon should not be allowed to stand until it is determined exactly

what evidence the SBI mishandled or concealed in his case and how that may have impacted the outcome of his capital trial. A jury learning that Agent Deaver and the SBI Lab have been disgraced; that Agent Deaver may have committed perjury, not just once, but many times; that bloodstain pattern analysis has been discontinued in its entirely; and that the Attorney General has called for a full audit of each and every portion of the SBI Lab, would find these revelations had a substantial and injurious effect or influence in the determination of the jury at Petitioner's trial. At a new trial, SBI policies and practices regarding the withholding of evidence and other failures would be presented to a jury. The jury had a right to know whether SBI employees were instructed to keep certain information out of laboratory reports; withhold evidence from prosecutors or defense counsel; or decline to perform tests which might hurt the State's case. They had a right to know that the SBI had a policy that resulted in per-se *Brady* and *Napue* violations.

Furthermore, the evidence is not cumulative. The newly discovered evidence is not only new, but shocking, and could not have been anticipated to support any theory or evidence the defense put forth. This new evidence is material to the case and strikes at the core of the case against Mr. Goode. In making its case against Mr. Goode, the State relied on SBI evidence to implicate Mr. Goode. That evidence was not given to the defense attorneys until the trial was well underway. Until then, the State's case was weak. [11]The newly discovered evidence not only undermines the credibility of State witnesses, but also bolsters the defense case, including Mr. Goode's testimony, who maintained his innocence when he testified at trial. The State's case depended so much on Mr. Goode being an active participant in the murder. The newly discovered evidence is so damaging to the State, that, had this evidence been developed by

[11] There was no forensic evidence connecting Mr. Goode to the murders until Agent Deaver falsely reported he found blood on Mr. Goode's boot.

skilled counsel, the jury would likely have a reasonable doubt and would have acquitted Mr. Goode.

Petitioner is also entitled to relief per Rule 60(b)(3)

The Rule 60(b)(3) standard is more lenient than its Rule 60(b)(2) counterpart, and properly so. The "newly discovered evidence" provision of Rule 60(b)(2) is aimed at correcting an erroneous judgment stemming from unobtainablility of evidence. *Schultz v. Butcher,* 24 F.3d 626, 630 (4th Cir.1994). In contrast, Rule 60(b)(3) focuses not on erroneous judgments as such, but on judgments which were unfairly procured. *Id*. In *Shultz,* the court held that new evidence does not have to be result altering to warrant a new trial on a Rule 60(b)(3) motion. *Id*. The movant must 1) show the opponent's misconduct by clear and convincing evidence; and 2) show that the misconduct substantially interfered with its ability fully and fairly to prepare for, and proceed at, trial. *Anderson v. Cryovac*, Inc., 862 F.2d 910 (1st Cir. 1988). The burden can also be met by presumption or inference, if the movant can successfully demonstrate that the misconduct was knowing or deliberate. Once a presumption of substantial interference arises, it can alone carry the day. Id at 926. If the movant is unable to prove that the misconduct was knowing or deliberate, it may still prevail as long as it proves by a preponderance of the evidence that the nondisclosure worked some substantial interference with the full and fair preparation or presentation of the case. Id. at 926. "Misconduct" does not demand proof of nefarious intent or purpose as a prerequisite to redress. For the term to have meaning in the Rule 60(b)(3) context, it must differ from both "fraud" and "misrepresentation." The term can cover even accidental omissions. Id. at 923.

Although habeas relief was granted to Petitioner on October 21, 2010, this Court found that a new trial was not warranted because there was not a reasonable likelihood the false evidence could have affected the verdict. Order p. 21. In order to prevail on a 60(b)(3) motion,

however, Petitioner need not show that the outcome would have been different. The SBI has already admitted that a policy was in place at the time of Petitioner's trial that resulted in *Brady* and *Napue* violations. This Court has already found that Agent Deaver gave false and misleading testimony at Petitioner's capital trial and imputed it to the State. The blood stain pattern analysis discipline of the Serology Section of the SBI lab has been suspended until higher standards and credentials are set, purportedly because Agent Deaver's opinions were not based in science and he was not qualified to testify on the subject. State witnesses were part of an institution whose culture was biased towards the prosecution and whose very culture has been characterized by a profound lack of objectivity, leadership, and scientific rigor. Deaver may very well be held in contempt for perjuring himself before the Innocence Commission.

With regards to Petitioner's claim that the State withheld material exculpatory evidence by failing to reveal that the test Agent Deaver performed on Petitioner's boot merely produced only a "very slight" reaction and there was not a sufficient quantity of substance on the boot to perform a Takayama test, which is a conclusive test for the presence of blood, this Court found that even if the State improperly withheld Agent Deaver's report, Petitioner was unable to show a reasonable probability that the result of the proceeding would have been different had the information been disclosed to the defense. Order, p. 33. In view of the fact that the State later claimed to do another presumptive test followed by DNA testing, Agent Deaver's report claiming there was not a sufficient quantity of substance on the boot to perform a Takayama test appears to be, at the very least, misleading, if not false, satisfying 60(b)(3). The SBI training manual made no reference to the possibility of an inconclusive result, yet a 1997 Molecular Genetics Section Administrative Order specifically instructed analysts to omit inconclusive results from reports. Some analysts judged a result to be inconclusive, as opposed to negative, when they subjectively concluded that the requisite salmon color crystals were "trying to form"

or must not have formed because the sample size was sufficient. Ex.1, pp. 17-22. Swecker's report demonstrates that the false and misleading testimony from Deaver were not isolated incidents.

In addition, as discussed above, Agent Deaver's misconduct was not the product of just his own zeal; rather, he is product of the broader cultural problems and failure of leadership at the SBI. Petitioner reiterates the shocking nature and scope of these developments is such that Petitioner deserves a new trial. His two consecutive life sentences and his consecutive forty (40) year sentence for robbery with a dangerous weapon should not be allowed to stand until it is determined exactly what evidence the SBI mishandled or concealed in his case and how that may have impacted the outcome of his capital trial. Agent Deaver and the SBI lab have been disgraced; Agent Deaver may have committed perjury, not just once, but many times; that the bloodstain pattern analysis has been discontinued in its entirely; and the Attorney General has called for a full audit of each and every portion of the SBI lab. The behavior of the State agents interfered with Petitioner's ability to fully and fairly prepare for and proceed to trial. *Anderson v. Cryovac*, Inc., 862 F.2d at 924. Thus, retrial is mandated under Rule 60(b)(3).

Finally, the existence of misconduct in the Rule 60(b)(3) sense does not depend upon a demonstration of nefarious intent or purpose. Nondisclosure comes in different shapes and sizes: it may be accidental or inadvertent, or considerably more blameworthy (though still short of fraud or outright misrepresentation). Id. at 925. Substantial interference with Petitioner's ability to have had a fair trial has been shown. It alone should "carry the day". Id. at 926.

Petitioner is entitled to a new trial under Rule 60(b)(6)

Although Rule 60(b)(6) contemplates cases that are extraordinary. Petitioner respectfully submits that recent revelations about the SBI engaging in a widespread and longstanding practice of misstating the results of forensic tests, concealing evidence favorable to the defense, and

withholding material and potentially exculpatory evidence from numerous criminal defendants fall squarely within the rule in order to appropriately accomplish justice.

CONCLUSION

For the foregoing reasons, George Earl Goode, Jr. respectfully requests that this Court grant his motion for relief from judgment as follows:

1. Reopen judgment and enter an Order granting a writ of habeas corpus vacating the convictions and allowing the State of North Carolina reasonable time to retry the Petitioner.

2. Such other relief as the Court deems just and proper.

Respectfully submitted this the 20th day of October 2010.

s/s Diane MB Savage
Diane MB Savage, Attorney at Law
4819 Emperor Blvd. Fl.4
Durham, NC 27703
(919) 932-7239
State Bar No. 22661
Dianes2@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Relief from Judgment has been duly served by first class mail on William Hart Sr., Senior Deputy Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina, 27602-0629, by placing a copy in an envelope addressed as stated above and by placing the envelope in a depository maintained by the United States Postal Service.

This the 20th day of October, 2010.

s/s Diane MB Savage
Diane MB Savage
Attorney for Petitioner