IN THE COMMON PLEAS COURT OF GUERNSEY COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO	:	
Plaintiff,	:	Case No. 97-CR-63
	:	
-vs-	:	**HONORABLE JUDGE DAVID A. ELLWOOD**
	:	
CLARENCE D. (SKIP) ROBERTS	:	
Defendant.	:	
	:	
	:	

MOTION FOR LEAVE TO FILE MOTION FOR NEW TRIAL

Defendant, Clarence D. (Skip) Roberts, proceeding in Pro Se, respectfully moves this Honorable Court to grant him leave to file a motion for new trial pursuant to Criminal Rule 33(A)(B)(C) of the Ohio Rules of Criminal Procedures.

Defendant's reasons for the instant motion are set forth in the following memorandum of law.

Respectfully Submitted,

Clarence D. (Skip) Roberts
#A351-300
Allen Correctional Institution
P.O. Box 4501
Lima, Ohio 45802-4501

Defendant, Pro Se

MEMORANDUM OF LAW

STATEMENT OF THE CASE:

On June 30th, 1997, Defendant Clarence D. (Skip) Roberts, (hereinafter referred to as Defendant), was indicted for Aggravated Murder pursuant to R.C. 2903.01; and, Aggravated Robbery pursuant to R.C. 2929.13. Death Penalty Specification was attached to the offenses. These offenses involved the stabbing death and robbery of Leo R. Sinnett which occurred on May 17th, 1997. Defendant's trial commenced on September 15, 1997 in the Guernsey County, Ohio Common Pleas Court. The trial concluded on September 30th, 1997 finding Defendant guilty of both counts. After the jury declined to recommend the death penalty, Defendant was sentenced to a term of imprisonment of life without the possibility of parole for the Aggravated Murder conviction and ten years for the conviction of Aggravated Robbery. Sentence was imposed on September 30th, 1997. Defendant has adamantly declared from the onset of his case that he was not the actual perpetrator of these offenses and that he did not enter the victim's residence of Leo R. Sinnett nor did he have any foreknowledge that the offenses were going to take place. Further, Defendant has maintained that it was Co-Defendant John LaFollette who entered the residence of Leo R. Sinnett and stabbed him to death and robbed him. Defendant now has new evidence that clearly shows that Co-Defendant John LaFollette is the lone perpetrator of these heinous crimes and going as far as boasting about it stating that he cannot be prosecuted for Aggravated Murder and Agg. Robbery because he has already served his time for the offenses

by pleading out to Complicity to Commit Voluntary Manslaughter. It is clear that he can be prosecuted because the charge he pleaded to and Aggravated Murder are completely different elements.

Based on the newly discovered evidence, Affidavit of Dillion E. Sargent, Defendant moves this Court to vacate his conviction and sentence and grant him a new trial as a matter of law.

[5], (19) "Whether evidence was unavailable to an accused at trial is, to some extent, to be determined by whether the source of the evidence was available for examination or cross-examination by an accused [sic] counsel at trial." State v. Condon, 808 N.E.2d 912 (Ohio App. 1 Dist. 2004), quoting STATE v. WRIGHT (1990), 67 Ohio App.3d 827, 832.

Defendant did not know of this new evidence because the evidence did not become available until several days after April 23rd, of 2008 when it arrived in the mail to him. See Exhibit "A". This Affidavit of Dillion E. Sargent could not, even through due diligence, have been available to him before, during, or immediately after trial because Co-Defendant John LaFollette did not boast about how he was the one who murdered and robbed Leo R. Sinnett until LaFollette was at Lebanon Correctional Institution.

In viewing the evidence of this case in the record along with the Notarized Affidavit of Dillion E. Sargent, being new evidence which entitles Defendant to a new trial, it is compelling evidence that Co-Defendant John LaFollette was the lone perpetrator who robbed and stabbed the victim, Leo R. Sinnett.

The Affidavit of Dillion E. Sargent, (Exhibit "A") is genuine, relevant, and material to "newly discovered evidence" which through due diligence could not have been discovered before trial or within the 120 day period as described in Crim. R. 33(A). This new evidence brings new facts to the case which will result in a different outcome. Defendant Roberts has been diligent throughout the case that it was Co-Defendant John LaFollette who viciously stabbed to death and robbed Leo Sinnett. Scientific evidence which still exists, yet has never been tested for comparison to John LaFollette still exists and Defendant states that there is now strong cause to test the scientific evidence in light of the newly discovered evidence presented herein. (Exhibit "A")

The Affidavit of Dillion E. Sargent being "newly discovered evidence" provides strong cause for Defendant to be granted a new trial as it would undoubtedly result in a different outcome than his previous trial. Having Dillion E. Sargent testify at a new trial would be exculpatory evidence that would show, to the jurors, that Co-defendant John LaFollette is the lone perpetrator and that LaFollette is so cold to his criminal acts that he boasts about committing them.

The requirements of Crim. R. 33(A)(6), as ruled upon in State v. Shepard, places a showing on the Defendant pursuing the motion for new trial that he must have used due diligence in trying to find the evidence. Second, he must present affidavits to inform the trial court of the substance of the evidence that would be used if a new trial were granted, and three, the evidence presented must be of such weight that a different result would be reached at the second trial. STATE v. SHEPARD, 13 Ohio App.3d 117, 468 N.E.2d 380; Quoting from

AFFIDAVIT OF DILLION E. SARGENT

I Dillion E. Sargent, hereby depose and states under the penalty of perjury; **Exhibit "A" attached.**

1.) I am a citizen of the United States.

2.) That I am currently incarcerated at the Lebanon Correctional Inst, in Warren County Lebanon, Ohio.

3.) that on or about July, 9th, 1999, I Dillion E. Sargent heard an inmate John Laffollette say he Killed and Robbed a Leo Sinpitt.[1]

4.) that Laffollette stated he spent the money he took from this man while he was on the run.

5.) Laffollette stated that there was 9 or 10 thousand dollars that he had taken from this man.

6.) John Laffollette made these statements to his code defendant, a man I knew as Chip, this conversation came about when Chip said that Clarence Roberts was going to get a new trial. LaFollette said it didn't matter because he John had already got his time and the Court could not try him again.

Co-Defendant LaFollette provides the reason as to why he can now brag that he was the principal offender. He believes he can not be charged for the murder and robbery of Leo Sinnett because he has already served his time for the crime. He could not be more wrong.

Though Co-Defendant LaFollette was originally scheduled to testify for the State, it was Defense Attorneys Lewis Tingle and Kent Biegler who called LaFollette to testify which was prejudicial to

[1] The Affidavit of Dillion E. Sargent contains some mis-spelled words.

Defendant because counsel can not impeach his own witness. Further, the Court had ruled that Defense Counsel could not raise the issue of Co-Defendant LaFollette's two "out of court" Police Statements to Investigative Officers which were contrary to one another which would have greatly challenged the credibility of LaFollette's trial testimony. Additionally, the Trial Court instructed the fact finders that Co-Defendant LaFollette had already been convicted of his participation of the crimes and would be sentenced at a later date. See Exhibit "H". Exhibit I and Exhibit J are the two statements of Co-Defendant John LaFollette made to the Detectives investigating the case.

There was no physical or scientific evidence connecting Defendant Roberts as being the principal offender not is there any that places Defendant inside the Sinnett residence. After stating this, it was imperative that defense counsel should have been permitted to challenge LaFollette's testimony against the two out of court statements he provided to the detectives because they were very much in contrast to each other and his trial testimony. In light of the fact that now, a viable and credible witness has come forward that not only places LaFollette inside the Sinnett residence but also shows that John LaFollette was the lone perpetrator as well as demonstrating that LaFollette was cold and calculating when he alone entered the Victim Leo R. Sinnett's residence and murdered and robbed him. See Exhibit "A".

The controlling case Defendant relies on is STATE v. CONDON, 808 N.E.2d 912. The Condon Court rendered the following decision:

> The evidence in Tobias's affidavit has been discovered since the trial and could not in the exercise of due diligence have been discovered before the trial. See Petro, supra, at syllabus; Wright, supra, 67 Ohio App.3d at 831, 588 N.E.2d 930.

NEWLY DISCOVERED EVIDENCE OF DAVID BLACK

David Black provided two statements to Detectives who were investigating the crime. One statement was given at the crime scene (Exhibit D) and one was given at the Guernsey County Sheriff's Department (Exhibit B). In both Exhibits "B" and "D" David Black places himself at the crime scene while the murder was taking place. David Black states that he was mowing the grass of his grandfather Leo R. Sinnett. In his statement (Exhibit B) to Detective Ron Pollock of the Guernsey County Sheriff's Department, David Black states the following:[2]

Page No.:		Line:	
31	DB	26	And I parked it and I went around back to see if I
"	"	"	could find a weed
"	"	27	eater in the basement. I couldn't find it, so I
"	"	"	went upstairs and I tried to get in the back door
"	"	28	and it was locked.
"	DP	29	Okay.
"	DB	30	So I went around the front and I went in and I
"	"	"	seen the telephone
"	"	31	laying by the desk and I didn't know really...I
"	"	"	didn't know what was going
"	"	32	on. So I went into the kitchen and I walked around
"	"	"	the table and I went
"	"	33	back in to see what was going on because it was
"	"	"	quiet and that's when I
"	"	34	seen my grandpa laying on the floor. And I ran in
"	"	"	the kitchen
"	"	35	called 911 and I opened the door so I could have
"	"	"	some air and I called
"	"	36	and they told me to see if he was breathing. I
"	"	"	went in and I felt on his
"	"	37	neck right there if he was breathing and he was cold.
"	"	"	I went back in and
"	"	38	told the 911 guy that he wasn't breathing, that I
"	"	"	thought he was dead.
"	DP	39	Okay.

2 DB refers to David Black and DP refers to Detective Pollock.

Page:		Line:	
02	DB	39	That...the detective took me in there, in the house
"	"	"	and showed me the
"	DB	40	bedroom that had been ransacked and they were in the
"	"	"	specific spots that
"	"	41	my grandfather had hid money and personal checks and
"	"	"	his will.
"	DP	42	So there were specific spots in the house...
"	DB	43	They looked...they knew what they was looking for
"	"	"	and where to look
"	"	44	for it.
"	DP	45	And who all would have knowed where them specific
"	DP	"	spots were?
"	DB	46	My Aunt and my mom.
"	DP	47	How did you know?
"	DB	48	And me.
"	DP	49	You knew too?
"	DB	50	Yes.

Exhibit "D" contains what David Black informed Captain Michael McCauley of the Guernsey County Sheriff's Department at the crime scene:

> "Captain McCauley stated the grandson had been outside mowing the lawn and had seen someone coming around the side of the house. The person got into the vehicle with two other people and left the scene." Exhibit "D" Report by Special Agent M.C. Kopfer/bea, File No. 97-40266 CS-30-97-01-674 on May 17, 1997.

What makes the Statement of David Black (Exhibit "B") so pertinent and newly discovered evidence is that Defendant had no knowledge that this statement existed. David Black's statement must be viewed as material and exculpatory to Defendant's case. The State did disclose this statment of David Black to Defense Attorneys Tingle and Biegler but these attorneys prejudicially failed to investigate this witness nor did they interview David Black. Why did these attorneys fail to investigate and interview such a material witness? Because there did exist an Attorney-Client Conflict of Interest.

The Attorney-Client Conflict of Interest that existed between Defendant Roberts and Attorneys Lewis M. Tingle and Kent D. Biegler was so deeply rooted that Defendant was prevented from having a fair trial afforded him under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Sections 10 of the Ohio Constitution.

Under the "Unambiguous rule" requires a judge to inquire whether a potential conflict of interest exists between a defendant and his attorney[s].

> Wood v. Georgia establishes an unambiguous rule that where the trial judge neglects a duty to inquire into a potential conflict, the defendant, to obtain reversal of the judgment, need only show that his lawyer was subject to a conflict of interest, and need not show that the conflict adversely affected counsel's performance. Wood v. Georgia, 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d (1981).

Defendant Roberts states that Attorney Biegler, was awaiting for the trial to be over because he was promised a job in the Guernsey County Prosecutor's Office. (See Exhibit "P") The record shows that Attorney Biegler failed to cross-examine many of the State's witnesses including expert witnesses thereby failing to challenge the adversarial system. Attorney Biegler was second chair counsel to the defense and was not certified in Death Penalty cases. This must be duly noted because Attorney Biegler was left several times on his own because lead Attorney left the trial proceedings on several occasions leaving Attorney Biegler to represent the Defendant on his own.

Attorney Tingle, being lead counsel and certified in death penalty cases was suffering a personal crisis while representing Defendant. Attorney Tingle's mother was extremely ill and in the

hospital,[3] compelling to be absent from Defendant's trial. The personal crisis Attorney Tingle was suffering under was the reason, among many, that caused him to perform below the reasonable level of competence, thereby denying Defendant Roberts due process of law to a fair trial by ineffective assistance of counsel.

NEWLY DISCOVERED EVIDENCE OF ATTORNEY TINGLE HAD REPRESENTED THE VICTIM LEO R. SINNETT PRIOR TO REPRESENTING DEFENDANT CLARENCE "SKIP" ROBERTS

Attorney Lewis M. Tingle had previously represented the Victim Leo R. Sinnett six months prior to representing Defendant for the murder and robbery of the Victim. The Attorney-Client relationship between Leo R. Sinnett and Attorney Tingle entailed settling the Sinnett estate after Leo R. Sinnett's wife, Betty Sinnett committed suicide. See Exhibit "L" Application To Relieve Estate From Administration. In viewing Attorney Tingle's pre-trial and trial performance in representing the Defendant it becomes quite apparent that the attorney-client relationship established between Attorney Tingle and the Victim Leo R. Sinnett influenced Attorney Tingle's performance in representing Defendant and that an Attorney-Client Conflict of Interest existed between Attorney Tingle and Defendant Roberts. The mere fact that the Trial Court had granted a motion for the defense for the appointment of an Investigator, allowing $2,500.00 for the Investigator's costs and expenses, and then failing to utilize this Investigator shows that Attorney Tingle

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3 Exhibit "K" reflects the obituary of Edith A. Tingle; mother of Attorney Lewis M. Tingle. Exhibit "K" attached herein.

did not have Defendant Roberts' best interests in mind throughout the pre-trial stages or the trial stages. David Black, the grandson of the Victim Leo Sinnett provided statements to Law Enforcement Officers investigating the crime scene states he was present when the murder and robbery of his grandfather was taking place. This is a material witness and for a defense attorney to fail to investigate such witness certainly must be viewed as an extreme case of ineffective assistance of counsel. This witness had a potential to impeach the State's case against the Defendant and the statements and testimony of David Black should have been heard for a jury determination. It must be considered that if David Black's statements or testimony did not have a high probability of probative value for the Defendant then certainly the Mr. Black would have been a material witness for the prosecution. For the prosecution to decide not to call such a material witness would be sound trial strategy on their part, thereby, David Black would be a material witness for the defense especially when reviewing his statements.

Attorneys Tingle and Biegler failed to zealously and adequately represent Defendant Roberts and their deficient performance fell far below a reasonable standard thereby denying Defendant due process of law to the effective assistance of counsel by way of the Attorney-Client Conflict of Interest that Defendant has well demonstrated herein.

Attorney Tingle failed to conduct a follow-up investigation on a material witness, David Black, who places himself at the crime scene while the murder and robbery were occurring. The Court appointed Investigator was well qualified and knew the process of investigating

crimes when viewing his experience and credentials. See **Exhibit "M" Complete Motion For Appointment of Expert Assistance, and Qualifications of Investigator Don Sonney.** Mr. Sonney's investigation, at Attorneys Tingle and Biegler's direction, consisted of two telephone calls. See **Exhibit "N" Documents showing Investigator Sonney's complete investigation, Pages 1 & 2.**

Attorney Tingle was indeed laboring under a pernicious conflict of interest which deprived Defendant Roberts of effective representation afforded him.

Although this is not directly in connection with the instant case, Co-Defendant John LaFollette is currently a fugitive from justice and is listed as armed and dangerous. See Exhibit "O" Ohio Department of Rehabilitation and Correction Offender Detail Information, two pages.

> Criminal defendant may introduce any legal evidence tending to prove that another person may have committed the crime with which the defendant is charged. STATE v. SWANN, 870 N.E.2d 754, 171 Ohio App.3d 304, 2007-Ohio-2010. (Per Tyack, J., with one judge concurring in result).

Again, Defendant relies on State v. Condon, 808 N.E.2d 912 which has held: an affidavit discovered since the trial could not in the exercise of due diligence have been discovered before the trial. Petro Supra, at syllabus; Wright, supra, 67 Ohio App.3d at 831, 588 N.E.2d 930.

Criminal Rule 33(B) provides that if a defendant fails to file a motion for new trial within 120 days of the jury's verdict, he or she must seek leave from the trial court to file a delayed motion. He or she must show by convincing proof that he was unavoidably pre-

vented from discovering the new evidence (Affidavits etc.) within the 120 days. STATE v. CONDON, 808 N.E.2d 914 [1, 2] (10); STATE v. LORDI, 149 Ohio App.3d 627, 2002-Ohio-5517, 778 N.E.2d 605, 26-27. Clear and convincing proof is that which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. **In re Adoption of Holcomb (1985)**, 18 Ohio St.3d 361, 368, 18 OBR 419, 481 N.E.2d 613; Lordi, supra, at 26.

To provide further evidence that Co-Defendant, John LaFollette was the lone perpetrator of robbing and killing Leo R. Sinnett, Co-Defendant, Albert "Chip" Andrews testified at his Negotiated Plea and Sentencing Hearing on November 4th, 1997 in STATE OF OHIO v. ALBERT Andrews, III; Case No. 97-CR-66 on Transcript Page 23, Lines 4 through 13: Exhibit "C", Transcript Page(s) of Albert Andrews, III.

Court: Where did you go?

Andrews: I ended up going headed towards Derwent and there was no talking going on, period. And State Patrol got behind me and "Skip", Clarence, says State Patrol's got you and he reaches to the back and grabs his coat and Johnnie proceeds to hand the wallet to the front seat, which "Skip" says -- Clarence says to keep it and quiet that he would take care of it.

Court: So at that time LaFollette had the wallet?

Andrews: Yes, sir.

Evidence in Andrews' testimony that LaFollette had possession of Leo R. Sinnett's wallet places LaFollette inside the Sinnett residence. Additionally, the fact that Defendant reached in the back seat and grabbed his jacket where Defendant also had his knife inside its sheath and inside of the jacket places control of the knife to Co-Defendant John LaFollette as Andrews explains in his testimony.

Furthermore, in David Black's statement to Police Officers, which was never presented into evidence by Defendant's trial Attorneys Lewis Tingle and Kent Biegler, nor the Prosecutor, reflects that

he saw someone coming around the side of the house. The person got into a vehicle with two other people and left the scene. [Exhibit "D" Report of Special Agent M.C. Kopfer/bea, File No. 97-40266; CS-30-97-01-674; Date: May 28, 1997]. David Black, being the grandson of the Victim, Leo R. Sinnett who stated he was at his grandfather's residence when the murder and robbery was taking place provided this statement on the scene to Captain McCauley.

The person coming around the side of the house was defendant when viewing the statement of Shirley Stillion as she provided to Detective Ron Pollock on June 3, 1997 (Exhibit "E") in pertinent part:

Page:	Line:		
1	19	S:	And we were going ~~to~~ through the alley and I stopped
"	20		up there and
"	""		asked...was talking ~~to~~ my husband and my granddaughter
"	""		said, "grandma,
"	21		you see that car sitting there?" And I asked, "yeah."
"	""		She said, "well,
"	22		that's the car that's been riding around here all day."
"	""		And I said,
"	23		"well, do you know who who's in it?" She said, "well,
"	""		Chipper's one." But
"	24		she don't know the ~~other~~ guy. But I really didn't
"	""		concentrate on that
"	25		guys...in the car. I ~~really~~ was looking at the guy
"	""		that was coming from
"	26		the back of Leo's ~~house~~
"	38	S:	But I didn't...I ~~knew~~ ~~one~~ of them as chipper, but I
"	""		don't know the
"	39		LaFollette guy.
"	40	D:	Okay, where was Chip at?
2	01	S:	Uh...when I seen him, he was behind the driver's seat.
"	02	D:	Okay, was anybody in the passenger's front?
"	03	S:	No, this is where I this guy I watched come from around
"	""		Leo's house and
"	04		that's where he got in, in the front.
"	05	D:	Okay, was there another person in the back seat?
"	06	S:	Yeah.
"	09:	D:	Okay, when a person come from in back of Leo's
"	""		house, what
"	10		did this person look like?

Page:	Line:		
2	11	S:	Oh, he was about as tall as I am, thinner, dark
"	"		hair, had a beard, had
"	12		a black...a black shirt on, maybe a little bit of
"	"		of white here in the front.
"	13	S:	I couldn't see if it was wording or if it was
"	"		just a picture.
"	14	D:	Okay, when this guy come around the side of Leo's
"	"		house, was
"	15		he in a hurry or...?
"	16	S:	Didn't seem like he was in a hurry. He just walked
"	"		normal and got in
"	17		the front seat of the car.

In the State's witness, Shirley Stillions's trial testimony, Page 1093, (Exhibit "F"):

Q: You can't recall whether he was towards the front of the house or the back of the house when you first noticed?

A: He was walking towards the car, the parked car.

Q: He was coming from the direction of the back of the house?
A: Yes, he was.

Q: You're positive he was not coming from the front door area?
A: I'm positive.

In neither of Shirley Stillions's statements does she say that Defendant was wearing his black leather jacket which gives substantial support that Defendant had his jacket in the back seat of the car where John LaFollette was sitting. Ms. Stillions does not state that she observed Defendant with a knife anywhere on his person, nor does she testify that she saw Defendant soaked in blood. She saw him come from the back of the house. When reviewing the lengthy statement provided by David Black to Police Officers (Exhibit "B") he states the back door was locked so he had to go around the front of the house to gain entry. Defendant could not enter the house from the back and Shirley Stillions testifies that Defendant was nowhere near

the front door.

John LaFollette had every reason to exculpate himself as much as possible and place blame on Defendant as being the lone perpetrator of the offenses of robbery and murder of Leo R. Sinnett. This Court has been down this road previously:

> [The accomplice] was in custody for his involvement in, and knowledge of, serious crimes and made his statements under the supervision of governmental authorities. He was primarily responding to the officers' leading questions, which were asked without any contemporaneous cross-examination by adverse parties. Thus, [the accomplice] had a natural motive to attempt to exculpate himself as much as possible. VINCENT L. CALVERT v. JULIS WILSON, WARDEN, 288 F.3d 823; 2002 U.S. App. LEXIS 7476; 2002 FED App. 01 (6th Cir.); 58. (Decided April 24, 2004).

The statement of David Black, (Exhibit "B") which its existence was unknown to Defendant and un-discovered to him until Defendant filed a motion to this Court for all records and documents which the Court ruled the motion well taken based on the reasons Defendant provided in said motion, is newly discovered evidence because Defendant's trial attorneys failed to present this evidence into trial as well as failing to utilize the Court appointed investigator to investigate this witness which violated Defendant's due process rights to a fair trial and had Attorney Tingle and Biegler pursued investigating this witness, inter alia, it would have resulted in a different outcome of the trial proceeings. When viewing the entire record, it can be reasonably determined, beyond any form of trial strategy, that David Black's Statement, and testimony had he been subpoenaed to testify, would undoubtedly been exculpatory to Defendant changing the outcome of the jury verdict.

Same can be said of the testimony of Co-Defendant Albert "Chip"

Andrews at his plea negotiation and Sentencing Hearing (Exhibit "C") when he testifies that Co-Defendant John LaFollette had the wallet of the Victim, Leo R. Sinnett. It should be further noted that on May 30, 2001, the Trial Court issued an ORDER to destroy the Depositions and Transcripts of State v. Andrews by the Honorable Judge David A. Ellwood, Case No. 97CR000066, (See Exhibit "G", Docketing Statement of STATE v. ANDREWS, Case No. 97CR000066; Filed: June 19, 1997, Volume # 260, Page # 25). Reason to ORDER these documents destroyed was not provided, but must be questioned.

The Affidavit of Dillion E. Sargent could not have been obtained before, during, or shortly after the trial, not even with due diligence.

The Affidavit of Dillion E. Sargent is newly discovered evidence pursuant to Ohio's Criminal Rule 33(A)(B)(C) and STATE v. CONDON, 808 N.E.2d 912 (Ohio App. 1 Dist. 2004); STATE v. WRIGHT (1990), 67 Ohio App.3d 827, 832.

The Affidavit of Dillion E. Sargent (Exhibit "A"), is newly discovered evidence and is not merely cumulative to former evidence. STATE v. PETRO (1947), 148 Ohio St. 505, 36 O.O. 165, 76 N.E.2d 370, the syllabus of the opinion stated the rules for considering a new trial motion. Also see, Crim.R. 33 (A)(6). Defendant has well demonstrated that all of the six PETRO guidelines for the granting of a Motion For New Trial has been satisfied. Also see, STATE v. ABI-SARKIS, 535 N.E.2d 745 (Ohio 1988).

The Statement of David Black is material and the fact that Defendant's Trial Attorney's Tingle and Biegler failed to pursue the statements of David Black and failure to subpoena him was so prejudicial to the Defendant that it denied him due process of law to a fair trial.

There can be no reason why Defense Attorneys Tingle and Biegler would would fail to pursue an investigation into an eye-witness [David Black] other than the attorney-client conflict of interest that existed between both of these attorneys and the Defendant which has been well demonstrated within the instant motion. Additionally, Attorney Biegler had been a representative of the State of Ohio long before representing Defendant as second-chair counsel in Defendant Roberts's murder trial. See Exhibits "T" and "U". Case Law showing Attorney Kent D. Biegler representing the Department of Human Services which is is an agency of the State of Ohio. Trial Attorneys Tingle and Biegler's deficient performance fall far below the reasonable standard and their inactions and omissions cannot be construed as trial strategy. Failing to investigate a material witness who places himself at the scene of the crime while the crimes were being committed was so prejudicial to Defendant that he was denied the effective assistance of counsel. In summary the conflict of interest that existed between Defendant Roberts and Attorney Tingle and Biegler are as follows:

ATTORNEY LEWIS M. TINGLE:	ATTORNEY KENT D. BIEGLER:
Represented Victim Leo R. Sinnett six months prior to representing Defendant.	Had job awaiting as Assistant Prosecuting Attorney of Guernsey County.
Had an existing personal family crisis effecting his pretrial and trial performance to the level of prejudice and denying Defendant Due Process of Law to the effective assistance of counsel.	Had long been an adversarial representative for the State and Guernsey County, Ohio Department of Human Services.
Had previously represented family member of Co-Defendant John LaFollette, whose name was Carol LaFollette.	

The evidence that exists, which is already well demonstrated in the instant motion but Defendant will provide a brief summary herein:

First, Attorney Lewis M. Tingle, being the lead counsel and the only one being certified in death penalty cases failed to investigate case to adequately challenge the State's case against the Defendant. Attorney Tingle's failure to direct a well qualified investigator at his disposal to investigate the case prevented Defendant from a constitutional defense thereby denying him a fair trial. In light of the fact that the Statement of David Black was material and certainly warranted an investigation, in and of itself establishes a conflict of interest between the Defendant and Attorney Tingle when taking under consideration that David Black was the grandson of the victim of Leo R. Sinnett who Attorney Tingle had represented six months prior to representing Defendant Roberts. Additionally, there existed and still exists scientific evidence that if tested to comparison of Co-Defendant John LaFollette will undoubtedly prove that John LaFollette is the lone principal offender of the murder and robbery of Leo Sinnett. This evidence should have been tested at the direction of Defendant's Attorneys.

Further, due to Attorney Tingle's mother being acutely ill while representing Defendant gave cause for his absence at various stages of the trial proceedings, furthering prejudicing the Defendant from due process.

Attorney Biegler, failed to cross-examine State witnesses, including expert witnesses, thereby, failing to adequately challenge the adversary process, thus, denying Defendant Roberts a zealous representation afforded to him under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution as well as Article I, Section 16 of the Ohio Constitution.

> Term used in connection with public official and fiduciaries and their relationship to matters of gain to them Ethical problems connected therewith are covered by statutes in most jurisdictions and by federal statutes on the federal level. The Code of Professional Responsibility and Model of Professional Conduct set forth standards for actual or potential conflicts of interest between attorney and client. Generally, when used to suggest to dsiqualification of a public official from performing his sworn duty, term "conflict of interest" refers to a clash between public interest and the private pecuniary interest of the individual concerned. GARDNER v. NASHVILLE HOUSING AUTHORITY OF METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVISON COUNTY TENN., C.A. Tenn., 514 F.2d 38, 41. A situation in which regard for one duty tends to lead to disregard of another. U.S. v. MILLER, C.A. Mass., 463 F.2d 600, 602.

Attorney Biegler's employed as a public official, representing County (and State) as a prosecutor, at least performing the tasks as a prosecutor, by all appearances, conflicted with his duties as an attorney representing Defendant within the same County (Guernsey) that Attorney Biegler had duties as a public official. Attorney Biegler's representation of the Guernsey County Department of Human Services was not an isolated or one time endeavor, but rather an on-going process handling many cases for the County. See Exhibits T and U. This well demonstrates that a conflict of interest existed between Attorney Biegler and Defendant Roberts which establishes cause as to why Attorney Biegler's inactions and omissions; such as failing to cross-examine State's witnesses including State's expert witnesses, while representing the Defendant fell far below the reasonable standard thereby depriving Defendant due process of law to a fair trial through ineffective assistance of trial counsel by the existing Attorney-Client Conflict of Interest.

The statement of a material witness, which was never disclosed to Defendant Roberts, provides pertinent information that shows Defendant did not enter the Victim Leo Sinnett's residence, thereby, as Defendant has adamantly maintained throughout this case, could not have and was not the principal offender. Had David B. Black been subpoenaed before the jury and his statement entered as evidence giving support to the testimony of Shirley Stillions's in which that, she is positive Defendant was nowhere near the front door of the residence when she saw him would have change the outcome of the jury's verdict upon Defendant. David Black's statement also establishes that Defendant could not have entered the Sinnett residence by the back door (as jury was allowed to infer) because in David Black's Statement to police he clearly states that the back door was locked. See Exhibit "B". In all respect, David Black was certainly a material witness and the jury had the right to weigh his testimony as material evidence. Co-Defendant John LaFollette testifies that Defendant Roberts came out of Mr. Sinnett's front door. He states that Defendant and he walked back to the car together. This conflicts with Shirley Stillions's testimony and David Black's statement but then David Black was never permitted to present what he witnessed that evening because it would have greatly challenged credibility of the testimony of Co-Defendant LaFollette and the State's case against the Defendant. See Exhibit "V", Testimony of John LaFollette; Exhibit B & D, police statements of David B. Black; Exhibit "F", Trial Testimony of Shirley Stillions.

David B. Black, in his statement to investigative officers, states that he could not enter the back door of his grandfather's house because it was locked, thereby, evidence that Defendant could not have entered the back door of the house either. (See Exhibit "B"). Shirley Stillions testifies that she is positive Defendant was not anywhere near the front door. (Exhibit "F"). For a clearer picture see Exhibit "S" which is the diagram of the Sinnett residence which was introduced into evidence by the prosecution as Exhibit "JJJ". Also see Exhibit "SS" which authenticates the Diagram by Agent Kopfer of the Guernsey County, Ohio Sheriff's Dept. which is the trial testimony of Agent Kopfer.

Defendant Roberts had no knowledge that the statement of David Black existed until he received the records and documents from Attorney Tingle with a letter stating the records had been damaged by water (see Exhibit "Q"). Defendant Roberts had filed a motion to this Court seeking disclosure of all records and documents pertaining to his case and the Court granted said motion on May 2nd, 2007. See Exhibit "R", Judgment Entry of the Guernsey County, Ohio Common Pleas Court.

The newly discovered evidence of Dillion E. Sargent, (Exhibit "A") not only warrants an evidentiary hearing and new trial, but it provides significant support for the scientific and physical evidence that exists in this case to be tested for DNA comparison to Co-Defendant John LaFollette. None of the biological, scientific, or physical evidence collected in this case was ever tested to compare to John LaFollette.

Given that there was no physical or scientific evidence linking Defendant Roberts as the principal offender in these

crimes along with the newly discovered evidence presented herein justifies the granting of a new trial. STATE v. LARKINS, 2003 WL 22510579 (Ohio App. 8 Dist.) 2003-Ohio-5928. Also See Exhibits "W" and "X".

The cumulative effect of exculpatory evidence is sufficiently material to warrant a new trial.

EDUCATIONAL HISTORY

Defendant Roberts attended the first through third grade at Saresville, Ohio Elementary School. His grades averaged out to "D"'s and "F"'s. Defendant attended Bellvalley, Ohio Elementary School beginning in the fourth grade which his grades continued to average to "D"'s and "F"'s. He was placed in special Educayion class after his father passed away by committing suicide.

Defendant was enrolled into Garfield Elementary School in Cambridge, Ohio which he was continued on in Special Education Class. Defendant was enrolled in and out of many schools throughout his childhood. The following schools included:

1. Byesville, Ohio Elementary School-Special Ed.
2. Senecaville, Ohio Elementary School-Special Ed.
3. Buffalo, Ohio Elementary School-Special Ed.
4. Pleasantville, Ohio Jr. Highschool-Special Ed.
5. Byesville, Ohio Meadowbrook Highschool-Special Ed.

All through Defendant Roberts' educational history, he did not average any better grades than D's and F's. By the time Defendant was out of school he remained unable to read and write. Defendant quit school at the age of fifteen.

When Defendant Roberts was convicted of the murder and robbery charges in 1997, at the age of thirty-eight, he still could not read or write.