AFFIDAVIT
STATE OF TEXAS

I DESIREE ANN SHAW declare under the penalty of perjury that the foregoing is true and correct to the best of my knowldge and information available to me.

1.The Angelina County District trial court has deprived me of a complete trial record on direct appeal, and has denied discovery of a complete trial record and photographic exhibits since 1996, despite diligent proper and timely requests, in violation of the Due Process Clause of the United States Constitution and Federal law, contrary to Griffin vs. Illinois, 351 US 12 (1956).

2. Pam English, paralegal investigated the state's denial of my trial records and exhibits and contacted the trial court, state and local elected and appointed officials. Pursuant to American Bar Association Rules for professional Conduct 3.8, the Angelina County District Attorney (prosecutor) produced and provided the (August11,20 "Prosecution's file" in this case for the first time since the 1996 conviction despite a paper trial of proper requests. Pam English saw Desiree's case profiled on Innocent In Prison Program website.

3. Pam English, paralegal contacted Habern and O'neil Law Office,LLP, and sought assistance of the Texas LLP, to obtain the trial records and photographic exhibits material to the outcome of the case, which according to the district judge, trial officials, Texas Attorney General, Texas State Bar and various legal experts--- I was entitled to a complete trial record because it is a public record. After a year of proper requests and independent search, attorney David P. O'Neil located and obtained the trial record from the State Library and provided me with a copy July 29, 2011.

4. I have been denied the right to access the courts repeatedly when the state court district clerk failed to record or report a $2500.00 payment for preparing the transcript for direct appeal, and failed to acknowledge, date stamp or file my pro se requests, motions and petitions for writ of habeas corpus for the first five years after the 1996 conviction, in violation of the Due Process Clause and Federal law contrary to Lewis vs Casey, 518 US 343 (1996).

5. I have sought post-conviction relief but every court has denied relief without holding a hearing or giving me opportunity to present new and previously undisclosed evidence that I am actually innocent of committing the charged crime; hence the procedural default charges preventing me from going forward with claims of new evidence, cannot

be used to deny me the right to have the habeas claims heard on the merits, because the new evidence disclosed in the prosecution's file and the transcript and photographic exhibits recently discovered, was not disclosed pre-trial or previously available before the direct appeal or post-conviction habeas petitions were filed or denied, in violation of the Constiution and Federal law, contrary to Schlup vs Deleo, 513 US 298 (1995).

6. Besides being denied a complete trial record for 15 years, I have been denied the right to access potentially exculpatory photographic evidence, in violation of the balancing tests which weighs the risk of convicting an innocent person against the government's interest in avoiding disclosure that should have been automatically disclosed, in violation of Due Process Clause of the Constitution and Federal law, contrary to Matthews vs Eldridge, 424 US 319 (1976).

7. I am entitled to a new trial because the newly discovered photographic exhibits and records undermines the prosecution's primary theory of the case in violation of my right to a fair trial, fair appeal, and due process of law, contrary to the US Supreme Court's precedent in House v s Bell, 126 S.Ct. 2064 (2006).

8. The prosecution's file disclosed evidence that the state had failed to disclose pre-trial in violation of my Due Process rights to Due Process, that was in possession of the investigator, which the prosecution had access but failed to supervise. Two photograph copies were discovered in the prosecution's file August 11, 2010, fourteen years after the death of Eddie Royce Shaw, Sr., which were not disclosed to the experts, the court or the jury, although these two photographs possessed an exculpatory value that was apparent to a reasonable fact-finder before trial or direct appeal. The photographs undermine the state's primary "wrapped gun" theory, and now demonstrate fifteen years after the trial that the weapon was not "wrapped" in a piece of fabric and the muzzle of the weapon is obviously visible (not wrapped or covered in fabric) resting on Mr. Shaw's right shoulder, where the firearm fell per gravity. This new discovery, after 15 years of deprivation of the record and exhibits, shows that the state failed to disclose the photograps pre-trial and has subsequently failed to respond to discovery requests for these exhibits that are material and pertinent to the defense and the outcome of this post-conviction case. The state's failure to disclose evidence favorable to the defense violates Due process according to the Brady v Maryland, 373 US 83 (1963), standard of review.

9. The newly discovered photographs showing the weapon is not "wrapped" and that the muzzle is not covered with fabric, demonstrates the 1996 scene of Mr. Shaw's death as it was when police forcefully removed me from the scene, stopping Basic Life Support (BLS) and denying my husband access to Emergency Medical Services (EMS) or transfer to a truama facility. The photos were not considered by the state experts or the jury, because the state failed to disclose them while knowingly using perjured testimony of the chief investigator to obtain my conviction, that the prosecution knew or should have known was fabricated, and prejudice resulted, denying me a fair trial, simular to Napue vs Illinois, 360 US 264 (1959).
10. A photograph was discovered at trial, showing the weapon beside Mr. Shaw's body at 0949 a.m., which caused a sensation in the court-room and a recess was quickly ordered. Trial counsel, who failed to conduct and adequate investigation pre-trial, was elated to find proof that the police investigator presented perjured testimony and tried to cover-up the fact that he had contaminated the scene and blamed me of murder that I did not commit. Trial counsel John Heath sent law student Malcolm P. LaVergne to obtain a magnifying instrument and asked the state's crime scene expert to examine the 0949 a.m photo. The state's California DPS crime scene expert, who was called to testify the Wednesday before the trial started on Monday December02, 1996, Michael Prodan, concluded that contrary to the investigator's testimony, that ~~obviously~~ still photos were taken, video was taken, then evidence was secured and the investigator left the scene. But the 0949 a.m. photo examined after the investigator's sworn testimony, then demonstrated that more still photos were taken after the video and over an hour after the evidence was taken into custody and the firearm was examined and the empty shell casing was removed from the weapon, which is in square contrast to the state's testimony previous to the accidental discovery of the 0949 a.m. photo at the defense table. The photo was allegedly double-labeled Exhibit 03 or 04. However, during recess, a heated argument with the defense, the prosecution and the trial judge was ovrheard. The trial judge told the trial counsel not to call my daughters to testify on my behalf, despite testimony material to my defense and to recant previous statements the girls had been forced to sign in 1993. Judge Goodwin told Mr. Heath that everything was not "butterflies and roses" with my children and myself. The prosecutor, David V.Wilson, III. (son of the other trial judge), spoke and Mr. Heath raised his voice and said if he heard the prosecutor

correctly that he understood the state was asking him to "put [me] on the shelf" to rescue on direct appeal, in exchange for not demanding the death penalty in another case that he was preparing for trial. Mr. Heath voiced his outrage, but returned to the court-room promising me and my family to present a complete defense after the state rested its case. Instead of re-visiting the 0949 photo issue or presenting any facts, evidence, experts or witnesses... two minutes after the state rested, Mr. Heath stood and closed without presenting ANY defense contrary to my expressed consent in violation of Due Process and my Right to Counsel. I thought it was another recess, I had no idea Mr. Heath denied my right to present a defense without having investigated sufficiently to develope any strategy or tactical decision, in violation of Due Process, as held in Wiggins vs Smith, 539 US 510 (2003). Material and prejudicial evidence and testimonial evidence was repeatedly introduced against me without any opportunity for confrontation, cross-examination or presentation of evidence to point the jury, or ultimately the Court of Appeals to any evidence in my favor, violating Due Process, the right to Confrontation, the right to a fair trial or fair appeal, contrary to Supreme Court precendent in Pointer v Texas, 380 US 400 (1965); Crawford vs Washington, 541 US 36 (2004); and Davis vs Washington 126 S.Ct. 2266 (2006). I was denied a fair trial when the court improperly restricted the right to present evidence of significant probative value, in violation of my right to a fair trial or appeal, as in Washington vs Texas, 388 US 14 (1967).

11. The court reporter notified the court and trial counsel that the 0949 photo was missing immediately after trial, and Mr. Heath demanded a new trial but filed the motion too late, but demanded a new trial on direct appeal, after an inordinate period of time. Trial counsel was appointed to my appeal, but abandoned investigation or preparation of my appeal from January until June of 1997 without informing me or court until August 1997, and then only the court...not me.

12. The state claimed that the photo was not missing, rather double labeled,and the time discrepency issues between 0835 a.m when the investigator collected evidence and left my home according to the record, and the 0949 a.m. photo showing the weapon beside my husband Royce's body has nver been considered upon the merit because after the trial, no court state or federal has ordered a hearing to resolve disputed issues and controverted facts...or did they? Despite 15 years of diligent discovery requests and motions to compel the state to provide the records and exhibits, the newly disclosed prosecution's file

reveals that the Ninth District Court of Appeals for Texas ordered a hearing to resolve abatement issues of whether I was indigent, whether I desired to appeal, and whether John Heath was ineffective in not ensuring the trial records were timely prepared and filed in the Court of Appeals, ordered May 1, 1997 and filed May 8, 1997, but I never recieved notice of the orders, the action taken by the trial court, the findings of fact, much less opportunity to present evidence in rebutal to the trial court's unreasonable finding of facts June 12, 1997 or the Ninth District Court of Appeal's June 26, 1997 orders to "re-instate" my appeal. These and simular records were not disclosed or provided to me here in Texas prison in violation of Due Process and denying me a fair appeal. A cursory review of my records would appear that the state provided a full panolopy of procedures to protect my rights. But in light of new dislcosure of these records from 1997, I was not provided notice or opportunity to present evidence, and Judge Goodwin never held a hearing, circumventing the Court's orders.

12. The prosecution's file also discloses two photographs described above, that proves that the scene was restaged by the investigator hours after I was removed from the scene and hours after the evidence was taken into custody, but subsequently planted beside Mr. Shaw's body after the investigator's second camera arrived on the scene. The scene was reportely restaged for pictorial documentation of the scene, but the investigator had a duty to report his actions and behavior. Instead the investigator concealed, suppressed, and witheld evidence in violation of Brady, and persuaded the assistant prosecutor to charge me with murder alleging that I "wrapped" my husband's gun and laid the gun beside him after allegedly shooting him, despite lack of direct evidence that I committed a crime. Then, when the 0949 photo was discovered during trial, the state concealed the investigator's misconduct and further side-stepped the issue, loosing or destroying the photo after trial and substituting another photo as an exhibit to the appellant brief that does NOT show the weapon beside the deceased, Mr. Shaw's, body. Subsequently, as described above, the state has denied discovery of the record for 15 years.

13. In the prosecution's file was also discovered two motions presented in August and November 1997 by trial/appeallant John R.Heath, describing serious and extended mental and phsyical illness requiring medical acare and medical leave from work, which were not disclosed to me although they were material to the outcome of my appeal in 1997.

The records that have been withheld for 15 years now demonstrate that John Heath abandoned my direct appeal after January 1997, failing to respond to my calls and letters from me or my family and experts, notice of new evidence or constitutional error claims. These two motions are material to the outcome of my case because I was not notified of Mr. Heath's incompetency before my appeal was re-instated or subsequently denied. The Ninth District Court of Appeals held that the appellant brief failed to point them to any evidence in my favor, which was in square contrast to Mr. Heath's promises and my expressed consent, denying me effective assistance of counsel on appeal in violation of the Sixth Amendment and the Right to counsel in Douglas v California, 372 US 353 (1963). Remarkably, the 2003 affidavit of John R. Heath, presented to the Texas Court of Criminal Appeals denied that he was ill before, during or after my trial. In light of the newly disclosed prosecution's file,(2010), it is now obvious that the state presented perjured testimony to the State's highest Court in 2003 and vouched for Mr. Heath's performance when the state knew and had records to prove that Mr. Heath was indeed seriously ill. The trial judge's failure to hold the hearing, and 1997 mistatment of material facts related to my indigency or failing to disclose that my family paid $2500.00 to prepare the transcript for 1997 appeal, and other fundamental issues related to ineffective assistance that the Court of Appeals ordered resolved May 1, 1997, were used to intentionally deny me the right to a fair appeal and effective assistance of counsel on appeal. Subsequently the state invited Mr. Heath to defend his performance and enjoin the state in opposing my 11.07 state writ, that took me over three years to file because the district clerk failed to file or process any of my pro se briefs until the Texas Court of Criminal Appeals mandated statutory process in September 2002, after over three years of denying me access to the court in violation of the Constitution and Fedreal laws. Records and memos found in the prosecution's file show that the habeas officials reviewed the records and helped Mr. Heath's memory by discussing the case with the prosecution, requesting that David V.Wilson prepare an affidavit regarding "how John Heath effectively represented his client at trial." The Court ordered the state to repond in 30 days, but the response was filed later than 90 days after any order I recieved, April 17, 2003. The state's response was reprehensible, attacking my character and presenting new and prejudicial evidence against me that had never been in the record before, without a hearing or opportunity

to present evidence, experts or witnesses that rebutted the state's arbitrary response to my state writ of habeas corpus. I did not recieve a copy of John Heath's affidavit that was presented to the Texas Court of Criminal Appeals. It took eight months of diligent requests and finally a Court mandate to obtain Heath's affidavit, that was obtained by Malcolm P.LaVergne, who by this time had successfully obtained his license to practice in New York and subsequently Texas. Refer to Mr.Lavergne's affidavit previously posted on the IIPPI website.

14. The state trial court has improperly denied my recent writ of habeas corpus petition to present claims of newly discovered evidence that was not considered at trial and was not previously available because of state court action in refusing to produce and timely provide my trial records and exhibits. I have hundreds of copies of letters, motions and communications from experts and supporters, as well as state and federal court clerk records showing that I have diligently requested the records and exhibits without success for 15 years, but the state court claims that my consitutional claims have already been presented and rejected previously, which is improper, but I have no other remedy available without legal representation. The trememdous hurdle that I face is called The Anti-Terrorist Effective Death Penalty Act of 1996 that requires all claims to be filed within one year of the denial of the state appeal. There are exceptions, such as newly discovered evidence that was not previously available, such as the two photographs recently discovered in the prosecution's file August 11, 2010, but the State court has turned a deaf ear to my wrongful conviction and the miscarriage of justice, although the newly discovered evidence that proves that I am, as a factual matter, actually innocent of the charged offense. Nevertheless, I remain in Texas prison, suffering unspeakable condiotions of confinement and separation from my children and family after serving fifteen years for a crime that I did not commit and new evidence entitles me to a new trial, but for procedural default caused by state action in withholding the records and photographs in the first place that are necessary to prove my innocence.

Dated: November 29, 2011.

Respectfully submitted,

Delaine Shaw

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