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Supreme Court, U.S.
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In the

Supreme Court of the United States

19A695

GRANT HAZE v. KATY POOLE

Petition for a Writ of Certiorari to the United States Court of
Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Grant Haze III, Pro se

Harnett Correctional Inst.

P.O. Box 1569

Lillington, NC 27546

3/20/20

ORIGINAL

QUESTIONS PRESENTED

I. Did the prosecution's intentional and repeated use of unreliable witnesses and the sheriff's theft of the Petitioner's outgoing legal mail, containing material investigative instructions and discussions of trial strategy pertaining to the examination of the Petitioner's sole corroborating witness, render his trial constitutionally unfair?

II. Did counsel's failure to present evidence of Petitioner's million dollar I-Phone case distribution deal deprive him of the effective assistance of counsel?

III. Did counsel's failure to investigate rebuttal evidence for the "Man Killer" song lyrics, that read like a confession to the crime Petitioner was charged with, deprive Petitioner of effective assistance of counsel?

PARTIES

GRANT Ruffin HAZE III, Petitioner
Katy Poole, Respondent

RELATED CASES

North Carolina vs Grant Hayes 11 CRS 8656

State v. Hayes, 768 S.E. 2d 636, 639-40 (N.C. Ct. App. 2015)

Grant Haze v. Katy Poole (5:17-hc-02026-BR)

18-7527, Grant Haze v. Katy Poole

18-7340, Grant Haze v. Donnie Harrison et al

Grant Haze v. Donnie Harrison (5:15-ct-03109-B0)

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OPINIONS BELOW

The opinions of the lower courts are attached and listed in the Appendix, pages A1-A42

JURISDICTION

The 4th Circuit Court of Appeals entered judgment on 9/17/19 and denied rehearing on 10/22/19. On 10/27/19, I filed an application to extend the time to file my Petition on 12/23/19, Chief Justice extended the time to file until 3/20/20. The jurisdiction of this court is invoked under 28 USC section 1254 (1).

STATEMENT

"Tp" refers to the trial transcript located at DE 20 at Ex. 10.

"DE 43" refers to the 43rd docket entry in case no. 18-7527, Grant Haze v. Katy Poole, (5:17-hc-02026-BB). DE 43 is the Petitioner's Appendix, herein "P. Appx.". "DE 33" refers to my "Supplement To: Motion for An Evidentiary Hearing..." the clerk accidentally docketed with my "Supplement to [DE 25]".

Laura Ackerson (LA) and I had been in a romantic relationship that had resulted in 2 boys, Grant IV, in 2008, and Gentle, in 2009. (DE 43, P. Appx. 28) LA and I split up in Oct. 2009, when she left the Virgin Islands, with both boys, and moved to Kinston, NC, with my parents. (P. Appx. 36) I stayed in the V.I. and met Amanda Smith. (P. Appx. 37) In Jan. 2010, I moved to NYC w/ Amanda and her daughter Sha Guddat. (Id. also DE 33 at Ex. 6 p. 5)

In Feb 2010, I visited my kids in Kinston. (Tp 1207) LA let me take Grant back to NYC with me after we had had sex. (P. Appx. 37) A few weeks later LA told her brother that I had kidnapped Grant, after I had refused to let her move in with us to manage the boy's modeling careers. (P. Appx. 6 at para. 30-32; DE 33 at Ex. 27 and Tp 1286)

On 3/29/10, LA sued me for custody after I had suggested that she fly up and get Grant IV, so Amanda and I could go to China for a business opportunity that I had over there. (P. Appx. 31; P. Appx. 6 at 33-34) LA wrote:

"Once I realized that there was no getting Grant to come back through my own pathetic attempts at manipulation, I stopped fibbing and told him that if he found someone that really made him happy, I was happy for him... A few weeks later he was married to Amanda." (P. Appx. 59)

On 4/19/10, Amanda and I were married. (Tp 1162) On 4/27/10, LA met with clinical therapist Donna Ramsey "trying to see how to prove BF has mental problem to help gain son back." (DE 33 at Ex. 30) Ramsey described LA as "the scorned woman." (Id.) LA started calling me with threats to abuse our children, if I didn't come back to her, so Amanda (AH) and I moved to Raleigh in May 2010, and on 6/15/10 an emergency petition was issued giving me temporary custody of both boys. (P. Appx. 10, 52-54; Tpp 1163, 2641) To keep LA from spreading more kidnapping rumors to her gullible supporters, I emailed them:

"Laura tried to convince my own family that I raped her, put a hit on her and threatened to kill her.... I have successfully taken my boys from her in a court of law.... I'm not scary and I'm not afraid or hiding." (DE 33 at Ex. 31) 

According to LA's custody attorney, John Sargeant, LA had told him and her previous attorney that I "had a bad history of selling cocaine, ... hired someone to steal a car and kill a man before, ... told my parents that [I] wished she was dead, ... threatened to kill my ex-wife (Kristin Gilmore), ... was a sociopath [and that she] ... was concerned about her safety and was afraid of [me] ... concerned that I was going to run, or hurt her." (P. Appx. 10-11) ^{However,} In a timeline document that LA had prepared, she accurately

described "Kristin Gilmore" as a girlfriend of mine while she was pregnant, not my ex-wife. (P. Appx. 33 and the email entitled "Just act like you'll fuck her but don't" at DE 33 Ex. 23)

Because I am a songwriter with "700-800 songs" (DE 33, Ex. 6 p. 54), I addressed LA's slanderous accusations in a rap-parody entitled "Broomstick Rider", wherein I impersonated the drug dealing hitman that LA had been describing me as. (DE 39 at Ex. 35) Prosecutors argued that the song was evidence of deliberation. (Tp 3367)

On 6/25/10, LA and I entered into a consent agreement giving me primary custody 5 days a week, w/ weekend visits for her. (Tpp 2642-43) I gave her the kids at the Sheetz in Wilson, because it was a midpoint btwn Raleigh & Kinston, on Fridays at 5 p.m., and she returned them on Sundays at 5 p.m. (Tpp 1164-65; 2642-43) A full psychological evaluation was ordered to be performed by Dr. Calloway. (Tp 2644)

Sha told police that I wouldn't go to exchanges without another adult present because I didn't want to take a chance of Laura accusing me of anything. (DE 33 at Ex. 32) I had complained to Dr. Calloway on the Parenting History Survey in Sept. 2010:

"Everytime I have left Laura she will tell anyone who will listen that I beat her, raped her and threatened to kill her... So obviously this is some sort of survival technique to get sympathy and support." (DE 33 at Ex. 24)

"Every other day I'm hearing from business associates or old friends that Laura is accusing me of raping her, pimping her, threatening to kill her and a host of other accusations." (DE 33 at Ex. 24 on p. 003899)

"I have a future to provide for these boys and I can't do that looking over my shoulder. I think she is potentially dangerous. I know she's violent." (DE 33 at Ex. 24 on p. 003900)

Then for question 9b, on the same page, I indicated that a "life threatening" level of hostility existed between us. However, Laura, whom several people testified lived in mortal fear of me, only selected "severe" not life threatening, for the same question. (DE 43, P. Appx. 49)

Then on Sunday 2/20/11, we picked the boys up from Laura with identical hand print bruises on both their right shins. DE 33's Ex. 34 is a 2 page email thread between my lawyer and I on 4/8/11, discussing what had transpired on 2/21/11:

"Well, the kids had these finger print bruises on their right leg. My wife and I saw them independently on each child but it was my step daughter that said what we were both thinking, 'those are hand prints'. So we called the police... because just taking a picture of it would have left me culpable in the event this was the beginning of a pattern.... If someone was hurting them, I didn't want it to go on another week for the sake of making a case or any other reason. The officer came over and took pics, he said that they looked like a hand print too."

DE 33's Ex. 35 on page "2 of 11" is Raleigh Police Officer Braswell's "Incident Summary"

"Two children had purple bruising on their right front calf part of leg. The bruising appears to be of finger marks as if the children were grabbed with force."

DE 33's Ex. 35, pages 9-10 of 11, is the Kinston P.D.'s report that I made on 2/23/11, to have LA "looked into" before her court ordered visitation on Friday 2/25/11.

DE 33's Ex. 6 p003241 (p. 10 of Dr. Calloway's report) says that on 2/25/11 "Laura was interviewed by Detective Whitaker, Kinston PD."

DE 33's Ex. 36 is an email LA sent Calloway on 5/3/11, giving her "a rundown of what happened with the detective." LA had denied knowing anything about the bruises and "had agreed in writing to the statement that [she] didn't remember my boys having the bruises when they left [her] home on the Sunday in question", which at the time had been a mere 5 days ago. LA wrote:

"As / I was signing the paperwork, Det. Whitaker asked to see my camera again and pulled up time-stamped photo's of the same bruises. I had documented

the bruises, then taken a picture of my phone with the time and date.

I was embarrassed that I hadn't remembered, and asked Det. Whitaker if I could change my statement. She said not to worry about it." (DE 33, Ex. 36)

So LA had been caught in a lie that Det. Whitaker swept under the rug. LA had been threatening to abuse my children, and did, but because of Whitaker's dereliction of duty, CPS "completed it's investigation without a substantiation of abuse." (Tp 2135)

CPS recommended a Parenting Coordinator to "improve communication" and on 4/26/11 Dr. Calloway asked for my reaction to that recommendation. (DE 33, Ex. 6 p.10; DE 33 at Ex. 37) In my email response I stated:

"I thought to myself, Laura accused me of violently raping and beating her after Grant was born, tried to convince my parents, then my sister, to get restraining orders on me, told me my children would be abused if I didn't come back to her, then followed me out of the country to mooch off me for another year... I don't believe there is any realistic resolution to these issues...

In my opinion, there is nothing to counsel. She's backed herself into a corner with all the lies... The whole conflict between us is completely fabricated and money driven." (DE 33 at Ex. 37)

On 5/17/11 LA's attorney received Dr. Calloway's report. (Tp 2657) It was favorable towards LA and negative towards me. Calloway lied in her report and covered LA's lie to Det. Whitaker, she wrote: "The police detectives who investigated the bruises noted that the bruises were consistent with injuries for children this age." (DE 33 Ex. 6 p.54)

Neither detective's report described the bruises this way, yet Calloway continued

"It is concerning that Grant uses the system to promote a negative view of Laura and to bring potentially serious charges against her. He made a report to the police... that could have resulted in misdemeanor child abuse charges if substantiated." (Tp 2763-64)

The investigator's reports that Calloway mischaracterized are DE 33's Ex. 35.

Calloway recommended a 50-50 split and that I be referred to a psychiatrist for a mood disorder and illogical, disturbed thinking. (Tp 2710) Sargeat discussed these findings w/ LA on 5/18/11. (Tp 2657) During a pretrial interview in 2012, he told prosecutors that LA was "willing to go with 50-50 split" but that my lawyer "Coley" didn't respond to their offer and instead moved for a hearing on 5/23/11. (P. Appx. 12) The trial date THAT I HAD REQUESTED was set for 8/15/11. (Id.) REMEMBER THIS.

The next day, 5/24/11, LA emailed me a request for a mid-week visit, allowing her to pick the boys up from my apartment, and return them a few hours later on Wed night. (P. Appx. 22) On 6/9/11, AH gave birth to our daughter Lillian. (P. Appx. 1) On 6/15/11, I emailed LA: "We usually hit Monkey Joes after 3. It would be a nice surprise and I'll leave it at that." (P. Appx. 16) Since the birth of our daughter, it was my job to keep my 2 and 3 year old sons entertained outside of our 3 bedroom apartment so our baby could sleep. Since we didn't have a yard, I took them to the bouncy house Monkey Joes almost everyday because our mutual friend, Lauren Harris, was the manager and would let us in for free. (Tpp 1256-57, 1260, 1271, 1273-75)

On 7/12/11, I sent LA an email inviting her to a 3pm playdate at Monkey Joes BECAUSE she had been requesting more mid-week visits since the 6/15/11 one. (Tpp 2533-37; 2540-42; 3254-55) REMEMBER THIS when reading p. 18 para. 1.

"Would you like me to forward my bank records over to your attorney so you can look through them and see how much of my money you were spending and on what? Its complete with A.T.M. times and locations and I was not in the country and state for the whole time. All the checks have your handwriting on them." (Tp 1030)

"I've got printouts with your handwritten notes where you called all the child modeling agencies in NYC so you could come up there and manage our son Grant. I got a text message from you when we were in Vegas the day I'm getting married saying 'do what you have to and we will come and join you in Italy.' "... "BIG BAD DRUG DEALING MURDERING RAPIST huh?... there are at least 5 people willing to testify that you've told them that stuff. That's malicious defamation of character and you will answer for that in court too, I promise you... Amanda and Kristin were sitting down comparing experiences just two weeks ago.. Its deja vu... Just listen to yourself in an email entitled "Just act like you'll fuck her but don't." (Tp 1031)

Then I pasted text from the 12/29/08 email that LA had sent me with that subject line, [when I had moved to St. John to live with Kristin, while LA was pregnant with Gentle. (DE 33 at Ex. 23 is the whole email)

LA had fooled Dr. Calloway, but the digital artifacts I had were irrefutable and accurately demonstrated the true dynamic of our relationship - and still do. LA offered to drop her custody suit in exchange for \$50,000. We settled on the \$25,000

that I had been planning on paying Coley to defeat LA at trial. (SEE DE 33 pp 15-21) I had been expecting a sizeable advance on a million dollar I-Phone case distribution deal, on 8/13/11. (SEE DE 41 pp 13-14 at paragraphs 41-42) LA and I co-authored an out of court settlement agreement stating that she would dismiss her suit for \$25,000. (DE 33 at Ex. 10)

Following the resolution of our custody dispute, I left the room to wake Gentle from his nap and prepare him to leave with his mother for a few hours. While I was out of the room Laura attacked Amanda, who had refused to let LA hold our baby Lillian. (P. Appx. 1) "Amanda said that she reflexively swung her elbow back as hard as she could, and caught Laura in the throat. I tried to revive Laura, but she died in front of me and Grant IV. Amanda came up with a plan to dispose of Laura's body and I assisted her in an attempt to protect her from prosecution." (Id)

Because LA had been telling people that I was going to kill her, for years, calling the police and telling them that a single-blind blow from a 39 yr-old woman, who was holding a baby, had killed a healthy 27 yr old woman who had been a thorn in our side for the last year - seemed like a very bad idea.

Amanda had decided to dump LA's body in the alligator-infested creek across the street from her sister, Karen's, house in Texas. To get LA's 5 foot 8 inch, 135 lbs, corpse out of our 3rd floor apartment undetected, we had to cut it up.

Amanda still had stitches from her cesarian section and wasn't supposed to lift anything heavier than Lillian, so I am on surveillance videos at Target, Walmart, Uhaul and Pep Boys, running all the errands necessary to dismember, package and transport LA's remains. (DE 47 at page 2) The NC Court of Appeals, as well as the district court, called this footage overwhelming

evidence that I had premeditatedly murdered LA, even though I had run all of these concealing errands after LA's death.

We arrived at Karen Berry's house w/ LA's remains in coolers, on Monday 7/19/11. (Tp 3149) Karen told investigators the following:

a) I slept for 7 hours upon arrival, while she and Amanda (AH) watched the kids (excerpts from KB's 3 interviews are at DE 25 Ex. 14 and DE 43 P. Appx. 65-82)

b) The next morning, Tues 7/19/11, Amanda told Karen what she had done. (Tp 3149-51) AH told Karen (KB) that LA had threatened to hurt her and "take her baby away from her." (P. Appx. 70) AH said that she had shoved LA and hurt her bad (DE 25 at Ex. 14)

c) KB said that I was NOT around when AH had confided in her, but after ward, AH asked KB if I "could come over" and KB said "yeah." (P. Appx. 73)

d) KB said that all I kept saying was that I loved AH, had taken a vow and would protect her (P. Appx. 75)

e) KB said that she suggested dumping LA's remains in her "septic tank in the back of the house," so she and AH left me in the front and walked back there. (P. Appx. 76-77) Once back there, and again, outside of my presence, the 2 sisters discussed what to do w/ LA's body, AH asked KB "what about the creek across the street" (P. Appx. 76, 79)

That night AH and I used Karen's son's boat to dump LA's remains in the creek. (P. Appx. 67) On 7/20/11, Wed morn around "10-ish", AH's daughter, Sha, was picked up at her home in Raleigh, by detectives investigating her mother. (Tp 1217-18, 3211-13 and DE 41 at Ex. 4) Her husband, Matt Guddat, called KB and told her what was going on in Raleigh w/ LA's disappearance and asked what he should

do to help Sha. (Id.) On 7/10/11 LA's car had been found near our residence and the local news had been correlating her disappearance with our acrimonious custody battle. (DE 39 at Ex. 42 p. 2) Upon learning all of this, KB pulled AH aside and asked her if she was covering for me, to which AH nodded "yes". (Tp 3211-13) After learning that she was being investigated through her daughter, AH began what would eventually become her duress defense. At her own trial, 5 months after mine, AH testified:

"I was just really scared. I didn't even know how to tell her... I just blurted it out. I told her something really bad happened and I needed her help." (DE 41 Ex. 2 p 1)

Amanda claimed that I had threatened to kill her and our children, if she didn't help me get rid of LA's body but: "the state presented last minute evidence - letters to Grant Hayes's mother - that also appeared to contradict [AH's] claims that she feared her husband because he threatened to kill or harm her and their children. In a Sept. 24, 2011, letter, she wrote to Patsy Hayes: 'Please tell my husband that I love him very much, and I think of him every day.' Patsy Hayes also read from two other letters, including one from Jan. 17, 2012, in which her daughter-in-law asked her to pass along a message that appeared in the page margin: 'Hello my baby I love you so much and I hope you are doing good... I miss everything about you and can't wait to give you a big hug and kiss.'" (DE 41 Ex. 3 p 2)

So Amanda's confession wasn't coerced, it was truthful, but as you will see, our assumption that AH had struck LA in the throat had been wrong.

THE MEDICAL EVIDENCE

On 7/26/11, the Galveston County Medical Examiner, Dr. Nobby Mambo, autopsied LA's larynx (voicebox), thyroid cartilage and vertebrae; he found them to be normal. (Tpp 2078, 2108, 2125-29) He found no abnormalities injuries, disease or signs of trauma. (Tpp 2095-97, 2103) He had to crack open the thyroid cartilage to examine it. (Tpp 2125-26) He testified that the crack he caused could appear to be an injury but it wasn't there before he'd caused it, and he found no indication that LA had been strangled. (Tpp 2126, 2137, 2139) Dr. Mambo's report is attached to DE 33 at Ex. 8. It mentions a 4x3 inch bruise that he observed on the back of her head, which is consistent with LA having fallen back wards after being pushed by AH, (Tpp 2111-12, 2133) and hitting her head on something.

Following his autopsy, a technician boiled the meat off the head and neck so that anthropologist Dr. Joan Bytheway could conduct her examination. (Tp 2138) Her report is DE 33 at Ex. 9, it states that on 8/4/11, she found the:

"Skull, mandible, cervical vertabrae C1-C4, C6 and C7 were complete and in good condition. . . . No antemortem trauma is observed on the remains analyzed." (Remember these exculpatory findings when reading p. 18 at para. 3.)

Dr. Mambo testified, "You examine every tissue", (Tp 2117) and in every case he would break open the thyroid cartilage to look inside. (Tp 2140) He pulled a normal windpipe out of LA's skull, cracked it open to check for signs of strangulation, and didn't find any. (Tpp 2125-28, 2136-39) This was done in the presence of Raleigh detective Robert La Tour. (DE 33 at Ex. 8) La Tour testified that he made arrangements for LA's remains to be returned to NC in the same condition that they'd left the Galveston Co. M.E.'s Office in. (Tp 1557)

THE FRAME UP

1) Amanda and I were arrested on 7/25/11 and I was housed in the same processing unit as federal detainee Pablo Trinidad until 7/31/11, when he was transferred to another city. (Tp 2913, 2915, 2921, 3253) On 10/17/11, an article headlined "Warrants Hayes may have lured Ackerson," was televised on WTVD and posted online stating: "It was determined that prior to her death, [LA] received a message from [GH] to visit the children at his residence on the evening of July 13, 2011... investigators say they are looking for any other emails that may reveal planning or motivation for the murder of [LA]." (DE 25 at Ex. 9)

2) This was a bold faced lie but it served its purpose to alienate and incriminate me, and on 1/5/12, three months after the lure lie had been published, Trinidad was debriefed in Elizabeth City Jail and told investigators that I had confessed to him that I had lured LA to my house then SUFFOCATED her. (DE 25 at Ex. 10 pg. 007676) He included other sensational details that had been publicized in various media reports, like DE 39's Ex. 42 and 40. He testified that he was facing over 100 years when he learned that he could get out from under this sentence by giving the government evidence on other people in exchange for a better deal. (Tp 2948, 2952) He was told, "the more you give 'em, the better deal you're going to get," so he started thinking back to give them whatever names he could, then he remembered that I was charged with a very serious charge. (Tp 2953)

3) On 4/30/12 NC Medical Examiner, Dr. Deborah Radisch, published her report stating: "The thyroid cartilage may have been crushed antemortem as a result of attempted asphyxia by strangulation." (Tp 3002)

Her report also included the findings of NC's forensic anthropologist, Dr. Ann Ross, that LA had a stabwound, "like the tip of a knife that had gone in," on the 4th cervical vertebra (C4), "which is in the front part of your neck," (Tp 2875) Her report and a picture of the divot in LA's C4 are DE33's Ex.7.

But if LA had been stabbed in the throat in such a way that the tip of a knife had poked a hole in the front center of her C4 vertebra, then her windpipe would've been punctured as the knife traveled through her trachea & esophagus, (Tpp 2998-3000) and we know from Dr. Mambo's autopsy that they had no pathologic features. SEE DE 33 pp. 7-12 at heading "Laura wasn't choked or stabbed".

NC manufactured 2 homicidal injuries, both in the area of LA's Adam's apple (Tp 2998), that didn't exist in Texas. This was done to turn LA's accidental death into an intentional, premeditated murder, the facts of which match the narrative of the "Mankiller" song lyrics Raleigh police had found in my recording studio. (SEE DE 28 at Ex. 3 and Ex. 4.)

4) On 5/2/12, WITN.com and WRAL.com publicized the erroneous findings of the NCME, that someone had tried to stab and strangle LA. (Tp 3227-28)

5) On 8/6/12, Jerry Faulk, the lead detective drove to Elizabeth City to interview Trinidad and get him to change his statement so that he could become a key witness for the state. Det. Faulk testified that Trinidad's January statement had been made available to him beforehand, (Tpp 3251-52) so he knew that suffocation was what Trinidad had accused me of confessing to, and that that was not consistent with the NCME's findings. Conveniently enough, Faulk's recording device wasn't

functioning properly and their voices were "...unintelligible at many points." (DE 25 at Ex. 13) So all we have is Faulk's summary of Trinidad's statement, not a transcript or audio file of the actual 21 minute interview in which he allegedly stated:

"Grant and Amanda lured Laura into the apartment, STRANGLED her and chopped her up." (Id.)

He testified that he knew the more information he provided, the better deal he would get. (Tp 2953)

6) In June 2013, Dr. Mambo told the prosecutors that his autopsy had caused what Dr. Radisch had speculated was a strangulation injury. (Tp 2139) This caused my lawyer, Jeff Cutler, to file a Motion In Limine To Exclude Speculative Statements by Dr. Radisch. (DE 43, P. Appx. 100) He argued on 8/16/13:

"...it would be unfair for one examiner to do damage and another examiner to say well, my client might have done it... she says I have no idea how that happened. That could've happened a hundred different ways, and her report she just puts one on it." (Id. P. Appx. 101)

But the court denied our motion to exclude Radisch's speculative statements and allowed her to testify that LA's thyroid cartilage may have been crushed before her death as a result of strangulation. (Tp 3002)

7) At the same hearing, A.D.A. Zellinger stated that the Wake County Sheriff's Office had been providing the D.A.'s Office with photocopies of my clearly labeled legal mail. (P. Appx. 99) Years later, while litigating a civil suit against the Sheriff, 18-7340, Grant Haze v. Donnie Harrison (5:15-ct-03109-B0), I learned from

my 2nd chair counsel, Will Durham that the jail had stolen all of my outgoing legal mail to him in the month before my trial began. In his sworn letter on the docket at DE 43, P. Appx. 89, he stated:

"I did not receive any legal mail from Grant Hayes during the month of July 2013. I did not receive a letter mentioning Amanda's blackberry... In the months prior to trial, there were numerous issues with legal mail. I told Grant there were too many other things to focus on than fighting with the jail's violation of attorney client confidentiality, and we terminated any mail correspondence."

8) In my affidavit, DE 43 at P. Appx. 2-3, I describe how Durham never received 5 release forms that I had signed and returned to him on 7/2/13. These forms would've allowed him "to obtain records from my prior attorneys." (P. Appx. 2 at 9) On 7/8/13, I had sent Durham 2 mailings that were extremely vital to my defense, and he never got them. (P. Appx. 3 at 12-13) To refute the state's assertion that I had lured LA to her death, I needed Durham to manually access the outbox of AH's Blackberry phone in order to retrieve the completed, timestamped, text messages between LA and I on 7/13/11 because Det Faulk had nefariously edited the text data that Det. David Moore had pulled from AH's phone, dumped in an Excel spreadsheet and turned over to him. SEE DE 25 pp 14-24 for an indepth discussion of this issue, as well as pp. 27-33 of my Informal Opening Brief to the US Court of Appeals for the 4th Circuit, docketed on 1/23/19. There is irrefutable evidence that the Communication Record produced by Det. Faulk, that the trial court ruled was "entire[and] complete" (DE 25 at Ex. 2 p. 2), was neither. When you compare

Det. Faulk's Communication Record with the pictures that LA had taken of our text conversations, and sent to Dr. Calloway, they are vastly different. (DE 25 pp21-23)

The same person who edited the Communication Record is the same person who stole my legal mail instructing Durham to manually examine AH's Blackberry.

A.D.A Zellinger argued: "Assume what the defendant says... that Grant just lured Laura over there and Amanda was the one who actually struck the blow that killed Laura. Under the law in [NC], the defendant, Grant Hayes, would still be guilty by acting in concert." (Tp 3353)

My affidavit states, P.Appx. 3 at 12-13:

"On July 8, 2013, I prepared two mailings to send to Will... The second mailing was a vital piece of evidence Will had left with me at a visit: a communication record between my wife and Laura on the day that she died. Will tasked me with making sense of the conversation thread between them.¹³) I made notes on the document about how the communication refuted the state's assertion that I had lured Laura to our apartment. I also instructed Will to examine Amanda's telephone in order to retrieve the completed time stamped text messages."

I needed Durham to photograph the time and date on the message:

"Look. Its not that big a deal. Ull c them in two days. So dont stress out about it..."

as well as LA's complete response at 2:58 pm:

"Its not a big deal to you. I told y, O"

because this exchange shows my intentions for LA NOT to try to keep the midweek playdate, specifically because she would "c them in two days" at the court ordered exchange on Friday at 5pm. By deleting the timestamps on all of my

sent messages, Faulk prevented me from correlating these messages. Det. Moore admitted that he had not looked at the text messages as they appeared in the phone's display, he just downloaded the data. (Tp 2022) The theft of my legal mail instructing Durham to retrieve the completed text AND the timestamp data deprived me of the effective assistance of his counsel.

8) Back to my affidavit. I also "discussed several findings in letters with Will as they related to his direct examination of me. ⁽⁷⁾ Once the final decision was made that I would not testify, I wrote a letter to Will expressing concerns about what Berry would testify to. I was specifically concerned about the fact that my entire defense strategy depended on her as a witness since the defense plan was now not to introduce any evidence. Our plan was to establish my defense through the cross-examination of Berry and Guddat [Sha's married name]. ⁽⁸⁾ Will told me that he did not receive any of these letters." (DE 43, P. Appx. 4)

On 8/16/13, prosecutor Zellinger stated that he and Holt didn't read any of my legal mail that had been copied by the sheriff and provided to their lead detective. (DE 20 Ex. 9 pp. 257-59) But after my legal mail to Will, discussing our strategy to use Berry as my sole corroborating witness, had been intercepted in July 2013, Holt filed a motion to prevent me from eliciting AH's confession to her. (DE 20 Ex. 3 p. 49)

9) The theft of these letters also prevented me from advising counsel on how to preserve AH's confession to Berry (KB), in light of her head nod to KB's question, "Are you covering for him?" (Tp 3211-13)

Only someone like me, who had been involved in the real time unfolding of these events, would've understood the significance of Matt's call and how learning of Sha's questioning in Raleigh, NC, had effected her mother, AH, in Texas. It scared her.

AH notified the state of her duress defense at our 4/22/13 arraignment which resulted in separate trials for us. (DE 43, P.Appx. 111-115) My trial date was set for 8/26/13 and Will Durham was appointed "as second counsel on [4/30/13]" to help Jeff Cutler who had been appointed in Nov. 2012. (P.Appx. 90 at 1) Will began "an initial review of discovery... [since]... the team had not generated a... summary of discovery." (Zd. at 2 $\frac{1}{2}$ 5) "The volume of discovery... was unusually high... thousands of pages... [and] There were many items [he] did not review." (Zd. at 5-6) My guidance on the examination of Sha and KB was especially vital and the state's theft of my outgoing legal mail made my trial constitutionally unfair.

Zellinger's cross-examination of KB focused on controverting my defense by implying that AH ~~had~~ been under duress when she'd confessed to killing LA in self defense. Although he held KB's interview transcript in his hand and even re-entered it into evidence, as State's Ex. 529, he led her to perjure herself by agreeing that I had been present during AH's confession, and had never allowed the sisters to be alone with each other prior to KB getting AH by herself, as we were preparing to leave on Wed afternoon, and asking her, "Are you covering for him?" (Tpp 3180, 3197-99, 3211-14) According to KB's statements, days after assisting AH with the disposal of LA's remains, she and AH were alone when AH had confessed and during their backyard discussion when AH had asked her "what about the creek across the street?" (P.Appx. 65-82)

The Respondent has never denied the sheriff's theft of my July 2013 legal mail that is documented in the affidavits of Will and I. (P.Appx. 2-3, 89) The trial

and district courts never even acknowledged these thefts because they confused the interception issue with the copying issue that had been discussed pretrial. (DE20, Ex. 9 pp. 257-59) On appendix pages A27-A28 attached here to, the district court erroneously stated, "trial counsel raised the mail interception issue at a motions hearing," but only the copied letters that had been returned to counsel were discussed at this hearing. We didn't learn of the intercepted letters until 3 years later!

Using the perjured and false testimony of unreliable witnesses, the state built a strong circumstantial case against me by establishing that:

- a) I had beaten LA bloody while she was pregnant w/ Grant IV in 2008 (Tp 1037-40)
- b) I had threatened to kill LA and Heidi in 2009 (Tpp 1044-47, 1297)
- c) I had Kidnapped Grant IV in 2010 (Tp 1286)
- d) LA feared me and never visited my residence (Tpp 943, 986, 1043, 901-02)
- e) in March 2011, I made a false police report accusing LA of child abuse because I had gotten desperate about the psych. evaluation not going my way (Tp 2664)
- f) LA had been looking forward to the 8/15/11 hearing, had not been trying to settle out of court and would've only settled for full custody (Tpp 2657-58, 2661, 2715)

The evidence rebutting all of the above had been provided to the defense in discovery but counsel honestly admitted in his affidavit, he "did not review all the data". (P.Appx. 90 at 6) This irrefutable rebuttal evidence is listed in pp. 4-7 of my Informal Opening Brief in the 4th Circuit 18-7527, Haze v. Poole.

The only direct evidence came from the state's sole identifying witness, a highly incentivised and unreliable jailhouse informant, Pablo Trinidad. He testified:

"So he said that he placed a call to her and lured her to his apartment and that's when him and his wife subdued her and strangled her." (Tp 2924)

The state actually entered LA's phone records into evidence as State's Ex. 78, so they

knew that I had not called LA, and had a duty to correct Trinidad. They didn't, nor did my counsel.

Immediately following Trinidad's perjurous testimony, the state called the originator of the strangulation lie, NCME Dr. Radisch, to provide scientific support for his lies. She testified that strangulation "was a possibility as a cause of death," (Tp 3002) She also admitted that at the time of her report, she was unaware that Dr. Mambo had found the thyroid cartilage undamaged and had created what she had mistaken as a strangulation injury. (Tpp 3006-07)

Prosecutor Holt also relied on the perjury of her lead detective, Jerry Faulk, to bolster Trinidad's credibility to jurors. On Tp 3252 she directed Faulk to testify that Trinidad's pretrial statements had been consistent with each other, as well as "his testimony here in court."

Then in Holt's closing she said :

"He talks to members of the Greenville Police Department in January 2012. That's before Dr. Radisch's reports come out, before there's been any reporting of it. It hasn't even been published. And he tells them about the choking. Detective Faulk said what he told me was consistent with what he told Greenville." (Tp 3344)

Rebecca Holt is a superior court judge now. She got famous framing me. I'm the new OJ Simpson around here and she's the new Marcia Clark - except, Holt got her monster, even if she had to make him up.

On Tp 3379, A.D.A. Zellinger argued :

"But there is a lot of evidence to show that Dr. Mambo didn't fracture Laura Ackerson's thyroid cartilage."

But that's not supported by the record because on Tp 2139, Dr. Mambo stated "but I know that I did it, so it's not as if it were there before I did it," and no one contradicted his admission. He was the only expert to examine LA's remains intact, as they were when they were recovered, before they had been altered by any other autopsies/examinations - and he had the meat boiled off the head and neck when he was done. (Tp 2138) Zellinger continued: "And if you find that Dr. Mambo did fracture [LA's] thyroid cartilage, it still doesn't matter because we still have Dr. Ross's report... she also found this little stab wound in her C4 vertebra in her neck, in her throat. That tells you pretty clearly what happened to Laura." (Tp 3379)

The nonexistent/impossible stab wound tells you pretty clearly what happened to me too. This backup injury was all part of the staging to make LA's death match the lyrics of a song I'd written 5 years before I'd even met her. (P. Appx. 45-46)

"Would a person who wrote a song about murdering someone - would that be the person that committed this murder, or was it someone else in that apartment?" (Tpp 3349-50)

"The defendants charged with first-degree murder because he murdered [LA] after writing a song about it..." (Tp 3354)

"We are asking you to use your common sense in determining whether the guy who wrote a song about murdering a person was the one who actually murdered the woman." (Tp 3360)

And remember the original lure lie from the 10/17/11 WTVR online news article "Warrants: Hayes may have lured Ackerson"? Remember how investigators had lied in their warrants and said that I had sent LA a message to visit the boys at my residence? Well even though lead investigator Faulk cleared that up on Tp 3254-55 by admitting that my July 12 emails were inviting LA to Monkey Joe's, and the state never presented one email wherein I had invited LA to my residence, A.D.A. Holt returned to the lure lie in her closing statement: "And when she came to his apartment, at his request, on July 13, he was going to make sure that [LA] never saw the light of day. That was his plan the night before when he sent her an email." (Tp 3346)

"... whether he formed that intent to kill [LA] when he wrote a song about killing her; whether he formed that intent and that plan when he sent her an e-mail the night before and told her to come over, to come see the boys ... " (Tp 3347)

Had it not been for the state's knowing use of perjured testimony, unreliable witnesses and the theft of my outgoing legal mail containing vital investigative instructions and material discussions of trial strategy my jury would not have convicted me of murdering Laura Ackerson.

IAC

Detective Faulk read the ManKiller lyrics into evidence on Tp 3088, counsel was shocked. They didn't even know these lyrics were in discovery. (P.Appx. 5 at 27) Will Durham stated in his affidavit:

"6. I spent much of my time pre-trial reviewing and organizing discovery. There were many items I did not review....

7. During my review, I remembered seeing tab sheets... When I saw these, I assumed they were irrelevant and likely not even written by Grant. ... I spent only moments reviewing these items and did not review them with Grant.

8. During trial, when the State entered the "ManKiller" lyrics into evidence, at first I thought there had been a discovery violation, but located on my hard drive the ManKiller song... We did not seek a halt in trial or a continuance to investigate or rebut this evidence. Grant later told me how the song was written long before knowing Larra and was even recorded..."

Counsel's failure to investigate the most damning piece of evidence presented against me cannot be deemed harmless. These lyrics read like a written confession to the crime described by the state's manufactured evidence. My father provided my investigator Steve Hale with a CD dated "10/9/02", with the song "ManKiller" on it. His affidavit is Ex. 13 on my MAR, P.Appx. 45-46. SEE Issue 11 on pp 44-46 of my Informal Opening Brief.

Another monumental failure of counsel, was failure to bring my million dollar distribution deal to the jury's attention. SEE Issue 10 of my Informal Opening Brief on pp 43-44. Not only did counsel withhold the evidence, but he misrepresented to jurors

in his opening statement, that we "didn't know exactly where they were going to get [\$25,000] from yet." (Tp 874) That lucrative deal was material exculpatory evidence because it legitimized the out-of-court settlement agreement that LA had signed minutes before her death. Without validation, then it appeared to be an alibi document that LA had been forced to sign at knife point, (Tpp 3363-65) as A.D.A. Zellinger argued.

The authentication of the document was already challenged by Det Faulk's suppression of evidence. SEE DE 33 at "Faulk's Suppression of Evidence on pp 15-19. FBI handwriting expert Lindsey Dyn was tasked with verifying the document, DE 33 Ex. 10. Her report is DE 33 Ex. 11. She testified that I had written the first paragraph and that LA had written the second. (Tp 2828) Dyn was unable to authenticate LA's signature however, because she needed 20-25 known signatures to make a comparative analysis and Faulk didn't respond to her request for those. (Tpp 2848-52) DE 33's Ex. 12 is 26 documents containing 35 signatures of Laura's that had been in Faulk's possession at the time of Dyn's request. He held them to prevent Dyn from authenticating LA's signature on the document that settled our dispute. The unresolved dispute provided the state with a motive for their manufactured murder. Dyn stated that LA had freely written the 2nd paragraph (Tp 2836-37) Because Faulk prevented Dyn's analysis, Zellinger was able to cast doubt on the legitimacy of our settlement saying: "You don't know if Laura's signing this at knife point." (Tp 3364)

REASONS FOR GRANTING THE PETITION

LEGAL MAIL THEFT

"[P]risoners have a constitutional right of access to the courts." Bonds v. Smith, 430 U.S. 817, 821, 97 S.Ct. 1491, 1494 (U.S. 1977) In Tompkins v. DOC, the court states that: In order to state a claim for denial of access to the courts, the inmate must show actual injury or that defendants' conduct hindered his efforts to pursue a legal claim or show actual harm by the opening. See, e.g., Lewis v. Casey, 518 U.S. 343, 35154 (1996); Michau v. Charleston County, 434 F.3d 725, 728 (4th Cir. 2006) "Prison's actions that allegedly violate an inmate's rights of access to the courts must have impeded the inmate's pursuit of a nonfrivolous legal claim, See, Wilson v. Blankenship, 163 F.3d 1284, 1290 (11th Cir. 1998)

"Legal Mail" may be opened and inspected for contraband, but in the presence of the inmate. Wolff v. McDonnell, 418 U.S. 539, 597 (1974)

The 14th Amendment prohibits the States from "depriv[ing] any person of life, liberty, or property without due process of law." (U.S. Const. amend XIV)

"It is a violation of the 6th Amendment for a government agent to intercept a criminal defendant's communication with his defense attorney and provide intercepted information to the prosecutor such that it prejudices the defendant in his criminal case." Brown v. Gulash, No. 07-CV-370-JPG-PMF, 2011 WL 2516765, at *9 (S.D. Ill. June 23, 2011) (citing Weatherford v. Bursey, 429 U.S. 545, 558 (1977)) It also violates the 6th Amendment to prevent a criminal defendant from speaking candidly and confidentially with

his counsel free from unreasonable government interference." Id. (citing Geders v. United States, 425 U.S. 80, 88-89 (1976)). Furthermore, "prosecutorial misconduct may so infect the trial with unfairness as to make the resulting conviction a denial of due process. To constitute a due process violation, the prosecutorial misconduct must be of sufficient significance to result in the denial of the defendant's right to a fair trial." Greer v. Miller, 483 U.S. 756, 765 (1987); see also Parker v. Matthews, 567 U.S. 37, 45 (2012). If the Court were to find that Haze's communication with his attorneys was chilled, then the right to privately communicate with his attorney, the essence of the 6th Amend. Claim to Effective Assistance of Counsel, would necessarily be rendered ineffective and the verdict would be invalidated.

The Sixth Amendment to the U.S. Constitution provides that "in all criminal prosecutions the accused shall enjoy the right to ... have the assistance of counsel for his defense."

The Fourth Circuit has held that "the essence of the 6th Amendment right to effective assistance of counsel is, indeed, privacy of communication with counsel."

United States v. Brugman, 655 F.2d 540, 546 (4th Cir. 1981) (citing Glasser v. United States, 315 U.S. 60, 62, 62 S.Ct. 457, 461, 86 L.Ed. 680 (1942)).

The 9th Circuit has recently declared that the right to counsel is violated when (1) "the government deliberately interferes with the confidential relationship between a criminal defendant and defense counsel," and (2) the interference "substantially prejudices the criminal defendant." Nordstrom v. Ryan, 856 F.3d 1265, 1271 (9th Cir. 2017).

The Supreme Court and 4th Circuit rulings are consistent with these requirements. See Weatherford v. Bursey, 429 U.S. 545, 557, 97 S.Ct. 837, 844, 51 L.Ed. 2d 30 (1977).

Procunier v. Martinez, 416 U.S. 396, 417; 94 S. Ct. 1800; ** 1814; 40 L. Ed. 2d 224, *** 243 L. Ed. HN [21] "The constitutional guarantee of due process of law has as a corollary, the requirement that prisoners be afforded access to the courts in order to challenge unlawful convictions and to seek redress for violations of their constitutional rights. This means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid. Ex parte Hull, 312 U.S. 546 (1941)

PROS. MISC. FOR PRESENTING UNRELIABLE WITNESSES

To succeed on such a claim, under Napue v. Illinois, 360 U.S. 264 (1959), a defendant must show "the falsity and materiality of testimony and the prosecutor's knowledge of its falsity. Perjury offered under these circumstances is material if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." Barden v. Lee, 290 F.3d 602, 614 (4th Cir. 2002) citing United States v. Agurs, 427 U.S. 97, 103 (1976)

I cannot relitigate this case herein. I addressed how prosecutors took advantage of the court's ruling, to allow the hearsay testimony of LA's associates, to give jurors an impression of LA's state of mind - by using unreliable witnesses to paint a picture of LA's relationship w/ me, that was in total conflict with LA's narrative of our experience, laid out in several documents for the court ordered psych. evaluation. SEE my Informal Opening Brief.

SIXTH AMEND. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

To succeed on such a claim, under the familiar standard set forth in Strickland v. Washington, 466 U.S. 668, a state prisoner seeking habeas corpus relief must show both that his counsel provided deficient performance/assistance and that there was prejudice as a result.

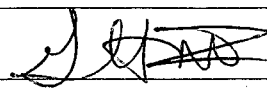
By telling jurors that I didn't know where I was going to get the \$25,000 required to settle Laura's custody suit, pursuant to the agreement she had signed, and failing to present evidence of my million dollar distribution deal's cash advance prior to the 8/15/11 hearing date, counsel left jurors to conclude that the agreement was an alibi document that LA had been forced to sign under duress. Counsel's failure to validate the financial aspect of our agreement undermined my entire account of events that led to A.H. Killing LA in self defense after LA had freely written and signed the agreement resolving our dispute.

By failing to investigate the Markiller song lyrics, that read like a confession to the premeditated murder I was charged with, counsel hung me out to dry. They totally dropped the ball. They didn't even tell me the song was in discovery or ask me about it. That was their job. The state provided the discovery to them not to me. I met Laura on 3/25/07, 5 years after Markiller had been recorded on 10/9/02. It had no relevance on LA's death and was highly prejudicial. These failures were not strategic.

The outcome in my case conflicts with decisions from several other federal and state appellate courts. For example, in Dennis v. Sec'y, Pa. Dept of Corr., 834 F.3d 263 (3d Cir. 2016), the Third Circuit affirmed the grant of a habeas petition overturning a murder conviction based on prosecutorial misconduct where the prosecutor withheld evidence that (1) would have corroborated the defendant's alibi, (2) showed a witness made inconsistent statements, and (3) suggested another person was responsible for the killing. Similarly, in United States v. Flores-Rivera, 787 F.3d 1 (1st Cir. 2015), the First Circuit ordered a new trial based on prosecutorial misconduct where the prosecutor withheld a letter and notes drafted by the Government's star witness. And in Cook v. State, 940 S.W. 2d 623 (Tex. Crim. App. 1996), the Texas Court of Criminal Appeals reversed a conviction because of prosecutorial misconduct based on withholding potentially favorable evidence and using misleading and false testimony by an expert witness. The misconduct in my case is at least as significant as in these cases where the courts granted relief.

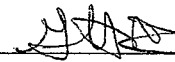
Conclusion

The petition for a writ of certiorari should be granted.



5/28/20

Respectfully submitted,



Grant Haze III

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