No. 17- 6182

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE GUY TOBIAS LEGRANDE,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

ON PETITION FOR WRIT OF HABEAS CORPUS
TO THE SUPREME COURT OF THE UNITED STATES

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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CAPITAL CASE

QUESTION PRESENTED

I. DID THE TRIAL COURT HAVE JURISDICTION TO TRY PETITIONER'S CASE?

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No. 02-7421

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2002

GUY TOBIAS LEGRANDE,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

ON PETITION FOR WRIT OF HABEAS CORPUS
TO THE SUPREME COURT OF NORTH CAROLINA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, the State of North Carolina, by and through the Honorable Joshua H. Stein, Attorney General of North Carolina, and Sandra Wallace-Smith, Special Deputy Attorney General, respectfully request this Court to deny the PETITION FOR WRIT OF HABEAS COURPUS filed by petitioner Guy Tobias LeGrande, [hereinafter "Petitioner"], seeking review of the judgment of the Supreme Court of North Carolina denying his Writ of Habeas Corpus.

CITATIONS TO OPINION BELOW

JURISDICTION

CONSTITUTIONAL PROVISIONS INVOLVED

STATEMENT OF THE CASE

A. Procedural History

On 25 January 1995, Petitioner was arrested on a warrant for First Degree Murder. (Attachment 1) On 13 February 1995, Petitioner was indicted for First Degree Murder. (Attachment 2) On 13 March 1995, Petitioner was indicted for the murder and the conspiracy to commit the murder of Ellen Hinson Munford on 27 July 1993 in a superseding indictment. (Attachment 3) On 18 April 1995, Petitioner waived arraignment. (Attachment 4) On 21 April 1995, the 13 February 1995 indictment was dismissed by Judge Sanford Steelman in light of the superseding indictment. (Attachment 2)

On 21 April 1995, a Rule 24 Conference was held in Petitioner's case before Judge Steelman. (Attachment 5) The trial court entered a pre-trial order committing Petitioner to Dorothea Dix Hospital for evaluation of his competency to proceed after Petitioner expressed a desire to represent himself. (Attachment 6)

Dr. Robert Rollins, Director of the Forensic Psychiatry Division at Dorothea Dix Hospital, conducted an evaluation of Petitioner's capacity to proceed and to waive counsel. Dr. Rollins found Petitioner to be competent to proceed to trial and competent to waive representation by an attorney. (Attachment 7) Based on Dr. Rollins' report, Superior Court Judge Sanford Steelman found Petitioner to be competent to waive counsel and, after making the appropriate inquiry, allowed Petitioner to sign a waiver of counsel on 9 February 1996. (Attachment 8)

Petitioner was tried for capital murder at the 15 April 1996 Session of Stanly County Superior Court before the Honorable William H. Helms, Superior Court Judge Presiding. On 25 April 1996, Petitioner was found guilty of conspiracy to commit murder and first degree murder on the theories of premeditation and deliberation and lying in wait. The jury recommended a sentence of death. (Attachment 9)

Petitioner gave notice of appeal to the North Carolina Supreme Court and requested appointment of appellate counsel. Petitioner was found to be indigent by the trial court and the appellate defender was appointed to represent him on direct appeal. The appellate defender assigned Petitioner's appeal to private attorney J. Clarke Fischer.

On 26 June 1996, Petitioner filed a petition for writ of habeas corpus in the North Carolina Supreme Court. In the petition, Petitioner attempted to challenge the sufficiency of the evidence to support his convictions, the admission of testimony by Howard Thomas Munford, the admission of testimony by Barbara Taylor, and the introduction of a prior conviction at sentencing. On 1 July 1996, the Supreme Court entered an Order denying Petitioner's petition for writ of habeas corpus without prejudice to raise the questions on direct appeal. Appellate counsel did not raise the issues on direct appeal.

On 24 July 1997, the North Carolina Supreme Court, in a unanimous opinion, found no error in Petitioner's conviction and sentence of death. State v. LeGrande, 346 N.C. 718, 487 S.E.2d 727 (1997).

Petitioner did not file a timely petition for writ of certiorari to this Court. On 3 April 1998, pursuant to N.C. Gen. Stat. § 15-194(2), the Warden of Central Prison issued an Order setting an execution date of 15 May 1998 for Petitioner. On 7 May 1998, upon Motion of the Appellate

Defender, the North Carolina Supreme Court entered an Order staying the scheduled execution. The Order remanded the case to the Superior Court of Stanly County for the limited purpose of considering whether Petitioner should be appointed counsel to prepare a Motion for Appropriate Relief on his behalf.

On 8 June 1998, Judge Sanford L. Steelman conducted a hearing to consider whether Petitioner should be appointed counsel to prepare a Motion for Appropriate Relief on his behalf. During a detailed inquiry of the Petitioner, he acknowledged his understanding of the purpose of the hearing, his entitlement to court appointed counsel, his right to represent himself, the complex nature of capital cases, the possible waiver of significant legal rights unless timely and properly asserted and the inability of the Court to give him legal advice.

After considering Petitioner's responses to the trial court's questions, the Petitioner's age, educational background, familiarity with the language, his ability to understand the nature of the proceedings, the ability to communicate his position and desires to the Court, his manner and appearance before the Court, the appropriateness of the Petitioner's responses to the Court's questions, Petitioner's mental status as described in the pretrial evaluation conducted by Dr. Rollins, and the Petitioner's experience waiving counsel and representing himself at trial, Judge Steelman entered an Order finding that Petitioner comprehends the nature of the charges and the proceedings against him, that Petitioner was competent to waive counsel and to represent himself in post conviction proceedings and that Petitioner had freely, knowingly, voluntarily, unequivocally and with full awareness of his rights, and the consequences of the waiver, waived appointment of counsel and standby counsel for preparation of any motion for appropriate relief.

Petitioner stated that he had filed a Motion for Appropriate Relief on 15 May 1998 and did

not wish to amend or supplement his motion. Petitioner subsequently filed additional pleadings which Judge Steelman considered to be amendments to Petitioner's Motion for Appropriate Relief and which were addressed as additional claims for relief. On 12 June 1998, the State filed a Motion to Deny Defendant's Motion for Appropriate Relief contending that Petitioner's claims were procedurally barred based on his failure to raise them on direct appeal.

On 16 September 1998, Dara Tyson Thomas and Alice Tyson, represented by Noell Tin, filed a Motion to Intervene As Next Friend and a Motion for Appropriate Relief on behalf of Petitioner.

On 19 October 1998, a hearing was held before Judge Steelman to consider the motions of Thomas and Tyson. The hearing that began on 19 October 1998 was continued on 23 April 1999 and completed on 7 May 1999, when Judge Steelman denied the next friends' motion to intervene and found Petitioner competent to represent himself in post-conviction proceedings.

On 4 June 1999, Judge Steelman entered an Order calendaring an evidentiary hearing on Petitioner's Motion for Appropriate Relief and all other pending motions for 1 July 1999. On 1 July 1999, the trial court denied Petitioner's Motion for Appropriate Relief. On 4 July 1999, Petitioner filed a Petition for Writ of Certiorari in the North Carolina Supreme Court seeking review of the denial of his Motion for Appropriate Relief. On 13 August 1999, the trial court entered a written order making findings of fact and conclusions of law. On 7 October 1999, the next friend petitioners filed a Petition for Writ of Certiorari in the North Carolina Supreme Court seeking review of the 31 August 1999 Order denying their Motion to Intervene as Next Friends. On 4 November 1999, the North Carolina Supreme Court entered an Order denying Petitioner's Petition for Writ of Certiorari to review the denial of his Motion for Appropriate Relief and an Order denying the next friend petitioner's Petition for Writ of Certiorari to review the denial of their Motion to Intervene as Next

Friends.

On 20 April 1999, Petitioner filed a pro se petition for writ of habeas corpus in the United States District Court for the Middle District of North Carolina. On 28 February 2000, the District Court entered an Order setting a hearing on 20 April 2000 to resolve the question of whether Petitioner would voluntarily accept court appointed counsel and, if necessary, whether the District Court would compel Petitioner to accept court appointed counsel. On 21 November 2000, the District Court entered an Order denying Petitioner's request to represent himself and requiring Petitioner to be represented by appointed counsel. On 16 November 2001, counsel for Petitioner filed an Amended Petition for Writ of Habeas Corpus. On 6 December 2001, Respondents filed Respondent's Answer to Amended Petition for Writ of Habeas Corpus. On 9 January 2002, counsel for Petitioner filed a Brief in Support of Petition for Writ of Habeas Corpus. On 8 February 2002, Respondents filed a Memorandum In Support of Respondent's Answer to Amended Petition for Writ of Habeas Corpus. On 7 May 2002, counsel for Petitioner filed a proposed Order and Motions for Leave of Court to Conduct Discovery and for Production of Documents in Possession of Federal Government. On 16 May 2002, Respondents filed Respondent's Response in Opposition to Petitioner's Motion for Leave of Court to Conduct Discovery. Although represented by counsel, Petitioner continues to file numerous *pro se* documents in State and Federal court, including the same claims he makes in the present petition. The present writ of habeas corpus was denied by the North Carolina Supreme Court on 21 June 2017. LeGrande v. State, ___ N.C. ___, 800 S.E.2d 420 (2017).

B. Evidence at Trial

Gayzelle Simpson saw her twenty-six-year-old daughter, Ellen Hinson Munford, for the last

time on 25 July 1993. Family members had gathered for a cookout on Morrow Mountain to celebrate the birthdays of Ellen's two children: Thomas, six years old, and Ashley, four years old. Ellen was separated from the children's father, Tommy Munford, and was living with David Swaringen, who was also separated from his wife. David brought his two young children to the cookout on Morrow Mountain. (T pp 843-848, 852) When Ellen and Tommy Munford separated, Ellen hired attorney Fred Stokes to prepare a separation agreement. The separation agreement was signed by Ellen and Tommy Munford on 23 June 1992. On 25 June 1993, Fred Stokes filed a civil action for divorce, custody, and child support on Ellen's behalf. The action was served on Tommy Munford on 1 July 1993. Ellen was scheduled to be a witness at the trial Fred Stokes had requested for the 23 August 1993 court calendar. (T pp 854-856, 936-939)

It was after the separation agreement was signed that Ellen and the children moved into David Swaringen's house off Tower Road in the Palestine community of Stanly County. (T p 859) Tommy Munford did not get along with David Swaringen and there were numerous arguments and physical confrontations. (T pp 861-863) Tommy Munford was charged with misdemeanor breaking and entering, harassing phone calls, assaults, and trespass as a result of his problems with David Swaringen and Ellen. (T pp 862-863)

Tommy Munford began feeling a great deal of anger and hatred towards Ellen. He thought that she was using him. During the early part of 1993, he began talking to people about having her "done away with". (T pp 866-872) He first discussed this possibility with Clyde Honeycutt, a friend whose wife had left him. Clyde told him that someone had offered to kill his wife for a motorcycle. Tommy Munford said that was just what he needed and called Clyde sometime later to ask him about it. (Tpp 872-873) The next person Tommy Munford talked to was Greg "Tadpole" Laton. He told

Tadpole Laton that he wanted Ellen killed and asked him for help. Tadpole told Tommy Munford it would take around $5,000.00. Tommy Munford offered to pay out of a life insurance policy he had taken out on Ellen, but Tadpole wanted at least half of the money up front. Tommy Munford and Tadpole Laton discussed how the killing would have to be done and then Tadpole agreed to help Tommy get a gun. (T pp 873-877)

Tommy Munford met defendant in the early part of 1993 at Jay's Downtowner Restaurant where they both worked the same shift. (T pp 869, 878) Tommy Munford asked defendant if he would "knock somebody off". He asked defendant because he saw him as a drifter with no ties to the community who would probably do something like that. Defendant told Tommy Munford that he would do it for the right amount of money. They discussed the possibility off and on over the next week or two and began negotiating a price. At first they agreed on $5,000.00 and then defendant raised the price to $6,500.00. Tommy Munford accepted defendant's price and defendant agreed to be paid from the life insurance proceeds without any money being paid up front. (T pp 878-879) While he and Ellen were still together, Tommy Munford had purchased a $50,000.00 life insurance policy on Ellen from Christie Stoner at Transamerica Occidental Life. He had named himself as the primary beneficiary. (T pp 857-858, 973-975)

Defendant and Tommy Munford began discussing the details of how Ellen would be murdered. Munford described Ellen and then showed defendant a picture of her. He took defendant to Tower Road and showed him the driveway leading to David Swaringen's house. He also showed defendant a pond near the house and told him it was a good place to dispose of the weapon because nobody would ever find it. They planned for defendant to walk to a nearby Food Lion and call a cab to take him home after he killed Ellen. They discussed the need for Ellen to be alone at the house.

It was agreed that Munford would take defendant to David Swaringen's house in the morning and pick up the children. Munford would establish his alibi by spending the day at the beach with his children. (T pp 880-882)

Tommy Munford continued to call Tadpole Laton to see if he had found a gun for him, however, Laton was not having much success in his efforts. Munford told defendant that he still had no weapon. Defendant was not concerned and told Tommy Munford that he could probably get a gun in Wadesboro where he had family and friends. Munford and defendant traveled to the home of defendant's friend, Barbara Taylor, in Wadesboro. Defendant tried to purchase a gun with $60.00 provided by Munford, but was unsuccessful. (T pp 879, 886, 888-889)

On 26 July 1993, Tommy Munford told Tadpole Laton he would take any weapon he could get. He rented a car so that he would have reliable transportation to the beach and then went to find defendant. He told defendant that he was going to the beach in the morning, that he would have a weapon for him, and that he should be ready to kill Ellen when he picked him up. Munford called Ellen and arranged to take the children to the beach on Tuesday morning, 27 July 1993. (T pp 890-893)

Early in the morning on 27 July 1993, Tommy Munford got ready to go to the beach and then went to Tadpole Laton's house to get the weapon. Laton walked to his father's house and returned with a single shot blue steel shotgun. Laton wiped it down and put the gun in the trunk of Munford's car. He gave Munford two twelve gauge shotgun shells. Munford drove home and picked up two more shotgun shells, called Ellen, stopped by Bojangles to get Ellen something to eat, and then picked up defendant. (T pp 894-899)

Defendant was wearing jeans, a long-sleeved dark shirt, brown cotton work gloves, and a hat.

Munford headed for David Swaringen's house on Tower Road. He stopped the car right after he turned onto Tower Road. Defendant got the gun and the shells from the trunk of the car. Munford told defendant that he would blow the horn to signal that Ellen was at home by herself when he left with the children. They planned for Munford to call defendant at his apartment from the beach. Munford would ask, "Is Barbara gone to the store?", to find out if defendant had shot Ellen. If defendant said yes, then Munford would ask, "Is she coming back?", to find out if Ellen was dead. (T pp 899-902)

Munford pulled into the driveway of David Swaringen's house and defendant went into the surrounding woods. Ellen came out of the house with the children. She told the children to have a good time and that she would see them when they got back. She told Tommy Munford that she would probably go to the lake to swim and that she had a job interview that day. The children got in the car and, as Tommy Munford drove off, he blew his horn. (T pp 902-905)

Tommy Munford arrived in Myrtle Beach at about 1:00 p.m. on 27 July 1993. He rented a room at the Barbara Lynn Motel. He told the managers, Cheryl and Jerry King that he would not be staying overnight, but wanted a shower for the kids and to be able to use the swimming pool for the day. Munford and the children were in the pool most of the day. At one point, they left to get cigarettes and drinks at a convenience store. While they were there, Munford called defendant's apartment, but got no answer. (T pp 906-909, 941-943, 952-954) Between five and six o'clock Munford took the children to get ice cream and called defendant from a pay phone. A male answered the phone and Munford said, "who is this?". The person answered "who do you think this is, mother fucker?" Munford then recognized defendant's voice and asked if Barbara had gone to the store. Defendant said "yes". Munford asked if she was coming back and defendant said "nope".

(T pp 909-910)

David Swaringen had gone to work a little before 7:00 a.m. on 27 July 1993. He left Ellen at home waiting for Tommy Munford to pick up the two children and take them to the beach. David spoke to Ellen on the phone between 9:30 and 10:00 a.m. and they made lunch plans. He arrived home at about 12:15 p.m. and Ellen had sandwiches ready. David went back to work and talked to Ellen on the phone sometime after 1:00 p.m. He called again between 3:00 and 3:30 p.m. and talked to Ellen about some good news regarding a loan they were trying to get. When David tried to call Ellen around 4:30 p.m. there was no answer. (T pp 982-986)

David Swaringen had planned to take Ellen to her six o'clock job interview at Video Spectrum, but since he didn't get off work until 5:50 p.m., he decided to go straight to the video store. It was a minute or two after six when he arrived at the video store. He noticed that Ellen's car was not in the parking lot. David called Ellen and got the answering machine. (T pp 971-972, 986-990) He drove home and saw that Ellen's car was parked in the same place as it had been at lunch. He also noticed that the front storm door was open. He went in the house and heard the television upstairs. He shouted Ellen's name at the bottom of the stairs, but got no answer. David went to the kitchen to put his wallet on the counter and saw Ellen. She was dead, kneeling like she was saying her prayers, and slumped against the back door in the kitchen. She was wearing only a bra and panties. David noticed two nickel- or dime-size perfectly round spots on her back. (T pp 990-994)

David Swaringen called the Sheriff's Department at the emergency number, told the dispatcher, Deputy O.V. Gardner, that he came home and found his girlfriend murdered, and asked for help. The call came in at 6:24 p.m. and Sergeant Kevin Boone of the Stanly County Sheriff's

Department was at the scene by 6:32 p.m. (T pp 995-996, 1072-1075)

Sgt. Boone knocked on the front porch door. David Swaringen let him into the house only after warning him not to touch the door in case there were fingerprints on it. Sgt. Boone saw that David was hysterical, crying and upset. David took Sgt. Boone to the kitchen to show him Ellen's body. Sgt. Boone secured the crime scene after checking the rest of the house for suspects. He found the television on upstairs and a make-up mirror light on in the master bedroom. Ambulance personnel checked Ellen's body for any signs of life, but found none. (T pp 1077-1081)

Special Agent Bobby Bonds, a crime scene search specialist with the North Carolina State Bureau of Investigation, arrived at the crime scene on 27 July 1993 at 8:15 p.m. The driveway into David Swaringen's house was about a tenth of a mile long. He observed Ellen's body in the kitchen slumped against the kitchen door. Her lower thighs and buttocks were resting against the floor and her upper torso was bent over to her thighs. Her head was resting against the door. The kitchen door was unlocked and Agent Bonds saw no signs of forced entry. (T pp 1162-1163, 1171) There was no evidence of a struggle. The house had not been ransacked. Agent Bonds saw jewelry, guns, stereo equipment, televisions, and a video camera, but nothing appeared to have been disturbed. (T pp 1180-1181, 1192-1193, 1196)

Agent Bonds did luminal testing throughout the Swaringen house, but found no bloody fingerprints or shoe impressions. (T p 1195) He observed blood spatter on the door in the kitchen. On the wall to the left of the door there were bloody smears from about 5'6" high to the floor, consistent with hair in blood as the body slid down to the floor. There were blood stain impressions to the left of the body consistent with blood dripping down and hitting the floor. (T p 1199) Agent Bonds collected a dollar bill that was found under Ellen Munford's body. He also collected shotgun

pellets that were found on the floor near the kitchen sink, to the right of the body, beneath the body, to the left of the body, and in the kitchen door. There were no expended shotgun shells found in the house, however, shotgun wadding was found in Ellen's hair. (T pp 1196-1197, 1200) In the master bedroom Agent Bonds found the television on, the walk-in closet door open and the closet light on, a half full glass of tea on the vanity and the vanity mirror turned on, an iron on the floor next to the vanity, a towel spread on the floor, and a purse next to the vanity. (T pp 1202-1203)

Tommy Munford returned to Albemarle with the children at about 11:00 p.m. on 27 July 1993. He called the Swaringen house from a pay phone and left a message for Ellen on the answering machine. He took the children to Eury's Truck Stop for french fries. People at the truck stop told him that Ellen had been killed and that the Albemarle police were looking for him to question. He went to the police station and gave a statement to Detective Roger Page detailing the day's activities at the beach with the children. (T pp 911-914)

Jerry Boone, who worked with defendant and Tommy Munford at Jay's Downtowner Restaurant, saw defendant at work on Wednesday, 28 July 1993. He asked defendant if he knew that Ellen Munford had been found dead. Defendant said that he knew. Jerry Boone told defendant that a witness had seen a person leaving the scene and that there would be an arrest that night. As soon as he said that, Jerry Boone saw a cloud come over defendant. Defendant said "I'm leaving, I'm quitting." Jerry asked where defendant was going. Defendant said "I ain't got to put up with this stuff. I'm leaving." Jerry told defendant that he wouldn't get paid, but he still quit right then saying, "You can burn the damn stuff. I don't care." (T pp 1041-1042)

Tommy Munford also saw defendant at Jay's Downtowner after the murder. Defendant looked at him and said "I did it." Munford told defendant that they would have to talk later. The

next time Tommy Munford saw defendant, he had moved to Wadesboro. Defendant asked Munford for money and Munford gave him the twenty or thirty dollars that he had. He told defendant that he had not filed for the insurance money yet and it would be a while before he could pay him. Defendant called Tommy Munford sometime after this and, again, was given some money by Munford. He told defendant that he had not heard anything from the insurance company and had not heard anything about any investigation. (T pp 915-918)

On 28 July 1993 Deborah Radisch, an expert in forensic pathology, performed an autopsy on Ellen Munford. She observed two shotgun entrance wounds in the upper right back area. She found no defensive wounds. Fingernail clippings, shotgun pellets removed from the chest, shoulder, and neck, plastic wadding from the left shoulder and neck, and swabs from the mouth, vagina, and rectum were collected for analysis. Dr. Radisch found no evidence of sperm. (T pp 1051, 1053, 1068-1069)

Wound number one traveled back to front, right to left, and slightly upward, primarily to the area of the neck. It fractured the shoulder blade and some ribs as it went, then traveled through a portion of the lung into the lower neck spine and upper chest spine, destroying the bones as well as the spinal chord in this area. A total of four vertebra were destroyed. This wound also injured the right carotid artery which supplies blood to the brain on the right side of the neck. Plastic shotgun wadding was found at the end of the wound track. There were two small satellite wounds associated with wound number one. These occurred from the early spreading of pellets when the shot starts to separate. This indicates a close to intermediate range wound of approximately three feet muzzle to skin distance. There were gun powder particles on the skin. This wound would have rendered Ellen Munford immobile because of the damage to the spinal chord. It also would have been fatal. (T pp

1051-1060)

Wound number two traveled back to front, right to left, and upwards. It angled more to the back of the body and exited in the left side of the neck. Wadding was also found in this wound track. In Dr. Radisch's opinion, this wound was probably inflicted first, while Ellen Munford was in a standing position, because of the blood spatter on the door. It would have been physically impossible to remain standing after wound number one was inflicted. Dr. Radisch determined the cause of death to be the shotgun wounds to the chest and neck. Both wounds were inflicted from the same range and, in combination, would have caused death within five minutes. (T pp 1061-1063, 1070)

During the summer of 1993, defendant stayed with Barbara Taylor at her house in Wadesboro for a part of each week. He told her that they were cousins, but she later found out that this was not true. He told her that Tommy Munford had offered him $8,000.00 in insurance proceeds in exchange for killing his wife, Ellen Munford. Defendant told her he was going to ask for more than $8,000.00. Barbara Taylor was shocked when she heard about the murder on television. (T pp 1084-1086)

A couple of days later, defendant told Barbara Taylor how he killed Ellen Munford. Defendant said he was camouflaged and sat outside watching. He saw Ellen's boyfriend leave the house at lunchtime. He said that Ellen was upstairs and came downstairs in her underwear. She was dancing around the front room when she looked up and saw defendant. She tried to run to the kitchen door, but defendant shot her in the back with a shotgun. Defendant told Barbara Taylor that the house was in the woods with a pond nearby. He threw the shotgun in the pond near a pipe or pole that was sticking up, then went through the woods and thumbed a ride with some lady.

Defendant said that Tommy Munford wanted his wife dead because he wanted the children. He said that they had "scoped out" the house and that Tommy Munford was at the beach when he killed Ellen Munford. (T pp 1087-1090)

Barbara Taylor remembered Tommy Munford from when he came to her house with defendant. After the murder, Tommy Munford met defendant at a store and gave defendant some money. After Tommy Munford left, defendant told Barbara Taylor that he "capped that ass" referring to killing Ellen Munford.

On 15 May 1994, Special Agents Mark Isley and Tim Caulder, of the North Carolina State Bureau of Investigation, interviewed Barbara Taylor at her request. She told Agent Isley everything defendant had told her. At this point in the investigation, law enforcement officials had not recovered a murder weapon and had no idea where it might be. (T pp 1099-1101)

In light of Barbara Taylor's statement, Agent Caulder obtained consent to search the pond near David Swaringen's house. He recruited some divers and went to search the area. They looked for a pipe, based on what Barbara Taylor told them, and found a white pipe sticking up by a dam at the end of the pond. Lt. Neal Speer, a Monroe Public Safety Officer and part of a special dive team, went into the pond at about 11:30 a.m. on 17 May 1994. By 11:55 a.m., Agent Caulder saw Lt. Speer come up out of the water with a shotgun. He found it on the bottom of the pond in about seven or eight feet of water. Caulder and Speer noted that it was a 12 gauge Stevens single barrel shotgun, model 9478, serial number E 493748. On 19 May 1994, Agent Caulder submitted the shotgun to the S.B.I. lab for analysis. (T pp 1105-1110, 1114, 1117-1118, 1121-1123)

Agent Caulder was able to trace the shotgun from its original sale on 20 September 1988 at the Western Auto Store in Norwood, Virginia, to Dean Kinley, whose future husband, Howard

Howell, sold the gun to Charles Laton, Tadpole Laton's father. (T pp 1131, 1134-1135, 1141-1142) Tadpole Laton confirmed that he sold a shotgun to Tommy Munford before Ellen Munford was killed, that he got it from his father, and that it was the shotgun recovered by law enforcement in the pond next to David Swaringen's house. (T pp 1148-1150)

Special Agent Roger Stills, an expert in fingerprint identification with the North Carolina State Bureau of Investigation, examined the shotgun recovered from the pond for the presence of fingerprints, but found none. He also examined the dollar bill found under Ellen Munford's body, but recovered no fingerprints.

Special Agent Mike Gavin, an S.B.I. expert in forensic firearms identification, examined the shotgun wadding found in Ellen Munford's hair, but was unable to determine conclusively a manufacturer or gauge. Agent Gavin determined that one of the pieces of shotgun wadding that had been removed from Ellen Munford's body was Remington 12 gauge fired plastic shot wadding. The other wadding removed from the body bore ammunition components of at least two different manufacturers. One piece was Federal 12 gauge shot wadding. The other two pieces were not Federal, but were not large enough to be identified. (T pp 1232-1237)

Agent Gavin also examined a bag of pellets that had been recovered from Ellen Munford's body. There were 48 lead pellets consistent with #4 shot and 12 lead pellets consistent with #6 shot. It cannot be determined if pellets are fired from a particular shotgun because there is no direct contact with the barrel, however, Agent Gavin could determine that the pellets were consistent with being fired from a shotgun. (T pp 1238-1240)

Finally, Agent Gavin examined the shotgun recovered by law enforcement. He determined that the shotgun functions properly and that the safety mechanisms function properly. It is a Stevens

12 gauge single shot shotgun, model 9478, that requires loading one shot at a time. The shell is ejected out of the gun to the rear of the gun after it is fired. Agent Gavin determined the trigger pull to be greater than ten pounds and less than or equal to twelve pounds. In order to fire this shotgun, the trigger must be held back to release the hammer block, which is a safety mechanism. (T pp 1241-1245)

Defendant was arrested on 25 January 1995. (T p 1102) Tommy Munford was also arrested on 25 January 1995. He had moved to Virginia Beach with his children in October of 1993. (T p 918) On 9 May 1995 Special Agent Bart Burpeau, of the North Carolina State Bureau of Investigation, interviewed Tommy Munford in the presence of his attorneys. The interview took two days. (T pp 1247-1249) Munford subsequently pled guilty to solicitation of Greg "Tadpole" Laton to kill Ellen Munford, to conspiring with defendant to kill Ellen Munford, and to the second degree murder of Ellen Munford. Conditioned on truthful testimony, Munford would receive a sentence of life plus twenty years. (T pp 922, 924)

Defendant presented testimony from Special Agent Bobby Bonds to show that he had transcribed a copy of a tape found on David Swaringen's answering machine and to play that tape for the jury, from Special Agent Tim Caulder to show that he checked defendant's criminal record in Pennsylvania and found no record of convictions, from Deputy Starr Smith to show that she had talked to defendant while wearing a wire, and from his landlord, Dillon Lambert, to show that they had a good relationship and that they talked about defendant's rent during the last weekend in July. (T pp 1313, 1315, 1321, 1327-1328, 1333)

SENTENCING PHASE

The State presented three additional witnesses during the sentencing phase. Richard Lee testified that defendant talked to him about murdering a lady in Albemarle and told him how he executed the hit. Defendant told Lee that he was supposed to be paid for the hit from insurance money and he was mad about not getting paid. He said he was going to raise the price if Tommy didn't pay him within a certain amount of time. (T pp 1405-1407) Kristian Gaddy met defendant during the summer of 1993. He bragged about killing a lady in Albermarle for money, but was concerned about not getting paid. He saw defendant call Tommy Munford in Virginia from Barbara Taylor's house. Defendant told him how he did the killing and said that he wore extra large size shoes with plastic bags over his feet so the dogs wouldn't catch any scent. He said that he put a stocking cap over his head and face so that no hair would fall at the scene. (T pp 1409-1413)

Special Agent Tim Caulder read a letter written by defendant to Tommy Munford at Jay's Downtowner restaurant. The letter said:

> Tommy, I'll be brief, mother fucker. I want you to think very carefully. The subject is fingerprints. The last thing you touched was a ten dollar bill which is now buried in one of the spent shells. You've taken me for granted. So now it's a matter of principle. And it's going to cost you 10 K. You've got until October 10th to complete our business. You can bet your white ass you will see me. You got a choice, pay me or slay me. You want to find out who is in control, call my bluff. Ask yourself, are you ready for death row. After October 10th, you got reservations. Time is up, pal.

(T pp 1417-1418)

Defendant testified on his own behalf. He pointed out his past accomplishments and strongly expressed his displeasure with the jury's verdict. On cross-examination he admitted that he had been convicted of two separate counts of blackmail against Tommy Munford.

REASONS WHY WRIT SHOULD NOT BE GRANTED

Petitioner claims that the trial court was without jurisdiction to try him because he was not legally charged with a criminal offense and that he was improperly convicted on inadmissable evidence. Neither of these claims have merit.

I. THE TRIAL COURT HAD JURISDICTION TO TRY PETITIONER'S CASE.

Petitioner was arrested on a valid warrant charging him with the criminal offense of first degree murder. (Attachment 1) He was served with the warrant and brought before a judicial official. (Id.) He was appointed counsel. (Attachment 10) Petitioner claims that he exercised his Miranda rights but was not allowed to speak to an attorney, however, he makes no claim that he made any statements or that any statements he made subsequent to his arrest were secured or used as evidence against him. Petitioner was properly indicted for first degree murder and conspiracy to commit murder. (Attachment 3) Petitioner waived arraignment on superseding indictments. (Attachment 4) Petitioner was afforded a Rule 24 Hearing to determine whether his case would be capitally tried. (Attachment 5) Petitioner has not shown that he was illegally arrested, detained, tried, convicted or sentenced, or that the trial court was without jurisdiction to hear his case.

II. PETITIONER WAS TRIED, CONVICTED AND SENTENCED BASED ON ADMISSIBLE EVIDENCE.

The evidence presented at Petitioner's trial overwhelmingly proved his guilt of the first degree murder and the conspiracy to commit murder. A review of the evidence presented against Petitioner does not reveal inadmissible hearsay evidence, nor does it reveal uncorroborated evidence. Petitioner has not indicated what evidence he believes was unsubstantiated and/or uncorroborated hearsay.

III. PETITIONER HAS NOT PRESENTED AN ISSUE WORTHY OF THIS COURT'S REVIEW.

Petitioner has not presented any compelling reason for the issuance of this Court's writ. He has not presented a federal question that has been determined in a conflicting manner in federal or state courts or that is in conflict with any decision of this Court. (Supreme Court Rule 10) Petitioner is currently represented by counsel in the State Court on a Motion for Appropriate Relief pursuant to the North Carolina Racial Justice Act (RJA), N.C. Gen. Stat. §§ 15A-2010 to 15A-2012. Petitioner's general dissatisfaction with his conviction and sentence do not present issues worthy of the issuance of this Court's writ of certiorari.

CONCLUSION

For the reasons discussed above, Petitioner has failed to identify any issue worthy of the issuance of this Court's writ of certiorari. Accordingly, the State of North Carolina respectfully requests that this Court deny the Petition for Writ of Habeas Corpus.

Respectfully submitted, this the 20th day of December, 2017.

JOSHUA H. STEIN
Attorney General

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CERTIFICATE OF SERVICE

I, Sandra Wallace-Smith, Special Deputy Attorney General for the State of North Carolina and a member of the bar of this Court, hereby certifies that on the 20th day of December, 2017, one copy of the State of North Carolina's RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS IN UNITED STATE SUPREME COURT, was served on the Petitioner, Guy Tobias LeGrande, Central Prison, 1300 Western Boulevard, Raleigh, North Carolina 27606, by first class mail, postage prepaid. I further certify that all parties required to be served have been served.

This the 20th day of December, 2017.

s/Sandra Wallace-Smith
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LIST OF ATTACHMENTS

1. Warrant for Arrest

2. Order Dismissing Indictments # 95-CRS-567 and 95-CRS-847

3. Murder Indictment #95-CRS-567 and Conspiracy to Commit Murder Indictment # 95-CRS-847

4. Waiver/Certification of Arraignment

5. Order on Pre-Trial Conference

6. Motion and Order Committing Defendant to Dorothea Dix Hospital

7. Forensic Psychiatric History and Evaluation/Legal Assessment/Discharge Summary and Aftercare Plan

8. Waiver of Counsel

9. Verdicts

10. Order of Assignment of Denial of Counsel