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APPENDIX A

IN THE SUPERIOR COURT OF BUTTS COUNTY STATE OF GEORGIA

Civil Action No. 2000-V-699

[Filed January 4, 2017]

LEONARD MAURICE DRANE,	)
	)
Petitioner,	)
	)
v.	)
	)
BRUCE CHATMAN, WARDEN, Georgia Diagnostic and Classification Prison,	)
	)
Respondent.	)
	)

ORDER

Petitioner Leonard Maurice Drane filed the above-styled petition for a writ of habeas corpus on November 29, 2000. On February 20, 2009, following an evidentiary hearing held on December 11, 2006, this Court entered an order denying Drane's petition in its entirety.

On October 18, 2010, the Supreme Court of Georgia granted Drane's application for certificate of probable cause to appeal the denial of his first habeas petition,

and remanded the case to this Court with the following directions:

> Because it is unclear what standard the habeas court applied in determining that Drane failed to show prejudice sufficient to overcome the procedural default of his conflict of interest claim, and, thus, in concluding that his underlying conflict of interest claim was meritless, see *Whatley v. Terry*, 284 Ga. 555, 560 [] (2008) (holding that, because the prejudice necessary to satisfy the cause and prejudice test is a prejudice of constitutional proportions, where a petitioner's claim is a constitutional claim, the prejudice analysis and the analysis of the merits of the claim are co-extensive), Drane's conflict of interest claim, including his claim that trial counsel were rendered ineffective by the "implicit" direction of the trial court to simultaneously represent him and a prosecution witness, is remanded to the habeas court for a proper analysis, including appropriate findings of fact and conclusions of law. See *Mickens v. Taylor*, 535 U.S. 162 [] (2002) (setting forth conflict of interest law).
>
> Because it appears that the habeas court left unresolved Drane's claim that sentencing phase jury charges at his trial were erroneous under *Davis v. State*, 255 Ga. 588, 593-595 []) (1986), and *Enmund v. Florida*, 485 U.S. 782 [] (1982), that issue is remanded to the habeas court for a ruling on the merits of that claim. See *Head v. Ferrell*, 274 Ga. 399, 403 [] (2001) ("Claims regarding sentencing phase jury charges in a

death penalty case are never barred by procedural default.").

Accordingly, the only two claims properly before this Court for review and decision are (1) Drane's conflict of interest claim, as it was unclear to the Georgia Supreme Court what standard was utilized in finding this claim to have been procedurally defaulted,[1] and (2) whether the trial court's sentencing-phase charge to the jury was erroneous under *Davis* and *Enmund.*

In July 2010, Drane's co-indictee, David Robert Willis, was interviewed by his parole officer. During this interview, Willis claimed that he alone killed victim Renee Blackmon and Drane only helped to dispose of the body after the murder.

In December 2010, based upon this information, Drane filed an extraordinary motion for new trial in the Superior Court of Elbert County. At the June 24,

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[1] Respondent initially argued that Drane's conflict-of-interest claim was procedurally defaulted, as the claim was not raised on the remand from the initial appeal. However, where Drane was still represented by a member of the public defender's office on remand and in the appeal therefrom, Respondent now concedes that Drane would not have been able to have raised the claim at that time. See *Williams v. Moody*, 287 Ga. 665, 666-667 (2010). Whether viewed through a lens of procedural default or on the merits, however, the Court's analysis is unchanged, as both require the determination of whether an actual conflict of interest exists. As the prejudice necessary to overcome procedural default is prejudice of constitutional proportions and because the conflict-of-interest claim is a constitutional claim, the analysis of the procedural default is coextensive with the analysis of the merits of the claim. See *Whatley v. Terry*, 284 Ga. 555, 560 (2008).

2011 evidentiary hearing on that motion, Willis testified under oath that he shot Blackmon and cut her throat; and, that Drane assisted him only after her death by helping him dispose of her body. In September 2011, the Court denied Drane's motion, which denial was affirmed by the Georgia Supreme Court.[2]

On January 28, 2013, Drane asked this Court to reopen the evidence to allow him to present Willis' confession. Respondent did not oppose the reopening of evidence insofar as it could relate to the two issues on remand. The Court therefore granted Drane's motion and on August 20, 2015, held an evidentiary hearing at which it heard Willis' testimony.

At that hearing, Willis testified that he and Drane met Blackmon at a liquor store in Elberton, Georgia.[3] While Drane was inside the store, Willis agreed with Blackmon to exchange drugs for sex.[4] Willis testified that he did not discuss this proposition with Drane.[5] Once Drane returned to the vehicle, he, Willis, and Blackmon left the store and began driving around.[6]

At some point, after Blackmon asked Willis multiple times where the drugs were, Willis pulled off onto a

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[2] *Drane v. State*, 291 Ga. 298 (2012).

[3] Transcript of 8/20/15 Hearing, pp. 18-19.

[4] *Id.* at pp. 19-21.

[5] *Id.* at p. 20.

[6] *Id.* at pp. 20-21.

side road in rural Elberton.[7] At this point, Willis testified, Drane exited the vehicle and Willis began having sex with Blackmon.[8] Before he ejaculated, Willis testified, he stopped, as it seemed to him that Blackmon did not really want to have sex.[9] He testified that he exited the vehicle and started getting dressed, and that Blackmon exited the vehicle as well.[10] He testified that Drane then approached him with a knife he knew was not Drane's, and said, "How would you have liked to have been stuck with this?"[11]

Willis testified that, when he saw Drane with the knife, he believed Drane took the knife from Blackmon, who he believed planned to stab him with it, and he became enraged.[12] When he saw Blackmon walking back towards the vehicle, he retrieved a shotgun from behind the front seat of his vehicle and shot Blackmon in the head at close range.[13] At that time, Willis testified, Drane was standing approximately 20-30 yards from the vehicle.[14]

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[7] *Id.* at pp. 20-22.

[8] *Id.* at pp. 22-23.

[9] *Id.* at pp. 23-26.

[10] *Id.*

[11] *Id.*

[12] *Id*.

[13] *Id.* at pp. 26-29.

[14] *Id.*

Willis testified that he approached Drane and told him he had shot Blackmon, and that Drane said, "Well, I know."[15] Willis testified that he was panicked, trying to think of what to do.[16] He recalled someone telling him that the mafia cut people's hands and heads off to dispose of a body because it is easier to hide the hands and head, and that is what he decided he would attempt to do.[17] To that end, he drew a switch-blade knife from his pocket and began cutting Blackmon's neck. At some point, however, he stopped and could not continue.[18]

Willis testified that he and Drane then loaded Blackmon's body into the back of his vehicle and Willis drove to a location with an old, abandoned well.[19] Once they arrived, Willis could not find the well, so they went to Willis' house, where they found some rope and an old brake drum.[20] Willis testified that he and Drane tied the brake drum on Blackmon's body, and ultimately dropped her body over a bridge on the Georgia/South Carolina border.[21] Willis was clear that Drane did not shoot or cut Blackmon, and was unaware

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[15] *Id.* at pp. 29-30.

[16] *Id.* at p. 30.

[17] *Id.*

[18] *Id.*

[19] *Id.* at pp. 30-34.

[20] *Id.*

[21] *Id.*

of his intention to do so.[22]

In accordance with the Supreme Court's direction, and after consideration of the trial record in this case; the record developed in this Court; the evidence adduced at the December 11, 2006 and August 20, 2015 evidentiary hearings; and the briefs and arguments of counsel, the Court hereby finds as follows:

1. Claim of "Actual Innocence"

In reliance upon Willis' confession, Drane claims that he is innocent of the crime for which he was convicted. While Willis' confession would certainly have been relevant to several issues raised in Drane's original habeas petition and the amendments thereto, it is simply not relevant to the two specific issues on remand.[23] As such, this Court is without the authority to consider this claim.[24]

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[22] *Id.* at pp. 34-35.

[23] See *Drane v. State*, 291 Ga. 298, 299 (2012) ("Drane filed a writ of habeas corpus in the Superior Court of Butts County in November of 2000, which was denied in February of 2009. In October of 2010, in response to Drane's application for certificate of probable cause to appeal the denial of habeas relief, the Supreme Court of Georgia remanded Drane's habeas case for further consideration of two issues not relevant to Drane's present appeal [of the Superior Court of Elbert County's denial of his extraordinary motion for new trial based on Willis' confession]."); see also *Head v. Hill*, 277 Ga. 255, 262 (2003) (citing *Marsh v. Way*, 255 Ga. 284, 285 (1985) ("[t]he scope of the [lower] court's authority to act on remand is limited to the specific purpose of making the applicable findings and conclusions.").

[24] See *Head v. Hill*, 277 Ga. 255, 262 (2003) (citing *Marsh v. Way*, 255 Ga. 284, 285 (1985) ("[t]he scope of the [lower] court's

2. Disproportionality of Death Sentence

Drane also contends that, in light of Willis' confession, his death sentence is disproportionate to Willis' life sentence. Again, because this issue is not contemplated by the Supreme Court's remand, this Court is without the authority to consider it.[25]

3. Ineffective Assistance of Counsel Based Upon Conflict of Interest

At trial, Drane was represented by the Public Defender of the Northern Judicial Circuit Robert Lavender and Assistant Public Defender Michelle Feinberg Derrico. At the time of Drane's trial, his counsel also represented Tammy Gaines in connection with a habitual-violator charge. The State called Gaines as a witness against Drane at trial. Drane argues that this created an actual conflict of interest which denied him effective assistance of counsel at trial in four distinct ways. The Court will address these arguments in turn, but turns first to the applicable principles of law.

> To prevail on a claim that a conflict of interest worked a denial of the effective assistance of counsel, a defendant like [Drane] – one who failed to object to the conflict at trial – must show that an actual conflict of interest adversely affected his lawyer's performance. As we consider whether [Drane] has made such a

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authority to act on remand is limited to the specific purpose of making the applicable findings and conclusions.").

[25] *Id.*

> showing, we do not, however, inquire into actual conflict as something separate and apart from adverse effect. Rather, as the United States Supreme Court has explained, an "actual conflict of interest" means a conflict that affected counsel's performance – as opposed to a mere theoretical division of loyalties.[26]

Put another way,

> [T]he test of a claim that a conflict of interest worked a denial of the effective assistance of counsel is whether the representation deprived either defendant of the undivided loyalty of counsel; i.e., did counsel slight one defendant to favor the other?[27]

On the 1991 indictment charging Gaines with habitual violator, Lavender was identified as her counsel. Drane's trial commenced on September 14, 1992, and ended on September 25, 1992. The indictment against Gaines was dismissed on March 5, 1993.

On direct examination by the State at Drane's trial, Gaines testified about a conversation she had with Drane on July 3, 1990, when Drane and Willis came to the trailer she shared with Toni Smith. She testified that, out of Willis' presence,

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[26] *Green v. State*, 299 Ga. 337, 343 (2016) (citations omitted).

[27] *Tolbert v. State*, 298 Ga. 147, 149-150 (2015) (citing *Lamb v. State*, 287 Ga. 41, 42 (1996)).

> [Drane] stated that he had picked this nigger girl up at the Huddle House in Elberton, Georgia, and that it would be the last ride she'd ever take, and he said, she would never have any more babies and I made the statement, I said, what did you do, rape her? He said, well, she'll have no more babies, and he said, I fucked her so hard, so bad that it'll never be possible ... he kept insisting that it was the last ride she'd ever take.[28]

Gaines further testified that Drane told her that "they'd thrown [Blackmon] in the river."[29]

At the December 2006 hearing before this Court, Lavender testified that he had no independent recollection of his office representing Gaines in her habitual-violator case.[30] Derrico testified that where she believed Gaines' habitual-violator case had been terminated by the time Drane's case went to trial, she thought Gaines was a former client.[31] Derrico also stated that she discussed the "potential conflict situation" with Gaines and obtained a waiver from her, but did not obtain a waiver from Drane.[32]

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[28] See Trial Transcript, p. 1196.

[29] *Id.* at p. 1197.

[30] Transcript of 12/11/06 Hearing, pp. 234-235.

[31] *Id.* at pp. 62, 101.

[32] *Id.* at pp. 63, 99.

First, Drane argues that Lavender failed to impeach Gaines with her criminal history. In support of this argument, Drane points to his Exhibits 4 and 5, both of which he presented at the Court's August 2015 hearing. These exhibits include files maintained by the Hart County Sheriff's Office and Clerk of Court, purportedly demonstrating "that [Gaines] was frequently arrested, but rarely tried or convicted."[33]

At the time of Drane's trial,

> [a] witness' credibility [could] be impeached upon showing conviction for a crime of moral turpitude, or upon introducing a certified copy of a prior felony conviction. [34]

Obviously, any such documents which reflect events that transpired after Drane's trial would not have been available for use by counsel to impeach Gaines. None

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[33] See Petitioner's Exhibits 4, 5, 8/20/15 Hearing; see also Drane's Post-Hearing Brief, pp. 21-22, fn 13. Drane also points to an Elbert County Sheriff's Office report and written statement allegedly made by Danny Chitwood, to allege that Gaines lied when she claimed that Drane tried to kill her. Not only are these documents unauthenticated and based upon multiple levels of hearsay, but there is no evidence that either Lavender or Derrico was aware of them or, if they were, what investigation was done into the truth or falsity of the statements therein, much less that counsel, being aware of them and having confirmed them with Drane and Gaines, refused to cross-examine Gaines on this issue because they represented her on a habitual-violator charge. Where the Court is left with speculation as to the significance of these documents, they do not establish that Drane's representation was significantly affected by the adequacy of his representation.

[34] *Kyler v. State*, 270 Ga. 81, 83 (1998).

of the remaining documents reflect Gaines' conviction for any crime of moral turpitude, or for any felony. As such, they could not have been used to impeach Gaines at trial. Therefore, counsel's failure to cross-examine Gaines on this issue did not constitute evidence of divided loyalties, nor did it establish that counsel suffered from an actual conflict of interest that affected Drane's representation.

Second, Drane argues that Lavender failed to question Gaines about her relationship with Willis. This argument is not supported by the record, which reflects that Lavender elicited from Gaines on cross-examination that she had known Willis since she was 13 years old, and that she stayed with Willis for several weeks to care for him after he had been in a car accident.[35] In his cross-examination of Toni Smith, another State witness, Lavender elicited testimony that Willis and Gaines had been "real good friends" throughout the years.[36] Indeed, in his closing argument, Lavender argued that, because of her friendship with Willis, Gaines was not a credible witness.[37]

Third, Drane argues that Lavender failed to cross-examine Gaines about certain inaccuracies in her testimony. While Lavender did not draw Gaines' attention to any such inaccuracies during his cross-examination of her, he did point them out to the jury in

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[35] Trial Transcript, p. 1205.

[36] *Id.* at p. 1717.

[37] *Id.* at pp. 1831-1832.

his closing argument, in which he argued that Gaines was not worthy of belief.[38]

Finally, Drane argues that, in a meeting with Gaines regarding her habitual-violator case, Derrico used as leverage her representation of both Gaines and Drane. In support of this argument, Drane points to a note allegedly written by Gaines, reading as follows:

> I Tammy Gaines was in [Derrico's] office 1-30-92 talking about my [habitual violator] case and the [Drane] and [Willis] case. She told me that she wanted to have my [habitual violator] case postponed until a later date and then she wanted to talk to me about working a deal out on the [Drane] and [Willis] case.[39]

Pretermitting the admissibility of this hearsay evidence, its significance is wholly unclear. There is no testimony from either Derrico or Gaines as to what the note means.[40] Without more than speculation,

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[38] Specifically, Lavender pointed out to the jury that Gaines stated that the victim had been picked up at the Huddle House, when the evidence was that she had been picked up at the "Hot Corner;" that Gaines testified that the firearm Willis often had in his vehicle was a 30-06 rifle, and there was no evidence that a 30-06 rifle was involved in the case; and she testified that she heard Drane say that the victim was tied down with blocks, when the evidence was that she was tied down with a brake drum. *Id.* at p. 1832.

[39] 8/20/15 Hearing, Petitioner's Exhibit 6.

[40] Drane argues that the note "implies that [Derrico] was engaging in a number of possible tactics, all of them rife with conflict. Given the ultimate outcome of the proceedings, it seems likely that [Derrico] intended to use [Gaines'] value to the state as a witness

however, Drane cannot prove the adverse effect required to establish his conflict-of-interest claim.[41]

Drane relies heavily upon *Mitchell v. State*, 261 Ga. 347 (1991), where the Supreme Court found that the defendant satisfied both prongs of the *Cuyler* test. Mitchell argued he was denied effective assistance of counsel where his counsel was also representing a state witness.

> On the morning of the second day of Mitchell's trial, the state served defense counsel with a list of witnesses that included, for the first time, Ira Underwood's name. Later that day, the state called Underwood to testify. At that point defense counsel objected that he was representing Underwood in an unrelated criminal matter, that he had obtained information from Underwood that was privileged, and that if Underwood testified,

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against her other client, [Drane], to obtain a favorable resolution of [Gaines'] habitual violator case – which, as any such resolution would be conditioned on [Gaines'] performance as a witness, necessitated its postponement. It is also possible that [Derrico] intended to pressure [Gaines] to testify more favorably for [Drane] by postponing the resolution of her habitual violator charge, in the belief that its uncertain outcome would motivate her to appease her lawyer. Regardless, her use of her representation of two clients to benefit one at the expense of the other is the definition of a conflict." See Drane's Post-Hearing Brief, p. 21.

[41] See *Washington v. Hopson*, 299 Ga. 358, 366 (2016) ("Habeas relief must be supported by evidence in the record, not mere speculation.").

> defense counsel would have to forego cross-examination.[42]

After Underwood testified on direct examination, defense counsel declined to cross-examine him.[43] He moved for a mistrial or, alternatively, a continuance until another attorney could be appointed to represent Mitchell, but the trial court denied the motion.[44]

> Defense counsel then concluded by stating that he and another member of his office had talked to Ira Underwood about many matters, including but not limited to the pending charges against Underwood. He stated that information he had regarding Underwood would have been valuable to Mitchell, but that he did not feel he could reveal any of this information.[45]

The *Mitchell* Court found that defense counsel's statements to the trial court sufficiently established his conflicting loyalties, and concluded that this conflict of interest denied Mitchell effective assistance of counsel.[46]

Here, on the contrary, there is no evidence to suggest that either Lavender or Derrico had any divided loyalties between Drane and Gaines or that

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[42] *Mitchell*, 261 Ga. at 348.

[43] *Id.*

[44] *Id.*

[45] *Id.* at 348-349.

[46] See *id.* at 349.

either slighted Drane to favor Gaines on her habitual violator charge. On the contrary, the Court's review of Lavender's extensive cross-examination of Gaines confirms that the public defender's representation of her had little, if any, effect on the inquiry to which she was subjected on cross-examination.[47]

Because nothing before this Court suggests that either Lavender or Derrico had divided loyalties or allowed their actions to be in any way negatively affected by the simultaneous representation, this Court concludes that Drane has failed to show that an actual conflict of interest existed.[48] Where Drane has failed to establish the constitutional predicate for an actual conflict of interest sufficient to amount to a violation of the Sixth Amendment, his petition for a writ of habeas corpus on this claim is therefore **DENIED.**

4. Sentencing-Phase Jury Instructions

Drane alleges that the trial court's charge to the jury at the close of the sentencing phase of his trial was

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[47] See *Lightbourne v. Dugger*, 829 F.2d 1012, 1024 (11th Cir. 1987) ("Counsel for petitioner fully and fairly cross-examined Carson with respect to his "deal" with the state in order to show the possibility of bias or prejudice. In addition, petitioner's counsel attempted to impeach Carson's credibility through a variety of methods. Any conflict of interest which may have existed by virtue of the fact that Assistant Public Defender Fox happened to cross-examine a client formerly represented by the same public defender's office had, at best, a de minimus impact upon petitioner's representation. Accordingly, we find no merit to petitioner's claim that an actual conflict adversely affected petitioner's assistance of counsel.").

[48] See *Davis v. Turpin*, 273 Ga. 244, 246-248 (2000).

improper for failing to appropriately focus on his culpability and intent as required by *Enmund v. Florida*, 458 U.S. 782 (1982), and was in violation of *Davis v. State*, 255 Ga. 588 (1986).

A. *Alleged Enmund Violation*

In *Enmund,* the Court found that for capital punishment to be valid, it must concentrate on the defendant's culpability and one who did not kill or attempt to kill cannot be sentenced to death.[49] The trial court's sentencing charge included the following language:

> I charge you further that the sentence of death shall not and cannot be imposed unless you find beyond a reasonable doubt that the Defendant committed the murder himself or he attempted to kill the victim or intended that deadly force be used by another to accomplish the criminal enterprise.[50]

Where this charge required the jury to focus on Drane's culpability, the Court finds that Drane's argument that the trial court's charge failed to satisfy *Enmund* is without merit.[51]

B. *Alleged Davis Violation*

In *Davis v. State*, 255 Ga. 588 (1986), the Supreme Court of Georgia held that

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[49] *Enmund*, 458 U.S. at 798.

[50] Trial Transcript, pp. 1973-1974,

[51] See *Kinsman v. State*, 259 Ga. 89, 94-95 (1989).

> only facts occurring prior to death may be considered ... i.e., only facts showing aggravated battery, ... which are separate from the act causing instantaneous death.[52]

Drane argues that the trial court's instructions were insufficient for failing to inform the jury that an aggravated battery must precede the murder and be distinct from the act causing death.

Pretermitting the cognizability of this claim in a habeas proceeding, the Court finds it without merit. The trial court's charge to the jury included the following language:

> I charge you that aggravated battery occurs when a person maliciously caused bodily harm to another by depriving her of a member of her body, by rendering a member of her body useless, or by seriously disfiguring her body or a member thereof. In order to find that the offense of murder involved an aggravated battery, you must find that the bodily harm to the victim occurred before death.[53]

Viewed as a whole, the Court finds this instruction satisfactory under the mandates of *Davis.*

Because the Court concludes that Drane's challenges to the sentencing phase jury instructions under *Davis* and *Enmund* are without merit, Drane's

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[52] *Davis*, 255 Ga. at 594.

[53] Trial Transcript, p. 1966.

petition for a writ of habeas corpus on this ground is hereby **DENIED**.

It is so **ORDERED**, this 22nd day of December, 2016.

/s/E.M. Wilkes
E. M. WILKES, III
Chief Judge, Superior Courts
Brunswick Judicial Circuit

APPENDIX B

SUPREME COURT OF GEORGIA

Case No. S17E1366

[Filed Atlanta, February 19, 2018]

LEONARD MAURICE DRANE)
)
v.)
)
ERIC SELLERS, WARDEN)
)

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

This Court has thoroughly reviewed Drane's application for a certificate of probable cause to appeal the denial of his petition for habeas corpus, the Warden's response, the habeas court's order, and the entire trial and habeas records. In doing so, we note that the habeas court recognized that the scope of its authority to act on remand was limited to the specific purpose of making findings of fact and conclusions of law on the issues delineated by this Court, and the habeas court thus correctly refused to consider Drane's actual innocence and proportionality claims. See Order, p. 5 (HR, p. 1,758); Head v. Hill, 277 Ga. 255, 263 (II) (C) (587 SE2d 613) (2003) (quoting Marsh v. Way, 255 Ga. 284, 285 (2) (336 SE2d 795) (1985)). In his application for CPC, Drane contends that we should once again remand his case to the habeas court in

order for the habeas court to rule on those claims. However, we decline to do so for the following reasons.

With regard to Drane's actual innocence claim, this Court has never found a freestanding innocence claim as cognizable in the habeas court. See, e.g., Fryer v. Stynchcombe, 228 Ga. 576, 577 (2) (186 SE2d 885) (1972) ("It is not the function of the writ of habeas corpus to determine the guilt or innocence of the petitioner."). Instead, such a claim should come by means of an extraordinary motion for new trial. See Bush v. Chappell, 225 Ga. 659, 661 (2) (171 SE2d 128) (1969) ("If the evidence which the appellant presented at the habeas corpus hearing was newly discovered evidence, his remedy is by extraordinary motion for new trial, and not by habeas corpus."). Drane has, in fact, litigated his actual innocence claim in his original trial court through an extraordinary motion for new trial, and, thus, his actual innocence claim is barred by res judicata. See Drane v. State, 291 Ga. 298 (728 SE2d 679) (2012) ("Drane III") (affirming the trial court's complete denial of Drane's extraordinary motion for new trial that was based on newly discovered evidence in the form of the testimony of Drane's co-defendant claiming that he alone was responsible for the victim's killing).

As to Drane's proportionality claim, it would be improper to remand that claim to the habeas court, as this Court alone is charged with the responsibility of conducting proportionality review. See OCGA § 17-10-35 (c) (3); Godfrey v. Francis, 251 Ga. 652, 661 (8) (308 SE2d 806) (1983); Wilson v. State, 250 Ga. 630, 639 (12) (300 SE2d 640) (1983). Furthermore, Drane's claim that his death sentence is disproportionate is res

judicata. See Drane v. State, 265 Ga. 255, 260 (14) (455 SE2d 27) (1995) ("Drane I") (finding no merit to Drane's claim that his death sentence was disproportionate to the life sentence that his co-defendant received); Drane v. State, 271 Ga. 849, 855 (7) (523 SE2d 301) (1999) ("Drane II") (conducting a review of the proportionality of Drane's death sentence as required by OCGA § 17-10-35 (c) and reiterating this Court's previous finding "that Drane's death sentence is not disproportionate to the life sentence [that his co-defendant] received for the same murder"). See also Hall v. Lee, 286 Ga. 79, 97 (III) (684 SE2d 868) (2009) (declining to re-examine proportionality on habeas corpus); Schofield v. Meders, 280 Ga. 865, 871 (8) (632 SE2d 369) (2006) (same). However, "[t]his Court allows claims to be revisited on habeas corpus where new facts have developed since the time of the direct appeal." Humphrey v. Morrow, 289 Ga. 864, 875 (III) (A) (717 SE2d 168) (2011). Drane claims that new facts in the form of his co-defendant's testimony that he alone killed the victim show that Drane's death sentence is disproportionate punishment, but at trial Drane presented testimony in the sentencing phase that his co-defendant had confessed to a fellow inmate that he alone had murdered the victim. Therefore, Drane's co-defendant's testimony does not constitute new facts that have developed since the time of Drane's direct appeal.

Drane has also failed to show that the writ is necessary to avoid a miscarriage of justice. See OCGA § 9-14-48 (d); Walker v. Penn, 271 Ga. 609, 611 (2) (523 SE2d 325) (1999); Turpin v. Todd, 268 Ga. 820, 831 (4) (493 SE2d 900) (1997). The miscarriage of justice exception to restrictions on habeas corpus relief, which

must be based on evidence of actual innocence, see Perkins v. Hall, 288 Ga. 810, 824 (II) (D) (708 SE2d 335) (2011), "is an extremely high standard and is very narrowly applied," Penn, 271 Ga. at 611 (2). See Valenzuela v. Newsome, 253 Ga. 793, 796 (4) (325 SE2d 370) (1985) (suggesting that the miscarriage of justice exception is to be applied in cases where the accused "not only is not guilty of the specific offense for which he is convicted, but, further, is not even culpable in the circumstances under inquiry"). For the same reasons that this Court affirmed the trial court's denial of Drane's extraordinary motion for new trial based on his co-defendant's testimony with regard to his murder conviction, see Drane III, 291 Ga. at 301-304 (3) (a), Drane's actual innocence claim based on that same co-defendant's testimony falls short of establishing the miscarriage of justice exception to overcome the procedural bar to this claim and thus does not constitute sufficient reason to re-examine the sentence in his case, which otherwise is res judicata in light of this Court's consideration of the issue in Drane II, 271 Ga. at 855 (7), and Drane I, 265 Ga. at 260 (14).

While we do not find a need to discuss our reasoning in detail, our review of the record reveals that the remaining claims properly raised and argued by Drane are without arguable merit. See Supreme Court Rule 36; Redmon v. Johnson, No. S16H1197, 2018 Ga. LEXIS 1 (Jan. 16, 2018) (explaining this Court's procedure in considering applications for certificates of probable cause to appeal).

In light of the foregoing and upon consideration of the entirety of the currently pending application for a certificate of probable cause to appeal the denial of

habeas corpus, it is hereby denied as lacking arguable merit. See Supreme Court Rule 36.

All the Justices concur, except Nahmias, J., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/, Clerk

APPENDIX C

IN THE SUPERIOR COURT
FOR THE COUNTY OF BUTTS
STATE OF GEORGIA

CIVIL ACTION NO. 2000-V-699

[Filed February 20, 2009]

LEONARD MAURICE DRANE,)
)
Petitioner,)
)
vs.)
)
WILLIAM TERRY, Warden,)
Georgia Diagnostic and)
Classification Prison,)
)
Respondent.)
)

ORDER

An evidentiary hearing on this Petition for Habeas Corpus relief was held on December 11, 2006. Final consideration of the Petition was deferred pending the Supreme Court's disposition of the constitutional challenge to lethal injection as a method of imposing capital punishment in Baze v. Rees, _U.S._, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008). After consideration of the record in this case, the evidence adduced at the evidentiary hearing, and the briefs and argument of

counsel, the Court makes the following Findings of Fact and Conclusions of Law, which for purposes of convenience are rendered for each claim raised in the petition, rather than seriatim:

1. ALLEGED CONFLICT OF INTEREST

The evidence shows that Petitioner's trial counsel, employed by the office of the public defender for the Northern Judicial Circuit, were nominally also counsel of record for Ms. Gaines, a witness at Petitioner's trial. Those attorneys testified that the matter was raised with the presiding Judge but the Judge did not direct them to cease representing either Petitioner or Ms. Gaines. While counsel obtained a written conflict waiver from Ms. Gaines, they did not get a waiver from Petitioner. This claim was raised by an Amendment to the Habeas Petition. The testimony of lead trial counsel Lavender shows that he has no recollection of taking any actions on behalf of Ms. Gaines, and his assistant might have provided the routine representation her case required. Petitioner's assistant trial counsel, Ms. Derrico (formerly Feinberg) did not believe a conflict existed because it was her recollection the Gaines matter had terminated before Petitioner's trial.

The Court finds that while Petitioner correctly asserts the above-stated conflict of interest could not have been raised by Mr. Lavender in Drane I[1] [Petitioner's Exhibit 16] because he was involved in

[1] Drane v. State, 265 Ga. 255 (1995).

that appeal, in Drane II[2] [Petitioner's Exhibit 17] there was no impediment to the raising of that claim by unrelated counsel. The Court therefore finds this claim to be procedurally defaulted. Petitioner has shown no cause for the failure to do so, as the criminal record of the trial witnesses and the identity of their counsel were readily available to his appellate counsel in Drane II. The Court further finds that Petitioner has shown no prejudice because the trial record reflects a thorough cross examination of Ms. Gaines by his trial counsel which adequately addressed what competent counsel would have addressed in similar circumstances. Therefore, the required cause and prejudice to excuse the procedural default has not been shown and this claim is not cognizable. Walker v. Hale, 283 Ga. 131 (2008). The Court has also considered whether the claim rises to the level of showing a miscarriage of justice. It would be a miscarriage of justice to impose the death penalty on a defendant who was denied a fair trial by reason of a conflict of interest which materially impaired his defense. However, in this case the evidence shows that while Petitioner's trial counsel may have been listed as attorney of record for a witness in a wholly unrelated matter, that representation was so inconsequential that counsel did not recall whether an actual appearance for the witness was made. Such a technical conflict of interest which has not been shown to have impacted the defense mounted for Petitioner by his trial counsel does not approach what is required to prevail on a miscarriage of justice claim. Compare Schofield v. Holsey, 281 Ga. 209 (2007). [execution of mentally

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[2] Drane v. State, 271 Ga. 849 (1999).

retarded person would be miscarriage of justice, which allows that issue to be raised notwithstanding procedural default and no showing of cause and prejudice].

2. MARCUS GUTHRIE TESTIMONY

Petitioner and David Willis were indicted for the murder for which Petitioner was convicted and sentenced to death. At Petitioner's trial, testimony from a cellmate of Willis, Marcus Guthrie, was excluded by the Court on the ground the statement was unreliable. Petitioner contends he was denied a fair trial because the same statement from Guthrie was admitted in the Willis trial. The Court finds that this issue was addressed on direct appeal.[3] Matters raised and decided on direct appeal are not subject to review in habeas proceedings, unless there has been a change in the facts or the applicable law. Hall v. Vargas, 278 Ga. 686 (2005). The Court has considered whether Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006) mandates that the issue be re-visited. That decision has been described as having invalidated any method of determining the reliability of evidence of third party guilt that would bar such evidence solely on the basis of the trial court's evaluation of the strength of the prosecution's case against the accused.

---

[3] "The trial court ruled that the alleged confession [the Willis statement to Guthrie] was properly excluded due to its lack of reliability, and after review of the record, we conclude that this ruling was not error." Drane v. State, 271 Ga. 849, 853 (1999).

In Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 164 L. Ed. 2d 503 (2006), the Supreme Court unanimously invalidated a South Carolina rule of evidence that permitted a trial court to exclude defense evidence of third-party guilt (i.e. "some other dude did it" evidence) if the prosecution has introduced forensic evidence that, if believed, strongly supports a guilty verdict. In Holmes, the defendant sought to introduce evidence that another person had made statements implicating himself in the murder of the victim. Because of the strong evidence linking the defendant to the crime, the trial judge excluded the evidence offered by the defense that the third-party was the guilty party. The Supreme Court held that the Constitution (the Due Process Clause, the Confrontation Clause and the Compulsory Process Clause) prohibits the exclusion of defense evidence where the exclusion impairs the defendant's right to present a complete defense. The Court noted that traditional rules of evidence that empower the judge to exclude evidence if the probative value is outweighed by its prejudicial effect, or evidence that would have the potential of misleading the jury, or evidence that would confuse the issues, are valid rules of evidence, while the rule in South Carolina that bars any evidence of third-party guilt if there is strong forensic evidence implicating the defendant, arbitrarily permits the judge to weigh the strength of the state's case in deciding whether to permit the defense an opportunity to rebut that evidence.

1-21 Eleventh Circuit Criminal Handbook § 286. The evidence of record does not support a conclusion that the trial court's decision on the admissibility of the preferred evidence of third party guilt was made by use of the "strength of the prosecution's case" method proscribed in Holmes. The reliability standard, which was not materially affected by that Supreme Court decision, was the basis for the trial court's determination it was inadmissible. Therefore, even it were concluded that Petitioner is entitled to have his claim involving the Guthrie testimony reconsidered in light of that case, he would not be entitled to relief under its holding.

3. INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner contends that his trial counsel were ineffective due to the heavy caseload of the public defender's office, and the allegedly inadequate funding of his requests for expert assistance. The Court questions the viability of this claim. An attorney with a heavy caseload is not necessarily ineffective in each of his or her cases. Some cases may receive insufficient attention because the attorney's efforts were focused on others. It is therefore incumbent upon a habeas petitioner to show that his interests were impaired in a specific manner due to his counsel's failure to devote time to his case which was sufficient to prepare an adequate defense. The trial court's decision not to continue the trial was raised and rejected on direct

appeal,[4] and the Court finds no basis on which it can be re-litigated in this proceeding.

The Court concludes that since Petitioner was represented by new counsel in his direct appeal, his claim of ineffective assistance of trial counsel is procedurally defaulted.

The Court finds that Petitioner's contention his trial counsel should have been granted the continuance they requested because approval of funding for expert assistance had not occurred in a timely fashion is procedurally defaulted as it was not raised on direct appeal. The Court finds no cause to excuse the procedural default of this claim. Nor has he shown prejudice because the focus of his request for assistance was to obtain expert testimony that the victim could have been alive when her throat was cut, and at trial the pathologist who testified for the State indicated that it was not possible to state with certainty that was not the case.

4. INCONSISTENT PROSECUTORIAL THEORIES

Petitioner contends that the prosecution utilized "inconsistent and incompatible theories" in his trial and the trial of his co-defendant, Willis. The record reflects that Willis was tried in October of 1993, and Petitioner's motion for new trial was denied in June of 1994, which demonstrates that this claim for relief

---

[4] "We find no merit to Drane's remaining enumerations which are: . . . that the trial court should have granted his motion for continuance to prepare for trial[.]" Drane v. State, 265 Ga. 255, 260 (1995).

could have been raised in the trial court. The claim could also have been raised on direct appeal, in which he unsuccessfully contended that his death sentence was disproportionate to the life sentence imposed upon Willis.[5] Therefore, the Court finds that this claim was procedurally defaulted, and that Petitioner has not shown cause for excusing the procedural default. Nor does the Court conclude that what occurred in the two trials of the two persons charged with murdering a single victim constitutes a miscarriage of justice. The evidence was in conflict as to which of those persons killed the victim. Both of them could be convicted of murder since the evidence supported a conclusion that each of them acted in concert with the other in carrying it out. With respect to the imposition of the death penalty, it could be argued that a prosecutor should not be permitted to obtain verdicts imposing the death penalty on two persons by representing that each of them was solely responsible for the death of a single victim based on evidence establishing that only one person could have been responsible for it, and that such conduct would constitute such a grave violation of the prosecutor's duties as to justify excusing procedural default. However, that is not what the evidence in this case shows. Since there were two potentially fatal attacks on the victim, one with a knife and one with a gun, this is a case in which the legitimate ambiguity in the evidence authorizes the approach of the prosecutor in the two trials. In Parker v. Singletary, 974 F.2d 1562 (11th Cir.1992), the Court held

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[5] Drane v. State, 265 Ga. 255, 260 (1995).

> [N]o due process violation occurred, because there was no necessary contradiction between the state's positions in the trials of the three co-defendants. Given the uncertainty of the evidence, it was proper for the prosecutors in the other co-defendants' cases to argue alternate theories as to the facts of the murder. The issue of whether the particular defendant on trial physically committed the murder was an appropriate question for each of the co-defendants' juries. . . . The state's mere failure to disclose the alternate positions it had taken in the trials of the other co-defendants thus did not result in a due process violation. For the same reasons, Parker's trial counsel was not ineffective for failing to discover and make use of the state's inconsistent statements.

Id. at 1578-1579. The Court's review of the record supports a conclusion that this case presents the kind of ambiguous evidence that authorizes a prosecutor to assert that two persons inflicted the fatal blow on a single victim. Therefore, Petitioner is not entitled to have this claim considered on the ground refusing to do so would constitute a miscarriage of justice.

5. ARBITRARY AND CAPRICIOUS USE OF THE DEATH PENALTY

The Court finds that Petitioner failed to raise his claim that the manner in which the death penalty is administered in Georgia is unconstitutionally arbitrary and capricious at trial or on appeal, and that it therefore is procedurally defaulted.

6. CHALLENGE TO LETHAL INJECTION AS METHOD OF EXECUTION

This claim has been decided adversely to Defendant. Baze v. Rees, _U.S. _, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008).

Based on the reasoning herein this Court hereby **DENIES** Petitioner's Petition for a WRIT OF HABEAS CORPUS, as amended, in its entirety.

SO ORDERED this the 20th day of February, 2009.

/s/E.M. Wilkes
E. M. WILKES III, Judge
Superior Courts of Georgia
Brunswick Judicial Circuit

APPENDIX D

SUPREME COURT OF GEORGIA

Case No. S09E1103

[Filed Atlanta, October 18, 2010]

LEONARD MAURICE DRANE)
)
v.)
)
WILLIAM TERRY, WARDEN)
)

The Honorable Supreme Court met pursuant to adjournment. The following order was passed.

This application for certificate of probable cause to appeal is granted, and the case is remanded to the habeas court with the following directions:

> Because it is unclear what standard the habeas court applied in determining that Drane failed to show prejudice sufficient to overcome the procedural default of his conflict of interest claim, and, thus, in concluding that his underlying conflict of interest claim was meritless, see Whatley v. Terry, 284 Ga. 555, 560 (2) (668 SE2d 651) (2008) (holding that, because the prejudice necessary to satisfy the cause and prejudice test is a prejudice of constitutional proportions, where a petitioner's claim is a constitutional claim, the prejudice analysis and the analysis of the merits of the

> claim are co-extensive), Drane's conflict of interest claim, including his claim that trial counsel were rendered ineffective by the "implicit" direction of the trial court to simultaneously represent him and a prosecution witness, is remanded to the habeas court for a proper analysis, including appropriate findings of fact and conclusions of law. See Mickens v. Taylor, 535 U. S. 162 (122 SC 1237, 152 LE2d 291) (2002) (setting forth conflict of interest law).
>
> Because it appears that the habeas court left unresolved Drane's claim that sentencing phase jury charges at his trial were erroneous under Davis v. State, 255 Ga. 588, 593-595 (3) (c) (340 SE2d 862) (1986), and Enmund v. Florida, 458 U. S. 782 (102 SC 3368, 73 LE2d 1140) (1982), that issue is remanded to the habeas court for a ruling on the merits of that claim. See Head v. Ferrell, 274 Ga. 399, 403 (IV) (554 SE2d 155) (2001) ("Claims regarding sentencing phase jury charges in a death penalty case are never barred by procedural default.").

All the Justices concur, except Carley, P.J., who dissents.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia.

Witness my signature and the seal

of said court hereto affixed the day and year last above written.

/s/, Chief Deputy Clerk

APPENDIX E

IN THE SUPERIOR COURT OF ELBERT COUNTY STATE OF GEORGIA

CRIMINAL CASE NUMBER 90-ER-1688-G/B/H

[Filed September 15, 2011]

STATE OF GEORGIA,	)
	)
VS.	)
	)
LEONARD M. DRANE,	)
DEFENDANT	)
	)

ORDER ON DEFENDANT'S EXTRAORDINARY MOTION FOR NEW TRIAL

Prior to discussing the decision on this Motion, the Court feels it necessary to review briefly the major facts in this matter. Leonard M. Drane and Robert David Willis were charged with the murder of Renee Blackmon on or about June 13, 1990. Drane and Willis, two Caucasian men, picked up Ms. Blackmon, an African-American woman, at a largely African American store/bar known locally as "the corner". According to the testimony given at both trials, Ms. Blackmon agreed to go with the men to exchange drugs for sex. Drane and Willis took her to a rural area in Elbert County, where Ms. Blackmon was shot and her throat sliced several times. Her body was thrown into

the upper part of Lake Russell, on a bridge between Georgia and South Carolina.

A few days later the body was discovered in a decomposed state. The crime lab was unable to determine from the state of the body whether the shot to the head or the cuts to the throat were the principle cause of death. The District Attorney sought the death penalty for both Defendants, and due to pre-trial publicity, both trials were moved to Spalding County. Due to the cases being moved, there are confusing and conflicting case numbers, as each Clerk's office assigned case numbers. Drane was tried first on September 14 to September 25, 1992 and received a death sentence. Willis was tried next on September 20 to October 2, 1993 and received a life sentence. Drane filed a Habeas Corpus action, case number 2000V699, which is currently pending in the Superior Court of Butts County in front of Judge E. M. Wilkes. In December 2010, Drane filed the present Extraordinary Motion for New Trial because of newly discovered evidence, based on the assertion that during a parole matter Willis disclosed that he was the person who shot and cut the throat of the victim, and that Drane was only present at the time and helped dispose of the body. David Willis was produced at the hearing on the Extraordinary Motion for New Trial, and in fact testified under oath that he was the one that shot Ms. Blackmon and cut her throat and that Defendant Drane only assisted in disposing of the body.

In determining whether to grant an Extraordinary Motion for a New Trial on the basis of newly discovered evidence, the Court must be satisfied that every one of six factors have been met by the moving party:

> (1) that the evidence has come to his knowledge since the trial;
> (2) that it was not owing to the want of due diligence that he didn't acquire it sooner;
> (3) that it is so material that it would probably produce a different verdict;
> (4) that it is not cumulative only;
> (5) that the affidavit of the witness himself should be procured or its absence accounted for; and
> (6) that a new trial will not be granted if the only effect of the evidence will be to impeach the credit of a witness.
>
> Timberlake v. State, 246 Ga. 488, 491 (1980).

Granting new trials on the basis of newly discovered evidence is not favored and is in the sole discretion of the trial judge. Craft v. State, 254 Ga. App. 511, 519 (2002). The failure to meet one of the requirements of Timberlake is sufficient to deny the motion for a new trial. Id. at 520. In considering the six factors laid out by Timberlake v. State, it is clear to this Court that it cannot grant a motion for a new trial. See, Dick v. State, 248 Ga. 898 (1982).

Drane has failed to satisfy the first factor of Timberlake, which requires that the evidence come to his knowledge since the trial. Counsel for Drane even states that the evidence that Willis was the only one to kill Ms. Blackmon was known by Drane since he was taken into custody, and is in fact evidence from which Drane "has never wavered." (T-4, lines 6-13). Willis' admission to being the only one to actively participate in the murder of Ms. Blackmon does not constitute evidence that has come to Drane's knowledge since the trial, but rather serves as corroboration for evidence

already available since the very beginning of these events. Drane argues that it is "newly available evidence" because at trial he could not require Willis to testify, and Willis' counsel testified that he would never have allowed his client to testify in Drane's trial. (T-27) As for the second requirement, Drane's exercise of due diligence does not come into play because Drane has always had access to this information. Looking at the third requirement, testimony from Willis and not just Drane, that Drane did not shoot or cut the throat of Ms. Blackmon does not rise to the level of being so material that the Court feels there probably could have been a different verdict. Drane also fails to satisfy the fourth requirement, which states the newly-discovered evidence may not be cumulative only. Drane did meet the fifth requirement of providing an affidavit of Willis confirming his statements, but only after Drane's counsel was informed of the error in failing to provide such an affidavit with its first filing. Drane's failure to satisfy the first, second, third, and fourth requirements of Timberlake and the disfavor of granting a new trial on the basis of newly discovered evidence requires this Court to deny the Extraordinary Motion for a New Trial.

The Court would like to address an argument presented by Drane's counsel at the hearing on this motion for a new trial, where Drane's counsel stated that one of the Court's options would be to grant a new sentencing trial. (T-90, line 15) The State argued that the court in this case may not address that issue, it would be for the habeas court to consider. (T-11,12) The Court found this position intriguing, but after researching such an option the Court has found this to be a legally unsustainable alternative. Capital cases

have been assigned special status and this in part results in this Court being unable to simply alter the sentence of Drane to match the sentence of Willis. In death penalty cases, the jury is given the sole power to assess whether, in light of mitigating and aggravating factors, the convicted individual should be given the death penalty. O.C.G.A. §17-10-2(c). Further, "the judges of the superior courts of this State have no general jurisdiction to commute death sentences to life imprisonment" and instead this power has been vested in the State Board of Pardons and Paroles. Parks v. State, 206 Ga. 675 (1950).

The Court would like to note, however, that while it concludes that it does not have the power to grant this motion for a new trial under existing case law and the constraints put on its authority, it should be noted there is precedent for the proposition that only the person who commits the murder is constitutionally eligible for the death penalty. Enmund v. Florida, 458 U.S. 782 (1982). This Court feels constrained by the existing precedents, that it does not have the authority to grant a new trial as to sentencing only in order to comply with Enmund, supra. That may be a matter to be considered by the Court hearing the Habeas Corpus petition. See gen. Allen v. State, 253 Ga. 390 (1984), Johnson v. Zant, 249 Ga. 812 (1982), High v State, 250 Ga. 693 (1983). Oddly enough, neither Drane nor the State cited or relied upon Enmund in this Extraordinary Motion for New Trial, other than a brief reference in argument.

Therefore, for the reasons assigned, the Court DENIES Defendant's Extraordinary Motion for New Trial.

SO ORDERED, this 15th day of September, 2011.

/s/Thomas L. Hodges, III
Thomas L. Hodges, III, Judge
Elbert Superior Court
Northern Judicial Circuit

APPENDIX F

IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA

CASE NO. 90-ER-1688-G/B

[Dated June 10, 2011]

STATE OF GEORGIA,	)
	)
v.	)
	)
LEONARD M. DRANE	)
	)
DEFENDANT.	)
	)

AFFIDAVIT OF DAVID ROBERT WILLIS

STATE OF GEORGIA
COUNTY OF ELBERT

COMES NOW, **DAVID ROBERT WILLIS,** after being duly sworn, and states under penalties of perjury that to the best of his knowledge and belief the following facts are true:

DRW 1. My name is David Robert Willis, and I was born in 1960.

DRW 2. I am currently incarcerated in the Walker State Prison serving a life sentence for the murder of Renee Blackmon in 1990.

DRW 3. I had never admitted my guilt in the crime to anyone until my interview with Chief Parole Officer Harris Childers during the summer of 2010. CPO Childers' report, attached hereto as Exhibit A, is accurate.

DRW 4. As I told CPO Childers during that interview, Leonard Drane, who is under a death sentence for the same crime, was only present during the crime and did not play an active part in assaulting or killing the victim. Leonard Drane did not do anything to the victim, and did not participate in any attempt to make the victim's body unidentifiable.

DRW 5. Due to my anger over a misunderstanding, I shot and killed the victim, and, thinking I could render her body unidentifiable, I started to remove the head and hands. Before I could remove her head, I got sick, and decided to dispose of the body in the lake. Leonard Drane's only involvement was in assisting in disposing of the victim's body after the killing.

DRW 6. I understand that in making this statement, I have probably decreased the likelihood of my being paroled for this crime, but it is a true statement of the facts.

Further Affiant sayeth not. This 10th day of June, 2011.

/s/David Robert Willis
DAVID ROBERT WILLIS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 10TH DAY
OF JUNE, 2011.
/s/Ronald E. Houser
NOTARY PUBLIC [SEAL]

EXHIBIT A

STATE BOARD OF PARDONS AND PAROLES

James E. Donald
Chairman

Albert R. Murray
Vice-Chairman
L. Gale Buckner
Member
Robert E. Keller
Member
Terry E. Barnard
Member

District 34, LaFayette Parole Office
901 North Main Street
Post Office Box 552
LaFayette, Georgia 30728
(706) 638-5560
Facsimile: (800) 819-1561
www.pap.state.ga.us

DATE: July 22, 2010

TO: Toni Fernander, Supervisor
Case Processing Unit

FROM: Harris Childers, Chief Parole Officer
District 34, LaFayette

RE: David Robert Willis, EF-320363
Special Interview

Institutional Information:

This 50 year old inmate was interviewed at Walker State Prison on July 21, 2010. His presented himself appropriately, and his uniform was neatly pressed. He

has been incarcerated at Walker State Prison for the past two years after being transferred there from Rivers State Prison. This is his twentieth year in prison on his Life Sentence for Murder.

Inmate Willis's current work assignment is in the prison laundry, where he recently received a certificate for OJT for Laundry Supervisor Aide. He is rated as being a very good worker.

During his incarceration he has completed the following programs: Family Violence 1, Health Education, Victim/Impact of Crime, Substance Abuse 101, Corrective Thinking (Session I), and Food Preparation/Culinary Arts. He states that he is currently enrolled in a Toastmasters program and Bible study through Prison Prevention Ministry and attends Alcoholics Anonymous. He also has skills as a machinist and machine operator. Additionally, he states that he has taken some college level classes, but this was not verified. He has also been a facilitator in the New Beginnings program.

Inmate Willis denies having any disciplinary reports for several years. His last disciplinary noted in OTIS was in 2003.

Other than some leg and hip problems from an old injury, the inmate denies any medical problems or limitations. He has no mental health history.

Deputy Warden Kasper rates inmate Willis as above average, but she did not comment further. Warden Lanier states that he is not familiar with the inmate, so that is probably a good sign.

Offense Information and Inmate Comments:

Though very reluctant at first, inmate Willis discussed his crime candidly. Initially, he refrained, saying that his attorney had instructed him not to make a statement. I informed him that he has already served twenty years of a Life sentence and seemingly has little to lose by telling the truth. After a long hesitation, he began to talk.

During his confession, he informed me that he has never admitted his guilt to anyone, including his attorney, until this interview. Inmate Willis accepted full responsibility for his crime, and be claimed that codefendant Leonard Drane, EF-268553, who is under a Death Sentence for the crime, was only present during the crime and helped him dispose of the victim's body. Willis stated that Drane did not play an active part in assaulting or killing the victim.

According to Willis, he and codefendant Drane had been drinking and went to a liquor store. The victim started talking to Drane and told him that she wanted some crack cocaine. They told her that they had some, and she voluntarily left the store with them, promising sex in exchange for cocaine. After riding around and drinking with the victim they informed her that they did not have any cocaine, and she started arguing with them. Willis said that she agreed to have sex with them even though they had lied about the cocaine, because she had drunk their liquor. He said that she had sex with him, but acted like she was upset.

After Willis had sex with the victim, codefendant Drane showed a large switchblade knife to Willis and

asked him, "How would you like being stuck with this knife?"

Willis stated that he misunderstood Drane, and thought that Drane was insinuating that the knife belonged to the victim and that she had tried to cut him (Willis). "I was enraged. I thought that she had tried to cut me. I had a gun in the truck, and I shot her." He said that Drane "didn't really to anything" to the victim.

"After it happened, I couldn't believe what had happened," Willis said. "I was going to try to hide the body. I had heard about the head and hands off a body (to avoid identification), and I started to do that. I started trying to cut her head off, but I got sick. It was like waking up from a dream. I said 'I can't do this.' We put the body in the truck and stopped by my house. We tied weights to it and dumped the body over a bridge into the lake."

Willis stated that codefendant Drane did not assault the victim in any way, and he did not participate in Willis's attempt to dismember the body.

Willis denied that the crime was racially motivated. He claimed that his only motive was anger over a misunderstanding.

He explained that at that time in his life, he was mad at the world. "I had worked since I was 16, then I went into the military," he said. After he was discharged from the military, he started drinking a lot. He was driving under the influence one night and got into a high speed chase with police, and had a bad wreck. He said that he was hospitalized for an extended period.

"After the wreck, I couldn't work, I couldn't get Social Security Disability. I blamed everybody else for my problems," he said. "I didn't' see things then like I do now. I was living a reckless life. I had a bad attitude and I didn't listen to anybody. For the first few years I was bitter, mad at the world, and blamed others for everything."

According to Willis, his turning point came when his family started having problems after he had been incarcerated for a few years. "I looked at the situation and realized that I would spend the rest of my life in prison, or try to have a chance to get out," he said. "I knew I had to change. I can see clear now. I've had a better attitude for a long time."

When asked if he thought be should be paroled, he replied, "That's up to (the Board). They probably won't (release him on parole) after what I just said," referring to his confession. "I wouldn't know what to tell (the Board). I don't expect them to let me out. I know they let a lot of people out, and a lot of people make false promises. I don't want to give the impression that I'm just making a false promise. But if they give me a chance, I would be one example of someone who can change his life."

Inmate Willis said that he has thought often about how being in a prison environment for 20 years has affected him. He stated that he believes he can adjust to society. "Book-wise, I know what to do: Go to AA, get a sponsor, get a mentor from church or AA," he said. He expressed his intention to participate in Faith-based initiatives.

Tentative Parole Plans:

Residence: Jack Willis (Father}
1408 Hunter Road
Elberton, GA 30635
(706) 283-3894

Employment: Refer to Department of Labor

Summary Remarks/Recommendation:

This case has proved to be complex. From one perspective, it would appear that this inmate would, in all likelihood, function successfully on parole. He is intelligent, insightful, has skills, seems motivated, and has a relatively good institutional record. On the other hand, he is serving a Life sentence while his presumably less culpable codefendant is sitting on Death Row.

It is noted in the Legal that the codefendant confessed to his participation in the crime, while inmate Willis refused to make a statement at all. He has never admitted guilt until his interview, if what he says now is true. In my opinion, he is being truthful. He seemed resigned to the prospect that his confession may adversely affect his chances for release.

I will notify the Director of Clemency of this new information in this case, in the event that the Board may want to review the case of codefendant Leonard Drane, EF-268553.

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APPENDIX G

IN THE SUPERIOR COURT OF SPALDING COUNTY STATE OF GEORGIA

CASE NO: 92-R-333
92-CR-1688-B (E Co.)

[Dated September 14-18, 21-25, 1992]

STATE OF GEORGIA)
)
vs.)
)
LEONARD M. DRANE,)
)
Defendant)
)

TRANSCRIPT OF VOIR DIRE, TRIAL PROCEEDINGS AND SENTENCING

VOLUME THREE, Pages 801-1200

VOLUME FOUR, Pages 1201-1600

VOLUME FIVE, Pages 1601-1986

Heard before the Honorable George H. Bryant, Judge, Superior Court of the Northern Judicial Circuit, and a jury of twelve plus two alternates, at the Spalding County Courthouse in Griffin, Georgia, on September 14-18, 1992 and September 21-25, 1992.

A P P E A R A N C E S:

For the State:	Mr. Lindsay A. Tise, Jr. Mr. John Bailey District Attorney's office Northern Judicial Circuit
For the Defendant:	Mr. Robert Lavender Ms. Michelle Feinberg Public Defender's office Northern Judicial Circuit

Jean S. Strickland, CCR
Official Court Reporter, Northern Judicial Circuit
Rt. 4, Box 4316
Danielsville, Georgia 30633
706/353-2049

* * *

[p.1153]

hear them. Accept them for what they are. Okay? But they were driving around in a truck and they went over to what in Elbert County a lot of people call the "hot corner". That means there's a lot of stuff going on there, drinking, drugs and so forth. That Renee approached the truck and asked if they had any crack or any liquor. She was told by two other individuals there that she shouldn't get in the truck. She did anyway. When she got in the truck, we expect the testimony will show that Renee sat on his lap in the truck. They left. At that time the witnesses that were there will identify this Defendant and David Willis and that he went up to the truck and saw a gun in Willis's lap. They left there and headed down to the river. During these statements of the Defendant, he is

blaming every little thing on the co-defendant, David. He didn't have nothing to do with it. These statements in reference to what happened from this Defendant, and the State will introduce this, were taken on 7, 8 and 9. They are what we call voluntary statements. We expect the State -- the State will introduce testimony that he was given his Constitutional rights. He says, "I, Leonard Drane, can read and write. On Wednesday evening, June 13, 1990, David Willis and I were together in his pickup truck. We were riding around

* * *

[p.1196]

Q During this discussion, can you state whether or not did y'all go back and forth in the trailer?

A Yes sir, we did. We was trying to get David and this girl out of our bedroom of the trailer, to get them to leave.

Q If you would please, I want you to tell the Ladies and Gentlemen of the jury what discussion you had with this Defendant.

A Okay. He stated that he had picked this nigger girl up up at the Huddle House in Elberton, Georgia, and that it would be the last ride she'd ever take, and he said, she would never have any more babies and I made the statement, I said, what did you do, rape her? He said, well, she'll have no more babies and he said, I fucked her so hard, so bad that it'll never be possible, that she ever has any more babies and he kept insisting that it was the last ride she'd ever take.

Q Did you say anything -- can you state whether or not did you say anything to him about whether or not he had raped her?

A I had asked, yes sir, if he had raped her.

Q What did he say?

A He just made the statement that he had fucked her so bad that she'd never have any more babies.

Q Did he make any other statement in reference to Renee's body?

[p.1197]

A He had said that they'd thrown her in the river. He didn't say what part of the river or anything like that. He just said that he had thrown her in the lake and that the biggest mistake he made was he only tied -- instead of tying two blocks to her, he only tied one and that her body had floated back to the water.

Q Did he tell you how he -- or where they met this young lady?

A He -- all he said was they'd picked her up at the Huddle House in Elberton.

Q Are you sure that this Defendant told you that this was one black girl that wouldn't have any more babies?

A Yes sir, I am.

Q Are you sure that he has told you that this was the last ride she would ever take?

A Yes sir, I am.

Q And are you sure that he said he fucked her so bad that she would never have kids?

A Yes sir.

Q Are you positive?

A Yes sir.

Q When you asked him if he had raped her, what did he do?

A He just made the statement -- he kind of laughed. It was all -- the whole thing was a laughing situation towards

* * *

[p.1205]

Lennie been over -- David Willis and Lennie Drane been over to your house?

A Yes sir, they had. They had spent the night with me a couple of nights.

Q How long had you known Mr. Willis?

A I've known him ever since I was thirteen years old.

Q Have you and Toni ever gone out drinking with them or anything like that?

A Yes, on occasions we have.

Q Do you -- had you ever been to David's house?

A Yes, I had after David had his car accident. I stayed with him for several weeks to help.

Q He was pretty -- he was incapacitated there for a period of time, is that right?

A Yes sir, he was.

Q And you were acting as his nurse so to speak?

A Just being a good friend at the time.

Q Do you know whether David owned any guns of any kind?

A Yes sir, he owned a -- I think he owned a .357 magnum pistol, a shotgun and a 30-06 rifle, I think it was.

Q Do you know of your own knowledge whether he carried them in his truck or not?

A At times.

* * *

[p.1248]

A Yes sir, I am.

Q What is State's Exhibit Number Fifteen?

A It's a car brake drum.

Q Who did you give it to?

A I received it from Officer Frank Kirkman of the Anderson County Sheriff's Office.

Q From who?

A Officer Frank Kirkman. It was later turned over to Curtis Veal with the Elberton County Sheriff's Office.

Q There was also some rope involved in this case, was it not?

A Yes sir.

Q Do you have that?

A No sir, I do not.

Q I'll show you what's been marked as State's Exhibit Number Sixteen. Are you familiar with that?

A Yes sir.

Q Where did you get that from?

A This came from Officer -- Lt. Darryl Singleton with the Anderson County Sheriff's Office. It came from the autopsy or before the autopsy.

Q So you got that from Officer Singleton?

A Yes sir.

Q And you gave it to who?

A It ended up staying in my possession for a while

* * *

[p.1322]

THE COURT: Yes.

BY MR. TISE:

Q Doctor, if you would please, would you stand on this side?

THE COURT: Let me just make a comment to the jury that as was indicated to you, I think,

earlier on, there were going to be gruesome pictures and you're about to see some of the gruesome pictures referred to. So, I just caution you about that, forewarn you.

BY MR. TISE:

Q Doctor, showing you State's Exhibit Number Twenty-eight, if you would please, inform the Ladies and Gentlemen of the jury concerning your examination of this portion of Renee's body and what you found and what you determined in this particular area and also in State's Exhibit Number Thirty-one, I believe, that can be discussed in conjunction with this particular photograph.

A The body had been in the water for a number of weeks and as a consequence, the hair had fallen out. What you're seeing is the left -- I'm sorry, the right side of the head. This is the ear. Here's the nose area and here's some of the teeth. There's no hair present, as I mentioned. What has been done to reconstruct this area is put some paper toweling inside where the brain and the skull would normally be. The skull on the right of the head and all the brain has

[p.1323]

been blown out by a shotgun or high velocity pistol blast here at the front of the head. At this location and you can see there are tears from here up and here back and here down and across, all radiating from this location in the right cheek region just below the eye. This is typical of a contact wound where the gases leave the gun along with the missile or missiles and cause a lot of destruction of the skin. The fact that the skull underneath here and the brain has all been blown

out indicates also that it was contact and the fact that we only found a few portions of lead material under the scalp in the region where there are few exit holes here. You can see part of an exit hole here on the back, upper portion of the head. It's a little darker than usual because the edge of a skin trauma sometimes dries as it has in this case. So this photograph shows the right side of the head partially reconstructed by putting something in the empty space where the brain and skull would be and then pulling the skin back together to show that these tears radiate from this one location where the point of entry was. A closer inspection of that area, both grossly and microscopically show that there was charring and burning of the skin at that point which is typical again of the flames coming out of the muzzle of a gun that actually burned the skin when it's in contact with the skin. Because of the massive destruction, it was not possible to determine the exact size of that hole as the point of entry

[p.1324]

before it exploded, so I can't tell you exactly what type of gun did that, just that it was contact and it was either a shotgun or some type of pistol that has enough velocity to do this, or rifle for that matter, although typically a rifle leaves little tiny particles of lead throughout the tissue which was not seen in this case. A type of high velocity rifle tends to do that, or if it's a jacketed round, it goes all the way through and leaves nothing. Where in this case, there was some lead left behind. The other photograph is simply a view from the back of the head as you see in this forward photograph and each of these has my label and a one-inch marker to tell me which way is down. The top of the body is

always above this marker and in this case, there's a hand holding the head at that position. My assistant was holding it with gloved hands so as I could photograph this to see the three little exit areas which are typical. When a bullet, or fragment of bullet exits the body, it produces not a larger hole. It produces a tear. In this case, it's sort of like a stellate or star-shaped tear where the skin simply erupts as the object first pushes the skin away from the body and then pops through it and so instead of having a round hole as you often do at the point of entrance with skin missing, you simply have tearing of the skin as we see here in three locations. So portions of the bullet or bullets or portions of skull came out from this location which is in the back of the head.

[p.1325]

Q Now, could a shotgun have done this? When you say bullets, are you also speaking of a shotgun?

A Right. Either shotgun pellets or a projectile from a pistol.

Q Now, did you obtain any fragments from Renee, lead fragments?

A There were three irregular fragments removed from under the scalp up in this region.

Q Who did you turn those over to?

A Again, to Officer Singleton from Anderson.

Q Doctor, I'm showing you State's Exhibit Number Twenty-seven and Number Twenty-six. Which photograph do you want to use to initially start your --

A This top one.

Q This one? Is this correct?

A That's correct. When we examined the body and took our overall impression and then took a closer look after cleaning the body to make sure that debris didn't confuse the issue, it was apparent that the decedent had some very deep cuts on her neck. You can see here. If you notice that the ruler is such that the top of this photograph is toward the top of the head, the chin would be where I'm pointing here at the top of the photograph, of the angle of the jaw at either side and the shoulders below and what you're seeing are horizontal cuts through the neck all the way down in one case to the spine

* * *

[p.1329]

thin cut through the bone which is under these other cuts in the front of the neck.

BY MR. TISE:

Q You testified that based on your examination, she'd been cut six times?

A At least six times. It may have been more, but there was clearly indication of six cuts, one of which went down to the spine.

Q Doctor, would you return to the stand? Doctor, based on your examination of Renee, did you list a cause of death?

A Yes sir.

Q What was that?

A In my opinion the cause of death was the gunshot wound or shotgun wound and/or the cuts to the neck. In both cases because of the body being in the water, it cannot be determined which came first. Obviously the gunshot wound to the head or shotgun wound to the head would have instantly caused death. The cuts to the neck, the one particular that went all the way down to the bone, could have caused death in a very short period of time, a hemorrhage. I cannot say which preceded the other and therefore, whether it was one or both of these that caused death. If the cuts to the neck preceded the shotgun or gunshot wound to the head, then the person would have lived for that interval in between, but each was

[p.1330]

sufficient to cause death.

Q Doctor, could Renee after she'd been shot in the head been breathing and gurgling and then cut?

A When a person receives this type of devastating wound to the head, it removes all the impulses to the rest of the body. However, the heart itself and in some cases the lungs can react sort of spasmodically for a period of time because a heart has a center in it that causes the heart to beat. The control of that heart beat comes from the brain, but there is an autonomous beat in the heart that in lower animals continues to beat for a good while after the brain impulse is removed. In humans it's only for a short period of time. The rest of the heart could have beat for a period of time. The body could have had some convulsive movements and there

could have been some respiratory efforts, some gasping type breaths.

Q And at that time she would have been considered alive, wouldn't she?

A Technically there would be evidence of life, but obviously after the shotgun or gunshot wound to the head, she would not be salvageable.

Q But she would have been alive?

A Technically she would have been alive.

Q So one or the other contributed along with -- the gunshot wound contributed to her death in the cuts or the cuts contributed to her death from the shotgun wound?

* * *

[p.1504]

MR. TISE: And I will tell him that when he gets here. I was going to call Mr. Carey Fortson to the stand at this time. Again, it would be the same situation. I informed Mr. Fortson that he could not state -- when I ask him the question if he knew the Defendant, he could say yes and my next question would be, have you talked to him about this case, in which he would reply, yes, but as to where this occurred, he is not to say that it took place in jail.

THE COURT: Who is this witness?

MR. TISE: Carey Fortson.

MR. LAVENDER: My motion would apply to him, too,Your Honor.

THE COURT: All right, then we'll proceed with Mr. Fortson now with the understanding that he's not to mention the Hart Detention Center or any other place of confinement where he may have met the Defendant and that motion will be granted as to Mr. Burton, also.

MR. LAVENDER: Thank you, Your Honor.

MR. TISE: Your Honor, may I call Mr. Fortson at the door at this time to make sure he understands that?

THE COURT: Yes sir. Mr. Fortson, before we bring the jury in, you're going to be asked some questions in this case and we want to make sure that you don't disclose in your answers anywhere you may

[p.1505]

have met the Defendant in this case, where you both may have been in confinement, whether that be in jail or at the Detention Center or wherever. I don't think Mr. Tise is going to ask you where you met him, but I don't want any of your answers to implicate or imply or infer or directly state anything about any detention. Do you understand?

MR. FORTSON: Yes sir.

THE COURT: Call the jury in please.

(Jury seated in the courtroom and the following transpired in their hearing and presence)

THE COURT: You may proceed.

CAREY FORTSON

Called as a witness on behalf of the State, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TISE:

Q State your name.

A Carey A. Fortson.

Q Mr. Fortson, where do you live?

A I live at 832 Porter Drive.

[p.1506]

Q I'll show you what has been marked as State's Exhibit Number Two. Would you look at that please? Do you know the individual in State's Exhibit Number Two?

A Yes, I do.

Q Who is that?

A Leonard Drane.

Q Can you state whether or not is Leonard Drane in this courtroom?

A Yes, he is.

Q Where is he sitting?

A Over there.

Q What's he wearing?

A A suit with a tie and a white shirt.

Q What color is that suit?

A Like a green color to me, a dark green color.

Q This gentleman right here in between?

A Correct.

Q The man in between?

A Yes sir.

MR. TISE: Your Honor, with the Court's permission, I'd like the record to reflect that Mr. Carey Fortson has identified the Defendant in this case.

THE COURT: Let the record so reflect.

(Witness identified the Defendant)

MR. TISE: Thank you, Your Honor.

* * *

[p.1507]

BY MR. TISE:

Q I call your attention back to February through March of 1991. Did you have an occasion to talk to this Defendant?

A Yes, I did.

Q Can you state whether or not, did you talk to him concerning what happened to Renee Blackmon?

A Yes, I did.

Q Approximately how many times did you -- retract that. When you talked to him, can you state whether or not were y'all in fact discussing the disappearance of Renee Blackmon?

A That's correct.

Q What did he tell you?

A He told me that him and his friend had came from Lincolnton County and they had came from Lincolnton County to Elberton, Georgia and they stopped on the corner which is located in Elberton, Georgia. They call it the corner, and they had stopped there for a drink and he said his friend had went inside to get a drink while he stayed inside the truck and at that time, Renee approached him and asked him did he know where could he get her some drugs and he said, no, but my friend might know. He's in the liquor store right now and he said, you can wait on him to come out; and after his friend came out, his friend told Renee to get in the truck, that he would find

[p.1508]

her some drugs. So they went for a ride. Leonard said they went for ride over by the Demaris Allen's, but Leonard didn't tell if they got drugs from Demaris Allen or not. So they continued to ride and drink the liquor that they had bought from the liquor store and somehow they ended up on South Carolina, somewhere in South Carolina. Leonard said they pulled down a dirt road somewhere and parked, and his friend told Leonard to get out of the truck and to take a walk and Leonard said that -- I think the guy was named Willis, if I'm not mistaken, that Willis and Renee were about to have sex, that's why he told him to get out of the

truck. So Leonard said he stayed gone about for thirty or maybe forty minutes and as he was coming back up, that Renee and his friend were pulling up their clothes. So, he was on the passenger's side and Renee was on the driver's side with his friend. Let me see -- after that Leonard said that he told him, come on, man, let's go, you know, and then Renee said, I thought you were going to get me some drugs, like that. So, he said, I'm going to get your drugs, I'm going to get you some drugs. Like I say, I don't know if they got the drugs or not, but about that time the guy pulled out the -- Leonard's friend pulled out the shotgun out of his truck and said, one nigger has already fucked me. Now, I want to kill a nigger, like that. So, Leonard said that he told him, he said, hey man, stop playing like that and then Renee said, yeah, stop playing like that, let's go. So,

[p.1509]

Leonard's friend said okay and about that time the guy, Leonard's friend shot Renee in the back of the head and so she fell down to the ground. This is what Leonard told me, she fell down to the ground and Leonard came around the truck and looked down and said, man, she's still alive, like that, and Leonard's friend gave him a knife and Leonard told me that he cut her, you know, cut her throat and said they tied her up and put her on the back of his friend's truck and where they took her I don't know, you know.

Q Can you state whether or not is this the man that told you he cut her throat?

A That's correct, he said that.

MR. TISE: I have no further questions.

THE COURT: Mr. Lavender.

MR. LAVENDER: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. LAVENDER:

Q Mr. Fortson, you knew Renee, right?

A That's correct.

Q And you didn't tell Mr. Veal about this until sometime in '92, is that right?

A Let me see now -- I think that's correct, I think that's correct.

* * *

[p.1520]

A Renee Gaines.

Q Also known as Renee Blackmon?

A Renee Blackmon.

Q Are you familiar with a location in Elbert County which is called the hot corner?

A Porter's Corner.

Q Is it Porter's Corner?

A Yeah.

Q I call your attention back to June of 1990, I think it was the 13th, did you have an occasion to be there that evening?

A Yes sir.

Q Did you have an occasion to see the young lady which is shown on State's Exhibit Number Forty-three? Did y'all see her there?

A Yes sir.

Q Can you state whether or not did you see that Defendant there also?

A Yes sir.

Q I'll show you what has been marked as State's Exhibit Number One. Would you look at that please?

A Yes sir.

Q What is that?

A It's a black truck trimmed in white right here, with the sides on it.

* * *

[p.1522]

Q When who came up?

A When him and his friend came up. He asked me did I know a guy named Rooster.

Q Who asked you that?

A The guy on the driver's side.

Q It wasn't this man?

A It wasn't him. Okay, and I told him, yeah, I know a guy named Rooster.

MR. LAVENDER: Your Honor, what transpired between this man and the driver as far as conversation we would object to.

MR. TISE: Your Honor, the Defendant was present.

THE COURT: I overrule the objection.

MR. TISE: Thank you, Your Honor.

BY MR. TISE:

Q What happened? What was said between you and the driver?

A Okay, when I got up, he asked me did I know him and I told him, yeah, and when I got up off of the car and stood up and looked down in the car, I seen, you know, a gun, a shotgun with a towel over it and I told him, no, I didn't know a guy named Rooster.

Q I'll show you what's been marked as State's Exhibit Number Ten, can you state whether or not is that gun similar to the one you saw on the driver's lap?

[p.1523]

A Yeah, this was the same one. He had a towel over it.

Q How do you know that's the same one if it had a towel --

A I just seen the barrel.

Q Huh?

A I seen the barrel.

Q Then what transpired between you and the driver?

A I sat back down, you know, and he kept saying that I'm going to kill the mother-fucker, like that and they stood up there and watched me about five or ten minutes, you know, kept looking at me and just kept looking at me and so, they pulled off. So when they pulled off, they went on around the, you know, project, and that's when Renee came up and she asked me did I have one and I told her, no. And so, they came back in Porter's and he got out and went in the liquor store. When he got out and went in the liquor store, he went and got a jug of liquor and my brother came up there and I said, man, that's the same guy that come up here with a shotgun just while ago and so he went in the liquor store and him and Jimmy, you know, got to talking, you know, standing out there talking and so Renee was talking to his friend. I told Renee, I said, come here, Renee. I said, let me talk to you and I told her not to get in the truck and so she just started laughing and so she went around on the other side and sat in his lap. When she sat

* * *

[p.1531]

Called as a witness on behalf of the State, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TISE:

Q State your name?

A Jimmy Hadley Burton.

Q Mr. Burton, you're incarcerated, is that correct?

A Yes sir.

Q You're in jail. I call your attention to June 13, 1990, and show you State's Exhibit Number One. Would you look at that please? Can you state whether or not did you have an opportunity to see State's Exhibit Number One, the vehicle on June 13, 1990?

A Yes sir.

Q Where?

A On the corner at Porter's.

Q You're going to have to speak up now so we can hear you.

A On the corner in Elberton.

Q I show you what's been marked as State's Exhibit Number Two. Would you look at that? Sir, do you know that individual?

A No sir.

* * *

[p.1549]

before or at any time during my questioning or statement I make and if I am not able to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority without cost or charge to me. I do not want to talk to a lawyer and I hereby knowingly and purposely waive my right to the advice and presence of a lawyer before and during any questioning

or at any time before or while I voluntarily make the following statement to the aforesaid person, knowing that anything I say can and will be used against me in a court or courts of law. I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise or hope or reward, without fear, or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of lenience by any person or persons whomsoever". It states, "I, Leonard Maurice Drane, can read and write. On Wednesday evening, June 13, 1990, David Willis and I were together in his pickup truck. We were riding around and had been drinking. We went to the liquor store in Elberton. While there, this black girl (I don't know her name) asked" and right here there's a correction. There's a word that's been marked out and his initials are over it. I have no idea what that word is at this point. It's marked out to the point that you can't read what's under it.

THE COURT: Mr. Justice, just read what you can read. Don't read the corrections.

[p.1550]

A Yes sir. " . . . asked us to get her some crack. We told her we didn't have any. She said she would ride around with us and drink some liquor. She got in the truck with us and we went down Ruckersville Road and pulled off on this deadend road at the lake. We all got out of the truck and drank some more. David and her had sex in the seat of the truck. I stayed at the front of the truck and drank. When they got finished, they got out of the truck and walked to the back of the truck. That's when I heard a loud blast and I heard the sound of her body hitting the pavement. I saw that

David had a sawed-off gun in his hand. I stood there in shock and disbelief. No one had been arguing or anything. He just shot her. I went to the back of the truck. I asked him why he did it. He told me to help put her in the truck because I was just as much in it as he was. I was scared and didn't know what to do. I saw David cut the girl's throat a couple of times as she still lied on the ground. She was still breathing at this point. After he cut her, she stopped breathing. I don't know what gauge shotgun this was, but I know where he hid it near where we live. He cut her throat with a pocketknife. We picked her up and put her in the back of the truck. She was real bloody. We left there and drove back to our house. David got a drum or some kind of car hub and a piece of nylon rope. He tied the rope and drum around her on her chest. Then we left and drove to the Georgia/South Carolina line on Georgia

[p.1551]

Highway 368, South Carolina Highway 184 that goes into Iva, South Carolina. We stopped on the top of the bridge near the Georgia side. We got her out of the bed of the truck and threw her over off the bridge into the water. The time was around midnight now or maybe a little after. We left and went to Snuffy's and North Iva beer joint and drank some more and we met some girls and went somewhere in Anderson at some woman's house. I passed out and when I woke up, we were headed back towards our house. We stopped at the Monte Video store and talked with David's uncle. We still had some blood on us. We left and went on towards the house. David told me again, if I said anything, he would put it on me. When we got home, David took my

clothes, his clothes and the girl's clothes and burned them in the heater at the house. We had washed the bed of the truck at the car wash that is behind the video store before we went home. We washed and went to bed. Later on when we got up, we went and hid the gun near our house. We talked about what had happened and agreed not to say anything and deny it if anyone asked us. He told me again, if I said anything, he would lay it off on me. I've been scared ever since. I am sorry for my part in this incident. This whole thing took place in Georgia. Nothing happened in South Carolina. End of statement. I request my copy be given to my attorney at the appropriate time". Then it closes with, "I have read this statement consisting of three pages and I certify that the

* * *

[p.1609]

A Right.

Q Did y'all talk about going home, what you was going to do or when you were going to do it?

A Well, we stopped at -- we was going to run in the Monte Video store out there in Georgia and there was still blood on the gate and on the tail of the truck, everywhere and on me and him and it was not -- we hadn't got it up out of the pickup, you know, and we went in there and talked a little while.

Q Talked with his uncle?

A Yeah.

Q With blood on you?

A Yeah.

Q And he saw the blood?

A It ain't never no big deal to him because, you know, me and David get in fights sometimes, get to drinking and get in fights and get bloody, you know.

Q Well, did he ask you what happened?

A No.

Q You just, I mean, did he comment about the blood all over you or anything?

A I don't know. It wasn't a whole lot. It was just -- you know, it was just on us.

Q All right. So then what?

A Then, you know, David told me, you know, if I

[p.1610]

ever said anything that he was going to put it on me and that's the truth.

Q David told me if it ever came up, he would put it on me. Okay.

A So then we went home and he wanted -- he wanted my clothes and shoes and all that.

Q Okay.

A And he threw them in the, you know, the heater and he burned them.

Q The heater in there in the living room, in the bedroom?

A Yes.

Q He got all my clothes and his?

A Yeah.

Q And your shoes. You took them off and burned them in the heater in the house.

A But all that I told y'all before about people asking us, they did ask us. I -- I never told anybody. I was scared. I didn't know what to do.

Q Uh-huh.

A Last night when I was going with her to her car at the Savannah Club, when we pulled up and Tammy Gaines, you know, told us that we was wanted for murder and uh, she got David in the car with her and they said they was going somewhere for a little while

* * *

[p.1623]

MR. LAVENDER: Can I see it, Your Honor?

MR. TISE: All right, sir.

MR. LAVENDER: No objection, Your Honor.

THE COURT: It's admitted without objection.

BY MR. TISE:

Q I'll show you what has been marked as State's Exhibit Number Ten. Can you identify that?

A Yes sir, this is the shotgun that is in that picture and the one that I picked up from the woods just down from their house.

Q And you turned it over to --

A Investigator Ellison at the Anderson County Sheriff's Office.

Q Is that the same weapon shown in State's Exhibit Number Forty-eight?

A That's correct.

Q I'll show you what has been marked as State's Exhibit Number Forty-nine. Are you familiar with that?

A Yes sir, I am.

Q Does that truly and accurately depict the scene as you saw it on that occasion?

A Yes sir. When we went back to pick up the shotgun, then we went from there to the actual crime scene and then back to the home here because we knew the ashes were there from Mr. Drane telling us. He gave a consent to search to

[p.1624]

Curtis Veal, I believe. He signed it and we went in the home. That was the heater in the front room.

MR. TISE: Your Honor, we'd offer State's Exhibit Forty-nine.

THE COURT: Any objection?

MR. LAVENDER: No sir, Your Honor.

THE COURT: It's admitted without objection.

BY MR. TISE:

Q I'll show you State's Exhibit Number Twelve. Would you look at that? Are you familiar with State's Exhibit Number Twelve?

A Yes sir, I am.

Q Does that -- what is that?

A This is a bag of ashes that were shoveled out of that heater that we found in the home that was -- I think myself and Curtis Veal jointly got it out and put it in this bag. I then took this bag and turned it over to Investigator Ellison at the Sheriff's Office.

MR. TISE: Your Honor, we'd offer State's Exhibit Number Twelve into evidence.

THE COURT: Any objection to Twelve?

MR. LAVENDER: Yes sir, Your Honor. We object as to Exhibit Twelve in regard to the chain of evidence, the SLED custodian.

THE COURT: I'll allow it over objection.

[p.1625]

BY MR. TISE:

Q Sir, I'm showing you State's Exhibit Number Forty-nine and State's Exhibit Number Twelve again. Can you state whether or not is that the debris, State's Exhibit Number Twelve, that you got out of the stove shown in State's Exhibit Number Forty-nine?

A Yes, it is.

Q Sir, I'll show you what has been marked as State's Exhibit Number Fifty. Would you look at that please? Can you identify State's Exhibit Number Fifty?

A Yes sir, this is the home where Mr. David Willis and Leonard Drane lived in Elberton County.

Q Does that truly and accurately depict the scene as shown there where they lived?

A That's correct.

MR. TISE: Your Honor, we'd offer State's Exhibit Fifty into evidence.

THE COURT: Any objection?

MR. LAVENDER: No sir, Your Honor.

THE COURT: It's admitted without objection.

BY MR. TISE:

Q Again, I'm showing you State's Exhibit Forty-nine which is the stove, is that correct?

A That's correct.

Q That was in the house shown in State's Exhibit

[p.1626]

Fifty? Is that correct?

A That is correct.

MR. TISE: Your Honor, also, based on this officer's testimony, we'd offer State's Exhibit Number Ten into evidence.

THE COURT: Any objection, Mr. Lavender, to the shotgun?

MR. LAVENDER: No sir, Your Honor.

THE COURT: It's admitted without objection.

MR. TISE: And also, Your Honor, I believe, that was also in connection with State's Exhibit Number Eleven, which is the shotgun shell.

THE COURT: Any objection?

MR. LAVENDER: No sir, Your Honor.

THE COURT: It's admitted without objection.

BY MR. TISE:

Q I'll show you what has been marked as State's Exhibit Number Fifty-two. Would you look at that? Can you identify State's Exhibit Number Fifty-two?

A Yes sir, this is the road going across the bridge coming from Georgia into South Carolina.

Q Does that truly and accurately depict the scene as shown in that photograph?

A Yes sir, it does.

Q Who took you to that location?

[p.1627]

A Mr. Drane did.

Q What did he tell you about this particular -- well, let me ask you this. Has there been any changes made to that photograph?

A None that I know of, no.

Q Other than it being enlarged?

A That's correct.

MR. TISE: Your Honor, I'd offer State's Exhibit Fifty-two into evidence.

THE COURT: Any objections?

MR. LAVENDER: I have no objections.

THE COURT: It's admitted without objection.

BY MR. TISE:

Q I'll show you what's been marked as State's Exhibit Number Fifty-one, are you familiar with that?

A Yes sir, I am.

Q Does that truly and accurately depict the scene as you saw that day?

A Yes sir, it does.

Q Has there been changes made to it?

A None that I can see.

MR. TISE: Your Honor, I'd offer State's Exhibit Fifty-one into evidence.

THE COURT: Any objection?

MR. LAVENDER: Your Honor, I'd like to know when

[p.1628]

this picture was made.

BY MR. TISE:

Q Are you familiar when these photographs were made?

A No sir, I'm not.

Q Does that truly and accurately depict the scene as you saw it that day?

A Yes sir, it is.

Q Was it the day you went out there?

A That's correct.

Q Who took you out there?

A Mr. Drane.

MR. LAVENDER: I have no objection, Your Honor.

THE COURT: It's admitted without objection.

BY MR. TISE:

Q I'll show you what has been marked as State's Exhibit Number Fifty-three. Are you familiar with that?

A Yes sir, I am.

Q What is that?

A This is a dirt road that is approximately a block, half a block from Mr. Willis and Drane's house. The dirt road -- this road here, this part here goes to their home if you're going this way. So if you're coming from the home, you can turn right on this road. This road leads up to a field, wide-open field that the night that

after the statement was taken from him, he directed us to this road. We parked our car

[p.1629]

just about right in the little curve there. He told us if we would walk out to the left there, we would find the log and the shotgun, which I did.

Q Who told you that?

A Mr. Drane.

MR. TISE: Your Honor, we would offer State's Exhibit Number Fifty-three.

THE COURT: Any objection?

MR. LAVENDER: No sir.

THE COURT: It's admitted without objection.

BY MR. TISE:

Q Sir, I'll show you what has been marked as State's Exhibit Number Fifty-four. Would you look at that please? Are you familiar with State's Exhibit Number Fifty-four?

A Yes, I am.

Q Does it truly and accurately depict what is shown in that photograph?

A Yes sir, it does.

Q Did you see that particular area when you were doing your investigation?

A Yes sir, I did.

Q Have there been any changes made to it?

A No sir.

Q Where is that located?

A This is on the road where the actual crime

* * *

[p.1694]

information and prior argument before the Court in regard thereto.

THE COURT: It's admitted over objection.

MR. TISE: Your Honor, at this time I would offer the witness read the statement.

A "About week before June 13, David Willis and I were riding through Moonie's Pool Room parking lot when David asked for a guy named Rooster. Everyone denied knowing him. As we were leaving, several blacks throwed beer bottles at David's truck. David went around the block and got his 30-30 rifle out and said, that's it. I'm tired of these niggers fucking with me. We went back and David said, I am going to kill a nigger in this town to straighten it out. The parking lot was cleared out when we got to it. He said he would still get one before it was over. When we picked up Renee Blackmon on the night she was killed, David had the shotgun in the truck with him, covered with a towel or some form of cloth. He forced sex on her, then shot her. She was still breaking, so he cut her throat. I asked him why he did it and he said that he could not take her back because she would tell the blacks and they would come after him." The end of the statement.

BY MR. TISE:

Q Can you state whether or not, in that statement he admits seeing a shotgun, doesn't he?

A Yes.

* * *

[p.1714]

stepped outside the trailer.

Q When you say we all, who are you talking about?

A Me, Tammy and Lennie stepped outside of the trailer.

Q Who are you calling Lennie?

A Leonard.

Q Leonard Drane?

A Yes. I've always called him Lennie and he started talking about a black girl that was missing and that he had blown the back of her head out and he kept on and he kept on and I went inside and I banged on the door. I said, David, come on. I said, I want y'all to leave. I don't want to hear all this. I said because David -- you know.

Q You're going to have to speak up now and go slow. Okay?

A And I stepped back outside and he was talking about he didn't put enough blocks on her. That that was his one mistake, he didn't put enough blocks on her.

Q Who said that?

A Lennie kept saying that he didn't put enough blocks on her and that he blew the back of her head out.

Q That he?

A He, yes sir, he blew her head off and I kept -- he just kept on and I went back in there and I said, David, come on and one thing led to another. My roommate was hearing

* * *

[p.1716]

Q Can you state whether or not, what type of weapon did he say he used when he shot her? Did he say anything?

A A 30-06, but that's what he kept talking about. I don't know anything about guns, but that's what he said though.

Q Were you scared?

A Yes sir, I was extremely scared. I know how he is. Me and him had had an argument prior to that and he told me he would cut me up and I just -- I know how he is.

MR. LAVENDER: Your Honor, we would object to that line of testimony. It's impermissible.

THE COURT: The objection is sustained. You will disregard any conversation that she may have had about any previous encounter with this Defendant. It's not germaine to this case. It has no relevance

whatsoever and I instruct the witness not to enter into any conversation like that in response.

A Yes sir.

MR. TISE: I have no further questions, Your Honor.

THE COURT: Mr. Lavender.

CROSS EXAMINATION

BY MR. LAVENDER:

Q Ms. Smith, when did you start using Toni Smith?

A That's my nickname. My parents gave me that

[p.1717]

nickname. I've used it all my life.

Q But when did you start using Smith?

A That's my maiden name.

Q You were married. You were a Hicks. Weren't you Toni Hicks?

A Yes sir.

Q And you're not married any longer?

A No sir, I've been divorced close to eight years.

Q You just started using Smith again because you wanted to?

A Yes sir, yes sir.

Q Now, you live with Tammy, is that correct?

A Yes sir.

Q Gaines?

A Yes sir.

Q And y'all have a relationship, do you not?

A Yes sir.

Q And y'all have been living together how long?

A Close to eight years.

Q Was that always in Hartwell?

A No sir, Elberton, too.

Q Now, Tammy and David have been real good friends, David Willis, have been real good friends through the years, have they not?

A Yes sir.

[p.1718]

Q Did you go and help look after David when he had been in a car wreck?

A Yes sir.

Q Did you stay over there with him or have him come over to your place?

A Me and Tammy both stayed with him, yes sir.

Q Y'all stayed with him?

A Yes sir.

Q And about when was this, do you remember?

A About six months after his car accident.

Q About how long did you stay with him, do you recall?

A A month and a half maybe.

Q You've always considered him to be your good friend, is that right?

A No, not a good friend, you know, a friend.

Q So you just stayed a month and a half helping him get well?

A Yes sir, I'm that type of person. I just did it for another friend.

Q You never -- you don't particularly like Mr. Drane, do you?

A He's not a very good person, no.

Q Now, you indicated that Mr. Drane came over to your house and was Tammy there?

* * *

[p.1772]

> made after the enterprise is ended shall be admissible only against himself" and basically, I think that is what the Vaughn case is saying and in this case I think there was a co-defendant. It refers to the Greene versus State, U.S. Supreme Court, a reversal on that and it refers to the highly relevant admissibility at punishment phase and it also cites the substantial indicio of reliability of being a spontaneous statement to a friend and it had been

admitted against Moore at his trial used by the State to procure a death penalty sentence for Moore. Based on prior cases and based on even the cases cited to the Court here, I don't think I will allow the witness to go into any statement made to him by the co-defendant in this case as to any confession. Obviously it's not reliable because this witness does not know at this point that the victim was a black girl.

MR. LAVENDER: Your Honor, we would take exception to the Court's ruling.

THE COURT: Yes sir, it's noted for the record.

MR. TISE: Your Honor, I respectfully request that the Court and I'm sure the Court will, but in reference to this witness, what Mr. Lavender has said and what this Defendant has said before I was able to object, that the jurors will be informed not to consider that

* * *

[p.1849]

tell the blacks. They would come after him." That's in his own handwriting. The way this should read in his own handwriting is, that they did it and they could not take her back because she would tell the blacks and they would come and get them. That's what we're talking about. We're not talking about David Willis. That's the way that statement ought to read by the Defendant. It goes down a perfect course. Willis, Willis, Willis, Willis. "I was going to try to put it on him and he would put it on me." That's what this whole thing is about. In closing

Defense Counsel has suggested that the aggravated battery came after Renee Blackmon had been murdered and I'm sure you understand what I'm saying. Basically what they're saying is that when Renee was shot in the head, she was dead, so it doesn't make any difference if you believe that Drane cut her throat or not. It doesn't make any difference because she was already dead. Okay? That's what they're trying to put to you, but that's not true. Both the shotgun wound and the cutting of Renee Blackmon's throat constitutes an aggravated battery. Okay? Just for argument, let's say Renee had only been shot. The fact that one side of Renee's head was completely blown off would constitute serious disfigurement of her body and would qualify as an

[p.1850]

aggravated battery. Assuming that the only injury to Renee was the six slashes across her throat, one of which if you'll remember right in the photograph, the knife cut is on her spine and you'll have those photographs with you. That again would qualify as disfigurement. Serious disfigurement, and would qualify for felony murder.

MR. LAVENDER: Your Honor, we would object to that argument as not a correct statement of the law.

THE COURT: I overrule the objection.

MR. TISE: Whichever injury Renee received, whichever, either the gunshot wound that took half of her head off or the six slashes across her throat, one of them being deep enough to mark on the spine

with the knife, would have constituted aggravated battery and there is no evidence presented to you that Renee was dead before she got shot or before she got cut. So you have your aggravated battery based on the evidence and testimony. You remember one thing and one thing only. State's Exhibit Number Two shows you the Defendant. You see him today and this is the first time you've had the opportunity to see that young lady, Renee Blackmon. Renee cannot come forward. She is gone.

THE COURT: Just a minute, Mr. Tise. Please escort them out of the courtroom. Go out that door.

[p.1851]

Go out the door behind you.

(Victim's family escorted out of the courtroom)

THE COURT: Ladies and Gentlemen, this is an emotional situation, I'm sure, but we cannot let emotions affect this verdict of yours and I ask you to the best of your ability to disregard the outburst which, as I said, I'm sure the lady cannot help, but that you are to disregard that in your deliberations. Okay?

MR. TISE: Thank you, Your Honor. Ladies and Gentlemen, again, you base your decision on what you heard from that witness stand. In reference to the Judge's remark, don't let emotions decide this case. You let the facts decide it. I want you to remember one thing and one thing only. That Defendant has brought this in the courtroom and as I stated Renee is not here. We don't have witnesses and I wish we did, but what we do have is two co-

defendants blaming each other. That's what this is about. Renee is not here. The only way Renee can come in this courtroom is by the photographs, the testimony of these witnesses where she can go and be at rest and that's Renee. That's what that Defendant along with Willis did to Renee.

Remember what I told you in opening statements in reference to this case, that you would not have the

[p.1852]

statements to go out with you? Do you remember that? There's a reason for that, that you cannot put that much emphasis on a witness's handwritten statement, but you have to remember it and I notice and I've seen this before in which jurors take notes. While you're going over your notes, you'll probably find that some of you have things written down differently from another person. It's good to have notes, but use what you have up here. Okay? Each one of you individually must make a decision in this case and you must make it speak the truth and it's taken a long time to get to the truth in this case because we had no witnesses. What we had was, "I was going to try to put it on him and he would put it on me" and we've had to weave our way through that to show you his involvement. I submit to you based on this evidence and testimony, he is a murderer of the worst kind. He killed Renee along with Willis. You remember the last witness the State used? The young lady that was -- I can't remember her name -- about how Drane acted that evening. She asked him about it and he was laughing. It was a big joke. Mr. Lavender's argument to you about the Defendant

being the good old -- I don't know if that's the right term, but the good old boy. He was just along for the ride. He didn't know nothing. Do you remember Lynn? Even in

[p.1853]

the Defendant's statement, after they dumped her body, burned the clothes -- after they dumped the body, they went over to Iva together, drank beer ever what they had. What he had been through, what he had been through, he went on to Iva, him and Willis and picked up two more ladies at a beer joint and go out, wrap themselves in the Confederate flag, drank and leave. He passes out and goes home. That he had a knife. Remember what Lynn Rousey said? Do you remember? He pulled out a knife and she saw the knife. Don't let him kid you. This guy had a knife just like the other one and I wish we did have the knife. I wish we did have Renee's blood on it, but when you leave a body in the river for three weeks, there's not too much evidence you can find and then all of a sudden, by that man's own words -- all of a sudden the statement, Willis lost the knife. Blood is on his hands. Renee's blood and it's going to stay there and stay there and as many baths and as many clothes and as many trucks as he washes along with Willis, that blood's going to be there on him. There it is. That's what this whole case is about and I keep pointing at it and we don't have witnesses, but that's what it's about right there and that didn't come about until he was handed what? A warrant in South Carolina. That's when he decided the

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APPENDIX H

STATE'S EXHIBIT #42

ANDERSON COUNTY SHERIFF'S OFFICE
POST OFFICE BOX 5497
303 CAMSON ROAD
ANDERSON, SOUTH CAROLINA 29625

Gene Taylor Sheriff	Telephone 260-4400

<u>CONFIDENTIAL POLYGRAPH REPORT</u>

SUBJECT: Leonard Maurice Drane	CASE #: 90-06286
SS #: [REDACTED]-9013	INVESTIGATING OFFICER: Lt. Veal
EXAMINATION DATE: 7-9-90	INCIDENT DATE: 6-13-90
EXAMINER: Jean M. Hughes	INCIDENT TYPE: Murder
EXAMINATION LOCATION: ACSO	AGENCY REQUESTING EXAM: Elbert Co. SO

On July 9, 1990, Leonard Maurice Drane was interviewed and examined by polygraph to determine if he had inflicted any of the injuries that subsequently caused the death of Linda Rene' Blackmon on or about June 13, 1990.

PRE-TEST INTERVIEW:

[Start]
~~Subject indicated during the pre-test~~ that he has completed the 9th grade and had been living with David Willis up until the time of his arrest. He stated that he is not exactly sure of the night that they picked up Linda Blackmon but it was sometime around 13th of June. He stated that David Willis was driving his (David Willis) truck and they went to the Hot Corner in Elberton around 10:00 PM. He stated that the two of them had drank a quart of liquor between them before they went to the liquor store. Subject stated that they were talking to Jimmy Burton and that a black girl started asking them if they had any “crack”. He stated that David told her they didn’t have any but that they had some liquor and asked her if she wanted to go off with them to drink some liquor. Subject reports that the girl got in the truck (he thinks she got in the middle) and they drove about 12 to 14 miles out of town to a dead end road. Subject stated that they all got out of the truck and then David and the black girl got in the front seat of the truck and started having sex. Subject stated that he was leaning on the front of the truck and was watching them have sex. When asked if the girl resisted, the subject stated that she said “no” a couple of times but David had sex with her anyway. Subject stated that it took him about 45 minutes to have sex with her and that David was on top of her. Subject then stated that they got out of the truck and went to the back of the truck. He then stated that he saw fire, heard a shot and heard her body hit the pavement. When asked what type of weapon was used, the subject stated that it was a sawed off shotgun. When asked where David had the weapon, subject

stated that it was on the floorboard down by his feet. Subject then stated that he asked David why he had shot the girl and that David told him he shot her because he had sex with her and the “niggers” in town would find out and come after him. Subject then stated that he helped put her body in the truck and they left. When asked about stabbing the girl, the subject then stated that David had cut her throat after he shot her. Subject stated that David told him that he was in it with him. Subject stated that they drove back to their house and David got something off a car and tied it around the body. He stated that they drove to a bridge near the SC/Ga line and threw her body off the bridge into the water. Subject then stated that they went to a couple of different bars and kept drinking. He stated that they met some girls and that he passed out later on. Subject denied causing any of the injuries to Linda Blackmon. Subject was very concerned about witnesses who he said were saying that he had killed the girl and talked about these witnesses repeatedly during the course of the interview. [~~It is interesting to note that the~~] subject stated that he knew if they got caught “I was going to try to put it on him and he would put it on me”.

[Stop]

Leonard Maurice Drane voluntarily submitted to polygraph and his written statement of consent is maintained in the files of this office.

The following relevant questions were asked along with the subjects responses:

#5 Did you yourself shoot Linda Blackmon with that shotgun?
ANS: No
#7 Did you yourself shoot Linda Blackmon with that shotgun on or about June 13?
ANS: No
#10 Did you yourself cut Linda Blackmon's throat with that knife?
ANS: No
#12 Did you yourself cause any of those injuries to Linda Blackmon?
ANS: No

SUMMATION AND EXAMINER'S OPINION

There were reactions indicative of deception to all relevant questions. When advised of the deception the subject stated that he did not kill Linda Blackmon and further denied causing any of the injuries. When questioned concerning if he had told anyone about what had happened, he stated that he had told his younger brother right after the murder and that he told his younger brother if anything happened to him (subject) that he should "get Willis".

STATE'S EXHIBIT #44

VOLUNTARY STATEMENT

DATE 070890 **PLACE** Anderson Detention Co. Center **TIME STARTED** 12:33A.M.

I, the undersigned Leonard Maurice Drane, am 30 years of age, having been born on [REDACTED]59, at Elberton, GA.

I now live at [REDACTED]

I have been duly warned and advised by Mel Justice - Detective, a person who has identified himself as Anderson Co. Sheriff Office, that I do not have to make any statement at all, nor answer any questions or do anything that might tend to go against me or incriminate me in any manner, and that any statement I make, can and will be used against me on the trial or trials for the offense or offenses concerning which the following statement is herein made. I was also warned and advised of my right to the advice and presence of a lawyer of my own choice before or at any time during my questioning or statement I make, and if I am not able to hire a lawyer I may request and have a lawyer appointed for me, by the proper authority, without cost or charge to me.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to the advice and presence of a lawyer before and during any questioning or at any time before or while I voluntarily make the following statement to the aforesaid person, knowing that anything I say can and will be used against me in a court or courts of law.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomever.

[Handwritten] I Leonard Maurice Drane can read and write. On Wednesday evening June 13th 1990, David Willis and I were together in his pick up truck. We were riding around and had been drinking. We went to the liquor store in Elberton. While there, this black girl (I don't know her name) ask us to get her some "crack". We told her we didn't have any. She said, she would ride around with us and drink some liquor. She got in the truck with us and we went down Ruckersville Road and pulled off on this dead end road at the lake. We all got out of the truck and drank some more. David and her had sex in the seat of the truck. I stayed at the front of the truck and drank. When they got finished they got out of the truck and walked to the back of the truck. That's when I heard a loud blast and I heard the sound of her body hitting the pavement. I saw that David had a sawed off shotgun in his hand. I stood there in shock and disbelief. No one had been arguing or anything. He just shot her. I went to the back of the truck. I asked him why he did it. He told me to help put her in the truck because I was just as much in it as he was. I was scared and didn't know what to do. I saw David cut the girls throat a couple of times as she still lied on the ground. She was still breathing at this point. After he cut her she stopped breathing. I don't know what gauge shotgun this was, but I know where he hid it near where we live. He cut her throat with a pocket knife. We picked her up and put her in the back

of the truck. She was real bloody. We left there and drove back to our house. David got a drum or some kind of car hub and a piece of nylon rope. He tied the rope and drum around her on her chest. Then we left and drove to the GA/SC line on GA HY 368/SC Hy 184 that goes into IVA, S.C. We stopped on top of the bridge near the GA. side. We got her out of the bed of the truck and threw her over/off the bridge into the water. The time was around midnight now or maybee a little after. We left and went to Snuffy's + N. Iva Beer Joint and drank some more and we met some girls and went somewhere in Anderson at some womans house. I past out and when I woke up we were headed back towards our house. We stopped at the Mt. Video Store and talked with Davids Uncle. We still had some blood on us. We left and went on towards the house. David told me again, "If I said anything, he would put it on me". When we got home, David took my clothes, his clothes and the girls clothes and burned them in the heater at the house. We had washed the bed of the truck at a car wash that is behind the video store before we went home. We washed and went to bed. Later on when we got up, we went and hid the gun near our house. We talked about what had happened and agreed not to say anything and deny it if anyone ask us. He told me again, if I said anything he would lay it off on me. I been scared ever since. I am sorry for my part in this incident. This whole thing took place in GA. Nothing happened in S.C. end of statement. I request my copy be given to my attorney at the appropriate time. LD

I have read this statement consisting of 3 page(s), and I certify that the facts contained therein are true and

correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 02:25 P.M. on the Eight day of July, 1990.

/s/Leonard Maurice Drane
Signature of person giving voluntary statement

WITNESS: /s/

WITNESS: /s/

CONFIDENTIAL
Elbert Co. S.O.
Investigative

STATE'S EXHIBIT #59

ELBERT CO. SHERIFF'S DEP.

WITNESS STATEMENT
FELONY CASE

AGENCY ID. GA

CASE NUMBER 90-06-286

PAGE ____ OF ____

ID INFORMATION____________________________

LOCATIONS WHERE STATEMENT WAS TAKEN
Anderson Co. Sheriff's Ofc.

NAME Leonard Drane

ADDRESS Rt. 3 Elbr.

TELEPHONE NO.____________________________

RACE W

AGE 30

SOC. NO.____________________________

EMPLOYER____________________________

YEARS OF EDUCATION____________________________

I declare that the following statement is made of my own free will and accord, without threats, coercion, favor or offer of favor [Handwritten] about week before June 13, David Willis and I where riding through Moonies Road corner parking lot, when David ask for a guy named Rooster. Everyone denied nowing him, as we were leaving several blacks throwed

beer bottles at Davids truck. David went around the block and got his 30-30 rifle out and said thats it I'm tired of these niggers fucking with me. We went back and David said I'm going to kill a nigger in this town to straighten it out. The parking lot was clear out, when we got to it he said he would still get one before it was over.

When we picked up Renee Blackmon on the night she was killed, David had the shot gun in the truck with him covered with a towel or some form of cloth. He forced sex on her then shot her, she was still breathing so he cut her throat. I ask him why hed did it and he said that he could not take her back because she would tell the blacks and they would come after him. xxxx

/s/Lenny Drane

/s/Curtis Veal

/s/John W. []

DATE/TIME COMPLETED 7-9-90 255 PM ________

WITNESS SIGNATURE ________________________

CASE STATUS: ☐ ACTIVE ☐CLEARED BY ARREST ☐ EX. CLEARED ☐UNFOUNDED

REPORTING OFFICER Veal - Strong

NUMBER ☐☐☐☐

APPROVING OFFICE ☐☐☐☐☐☐☐☐☐☐☐☐☐

NUMBER ☐☐☐☐

Original – Sheriff's File Copy – Magistrates File

APPENDIX I

IN THE SUPERIOR COURT FOR THE COUNTY OF BUTTS STATE OF GEORGIA

C.A. NO. 2000-SU-V-699
HABEAS CORPUS HEARING

[Dated August 20, 2015]

LEONARD MAURICE DRANE,	)
PETITIONER	)
	)
-vs-	)
	)
BRUCE CHATMAN, WARDEN,	)
GEORGIA DIAGNOSTIC &	)
CLASSIFICATION PRISON,	)
RESPONDENT.	)
	)

TRANSCRIPT OF PROCEEDINGS

IN THE ABOVE CAPTIONED CASE, HEARD BEFORE THE HONORABLE E. M. WILKES, III, JUDGE, BRUNSWICK JUDICIAL CIRCUIT, IN BUTTS COUNTY SUPERIOR COURT, AUGUST 20, 2015.

APPEARANCES:

FOR THE PETITIONER:

L. JOSEPH LOVELAND
JOHN R. CHALLY

ELIZABETH D. ADLER
KING & SPALDING, LLP
1180 PEACHTREE STREET, NE
ATLANTA, GEORGIA 30309

FOR THE RESPONDENT:

KATHERINE L. IANNUZZI
RICHARD TANGUM
ATTORNEY GENERAL'S OFFICE
40 CAPITOL SQUARE
ATLANTA, GEORGIA 30334

MARIE W. HARVIL
CCR B-955
P.O. BOX 608
FORSYTH, GA 31029

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WITNESS PAGE

DAVID WILLIS

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PETITIONER'S LIST OF EXHIBITS

PETITIONER'S EXHIBIT NO.

1-A *State of Georgia v. Leonard M. Drane,* Case No. 90-ER-1688-G/B Defendants Extraordinary Motion for New Trial (Dec. 8, 2010)

1-B State's Response and Motion to Dismiss Extraordinary Motion for New Trial (May 13, 2011)

1-C Transcript of Motion Hearing (June 24, 2011)

1-D Order Denying Extraordinary Motion for New Trial (Sept. 15, 2011)

1-E Notice of Appeal (Nov. 14, 2011)

1-F Petition to the Supreme Court of Georgia for Discretionary Appeal of Denial of Extraordinary Motion for New Trial (Oct 13. 2011)

1-G Order by Supreme Court of Georgia Granting Discretionary Appeal (Nov. 10, 2011)

1-H *Leonard M. Drane v. State of Georgia,* Case No. S12A0857 Appellant's Brief (Feb. 17, 2012)

1-I Brief on Behalf of the Appellee by the Attorney General (Mar. 8, 2012)

1-J Brief on Behalf of the Appellee by the District Attorney (Mar. 9, 2012)

1-K Supreme Court of Georgia Denial of Extraordinary Motion for New Trial Appeal (June 25, 2012)

1-L Transcript of Oral Argument in Supreme Court of Georgia (May 7, 2012)

1-M Audio Recording of Oral Argument in Supreme Court of Georgia

2 File of David Willis from Georgia Board of Pardons and Paroles

3 File of Carey Fortson from Georgia Board of Pardons and Paroles

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PETITIONER'S LIST OF EXHIBITS

PETITIONER'S EXHIBIT NO.

4. File of Tammy Gaines from Hart County Sheriff's Department
5. File of Tammy Gaines from Hart County Clerk of Court
6. Excerpts from File on *State v. Drane,* Case No. 90-ER-1688-G/B, and *State v. Willis,* Case No. 92-R-333, from District Attorney of Elbert County
7. Affidavit Willis

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TRANSCRIPT OF PROCEEDINGS 9:30 A.M.

(The Petitioner is present during the entire proceedings.)

THE COURT: This is Leonard Maurice Drane, Plaintiff, versus Bruce Chatman, Warden, as the Defendant. It's case 2000-SU-V-699.

I'm E. M. Wilkes. I'm sitting by special designation as Butts County Superior Court in this matter.

We're here -- let me let you folks introduce you. I think I met all these folks coming through the process outside, and y'all were behind us. Please introduce yourself.

MS. IANNUZZI: Good morning, Your Honor. My name is Kate Iannuzzi, here on behalf of the Warden. And I am here with Rick Tangum, co-counsel today.

THE COURT: Okay. Glad to have both of y'all and glad to see y'all again. We all made it through the process.

So, we're here -- there were some motions filed by the Petitioner. Basically I had limited you to the issues that the Supreme Court had sent back to me on remand in the lass hearing. So, are we ready to proceed, Mr. Chally?

MR. CHALLY: Yes, Your Honor.

THE COURT: And am I pronouncing your name correctly?

MR. CHALLY: It is Chally.

THE COURT: Chally. Thank you, sir.

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MR. CHALLY: Yes, Your Honor.

THE COURT: Thank you.

MR. CHALLY: I would propose -- just for the record, I'm John Chally with King & Spalding, representing Mr. Drane. With me is Joe Loveland and Elizabeth Adler from my firm.

I believe we are prepared to proceed as follows. I have a short opening, to sort of set the stage for the Court--

THE COURT: Okay.

MR. CHALLY: -- if you would prefer. And I believe at this point we have agreed with the State that there will be only one witness to give live testimony today: Mr. David Willis.

THE COURT: Okay.

MR. CHALLY: And -- and we would proceed then to his testimony after that short opening and whatever responses they may have.

THE COURT: Be fine. Be glad to.

MR. CHALLY: Thank you, Your Honor.

THE COURT: All right.

MR. CHALLY: Your Honor, September 25th of this year will mark Leonard Drane's twenty-third year on death row for the murder of Renee Blackmon. That is a crime he did not commit.

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In 2010, David Robert Willis, who was also convicted of Ms. Blackmon's murder, confessed to an investigator, Mr. Harris Childers, for the State Board of Pardons and Paroles, that he and he alone murdered Ms. Blackmon, that Mr. Drane was merely present during this crime. Mr. Childers, an investigator with the State Board of Pardons and Parole, has no doubt seen many confessions of this sort but he has testified at the extraordinary motion for new trial proceeding that he believed Mr. Willis was being truthful and that he confessed, Mr. Willis confessed, believing that it would hurt the possibility that Mr. Willis would be granted parole, a fact that corroborates Mr. Willis's testimony.

Mr. Willis later affirmed that confession in the sworn testimony before a Georgia Superior Court in Elbert County and today you're going to hear from him, and he will say the same thing again today. Mr. Willis's confession confirms the truth of what Mr. Drane has maintained from the time of his arrest and in his proceedings before this Court, that he is innocent of Ms. Blackmon's murder.

Following their arrest Mr. Willis remained silent while Mr. Drane, on the other hand, who assisted the police in gathering evidence, asserted that Mr. Willis had shot Ms. Blackmon and cut her throat, to Mr. Drane's surprise and horror. Mr. Willis's confession, again what you will

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hear today, confirms Mr. Drane's account.

Here are the basic facts of what happened on June 13, 1990. Mr. Willis and Mr. Drane met Renee Blackmon at a liquor store known as The Corner, in Elberton, Georgia. While Mr. Drane was inside the store Mr. Willis propositioned Ms. Blackmon and promised drugs in exchange for sex. Ms. Blackmon agreed to get in Mr. Willis's truck. Mr. Drane then emerged from the store, climbed in Mr. Willis's truck, with Mr. Willis driving, Ms. Blackmon in the middle seat, Mr. Drane on the passenger side. Mr. Willis drove Ms. Blackmon and Mr. Drane around for some time, eventually ending up on a rural road, Ruckersville Road, with no one around but Mr. Willis, Mr. Drane, and Ms. Blackmon. Mr. Drane left Mr. Willis's truck so that Mr. Willis could begin having sex with Ms. Blackmon. Mr. Willis abruptly ended that encounter and Ms. Blackmon exited the truck. A few minutes later, after Mr. Willis became enraged in response to an apparent misunderstanding, Mr. Willis grabbed a sawed-off shotgun from his truck, and he shot Ms. Blackmon at close range. Panicked, Mr. Willis then used a knife, a knife that he had in his pocket, in an attempt to dismember Ms. Blackmon's body and cover up his crime. He cut her throat numerous times before he became sick and then stopped. He then asked -- this is the first time that he asked Mr. Drane for involvement. He then

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asked Mr. Drane for help in concealing Ms. Blackmon's body.

These are the relevant facts associated with the murder of Ms. Blackmon. These are the facts that

Mr. Willis has now admitted and these are the facts that Mr. Willis will describe to the Court today. These facts simply do not support conviction of Mr. Drane. Mr. Drane did not shoot Ms. Blackmon; that was Mr. Willis. Mr. Drane did not cut Ms. Blackmon; that too was Mr. Willis.

These two people, Mr. Drane and Mr. Willis, are the only two witnesses to Ms. Blackmon's murder. The only evidence that implicated Mr. Drane in the commission of the murder was hearsay testimony from three witnesses who attributed a number of contradictory but self-inculpatory statements to Mr. Drane. Against this unreliable hearsay we now have two eyewitnesses, Mr. Drane and Mr. Willis, that prove that Mr. Drane did not cause the death of Ms. Blackmon. The fact that Mr. Drane is still on death row is a travesty and a gross violation of his constitutional rights, but he remains on death row.

As soon as Mr. Drane's then-counsel, Ed Tolley, became aware of Mr. Willis's confession he filed an extraordinary motion for new trial in Superior County -- excuse me, the Superior Court of Elbert County.

THE COURT: Elbert, right.

MR. CHALLY: Elbert County.

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THE COURT: Judge Hodges.

MR. CHALLY: Exactly, the Court that sentenced Mr. Drane.

Judge Hodges denied that motion, but critically, and I hope the Court understands, held -- and I'm quoting now -- "that it should be noted there is precedent for the proposition that only the person who commits the murder is constitutionally eligible for the death penalty." This is from Judge Hodges' order.

Judge Hodges concluded that he did not have the authority to grant a new trial as to sentencing only, but he held that this issue, the unconstitutionality of sentencing one who did not commit a murder to the death penalty -- and again I'm quoting as well -- "may be a matter to be considered by the court hearing the habeas corpus petition." This Court.

Here we are, Judge, before the Court that has the habeas hearing -- habeas petition. And the precedent that Judge Hodges cited in his order, the precedent that he identified as the matter to be considered by this Court is Inman v. Florida, the same case that the Supreme Court of Georgia cited in its order remanding this case to this Court for further proceedings. It's also the same authority that Mr. Drane relied on in his initial petition to this Court, where he challenged the unconstitutionality

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of his sentence of death and he asserted his innocence.

Now is the time for this evidence to finally be heard. Mr. Drane's conviction and sentence cannot stand in light of the facts that you'll hear today.

The State's position on these facts appears to be that they are not procedurally before the Court. There is no response to the facts themselves. Mr. Drane did not cause the death of Ms. Blackmon, and the State's suggestion that the Court should indulge in a shell game as it relates to these facts merely passed the buck down the road, disregards Mr. Drane's constitutional rights and the very purpose for the great writ of habeas corpus.

So, Your Honor, in our post-hearing briefing we will describe in more detail the legal grounds for ruling in Mr. Drane's favor. I don't want to belabor all those points here today. But I think it's sufficient to say that, just as Judge Hodges recognized in his order related to the extraordinary motion for new trial, that Mr. Drane's conviction and his sentence cannot stand in light of the facts that you'll hear today. Mr. Drane did not cause the death of Ms. Blackmon, and he can't be sentenced to death for that crime.

Thank you.

THE COURT: Thank you, sir.

Ma'am?

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MS. IANNUZZI: Your Honor, I'll waive opening.

THE COURT: Okay. Call your witness.

MR. CHALLY: Yes, sir. We'd like to call David Willis.

THE COURT: David Willis. Do we have somebody with him?

MR. CHALLY: We do. He is here.

THE COURT: I -- I -- I'm a little bit -- this is a little bit unusual courtroom, so I don't know -- I normally can look to bailiffs and say bring the person in, but -- (brief pause)

While we're waiting, who are the parties in the courtroom? I know the law clerks, both of them. Who are you, sir?

MR. BLACK: I'm James Black. I'm Leonard's stepfather.

THE COURT: Okay. Glad to have you here.

MAN: I'm his brother.

THE COURT: Oh, all right, sir. Glad to have you.

And, ma'am?

MS. DANIEL: Ms. Daniel, Your Honor. I work with the federal defender program.

THE COURT: Okay. Thank you, ma'am.

All right. And I will, for purposes of the record, say that Mr. Tolley had notified the Court that he was

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before Judge Land in a trial this week and had asked me to excuse him. And then I think I got a letter from you saying you had no objection. And I

don't know that I ever heard from the State in the matter, but I presumed that once the Petitioner said that they would be glad to proceed with the K and S folks that that was sufficient. So, I went ahead and asked Natasha to get a notice out to all of y'all and to Mr. Tolley that I would excuse him. And so I presume that was satisfactory with everybody?

MS. IANNUZZI: Yes, Your Honor.

THE COURT: Okay. Good.

MR. CHALLY: It absolutely was with us, Your Honor. Mr. Tolley has -- has -- since we became engaged, Mr. Tolley has not been actively involved.

THE COURT: Right. Well, I knew he hadn't, but I -- I certainly didn't want to deprive him of being here because he has represented Mr. Drane for a number of years.

MR. CHALLY: Your Honor, it appears that it may be a few minutes for them to actually get Mr. Willis up.

THE COURT: That'll be fine. If y'all want to be at ease, do so. If you need to step outside of the courtroom I'll allow it. I've just -- we're all -- I think, waiting. It is a little bit different procedure.

MR. TANGUM: Yes, Judge.

THE COURT: Five minutes?

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MR. CHALLY: They estimate about five minutes, Your Honor.

THE COURT: Be fine.

> WHEREUPON, there was a pause in the proceedings while waiting for the witness, after which the following pause transpired:)

> WHEREUPON, the Witness entered the Courtroom and took the witness stand.)

THE COURT: All right, we're back in session. You are Mr. Willis, sir?

THE WITNESS: Yes, sir.

THE COURT: All right, state your name completely, Mr. Willis.

THE WITNESS: David Robert Willis.

THE COURT: Thank you.

Mr. Chally?

MR. CHALLY: Madame Court Reporter, would you mind swearing in the witness?

THE COURT: Yes.

THE COURT REPORTER: Raise your right hand.

Do you swear the testimony you're about to give will be the truth, the whole truth and nothing but the truth, so help you God?

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THE WITNESS: I do, ma'am.

THE COURT: Thank you. You may proceed.

WHEREUPON,

DAVID WILLIS

was called as a witness by the Petitioner and after having first been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHALLY:

Q Mr. Willis, where do you currently reside?

A At Walker State Prison.

Q Why are you at Walker State Prison?

A I'm in the face to face program they have up there, sir.

Q Okay. What led you to be incarcerated?

A Well, a murder charge, murder of Ms. Blackmon.

Q How long have you been in jail?

A Since July of 1990, sir.

Q Mr. Wilson --

THE COURT: 1990, or '97?

THE WITNESS: Ninety, 1990.

THE COURT: Okay.

BY MR. CHALLY: (Resuming.)

Q Mr. Wilson, before we get to the detail on what brings us here today, I have a couple of preliminary questions,

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if that's okay.

Have you obtained a college degree while you were in prison?

A Yes, sir.

Q What degree is that?

A A bachelor and master.

Q Have you taken any other classes while you've been in prison?

A Yes, sir. I took numerous classes, really, anything I can, anything I -- that spoke to me, that I think I can better myself, I've been taking.

Q Are any of the classes or instruction that you've received faith-based programs?

A Yes, sir.

Q Have you received certificates of completion from any of these programs?

A Yes, sir, lots of them.

Q Okay. Do these programs have leaders that facilitate the courses that are offered?

A Yes, sir.

Q Have you served as a leader in any of these programs?

A Yes, sir, I have.

Q For how long have you done that?

A Well, for -- from about three -- three years at Rivers State Prison and then a little bit over two years at

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Walker.

Q And what specific programs or courses have you served as a leader in?

A Well, at Rivers it was the New Beginnings program. It was a faith-based. And at Rivers, I mean at Walker it's also a faith -- character-based dorm. But I'm a team leader and we kind of divide dorms up into groups and they have team leaders, you know, that's over about -- about ten people. And we just -- we just act like a mentor to them or try to help them out any way we can.

Q Okay. Mr. Willis, do you know the Petitioner in this case, Leonard Drane?

A Yes, sir.

Q How do you know him?

A Well, we grew up together. I've known him since I was a little kid. We went to elementary school together, Boy Scouts together, basically during my younger life, you know, until we got older and separated ways. I -- I knew him most of my life.

Q Mr. Willis, isn't it true that you were convicted of murdering the same woman as Mr. Drane?

A Yes, sir.

Q Are you aware that Lenny was convicted of this murder following a trial?

A Yes, sir.

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Q Did you testify at Lenny's trial?

A No, sir.

Q You yourself were convicted after a trial, isn't that right?

A Yes, sir.

Q Did you testify at your trial?

A No, sir.

Q During the time before and during your trial and Mr. Drane's trial, did you ever give a statement regarding Mr. Drane's involvement in the murder of Ms. Blackmon?

A No, sir.

Q All right, Mr. Willis, I want to take you back to June 13, 1990, and I want you to tell the Court today everything you remember about your interaction with Ms. Blackmon that day. So, let -- let's start with before you first saw Ms. Blackmon that night. Were you with Lenny that night?

A Yes, sir.

Q What were the two of you doing?

A We were drinking, basically, riding around, drinking.

Q Was anyone else with you before you met Ms. Blackmon?

A No, sir.

Q At some point you ended up at a liquor store; is that right?

A Yes, sir.

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Q Where was the liquor store?

A It was a little place. It was about -- right outside of town. I forget what street it's on but it's this little, small liquor store. It was on, I believe it was Elder Street.

Q Do you remember the name of the store?

A No, sir, I don't. I think -- I think they called it Doodle Bug's, I believe they called it. I don't know the name of it, though.

Q Is The Corner a name that's familiar to you at all?

A Opposite from the liquor store they had a little place they called Our Corner. It was a little parking lot, and there was a club on the left side.

Q Same general area?

A Yes, sir, right across the street.

Q When you got to the liquor store, tell us what happened.

A When I pulled in Lenny went in to get some liquor, and while he was in the store Ms. Blackmon, she approached me. She walked up to me. I was sitting in the parking lot. She came from the passenger's side door and walked up and was asking me did I have any drugs. She was basically, you know, saying she would trade sex for drugs, if I had it, and I told her I did. And then Lenny came back. I can't remember whether she got in the truck right at that moment or she waited till Lenny came in, but she got in the truck and then we left.

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Q So, you reached a deal with Ms. Blackmon; is that right?

A Yes, sir.

Q And what was that deal?

A Give her drugs for sex.

Q When you reached that agreement with Ms. Blackmon was Lenny involved in discussing the deal at all with Ms. Blackmon?

A No, sir.

Q Before this arrangement did you talk to Lenny about any arrangement like this?

A No, sir.

Q At some point after you reached this arrangement Ms. Blackmon got in your truck; is that right?

A Yes, sir.

Q How long were you at the store with Ms. Blackmon?

A Probably five minutes at the most.

Q What happened then, after you left?

A Well, we -- after we left I started going in the direction of where my house was, and that was out in the country. It was about -- about ten miles from the city. So, we took actually a long road, a long way around, which is Ruckersville Road, and we was riding. And we was just riding and talking and drinking. And we got down to a little place where we stopped at. It was probably -- I'm just guessing, I guess it would be eight miles maybe, eight miles from town. We

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pulled up into a little road, off to the side of the road.

Q Okay. Now, so you were in the driver's seat, is that right, of your vehicle?

A Yes, sir.

Q And this was your vehicle; is that right?

A Yes, sir.

Q Where was Lenny sitting in the car?

A He was sitting on the passenger's side, next to the window, on the right.

Q Do you remember where Ms. Blackmon was?

A She was in the middle.

Q At the time that you were riding around did you tell Lenny the deal you had made with Ms. Blackmon?

A No, I don't believe so. He probably knew it because she had mentioned it. She had asked me, you know, she'd asked me where is the drugs at. And I told her, I said they're at the house. And so when I pulled over -- when I pulled over I actually had to use the bathroom, too, so I used the bathroom. But she was asking where the drugs were and I was telling her, well, just wait, you know, when we get to the house.

Q Do you remember talking with any of the -- amongst yourselves about anything else, other than what you just described?

A No, sir.

Q What road did you pull over on?

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A It was a little -- they built a lake and this little -- road ran to the lake and they built a new bridge over where the lake went. It was a little side road that was all growed. And it was -- they used it where they had dumpsters, big green dumpsters there, too.

Q Did it have a name?

A Not -- I don't know. Not as I know of. It was just a little I mean, it wasn't probably -- it was just a little, short piece of road. It probably wasn't but a quarter of a mile long all together.

Q And this was off of Ruckersville Road; is that right?

A Yes, sir.

Q When you pulled over, did you talk about having sex with Ms. Blackmon?

A Yes, sir.

Q Did you talk to her about that?

A Yes, sir.

Q What was her response?

A She was wanting drugs.

Q Did she ultimately agree to have sex with you?

A Yes, sir.

Q Did you in fact begin to have sex with her?

A Yes, sir.

Q Where was Mr. Drane while you were having sex with Ms. Blackmon?

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A I don't know. We were in the front of the truck, I mean, in the seat of the truck. So I don't remember exactly how it happened, but I know I had to get out of the truck and she had to get out of the truck because I was on the, she was laying down in the truck, with her head towards the steering wheel, so I had to come around to the other side. So then I probably took my pants off, whatever, and came around to the side -- other side. But as far as where Lenny was at, at the time, I don't even -- I don't know where he -- I mean, he wasn't in that direct vicinity, where I, you know, could see him.

Q He was not in the truck; is that correct?

A No, sir, he wasn't in the truck.

Q So, Mr. Drane left the truck before you began having sex -- sex with Ms. Blackmon; is that right?

A Yes, sir.

Q At any point during the time that you were having sex with Ms. Blackmon was Mr. Drane in your truck?

A No, sir.

Q Did you stop having sex with Ms. Blackmon at some point?

A Yes, sir.

Q Had you ejaculated by that time?

A No, sir.

Q What led you to stop?

[p.24]

A Well, it was -- the mood that Ms. Blackmon was in, it was -- she was just not -- I mean, for you to, I guess, understand what I'm talking about, a lot of times, you know, when you have a trade like this, or anything, with a girl it, you know, she usually -- she usually wants, you know, she wants to have sex, and she just seemed like she really didn't want to, so I stopped.

Q What happened then?

A Well, she got up -- I can't tell you exactly what happened because I can't actually remember exactly what happened or what went on. But this is what I

know, I got out of the truck and I was getting dressed and she got out. Evidently she got out. She wasn't in the truck. And I'm not even sure where she went or where she was at, at the time. I mean, I wasn't really paying her any attention. I might have had my back to her. I don't even know, I can't remember that part.

But the next thing I remember was, I believe I was -- I was already dressed and I believe that's when -- sometime during that time Lenny came around, and he had a knife. And I had never seen the knife before. I knew it wasn't his knife. And it was one I had never seen before, so he told me, he said, "How would you like to have been stuck with this?" And in my mind I was thinking that, you know, he had gotten it from her and --

[p.25]

Q Do you have any doubt in your mind about what you just described, that Mr. Drane came to you with a knife?

A No, sir.

Q So you might not remember exactly where Ms. Blackmon went after that, but you distinctly remember Mr. Drane showing you a knife at that point?

A Yes, sir.

Q What happened next?

A Well, he -- I guess I -- I stayed around the truck. And that's again, I can't tell you exactly what I did because I don't know. But I know that I was -- I was right around the truck a little while. I might even have

used -- I used the bathroom. I don't -- I don't remember what I was doing or what I did. Maybe I was drinking.

Q How did -- excuse me. How did you react to Mr. Drane showing you this knife?

A I was -- it made me mad. I mean, I was -- I misunderstood. Looking back, I misunderstood. I thought, in my mind I thought that he had took the knife from her and she was trying to, you know, stab me with it. That's what I thought at the time.

Q And that was your memory at the time --

A That's what I thought at the time. And -- and I really -- I -- I know during that time, in between that time and the time I shot her, that's what I was thinking about, and

[p.26]

I was enraged by it.

Q So, it angered you?

A I was -- yes, sir, I mean, I was -- I was enraged by it, yes, sir.

Q Did you have a gun with you that night?

A Yes, sir.

Q Where was the gun?

A Well, actually, I had two guns. One was behind the seat, which was a shotgun, and we had one in front of the seat, or I had one in front of the seat. It was a 30-30 rifle.

Q Did you eventually get one of those guns?

A Yes, sir.

Q Which one?

A Shotgun.

Q Did Lenny tell you to get the gun?

A No, sir.

Q Did you tell Mr. Drane that you were going to get a gun?

A No, sir.

Q Did you tell Mr. Drane what you were going to do with the gun?

A No, sir.

Q Tell us a little bit more about this gun. What kind of gun was it?

A It was a sixteen gauge shotgun. It was sawed off.

[p.27]

And I can't remember whether it was a Winchester or Remington. It was an automatic shotgun.

Q Whose gun was it?

A It was mine, sir.

Q What did you do once you got the gun?

A Well, I didn't get the gun until I seen Ms. Blackmon walking towards, back towards the truck. I seen her coming back, and that's when I got the gun. And by the time she -- she just about got to the truck I had gotten the gun out from behind the seat. And I

walked around on the side of the truck -- I'm on the driver's side of the truck and I walked around to the side. And about the time I walked around to the side -- I had it in my left hand because I'm left-handed. By the time she walks around -- and she never sees the gun -- I just pull the gun up and I shoot her.

Q You have a distinct memory of the events you just described?

A Yes, sir.

Q No doubt in your mind that it happened just as you described it?

A No, sir.

Q Did you say anything to her before you shot her?

A No, sir.

Q Did she say anything to you?

A No, sir.

[p.28]

Q Where did you shoot her?

A In the head.

Q How many times?

A Once.

Q What impact did it have on Ms. Blackmon?

A Well, when the shotgun blast hit her she just, I mean, she just immediately just fell backwards and hit the ground. And I -- I knew she was dead on impact

because, I mean, there was no movement, she just -- that was it, she just hit the ground just flat.

Q Was she moving after you shot her?

A No, sir.

Q Could you tell whether or not she was breathing?

A Well, I didn't -- I didn't get close to her, or anything. I mean, I -- I -- the way she hit, I mean the way she hit the ground, I mean, the shotgun blast was in the head, I mean, I just thought for positive that she was dead on impact.

Q Where was Lenny when you shot Ms. Blackmon?

A He was -- he was a little ways up that road. It was probably a little distance away. I could see him. It was dark but I could see, like, his shadow, where he was standing at. I could see that he was standing up.

Q Do you have any idea how far away he was?

A I would say, I don't know, maybe twenty yards maybe,

[p.29]

thirty yards.

Q Let me ask it this way. Do you think that you would have had to raise your voice to speak to Mr. Lenny where he was?

A Yes, I would have, because actually after -- after that happened I walked up to him. He stood in that spot. He didn't move after I shot her. I walked up to

him and -- I walked up to him because I was going to tell him what happened.

Q Did you in fact tell him what happened?

A Yes, sir. I told him -- well, I forget exactly what I said but I think I said something like, "I shot her." He said, I think he said something like, well, "I know" or something like that, because it was evident that --

Q Why did you feel the need to tell him that you shot her, under those circumstances?

A Well, I didn't know basically, I didn't know what I was going to do right after it happened. It was like -- been drinking liquor and I was more or less like in a haze. But after I shot her, I mean, it's just like I realized, it hit me what I'd just done and it really sobered me up. And I really panicked and thinking what am I going to do now because it's already done.

Q So any haze that you might have had before the time you shot her was gone at the time that you shot her; is that right?

[p.30]

A Yes, sir.

Q As you're talking with Mr. Drane at this time, did Lenny tell you what to do?

A No, sir.

Q Did he suggest in any way that anyone begin to cut Ms. Blackmon?

A No, sir.

Q Then what happened?

A Well, I was standing there -- me and Lenny was standing there. I was really thinking about, you know, I mean, you know, what am I going to do. I thought that -- which I didn't -- I didn't say anything to him. He didn't -- he didn't know because, that's what I'm saying, I didn't say anything to him about it, you know, what was going through my mind, what I was going to do. But somebody told me, one time -- I was thinking about, because I was trying to cover it up. I was trying to hide what I did. So I knew I had to do something with the body, so I was thinking what somebody else had told me one time before -- which is really ridiculous, but at the time I wasn't thinking too clearly anyway -- told me that, you know, the mob, or whatever, cut people's hands off and their head off, to dispose of a body because it's easier to hide the hands and the head, and that's what they can identify somebody with. So, that's what I was attempting to do, was -- was cut her head off and her hands off.

[p.31]

Q So you came up with this idea to cut Ms. Blackmon?

A Yes, sir.

Q And you -- why did you do it?

A To hide the body.

Q Where did you get the knife?

A I had it in my pocket.

Q Was Ms. Blackmon, did you, in fact, begin cutting Ms. Blackmon?

A Yes, sir.

Q Was she moving at all when you were cutting her?

A No, sir.

Q Did she appear to be breathing?

A No, sir, not at all.

Q Where did the knife come from?

A I had it in my pocket. It was a pocket knife I'd had for, probably had it for a long time.

Q Do you remember what kind of knife it was?

A Yes, sir. It was a Case, had an aluminum handle, a Case knife. It was a locked blade. It was -- the blade was probably about maybe two inches long or maybe a little bit longer.

THE COURT: Was this a different knife than the one that you spoke of earlier?

THE WITNESS: Yes, sir. Can I -- can I explain? The other knife was a -- it was a, looked like one, a locked

[p.32]

blade knife. It was a -- had a black handle and it was, uh, a switchblade knife, the one that -- other knife that Lenny had showed me.

BY MR. CHALLY: (Resuming.)

Q At some point, Mr. Willis, did you stop cutting Ms. Blackmon?

A Yes, sir.

Q Why?

A Well, I realized, really, what I was doing and then I -- at the same time it wasn't, you know, it wasn't -- it wasn't easy, what I was doing wasn't easy and I just said, you know, I can't -- I can't keep doing this. So I stopped.

Q Did you resume cutting her at any point after that?

A No, sir.

Q Did you ever give the knife to Mr. Drane?

A No, sir.

Q Did Mr. Drane ever cut Ms. Blackmon?

A No, sir.

Q What happened after you stopped cutting Ms. Blackmon?

A Well, I knew I had to get her in the back of the truck, so that's one reason -- excuse me. That's the reason, you asked earlier, but I -- I had to talk to Lenny because I didn't know what he was going to do. I didn't know whether he was going to turn on me or he was going to run or what he was going to do. So that's why I -- see, I'm not sure at this

[p.33]

point. I believe I laid the gun down before I went and talked to him, or I might not have. So, I can't even remember at that point exactly what I did with the gun, but I do remember what my intentions were at the time. But I'd asked Lenny, I said, "Help me get her in the truck."

Q Did Mr. Drane in fact help you get her in the truck?

A Yes, sir.

Q What happened after you and Mr. Drane loaded Ms. Blackmon in the truck?

A Well, at first, I drove to a place that I knew was an old well, an abandoned well, and I drove up there. And there was a lot of old roads and brush and stuff and I couldn't find the well, looked around -- it's dark -- and looked for it and couldn't find it. So, we left. From there we left and I went down to my house and found some rope, went and found some rope and an old brake drum and tied her to it. I was thinking about a place that was on the lake that had a lot of deep water. I was thinking about, you know, throwing the body over the bridge, in the water. That's what I ended up doing.

Q Was Mr. Drane with you during this time that you described?

A Yes, sir.

Q All right, Mr. Willis, I want to sum up what you've testified to, and I want to make sure that we are clear on these few points. Did Mr. Drane shoot Ms. Blackmon?

[p.34]

A No, sir.

Q Is there any doubt in your mind whatsoever as to whether or not Mr. Drane shot Ms. Blackmon?

A No doubt at all.

Q Did you tell Mr. Drane that you intended to shoot Ms. Blackmon before you shot her?

A No, sir.

Q Is there any doubt in your mind about whether you told Mr. Drane that you intended to shoot Ms. Blackmon before you shot her?

A No, sir. I didn't tell him.

Q Did Mr. Drane ever cut Ms. Blackmon?

A No, sir.

Q Is there any doubt in your mind about whether Mr. Drane cut Ms. Blackmon?

A No, sir.

Q Did you tell Mr. Drane that you intended to cut Ms. Blackmon before you cut her?

A No, sir.

Q Is there any doubt in your mind about whether you told Mr. Drane that you intended to cut Ms. Blackmon before you cut her?

A No, sir.

Q Mr. Willis, was Mr. Drane involved in any way in causing the death of Ms. Blackmon?

[p.35]

A No, sir.

Q Mr. Willis, what was the first time that you told anyone about the fact that Mr. Drane was not involved in causing the death of Ms. Blackmon?

A During a parole interview in 2010.

Q Who was -- you were being interviewed; is that right?

A Yes, sir.

Q Who was interviewing you?

A Mr. Childers.

Q Before your statement to Mr. Childers that you just identified, is it correct that you never made a statement to anyone describing the extent of Mr. Drane's involvement in causing the death of Ms. Blackmon?

A No, sir, I haven't said anything to anyone.

Q Do you recall refusing to testify at and around your trial based on privilege and self-incrimination?

A Yes, sir.

Q After you were convicted of murdering Ms. Blackmon and until your discussion with Mr. Childers, did anyone associated with Mr. Drane ever ask you about what happened on June 13, 1990?

A That's hard to answer because I don't know. You have a lot of people -- a lot of people in jail try to ask and find out why you're locked up, you know. I had a lot of people ask me. I've had a lot of, you know -- I don't know -- now that I

[p.36]

know that it was associated, that knew Lenny, asked me anything about it, so --

Q Let me ask it this way. Before your discussion with Mr. Childers, did you hear from any lawyer representing Mr. Drane?

A No, sir. No.

Q So, no one representing Mr. Drane ever sent you a letter?

A No, sir.

Q No one ever sent you a subpoena; is that right?

A No, sir.

Q So, is it correct that until sometime after your discussion with Mr. Childers no lawyer representing Mr. Drane ever asked you anything about Mr. Drane's involvement in this crime?

A Oh, you're talking about after the parole interview?

Q No. I'm sorry. Until sometime after, so between the time of your conviction and the time that you spoke with Mr. Childers, no lawyer representing Mr. Drane ever asked you anything about Mr. Drane's involvement in the crime; is that right?

A Well, not until -- till later, later on.

Q Mr. Willis, were you surprised you never heard from anyone until after you made a statement to Mr. Childers?

A Yes, sir, I was.

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Q Mr. Willis, I want to talk about your statement to Mr. Childers now for a few minutes. Were you initially reluctant to discuss Mr. Drane's involvement or lack thereof with Mr. Childers?

A Yes, sir.

Q Why?

A Because I didn't -- I didn't know -- the whole time since he -- he got convicted, I didn't know what was going on with his case. I didn't know -- I figured that if, you know, if there was anything going on with his case where, you know, for me to say anything, make any statements about his case, that his lawyers would have contacted me or -- so I'm just assuming, I don't know, he's still got his case on appeal or whatever. I don't even know what's -- I was trying to tell him, I'm not at liberty to discuss this because it involves a co-defendant in my case and I didn't really feel free to talk about it at the time.

Q Were you concerned in any way about what might happen to you if you were to make a statement to Mr. Childers describing Mr. Drane's lack of involvement in the crime?

A Yes, sir. Of course, I was thinking, well, which he had told me that you have a co-defendant, and I think he said on death row and --

THE COURT: He, who?

THE WITNESS: Mr. Childers.

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THE COURT: Okay.

THE WITNESS: And so that told me that, well, because I had heard, you know, from other people before, saying that he was -- I've heard people say that he was out, they got his case overturned, he was out on the street. I've heard people say that, well, he got his case overturned, he's serving a life sentence in another prison. I heard a lot of different things, you know. I really didn't know what to believe. So, when he said that -- when he said that he's at Jackson, on death row, then I knew that, well, he was, you know, still in there, so I'm thinking, well, you know, nothing's happened in his case then, if he's still on death row.

BY MR. CHALLY: (Resuming.)

Q As it relates to you, Mr. Willis, did you think that there would be any -- anything could happen to you if you were to make a statement to Mr. Childers describing Mr. Drane's lack of involvement?

A Well, of course, for one thing, I think it plays a big part of it, I really, I didn't want anybody to know about what I -- I'm ashamed about what I did. I didn't want anybody to know, for one. But, two, I know once I -- once I make a statement or anything, any chances

for me ever getting the case overturned or appealed or anything like that, it's just gone, it's vanished. And I also knew for chances of parole it would

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probably affect me in an adverse way because, you know, I've got a co-defendant, maybe they'll look at me, maybe, you know, I didn't have that big of a part in it, whatever, I might have a better chance of parole. But I knew I would -- when I told them that I was, you know, the killing and all that.

Q You were -- you were, in your mind, eliminating any chance that you would get parole?

A Yes, sir.

Q You nevertheless ultimately did describe to Mr. Childers the complete picture of Mr. Drane's involvement, as you remember it; isn't that right?

A Well, I believe he asked -- he may have asked, I'm not sure exactly, but basically what I was telling him was my involvement, everything. I really didn't discuss about Mr. Drane, at the time I didn't. Well, he -- he did ask. I do remember now he did ask me did Mr. Drane, you know, do this or do this, and I said, no, sir, I did.

Q Mr. Willis, did you think that making this statement to Mr. Childers would benefit you in any way?

A No, sir, just -- well, the only way it would benefit me is -- is knowing at least that -- that after all these years with Renee's family wondering what happened,

at least that would come out and they would know the truth of what really happened.

Q Following your discussion with Mr. Childers, did you

[p.40]

tell anyone else? This is immediately after your discussion with Mr. Childers. Did you tell anyone else about Mr. Drane's lack of involvement in causing the death of Ms. Blackmon?

A Not immediately, no, sir.

Q Did you ever speak to a chaplain?

A Yes, sir, Chaplin Eldrige.

Q What was his last name?

A Eldrige.

Q Do you know how to spell that?

A E-L-D-R-I-G-E (spelling).

Q Why did you tell this chaplain what you had discussed with Mr. Childers?

A Well, for one thing, I had told -- after I talked to Mr. Childers I was -- I didn't know exactly where he was going to take it from there. I kind of wanted to have some reassurance that if anything happened to me that someone else would know. And so I went ahead and told Chaplain Eldrige.

Q Mr. Willis, if I may, with the Court's permission, I'd like to show you what I've marked as Petitioner's Exhibit 7.

THE COURT: Have you shown it to counsel?

(Exhibit shown to counsel). (Pause.)

THE COURT: You may proceed.

BY MR. CHALLY: (Resuming.)

Q Mr. Willis, just take a minute to familiarize

[p.41]

yourself with this particular document.

A (Witness complies.)

THE COURT: I think he's ready.

MR. CHALLY: Okay. Thank you, sir.

BY MR. CHALLY: (Resuming.)

Q Mr. Willis, have you seen this affidavit before?

A Yes, sir.

Q The affidavit includes an attachment A. Did you have an opportunity to just review that here?

A Yes, sir.

Q Have you seen the report that is attached as Exhibit A to the affidavit?

A Yes, sir.

Q I'd like you to look at paragraph four of the affidavit. That's on the -- begins on the first page, continues on to the second. Do you see that?

A What does it say?

Q Well, you -- you see -- you see paragraph four, don't you?

A Talking about the first page?

Q On the first page, yes, sir.

A Yes, sir.

Q I want to call your attention to the second sentence of that affidavit. It says, "Leonard Drane did not do anything

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to the victim and did not participate in any attempt to make the victim's body unidentifiable." Do you see that?

A Yes, sir.

Q Do you agree with that statement today?

A Yes, sir .

Q Is that statement in every way true and accurate?

A Yes, sir, it is.

Q Now I want to refer you to paragraph six of this affidavit. It reads, "I understand that in making this statement I have probably decreased the likelihood of my being paroled for this crime, but it is a true statement of the facts." Do you see that?

A Yes, sir.

Q Do you agree with that statement today?

A Yes, sir

Q Is that statement in every way true and accurate?

A Yes, sir.

MR. CHALLY: That's all I have.

THE COURT: Okay. Ms. Iannuzzi?

CROSS-EXAMINATION

BY MS. IANNUZZI:

Q All right, Mr. Willis, when you picked up Ms. Blackmon -- and just for the record, Ms. Blackmon was African-American?

A Yes, ma'am.

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Q And for the record, you are white?

A Yes, ma'am.

Q And also for the record, Mr. Drane is white. You picked up Ms. Blackmon and your understanding of what was going to happen is that you were going to trade drugs for sex?

A Yes, ma'am.

Q Did you actually have any drugs with you when you picked up Ms. Blackmon?

A No, ma'am.

Q And was she aware of that?

A No, ma'am.

Q And you said you had two guns in the car with you. You had a shotgun and something else. I didn't quite catch what --

A I had a 30-30 rifle.

Q Another -- a rifle?

THE COURT: 30-30 rifle.

MS. IANNUZZI: Okay.

THE COURT: Caliber.

BY MS. IANNUZZI: (Resuming.)

Q And you didn't use the rifle to shoot her, you used the shotgun?

A Yes, ma'am.

Q And it's the sixteen gauge, sawed-off shotgun?

A Yes, ma'am.

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Q That it was behind the seat, in the truck?

A Yes, ma'am.

Q And let me just understand. So, you were in a pickup truck?

A Yes, ma'am.

Q And is that, like, a single cab, where there's just a bench seat and that's everything?

A It's a bench seat. It's -- it's a small pickup truck. It's a Nissan, a '96 Nissan. No -- not '96, '86.

Q Okay. And so the shotgun was behind the seat?

A Yes, ma'am.

Q And where was the shotgun earlier in the evening, when you picked up Ms. Blackmon?

A It was behind the seat, I believe, ma'am.

Q Okay. And you wouldn't have any reason to believe that it had moved anytime in the evening? Since I guess it was behind the seat when you picked her up and it was behind the seat when you went to retrieve it to shoot her?

A Yes, ma'am.

Q Now, while you were having sex with Ms. Blackmon was she, I guess, willing to have sex with you?

A Yes, ma'am. She took her clothes off. She was (inaudible).

Q She's got to take down everything you say, so if I can't hear you she probably can't hear you either.

[p.45]

A Sorry, ma'am. My voice is not too good and --

Q Okay.

THE COURT: Say it again, if you would.

THE WITNESS: Yeah. What I said --

BY MS. IANNUZZI: (Resuming.)

Q I asked you if Ms. Blackmon was a willing participant when y'all were having sex.

A I said, yes, ma’am, she had -- she had taken her clothes off and, yes, ma’am, she was a -- she was willing.

Q Did she ever say no to you while y’all were having sex?

A No, ma’am.

Q And do you recall earlier on direct you stated that you retrieved the shotgun from the cab of the car, behind the seat, and you came around and you shot Ms. Blackmon in the head? About how long between when you shot her and then when you started to try to cut her head off, do you recall about how long that was?

A It was -- it was not a long period of time. It was -- it was a relatively short period of time, I guess, and I would say five minutes, ten minutes, maybe.

Q And you stated earlier that once when you shot her you believed that she was dead?

A Yes, ma’am.

Q And when you stated that you put Ms. Blackmon in the

[p.46]

truck, was that in the bed of the truck?

A Yes, ma’am.

Q And did Mr. Drane help you do that?

A Yes, ma’am.

Q And did you ever threaten him in any way in order to make Mr. Drane help you with that?

A No, ma'am.

Q Did you ever tell Mr. Drane if you say anything about this I'm going to put it on you?

A Not that I -- the course of the time between when it happened and when I got locked up, ma'am? Is that -- are you asking or direct me to time?

Q Well, any type of threat at the immediate time, to get him to help you dispose of the body.

A No, ma'am.

Q So, y'all put the body in the back of the truck, went to look for the well but you couldn't find the well; is that correct?

A Yes, ma'am.

Q And then you went to your house? Is that --

A Yes, ma'am.

Q And you got the brake drum and rope at the house in order to tie her up; is that correct?

A Yes, ma'am.

Q Did Mr. Drane help you tie Ms. Blackmon onto the

[p.47]

brake drum?

A Yes, ma'am. He did at one point, he probably seen I was having a little trouble, so he helped me tie a couple of knots in there.

Q Did you ever threaten him in order to make him help you tie those knots?

A No, ma'am.

Q And then y'all drove to the bridge that goes to South Carolina and you threw her in the water; is that correct?

A Yes, ma'am.

Q What did you do after you threw her in the water?

A Went to a place in South Carolina, where the bridge we threw the body off at. We went to South Carolina. It was on the state line. So we -- I drove to a car wash in South Carolina. I drove to a car wash to wash the truck. It was blood in the back of -- a little bit of blood in the back bed of the truck. I went up there to try to wash it off.

Q And was Mr. Drane still with you when you went to the car wash?

A Yes, ma'am.

Q And did he assist you in washing the blood out of the bed of the truck?

A He was there. I can't remember who washed it. It might have been me, it might have been him, I can't remember.

Q And were you and Mr. Drane living together at the

[p.48]

time of the crime?

A Yes, ma'am.

Q About how long had you been living together for?

A Well, I think living together might not be the appropriate word for it. He -- he was staying at the house because he'd got into an argument with his wife, and his wife kicked him out of the house. And he didn't have a place to stay, so I told him, well, you can stay at my house until she takes you back or you find a place, whatever.

Q And about how much time passed between when Ms. Blackmon was shot and when the police apprehended you?

A About three weeks.

Q And were you and Mr. Drane living together in that time period?

A Yes, ma'am.

Q Now, Ms. Blackmon was African- American. Did that play any type of role in the reason why you picked her up that night?

A No, ma'am.

Q And did you shooting her, did her being black play any type of role in you shooting her that night?

A No, ma'am.

Q And had you, I guess, had problems with African-American people in the past?

A Well, not really, not -- nothing that I don't have

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with anybody else. I mean, I've gotten into fights with black people, white people, Mexicans, you know, all types of people. I mean, it's nothing -- no, ma'am, I didn't have any -- any instance out of the normal, with any other race, I mean.

Q Okay. So, people from all walks of life, white, black, whatever had at one point maybe made you angry?

A Yes, ma'am.

Q But black people didn't in particularly, you know, make you so angry that this motivated you to kill a black woman?

A No, ma'am.

Q And, Mr. Willis, who have you spoken to in preparation for your testimony today?

A Well, I have talked with Mr. Drane's attorneys --

Q Okay.

A -- attorney and that gentleman back there.

Q Mr. King, from the --

A Mr. King.

Q -- federal defender's office.

A I think. I can't even remember. Mr. -- I can't remember – Gayley? Okay. And, yes, I spoke with him.

MS. IANNUZZI: May I get a minute, Your Honor?

THE COURT: Certainly.

(WHEREUPON, there was a pause,

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after which the following transpired:)

MS. IANNUZZI: That's all I have, Your Honor.

THE COURT: Okay. Anything further?

MR. CHALLY: No, sir, no redirect.

THE COURT: All right. And Mr. Willis can be returned to the custody of the officers to be returned from whence he came?

MR. CHALLY: Yes, sir.

THE COURT: Okay. I'll put you in the custody of the officers, Mr. Willis.

MR. WILLIS: Thank you, sir.

THE COURT: Yes, sir. Mr. Willis.

You had not tendered that. Were you intending to?

MR. CHALLY: We did, Your Honor. We actually have a housekeeping matter that I think might conclude us today. We do have a series of exhibits that we would like to provide to the Court. This is one of them. My suggestion would be that we tender these exhibits to the Court, we provide Ms.

Iannuzzi with an opportunity to review and object to those exhibits to the extent she feels necessary. And we can deal with that issue with any objections she raises in briefs or submissions to the Court.

THE COURT: Say the last part of what you said. I

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didn't hear.

MR. CHALLY: Yes, sir. So --

THE COURT: Your voice trailed off a little bit.

MR. CHALLY: Sorry about that.

What we would propose to do is provide copies of the exhibits to everyone and give Ms. Iannuzzi an opportunity to object to the exhibits that we want to introduce. And then we could resolve, respond to her objections and have the Court resolve them through briefs or submissions to the Court.

THE COURT: Okay. That's what I was trying to get to.

MR. CHALLY: Yes, sir.

THE COURT: You weren't planning to do it today?

MR. CHALLY: No, sir.

THE COURT: You wanted to give her sufficient time to take them with her and go over them?

MR. CHALLY: Absolutely. And we have both hard copies and I believe we have a disc, if that's easier either for the Court or Ms. Iannuzzi.

THE COURT: Okay. All right. Any objection to that procedure?

MS. IANNUZZI: That sounds fine. I guess we'll just --

THE COURT: That way -- what I'm --

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MS. IANNUZZI: We'll deal with it --

THE COURT: What I'm hearing here, he's saying he wishes to tender these as exhibits, but he would give you an opportunity to look at them and then make a written objection to them. And then he would want the opportunity to respond to your written objection and then have the Court rule on that and then make its ruling. I think I remember the procedure we set up was once the court reporter had prepared everything and the record was completed of today's hearing, then you would have ninety days. I was trying to remember. Y'all can correct me if it's different, but ninety days to file a brief.

MR. CHALLY: Yes, sir.

THE COURT: And then you would have forty-five? I was trying to remember how long to respond.

MS. IANNUZZI: I believe it's only thirty.

THE COURT: Thirty? Okay. I -- I appreciate --

MS. IANNUZZI: But if you want to give me forty-five I'll be happy to take it.

THE COURT: I'm not trying to change anything. Whatever's in the record is in the record.

MS. IANNUZZI: I was just curious as to the time frame for dealing with the exhibits, a time frame to submit objections, I guess get response.

THE COURT: Is it thirty days to look at that? I

[p.53]

don't have any idea how voluminous those are. I haven't seen it yet.

MR. CHALLY: There are quite a few, Your Honor, but I would say that most of these are documents that they will be familiar with.

What I would propose -- we're not trying to crunch your timing at all. What I would propose is let's exchange and then if you want to discuss with me what you think is an appropriate time, I'm happy to reach some accommodation and propose a schedule to the Court. That not only provides you that opportunity but provides you time to submit your brief and our brief in a way that makes sense for everyone.

MS. IANNUZZI: Well, I guess -- I guess the only thing is I would prefer to get a ruling from the Court on the exhibits before we're doing the briefings because then we know --

THE COURT: I agree. Well, I'm presuming that -- that's why I was saying, I'm presuming it's going

to take our good court reporter a little bit of time to get what we've done today. It hasn't been that long, so it may not be -- take her as long as we're anticipating here. So that's why I was saying maybe we want to give you a time. And I understand what you're saying, you want a ruling on these things before you start -- your time starts running

[p.54]

on the briefing for the final order.

MR. CHALLY: And, Your Honor, of course we have a similar interest in us having the brief --

THE COURT: Sure.

MR. CHALLY: The first start might make us want to make sure the State is accommodated in much the same way that we would want to be. So I would say, you know, we can indicate if -- if thirty days is acceptable, thirty days from today for you to submit objections. We'll have some period of time, depending on your objections, to respond. Let's just say thirty days. If we need to accommodate each other we can.

THE COURT: All right.

MR. CHALLY: But in any event, that's done before I believe we submit --

THE COURT: Then once the Court enters its order on this, then your ninety days starts to run. How about that?

MR. CHALLY: That would be wonderful. Thank you, sir.

MS. IANNUZZI: All right. Sounds good.

THE COURT: Does that suit both sides?

MR. CHALLY: Thank you very much.

THE COURT: All right, his ninety days starts to run and your forty-five days to respond.

[p.55]

MR. CHALLY: For clarity, Your Honor, should we just put together a scheduling order?

THE COURT: Why don't you do that. That'll be the simplest thing.

MR. CHALLY: Be happy to. Thank you.

MS. IANNUZZI: And then, Your Honor, I guess the one concern that I do have is the exhibit numbers, just because I'm certain -- obviously in the hearing that was however many years ago, ten years ago there probably was a Petitioner's Exhibit 7. I just wanted to make it clear that -- I guess we're going to mark, start numbering one through whatever again -- that they're going to correspond only with this hearing and not get mixed up with when it goes up on appeal. I mean, that's the only thing that --

THE COURT: There will be exhibits -- exhibits as they are referred to for this hearing.

MS. IANNUZZI: Okay.

MR. CHALLY: And if we need to accommodate our marking of them --

MS. IANNUZZI: Because that just might get a little confusing on appeal, if we have multiple Petitioners --

THE COURT: I understand.

MS. IANNUZZI: -- you know, before the Court. But that's just -- that's just my one concern.

THE COURT: Right.

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MR. LOVELAND: Perhaps for these you can put today's date.

THE COURT: That's what I was thinking. You could put it exhibit number so-and-so for hearing held 8/20/15.

MR. CHALLY: Yes, sir.

THE COURT: All right. Do y'all wish to make any arguments of anything now, or do you just want to make them in your written briefs?

MR. CHALLY: I believe that's most appropriate, Your Honor. We will certainly submit a brief and the schedule that we talked about and that will be the best place to resolve the legal argument.

THE COURT: Okay. You had said that you had Mr. Lavendar as a potential witness.

MS. IANNUZZI: Yes.

THE COURT: Is he here today?

MS. IANNUZZI: No, and we've determined we're not going to call him.

THE COURT: Oh, okay. So the hearing is in essence concluded?

MS. IANNUZZI: Yes. Yes.

MR. CHALLY: Yes, sir.

THE COURT: And I'm glad to see all of y'all.

MR. CHALLY: Thank you.

MS. IANNUZZI: Thank you, Your Honor.

[p.57]

THE COURT: Thank you. We are adjourned.

(WHEREUPON, the hearing was concluded.)

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STATE OF GEORGIA)

COUNTY OF BUTTS)

C E R T I F I C A T E

I, MARIE W. HARVIL, do hereby certify the above and foregoing pages 1 to 58 to be a true and accurate copy of the proceedings captioned herein;

I further certify that I am neither kin nor counsel to the parties herein, nor have any interest in the cause herein.

This 14th day of September, 2015.

/s/Marie W. Harvil
MARIE W. HARVIL

Certified Court Reporter
Certificate Number B-955

[SEAL]

APPENDIX J

PETITIONER'S EXHIBIT 06

PAGE #–1

Elbert Co.Sheriff's Dept.
Supplemental Report

CASE#–90–06–286

FILE NAME–Renee Blackmon Murder

Tuesday July 9, 1991 approx. 300pm Inv.Veal was contacted by DA Tise at the ECSO. He said that Lenny Drane had threatened to kill Tammy Gaines, a witness in the Blackmon case. He said that Gaines was in his office giving a statement. He related that Drane had told a Danny Chitwood from Hartwell, Ga. They were in Jackson Prison together sometime this year. Report by C.Veal.

Tuesday July 9, 1991 approx. 315pm Inv.Veal talked with Lt.Spratling at Jackson Prison. He said that Drane and Chitwood were housed in Cell Block F together from 041291 to 052491 and would have had the chance for a lot of contact. He said Drane was in F36 and Chitwood in F81. Report by C.Veal.

Tuesday July 9, 1991 approx. 330pm Inv.Veal talked with Doug Derrer at the Hall Co.CI. Danny Chitwood was transferred there on 053191 and according to Derrer, his is still there. An interview will be conducted about the threats Drane made. Report By C.Veal.

Wednesday July 10, 1991 approx. 1000am Inv.Veal conducted an interview with Danny Chitwood at Hall

Co.CI in Deputy Warden Don Nix office. Danny said he never saw Drane at Jackson and never wrote his brother Doug a letter about any threats. He said Doug and Tammy Gaines were bad to make up stuff. Report by C.Veal.

[Handwritten]

Hall Co.CI 7-10-91 1000AM
Curtis Veal
Danny Chitwood EF-276442

Statement -

CV I didn't write my brother telling him that Leonard said that he was going to kill Tammy Gaines and I didn't even know that Leonard was in Jackson. CV O.C.

Danny Chitwood

Curtis Veal

[Handwritten]

I Tammy Gaines was in Mrs. Feinberg's office 1-30-92 talking about my H.V. case and Lenny Drain & David Willis case.

She told me that she wanted to have my H.V. case postponed until a later date and then she wanted to talk to me about working a deal out on the Drain & Willis case.

Tammy Gaines
2-3-92
404-376-2043

[Handwritten]

I Toni Smith went to Ms. Feinberg's office to ask when David Willis and Lenny Drane's case was coming up and she asked me how many times the D.A. and police had questioned me and about the night Lenny told us about killing the girl. She also told me she needed to talk to Tammy and that she could cut her some kind of deal.

Toni Smith
2/3/92

She also told me that in my statement I said we when Lenny was talking about what he had done. My statement didn't say we to said I.

Toni Smith
2/4/92

RODGER E. DAVISON
ATTORNEY AT LAW

HIGHWAY 17 NORTH
POST OFFICE BOX 98
ROYSTON, GEORGIA 30662

Associate: F. MAYES DAVISON

Telephone: (404) 245-7211

August 31, 1992

TO:

Honorable George H. Bryant, Judge
Northern Judicial Circuit of Georgia
P. O. Box 950
Hartwell, Georgia 30643

Honorable Lindsay A. Tise, Jr.
District Attorney
Northern Judicial Circuit of Georgia
P. O. Box 515
Hartwell, Georgia 30643

Honorable Robert W. Lavender
Public Defender
Northern Judicial Circuit of Georgia
Elberton, Georgia 30635

RE: LEONARD DRANE, TRIAL

In reference to the above, as the attorney for Davis Willis, I have been directed to inform the Court, District Attorney and Public Defender, that David Willis is exercising his privilege against testifying as per the provision of OCGA 24-9-27(a).

Sincerely,

/s/Rodger E. Davison
Rodger E. Davison

RED:dj
cc: David Robert Willis

APPENDIX K

IN THE SUPERIOR COURT OF SPALDING STATE OF GEORGIA

Case No. 92-R-333
Charge: Malice murder; felony murder; aggravated assault

[Dated September 20 - October 2, 1993]

STATE OF GEORGIA	)
	)
vs.	)
	)
ROBERT DAVID WILLIS,	)
	)
Defendant	)
	)

TRANSCRIPT OF TRIAL PROCEEDINGS

September 20, 1993 - October 2, 1993

Volume VII Pages 1223 - 1445

Heard before the Honorable George H. Bryant, Judge, Superior Courts of the Northern Judicial Circuit, and a jury of twelve plus two alternates, at the Spalding County Courthouse in Griffin, Georgia.

A P P E A R A N C E S:

For the State: Mr. Lindsay A. Tise, Jr.
District Attorney
Northern Judicial Circuit

For the Defendant: Mr. Rodger Davison
Attorney at Law
Royston, Georgia

JEAN S. STRICKLAND
Official Court Reporter, Northern Judicial Circuit
Route #4, Box 4316
Danielsville, Georgia 30633
706/795-5202 OR 706/353-2049

* * *

[p.1241]

Q. You're in jail right now with Reginald McCord, aren't you?

A No sir.

Q You're not in the same cell with him?

A No sir.

Q You haven't seen him since you've been here?

A I've seen him one time when we were being transferred, but I got into a different car.

Q But am I understanding your statement now to be that Officer Veal came up on the 25th for an interview with Reginald McCord?

A My statement?

Q Do you know whether or not Officer Veal came up on the 25th and interviewed Reginald McCord?

A I don't know whether he did or not. I wasn't -- I wasn't out there with them. If I was out there, I'd tell you.

Q Well, did you see Mr. Veal on about the 25th?

A Yes sir, I did. He asked me about why was the fight caused.

Q At that time, were you able to tell him that you knew anything on this Defendant?

A I told him the reason he was in the fight, what reason he got in the fight was because of the card game.

Q Did you tell him that you knew anything about a

* * *

[p.1289]

Q Where is he sitting?

A To the left of me.

Q What's he wearing?

A A gray suit and blue shirt.

Q Does he have a tie on?

A No.

MR. TISE: Your Honor, may the record reflect that this witness, Ms. Gaines, has identified the Defendant.

THE COURT: Let the record so reflect.

(Witness identified the Defendant)

BY MR. TISE:

Q I want to call your attention to around July 3, 1990, I believe you stated you were living there in Hart County?

A Yes sir.

Q With Toni Smith, is that correct?

A Yes sir.

Q Can you state whether or not, do you know an individual by the name of Leonard Drane?

A Yes sir, I do.

Q Prior to that date, how did you know the Defendant in this case, David Willis?

A Well, I've knowed David all my life just about it.

* * *

[p.1292]

you know, they was intoxicated a little bit, but they wasn't out of their heads or anything.

Q Can you state whether or not, did they enter your residence?

A Yes sir, they did.

Q Both Leonard Drane and David Willis?

A Yes.

Q And you stated they had another lady with them?

A Yes, they did.

Q Did she enter your residence?

A Yes, she did.

Q What did you do?

A We just sat around in the living room for a little while and talked and stepped outside to get a beer out of the ice chest and when we did that, David and this other girl went to the bedroom and we stayed out and talked to Lennie.

Q You stayed out and talked to Lennie?

A Uh-huh.

Q Where was Toni Smith?

A She was -- she was present with us outside.

Q What did you and Leonard Drane talk about?

A He was talking -- he was telling us about he had killed a black girl.

MR. DAVISON: Of course, Your Honor, we would

* * *

APPENDIX L

IN THE SUPERIOR COURT OF BUTTS COUNTY STATE OF GEORGIA

No. 2000-V-699
Habeas Corpus

[Filed November 29, 2000]

Leonard Maurice Drane)
Petitioner,)
Pro-se)
)
vs.)
)
Fred Head, Warden)
Georgia Diagnostic Prison)
Respondent)
)

Petition for Writ of Habeas Corpus

Leonard Maurice Drane, Pro se, petitions this court for a Writ of Habeas Corpus, pursuant to O.C.G.A. §§ 9-14-41 et seq. Petitioner is an indigent person currently under sentence of death. Respondent is the Warden of the Georgia Diagnostic Prison in Jackson Georgia. The allegations of this petition are set forth as follows:

I. History of Prior Proceedings

1. The name and location of the court which entered judgment of conviction and sentence under attack are:
Superior Court of Elbert County, Elberton Georgia

(on change of venue to Spalding County, Griffin Georgia)

2. The date of judgment of conviction was September 25, 1992 Petitioner was convicted of Felony Murder, Malice Murder, and Aggravated Battery.

3. The date of judgment of sentence was September 25, 1992. The sentence for Malice Murder was that Petitioner be put to death by electrocution.

4. At his trial Petitioner pled not guilty

5. The trial on the issue of guilt or innocence and on the issue of sentencing was determined by a jury.

6. Petitioner did not testify at the guilt-innocence phase of his trial, nor the sentencing phase

7. Following his conviction and sentencing Petitioner filed a motion for new trial on 10-19-92, and an amended motion for new trial on Oct. 1993. After a hearing the amended motion for new trial was denied on 6-20-94. Petitioner appealed to Georgia Supreme Court and that Court remanded to the trial court on 3-17-95, and remanded again. New council was appointed. After a hearing remand was denied on 9-24-97, and notice of appeal was filed on 10-23-97.

8. The facts of Petitioners appeal are as follows:

(a) The Supreme Court of Georgia affirmed Petitioners conviction and sentence of death on November 1, 1999. A timely filed motion for reconsideration was denied on December 20, 1999.

(b) On 10-2-2000 Petitioner was denied Certiorari review by the United States Supreme Court.

II. Claims For Relief

Each claim for relief raised below is predicated on Article I, § 1, ¶ 1, 2, 3, 4, 5, 9, 14, 15, 16, 17, 18, of the Constitution of the State of Georgia, and the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and other law set forth in the Petition.

Claim I

> Petitioner was deprived of his right to the effective assistance of counsel a trial in violation of Art. I, § 1, ¶ 1, 2, 14, & 17 of the Constitution of the State of Georgia, the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Strickland v. Washington, 466 U.S. 688 (1984)

9. All other allegations in this Petition are incorporated into this claim by this reference.

10. Petitioner was denied his right to effective assistance of counsel at his capital trial in violation of the Sixth, and Fourteenth Amendments to the United States Constitution and Article I, § 1 ¶ 1 & 14 of the Constitution of the State of Georgia. Trial counsel's ineffectiveness includes, but is not limited to the following:

(a) Counsel failed to conduct adequate negotiations for plea agreement resulting in a sentence less than death.

(b) Counsel failed to conduct an adequate pre-trial investigation into the defense of actual innocence of the crime for which Petitioner was charged. Specifically, counsel failed adequately to investigate and present

evidence challenging the states theory that Petitioner participated in the death of Renae Gaines on or about June 13, 1990.

(c) Counsel failed to conduct an adequate pretrial investigation into the State's case and defenses available to Petitioner, including his psychological, medical, and psychiatric defenses affecting Petitioner's mental state before, during, and after the murder for which he was charged.

(d) Counsel failed to conduct an adequate pretrial investigation into Petitioner's medical, and psychiatric conditions affecting his competency to stand trial.

(e) Counsel failed to file several motions pretrial to protect his client's right to a fair trial, including discovery motions which would have produced highly relevant and critical information regarding the circumstances surrounding the murder of Renae Gaines Blackmon. This information would have assisted his lawyers to effectively represent their client.

(f) Counsel failed to confront adequately the State's case during the guilt-innocence phase of trial in not presenting the pharmacological, medical, psychological, emotional and neurological defenses which were available to overcome the State's evidence in support of its prosecution theory that Petitioner had the mental state necessary to intentionally and with malice kill the victim.

(g) Counsel failed adequately to investigate and present evidence exposing flaws in law enforcement's investigation into the circumstances of the murder of Renae Gaines Blackmon.

(h) Counsel failed to object to the admission of several items of evidence offered by the State during the guilt-innocence phase of trial. Timely objections would have insured that certain improper evidence was not received and considered by the jury.

(i) Counsel failed to conduct an adequate investigation into Petitioners life-history, which would have uncovered compelling evidence relevant at both phases of trial, and particularly at sentencing as evidence in mitigation of punishment. As a result, the sentencer was deprived of compelling mitigating evidence which would have provided the basis for a sentence less than death.

(j) Counsel failed to present at sentencing phase substantial mitigating evidence relating to Petitioner's psychological and emotional problems, and neurological impairments. This evidence was readily available to counsel and would have the trial court a basis for entering essence less than death.

(k) Counsel failed to object properly to items of improper evidence offered by the state in aggravation at the penalty phase of trial.

(l) Counsel failed to perform competently at Petitioners motion for new trial proceeding, and Petitioner was prejudiced thereby.

11. But for counsel's ineffective representation, there is a reasonable probability that the result of each phase of trial, and the appeal, would have been different. Strickland v. Washington, 466 U.S. 668 (1984)

Claim II

> Petitioner was deprived of his right to the effective assistance of counsel at motion for new trial in violation of Art. I, § of 1, ¶ 1, 2, 14, & 17 of the Constitution of the State of Georgia, the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Strickland v. Washington, 466 U.S. 688 (1984)

12. All other allegations in the Petition are incorporated into this claim by this reference.

13. Petitioner was denied his right to effective assistance of counsel at motion for new trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution, and article I, § 1 & 14 of the Constitution of the State of Georgia.

14. After trial counsel Robert Lavender withdrew during the pendency of Petitioners appeal proceeding, the Georgia Supreme Court remanded the case to the trial court to consider other issues. Following the appointment of new counsel Bill Daughtry, assisted by Georgia Resource Center's, Jeff Ertle and John Hanusz represented Petitioner on remand and appeal. During the proceedings which followed, counsel failed to perform to proffessional standards of competency. Counsel's and ineffectiveness includes, but is not limited to the following:

15. Counseled failed adequately to litigate the issue of ineffective assistance of trial counsel. Had motion for new trial counsel rendered competent performance in this regard, there is a reasonable probability that the trial court would have granted a new trial and/or sentencing hearing.

16. In connection with the ineffective assistance of trial counsel issue, motion for new trial counsel rendered ineffective assistance in numerous ways, including but not limited to:

(a) Counsel failed to conduct an adequate investigation into, and present, evidence of Petitioner's actual innocence of the crime for which he was charged. Specifically counsel failed to interview and present the testimony of crucial witnesses and participants in the events leading up to the murder of Renae Gaines Blackmon. Such testimony would have vitiated Petitioner's culpability for the crime and resulted in a new trial.

(b) Counsel failed adequately to investigate and present evidence of Petitioner's deprived childhood, drug and alcohol addiction, psychological disorders neurological impairments, evidence of which was available yet unobtained by counsel. A competent investigator would have uncovered compelling mitigating evidence which would have supported counsel's claim that trial counsel performed ineffectively in this regard. To the extent motion for new trial counsel did develope mitigating evidence, counsel failed to present a complete and adequate picture of Petitioner's social and mental health history.

(c) Counsel failed adequately to litigate the issue of trial counsel's ineffective assistance during voir dire, which resulted in the seating of a biased jury which could not impartially sit in judgment of Petitioner.

17. Counsel failed to adequately to investigate and develope new evidence of petitioners actual innocence of the murder of Renae G. Blackmon.

18. Counsel failed adequately to investigate and litigate the issue of state misconduct, including but not limited to suppression of favorable, exculpatory evidence in misconduct during the trial itself.

19. Counsel failed adequately to litigate the issue of trial court error, including but not limited to: trial court error during voir dire resulting in the seating of a biased jury which could not impartially sit in judgment of Petitioner; the trial court's improper charges to the jury at guilt-innocence and penalty phases of trial

20. Motion for new trial counsel generally rendered ineffective assistance of counsel with regard to all claims raised on motion for new trial, and by failing to raise several claimes for which the factual basis was readily available to counsel.

21. Had counsel performed competently at motion for new trial, there is a reasonable probability that the outcome of the proceedings would have been different. Petitioner's convictions and sentence of death and 20 years must be vacated.

Claim III

> Misconduct by the State deprived Petitioner of his Constitutional Right to due process and a fair trial in violation of Art. I, § 1, ¶ 1, 2, 11, 12, 14, & 17 of the Constitution of the State of Georgia and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

22. All other allegations in the Petition are incorporated into this claim by reference.

23. The State surppressed information favorable to the defense at both phases of the trial, and the materiality of the suppressed evidence undermines confidence and the outcome of the guilt-innocence and penalty phases of Petitioner's trial, and Petitioner's direct appeal, in violation of Brady v. Maryland, 373 U.S. 667 (1965), and Kyles v. Whitley, 115 S.Ct. 1555 (1995). The State has a continuing obligation to disclose favorable evidence, which extends through post conviction proceedings, and the State may be continuing to withhold favorable evidence from Petitioner Thomas v. Goldsmith, 979 F.2d. 746, 749-50 (9th Cir. 1992) The State took advantage of Petitioner's ignorance of the undisclosed favorable information by arguing to the fact-finder that which it knew or should have known to be false and/or misleading United States v. Sanfilippo, 564 F.2d. 176, 179 (5th Cir. 1977) The State allowed its witness to convey a false impression to the fact-finder, and there is a reasonable likelihood that the false impression could have affected the fact-finder Giglio v. United States, 405 U.S. 150 (1972). The State knowingly or negligently presented false testimony in pretrial and trial proceedings, and there is a reasonable likelihood that the false testimony could have affected the judgment of the trial court/fact-finder at both phases of the trial. United States v. Agurs, 427 U.S. 97, 103 (1976). Regardless of whether the State knew or should have known that it was presenting false evidence, the mere presentation of such evidence and the fact-finder's reliance upon such evidence at both phases of the trial deprived Petitioner of due process. Sanders v. Sullivan, 863 F.2d. 218 (2nd Cir 1988). This pervasive State misconduct violated Petitioner's rights under Article I, § 1,¶ 1, 2, 11, 12, 14, &17 of the Constitution of the State of Georgia, and the

Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.[1]

24. The jury bailiffs and/or Sheriff's deputies and/or other State agents who interacted with jurors engaged in proper communications with jurors which deprived Petitioner of a fair trial and reliable sentencing. See, e.g., Turner v. Louisiana, 379 U.S. 466 (1965); Turpin v. Todd, 268 Ga. 820, 493 S.E.2d. 900 (1997).[2]

Claim IV

Misconduct on the part of the Jurors Violated Petitioner's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Analogous Provisions of the Georgia Constitution.

25. All other allegations in this Petition are incorporated herein by this reference.

26. Misconduct on the part of the jury included, but was not limited to, improper consideration of matters extraneous to the trial, improper racial attitudes which

[1] To the extent that surppressed favorable evidence might have been available to Petitioner, but his counsel failed to obtain and effectively utilize the information, counsel was ineffective. Because the suppressed favorable evidence creates a reasonable probability of a different outcome at Petitioner's trial and sentencing proceedings, Petitioner was prejudiced by the deficient performance of counsel in this regard.

[2] To the extent the factual basis for this claim was available to defense counsel and/or motion for new trial counsel and counsel failed to raise and litigate this claim at trial or on appeal, Counsel rendered deficient performance and Petitioner was actually prejudiced thereby.

infected the deliberations of the jury, false or misleading responses of jurors on voir dire, improper biases of jurors which infected their deliberations, improper exposure to the prejudicial opinions of third parties, improper communications with third parties, improper communication with jury bailiffs, improper ex parte communications with the trial judge, and improper prejuding the guilt-innocence and penalty phases of Petitioner's trial.[3] See e.g., Spencer v. Georgia, 500 U.S. 960 (1991) (Kennedy, J., concurring in denial of cert.) (Racial epithets used in jury room); McClesky v. Kemp 481 U.S. 279 (1987) (racial animus of decision makers); Moore v. State 172 Ga. App. 844, 324 S.E.2d. 760 (1984) (jury consideration of extraneous legal research); Jones v. Kemp, 706 F.Supp. 1534 (N.D. Ga. 1989) (jury consideration of extraneous religious information); Turner v. Louisiana, 379 U.S. 466 (1965) (improper communications with bailiffs); Rushen v. Spain, 464 U.S. 114 (1983) (improper communications with trial judge); United States v. Scott, 854 F.2d. 697, 700 (5th Cir 1988 (failure to respond truthfully on voir dire); Radford v. State, 263 Ga. 47, 426 S.E.2d. 868 (1993) (improper

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[3] To the extent that Petitioner's counsel failed to protect Petitioner's rights in this regard, counsel's performance was unreasonably deficient, and Petitioner was prejudiced by the deficiencies of his counsel. To the extent that the trial court was implicated in or aware of any of the jury misconduct, and yet failed to advise petitioner or correct this misconduct the courts actions constitute an independent violation of Petitioner's rights to the extent that the state, through any of its entities, was implicated in or aware of any of the jury misconduct, the states action (or failure to act) also deprived Petitioner of his constitutional rights.

communications with bailiffs); Turpin v. Todd, 268 Ga. 820, 493 S.E.2d. 900 (1997)(same).[4]

Claim V

The death penalty in Georgia is imposed arbitrarily and capriciously and amounts to cruel and unusual punishment, violating Petitioner's rights under the Fifth, Sixth, Eighth, and Fourteenth to the United States Constitution and Analgous provisions of the Georgia Constitution.

27. All other allegations in this Petition are incorporated into this claim by this reference

28. Petitioners sentence of death was imposed arbitrarily and capriciously, and pursuant to a pattern and practice of discrimination in the administration and imposition of the death penalty in Georgia, thereby rendering Petitioner's sentence of death unlawful and in violation of Petitioner's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Georgia Constitution. The grounds for this claim include, but are not limited to, the following:

a. Georgia's statutory death penalty procedures, as applied, do not result in fair, nondiscriminatory imposition of the death sentence, and therefore violate the Eighth Amendment to the United States

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[4] To the extent that Petitioner's counsel failed to argue, develop, or present these issues, failed to adequately preserve objections thereto, or failed to effectively litigate these issues on motion for new trial and direct appeal, Petitioner's counsel rendered ineffective assistance, and Petitioner was prejudiced thereby.

Constitution and the corresponding provisions of the Georgia Constitution;

b. The death penalty is imposed arbitrarily, capriciously, and discriminatorily in the State of Georgia, and was so imposed in Petitioner's case;

c. Georgia cases similar to that of Petitioner with regard to both the nature and circumstances of the offense, prior record, culpability and life and character of the accused, have resulted in lesser punishments then death;

d. Georgia cases more aggravated than that of Petitioner with regard to both the nature and circumstances of the offense, prior record, culpability, and life and character of the accused, have resulted in lesser punishments than death.

e. There is no constitutionally-permissible way to distinguish the few cases in which the death penalty has been imposed, and Petitioners case in particular, from the many similar cases in which a lesser punishment has been imposed;

f. In both the United States and the State of Georgia, the death penalty has been and continues to be imposed discriminatorily against males, poor person's, and those charged with the homicide of victims who are black. Petitioner's sentence of death was imposed because he is a poor male charged with the homicide of a black person.

g. There exist in Georgia a pattern and practice of prosecuting authorities, courts, and juries to discriminate on basis of race, gender, and poverty in deciding whether to seek or impose the death penalty

in cases similar to that of Petitioner, thereby making the imposition of the sentence of death against Petitioner a violation of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Georgia Constitution.

29. Execution by electrocution is cruel and unusual punishment, and Petitioners sentence this violates his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the analogous provisions of the Georgia Constitution.[5]

Claim VI

> Petitioner is actually innocent of the Murder of Renae Gaines Blackmon and his execution would be a miscarriage of Justice in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and analgous provisions of the Georgia Constitution.

30. All other allegations in this Petition are incorporated herein by this reference.

31. "In all cases habeas corpus relief shall be granted to avoid a misscarriage of justice." O.C.G.A. 9-14-48(d). The Georgia Supreme Court has said that miscarriage of justice is

> by no means to be synonymous with procedural irregularity, or even with reversible error. To the contrary, it demands a much greater substance,

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[5] To the extent trial counsel failed to raise and/or adequately litigate this claim at trial or on appeal, counsel was ineffective, and Petitioner was prejudiced thereby.

> approaching perhaps the imprisonment of one who, not only is not guilty of the specific offense for which he is convicted, but further is not even culpable in the circumstances under inquiry.

Valenzuela v. Newsome, 253 Ga. 793, 796, 325 S.E.2d. 370 (1985).

32. Petitioner does not simply complain of any procedural irregularity. Instead Petitioner precisely fits into the narrow exception the Georgia Supreme Court has carved out for a miscarriage of justice. Petitioner will present substantial credible evidence which establishes his innocense of the crimes for which he was convicted and sentenced to death. While the Georgia courts have yet to define the standard of proof required to show a miscarriage of justice, Petitioner's evidence makes it more likely than not that no reasonable juror would have convicted him in light of the new evidence. See Schlup v. Delo, 513 U.S. 298, 324, 115 S.Ct 851, 865-66 (1995).

33. The Georgia habeas corpus statute provides that "[I]n all cases, habeas corpus shall be granted to avoid a miscarriage of justice". Id. The most respected scholar of Georgia habeas corpus practice and procedure, University of Georgia Law School Professor Donald E. Wilkes has concluded that "the statutory language regarding a miscarriage of justice (1) furnishes an independent basis for granting relief, and (2) also furnishes a procedure which, like a showing of cause and prejudice, permits a court to consider the merits of a procedurally defaulted claim." See, Donald E. Wilke, Jr., State Postconviction Remedies and Relief, App. A., p. 408; § 1-13, at 31-32 (1996).

34. Thus, actual innocence is an independent, cognizable claim which may be remedied by habeas corpus relief in order to prevent a miscarriage of justice, and an exception to the bar to habeas litigation of claims which would otherwise be barred by procedural default on res judicata O.C.G.A. § 9-14-48(d).

35. Most of Georgia case law concerning the miscarriage of justice focuses on the use of miscarriage as a mechanism to cure procedural default in instances of alleged constitutional error. See e.g., Gavin v. Vasquez, 261 Ga. 568, 407 S.E.2d. 756 (1991), Black v. Hardin 255 Ga. 239, 336 S.E.2d. 754 (1985). However, the language of the statute does not limit the use of the miscarriage of justice clause to only cure procedural default of Constitutional errors. See O.C.G.A. 9-14-48(d).

36. To the contrary, as Proffessor Wilkes indicated, the broad language of the statute, Georgia case law, and the law of other states support the notion that a miscarriage of justice can also be basis for an independent claim under habeas. See, Donald E. Wilkes, Jr., State Postconviction Remedies and Relief § 1-13 at 31-32, § 3-3 (1996). First, the statute uses broad and open language, and on its face does not limit the use of the miscarriage of justice clause in any way.

37. Second, the case law in Georgia also supports the notion that the miscarriage of justice clause is to be used to prevent the punishment of innocent persons, regardless of the existence of an attendant constitutional error. The "plain example" of a miscarriage of justice cited by the Georgia Supreme Court in Valenzuela -- "a case of mistaken identity" --

includes no requirement that a specific constitutional violation resulted in the erroneous determination of guilt. Valenzuela, 253 Ga. at 796, 325 S.E.2d at 374. As the court observed,

> We must not become so engrossed in the searching out of procedural defaults which sometimes intrude in convicting the guilty that we forget the core purpose of the Writ [of habeas corpus] - which is to free the innocent deprived of their liberty .... [as] necessary to avoid a miscarriage of justice.

Id.

38. While habeas is not normally the avenue in which guilt and innocence is which to be litigated, habeas must remain available to avoid a miscarriage of justice O.C.G.A. 9-14-48(d). If the miscarriage of justice can be prevented by the litigating guilt or innocence under habeas where there is substantial new evidence of actual innocence, the habeas is the correct avenue in which to prevent such a miscarriage of justice.

39. This interpretation of Georgia's habeas law is also consistent with the practice in other states. While historically it was understood that postconviction relief could not be granted on solely a free-standing claim of innocence, that notion has been eroding in the states since the 1920's. Neely v. State, 565 So.2d. 337 (4th D.C.A. Fla. 1990) (relief granted on grounds of newly discovered evidence), People v. Ross, 191 Ill. App. 3d. 1046, 548 N.E.2d. 257 (1989) (Newly discovered evidence is proper basis for relief Wadsworth v. State, 507 So.2d. 572 (Ala. Crim. App. 1987) Edgemon v. State, 292 Ark 465, 730 S.W.2d. 898 (1987). In re Kirschke, 53 Cal. App. 3d. 405, 125 Cal Rptr. 680

(1975). The trend across the country is to give relief under the writ of habeas corpus for a claim of actual innocence where there is new evidence. "Newly discovered evidence is a ground for postconviction habeas corpus in seven states-California, Connecticut, Georgia, Nevada, Texas, Utah, and Washington." Wilkes, State Postconviction Remedies and Relief § 1-13, at 31 (1996). See, e.g., Callier v. Warden, 111 Nev. 976, 901 P.2d. 619 (1995); Casida v. Deland, 866 P.2d. 599 (Utah App. 1993); Talton v. Warden, 33 Conn App. 171, 634 A.2d. 912 (1993); Stewart v. State, 830 P2d. 1159, 275 Cal. Rptr. 729 (1991); Valenzuela, 253 Ga. 793, 325 S.E.2d 370 (1985); In re Hall, 30 Cal.3d. 408, 637 P.2d. 690, 179 Cal. Rptr. 223 (1981); In re Wright, 78 Cal. App. 3d. 788, 144 Cal. Rptr. 223 (1981); In re Branch, 70 Cal.2d. 200, 449 P.2d 174, 74 Cal. Rptr. 238 (1969); Gallegos v. Turner, 17 Utah 2d 273, 409 P.2d. 386 (1965).

40. Many of these states do not even have the language of a claim for "miscarriage of justice" in their habeas statutes, as does Georgia, but judicially grant an independent habeas claim where new evidence supports actual innocence. E.g. Callier, 111 Nev. 976 (1995); Summerville v. Warden, 229 Conn. 397, 641 A.2d. 1356 (1994); In re Clark, 5 Cal. 4th 750, 885 P.2d 729, 21 Cal. Rptr. 2d. 509 (1993).

41. Even if this court were to require that a constitutional error must be alleged in order to pursue relief under the writ of habeas corpus, Petitioner has suffered a constitutional error. The punishment of an innocent person violates the cruel and unusual punishment clause of the Georgia Constitution Cf. Ex parte Elizondo, 947 S.W.2d. 202 (Tex. Crim. App. 1996)

If an innocent person is punished for a crime that person's due process rights to liberty and life have necessarily been violated. Id.

42. Society recoils at state execution of an innocent person. Such a barbaric act is "at odds with contemporary standards of fairness and decency," Spaziano 468 U.S. at 465, and would be "bound to offend even hardened sensibilities." Rockin, 342 U.S. at 172. As Judge Learned Hand recognized, our justice system in fact is "haunted by the ghost of innocent man" executed. Charles E. Silberman, Criminal Violence, Criminal Justice 262 (1978); see also Pulley v. Harris, 465 U.S. 37, 68 (1984) ("The execution of someone who is completely innocent ...[is] the ultimate horror case.") (Brennan, J., dissenting)(quoting John Kaplan, The Problem of Capital Punishment, 1983 U. Ill. L. Rev. 555, 576) (internal quotations omitted. The infliction of a severe punishment by the state cannot comport with human dignity when it is nothing more than the pointless infliction of suffering." Furman, 408 U.S. at 279 (Brennan, J., concurring).

43. The "natural abhorrence civilized societies feel at killing" (Ford, 447 U.S. at 409) an innocent person requires that the law remove that possibility as much as is humanly possible. Society's abhorrence at the idea of executing an innocent person finds expression in the United States Supreme Court's Eighth Amendment and Fourteenth Amendment jurisprudence. First, as a matter of substantive Fourteenth Amendment law, "no person can be punished criminally save upon proof of some specific criminal conduct," Schad v. Arizona, 111 S.Ct. 2491, 2497 (1991), beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307 (1979). A vast

array of due process protections helps assure that no innocent person is convicted of a crime.[6]

It is a common (and tragic) knowledge that mistakes are made in criminal trials. "[O]ur system of criminal justice does not work with the efficiency of a machine -- errors are made and innocent as well as guilty people are sometimes punished. The sad truth is that a cog in the machine often slips: memories fail; mistaken identifications are made; those who yield the power of life and death itself -- the police office, the witness, the prosecutor and jurors, and even the judge -- become overzealous in their concern that criminal be brought to justice." Foreward, J. Frank and B. Frank, Not Guilty 11-12 (1957).

Arriving at the truth is a fundamental goal of our legal system, United States v. Havens 446, U.S. 620, 626 (1980) (citing Oregon v. Hass, 420 U.S. 714, 722 (1975) "[T]he twofold aim (of criminal law) is that the guilt shall not escape or innocence suffer." United States v. Nixon, 418 U.S. 683, 709 (1974) (quoting Berger v. United States, 295 U.S. 78, 88 (1934). When

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[6] See, e.g., Coy v. Iowa, 487 U.S. 1012 (1988) (defendant has the right to confront witnesses against him); Taylor v. Illinois, 484 U.S. 400 (1988) (defendant has a right to present witnesses in his own defense); Strickland v. Washington, 466 U.S. 668 (1984) (defendant has a right to effective assistance of counsel); In re Winship, 397 U.S. 538 (1970) (state must prove defendants guilt beyond a reasonable doubt); United States v. Wade, 388 U.S. 218 (1967) (Defendant has a right to counsel at postconviction lineup); Brady v. Maryland, 373 U.S. 83 (1963) (state has affirmative duty to disclose exculpatory evidence); In re Murchison, 349 U.S. 133 (1955) (defendant is entitled to a fair trial before impartial tribunal).

ever the state discovers a mistake has been made the laws must allow corrective action.

44. Second, as a matter of substantive Eighth Amendment law "a person who has not in fact killed, attempted to kill, or intended that a killing take place or that lethal force be used may not be sentenced to death," Cabana v. Bullock, 474 U.S. 376, 386 (1986), and if such a sentence is imposed the "Eighth Amendment violation can be adequately remedied by any court that has the power to find the facts and vacate the sentence," id. at 386, and prevent execution…" Id. at 390; cf. Tison v. Arizona, 481 U.S. 137 (1987)[7]

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[7] The death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by perspective offenders." Gregg, 428 U.S. at 183 (opinion of Stewart, Powell, & Stevens, JJ.). Executing innocent persons would not deter crime, and because retribution has as its benchmark "that punishment should be directly related to the personal culpability of the criminal defendant," California v. Brown, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring obviously there is no retribution in executing an innocent person. Such an execution could serve no other function than the gratuitous infliction of suffering.

A punishment violates the Eighth Amendment if it is excessive. Harmelin v. Michigan, 111 S.Ct. 2680 (1991). Clearly, the execution of an innocent person is excessive under any understanding of the term.

The most basic equitable principle is that courts must prevent a fundamental miscarriage of justice. Cf. McCluskey v. Zant, 111 S.Ct. 1454, 1471 (1991). The execution of an innocent person is the paradigm of a fundamental miscarriage of justice. Petitioner's convictions and sentence of death must be vacated.

III Prayer For Relief

Wherefore, Petitioner respect fully that this Court:

1. Issue a writ of habeas corpus to have Petitioner brought before it to the end that he may be discharged from his unconstitutional confinement and restraint, and/or be relieved of his unconstitutional sentence of death;

2. Permit Petitioner, who is indigent, to proceed in forma pauperis, and grant Petitioner sufficient funds to secure the expert testimony necessary to prove the facts as alleged in this petition;

3. Appoint and compensate counsel to represent Petitioner in the proceedings;

4. Grant Petitioner the authority to obtain subpoenas in forma pauperis for witnesses and documents necessary to prove the facts as alleged in this petition;

5. Prior to a hearing, provide Petitioner sufficient time and resources to investigate the case and amend his petition as investigation and covers evidence pertinent to these proceedings;

6. Conduct a hearing at which proof may be offered concerning the allegations of this petition.

7. Allow petitioner a period of one-hundred twenty (120) days, which period shall commence after the completion of the transcript of any hearing this Court shall determine to conduct, in which to brief the issues of law raised by this petition, and

8. Grant such other relief as may be appropriate.

The 7th day of November, 2000

Respectfully submitted,

/s/Leonard Maurice Drane

Leonard Maurice Drane
Petitioner Pro-Se
EF 268553
G1-8
P.O. Box 3877
Jackson, Ga. 30233

* * *

[Certificate of Service Omitted in the Printing of this Appendix]

APPENDIX M

IN THE SUPERIOR COURT OF ELBERT COUNTY STATE OF GEORGIA

CASE NO. 90-ER-1688-G/B

[Dated June 24, 2011]

STATE OF GEORGIA	)
	)
-v-	)
	)
LEONARD M. DRANE,	)
	)
Defendant	)
	)

TRANSCRIPT OF MOTION HEARING

Heard before the Honorable Thomas L. Hodges, Judge of the Superior Courts of the State of Georgia, Northern Judicial Circuit, at the Elbert County Courthouse in Elberton, Georgia, on June 24, 2011.

APPEARANCES:

For the State: ***Mr. David T. Lock, Esq.***
Mr. James Chafin, Esq.
Assistant District Attorney
Western Judicial Circuit

For the Defendant: ***Mr. Edward Tolley, Esq.***
Mr. Ron Houser, Esq.

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Hull, Georgia 30646
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* * *

[p.30]

MR. LOCK: No objection.

THE COURT: Thank you.

MR. TOLLEY: Thank you, Mr. Davison. Your Honor, we would call David Willis.

DAVID WILLIS

Called as a witness on behalf of the Defendant/Petitioner, having first been duly sworn, is examined and testifies as follows:

DIRECT EXAMINATION

BY MR. TOLLEY:

Q Would you state your name for the record, please.

A David Willis.

Q Mr. Willis, where do you currently reside?

A I'm at Walker State Prison.

Q How many years have you been there?

A Approximately, close to three years.

Q After you moved to Walker State Prison, did you have an opportunity to speak to a chaplain at Walker State Prison about your case?

A Yes sir.

[p.31]

Q In the conversation with that chaplain, did you reveal certain information to him or her?

A Yes, I did, sir.

Q Was that the first time you had ever revealed that information to anyone other than your -- knowing it yourself?

A No sir. The first time was my parole officer.

Q The parole officer?

A Yes.

Q And then you saw the chaplain?

A Yes sir.

Q Did you have an occasion to speak to Parole Officer Harris Childers in the prison, sir?

A Yes sir.

Q In that conversation, did you give him information about the crime for which you were convicted?

A Yes, I did.

Q I know this is difficult for you, but I'm just going to ask you straight out. Did you tell him whether or not you killed Ms. Blackmon?

A Yes, I do, sir.

Q Did you kill Ms. Blackmon?

A Yes sir.

Q Did you cut her throat?

A Yes sir.

[p.32]

Q Did you shoot her?

A Yes sir.

Q Had you ever confided in anyone before your interview on July 22, 2010, with Officer Childers? Had you ever confided that in anyone, sir?

A No sir, no one.

MR. TOLLEY: That's all I have. Thank you.

CROSS-EXAMINATION

BY MR. LOCK:

Q Mr. Willis, my name is David Lock. I'm an Assistant District Attorney from Athens, but I'm a special prosecutor in this case. You were convicted of the murder and rape of Ms. Blackmon; is that correct, or murder of Ms. Blackmon?

A The murder, yes sir.

Q You're serving a life sentence?

A Yes sir.

Q During the crime, the Defendant Leonard Drane was with you; is that correct?

A Yes sir.

Q And he certainly participated in helping you cover up the crime; is that correct?

A Yes sir.

[p.33]

Q He stayed -- he lived with you until y'all were arrested at approximately the same location a few weeks later; is that correct?

A I wouldn't go as far as saying lived with me. I would say he was -- he was staying at the house because he had a problems with his wife at the time and I was just letting him stay there until they got things reconciled.

Q Would you please explain to the Court how you came to meet Ms. Blackmon?

A We had met her at a liquor store.

Q What occurred at the liquor store?

A Well, she had -- she had approached me and I'm not sure she had talked to Lennie or not because he had went inside the liquor store, but she was, you know, asking for some drugs.

Q Where were you when this occurred?

A I was in my vehicle in the parking lot.

Q Was that a truck?

A Yes sir.

Q What kind of truck was it?

A It was an ‘86 Nissan.

Q At this time where was Mr. Drane?

A He was -- at that moment he was either in the liquor store or coming back out.

Q He was not in the truck?

[p.34]

A When she first approached, I don’t believe so, sir.

Q Where was he when she got in the truck?

A He was at the truck. He came back out.

Q So it’s your testimony that Mr. Drane was not in the truck when you talked to Ms. Blackmon?

A When I talked to her?

Q Yes.

A Yes sir.

Q He was in the truck?

A He was not in the truck.

Q Okay, okay. Had you already made an agreement with Ms. Blackmon to do something before Mr. Drane came back?

A I’m going to tell you the truth because I’m not sure, I probably did.

Q What was your agreement?

A Well, I just told her I had some drugs. She was wanting drugs, so I told her I had drugs.

Q Was that the truth?

A No sir, it was a lie because I didn't.

Q Why did you tell her that?

A To get her to go off with us.

Q What was your intention when you got her to go off with y'all?

A To have sex.

[p.35]

Q You said with us, so that was to go with you and Mr. Drane; is that correct?

A Well, he was with me at the time, so yes sir.

Q But it's your testimony that he was not present during this conversation?

A Not the first part, no sir.

Q When she got in the truck, where did she sit?

A She sat in the middle.

Q Did she ever sit in Mr. Drane's lap?

A Not as I recall.

Q Where did y'all go?

A We rode down the road. We went to the projects, what's called the projects and I believe -- I can't

remember if we came back or not, but I know we rode around a little bit and we rode down -- we went down -- I remember we eventually ended up going down Ruckersville Road.

Q You can't remember if you came to where?

A To where we picked her up at.

Q Why would you have come back there?

A Well, we were just riding around.

Q Okay, what was going on while y'all were riding around?

A We were talking and drinking liquor.

Q What were you talking about?

A I don't remember, sir, to tell you the truth.

[p.36]

It was just idle talk.

Q You said you went down to Rugford Road; is that --

A Ruckersville Road.

Q Ruckersville Road. What is on Ruckersville Road? What were going to?

A Well, we wasn't really going anywhere. Like I said, we were just riding around.

Q What happened when you got to Ruckersville Road?

A Well, we pulled over on another little side road. We pulled over and stopped.

Q What occurred then?

A Well, we continued to drink liquor, but I think the reason we stopped was to use the bathroom.

Q Who used the bathroom?

A I did for one. Probably Lennie, too, but I can't remember exactly.

Q What occurred, what else occurred?

A Well, we -- we talked about having sex. We had an argument about it because she was asking where the drugs were at because we promised her drugs.

Q Y'all had promised her drugs? You said we, that's you and Mr. Drane; correct?

A Well, I can't remember if he promised her or

[p.37]

not. I know I did, sir.

Q Well, you're saying a lot of we. Please be specific -- if you could be specific who you're talking about when you say we, okay?

A Okay.

Q You said we talked about having sex, who was that? Was it you and Mr. Drane and Ms. Blackmon?

A Yes sir.

Q So all three of you talked about having sex?

A [Nodded affirmatively].

Q And she asked about the liquor -- I'm sorry, about the drugs?

A Yes sir.

Q What -- how did you -- how did y'all respond to that?

MR. TOLLEY: Your Honor, I'm going to make the same objection that he made in that he's saying y'all. If he would use individual names, it would keep the record straight.

MR. LOCK: Okay, fair enough.

BY MR. LOCK: [Resuming]

Q How did you and Mr. Drane respond to Ms. Blackmon?

A We told her that -- I told her that we had some at the house.

[p.38]

Q Now, you started to say we told her.

A I started to because Lennie, he was with me so --

Q Isn't it true that y'all both said it or are you just trying to restrain it, to confine it to yourself now?

A No sir.

Q After you responded that you had some drugs at the house, what occurred or what was said?

A Well, we -- I had asked her what about having sex and she said she wanted drugs. I think Lennie had said it, but I'm going to leave the we out. I think Lennie had said that, well, you've been drinking liquor with us. I mean, is that not good enough, and, you know, she had really gotten mad about that and there was an argument about it.

Q Who argued?

A It was me and Lennie that argued about it at that point.

Q With her?

A Yes sir.

Q About having sex?

A Yes sir.

Q So, what occurred then?

A Well, she agreed to have sex.

Q What was the alternative? Did y'all give her any alternative to having sex?

[p.39]

A Of course. I mean, you're trying to insinuate that we didn't tell her she had to? Is that what you're trying to say, sir?

Q Yes.

A No, she didn't have to.

Q But y'all had argued with her; is that correct?

A Yes sir.

Q What occurred then?

A Well, she started pulling her clothes off.

Q Was that in the truck?

A Yes sir.

Q You and Mr. Drane were both in the front seat of the truck?

A Yes sir.

Q She started pulling her clothes off. What occurred?

A Well, she pulled her clothes off and Lennie got out of the truck and I started to have sex with her.

Q Why do you think Lennie got out of the truck? Do you know?

A To make room.

Q So y'all were getting ready to start the act when he got out of the truck?

A Yes sir.

[p.40]

Q I mean, you and Ms. Blackmon were getting ready to start the act when Mr. Drane got out of the truck?

A [Nodded affirmatively].

Q Was the plan for Mr. Drane to have sex with Ms. Blackmon after you did?

A You'll have to ask him that. I can't answer that question.

Q But did you not earlier say that you and Mr. Drane were both arguing with her about her having sex with y'all; is that correct?

A Yes sir.

Q So that appeared to be the discussion that she was to have sex with both you and Mr. Drane?

A I suppose so.

Q What occurred in the front seat of the truck?

A Well, I had sex with her.

Q How long did this occur or how many times did you penetrate her?

A I don't know. I mean, probably five minutes.

Q Only five minutes?

A Yes sir, or maybe less. I don't know.

Q Did she object at any time to this?

A No sir.

Q What occurred after the five minutes? What happened when y'all finished the act?

[p.41]

A Well, actually we didn't finish the act.

Q What do you mean you didn't finish the act?

A She seemed like she was upset, so I stopped and she --

Q How did she act? What led you to believe that she was upset? Can you describe that a little bit better?

A She was -- she just acted like she didn't -- she wasn't enjoying it.

Q Had you actually penetrated her at that time?

A Yes sir.

Q Had you ejaculated?

A No sir.

Q So, did you pullout and stop the act?

A Yes sir.

Q What occurred then?

A She walked away.

Q Did she put her clothes on?

A No sir.

Q Where did she walk to?

A She walked over with Lennie or to Lennie.

Q Where was Lennie standing?

A He was somewhere in the vicinity of the truck. I can't tell you exactly where he was at. I know he was in the vicinity.

Q Was he standing or sitting? I may have said

[p.42]

standing, but what was he doing?

A Well, he might have been standing. I doubt if he was sitting. I didn't see him right at the time, so I don't know.

Q Ms. Blackmon walked to Mr. Drane. What did you do -- what occurred then?

A I don't really know because I sat down in the truck, I believe.

Q How long did you stay in the truck?

A Probably five, maybe five or ten minutes. I don't know. Something like that.

Q You could not see them at that time? By them, I mean Ms. Blackmon and Mr. Drane.

A I wasn't looking. I mean, not directly so I don't know. I probably could have seen them if I had looked, but I wasn't looking.

Q After the five or ten minutes, what did you do?

A I can't -- I got up -- I believe I got up and walked around the truck, I believe. I can't exactly remember.

Q Well, when you walked around -- I'm sorry, you walked to where in the truck?

A I believe I walked around the truck.

Q To the best of your recollection, what occurred next or what did you see?

[p.43]

A Well, him and -- Lennie and her was -- I think they was -- see if I can remember, they were about -- a little ways from the truck down -- it was a little road that we were sitting on. It was probably about fifty yards or more so down the road.

Q What were they doing?

A It's like I didn't really -- I don't know what they were doing.

Q Well, were they standing next to each other? Were they talking -- were they sitting, were they laying on the road?

A I told you I don't know.

Q Well, what did you do then?

A I just stood around the truck.

Q How long did you stand around the truck?

A A few minutes.

Q You couldn't tell what they were doing?

A [Nodded negatively].

Q You have to speak up.

A No sir.

Q Well, what occurred next?

A Well, they both walked up. They both walked up to the truck.

Q Go ahead, what occurred?

A And I was talking to her and she walks back

[p.44]

away. She walks --

Q What did you say to her?

A I don't remember. I mean, I really don't. If I could remember, I would tell you, but she walks off and then Lennie comes up and he shows me a knife and he said, how would you like to get stuck, how would you have liked to have got stuck by this?

Q What kind of knife was it?

A It was a -- it looked like a -- it looked like a switchblade, but it wasn't. It was locked blade. It had a long, probably a five inch blade, four inch blade, something like that and it had a black handle.

Q Had you seen that knife before?

A No sir.

Q You had never seen that knife with Mr. Drane?

A No sir.

Q When he said that, what occurred?

A I went and got the gun that was in the truck.

Q Where was the gun?

A It was in the -- behind the seat in the truck.

Q What kind of gun was it?

A It was a sixteen gauge shotgun.

Q Was it sawed off?

A Yes sir.

Q Whose gun was it, yours or Mr. Drane?

[p.45]

A It was mine.

Q Did Mr. Drane -- Mr. Drane knew you had that gun; is that correct?

A Yes sir.

Q Did you always keep it in the truck?

A Not all the time.

Q Had it been in the floorboard of that truck earlier that night when y'all were at the place where Ms. Blackmon was picked up?

A I can't remember, sir. I don't know.

Q Well, you went and got the shotgun; is that correct?

A Yes sir.

Q What did you do then?

A I shot her.

Q If you would describe a little bit more. You went back to the truck?

A Yes sir.

Q Reached behind the seat and got the shotgun?

A Yes sir.

Q How did you proceed from that point?

A Well, she was standing right behind the truck, right beside -- well, right behind the truck and she never seen it coming. I just shot her.

Q How many times did you shoot her?

[p.46]

A One time.

Q Was that right up next to her?

A She was probably a couple of feet away, maybe more.

Q Where was Mr. Drane standing?

A I think he was standing -- I'm not even sure. He wasn't right there close by. I think he was standing up the road where he was at earlier.

Q They both did not come back to the truck, Mr. Drane and Ms. Blackmon?

A From the first time, I told you they had walked back.

Q Before you went into the truck, was Mr. Drane standing there because he showed you the knife?

A Yes sir.

Q So he was at the back of the truck when you went to get the gun?

A I just finished saying he wasn't there when I came back.

Q So he went all of fifty yards down the road; is that what you're saying?

A Well, he wasn't standing right there. I don't know if he went fifty yards. I don't know exactly where he was at, but I know he wasn't standing right there.

Q Did you tell him -- what did you tell him you

[p.47]

were going to do when he showed you the knife?

A I didn't say anything.

Q If he saw you coming out of truck with the gun, did anybody ever tell you not to do it?

A Not that I know of. I mean, evidently if they -- I don't think he was -- I don't think that if anybody was standing there, it happened so quick, that they could do anything because she didn't even see the gun. She didn't even know I had a gun. If anybody else was there, I doubt if, you know, they'd had a chance. It happened real fast.

Q After you shot her, what did you do?

A Well, at first I didn't do anything because it occurred to me -- I mean, I don't know how to explain it to you, but it just -- I had been drinking liquor and I guess I was in a foggy state at the time, but it just -- it sobered me up and really realized what I had done and it really shocked me and I didn't -- I was stunned and I didn't really know what to do. I knew I had really messed up real bad and I was just stunned for a minute. I probably -- I couldn't tell you exactly what I did, but I probably just stood there for a minute.

Q After that minute, what occurred?

A I walked up to Lennie. I walked up to him and I can't remember exactly what I said, but I said something like, you know, I shot her and he said something like, he

[p.48]

said, well, I knew -- I mean, it was evident that he knew what was happening and I had really panicked because I didn't know what to do.

Q What did you say Mr. Drane said?

A I don't know exactly what he said. That's what I said. I don't know exactly what I said, but I know that I had panicked. Well, I told him -- let me go back because I don't want you to say something. I went back and I told him, I said, I done shot her and I believe he had said he knew that. I mean it was evident anyway. That's my words, it was evidence, but he said that I knew that, but I said something to the effect, well, we've got to, you know, do something. That's what I said, we've got to do something, you know. I didn't know what to do. I thought about trying to hide the body, trying to cover it up and --

Q When you said, we've got to do something, what did Mr. Drane say?

A I don't believe he said anything. I believe he was as shocked as I was.

Q So, what did you -- go ahead, what was your thought process and what did you do after that point?

A My thought was well just to try to cover it up and hide what I'd done.

Q What did you do or say to Mr. Drane?

A I didn't say anything after that point.

[p.49]

Q What did you do?

A I went to -- I was planning on cutting her head and her hands off and try to hide the body because I had heard before that that's how somebody identifies people. It was crazy anyway. The whole thing was crazy, but that was my intention to just cut her head off and I started to and I stopped.

Q What do you -- what do you mean you started to?

A I started to cut her head off and I stopped.

Q Where did you get the knife? Whose knife was it?

A It was mine.

Q Where had the knife been?

A It was in my pocket.

Q What kind of knife was it?

A It was a Case locked blade.

Q A Case locked blade?

A Yes sir.

Q How long was the blade? How big?

A It was about two inches maybe.

Q Two inches?

A Maybe.

Q How did you try to cut her head off?

A Well, I took the knife and tried to cut it.

[p.50]

Q How many times did you try to cut it?

A Probably several.

Q What occurred then?

A I stopped.

Q Why did you stop?

A Because it made me sick.

Q Did you throw up or what?

A No sir, I didn't throw up. I just stopped.

Q What do you mean it made you sick? Did you have an upset stomach or just didn't want to do it? What do you mean?

A I don't know how I can explain it any more.

Q Were you physically sick or mentally sick?

A I just answered you. I said, I can't explain it any more.

Q Okay. So what did you do then?

A I asked Lennie to help me load her up in the truck.

Q Did he do that?

A Yes sir.

Q Did he object at any time?

A No sir.

Q Would you explain how you loaded her up in the truck.

A We picked her up and put her in the truck.

[p.51]

Q Why did you tell Mr. Drane you were doing that?

A I don't know if I did tell him.

Q After y'all put her in the truck, what did y'all do? I mean, by y'all, you and Mr. Drane.

A Well, we rode to an old place where I knew was an empty well and there was a lot of old growth around where an old well was and I couldn't find it.

Q I'm assuming you were planning on dumping the body in the old well?

A Yes sir.

Q Did you tell Mr. Drane that was what you were going to do?

A Probably so.

Q So when you couldn't find the old well, what did you do?

A We -- I drove to my house.

Q Where was your house located?

A It's in Rock Branch.

Q How far away was that?

A From where?

Q From where you were at that -- from where the incident happened? Where you shot Ms. Blackmon?

A Approximately I'd say five miles.

Q How long was it after you shot Ms. Blackmon

[p.52]

until you arrived at your house?

A I would say approximately ten minutes.

Q That includes the time you were looking for the old well?

A [Nodded affirmatively].

Q You're shaking -- you need to answer.

A Probably.

Q How long did you look for the old well?

A You know what, I didn't have a stop watch. I didn't time everything I did. I know you're trying to trap me up and make it look like I'm lying, but I'm telling the truth. I'm trying to tell you the truth to the best of my ability. You keep asking these questions and trying to pinpoint, trying to get me to say things that are factual and I can't pinpoint, sit there and say that and I'm trying to tell you the truth. I don't know. It

might have been ten minutes. It might have been more. It might have been less. I don't know.

Q Was it significant to you that you had killed the lady?

A Was it significant?

Q Yes.

A It's pretty obvious it was.

Q Well, it's hard for you to remember the details of it; is that correct?

A Yes sir, it was.

[p.53]

Q Where was the old well in relation to where you shot her and your house?

A It's probably three miles.

Q Was it on the way or what direction was it?

A On the way to where?

Q Your house.

A It was not far from my house.

Q Did y'all get out of the truck and look for the old well?

A I just told you I did.

Q How long did you look for it?

A I don't know. I'm not going to answer how long because I don't know. I didn't have a stop watch.

Q When you got to your house, what did you do?

A I looked for something to put on the body to weigh it down because I was going to throw it in the lake, throw the body in the lake.

Q In relation to that, what did you and Mr. Drane talk about?

A Well, we just really didn't talk about anything. I mean, except I believe I had said something about, we'll need to put some weights on it or something because I knew the lake, it was -- the bridge we took her to, I knew it was deep water and I thought about we'll throw her in the water at that point.

[p.54]

Q Did Mr. Drane have any suggestion about how to tie her body?

A I believe he helped me tie some weights to her with something.

Q What were the weights?

A Well, it was a -- I had an old -- it was an old brake drum, not brake drum -- well, that's what it was, a brake drum, I believe. I believe that was the only thing used.

Q Who got the rope?

A I can't remember.

Q Did Mr. Drane ever object to helping you tie the body?

A No sir.

Q Was it his suggestion or your suggestion that you take her to the lake?

A It was mine because I knew where -- like I'm saying, I knew the water was deep in that one area so I thought that that may be the place to take it to.

Q Did he agree to you that that was a good place to take her?

A I don't think so. I don't think he said anything.

Q But he physically helped you; is that correct?

A Yes sir.

[p.55]

Q After you tied the body, did you take her to the bridge or where did you go on the lake? I'm sorry.

A There's a place that crosses the lake and goes into South Carolina. It goes into the road that goes to Iva.

Q To where?

A The road that goes to Iva.

Q Is that a place, is that a town in South Carolina?

A Yes sir.

Q Okay.

A That was where we throwed her over.

Q Were y'all on the bridge when you threw her over?

A Yes sir.

Q Both you and Mr. Drane threw her body into the lake?

A Yes sir.

Q What did y'all do then?

A We went to -- we left and went to South Carolina.

Q Where did y'all go?

A Well, the first place we went is the car wash.

Q Was that a car wash that was open?

A Yes sir.

Q Was there an attendant there?

[p.56]

A No sir.

Q What did y'all do?

A We washed the truck.

Q When you say, we washed the truck, what did Mr. Drane do?

A I believe he helped me wash the truck.

Q You believe he helped you? I'm sorry?

A Yes sir.

Q After y'all washed the truck, what did y'all do?

A Went to a bar up the road.

Q What happened to the knife and gun?

A Got rid of the gun. Threw it in the lake. No, I take that back.

Q You threw the gun in the lake?

A I'm sorry, no sir, we didn't because I had hid the gun. I had the gun away from the house. The reason that I said I went to the lake was because we threw some shells in the lake.

Q Was Mr. Drane with you when the gun was hidden?

A Yes sir.

Q Was that before or after you threw the body over into the lake?

A That was after -- actually that was days

[p.57]

after.

Q Days after?

A Yes sir.

Q Mr. Drane was still with you days after?

A Yes sir.

Q He helped you hide the gun?

A He was with me. I hid the gun. He was with me when I hid it.

Q Was it close to your residence?

A It was about a quarter of a mile away from it.

Q Did you have the clothes that Ms. Blackmon was wearing and that you and Mr. Drane were wearing?

A That next day, the next day we had throwed the clothes in the fireplace and burned them.

Q When you say the clothes, what clothes?

A My clothes, Lennie clothes, I believe. Lennie's clothes, my clothes and I'm not even sure if her clothes were in there or not.

Q But these clothes were thrown in the fireplace at your house?

A Yes sir.

Q Who burned them?

A I did.

Q What did Mr. Drane do?

A He really didn't do anything.

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Q Did he give you his clothes?

A I didn't just -- yes sir, he gave me his clothes before we burned them.

Q That was for the purpose of burning the clothes?

A Yes sir.

Q It was a few weeks until y'all were arrested; is that correct?

A Yes sir.

Q Y'all were in the same -- you weren't arrested at the exact same hour, I don't think, but y'all were at the same general area at a bar when y'all were both arrested in the parking lot; is that correct?

A Yes sir.

Q Y'all had stayed together during the intervening weeks; is that correct?

A He was living -- he stayed there at my house during that time, yes sir.

Q Mr. Willis, you gave a statement to your Parole Officer, Harris Childers, in the summer of 2010; is that correct?

A Yes sir.

Q You're aware that if you help give information to the Parole Board in an attempt to exculp another inmate, that that would help your case; are you not?

[p.59]

A Repeat that question, sir.

Q Let me try it a little less complicated. Are you aware that if you give helpful information to the Parole Board, it could help your case for parole; is that correct?

A No sir.

Q You don't think it would help you?

A No sir.

Q You've never heard of anybody giving good information to the Parole Board that if they try to help

another inmate, that that would lead to a better situation for them?

A I've heard of people -- I've heard of people that would do something like that and actually to tell you the truth, there was a guy that testified against me in my case, that's about what he did, but he gave them information that they wanted and I don't believe I gave information that anybody wanted to the Parole Board. I don't believe he was wanting the information that I gave to him. I believe when I gave him the information, he really didn't want to hear what I told him and I really thought that when I told him that, it would hurt my chances of getting out because the way I looked at it and the way the case was handled and everything, that they looked at Drane and they put him on death row and I was the one that looked like that I didn't have any part in the crime and like Drane did. If I was wanting to get out, I

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would have told them, I would have said, well, Drane did the killing and I didn't know what to do. I just went along with it. I would have told him that and they might would have let me out. They might would have not, but I sure wouldn't have told them that I did it.

Q Did you ever think you would get paroled while Leonard Drane was on death row?

A There's a possibility, yes sir.

Q Did the Parole Board not deny your parole in 2010?

A In 2010, yes sir, they did deny it. That's probably why they denied it because of what I had told them.

Q Since that time, did you not ask an assistant warden at Walker State Prison if you could have your parole reviewed again?

A Yes sir, I did.

Q That was Jennie Marie Arcasper [phonetic]?

A Yes sir.

Q Did you also speak to the warden at Walker State Prison?

A Yes sir, I did.

Q Was that around March of this year, 2011?

A Yes sir.

Q What was the reason you asked them if they would review your case? If they would help you get your case

[p.61]

reviewed?

A Because what I had told the Parole Officer, I knew that if I ever had any chance at all of making parole, that I would have to have someone helping me and I would have to have somebody that would look at me and see what I'm doing and suppose is letting someone out that -- if they have a choice between letting someone out that doesn't want to change or remain the same or to get worse when they're in prison, if they have choice to at least look at me.

Q But this was after you had given the information in an attempt to help Mr. Drane; is that correct?

A Yes sir, it was after.

Q Isn't it true that you killed Ms. Blackmon because she was black?

A Absolutely not, sir.

Q Did race have anything to do with it?

A Absolutely not.

Q Have you ever told anybody that you wanted to kill a black person?

A No sir.

Q So, you're denying that this crime was racially motivated in any way?

A Yes sir.

Q Mr. Willis, you know a Marcus Guthrie; is that correct?

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A Unfortunately, I do, sir.

Q You were in jail with him at some point; is that correct?

A Yes sir.

Q Do you recall a conversation with him about this crime?

A No sir, I don't. He was the one I was talking about that would probably tell someone something and get out of prison.

Q Do you recall telling Mr. Guthrie that you had shot the lady?

A No sir, I never told him anything.

Q Did you also recall telling him that you cut her throat?

A No sir. Just like I said before, he was lying when he said that and he was lying when he got on the stand and he --

Q Do you recall that Mr. Guthrie testified that you, Willis said that you cut her throat six or eight times because she kept gagging?

A Yes sir, just like I told you. Guthrie was lying the whole time he was on the stand everything. he said except maybe his name, that he wasn't lying about.

Q But you do recall him testifying to that in your trial; is that correct?

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A Yes sir, that's what he testified to.

Q Was Ms. Blackmon gagging?

A No sir.

Q She was not gurgling or making any kind of -- did she appear to be -- was she gurgling?

A No sir, she wasn't.

Q Did she appear to be breathing?

A No sir.

Q So that didn't have anything to do with you cutting her throat?

A No sir.

Q Again, what was Mr. Drane saying during the time that you shot Ms. Blackmon?

A What was he doing or saying? What did you say?

Q What was he saying and doing, let me put it that way?

A When I answered this earlier, when I had shot her, he was -- I don't know what he was doing. He was standing there. He wasn't standing there, he was standing not far away, but I mean I just answered that a while ago.

Q Right before you shot her, Mr. Drane had showed you a knife and alluded and made the claim, is it safe to say he had made the claim the victim had had a knife and was going to stab you?

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A He didn't say that, sir. He said -- I alluded to the fact that she might -- I took it that that's what -- I mistakenly took him as that was what he was insinuating, but that's not what he said. He had asked me -- I do remember exactly what he said. He said, how would you like to have been stuck with this?

Q Did you ever find out from him where that knife came from?

A I believe I had asked him.

Q What did he say?

A I think he said her pocketbook, he got it out of her pocketbook.

Q That would be Ms. Blackmon's pocketbook?

A Yes sir.

Q When did he tell you that?

A I can't remember exactly what time it was, sir.

Q Was it before you stabbed her or shot her?

A No sir.

Q When was it?

A It was later.

Q How much later? Was it days later or hours later?

A I can't remember. It may have been -- it may have been hours later or it may have been the next day or day

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after. I don't know. I just know it was some time afterwards.

Q So if the incident actually occurred that Mr. Drane had showed you a knife, your testimony is that you had a conversation with him about that incident, either hours or days later; is that correct?

A I'm not clear on what you're asking me.

Q Let me rephrase it. Your testimony is that you had a conversation with Mr. Drane about the incident involving the knife either hours or several days later?

A Yes sir.

Q Mr. Drane told you that he had got it -- that he got it out of Ms. Blackmon's purse?

A I believe so.

Q Do you recall signing an affidavit on June 10th of this year?

A Yes sir, I signed an affidavit.

Q Who did you sign that in front of?

A That gentleman, Mr. Houser.

Q Did you tell what to put in the affidavit?

A No sir.

Q Did he just show up with the affidavit?

A Yes sir.

Q Did you make any corrections to it?

A No sir.

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Q You just signed it; is that correct?

A Well, I had signed it, but there was one -- one particular area that I might have been misunderstood on it and I just said -- not that affidavit, but it was another summary the parole had done on me and I said there was something in there because they had wrote

the affidavit off of it what I had said to the Parole Officer, in his report what I had said to him. They had reproduced the affidavit from that and I told them the only discrepancy that may be conceived on it was one area in there and I had discussed it with them and they asked me, well, did I want to change it and I said, well, no sir, I don't think it will make any difference anyway because it was just the way it might be understood on it and that's the only thing.

Q Okay, but you signed the affidavit which apparently says that your statement to the Parole Board was correct, but you're saying that something on that statement to the Parole Board was incorrect?

A I'm not saying it's incorrect. I'm saying it might be misunderstood.

Q You agree that this is an important proceedings, don't you? You agree that this is an important proceeding where we need to know the truth, don't you?

A Yes sir.

Q Can you tell what that misunderstanding might

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be in the statement you gave to the Parole Board Officer?

A I'd have to have the report to show you.

MR. LOCK: I'm showing him your file.

MR. TOLLEY: Are you showing him the affidavit or the Parole Board report?

MR. LOCK: They are both attached, but I was going to show him the Parole Board report. I have a copy of your filing.

BY MR. LOCK: [Resuming]

Q You've seen this document; is that correct, the Parole Board report?

A Yes sir.

MR. TOLLEY: Your Honor, for the clarity of the record, I've got an extra copy. Do you want to put an exhibit sticker on it?

MR. LOCK: That will be fine, that will be fine.

MR. TOLLEY: Do you want to do it as a joint exhibit one?

MR. LOCK: Well, it's actually -- that will be fine if you want to. It can be my exhibit.

MR. TOLLEY: Okay.

MR. LOCK: This is also in the record as an attachment to the affidavit, but for the claritiness [sic], it doesn't have staples on it so I can hand it to him.

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BY MR. LOCK: [Resuming]

Q Let me show you State's Exhibit Number Two. Is that the memoranda from your Parole Board Officer; is that correct?

A Yes.

Q Now, when did you first see that memorandum, do you recall?

A When they had brought it up to me.

Q When they, do you mean Mr. Houser?

A Yes sir.

Q Was it just Mr. Houser and Mr. Tolley?

A It was that gentleman sitting in the back.

Q The attorney with the Federal Public Defender or the Public Defender's Office?

A To tell you the truth, I don't know.

Q Is he helping on your habeas case?

A I didn't know who he was. I didn't even know who Mr. Houser was at first. They told me he was representing Mr. Drane.

MR. LOCK: I'm sorry, he would -- I apologize for the record. I think I'm referring to an attorney that might be Mr. Drane's habeas attorney. I apologize.

MR. TOLLEY: Just for the record, this is Mr. King and he's assisting us with the Drane legal matters and those are the two, Mr. King and Mr. Houser, are the two

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that went to see Mr. Willis.

BY MR. LOCK: [Resuming]

Q Mr. Willis, this is the first time you had talked to the attorneys for Mr. Drane; is that correct?

A Yes sir.

Q That's the first time you saw the statement of your Parole Board or your Parole Officer?

A Yes sir.

Q What about that statement or that memorandum do you think might be misinterpreted?

A [Defendant reads statement to himself] It states -- it says after Willis has sex with the victim, co-defendant, Drane, showed a large switchblade knife to Willis and asked him how would you like to be stuck with this knife and I had -- the way that it read, the statement, I might have misread it because I thought that the statement in here said, how would you like -- the one of the Parole Officer, how would you like being cut with this knife, but this one says stuck with this knife, but that's not the discrepancy I was thinking about being misunderstood. I was talking about that Drane showed a large switchplade knife, which I didn't tell the Parole Officer because he didn't ask and I didn't explain it to him that when Lennie had showed me the knife, that I knew it wasn't his knife. I knew that it had to have been her knife because I had -- I mean he just then showed me a knife

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and I had assumed it was her knife, but he didn't say this is her knife. He just said, how would you like to have been stuck with this knife and that was the only thing that I really thought might be misunderstood in the statement.

Q If I understand what you're saying, you're saying that it could have been misunderstood in the statement that you were trying to say that it was Lennie's knife when you're actually saying it's the victim's knife.

Q Well, I just thought -- I never explained it to the Parole Officer when he wrote the statement. I just wanted to explain it further because it wouldn't be misunderstood.

Q Did he say, how would you like being stuck with this knife or how would you like being cut with this knife?

A I thought it said on the Parole report, cut, but that says stuck. Maybe I had misread it. I don't know.

Q Okay, but which was it? What do you recall Drane saying?

A Stuck.

Q Stuck. Okay. But you did not dictate the affidavit; is that correct? It was given to you and you signed it?

A The one that Mr. Houser had?

Q Yes.

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A Yes sir. I mean, I went over it. I read over it and I looked at it to see if there was anything that was not true or be misleading or anything and I looked at it and i read over it. They gave me plenty of time to look at it and go over it. I read over it and I didn't see anything on there that was incorrect.

Q I know it's hard to possibly get in to see you at the prison, but the first time you talked to any attorneys for Mr. Drane was in June of -- this month; is that correct?

A Yes sir.

Q Did you know anything about the Parole Board memorandum being used in this motion filed by Mr. Drane?

A No sir.

Q If I understand your testimony, Mr. Drane -- I'm sorry, Mr. Willis, Mr. Drane was not in the truck when Ms. Blackmon approached and talked to you?

A No sir.

Q Was the shotgun laying in the floorboard at that time?

A I don't remember.

Q And the discussion between you, Mr. Drane and Ms. Blackmon was about her having sex with both you and Mr. Drane; is that correct?

A I don't think it was -- it was never said.

Q But weren't both of you arguing with her about

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having sex?

A Yes sir.

Q Did it appear to you that Mr. Drane's intention was to have sex with Ms. Blackmon?

A Yes sir.

Q When did Mr. Drane find out that was the agreement, that y'all were trying to get -- that y'all were going to be trying to get drugs for Ms. Blackmon?

A Well, I'm not sure exactly when, but we had talked. I mean, she had asked -- you know, she was asking about where the drugs were at.

Q But you said Mr. Drane wasn't present then?

A At what time are you talking about? He was in the truck with us when we were going down the road. That's when I'm talking about now.

Q Okay. Your testimony is you do not recall where Mr. Drane was located when you shot Ms. Blackmon?

A I didn't say that earlier.

Q Where was he?

A He was in the area. He was not too far away. He wasn't standing, I mean, a couple of feet from me, but he was in the vicinity, close vicinity.

Q Was he looking at you?

A I don't know.

Q Was it a few feet away or fifty yards away?

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A I don't know. I mean, we have been through this before. I don't know exactly, I mean.

Q Did he ask -- and he never asked you why you shot her?

A I don't believe so.

Q When you got the knife, he never said, don't cut her?

A No sir.

Q Where was he standing then?

A He was standing about -- a few yards away.

Q Was he watching you?

A I assume he was.

MR. LOCK: No further questions at this time.

MR. TOLLEY: Your Honor, may this witness be excused?

THE COURT: Yes sir.

MR. TOLLEY: By being excused, Your Honor, what I mean is I think they're going to take him back, so I just want to let the Court know we're done with him.

THE COURT: Okay. Yes, I'm assuming they are going to return him to Walker State.

MR. TOLLEY: Our final witness, Your Honor, is Mr. Harris Childers.

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we're not here to argue about that. That's in front of Judge Wilkes, but I do submit to you that when you look at the case as a whole, the question you have to ask yourself is, what impact would the testimony of

David Willis have had on a jury? I submit to you that when David Willis was testifying, you could hear a pin drop in this courtroom and I think that it's evident to all of us with experience that it would have had a dramatic effect on the outcome of this case. So I think we meet the extraordinary circumstance test in Timberlake. In my view, this Court has three choices. It can do nothing and hope that Judge Wilkes takes care of things on the other issues; or, it can grant a new trial in which we just try the case again and put Willis on the stand; or, it can grant a new sentencing trial finding that while Willis' testimony mayor may not have impacted a jury in the guilt/innocence phase, nevertheless it may have impacted their decision to execute the Defendant. The District Attorney, I know, is going to argue that this evidence was available. We knew about it, but it makes no sense because that's why I put Rodger Davison on the stand and why I put Bob Lavender on the stand. We could not compel this testimony and even had we compelled it, it would have been refused or was refused and even if we did all of that, the trial judge made the evidence

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unavailable to us. I think his ruling was that it was hearsay and I think he was wrong, but that's what he ruled, but the point of the ruling is, that it was unavailable and so it becomes newly discovered as far as we're concerned because it is newly discovered admissible evidence. That's the focus that I want to keep the Court on. Now, I agree with Mr. Lock that that is the issue before you. The other issues that I've referenced, I only referenced such as

the jury charge, etc. in the context of the Court understanding the posture of this case and that's all I have at this time. I may have a few rebuttal remarks, Your Honor.

MR. LOCK: Thank you, Your Honor. The Manuel case dealt strictly with a motion for new trial and I would submit that under that case the Judge has a lot lighter discretion in a grant of a motion for new trial than in an extraordinary motion for new trial. I believe in that case, I didn't know he would cite it, but I have read it and I believe in that case the Court of Appeals did not set the standard correctly in that case, so the Georgia Supreme Court had to reverse it, but I think it was not recognized, the breadth of the discretion of the court in a motion for new trial. An extraordinary motion for new trial is a different matter. There are strict pleading requirements in the extraordinary motion for new trial

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