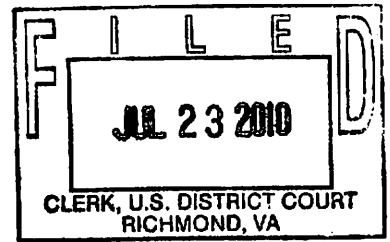


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)



JOSEPH J. DICK, JR.,

*Petitioner,*

v.

Case No. 3:10cv505  
(Related Case to *Danial Williams v.*  
*Helen Fahey, Chair of the Virginia Parole*  
*Board, Civ. No. 3:09-769; Derek Tice v.*  
*Gene Johnson, Civ. No: 3:08-69*)

HELEN FAHEY,  
Chair, Virginia Parole Board

*Respondent.*

PETITION FOR A WRIT OF HABEAS CORPUS  
UNDER 28 U.S.C. § 2254

COMES NOW Joseph J. Dick, Jr., by and through counsel, to petition this Court for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254 *et seq.*

**I. Jurisdiction and Venue**

1. The District Court has jurisdiction over this federal habeas petition filed by Mr. Dick pursuant to 28 U.S.C. § 2254 *et seq.*, because his liberty has been and continues to be deprived because he is under onerous parole restrictions that arise from convictions that were obtained in violation of the Constitution or laws of the United States, pursuant to a judgment of a State Court.

2. Venue lies in the United States District Court for the Eastern District of Virginia (Richmond Division), because Mr. Dick's liberty is being unlawfully restrained

by the Virginia Parole Board, whose headquarters is located within the Eastern District of Virginia.

## **II. Procedural History**

3. The name and location of the court that entered the judgment of conviction and sentence that Mr. Dick is challenging is the Circuit Court for the City of Norfolk, Norfolk, Virginia. The criminal case number is CR-98000604. He was represented by retained attorney Michael F. Fasanaro, Jr. during the proceedings before the Circuit Court of Norfolk, Virginia.

4. On March 4, 1999, Mr. Dick was indicted on charges of capital murder and rape.

5. On April 20, 1999, Mr. Dick pled guilty to first degree murder and rape.

6. The judgment of conviction and date of sentencing was September 8, 1999. The length of sentence was two life terms without the possibility of parole.

7. The offenses for which Mr. Dick was sentenced are first degree murder and rape.

8. Mr. Dick did not appeal from the judgment of conviction, and thereafter had no legal representation until 2004.

9. On the basis of the fact that he is factually innocent of these crimes, Mr. Dick, through pro bono counsel, petitioned the Governor of Virginia for an absolute pardon on November 10, 2005 pursuant to Article V, Section 12 of the Virginia Constitution and Va. Code §§ 53.1-229 - 231.

10. Before the Governor, Mr. Dick (and his co-defendants Danial Williams, Derek Tice, and, separately Eric Wilson) presented overwhelming evidence of Mr. Dick's (and the others') actual innocence. Governor Kaine concluded that Mr. Dick raised "substantial doubt" about the validity of his conviction, but had not "conclusively established his innocence." Thus, Governor Kaine did not overturn Mr. Dick's convictions.

11. Instead, on August 6, 2009, Governor Kaine issued a conditional pardon that keeps in place the convictions at issue in this petition.

12. Pursuant to the conditional pardon, Mr. Dick was released from incarceration and is now subject to the custody and control of the Virginia Parole Board or its agent until August 6, 2029. Supervision of Mr. Dick has been transferred to the State of Maryland, where he resides, under the Interstate Commission for Adult Offender Supervision. Mr. Dick was also required to register as a sex offender.

13. He is under supervised parole for at least ten years, and may be considered for unsupervised probation only after ten years from the date of release.

14. Furthermore, the conditional pardon may be revoked upon parole or probation violation for a period of twenty years from the date of release (i.e., until 2029.)

15. Mr. Dick has no further state corrective process available to him for claims #1 - #4 asserted herein. Claim #5 is grounded in events of very recent origin and Mr. Dick is in the process of timely and diligently exhausting that claim.

16. This is Mr. Dick's first petition under 28 U.S.C § 2254 *et seq.*

### III. Statement of the Case

17. This is a case of wrongful conviction. Joseph Dick was a young sailor honorably serving his country when, in January, 1998, he was coercively interrogated by Norfolk Police Department Detective Robert Glenn Ford and led to confess to a horrible crime that he did not commit. Both prior to that interrogation, and repeatedly afterwards, he told investigators, his parents, his immediate commanding officer, his lawyer, and others, that he was not guilty because he was on duty on his ship. Yet because he is easily influenced by stronger personalities, he went along with his lawyer's urgings that he plead guilty to avoid the death penalty, even after he gave several sharply inconsistent statements, and after it was clear he possessed no actual firsthand information about Ms. Moore-Bosko's killing and was simply trying to please the authorities. Joe even came to believe that he must have been involved in this crime. His lawyer continued to push Joe to plead guilty and continue to cooperate with the prosecutors even after news that another man, Omar Ballard, had confessed to the crime, and that his, and his DNA alone matched the multiple DNA samples recovered from the crime scene. This petition is filed to rectify Mr. Dick's wrongful conviction, and its ongoing collateral consequences; and finally clear his good name.

#### A. Significant Trial Court Proceedings

18. During the early morning hours of July 8, 1997, Michelle Moore-Bosko was raped and murdered in her Norfolk, VA apartment. On the basis of a neighbor's tip, police investigators focused on Danial Williams, Ms. Bosko's neighbor and Joe Dick's roommate and fellow sailor on the *USS Saipan*. Mr. Williams agreed to a police

interview, but this encounter turned into a grueling, overnight interrogation that lasted through the following morning. (Memorandum in Support of Petition for Absolute Pardon Before the Governor of Virginia and the Office of the Secretary of the Commonwealth, "Pardon Mem.," Ex. 6 at 5-6.) Williams repeatedly denied any involvement in the crime. Finally, after Detective Ford, an experienced and tenacious interrogator, took over the questioning and told Williams he had failed the polygraph, an exhausted and emotionally broken Williams told the police that he, alone, raped and murdered Ms. Bosko. (*Id.* at 52.) Because the conscientiously collected crime scene evidence strongly suggested a lone assailant had assaulted and killed Ms. Bosko, with Williams' confession, police considered the crime solved, even though key portions of Williams' account were wholly inconsistent with the crime scene. (*See id.*)

19. During the fall of 1997, investigators interviewed Joe on two occasions. He was not a suspect, and their questions focused upon Danial Williams. Joe told them that he knew nothing about the crime and that he was on duty on his ship on the night of the crime.

20. In December 1997, DNA analysis conclusively eliminated Williams as the source of the male DNA found in three different locations at the crime scene. This news stunned investigators.

21. Williams' exclusion should have caused investigators to reconsider Williams' guilt, and to look for a different suspect. It did not. Det. Ford, now leading the investigation, could not afford professionally to deal with having coerced another false confession. He had previously secured false confessions and lost rank as a result.

He decided that Williams must have had a co-defendant who left the crime scene DNA material. This decision led to the wrongful arrest of Joe Dick, and several other then current and former servicemen who had never before been in trouble with the law, and who had no involvement in this crime. (Pardon Mem., at 29.)

22. On January 12, 1998, Joe was brought to the Norfolk police station by Detective Ford and his partner Detective Brian Wray. Joe was a shy and socially awkward young man. He had no prior criminal history of any sort and no experience with law enforcement. He was no match for Det. Ford. (*Id.*)

23. Joe, early and often, told Ford and Wray that he had no involvement in the crime, and explained that he had been on duty aboard the *USS Saipan* on the night of the murder. Ford was not interested in Joe's denials and aggressively accused Joe of lying. After a break, he told Joe that his alibi had not checked out. In fact, the detectives had not attempted to confirm Joe's whereabouts. Joe became confused because he knew he was on the ship and had nothing to do with the crime. (Pardon Mem., at 33.)

24. Joe agreed to take a polygraph test, believing it would convince Ford of his innocence. However, after the testing, Ford misleadingly told Joe the polygraph test showed he was lying when he said he was not involved in the crime, and that Joe had failed so completely that he nearly broke the machine. (*Id.*)

25. Ford and Wray continued to pressure Joe to confess. Ford suggested that he could force Joe "under the hoses." He told Joe he would face the death penalty. Ford yelled at and intimidated Joe. When Joe continued to insist that he was not involved,

Ford accused him repeatedly of lying. He forced Joe to view photos of Michelle Bosko after she had been raped and stabbed. He demanded that Joe admit his involvement with Williams. As the hours went by, Joe became increasingly emotionally and intellectually incapable of resisting Ford's pressure. Worn down and becoming hopeless, Joe began to believe he would face death if he did not tell Ford what Ford was demanding to hear. After seven hours of intense interrogation, which Ford chose not to record, Joe falsely told Ford that he and Danial had raped and murdered Michelle Bosko together. (Pardon Mem., at 34; Joseph Dick Affidavit; January 12, 1998 Dick Interrogation Notes.)

26. But Joe's account, later taped and heavily coached by Ford, matched neither the known facts nor Williams' confession:

- Joe initially told Ford that he and Danial had committed the crime at 7 or 8 p.m. and later was prompted by Ford to say it could have been between 9 and 11 p.m. These assertions were impossible because Michelle Bosko and neighbor Tamika Taylor were together that evening until nearly 11:30 p.m.
- Joe told police that the rape and murder occurred in the living room; the known crime scene evidence confirmed it occurred in the bedroom.
- Told by Ford that Michelle Bosko's body was found in another room in the apartment Joe said they might have moved the body after she was killed. This assertion, too, was impossible, since there was no blood anywhere in the apartment except in the bedroom and the blood drops and blood pool on the bedroom floor were not smeared in any way.
- Joe told Ford that he had ejaculated in the victim's mouth and that she bit his penis but DNA tests showing no male DNA on oral swabs from Michelle Bosko proved these statements were false.
- Joe told police he wiped his penis on the blanket after ejaculating but Joe's DNA was not on the blanket.

- Joe told Ford that he and Danial had stabbed Michelle Bosko, who was fighting back while she was standing. But the crime scene evidence clearly showed that Ms. Bosko was stabbed while lying on her back on the floor and never moved from that position once she had been stabbed.
- Joe told Ford that after stabbing her, Danial had thrown a blanket over Ms. Bosko's legs, but this was also false. Billy Bosko placed the blanket over his wife's body shortly after he discovered her in the apartment.
- Joe told Ford that he had committed the crime with Danial, but both Danial and Joe had corroborated alibis.

(Pardon Mem., at 35; January 12, 1998 Statement of Joseph Dick.)

27. Solely on the basis of Joe's statement, Ford charged Joe Dick with capital rape and murder.

28. When Joe spoke to his parents for the first time days later, he immediately told his father "Dad, I didn't do it! I didn't do it. I didn't do it." (See Pardon Mem., at 36; Aff. of Joseph Dick Sr., at ¶24.) Shortly thereafter, Joe's parents, Joe Sr. and Patricia, visited Joe in the Norfolk City Jail. Joe explained to his parents that he had nothing to do with the crime and was on the ship at the time. As they were leaving the jail, a man handed Joe, Sr., a business card of attorney Michael Fasanaro. On January 18, 1998, the Dicks hired Fasanaro and agreed to pay him a flat fee of \$22,500, which they were able to pay by taking a second mortgage on their home. (Pardon Mem., at 87; J. Dick Sr. Aff. at ¶28; P. Dick Aff. at ¶25.)

29. When Fasanaro first visited Joe at the Norfolk City Jail, Joe told Fasanaro that he was innocent and he was aboard the ship at the time of the crime. But shortly after Fasanaro reviewed both Joe's and Danial's confessions, he came to the view that Joe would be found guilty and that the only way to avoid the death penalty was to



cooperate with the prosecution. Fasanaro made little effort either to investigate the facts or prepare a defense on Joe's behalf. Instead, he advised Joe that his only sensible course of action was to make a deal with the prosecution. (Pardon Mem., at 87-88; Joseph Dick Aff. at ¶32; Joseph Dick, Sr. Aff. at ¶31.)

30. On February 13, 1998, a preliminary hearing was held at which Investigator Wray testified. Despite numerous, obvious discrepancies between Joe's statement and the crime scene evidence, Fasanaro made no attempt to show that Joe Dick's statement was false and coerced.

31. On March 26, 1998, investigators learned that Joe's "confession" was not credible. DNA analysis eliminated Joe as a contributor to the DNA recovered at the crime scene and autopsy. (Pardon Mem., at 36; March 26, 1988 DFS Report.)

32. On April 27, 1998, Detectives Ford and Wray and Commonwealth Attorney Valerie Bowen met with Joe. Prior to the meeting Fasanaro told Joe that detectives knew Eric Wilson was involved in the crime, and that Joe should cooperate by describing him. Det. Ford came to suspect Eric Wilson might be involved only after he -- in plain violation of Joe's Sixth Amendment counsel rights -- arranged for a paid informant to be placed in Joe's cell to gather information from Joe about a possible third suspect.

33. Under pressure to be cooperative, Joe gave an account of the crime that implicated Wilson. This version completely contradicted his January statement. For example, Joe stated that the assault took place in the bedroom, rather than the living room as he previously stated. He told police he did not ejaculate, and claimed he and

Eric carried Ms. Bosko into the living room and, when a car in the parking lot spooked them, they took her back into the bedroom. Joe also said that both Eric Wilson and Danial Williams hit Ms. Bosko twice in the face. (Pardon Mem., at 39-40; Wray and Ford Notes, 1/22/98, 4/27/98.)

34. The next day, police polygraphed Joe again. Afterwards, he was told he failed, scoring a minus 19. After additional questioning, Joe told investigators he was the one that grabbed the knife from the kitchen and that Eric Wilson did not stab Ms. Bosko. Later that same day Joe was given a second polygraph test. This time, he supposedly scored a plus seven. (See Pardon Mem., at 39-40; Notes of Investigators Wray and Ford, 4/28/98.)

35. On May 1, 1998, Dr. Evan Nelson, a court-appointed licensed clinical psychologist, completed a competency-to-stand-trial report. Among other findings, Dr. Nelson stated that:

During our interview, Mr. Dick claimed to be completely innocent of the charges, despite the fact that he had made a full confession when he was arrested. He claimed that he had been onboard the ship at the time of the alleged offense, although he also reported that the ship did not have a log of him being there. When asked why he would confess to something that he believed he did not do, Mr. Dick went on to say that he felt intense pressure from the officers...In essence, **Mr. Dick was claiming False Confession Syndrome** without labeling as such.

(See Evan Nelson, Psychological Evaluation at 7; see also Pardon Mem., at 89.)

36. On June 16, 1998 Joe was again questioned again by Detectives Ford and Wray after the police learned DNA testing cleared Wilson. The Detectives insisted that still others must have been involved. Again, Joe changed his story and provided them

the name "George Clark." Joe stated that George Clark and Williams had planned the crime and that Williams stabbed Ms. Bosko first, followed by Eric, and then himself. (Pardon Mem., at 40-41; Notes of Investigators Wray and Ford, 6/16/98.)

37. The next day, Wray and Ford returned to the jail. Joe helped them compose a composite sketch of "George Clark." Detectives eventually showed Joe the Navy Yearbook for the *USS George Washington*. Joe identified Derek Tice as the person he had been calling "George." (Pardon Mem., at 40-41; J. Dick Aff., at 36; Investigator Notes of Wray and Ford, 6/16/98.)

38. On August 25, 1998, Joe testified for the Commonwealth at the preliminary hearing for Richard Pauley and Geoffrey Farris, two former sailors who Derek Tice had implicated but who had not confessed. Joe testified that he did not know them but had been told their names by prosecutor D. J. Hansen just prior to testifying. (Tr. of Preliminary Hearing of Pauley and Farris, 8/25/98, at 44-45.)

39. This testimony contradicted every other previous statement he had given as well as the crime scene evidence. But by this time, however, due to his malleable nature and relentless efforts by his attorney to cooperate fully with the prosecution, Joe had come to believe he had to have been involved in the crime and that he could avoid the death penalty only by cooperating with the prosecution. Joe's newest account was that seven men went over to Ms. Bosko's apartment door, where any one of them could have knocked on the door. When Ms. Bosko opened the door they forced their way in and carried her into the bedroom where the men raped her, in "no particular order." (See *id.* at 68.) Joe testified that everyone stabbed Ms. Bosko, perhaps except Eric Wilson.

40. Finally, the real killer, Omar Ballard, literally turned himself in. On February 22, 1999, Ford received a copy of a letter Ballard had written to an acquaintance in which he admitted to killing Ms. Bosko. On March 4, 1999, DNA results showing that Ballard's DNA was on the vaginal swabs, the stain taken from the blanket next to Michelle Bosko's body, and the fingernail clippings. (Pardon Mem., at 52; May 6, 1999 Virginia DFS Certificate Analysis.) When Ford confronted Ballard with this evidence, Ballard readily confessed. (Pardon Mem., at 52; Confession of Omar Abdul Ballard, March 4, 1999.) He also said he committed the crime by himself.

41. Despite the exclusion of Joe's DNA from the crime scene evidence, his now numerous inconsistent and non-sensical crime accounts, and the conclusive evidence that Omar Ballard committed the rape and murder, Fasanaro continued to urge Joe to cooperate and plead guilty. Following this advice, Joe pled guilty to first degree murder and rape on April 21, 1999 and agreed to testify against his co-defendants. (*Commonwealth v. Joseph Dick, Jr.*, CR-98 000604.) Greg McCormack, Eric Wilson's attorney, was shocked that any lawyer would go through with a guilty plea given Joe's numerous inconsistent statements and Ballard's solid DNA match. He attended the hearing and later confronted Fasanaro outside of the courtroom. The two lawyers argued heatedly over Fasanaro's advice to Joe. (Pardon Mem., at 88-89.)

42. In June 1999, Joe testified for the prosecution in the trial against Eric Wilson in order to satisfy his plea agreement. (Wilson Tr. at 261-367.)<sup>1</sup> As in previous instances, Joe's testimony was inconsistent with his previous statements and the crime scene evidence. The jury later acquitted Wilson of murder, convicted him of rape, and imposed a relatively light sentence of 8 1/2 years.

43. At his September 8, 1999 sentencing, Joe apologized to Ms. Bosko's family. Prosecutor Valerie Bowen noted that Joe's shifting accounts had complicated the case and asserted that Joe appeared to be telling them what he thought would please them. (Dick Sentencing Hearing Tr., 9/8/99.) The court sentenced Joe to two life terms without the possibility of parole. Joe took no appeal from this judgment.

B. Post-Conviction Proceedings

44. Joe went off to prison a thoroughly confused young man. He had never before been charged with a crime, and while he believed he was on duty on the *USS Saipan* at the time of the crime, Det. Ford and others had made him believe that he must have been involved in the crime.

45. Joe had no lawyer until 2004. After *pro bono* counsel came to represent him, and his co-defendants Danial Williams and Derek Tice, counsel conducted an exhaustive post-conviction investigation of the cases, and uncovered compelling evidence demonstrating that Dick, Williams, Wilson and Tice (as well as Geoffrey

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<sup>1</sup> References to Eric Wilson's June 16, 1999 to June 18, 1999 criminal trial are referred to as "Wilson Tr." followed by an appropriate page number. References to Derek Tice's February 8, 2000 to February 11, 2000 criminal trial and his January 27, 2003 to January 31, 2003 criminal trial are referred to as "Tice I Tr." And "Tice II Tr." respectively, followed by an appropriate date and page number. References to Derek Tice's state habeas hearings spanning September 11 to September 12, 2006 are referred to as "Tice Habeas Tr.".

Farris, Richard Pauley & John Danser) had nothing to do with Ms. Bosko's assault and murder. This evidence showed also that each was a law-abiding citizen with no record when they were arrested. As discussed below, the investigation revealed beyond doubt that the crimes against Ms. Moore were committed by one person, Omar Ballard, a serial rapist.

46. In the Summer of 1997, eighteen-year-old Michelle Moore-Bosko eloped with her high school sweetheart, William ("Billy") Bosko and moved to join him in Norfolk, Virginia. Billy had recently enlisted in the Navy and was assigned to the *USS Saipan* based in Norfolk. The couple moved into an apartment at 254 West Bay Avenue in an apartment complex then known as Bayshore Gardens. (Pardon Mem., at 10-12.)

47. Soon after Michelle Bosko moved to Norfolk she met Tamika Taylor, who lived with her children in the same apartment complex. Tamika and Michelle became fast friends and Taylor would often spend the night at Michelle's apartment because Michelle was afraid to stay home alone when her husband was out at sea. (*See id.*)

48. The young men who would be wrongly charged with Ms. Bosko's rape and murder were unlikely rapists and murderers.

i. Joseph Dick

49. Joe Dick was born on July 31, 1976 in Baltimore, Maryland. When Joe was three years old, he received a severe head injury and doctors believed he may have suffered damage to the frontal lobe of his brain. A shy and awkward child, Joe was often teased by his peers. He had significant developmental disabilities and struggled academically in school. His teachers described him as slow intellectually. Friends and

family saw Joe as a peaceful, obedient, compliant child and a young man who was both easily led and never aggressive towards others. (Pardon Mem., at 30-31.) He was a Boy Scout, an altar boy, and later a Navy sailor. (*Id.*)

50. Joe was raised in a family with a strong military tradition. His father, Joseph Dick, Sr., made a career in the Maryland Army National Guard. Immediately after graduating from a vocational high school, Joe elected to follow in his father's military service footsteps. He enlisted in the Navy in 1995 at the age of eighteen, and in early 1996, Joe was assigned to the *USS Saipan* based in Norfolk. (Pardon Mem., at 31.)

ii. Danial Williams

51. Danial Williams is from Ossowo, Michigan. Danial was raised by his parents to have a respect for authority and a commitment to service for others. As a kid, he had a paper route and served as a boy scout. He tried hard in school, but struggled academically. He has always been a peaceful, non-violent person, who had never been accused of any crime. Following his family's commitment to military service, Danial pre-enlisted in the Navy while he was a senior in high school and left for basic training in June 1991, right after graduation. Danial was assigned to the *USS Saipan* in Norfolk. (Pardon Mem., at 13.)

52. In January 1997, Danial returned from a six-month cruise on the *USS Saipan*. Danial and his then-girlfriend Nicole, rented a small, two bedroom apartment together in Bayshore Gardens, the same apartment complex which the Boskos would move into a few months later. (Pardon Mem., at 14.) Not long after they moved in, Danial and Nicole invited Joe Dick, one of Danial's friends from the *USS Saipan*, to share

their small apartment. (*Id.*) In June, 1997, Nicole learned that she had ovarian cancer. Realizing that their long-term plans were in jeopardy due to Nicole's diagnosis, Danial and Nicole decided to get married immediately. (*Id.*)

iii. Derek Tice

53. Derek Tice was born in San Diego, California, when his father was stationed there by the Navy. His family eventually settled in Clayton, North Carolina when Derek was fifteen. Derek was a boy scout and played in his high school band. After he graduated from high school, Derek volunteered for nearly two years as an Emergency Medical Technician in his hometown. Derek was known as a compassionate person with a deep respect for authority and had never been in trouble with the law. Following his father's footsteps, Derek served in the military, first in the United States Army and then in the Navy. He discharged and returned to civilian life shortly before his arrest. (Pardon Mem., at 41-42.)

iv. Eric Wilson

54. Eric Wilson was raised in Pleasantown, Texas. He was a religious young man who was very involved in his family's Baptist church. Eric was an average high school student who became an Eagle Scout in the Boy Scouts. He had no history of violence or any other misbehavior and had never been in trouble with the law. In 1995, Eric enlisted in the Navy right out of high school. (Pardon Mem., at 37.)

v. Omar Ballard & His Crime Spree

55. Unlike Dick, Williams, Tice and Wilson, Omar Ballard had a very different past. Ballard's mother was a prostitute and drug addict who abandoned him when he



was about two years old. Thereafter, Ballard was shuttled from foster home to foster home, until he ended up being raised by adoptive parents in a rough New Jersey neighborhood. When he grew older, Ballard possessed intense anger towards women. He had an explosive temper and regularly fought with peers. He abandoned school before graduating from high school. He spent much time on the streets. He drank, used and sold drugs and committed assaults and robberies. (Wilson Tr. at 230.)

56. In New Jersey, Ballard became close to Tamika Taylor, her brother Kamonte Stover, and their mother Delvi Stover, who lived in the same neighborhood. Later, when Ballard met Karen, who was Kamonte's girlfriend and eventually his wife, he developed a crush on her. When Tamika Taylor, Delvi Stover, Kamonte and Karen moved to Norfolk, Ballard followed soon afterward. Ballard had no fixed place to live in Norfolk. At first he stayed with Kamonte and Karen Stover and later he often stayed with Tamika Taylor, who lived with her two young children at Bayshore Gardens near Michelle Bosko and her husband. Through Ms. Taylor, Ballard met Ms. Bosko and her husband Billy. (Pardon Mem., at 10-12; March 29, 2004 letter from Omar Ballard to Tom Wells; Omar Ballard Presentence Investigation Report; June 23, 2005 Tamika Taylor Decl.)

57. On June 24, 1997, Ballard attacked a young white woman, Melissa Morse, with a baseball bat in a common area in the apartment complex. The assault was interrupted and Ballard fled to Michelle and Billy Bosko's apartment. They admitted him. Soon afterward, an angry crowd of Navy sailors and complex residents gathered outside the apartment, shouted racial epithets, and demanded that Ballard come

outside. Billy Bosko bravely stepped outside and defused the situation. He told the crowd they must have been mistaken because Ballard could not have committed any assault. The crowd eventually left. (Pardon Mem., at 11-12.)

58. Apartment management banned Ballard from the apartment complex. But he continued to sleep at Tamika Taylor's apartment at night. Ballard would also sometimes knock on Michelle Bosko's apartment door at odd hours looking for Tamika Taylor. Sometimes Michelle would let Ballard into her apartment; other times she would inform Ballard that Tamika was elsewhere. (*Id.*; Wilson Tr. at 249-50, 255, 258.)

59. In the early morning hours of July 8, 1997, Ballard stopped by Michelle Bosko's apartment. Billy Bosko was out at sea and Michelle was alone. She let him in, as she had done on other occasions. Sometime later, Ballard raped Michelle in the bedroom. He also stabbed her several times in the chest with a steak knife from the kitchen, and strangled her. Before leaving, Ballard wiped his penis with a nearby blanket and left it and the bloody knife in the bedroom. On his way out, Ballard stole \$35 from Ms. Bosko's purse. The police would later find the contents of Ms. Bosko's purse scattered on the dining room table. (Pardon Mem., at 10-11.)

60. On the afternoon of July 8, 1997, Billy Bosko returned to Norfolk from a short trip at sea. When Michelle did not show up at the pier to greet him, he took a cab and arrived home between 4:00 and 5:00 p.m. The front door to the apartment opened into a combination living and dining room. It was tidy and nothing was amiss. As Bosko walked down the narrow hallway to the bedroom, letters and papers were neatly

stacked on the hallway display shelf and protruded undisturbed. When Bosko entered the bedroom, he found his wife's lifeless body on the floor by the bed. (*Id.* at 11.)

61. Immediately, Billy Bosko raced across the hall and banged on Danial Williams' door. He shouted frantically that his wife had been murdered. Danial was at home with his wife, and mother, who was in town visiting along with Danial's father. Danial called 911, and followed Bosko into his apartment and to the bedroom. (Pardon Mem., at 15-16.)

vi. Police Focus on Danial Williams

62. An hour after arriving on the scene, Tamika Taylor told investigators that Williams had behaved oddly around Michelle Bosko. Investigators asked Williams to drive to the Norfolk police station for an interview. He did, and for hours thereafter, Williams repeatedly denied any involvement in the crime. But after being told he had failed a polygraph and after numerous hours of intense interrogation, he told the police that he, alone, raped and murdered Ms. Bosko. Williams' statement, however, was wholly inconsistent with the crime scene. (*Id.* at 52.)

vii. Ballard Continues His Crime Spree

63. Ten days later, on July 18, 1997, Ballard struck again. He attacked Virginia Owens, a fourteen-year-old white girl, about a mile away from the Bayshore Gardens Apartments. Ballard accosted Owens as she was walking near a McDonalds. He pulled Owens into a secluded area, raped her, and threatened to shoot her. During the assault, Ballard punched Owens, broke her nose, and caused injuries to her vagina that required surgery. Owens fought back, escaped after the rape, and found assistance. A week

later, Owens and her sister spotted Ballard near the scene of the assault and called police. Ballard was arrested and readily confessed. As he would later tell police with regard to the Bosko assault, he briefly claimed that he had consensual intercourse with Owens and then beat her afterward, but soon abandoned that story and admitted that he had actually raped her. (Pardon Mem., at 11.)

viii. DNA Results Eliminate Williams

64. During the five months following Williams' confession to the rape and murder of Ms. Bosko, investigators did not search for any other suspect because they considered this a single perpetrator crime and Williams was their man. But in late December 1997, DNA testing results eliminating Williams shocked investigators. Det. Ford did not reconsider whether he had the right person in custody. Instead, he and his team began investigating young men who knew Williams, under a new theory, supported by none of the crime scene evidence, that two or more offenders assaulted Ms. Bosko. (Pardon Mem., at 28-29.)

ix. Police Focus on Joseph Dick

65. Det. Ford quickly turned his attention to Joe Dick, Danial and Nicole Williams' roommate and a fellow sailor on the *USS Saipan* with Danial. Like Danial, Joe had no prior criminal history of any sort and no experience with law enforcement. (Pardon Mem., at 29.)

66. Joe was no match for Det. Ford. Throughout his school career, he struggled with learning and developmental disabilities, although they were not specifically diagnosed. Joe's parents feared that Joe's intellectual disabilities may have

been caused by a childhood head injury. Concerned about Joe's development, Joe's parents brought him for testing, but after an initial visit, no additional testing was pursued. Joe sought to please his parents, and learned to have absolute and unquestioning obedience to authority. (Pardon Mem., at 30.)

67. Before the interrogation began, Joe knew he had been on duty on the *USS Saipan* for the 24-hour period starting on the morning before Ms. Bosko was murdered until the morning after the crime. This required he remain on the ship for 24 hours and account for his presence several times throughout his duty shift. Moreover, in early July, 1997, Joe had been ordered to sleep every night on the ship (whether or not he was on duty) by his immediate supervisor, Petty Officer Michael Ziegler, because he had been late on several occasions. (Pardon Mem., at 32)(citing Joseph Dick Affidavit, Michael Ziegler Affidavit.)

68. Sailors on the *USS Saipan* were assigned to duty on a fixed, rotating basis once every four days, and detailed records of the duty assignment and records of the roll-calls, called "muster reports," were kept on the *Saipan* for several months before they were destroyed. (Pardon Mem., at 7, 32; Joe Dick Affidavit; Ziegler Affidavit; Ziegler testimony, Tice Habeas Tr. at 102-122; August 31, 2007 Declaration of Greg Booth.)

69. During the two fall, 1997 meetings with investigators, Joe told investigators that he was on duty on his ship that night. Later, Joe also told his immediate supervisor, Michael Ziegler, that he was not sure the police believed him. Ziegler asked Joe whether he had anything to do with the murder. Joe said no, and that

he was assigned to duty and was on the ship on the night of the crime. (*Id.* at 32.) But by December, 1997, the duty assignment records and muster ports were no longer available. Ziegler, a decorated and highly regarded senior chief, used his calendar to count back from that day (the day of their conversation) to the day and night of the crime. Knowing the fixed duty assignment rotation provided a reliable pattern, Ziegler confirmed that Joe was, in fact, assigned to duty that night. As Joe's immediate supervising officer, Ziegler would have been the first person to be contacted if Joe had not been at his duty station but never received any such report. Ziegler is certain that Joe Dick was on the *USS Saipan* on the night of July 7 and the early morning hours of July 8, 1997 and could not have participated in the crime in any way. (Pardon Mem., at 32; Joseph Dick Affidavit; Ziegler Affidavit; Ziegler Declaration; Ziegler Testimony; Tice Habeas Tr. at 102-122; Booth Declaration)

x. DNA Results Eliminate Joe Dick

70. On March 26, 1998, investigators received jarring news again; DNA analysis eliminated Joe as a contributor to the DNA found at the crime scene and from Michelle Bosko's autopsy. (Pardon Mem., at 36; March 26, 1988 DFS Report; Joseph Dick Affidavit.)

xi. Police Focus on Eric Wilson

71. Even though Det. Ford knew Joe had counsel, Ford paid cash to a known informant, Timothy Gurley, and saw to it that Gurley was placed in Joe's cell. Det. Ford also promised Gurley immunity from prosecution on unrelated arson charges in exchange for Gurley's obtaining from Joe a name of another potential suspect in the

Bosko crime. Thereafter, Gurley convinced Joe to write letters to Danial's then deceased wife, Nicole. Gurley knew that Nicole was dead, but Joe did not. Gurley also persuaded Joe to write letters to Gurley's brother in which Joe expressed anger at someone named "Eric" who he wanted Gurley's brother to beat up. Joe accepted Gurley's offer to mail the letters for him, but instead Gurley gave the letters directly to Ford. (Pardon Mem., at 36-37.)

72. Based on information from Gurley, Det. Ford tracked down Navy sailor Eric Wilson. Like Joe and Danial, Eric had no prior criminal record nor a history of violence or any other misbehavior. (Pardon Mem., at 37; Wilson Tr. at 515-17.)

73. On April 8, 1998, after he had served watch on board his ship, which had begun at 3:00 am that morning, Eric was brought to the Norfolk Police station at Det. Ford's request. Eric waived his *Miranda* rights and agreed to answer Ford's questions. Eric told Ford that he had never met Michelle Bosko nor had he ever been in her apartment. Ford asked Eric where he had been nine months earlier on the night Michelle Bosko was murdered. Eric told Ford that he probably was on board his ship out at sea. Ford asked Eric whether he would submit to a polygraph examination. Wilson immediately agreed. After the test, Ford told Eric that he failed and that he was lying about being out to sea at the time of the murder. Ford yelled at Eric, telling him they knew that he participated in the rape but did not think he was involved in the murder, using a common police tactic to wear down a suspect by first inducing a confession to a lesser crime. (Pardon Mem., at 37-38..)

74. Eric repeatedly denied that he was in any way involved in the crime.

Ford became very angry and aggressive. He forced Eric to sit in a chair in the corner of the room, pinned his wrists to the chair, and yelled loudly at him. Ford also repeatedly poked Eric in the chest, forehead, and eye. Ford told Eric that the police had proof he had committed the crime. Ford showed Eric photographs of Michelle Bosko, both before she was murdered and a graphic photo of her dead body. Ford's partner suggested to Eric that he might have blacked out and not known that he committed the crime and told Eric to close his eyes and imagine the assault. (*Id.* at 37-38; Wilson Tr. at 519-67.)

75. Finally, an exhausted and intimidated Wilson told the detectives what they wanted to hear. He described a violent dream in which a woman was shaking her head back and forth. Ford pushed Eric to say that woman was Michelle Bosko and that she was on a couch. At this point Eric broke down and falsely told the police that he was with Danial Williams and Joe Dick when they assaulted Michelle Bosko. (Pardon Mem., at 38; Wilson Tr. at 519-67.)

76. Like Williams' and Dick's, Eric Wilson's confession did not match the evidence, nor did it match Danial Williams' and Joe Dick's confessions.

- Eric told Ford the rape happened in the living room, but the blood stain and other crime scene evidence shows that the crime occurred only in the bedroom.
- Eric said the assault began on the couch and then moved to the floor, but there is no couch in the bedroom.
- Eric also told the police that he believed he had ejaculated inside Michelle Bosko, but his DNA later proved not to match the DNA from the crime.



- Eric told the police that he pinned Michelle Bosko's hands down and that Danial and Dick got rough with her and Danial hit her in the face, but these claims were also false: Michelle Bosko had no facial injuries or bruises to her arms or wrists.
- Eric also told the police that Michelle Bosko broke one of her hands free and scratched him, but the only male DNA under Michelle Bosko's fingernails belonged to Omar Ballard.
- Eric also told the police that he committed the crime with Danial and Joe, but both Danial and Joe had corroborated alibis.

77. After extracting his confession, Ford charged Eric Wilson with capital murder and rape. (Pardon Mem., at 38; Wilson Statement.)

xii. DNA Results Eliminate Wilson

78. In June 1998, DNA testing excluded Eric Wilson as a contributor to the autopsy and crime scene DNA evidence. (Pardon Mem., at 39; June 10, 1998 DFS report.)

xiii. Ford Returns to Joe for Another Suspect

79. After DNA tests eliminated Wilson as the source of the DNA found at the crimes scene, Ford surely should have reassessed the direction of the investigation. The crime scene evidence strongly pointed toward a solo offender, and he now had three individuals charged with Ms. Bosko's murder whose DNA did not match that found at the scene. But he did not reconsider his approach. Instead, he inexplicably returned to Joe Dick, who had already given two significantly different statements, for help in identifying a fourth suspect. On June 16, 1998, Joe complied with Ford's request and arbitrarily named a "George Clark." Ford then gave Joe a 1997 yearbook and asked Joe

to identify which one of those sailors was involved. Joe had met Derek once and Derek was the only person whose picture looked familiar, so Joe named Derek as the man he was referring to as "George Clark" (Pardon Mem., at 40-41; June 16, 1998 Interrogation of Joseph Dick by Detectives R.G. Ford and B.E. Wray; June 18, 1998 Interrogation of Joseph Dick by R.G. Ford and B.E. Wray.)

80. Derek Tice was a former Army soldier and Navy sailor with no criminal record. He was a respectful, caring, and compassionate young man, and a former Boy Scout and volunteer emergency medical technician. (Pardon Mem., at 41-42.)

81. On June 18, 1998, Ford obtained a warrant for Derek Tice's arrest for rape and capital murder. Derek, who had reentered civilian life, was arrested in Florida where he lived. A few days later, he was awakened between 4:00 and 5:00 a.m. in the Florida jail, and transported by Ford and his partner to Virginia, arriving at the police station at approximately 2:00 p.m. (Pardon Mem., at 43; September 11, 2006 Tice Habeas Tr. at 229.) Ford immediately began interrogating Tice. Ford accused Derek of being one of now six men who raped and murdered Michelle Bosko. Derek repeatedly denied any involvement. But Ford forcefully rejected Derek's assertions of innocence, sometimes yelling in his face that he knew Derek was lying. Ford described to Derek the scenario that Ford wanted Derek to adopt, claiming that six men had a party at Danial's apartment, wanted to go over and see the color of Michelle Bosko's underwear, decided to rape Michelle, and tricked her into opening her door, at which point the men rushed in and raped her. When Derek rejected Ford's scenario, Ford threatened Derek with the death penalty, shouting that Derek was going to "get the needle" and was

going to die. Derek agreed to take a lie detector test, and afterward declared that he did not want to answer any more questions. (Pardon Mem., at 43; Tice Affidavit; September 11, 2006 Tice Habeas Tr. at 223-79.)

82. Ford failed to honor Derek's invocation of his right to silence. Both the Circuit Court for Norfolk, Virginia and a federal district court have since ruled the admission of this confession violated Derek's constitutional rights. (November 27, 2006 Opinion of Judge Everett A. Martin, Jr. Circuit Court of Norfolk, Virginia; *Johnson v. Tice*, 654 S.E.2d 917 (Va. 2008)(reversing grant of relief); September 14, 2009 Memorandum Opinion of Judge Richard L. Williams, *Tice v. Johnson*, Civ. No. 3:08-69, United States District Court for the Eastern District of Virginia, Richmond Division).

83. Ford showed Derek a picture of Michelle Bosko when she was alive, and peppered him with leading questions about how Ford believed the crime occurred. Ford told Derek that other suspects had agreed to testify against him, had informed police that it was Derek's idea to rape and murder the victim, and told him they had additional witnesses and evidence against him. Ford eroded Derek's resistance with repeated threats of the death penalty and insistence that his co-defendants were going to testify against him. Ford suggested that he would help Derek avoid a hard sentence if he confessed. Finally, at about 8 p.m., about sixteen hours after having been awakened in a Florida jail, Derek Tice gave in to Ford's pressure and told Ford the story he had relentlessly pursued, that six men, including Derek, raped and murdered Michelle Bosko. (Pardon Mem., at 43-47; June 24, 1998 Notes of Detectives Ford and

Wray concerning Interrogation of Derek Tice; Tice Affidavit; September 11, 2006 Tice Habeas Tr. at 223-79.)

84. Once again, the facts described in Derek's false confession were demonstrably false. Derek's confession also was sharply inconsistent with the prior false confessions given by Danial, Joe and Eric. (Pardon Mem., at 46-48; June 25, 1998 Statement of Derek Tice.)

- Derek told the police that the men entered the victim's apartment by forcing the door open with a claw hammer, but there was no evidence of forced entry; instead, the crime scene strongly suggested that Michelle Bosko permitted her attacker to enter.
- Derek claimed that Michelle Bosko struggled with the men near the apartment entrance, as they carried her down the hall to the bedroom, and in the bedroom where the rape occurred, but Ms. Bosko had no bruises anywhere on her body (indicating she did not struggle with her attacker), and there was no sign of a struggle or disruption among the furniture and items near the apartment entrance or in the narrow hallway or small bedroom.
- Derek told the police he ejaculated inside the victim while raping her, but only Ballard's DNA was on the autopsy and crime scene samples.
- Derek claimed that the six men took turns stabbing Michelle Bosko, but her stab wounds were clustered in a small area and were identical in depth, angle, and path consistent only with one, not multiple, stabbers.
- Derek identified the six participants as Danial, Joe, Eric, Geoffrey Farris and Richard Pauley, but Danial, Joe, and Richard Pauley all had corroborated alibis.

85. Derek was charged with rape and murder. When he called his parents from the Norfolk jail after he was charged, Derek told them he was innocent and had falsely confessed because he feared he would face the death penalty if he continued to maintain his innocence. He also repeatedly told his court-appointed attorney that he was innocent. (Pardon Mem., at 49.)

86. Derek's lawyer, Alan Zaleski, did not believe in Derek's innocence. He did not independently investigate the case, never litigated a motion to suppress Derek's involuntary confession, and took no steps to mount a defense on Derek's behalf. Instead, Zaleski convinced Derek to cooperate with the police and prosecutors in order to avoid a death sentence. (Pardon Mem., at 49; Tice Affidavit; September 11, 2006 Tice Habeas Tr. at 271-72; Affidavit of Larry A. Tice; Affidavit of Rachel Tice.)

xiv. Geoffrey Farris and Richard Pauley

87. Based solely on Derek's false confession implicating them, Norfolk detectives arrested Richard Pauley, who served in the Army reserves, and Geoffrey Farris, another former sailor.

88. Pauley had a solid alibi – he was at home with his parents on the night of the murder. On the evening of July 7, 1997, Pauley got home from work between 6:30 and 7:00 p.m., spent the evening with his parents (with whom he lived), who verified that he never left the house that night after he got home from work. Telephone and computer records corroborated his claim that he communicated, by computer and telephone, with his girlfriend, who lived in Australia, later that night from 11:00 p.m. until after 3:00 a.m. the next morning. Ford was on leave on June 30, 1998, when Pauley was arrested. Thus, Pauley was not subjected to Ford's aggressive questioning style and did not confess. (Pardon Mem., at 46-47, 50; June 30, 1998 Interrogation notes by Detectives B.E. Wray and P.J. Dunn of Richard Pauley; Excel Telecommunications, Inc. records for July 7, 1997 for Richard Pauley.)

89. Ford arrested Geoffrey Farris on July 8, 1998 and soon began to interrogate him. Farris requested an attorney early on in the questioning and did not confess. Nevertheless, Farris was charged with capital murder and rape.

xv. DNA Results Eliminate Tice, Farris, and Pauley

90. Two months later, DNA results eliminated Derek Tice, Geoffrey Farris, and Richard Pauley as possible sources of the forensic evidence in the case. (Pardon Mem., at 60; August 28, 1998 DFS Certificate of Analysis, hereafter August 28, 1998 DFS report.)

91. Despite these exculpatory DNA results, and a growing concern that the police investigation was on the wrong track, Tice's attorney, Zaleski, continued to believe that Derek was guilty. Zaleski negotiated a plea agreement for Tice in mid-October 1998, sparing Derek the death penalty in exchange for his cooperation, including identifying a supposed unknown seventh assailant and testifying against his co-defendants. (Pardon Mem., at 49-50.)

xvi. John Danser

92. On October 27, 1998, pursuant to his plea agreement, Tice met with Zaleski and police and prosecutors to identify a seventh assailant. At one point when alone with Zaleski, Tice repeated his earlier assertions that he was innocent. Frustrated, Zaleski allowed Detective Ford and his partner to interview Derek alone and later, even more frustrated, left the police station altogether, giving his consent to Ford to continue questioning Tice. Ford suggested to Tice that John Danser, a friend of Tice's and another former sailor, was the seventh perpetrator and Tice eventually agreed that

Danser had been involved. (Pardon Mem., at 49-50; October 27, 1998 Notes of Detectives Ford and Wray of Interrogation of Derek Tice.)

93. With no evidence against him other than Tice's reluctant accusation, Ford obtained a warrant for John Danser's arrest. Danser was arrested in Pennsylvania and later was transported to Norfolk. Ford interrogated Danser on November 4, 1998, and accused him of participating in Michelle Bosko's rape and murder on July 8, 1997. Danser told Ford that he was not involved in the crime and that he was not even in Virginia on the night of the murder. July 7, 1997 was Danser's birthday and he told Ford that after working that day at his job for an air conditioning and heating company in Warminster, Pennsylvania, he celebrated his birthday that night in Philadelphia. Danser told Ford that he had visited Norfolk several weeks after the murder and had stayed in two motels, an Econo Lodge and a Tides Inn. Danser then asserted his right to counsel; Ford was unable to extract a confession from Danser. (Pardon Mem., at 50-51; November 4, 1998 Notes of Detectives Ford and Wray of the Interrogation of John Danser.)

94. Det. Ford obtained motel records corroborating Danser's claim that he stayed at the Norfolk motels, not on the night of the murder but instead about two weeks after the murder. Ford then interrogated Tice again the next day, on November 5, 1998. Ford confronted Tice with the motel records and accused Tice of lying about John Danser's involvement. Tice then recanted his claim that John Danser was involved. Shortly afterward, Tice completely recanted his own involvement in the crime and told Ford that he was not present. Ford and the prosecutors failed to turn over these motel

records to Danser or his attorney, and lied to Danser's attorney by telling her that no motel records existed. (Pardon Mem., at 51-52; November 4, 1998 Notes of Detectives R.G. Ford and D.R. Norrell concerning Interrogation of Derek Tice.)

95. Jennifer Stanton, Danser's attorney, effectively represented Danser, in sharp contrast to Joe's counsel. She eventually subpoenaed the records and proved that Danser stayed at the motels exactly when he said he had, two weeks after the murder. More critically, Stanton obtained records corroborating Danser's alibi. She subpoenaed work records that showed that Danser worked to repair the air conditioning in a customer's Warminster home until 6:30 p.m. on July 7, 1997. She subpoenaed bank records that showed that Danser withdrew money from an automatic teller machine at 8:42 p.m. on July 7, 1997 near the bar in Philadelphia where Danser celebrated his birthday with friends. She obtained work records showing that Danser returned to work in Warminster at 7:30 the next morning. Stanton also interviewed Danser's work colleagues, the customer whose air conditioning system he worked on, and Danser's friends with whom he celebrated his birthday, who all corroborated Danser's alibi. Warminster, Pennsylvania is 295 miles from Norfolk, and it would have been impossible for Danser to drive from Warminster after 8:42 p.m. to Norfolk and return to his work in Pennsylvania at 7:30 a.m. the next day. Stanton also confirmed with airlines, bus companies, and the passenger railways that it was impossible to get from Pennsylvania to Norfolk and back in this window of time. (Pardon Mem., at 50-51; Testimony of John H. Danser, Tice II Tr. at 47-78; Lindsey Mechanical Services, Inc.



records dated July 7 and July 8, 1997 for John Danser; Commonwealth Federal Savings Bank records dated July 7, 1997 for the account of John Danser.)

xvii. DNA Results Exclude Danser

96. Finally, and like all the innocent servicemen before him, Danser was excluded as a possible contributor to the DNA evidence. (February 18, 1999 DFS Certificate of Analysis, hereafter "February 18, 1999 DFS report.") Nevertheless, when provided with Danser's solid alibi evidence and aware of the corroborating motel records in the Commonwealth's possession and the exculpatory DNA results, the Commonwealth persisted in pursuing its capital case against Danser. (Pardon Mem., at 51.)

xviii. Williams Pleads Guilty

97. In January, 1999, eighteen months after his arrest, Williams was forced to decide whether to take the plea offer and avoid the death penalty, or go to trial. On January 22, 1999, Danial Williams, reluctantly and unhappily, pled guilty, before he or anyone else knew of Omar Ballard's involvement in the crime. (Pardon Mem., at 86-87.)

xix. Omar Ballard, the Real Killer, Identifies Himself to Police

98. On February 22, 1999, 19 months after Ms. Bosko's death, Ford received a copy of a letter that Ballard had written to Karen Stover, Tamika Taylor's sister-in-law. At the time, Ballard had just begun serving a long prison sentence for the rape and malicious wounding of Virginia Owens, the teenager he assaulted shortly after he killed Ms. Bosko. In his letter, Ballard admitted that he had killed Ms. Bosko, writing "[y]ou remember that night I went to Mommie's house and the next morning Michelle got

killed guess who did that, Me, Ha, Ha." According to the letter, Ballard wanted to kill another "bitch" who lived down the street from Stover. Ballard said that unless Stover sent him money and other things, she would "be with Michelle in hell." (Pardon Mem., at 51-52; *Commonwealth v. Omar Ballard*, Nov. 4, 1999 Transcript from Hearing On Motion to Suppress ("Ballard Suppression Hearing"), at 16; Ballard Affidavit, Attachment 1.)

99. On March 2, 1999, Ford and his partner confronted Ballard with the letter, but Ballard denied everything, demanding that the detectives provide proof of his guilt. En route to question Ballard again on March 4, 1999, Ford finally received what he had sought but never obtained from his seven previous suspects: a positive DNA match. (Pardon Mem., at 52; Ballard Suppression Hearing, at 16-18.) Omar Ballard's DNA was everywhere: on the vaginal swabs, on the stain taken from the blanket left next to Michelle Bosko's body, and on Ms. Bosko's fingernail clippings. (*Id.*; May 6, 1999 Virginia DFS Certificate of Analysis.)

100. Confronted with this powerfully incriminating evidence, Ballard confessed to the murder of Michelle Bosko within twenty minutes of waiving his *Miranda* rights. (Pardon Mem., at 52 (citing Tice Trial Tr., Day 3, at 39; Ballard Affidavit, Confession of Omar Abdul Ballard, March 4, 1999).)

101. Initially, Ford sought to persuade Ballard to implicate the seven sailors. Ford soon realized, however, that his attempts were not working, and finally asked Ballard, "So how did it happen?" Ballard unequivocally told Ford he killed Michelle Bosko alone. (Pardon Mem., at 52 )(citing Ballard Affidavit ¶ 11).)

102. Ballard first claimed he had consensual sex with Ms. Bosko before he killed her. When Ford said that he could prove she was raped, Ballard asked whether robbery in the course of a murder would qualify as a capital offense. When Ford said that it would, Ballard responded that he had taken money from Ms. Bosko's purse. Ballard knew he was caught and fully expected a death sentence. (Pardon Mem., at 52.)

103. On March 11, 1999, Ford and his partner again visited Ballard and sought to get Ballard to confess to rape. He did, and continued to insist that he had acted alone. (Pardon Mem., at 52-53)(citing Tice Trial, Day 3 at 20; Detectives' Notes of the Interrogations of Omar Abdul Ballard, March 4, 1999 and March 11, 1999; Ballard Suppression Hearing at 21-23).)

104. Ballard's statements to Ford that he committed this crime alone were unequivocal. Ballard made clear that no one had been with him, that he had not seen anyone outside or inside the apartment before or after the offense, and that he had never talked with anyone about the offense. When Ford asked Ballard specifically whether anyone else participated in the crime, Ballard said, "No ... them four people that opened their mouth is [sic] stupid." (Pardon Mem., at 53)(citing Tice Trial Tr. Day 3, at 18; Ballard Affidavit, Attachment 3, Confession of Omar Abdul Ballard, March 4, 1999).)

105. Ballard's insistence that he had acted alone changed only when Ford gave him a reason to lie. In order to secure a plea deal that would spare his life, Ballard agreed to adopt Ford's multi-perpetrator theory of the case. As part of his plea agreement, Ballard agreed to a very brief statement in which Ford said that Ballard met

Williams, Dick, Tice and Wilson in the parking lot, that they all went to Ms. Bosko's apartment, that Ms. Bosko opened the door, and that the five individuals rushed into the apartment and took Ms. Bosko in to the bedroom, where they each raped and stabbed her. (Pardon Mem., at 53.) Ballard never signed this statement.

106. On March 22, 2000, Ballard was spared the death penalty in exchange for his guilty plea to the capital murder and rape of Ms. Bosko. He was sentenced to two terms of life imprisonment without the possibility of parole. (Pardon Mem., at 54.)

xx. Charges Dropped Against Farris, Pauley and Danser

107. After Ballard surfaced, Derek Tice refused to continue cooperating with the Commonwealth and withdrew from his plea agreement.

108. Left with no credible evidence to prosecute Geoffrey Farris, Richard Pauley, and John Danser, who all had been accused solely by Tice, and with DNA and alibi evidence proving they were not involved, the prosecutors still did not dismiss the cases against them, but tried to persuade each to plead guilty to rape; they further offered to drop the murder charge completely. Only when all three forcefully rejected the offers did the Commonwealth drop all charges against Farris, Pauley, and Danser. All three were immediately released from jail. (May 14, 1999 Entry of Nolle Prosequi in *Commonwealth v. Richard Pauley*, CR-98003429; *Commonwealth v. Geoffrey Farris*, CR-98003428; and *Commonwealth v. John Danser*, CR-99000441.) Incredibly, although it dropped the charges, the Commonwealth continues to insist today that these three men were involved.

xxi. Joe Testifies Against Co-Defendants

109. To fulfill his plea agreement and avoid the death penalty, Dick testified against Wilson. (Wilson Tr. at 261-367.) Joe falsely testified that he, Eric, and the other sailors and Omar Ballard committed the rape and murder of Michelle Bosko together. (Dick Affidavit.) Ballard, who had by Wilson's trial been charged with capital murder and rape and who was facing the death penalty, was called as a witness but invoked his Fifth Amendment rights and refused to testify. (Wilson Tr. at 493-94.)

110. The jury acquitted Eric of murder but convicted him of rape. He was sentenced to eight and a half years in prison. (Wilson Tr. at 579-80, 617.)

111. When Derek Tice would no longer cooperate with the Commonwealth and insisted on going to trial, his original lawyer, Zaleski, withdrew and was replaced by James Broccoletti and Jeffrey Russell. New counsel sought to introduce all of the below evidence, which Judge Poston refused to admit at Derek's trials:

- testimony from a false confession expert, Richard Leo, about the coercive interrogation techniques used against Derek and the factors in his case that were consistent with a false confession;
- evidence that Ford had a history of obtaining false confessions to support the claim that Derek's confession was coerced;
- testimony from a former police homicide detective with expertise in crime scene reconstruction, together with a scale-sized wooden model of the bedroom of the Bosko apartment in order to graphically demonstrate that the Commonwealth's multiple offender theory was inconsistent with the evidence;
- John Danser's work time records that corroborated his presence on July 7 and July 8, 1997, in Pennsylvania;
- evidence that Omar Ballard, acting alone, engaged in a three-week crime spree before and after he murdered Michelle Bosko against young, female victims and that he was a convicted felon, as proof that Ballard committed the Bosko murder by himself; and
- Omar Ballard's letter to Karen Stover in which he first admitted to murdering Michelle Bosko.

(See Pardon Mem., at 80-84; Tice I and Tice II Tr.)

112. As required by his plea agreement Joe Dick testified against Derek Tice at his first trial in February 2000 on behalf of the Commonwealth. Like he had in the Wilson trial, Joe falsely testified that he, Derek, and the other sailors committed the rape and murder with Omar Ballard. (Tice I. Tr. at 3-63.) Ballard was called as a defense witness but his capital murder and rape charges were still pending and he continued to face the death penalty. Despite the fact that he had voluntarily confessed to raping and murdering Michelle Bosko, and DNA evidence linked him directly to the crime, Ballard testified that he was not involved in any way in the crime. (Tice I Tr., at 704-725.) Derek was convicted of rape and murder, but his conviction was reversed by the Virginia Supreme Court because of a faulty jury instruction. (Pardon Mem., at 93-97; Tice I. Tr. at 934; *Tice v. Commonwealth*, 563 S.E. 2d 412 (Va. Ct. App. 2002)).

113. Prior to Derek's second trial, Joe Dick thought long and hard about what to do. He had decided to testify truthfully that he was not involved in the rape and murder of Michelle Bosko and that he had no knowledge that Derek Tice or any of the other innocent sailors were involved either. But just prior to trial, Ford and D.J. Hansen visited Joe. Joe had no attorney and Ford and Hansen reminded Joe that his plea deal was in jeopardy and he would face the death penalty again if he did not testify for the Commonwealth. This frightened Joe, and he reverted to his prior position of cooperating. Joe thereafter falsely testified that he and Derek Tice and the other sailors

were involved in the crime. (Pardon Mem., at 83; Tice II tr. at 51-114; Joseph Dick Affidavit.)

114. Similarly, Omar Ballard was prepared to testify at Derek's second trial that he committed the crime by himself and that Derek was not involved in any way. But Ballard received separate visits shortly before trial from Tice's attorney, James Broccoletti, and from Ford. Ballard heard similar messages, essentially that neither side was interested in hearing from Ballard at trial. Frustrated, Ballard refused to testify when Judge Poston called him to the courtroom. (January 29, 2003 Tice II Tr. at 4-8.) Derek was again convicted of rape and murder and was sentenced to life in prison without the possibility of parole. (Pardon Mem., at 93-94; Tice II Tr., January 31, 2003 at 3, 10.)

xxii. Persuasive Forensic Evidence Proves that Ballard Acts Alone

115. The investigation of this crime was dominated by Det. Ford's high risk and highly coercive interrogation tactics. These tactics were completely counter-productive, and virtually ignored an enormous amount of highly reliable forensic evidence. Had this evidence been properly and carefully reviewed, it would have made clear that neither Joe Dick, nor his sailor co-defendants, had anything to do with Ms. Bosko's sexual assault. This evidence includes the following:

a. DNA Evidence

116. The male DNA profile from the semen on the blanket stain was 21 billion times more likely to have come from Ballard than any unknown Caucasian person and 4.6 billion times more likely to have originated from Ballard than any unknown Black

person. The male DNA profile found on the vaginal swabs was 23 million times more likely to have come from Ballard than any unknown Caucasian person and 20 million times more likely to have come from Ballard than any unknown Black person. (Pardon Mem., at 61-62; May 6, 1999 Virginia DFS Certificate of Analysis; hereafter "May 6, 1999 DFS Report.")

117. DNA from the seven former sailors accused of this crime, Danial Williams, Joseph Dick, Eric Wilson, Derek Tice, Richard Pauley, Geoffrey Farris, and John Danser, did not match any DNA sample found at the crime scene or recovered during the autopsy, and each man was excluded with certainty as a possible contributor to the crime scene and autopsy DNA samples. DNA expert Todd Bille concluded that it is extremely unlikely that DNA from the seven innocent sailors would be absent from the crime scene and autopsy samples if the four sailors' rape confessions were true. (Pardon Mem., at 60; February 18, 1999 DFS Report, Todd Bille Affidavit.)

b. Autopsy Evidence

118. The autopsy performed on Michelle Bosko contains findings which confirm this crime was a single offender crime. Omar Ballard stabbed Michelle Bosko multiple times in a small area on her chest. Three of the stab wounds were five inches deep, each penetrating her chest with the same angle and direction, and each wound parallel to the others. There were a number of other small pinprick or very shallow wounds on her chest, and all of the stab wounds were concentrated in a small, 2" x 2.75" area. Michelle Bosko was also strangled, and the pattern of the marks on her neck were consistent with her being choked by one hand. She also had small abrasions on her



neck which were consistent with the stitching found on her t-shirt. Michelle Bosko had no bruises or other injuries on her arms, wrists, legs, or ankles. (Pardon Mem., at 62-64; May 15, 1998 Report of Autopsy Of Michelle Bosko by Dr. Elizabeth Kinnison.)

119. Dr. Elizabeth Kinnison, a forensic pathologist from the Office of the Chief Medical Examiner in Virginia who performed the autopsy, testified that her autopsy results were consistent with the then prevailing police theory (of which she was aware) at the time of the autopsy, that Michelle Bosko had been raped and murdered by a single assailant. Dr. Kinnison further testified that had she found evidence during the autopsy suggesting that Michelle Bosko's injuries were caused by more than one person, she would have informed the police. But Dr. Kinnison never told the police that the autopsy suggested multiple perpetrators. (Tice II Tr. at 45-47.)

120. Dr. Werner Spitz, a celebrated and highly respected forensic pathologist, the author of the leading treatise on forensic pathology, and an expert who has performed over 60,000 autopsies, thoroughly examined the autopsy report, autopsy photographs, and other case materials in 2005. Dr. Spitz concluded that given the clustering, depth, and consistent direction of the stab wounds, it was extraordinarily unlikely that more than one person produced them and even less likely that several people inflicted them. Dr. Spitz also concluded that the genital and neck injuries were consistent with a single rapist and murderer. (Pardon Mem., at 62-64; November 8, 2005 Declaration of Dr. Werner U. Spitz.)

c. Crime Scene Evidence

121. Two highly regarded experts in violent crime scene analysis and reconstruction examined the physical, forensic, autopsy, and other evidence in this case. Larry McCann, a twenty-six year veteran of the Virginia State Police, and Gregg McCrary, a twenty-five year veteran of the FBI, both concluded that the crime scene evidence was consistent with a single offender only and strongly indicated that Michelle Bosko knew her assailant and willingly let him into the apartment. McCann and McCrary further concluded that the condition of the crime scene was not consistent with the prosecution's eventual theory that as many as eight men burst into the apartment, carried a struggling victim into the back bedroom, and took turns raping her while some of the assailants held her down on the floor by her arms and legs. Nor was the crime scene consistent with eight men taking turns stabbing the victim while kneeling or crouching around her body, as the Commonwealth theorized. McCann and McCrary also stated that they would have expected young men involved in a gang rape, which is a crime characterized ordinarily by frenzied violence, to cause significant injuries to the victim from severe beating or to cause restraint wounds, such as bruises or abrasions, from being tightly held down, and in an assault committed in the middle of the summer, would be likely to leave latent fingerprints from the agitated sweating men crouching on the floor around the victim's body. They based their opinions on the following uncontroverted facts in the case:

- There was no sign of forced entry on any door or window, nor was there any sign of struggle just inside the entrance.

- The apartment was described by investigators as being in pristine condition, a neat and orderly but tiny apartment with little evidence that any violent struggle had occurred.
- An end table near the front door, which the door would have struck if forced or shoved open, had a lamp and other items sitting on it that were not disturbed.
- The hallway across the apartment from the front entrance and leading to the bedroom where Michelle Bosko's body was found was extremely narrow - only 32" wide.
- A chair that had been pulled out from the tiny dining room table partially blocked the entrance to the hallway.
- Papers and envelopes resting on a shelf along the hallway protruded into the hallway, further narrowed the passageway, but were not disturbed in any way, nor were picture frames on the walls of the hallway.
- Michelle Bosko's body lay in the 10' x 15' bedroom (with the available open space left by the furniture only 7' x 7') next to a delicately balanced, undisturbed mirror.
- The fine droplets of blood and the large pool of blood on the floor around her body were not smeared or disturbed in any way; instead, the fine spray of blood droplets and the blood pool were unbroken.
- Perfume bottles, knickknacks, and other items sitting on a nightstand and dresser near the body were not knocked over or disturbed in any way.
- Latent fingerprints and footprints found on the highly polished wood floor belonged only to Michelle and Billy Bosko.
- Michelle Bosko had no restraint injuries, nor was she beaten in any way.
- Only Michelle Bosko and her husband's fingerprints and footprints were found on the floor.

(Pardon Mem., at 56-59; McCann Report; Declaration of Gregg O. McCrary.)

d. Omar Ballard's Confession Matches Evidence

122. Omar Ballard's confession to the police is also powerful evidence that he committed the crime alone. Unlike the others, his detailed confession was entirely consistent with the known physical and scientific evidence at the crime scene, the autopsy evidence, and the DNA evidence. During his March 4, 1999 interview, within 20 minutes of waiving his *Miranda* rights, during questioning that was neither hostile, aggressive, nor suggestive, Ballard freely admitted that he had murdered Michelle Bosko in her bedroom and had committed the crime by himself. (March 4 and March 11, 1999 Ballard Statements; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

123. Unlike Williams, Dick, Wilson, and Tice, Ballard accurately described details of the crime that only the real killer knew:

- Ballard told the police that he used a brown-handled knife with a serrated blade to stab Michelle Bosko, which exactly matched the bloody knife found near her body.
- Ballard told the police that he took the knife from the victim's kitchen. Billy Bosko confirmed that the knife found by Michelle's body matched their kitchen knives.
- Ballard told the police that he had stolen \$35 from Michelle Bosko's purse, which he found in the dining room/living room area, and Michelle's purse and its dumped out contents were on the dining room table.
- Ballard correctly told the police that Michelle Bosko had willingly let him into her apartment, because she knew him through Tamika Taylor.
- Ballard accurately described stabbing the victim three or four times and leaving the knife behind in the apartment, which, as described, is consistent with the autopsy and crime scene evidence.
- Ballard accurately described raping Michelle Bosko vaginally (not anally or orally.)

- Ballard correctly told the police that he never hit Michelle, which is consistent with the lack of injuries to her face or body.
- Ballard told the police that he committed the crime between 2 and 3 a.m., which was consistent with Tamika Taylor's statement that she last saw Michelle Bosko alive at about 11:30 p.m. on the night before her body was discovered by her husband.
- Ballard also admitted to the police during a subsequent interview a week later on March 11, 1999 that he raped and choked Michelle Bosko and that she did not struggle or fight much during the assault.

(Pardon Mem., at 52-53; March 4, 1999 and March 11, 1999 Ballard Statements.)

124. Dr. Richard Ofshe, a sociologist and expert on coercive interrogation techniques and the phenomena of false confessions, and Dr. Richard Leo, a psychologist who is also an expert on interrogations and false confessions, carefully examined the confessions from all of the suspects in this case. In their opinion, Ballard's statements, unlike all the others, were free of coercive interrogation techniques, were entirely consistent with the physical and scientific evidence, and accurately revealed details only the true killer could know. Ballard confessed readily, and the police used none of their high pressure interrogation tactics to produce Ballard's statements. (Declaration of Dr. Richard J. Ofshe; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

e. The False Confessions Do Not Match the Evidence

125. In contrast, Ofshe and Leo concluded that the confessions from Danial Williams, Joseph Dick, Derek Tice, and Eric Wilson materialized only after Ford employed a series of highly risky and coercive interrogation methods. Ford lied to the

former sailors about possessing evidence of their guilt. He interrogated some of them for hours and hours. He repeatedly and forcefully rejected all of the sailors' protestations of innocence. Ford told some of them that their alibis did not check out, when no one had investigated these alibis, which in fact could have been and ultimately were corroborated. He repeatedly misused polygraph tests, not to discover the truth, but as a tool to undermine the former sailors' resistance. And he threatened some of the sailors with the death penalty. (Pardon Mem., at 65-66; Declaration of Dr. Richard J. Ofshe; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

126. Ofshe and Leo concluded that the confessions of Williams, Dick, Wilson, and Tice bear all of the hallmarks of false confessions. The details in these confessions conflict with the physical and crime scene evidence; they are internally inconsistent and clash with each other; and they were tainted by police prompting and changed dramatically over time. In short, the confessions are completely uncorroborated by all of the other evidence, and Ofshe and Leo both agreed that they are false confessions (Pardon Mem., at 65-66; Declaration of Dr. Richard J. Ofshe; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

127. Detective Ford had been a police officer for eighteen years and a homicide detective for ten years when he took over the Bosko investigation. During a 1990 investigation of an armed robbery and murder known as the Lafayette Grill case, Ford had extracted confessions from three teenagers who he then wrongly charged with a murder they did not commit. Using aggressive tactics, Ford and his partners obtained false confessions from the three teenagers. An attorney for one of the teenagers

described how Ford and his partners "scared the teenager to death," wore him down, and made improper promises which led to the fatigued teenager's confession. Very quickly, the cases against the teenagers fell apart and the charges were dropped. Ford later admitted these confessions were false. Shortly after dropping the charges against the three teenagers, the Norfolk Police Department transferred Ford and his partners to uniform duty because their credibility was undermined, according to police and prosecutors. (Pardon Mem., at 20-22; Joe Jackson and Thomas Huang, "Police Transfers Followed Teens' False Confessions," *The Virginian Pilot*, December 16, 1990 at B1.)

128. Still other misconduct undermines Ford's credibility. In a 1994 investigation he led after he worked his way back onto the homicide squad, Ford manipulated an audiotaped statement he took from a homicide suspect. Ford was caught in this misconduct when the defense investigator obtained a second audiotape of the statement that had not been altered by Ford and discovered the two tapes differed. As a result, the defendant in that case was acquitted in a bench trial of the felony murder charge. (*Commonwealth v. Clubsie Eaddy*, Case No. 94-005707; March 22, 1994 Statement of Clubsie Eaddy to Detective R.G. Ford.)

f. Alibi Evidence

129. The Commonwealth's theory that the seven innocent sailors were involved in the attack on Michelle Bosko was also patently wrong because four of the seven sailors charged with the murder and rape of Michelle Bosko had corroborated alibis proving that they could not have committed the crime. The alibi evidence included:

- Michelle Bosko was murdered between 11:30 p.m. on Monday, July 7, 1997, when she was last seen alive by her friend Tamika Taylor, and 4 p.m. on Tuesday, July 8, 1997, when she was found by her husband. Omar Ballard confessed to murdering Michelle Bosko sometime around 2:30 or 3:00 a.m. on July 8th. (*See Pardon Mem.*, at 11, 51-53.)
- Danial Williams was asleep with his ailing wife, Nicole Williams, in their apartment from 10 p.m. on Monday, July 7, 1997 until 9 a.m. on Tuesday, July 8, 1997. Danial told this to the police the next evening. The Norfolk Police confirmed Danial's alibi with his wife when they interviewed Nicole Williams on July 8, 1997, before she was aware that her husband was a suspect in the murder. But the police chose not to believe Danial or his wife. (*Pardon Mem.*, at 15; Danial Williams Affidavit; July 8, 1997 Statement of Nicole Williams to Detective Maureen Evans.)
- Joe Dick was on board his ship, the *USS Saipan*, on the night of July 7, 1997, when Michelle Bosko was murdered. Joe told Ford and other detectives that he was on duty on the night of the murder. Danial Williams also told the police that Joe was on duty that night. Dick had been ordered by his supervisor, then Petty Officer Michael Ziegler, to sleep on board the *Saipan* for at least a week in early July 1997 because Joe required close supervision of his work. In addition, Joe Dick was assigned to a regular 24-hour duty assignment on the *USS Saipan* beginning on the morning of July 7, 1997, and was not permitted to leave the ship without permission during that period. In the fall of 1997, Ziegler confirmed through duty assignment schedules that Dick was on duty aboard the *Saipan* on July 7, 1997. Michael Ziegler is positive today, as he was at the time that Joe Dick was arrested, that Joe was on board the *Saipan* on the night of July 7, 1997, and could not have participated in Michelle Bosko's murder and rape. When Joe Dick was arrested, Ziegler reported his concerns that Dick had an alibi up the chain of command in the Navy. Ziegler was told by his command that he likely would be contacted by the authorities or by a defense attorney and he could wait to share his concerns at that time. Unfortunately, no one contacted Ziegler until Joe Dick's current counsel located him in 2005 in Nevada, where he was stationed in the Navy. (*Pardon Mem.*, at 32-33; Joseph Dick Affidavit; Ziegler Affidavit; Ziegler Testimony, Tice Habeas Tr. at 102-122; Booth Declaration.)
- Richard Pauley was at his parents' home, where he lived, on the night of July 7, 1997, when Michelle Bosko was murdered. Telephone and internet service provider records prove that Richard Pauley was there on the night of July 7, 1997 until the morning of July 8, 1997, speaking by telephone and communicating online with his girlfriend, who lived in Australia. Pauley's parents testified under oath at Derek Tice's second trial that their son was home during the evening of July 7, 1997, and never left their home until the next morning. (*Pardon Mem.*, at 46-47; Excel Telecommunications, Inc. records for July 7, 1997 for Richard Pauley; Testimony of Judy Pauley, Tice II Tr. at 83-98; Testimony of Richard D. Pauley, Sr., Tice II Tr. at 98-108.)



- John Danser was in Warminster, Pennsylvania on July 7, 1997 and July 8, 1997, at the time that Michelle Bosko was murdered. Warminster is 295 miles from Norfolk, Virginia. This distance is too far to travel by car, bus, rail or plane (given flight schedules at that time) in less than eleven hours roundtrip. Work records and witness statements showed Danser worked in Warminster until 6:30 p.m. on July 7, 1997 and returned to work at 7:30 a.m. on July 8, 1997 in Warminster. Bank records showed Danser withdrew money at 8:42 p.m. on July 7, 1997 near Warminster, Pennsylvania. (Pardon Mem., at 50-51; Testimony of John H. Danser, Tice II Tr. at 47-78; Lindsey Mechanical Services, Inc. records dated July 7 and July 8, 1997 for John Danser; Commonwealth Federal Savings Bank records dated July 7, 1997 for the account of John Danser.)

g. New psychological evidence

130. In support of his Pardon Application, Mr. Dick submitted the declaration of Richard A. Ratner, MD, and Distinguished Life Fellow of the American Psychiatric Association. Dr. Ratner performed a comprehensive evaluation of Mr. Dick in 2005. He found that during the January, 1998 interrogation, and continuing until 2004, Mr. Dick lost the ability to comprehend whether he had been involved in the crime, and could not stand up to his attorney and Det. Ford who strongly pushed him to plead guilty and agree to testify against his co-defendants to avoid the death penalty. (Pardon Mem., at 89).

h. Wilson and Tice Juries Did Not Hear Significant Evidence

131. The juries in the Eric Wilson and Derek Tice trials did not hear much of the overwhelming evidence demonstrating that Wilson and Tice, like the five other sailors accused of the Bosko murder, were innocent. There are many reasons why the jurors did not hear all of the exculpatory evidence. The Commonwealth engaged in a persistent pattern of withholding exculpatory evidence from the defense. In addition, some of the defense attorneys representing the sailors failed to investigate the case and

failed to discover or preserve exculpatory evidence. And the trial court excluded some highly relevant evidence that supported the defense case of innocence.

132. The highly exculpatory evidence that the Wilson and Tice juries did not hear included:

- *Truthful Testimony From Joe Dick.* None of the juries heard Joe Dick testify truthfully that he was not involved in any way in the rape and murder of Michelle Bosko, that he had no knowledge about the crime at all, and that his previous claims that the other former sailors were involved were false. Joe was prepared to testify to the truth before Derek Tice's second trial, but last minute pressure by Ford and Hansen led Joe to again claim that he and the others were involved. However, Joe adamantly insists that he is innocent, and on November 29, 2005, Joe Dick signed an affidavit in which he swore that he did not participate in the crime, and that he had only claimed to have done so and testified against the other innocent sailors at their preliminary hearings and trials because of pressure from the police, prosecutors, and his own attorney to do so and because of his fear of the death penalty.
- *Complete Comparison Of the Conflicting, Inconsistent False Confessions.* None of the juries heard all of the confessions extracted by the police from Danial, Joe, Eric, and Derek. The juries were never given the opportunity to compare the confessions. The juries were thus unaware of all of the glaring inconsistencies and the erroneous claims included in the multiple confessions, which conflicted with one another, and were contradicted by the physical and crime scene evidence. When considered together rather than in isolation, these coerced statements were powerful evidence of the sailors' collective innocence than their guilt.
- *Detective Ford's History.* None of the juries were aware that Detective Ford had a history of obtaining false confessions through high pressure interrogations, nor were they aware of Ford's manipulation of suspects' statements in other cases.
- *Omar Ballard's Crime Spree.* None of the juries ever heard about Omar Ballard's crime spree in which he attacked young white women in the immediate vicinity around Michelle Bosko's apartment within the weeks before and after he murdered Ms. Bosko.
- *Ballard's sworn testimony that he acted alone.* The juries never heard sworn testimony from Ballard that he committed the rape and murder of Michelle Bosko alone and that the other sailors and former sailors were not involved.
- *Alibi Evidence.* None of the juries ever heard the full array of evidence of Danial Williams', Joseph Dick's, Rick Pauley's, and John Danser's corroborated alibis, detailed in paragraph 129 above.

- *Expert Analysis Of Autopsy Indicating A Single Offender.* The juries did not hear the expert testimony of Werner Spitz - one of the nation's leading forensic pathologists, the author of the leading treatise on forensic pathology, and an expert who had performed over 60,000 autopsies - that the clustering, depth, and consistent direction of the stab wounds make it extraordinarily unlikely that more than one person made them and even less likely that several people inflicted them. Instead, the jurors only heard the testimony of the Commonwealth's pathologist who performed the autopsy that the autopsy results were consistent either with single or multiple offenders.
- *Expert Analysis Of Crime Scene Indicating a Single Offender.* The juries did not hear Larry McCann, a twenty-six year veteran of the Virginia State Police, and Gregg McCrary, a twenty-five year veteran of the FBI, national experts in crime scene reconstruction, who could have testified about the factors that persuasively demonstrated that the police were initially correct when they concluded that this was a single offender crime, and that the Commonwealth's multiple offender theory was wholly implausible.
- *Expert DNA Analysis Indicating A Single Offender.* The juries did not hear the testimony of Todd Bille, a DNA expert from the DNA lab relied upon by the Commonwealth to conduct the DNA testing in the nation's most ambitious and comprehensive testing of old forensic evidence. They did not hear Bille's conclusion that "the absence of any DNA evidence connecting Danial, Joe Dick, Derek Tice, or Eric Wilson to the crime scene makes it overwhelmingly likely that these four men did not participate in the rape and murder of Ms. Bosko."
- *Expert Testimony On False Confessions.* The juries did not hear the testimony of false confession experts like Richard Ofshe and Richard Leo who could testify about the high risk, high pressure interrogation tactics the police used and the myriad factors that raised compelling doubts about the reliability of the sailors' confessions.

#### IV. **Governor Kaine's Conditional Pardons of Danial Williams, Joseph Dick and Derek Tice**

133. Eight years after Michelle Bosko's murder, Danial, Joe, and Derek jointly filed a Petition for an Absolute Pardon based on Innocence on November 10, 2005 with Virginia Governor Mark Warner seeking relief from their convictions for the murder and rape of Michelle Bosko because they are innocent of the crime. Eric had separately filed a clemency petition seeking the same relief.

134. On August 6, 2009, Warner's successor, Governor Timothy M. Kaine, granted Danial, Joe, and Derek conditional pardons. He found that the petitioners had established "very grave doubts" about their guilt. However, Governor Kaine denied their petitions for an absolute pardon, stating that they had not "conclusively established their innocence" and had not "conclusively demonstrated that there is no possibility that they were involved in this crime." Governor Kaine's remarks demonstrate that in order to grant an absolute pardon, he required proof beyond all doubt.

#### **V. Derek Tice's Grant of Habeas Corpus Relief**

135. In addition to seeking executive clemency, Derek also filed a petition for habeas corpus relief first in the Virginia state courts. The Circuit Court for Norfolk found that Derek's constitutional right to the effective assistance of counsel was violated when trial counsel failed to seek suppression of Derek's custodial statement as he had plainly asserted his right to counsel which was ignored by Det. Ford. The Virginia Supreme Court later reversed that decision, but the United States District Court for the Eastern District of Virginia granted Derek Tice habeas relief, finding that the Virginia Supreme Court's decision was objectively unreasonable. United States District Judge Richard L. Williams granted Derek Tice's petition for a writ of habeas corpus, noting that the case against Derek was "awash in doubt."

## VI. Grounds for Relief

### A. Entitlement to be Heard

136. Joseph Dick has fully exhausted and properly preserved his absolute innocence claim for federal habeas review. An absolute innocence claim is not cognizable under Virginia state habeas law. *Lovitt v. Warden*, 266 Va. 216 (2003)(assertions of actual innocence are outside the scope of Virginia habeas corpus review.) Virginia's writ of actual innocence based on biological evidence is inapplicable because the exculpatory DNA evidence became known to Joe after he pled guilty but before he was sentenced and, therefore, before his conviction became final. Va. Code Ann. § 19.2-327.3 (2009). Virginia's writ of actual innocence based on non-biological evidence is inapplicable as well because Joe pled guilty. Va. Code Ann. § 19.2-327.11 (2009). With no state court habeas remedies and no Virginia writ remedies available, Joseph Dick fully exhausted his absolute innocence claim by petitioning the Governor of Virginia for a pardon based on absolute innocence. After Governor Kaine denied Joe Dick's petition for an absolute pardon on August 6, 2009, but granted him a conditional pardon, Dick timely filed this petition.

137. Moreover, Joe Dick is entitled to the merits adjudication of his legal claims asserted herein because the compelling evidence that he is actually innocent overcomes any state procedural bar, or other procedural defense raised by the Warden. *See Schlup v. Delo*, 513 U.S. 298 (1995). Joseph Dick has made a compelling showing, *supra*, that he is actually innocent of both of the crimes for which he has been convicted and that he

played no role whatsoever in the rape and murder of Michelle Bosko. See *House v. Bell*, 547 U.S. 518 (2006) ("In certain exceptional cases involving a compelling claim of actual innocence...the state procedural default rule is not a bar to a federal habeas corpus petition.")(citing *Schlup*, 513 U.S. at 319-322).

138. Furthermore, this entire application is timely under the one-year statute of limitations under § 2244(d)(1), so long as one of the claims is still timely. See *Walker v. Crosby*, 341 F.3d 1240, 1243 (11th Cir. 2003). As the Eleventh Circuit held in *Walker*, 28 U.S.C. § 2244(d) "directs the court to look at whether the 'application' is timely, not whether the individual claims within the application are timely. The statute provides a single statute of limitations, with a single filing date, to be applied to the application as a whole." *Id.* at 143. (citing *Artuz v. Bennett*, 531 U.S. 4, 9-10 (2000)). Accordingly, because Joe Dick's claim of actual innocence is timely filed, his entire application is timely.

139. Finally, given the very strong showing of innocence, as well as Mr. Dick's diligent efforts to present his innocence claim to the state clemency authority without delay, he is entitled to equitable tolling. See *Holland v. Florida*, \_\_\_ U. S. \_\_\_ (2010).

#### **B. Respects in which Joseph Dick's Constitutional Rights were Violated**

140. As we allege below, Joseph Dick has been wrongly and unconstitutionally convicted and sentenced in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

## 1. Actual Innocence

141. The conviction and sentencing of an individual who is actually innocent of the crime(s) for which he was convicted and sentenced constitutes a profound violation of the Fourteenth Amendment to the United States Constitution. *Herrera v. Collins*, 506 U.S. 390, 427 (1993); *see also House v. Bell*, 547 U.S. 518, 555 (2006).

142. Petitioner herein incorporates paragraphs #1-139 of this petition. The content of said paragraphs demonstrates that Joseph Dick played no role whatsoever in the tragic events that led to the rape and murder of Michelle Moore-Bosko. He is innocent of those crimes. Abundant reliable evidence links Omar Ballard, and only Ballard, to these crimes.

143. Nevertheless, Joe was convicted of both Ms. Bosko's rape and murder, and received life sentences.

144. The state court processes available to Mr. Dick to demonstrate his innocence of these crimes have not been adequate. Repeatedly, beginning with his first encounter with the police in the fall of 1997, and with virtually every other person in authority to whom he spoke – the police, his lawyer, his parents, a psychologist – Joe said he was on duty and on the ship at the time of the crime. But the police did not believe him, and made no effort to confirm whether he was telling the truth. His attorney also made no effort to see if there were witnesses or other evidence that would corroborate Joe's account, and also summarily and arbitrarily reached the conclusion that Joe was guilty and should plead guilty to avoid the death penalty.

145. By the time Mr. Dick pleaded guilty to rape and murder, his will had been overwhelmed and he had come to believe that he must have participated in the events that led to Ms. Bosko's murder. He did not again realize until 2003 that he could not have committed this horrible crime.

146. Since 2004, Mr. Dick has had access to counsel who agreed to investigate his claims of innocence - a task that was impossible for him to perform from his prison cell without representation. The state courts have been shut to his claims. Immediately after he had gathered the evidence he needed to demonstrate his actual innocence, he timely brought his claim to the one Commonwealth official who possessed the authority to consider it. In November, 2005, he filed a Petition for Absolute Pardon with the Governor of Virginia.

147. The Virginia pardon process was inadequate for Mr. Dick to be fully and fairly heard. While Mr. Dick's counsel met with members of the Governor's staff, and also appeared before the Virginia Parole Board to present his case, he did not possess critical tools necessary to be meaningfully heard. He was unable to subpoena critical records and files from the Norfolk Police Department, from the Commonwealth Attorneys' Office, and from other state offices and officials who possess relevant information concerning his innocence and lack of credibility of the Commonwealth's case against him. Upon information and belief, former Governor Kaine also did not secure or review relevant files and other documents and exhibits in the possession of the Norfolk Police Department, the Commonwealth Attorney's Offices, and other state



law enforcement agencies that possess relevant information of Mr. Dick's innocence and the lack of credibility of the Commonwealth's case against Mr. Dick.

148. The continuing restraints upon Mr. Dick - the two serious felony convictions, supervised parole and sex offender status -- violate the Fourteenth Amendment to the Constitution because he is actually innocent of the crimes of rape and murder concerning Michelle Moore-Bosko.

## **2. Ineffective Assistance of Counsel**

149. Trial counsel's representation of Joe Dick constitutes prejudicial ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

150. One fundamental duty that a lawyer owes to a client is the duty to perform a reasonable investigation into the underlying facts to determine if there is a defense or defenses to the charged offenses. This non-dischargeable obligation was particularly important here because of Mr. Dick's inability to stand up for himself in the face of the aggressive and relentless Det. Ford. A brief review of Joe's life history confirms that Joe was compliant, would wish to please authority figures, and could easily become dominated by such forces. If ever there was a case of a young man truly needed the guiding hand of counsel, this is it.

151. Trial counsel completely abdicated his duty to investigate the facts of Joe's case and to prepare a defense. Defense "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 691 (1984). Here, trial counsel's

decision not to fully investigate Joe's alibi was not reasonable.

152. Trial counsel did not fulfill his duty to conduct a reasonably thorough effort to investigate Dick's repeated assertions that he was innocent. When counsel first met with Joe in January 1998, Joe told him that he was innocent and that he could not have been involved in Ms. Bosko's death because he had been on his ship on that night. This was the very same assertion Joe had earlier made to investigator Maureen Evans in the fall of 1997, to his Navy supervisor Ziegler later in the fall of 1997, and to Detective Ford at the beginning of his January 12, 1998 interrogation.

153. Nevertheless, trial counsel failed to adequately investigate Joe's assertions that he was on the *USS Saipan* on the night of the murder. First, by the time Joe was charged, in January, 1998, official Naval records confirming that Joe was on the ship at the time of the crime were no longer available. Thus, counsel had a duty to reasonably determine whether there were witnesses - shipmates, supervising officers, or others - who could confirm Joe's alibi claim. Trial counsel made no reasonable effort to determine if there were such witnesses.

154. Had counsel conducted a minimally adequate investigation, he would have confirmed that Mr. Dick was telling the truth about being on the ship at the time of the crime. In October 2005, Joe Dick's current counsel sent an investigator to the home of Senior Chief Michael Ziegler in Reno, Nevada. Ziegler was Joe's immediate supervisor on the *USS Saipan*. Ziegler's first remark to the investigator was to ask "what took you so long?" (Affidavit of Senior Chief Michael Ziegler, October 26, 2005.) Ziegler meant that "[he] had always been willing to speak to Joe's attorneys or to police

of prosecutors about what [he] knew, but [the investigator] was the first individual to contact him." (*Id.*) After Joe's arrest, Ziegler wanted to reach out to civilians but had not done so because he had been told by his supervisors to wait to be contacted. Ziegler was never contacted by trial counsel or anyone working on trial counsel's behalf.

(Pardon Mem., at 32-33; October 26, 2005 Affidavit of Senior Chief Michael Ziegler; September 11, 2006 Testimony of Senior Chief Michael Ziegler.) In fact, John Adam Carbo, who was a Senior Chef Petty Officer on the *USS Saipan* in March of 1998 and one of Ziegler supervisor's confirmed that Ziegler expressed frustration on several occasions that he did not hear from anyone connected to the case. (Declaration of John Adam Carbo, submitted in support of Petition on April 22, 2009.) Further, Ziegler told Carbo that Dick was on the ship when the crime was committed. (*Id.*) Other Navy personnel stationed on the *USS Saipan* have corroborated Ziegler's account.

155. In addition to the \$22,500 he charged Joe's parents for his representation of Joe, trial counsel charged an additional \$500 for an investigator. However, trial counsel never hired an investigator nor had anyone make any effort to independently investigate the facts of the case. In fact, trial counsel did not make any effort to challenge the Commonwealth's case.

156. Had trial counsel made a reasonable effort to determine whether there were facts that would support a defense that Mr. Dick was not guilty, he would have found abundant support. Had he adequately reviewed information that concerned the circumstances of the crime scene, he would have learned that its pristine condition strongly counseled that one assailant, and not more, committed this crime. Had he

hired a forensic pathologist, he would have learned that autopsy results, the position of Ms. Bosko's body at the crime scene, and evidence in the body's immediate vicinity overwhelmingly supported the conclusion that only one assailant raped and stabbed her to death in her bedroom. Had he consulted with an expert in the interrogation process, he would have learned that Joe's custodial interrogation was totally unreliable. With a minimal amount of critical assessment of the strength of the Commonwealth's case against Joe, trial counsel would have learned that a powerful defense could have been asserted.

157. But trial counsel defaulted on these essential obligations. Moreover, he also ignored red flags raised during a pre-trial mental health assessment that Joe's confession was false. Dr. Nelson's March 1, 1998 report informed counsel that Joe claimed he was on the ship at the time of the crime and "in essence, Mr. Dick was claiming False Confession Syndrome without labeling as such." (Evan Nelson, Psychological Evaluation. at 7; *see also* Pardon Mem., at 88-89.) Without having taken any steps to build a defense to the capital charges that Joe was facing, trial counsel instead saw a plea settlement as Joe's only option, and during the course of his representation, placed enormous pressure on Joe to agree to cooperate with the Commonwealth in their investigation and prosecution of the case. Eventually, the malleable, scared, and confused Joe felt he had no choice but to go along with his attorney's plan and he agreed to plead guilty and to cooperate. (*See* Pardon Mem., at 88-89; Joseph Dick Affidavit.)

158. At Joe's preliminary hearing, trial counsel did not even raise the

possibility that Joe Dick's statement was false. In fact, he failed to point out a single discrepancy between it and the evidence. During pretrial events, trial counsel ignored still more red flags suggesting that Joe's confession was false. In several meetings with the police and prosecutors - beginning in March, 1998 through the spring of 1999 - Joe gave a number of vastly different statements to police, concerning both his own role in the crime, and the participation of others. There is no way more than one of these statements could be true. Joe's willingness to say anything to Det. Ford so that he would not lose his settlement was very strong evidence that Joe did not know who raped and killed Ms. Bosko, was innocent, and thus could not credibly help the police.

159. Trial counsel's failure to investigate both the numerous shortcomings in the prosecution's case as well as Joe's very strong alibi left Joe without access to effective legal representation as he was facing the most agonizing and momentous decision of his life - whether to continue to plead not guilty and go to trial, or take the plea offer and avoid the death penalty.

160. Trial counsel's representation constitutes prejudicial ineffective assistance of counsel. As a result of counsel's plainly deficient performance, Joe Dick entered an involuntary plea. These errors ensured Dicks' conviction and therefore prejudiced the result of the plea hearing.

### **3. Involuntary Plea**

161. Mr. Dick's plea of guilty - brought about by trial counsel's failure to adequately investigate his alibi and otherwise prepare to confront the state's case, as well as by the commonwealth's suppression of important evidence that showed its case

against Mr. Dick rested upon no credible evidence - violates the Fourteenth Amendment to the United States Constitution.

162. Trial counsel's failure to conduct an adequate pretrial investigation is sufficient to satisfy the prejudice prong of *Strickland* because it resulted in Joe Dick entering an involuntary plea. A petitioner meets the second prong of *Strickland* where "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. But for trial counsel's failure to conduct a reasonable investigation, Joe would not have agreed to abandon his right to go to trial and submit to a plea of guilty. A defendant cannot enter an intelligent, thoughtful, and voluntary plea unless he has been counseled by a competent attorney who has given him all of the relevant facts. See *Henderson v. Morgan*, 426 U.S. 637, 645 (1976). Here, trial counsel's failure to perform an adequate pre-trial investigation denied Joe the opportunity to enter a voluntary plea.

163. Trial counsel's insistence that Joe plead guilty is especially baffling in light of the overwhelming evidence that Ballard committed the crime alone and the report trial counsel received from the pretrial psychiatric evaluation noting that Joe's statements during his evaluation were indicative of false confession syndrome. The flag was raised, but trial counsel never investigated the possibility that Joe was innocent. With the threat of death hovering over Joe and his only advisor exhorting him to adhere to his confession, plead guilty, and testify against the others, and because Joe had become convinced, in part due to trial counsel that he must be guilty, Joe felt no choice but to comply. Counsel's representation of Joe Dick fell below an objective standard of

reasonableness and there exists a reasonable probability that but for trial counsel's unprofessional errors, that Joe Dick would not have entered an involuntary guilty plea.

164. Moreover, the commonwealth suppressed from Mr. Dick a large amount of information which showed that its case against him was non-existent. At the time of his plea, the prosecution's theory was that Mr. Dick, along with several other men, entered Ms. Bosko's apartment and raped and murdered her. But at the time of the plea, the commonwealth possessed unassailable evidence showing that it is very likely Williams, Danzer and Pauley could not have been involved. None of that evidence was shared with Mr. Dick prior to his plea. But for suppression of said material, Mr. Dick would not have waived his important trial rights and entered a plea of guilty.

#### **4. Wrongful Suppression of Exculpatory Evidence**

165. In this capital prosecution, the Commonwealth suppressed exculpatory evidence that it was obligated to provide to the defense in violation of the Fourteenth Amendment to the United States Constitution.

166. The following evidence was in the possession of the Commonwealth prior to Mr. Dick's plea and sentencing, and was not turned over to either Mr. Dick or to counsel:

i. Police and prosecutors learned very early in their investigation that Omar Ballard should be a suspect. This information was provided by Tamika Taylor, who knew Ballard well, and who knew that Ballard could have gained entry into Ms. Bosko's apartment because he and Ms. Bosko was acquaintances.

ii. Police and prosecutors knew that one of Dick's co-defendants – John Danser -- had a very solid alibi and could not have participated in the crime. The police confirmed Danser could not have been involved and collected evidence which strongly supported his alibi.

iii. Derek Tice told police in the fall of 1998 that he was not involved in the crime.

167. The suppression of these and other materials that were exculpatory violated the Fourteenth Amendment, and denied Mr. Dick a fundamentally fair trial court proceeding.

#### **5. Corruption of Investigative Process Claim (Non-Exhausted)**

168. Repeated overreaching, purposeful manipulation of the criminal justice process and deliberate misconduct committed by the former Det. Ford, the key investigator in this case and driving force to see that Mr. Dick was convicted and sentenced, deprived Mr. Dick of a fundamentally fair trial court adjudication in violation of the Fourteenth Amendment to the United States Constitution.

169. After a considerable investigation, on May 10, 2010, a federal grand jury in the Eastern District of Virginia indicted former Det. Ford on five counts of official corruption, including one count of conspiracy to commit extortion, three counts of extortion, and one count of making materially false, fictitious, and fraudulent statements and representations. The indictment alleges that Ford conspired with another individual, who acted as his intermediary, to extort payments from criminal



defendants in return for helping them obtain release on bond, sentencing reductions, and other favorable treatment by falsely representing to prosecutors and judges that the defendants had provided assistance in unrelated homicide investigations, when in fact that defendants had provided no such assistance. (*See U.S. v. Robert Glenn Ford*, No. 2:10-cr-00083-JBF-FBS (E.D. Va. May 7, 2010)(Indictment)).

170. The indictment further states that Ford made materially false statements to authorities on a least eleven different occasions on behalf of nine criminal defendants over a four year period, from 2003 until 2007. It is further alleged that Ford falsely represented to state prosecutors in Norfolk, Suffolk and Portsmouth, on seven occasions that defendants provided assistance in homicide investigations, and that on another occasion, Ford made a false representation to a federal prosecutor from Texas. The indictment alleges further that Ford testified falsely on at least three occasions before circuit judges in Norfolk and Portsmouth. Finally, the indictment states that in 2010, Ford made at least five false, fictitious, and fraudulent statements and representations to agents of the Federal Bureau of Investigation. (*See id*).

171. If proven, these allegations will demonstrate that Ford was a corrupt and dishonest law enforcement officer who was willing to manipulate the criminal justice system for his own benefit.

172. Evidence developed since this indictment, which was previously unavailable, demonstrates that, in this case, Ford manipulated the prosecution and distorted evidence, knowing Joe Dick, Jr., was innocent, to protect his career.

173. Ford possessed a very strong motive to see that Joe Dick was convicted and sentenced for this crime, even though he knows Dick, and the other Norfolk Four, are not guilty. Ford had previously suffered demotion for securing false confessions, and did not wish to suffer demotion again. He had also been caught manipulating evidence in important cases. Despite the fact that the crime scene and Ms. Bosko's body contained an enormous amount of evidence identifying the killer - Ms. Bosko, in her final minutes scratched her assailant, and his DNA was recovered under her fingernails - Ford chose to solve the crime through aggressive, high-risk interrogation. He secured a "confession" from an exhausted Dan Williams that failed to match the known crime scene evidence. Even though Williams' wife and other told police Williams never left his apartment the evening Ms. Bosko was murdered, Ford believed he solved the crime with Williams confession.

174. When the DNA testing cleared Williams, Ford stubbornly stuck with the idea that Williams was guilty, and sought to find a second assailant, even though the crime scene investigation strongly suggested only one assailant had committed the crime. Ford did so because if he sought a new single assailant - and by this time, Ballard had been charged with two sexual assaults near Ms. Bosko's apartment, and police had been told Ballard might have been the assailant by Tamika Taylor - it would be apparent that Williams' confession was false.

175. Ford next went after Joe Dick, even though Dick had repeatedly told investigators he was on duty on the ship, and Ford had no evidence --- none - that Dick was or could have been involved. Again, throwing all caution in the wind, he

aggressively interrogated Dick, and after lying to him and telling Dick that Dick's alibi could not be confirmed, Ford overcame Dick's will, and Dick "confessed." But the "confession" was as unreliable as was Williams'.

176. And when Dick's DNA test cleared him, Ford blatantly violated Dick's Sixth Amendment right to counsel when he saw to it that a snitch was placed in Dick's cell to gain information about the crime and a third suspect. Ford also fabricated warrants to cover the real motive for this snitch to be placed with Dick.

177. Ford later directed another informant to obtain incriminating statements from Derek Tice long after Tice's right to counsel had attached. Ford also lied to other defense counsel about the credibility of John Danser's alibi - which was very solid - and pressured Dick to testify against Tice at Tice's second trial.

178. By the time Dick yielded to his attorney's pleas to plead guilty, Ford knew that Dick was innocent, and that Omar Ballard had committed this crime by himself.

179. But for Ford's continued manipulation of witnesses, the evidence and other actors in the criminal justice system, there would have been no evidence against Dick, nor against the other Norfolk Four defendants.

#### **Prayer for Relief**

Wherefore, Joseph Dick prays that this Court:

1. Order a hearing at which proof may be offered concerning the allegations in his petition, including the testimony of experts, and permit full discovery in advance of that hearing so that evidence in addition to the substantial evidence Joseph Dick has already collected in support of his claims shall be produced by the Commonwealth;

2. Order that Joseph Dick's conviction for the murder and rape of Michelle Bosko is null and void;
3. Grant this Petition for a Writ of Habeas Corpus ordering Joseph Dick's immediate release from the parole conditions under which he currently lives;
4. Order that the Commonwealth of Virginia shall immediately expunge any and all records relating to Joseph Dick's conviction;
5. Order that the Commonwealth of Virginia is forever barred from arresting and/or retrying Joseph Dick for any crime stemming from the murder and rape of Michelle Moore-Bosko; and
6. Grant such other relief as may be necessary and appropriate.

Dated: July 22, 2010


Respectfully submitted,

Counsel for Petitioner

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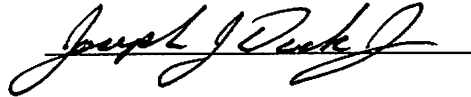
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by:  \_\_\_\_\_

**AFFIRMATION**

I declare under penalty of perjury that the foregoing Petition for Writ of Habeas Corpus is true and accurate to the best of my information and belief.

Dated: 21 July 2010

A handwritten signature in cursive script, reading "Joseph J. Dick, Jr.", written over a horizontal line.

Joseph J. Dick, Jr.

**Certificate of Service**

I hereby certify that on July 22, 2010, as a courtesy I have sent the foregoing to the Counsel for the Respondent in the related case of *Danial Williams v. Helen Fahey, Chair of the Virginia Parole Board* (Civ. No. 3:09-769), at the following address:

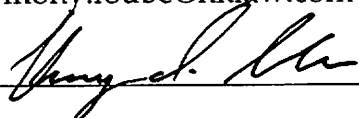
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