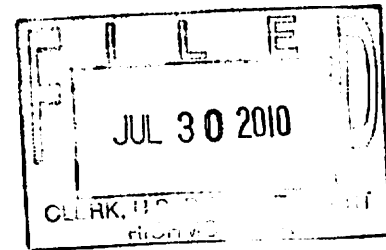


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)



ERIC C. WILSON,

Petitioner,

v.

Case No. 3:10cw536
(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; *Joseph J. Dick, Jr. v. Helen Fahey, Chair, Virginia Parole Board*, Civ. No. 3:10-505)

W. STEVEN FLAHERTY,
Superintendent, Virginia Department of State Police

Respondent.

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

COMES NOW Eric C. Wilson, by and through *pro bono* 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. Wilson pursuant to 28 U.S.C. § 2254 *et seq.*, because his liberty has been and continues to be deprived by virtue of the onerous restrictions he suffers as a convicted violent sex offender that arise from a conviction that was 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. Wilson's liberty is being unlawfully restrained by the Virginia Department of State Police, which administers and enforces the Virginia Sex Offender

and Crimes Against Minors Registry pursuant to §§ 9.1-900 *et seq.* of the Code of Virginia and 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. Wilson is challenging is the Circuit Court for the City of Norfolk, Virginia. The criminal case number is CR-98002484. He was represented by retained attorney Greg D. McCormack during the proceedings before the Circuit Court.

4. On July 1, 1998, Mr. Wilson was indicted on charges of capital murder and rape.

5. On the date of trial, June 16, 1999, the Circuit Court, on motion of the Commonwealth, amended the indictment alleging capital murder to first degree murder and the case proceeded to trial before a jury on the charges of first degree murder and rape.

6. On June 21, 1999, the jury returned a verdict of not guilty on the first degree murder charge and a verdict of guilty on the rape charge and returned a sentence on the rape charge of eight and one-half years in prison.

7. On September 8, 1999 the Circuit Court sentenced Mr. Wilson to eight and one-half years in prison.

8. Mr. Wilson filed a petition for appeal with the Court of Appeals of Virginia on January 4, 2000, which was denied on March 8, 2000, thereby affirming Mr. Wilson's conviction. Mr. Wilson did not pursue an appeal to the Supreme Court of Virginia.

9. On the basis of the fact that he is factually innocent of the crime for which he was convicted, Mr. Wilson, through his attorney Greg D. McCormack, petitioned the Governor of Virginia for an absolute pardon on May 21, 2004 pursuant to Article V, Section 12 of the Virginia Constitution and Va. Code §§ 53.1-229 - 231.

10. Before the Governor, Mr. Wilson (and his co-defendants Danial Williams, Derek Tice, and Joseph Dick, each through separate *pro bono* counsel) presented overwhelming evidence of Mr. Wilson's (and the others') actual innocence. Governor Kaine concluded that the four petitioners had raised "substantial doubt" about the validity of their convictions, but had not "conclusively established [their] innocence." Thus, Governor Kaine did not overturn Mr. Wilson's conviction or those of the other three petitioners.

11. Instead, on August 6, 2009, Governor Kaine issued a conditional pardon to Messrs. Williams, Dick and Tice that released them from prison but kept in place their convictions, and announced that he would deny any relief to Mr. Wilson because he was no longer in prison. By letter dated September 17, 2009, the Office of the Secretary of the Commonwealth advised Mr. Wilson that his petition for an absolute pardon "has been denied."

12. At the completion of his sentence in September 2005, Mr. Wilson was released from a Virginia prison and returned to his parents' home in Texas.

13. As required by Virginia law, Mr. Wilson registered with the Virginia State Police as a violent sex offender upon his release from prison and, upon his arrival in Texas, he registered as a violent sex offender with the relevant authority in Texas. Mr. Wilson remains subject to the custody and control of the Virginia State Police under the Virginia Sex Offender and Crimes Against Minors Registry, §§ 9.1-900 *et seq.* of the Code of Virginia.

14. Mr. Wilson has no further state corrective process available to him for claims #1 and #2 asserted herein. Claim #3 is grounded in events of very recent origin and Mr. Wilson is in the process of timely and diligently exhausting that claim.

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

III. Statement of the Case

16. This is a case of wrongful conviction. Eric Wilson was a young sailor honorably serving his country when, in April, 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 lawyer, and others that he was not guilty. However, police and prosecutors ignored his assertions of innocence, even though (a) the details of his confession matched neither the facts of the crime scene nor the details of confessions extracted by Ford from other innocent sailors, (b) DNA samples from Eric matched none of the multiple DNA samples recovered from the crime scene, and (c) another man, Omar Ballard, eventually confessed to the crime, asserted that he had acted alone, and submitted DNA samples that were the only samples taken from multiple suspects, including Eric, that matched the DNA samples recovered from the crime scene. Nevertheless, the Commonwealth of Virginia persisted in its efforts to prosecute Eric. Aided by Eric's coerced false confession and the testimony of another innocent sailor forced to cooperate in obtaining convictions of other victims of Ford's misconduct, the Commonwealth managed to persuade a jury to convict Eric of rape. This petition is filed to rectify Eric's wrongful conviction and its ongoing collateral consequences, and finally clear his good name.

A. Chronology of Events and Proceedings in the Trial Court

17. During the early morning hours of July 8, 1997, Michelle Moore-Bosko was raped and murdered in her Norfolk, Virginia apartment. On the basis of a neighbor's tip, police investigators focused on Danial Williams, Ms. Bosko's neighbor and a sailor on the *USS Saipan*. 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 falsely told Williams he had failed a polygraph examination, 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.*)

18. 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.

19. Williams' exclusion should have caused investigators to reconsider Williams' guilt, and to look for a different suspect. It did not. Detective Ford, now leading the investigation, could not afford professionally to admit to having coerced another false confession. He had previously secured false confessions and lost rank as a result. Instead of concluding that Williams was innocent, and contrary to the crime scene evidence that the crimes had been committed by a lone assailant, Ford decided to search for a co-defendant who participated with Williams and left the crime scene DNA material. This decision led to the wrongful arrest of Joe Dick and, ultimately, 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.) Ford's ensnarement of Joe Dick proved to be especially fateful for Eric Wilson and many of the other innocent men who wound up caught in Ford's web. Joe Dick is

easily influenced by stronger personalities. Besides going along with his lawyer's urgings to plead guilty to avoid the death penalty, Joe eventually succumbed to pressure from his lawyer and from Ford to cooperate in seeking convictions of other innocent men. Joe even came to believe that he must have been involved in the crime.

20. On January 12, 1998, Joe Dick was brought to the Norfolk police station by Detective Ford and his partner Detective Brian Wray. Following many hours of a coercive and abusive interrogation, during which Joe insisted that he had no involvement in the crime and had been on duty aboard the *USS Saipan* on the night of the murder, Joe finally gave in and falsely told Ford that he and Danial Williams had raped and murdered Michelle Bosko together. (Pardon Mem., at 34; Joseph Dick Affidavit; January 12, 1998 Dick Interrogation Notes.)

21. But Joe's account, later taped and heavily coached by Ford, matched neither the known facts nor Danial's 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.)

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

23. As with the DNA exclusion of Danial Williams, the DNA exclusion of Joe Dick should have caused Detective Ford to reconsider Dick's guilt. Once again, it did not. Instead, motivated by his need to avoid the consequences of admitting to having again coerced false confessions, Ford turned to finding a third suspect he could accuse of participating in the crime. This effort led him to Eric Wilson.

24. Even though Ford knew Joe Dick had counsel, Ford paid cash to a known informant, Timothy Gurley, and saw to it that Gurley was placed in Joe's cell. 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 Williams' 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 expressing 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.)

25. Based on information from Gurley, Ford tracked down Navy sailor Eric Wilson. Like both Williams and Dick, Eric had no prior criminal record and no history of violence or any other misbehavior. (Pardon Mem., at 37; Wilson Tr. at 515-17. ¹)

26. On April 8, 1998, after he had served watch on board his ship, for which he had awoken at 3:00 that morning, Eric was brought to the Norfolk Police station at 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 whether he would submit to a polygraph examination. Eric immediately agreed. After the test, Ford falsely told Eric that he failed and that he was lying about having had no involvement in the crimes against Ms. Bosko. 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..)

27. 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.)

28. Finally, exhausted and intimidated, Eric told the detectives what they wanted to hear. He described a violent dream in which a woman was shaking her head back and forth.

¹ References to Eric Wilson's trial are referred to as "Wilson Tr." followed by an appropriate page number.

Ford pushed Eric to say that the 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.)

29. Like the confessions of Danial Williams and Joe Dick, Eric Wilson's confession did not match the evidence, nor did it match the other confessions Ford had extracted.

- 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.

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

31. On April 27, 1998, Detectives Ford and Wray and Commonwealth Attorney Valerie Bowen met with Joe Dick. Prior to the meeting, Joe's attorney had told his client that detectives knew that Eric Wilson was involved in the crime and that Joe should cooperate by describing Mr. Wilson. Under pressure to be cooperative, Joe gave an account of the crime that implicated Eric. This version completely contradicted Joe's January statement. For example, he now 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 and Danial hit Ms. Bosko twice in the face. (Pardon Mem., at 39-40; Wray and Ford Notes, 1/22/98, 4/27/98.)

32. On June 10, 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.)

33. Once again, because Ford could not afford any more coerced false confessions on his record, he refused to allow the DNA exclusion of Eric to cause any reconsideration of the results of his "investigation" thus far. Instead, he embarked upon a search for yet another participant in what by now had evolved from the initial lone assailant theory into a gang rape and murder melee. On June 16, 1998, Ford and Wray questioned Joe Dick again. 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 Danial Williams had planned the crime and that Danial stabbed Ms. Bosko first, followed by Eric, and then himself. (Pardon Mem., at 40-41; Notes of Investigators Wray and Ford, 6/16/98.)

34. The next day, Wray and Ford returned to the jail. Joe Dick 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.)

35. 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.)

36. 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 229.²) 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.)

37. 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*, 275 Va. 18 (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).

² References to Derek Tice's state habeas hearings spanning September 11 to September 12, 2006 are referred to as "Tice Habeas Tr."

38. 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.)

39. 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.

40. 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.)

41. 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.)

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

43. 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.)

44. Ford arrested Geoffrey Farris on July 9, 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.

45. Six weeks later, on August 28, 1998, 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.)

46. 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.)

47. 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.)

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48. With no evidence against Danser 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.)

49. 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.)

50. Jennifer Stanton, Danser's attorney, effectively represented Danser, in sharp contrast to counsel for some of the other victims of Ford's misconduct. 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 showing 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;³ 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.)

51. Finally, 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

³ 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.

and the exculpatory DNA results, the Commonwealth persisted in pursuing its capital case against Danser. (Pardon Mem., at 51.)

52. In January, 1999, eighteen months after his arrest, Danial 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, reluctantly and unhappily, pled guilty, before he or anyone else knew of Omar Ballard's involvement in the crime. (Pardon Mem., at 86-87.)

53. 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, the sister-in-law of a mutual friend of Ballard and Ms. Bosko, Tamika Taylor. At the time, Ballard had just begun serving a long prison sentence for the rape and malicious wounding of Virginia Owens, a 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.)

54. 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.)

55. 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).)

56. 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).)

57. 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.)

58. 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).

59. 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).

60. 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.

61. 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.)

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

63. In April of 1999, in light of the evidence concerning Omar Ballard, Danial Williams filed a motion to withdraw his guilty plea. At a hearing on the motion on April 28, 1999, Danial's lawyers did not prepare him to testify and failed to call him as a witness. The court denied the motion. The court then sentenced Danial to two life terms without the possibility of parole. Danial appealed his conviction unsuccessfully on the sole ground that the trial court abused its discretion when it refused to allow him to withdraw his guilty plea.

64. 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. The prosecutors 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 in the crime.

65. Despite the exclusion of Joe Dick'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, his attorney, Michael 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'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; Tom Wells and Richard A. Leo, *The Wrong Guys*, The New Press 2008, at 207-08.)

66. In the meantime, Eric Wilson's case proceeded toward trial. Shortly after his confession on April 8, 1998, and with the assistance of his parents, Eric had retained Greg D. McCormack to represent him. McCormack is an experienced and able attorney. He waged a vigorous and thorough defense on behalf of his client. Compounding the challenge of his client's confession to the crimes, McCormack also had to overcome a number of questionable

tactics by the police and prosecutors, including the use of a jail house informant in the facility where Eric was confined. That informant testified falsely at the hearing on a motion to suppress Eric's confession that he had overheard Eric and Derek talking about the murder.⁴ McCormack also had to file numerous motions to force the prosecutors to turn over many items of relevant and/or exculpatory evidence.

67. Eric's trial on the charges of first degree murder and rape of Michelle Bosko took place between June 16 and 21, 1999. The prosecution's case consisted almost exclusively of Eric's confession and false testimony of Joe Dick which was given in order to satisfy his plea agreement. (Wilson Tr. at 261-367.) As in previous instances, Mr. Dick's testimony was inconsistent with his previous statements and the crime scene evidence. The defense called Omar Ballard, who invoked his Fifth Amendment rights and declined to testify. Eric Wilson took the stand, denied any involvement in the assaults on Ms. Bosko, and asserted that his confession was false and had been coerced from him involuntarily. McCormack's cross-examination of Joe Dick was vigorous and effective and Eric's performance on cross-examination by the prosecution was calm and consistent with his direct testimony. The jury acquitted Eric of the murder charge, but, unable to completely ignore Eric's confession, convicted him of the rape charge. The jury returned a relatively light sentence of eight and one-half years, which the court imposed on September 8, 1999.

68. 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

⁴ After the hearing on the motion to suppress, and prior to trial, McCormack obtained a sworn statement from the informant, a man named Garey Kelly, in which Kelly admitted that he had testified falsely at the hearing about what he heard said by Eric and Derek and that Detective Ford had asked him to obtain information about the Bosko case and had induced him to testify falsely, in return for a promise of help with his own case. (Tr. of Statement of Garey M. Kelly, May 27, 1999, at 3-15).

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.

69. 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.)

70. As required by his plea agreement, Joe Dick testified against Derek Tice at his first trial, which took place in February 2000. As he had in Eric's 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).)

71. 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 Prosecutor 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.)

72. 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 from both visitors, essentially that neither side was interested in hearing from him 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.)

B. Post-Conviction Proceedings

73. In 2004, *pro bono* counsel came to represent Danial Williams, Joe Dick and Derek Tice. These new 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 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. Many of the facts discussed above in the chronological narrative of the key events in the trial court were uncovered and/or pieced together as a result of this post-conviction investigation.

74. The post-conviction investigation also revealed additional information that demonstrates beyond any reasonable doubt that the crimes against Ms. Moore-Bosko were committed by one person, Omar Ballard, a serial rapist. This additional information included DNA evidence, autopsy evidence, a scientific reconstruction of the crime scene, alibi evidence, and new psychological evidence.

i. DNA Evidence

75. 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.")

76. 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.)

ii. Autopsy Evidence

77. 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 was 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.)

78. 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. Dr. Kinnison never told the police that the autopsy results suggested multiple perpetrators. (Tice II Tr. at 45-47.)

79. 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.)

iii. Crime Scene Evidence

80. 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 narrowing 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.

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

iv. Omar Ballard's Confession Matches the Evidence

81. 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.)

82. 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.)

83. 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.)

v. The False Confessions Do Not Match the Evidence

84. 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.)

85. 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.)

86. Detective Ford had been a police officer for eighteen years and a homicide detective for ten years when he took over the Bosko investigation in 1997. 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.)

87. 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 and altered 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.)

vi. Alibi Evidence

89. 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 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.)

vii. New psychological evidence

90. In support of his Pardon Application, Joe Dick submitted the declaration of Richard A. Ratner, MD, a 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 Detective

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).

viii. The Wilson and Tice Juries Did Not Hear Significant Evidence

91. 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.

92. 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, not 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 Denial of Absolute Pardons for Danial Williams, Joseph Dick, Eric Wilson and Derek Tice

93. 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. Previously, Eric had separately filed a clemency petition seeking the same relief.

94. On August 6, 2009, Warner's successor, Governor Timothy M. Kaine, granted Danial, Joe, and Derek conditional pardons and stated that he would deny Eric's petition for an absolute pardon. 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 on innocence, not beyond any reasonable doubt, but beyond any possible doubt.

V. Derek Tice's Grant of Habeas Corpus Relief

95. In addition to seeking executive clemency, Derek also filed a petition for habeas corpus relief 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 remain silent, which was ignored by Detective 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

96. Eric Wilson 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 Eric prior to his trial 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 for the same reason, i.e., other evidence of his innocence was known before Eric's conviction because final. Va. Code Ann. § 19.2-327.11 (2009). With no state court habeas remedies and no Virginia writ remedies available, Eric Wilson fully exhausted his absolute innocence claim by petitioning the Governor of Virginia for a pardon based on absolute innocence. After Governor Kaine denied Eric Wilson's petition for an absolute pardon on September 17, 2009, Wilson timely filed this petition.

97. Moreover, Eric Wilson 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 that could be raised by the Defendant. *See Schlup v. Delo*, 513 U.S. 298 (1995). Eric Wilson has made a compelling showing, *supra*, that he is actually innocent of the crime 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).

98. 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 Eric Wilson’s claim of actual innocence is timely filed, his entire application is timely.

99. Finally, given the very strong showing of innocence, as well as Eric Wilson’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*, 560 U. S. ___, 130 S.Ct. 2549 (2010).

B. Respects in which Eric Wilson’s Constitutional Rights Were Violated

100. As we allege below, Eric Wilson has been wrongly and unconstitutionally convicted and sentenced in violation of the Fourteenth Amendment to the United States Constitution.

1. Actual Innocence

101. The conviction and sentencing of an individual who is actually innocent of the crime 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).

102. Petitioner herein incorporates paragraphs #1-99 of this petition. The content of said paragraphs demonstrates that Eric Wilson played no role whatsoever in the tragic events that

led to the rape and murder of Michelle Moore-Bosko. He is innocent of any involvement in those crimes. Abundant reliable evidence links Omar Ballard, and only Ballard, to these crimes.

103. Nevertheless, Eric was convicted of raping Ms. Bosko, and received an eight and one-half year sentence.

104. The state court processes available to Mr. Wilson to demonstrate his innocence of this crime have not been adequate. Repeatedly, beginning with his first encounter with the police in the spring of 1998, and with virtually every other person in authority to whom he spoke – the police, his lawyer, his parents, a psychologist – Eric proclaimed his innocence and denied any involvement in the assaults on Ms. Bosko.

105. At his trial, Eric could not completely overcome the effects of the false confession that was coerced from him by Detective Ford and the false testimony that was procured by illegal means from Joe Dick.

106. It was not until 2005, when pro bono counsel representing Danial Williams, Joe Dick and Derek Tice conducted their thorough investigation that all the evidence could be gathered and the complete story of this tragedy could be told. By that time, Eric's conviction had long been final and no state court door was open for him to present his claim of innocence. Immediately after pro bono counsel for Danial, Joe and Derek had gathered the evidence needed to demonstrate the actual innocence of all four innocent men convicted of the assaults on Ms. Bosko, they timely presented this evidence to the one Commonwealth official who possessed the authority to consider it – the Governor of Virginia.

107. The Virginia pardon process was inadequate for Mr. Wilson to be fully and fairly heard. While counsel for all four innocent men met with members of the Governor's staff, and also appeared before the Virginia Parole Board to present the case for innocence, they did not

possess critical tools necessary to be meaningfully heard. They were 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 their innocence and lack of credibility of the Commonwealth's case against them. 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. Wilson's innocence and the lack of credibility of the Commonwealth's case against Mr. Wilson.

108. The continuing restraints upon Mr. Wilson – the serious felony conviction and the sex offender status -- violate the Fourteenth Amendment to the Constitution because he is actually innocent of the crime of rape of Michelle Moore-Bosko.

2. Wrongful Suppression of Exculpatory Evidence

109. In the prosecution of Mr. Wilson, 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.

110. The following evidence was in the possession of the Commonwealth prior to Mr. Wilson's trial, and was not turned over to either Mr. Wilson 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 were acquaintances.

ii. Police and prosecutors knew that one of Eric Wilson'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.

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

3. Corruption of Investigative Process Claim (Non-Exhausted)

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

113. After a considerable investigation, on May 10, 2010, a federal grand jury in the Eastern District of Virginia indicted former Detective 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).

114. 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 on seven occasions Ford falsely represented to state prosecutors in Norfolk, Suffolk and Portsmouth 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*).

115. 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.

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

117. Ford possessed a very strong motive to see that Eric Wilson was convicted and sentenced for this crime, even though he knows Wilson, and the other members of the 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 Danial

Williams that failed to match the known crime scene evidence. Even though Williams' wife and others told police Williams never left his apartment the evening Ms. Bosko was murdered, Ford believed he solved the crime with Williams' confession.

118. 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.

119. 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 Dick's "confession" was as unreliable as that of Williams.

120. 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.

121. Ford next went after Eric Wilson, even though Wilson repeatedly asserted his innocence and Ford had no evidence – none – that Wilson was or could have been involved. Again, throwing all caution in the wind, Ford aggressively interrogated Wilson and overcame Wilson's will, and Wilson "confessed." But Wilson's "confession" was as unreliable as those of Williams and Dick.

122. 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.

123. By the time of Eric Wilson's trial, Ford knew that Eric was innocent, and that Omar Ballard had committed this crime by himself.

124. 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 Wilson, nor against the other Norfolk Four defendants.

Prayer for Relief

Wherefore, Eric Wilson 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 Eric Wilson has already collected in support of his claims shall be produced by the Commonwealth;
2. Order that Eric Wilson's conviction for the rape of Michelle Bosko is null and void;
3. Grant this Petition for a Writ of Habeas Corpus ordering Eric Wilson's immediate release from the violent sex offender status under which he currently lives;
4. Order that the Commonwealth of Virginia shall immediately expunge any and all records relating to Eric Wilson's conviction;
5. Order that the Commonwealth of Virginia is forever barred from arresting and/or retrying Eric Wilson 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 30, 2010

Respectfully submitted,

ERIC C. WILSON

By: 

Anthony F. Troy (VSB No. 05985)

Anthony.Troy@troutmansanders.com

Stephen A. Northup (VSB No. 16547)

Steve.Northup@troutmansanders.com

Joshua D. Heslinga (VSB No. 73036)

Joshua.Heslinga@troutmansanders.com

TROUTMAN SANDERS LLP

P. O. Box 1122

1001 Haxall Point

Richmond, Va. 23218-1122

Telephone: (804) 697-1200

Facsimile: (804) 698-5120

Counsel for Petitioner

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.

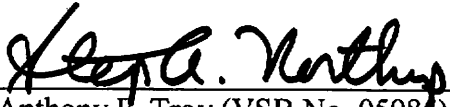
Dated: 28 July 10


Eric C. Wilson

Certificate of Service

I hereby certify that on July 30 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:

Virginia B. Theisen
Senior Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
vtheisen@oag.state.va.us
Counsel for Respondent



Anthony F. Troy (VSB No. 05983)
Anthony.Troy@troutmansanders.com
Stephen A. Northup (VSB No. 16547)
Steve.Northup@troutmansanders.com
Joshua D. Heslinga (VSB No. 73036)
Joshua.Heslinga@troutmansanders.com
TROUTMAN SANDERS LLP
P. O. Box 1122
1001 Haxall Point
Richmond, Va. 23218-1122
Telephone: (804) 697-1200
Facsimile: (804) 698-5120
Counsel for Petitioner