



STORAGE NAME: h0141.CVJS

DATE: 22/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 141 - Representative Crisafulli
Relief/William Dillon/State of Florida

THIS IS AN EQUITABLE CLAIM FOR \$810,000 FROM THE GENERAL REVENUE FUND, PLUS 120 HOURS OF TUITION WAIVERS, TO COMPENSATE WILLIAM DILLON FOR HIS 27-YEAR WRONGFUL INCARCERATION FOR MURDER.

FINDING OF FACT:

William Dillon was convicted of first-degree murder on December 4, 1981, and imprisoned for 27 years, for killing James Dvorak. Mr. Dillon was released from prison on November 18, 2008, after the Circuit Court in the Eighteenth Judicial Circuit granted the state's motion to discharge Dillon based on DNA evidence that suggested Mr. Dillon was not guilty of the murder.

Mr. Dvorak, a 40-year-old man, was murdered at Canova Beach in Brevard County on August 17, 1981, between 1:30 a.m. and 3:30 a.m. Mr. Dvorak had multiple fractures to his head and was beaten to death with fists and/or a blunt instrument. A murder weapon was never found.

At approximately the same time Dvorak was being murdered, John Parker drove his truck to Canova Beach. While there, Parker observed a young man walking up from the beach area. Parker testified that the man was 21 to 27 years old, about 6

feet tall, had a "medium" mustache, was sweaty, had blood smears on his leg and pants, and appeared upset. The man was wearing shorts, was not wearing a shirt, but held a shirt in his hand. Parker pulled up to the man and inquired if he needed help. The man told Parker that he could not find his car and asked for a ride to the A-Frame Tavern. Parker gave the man a ride to the A-Frame Tavern and testified that the man said his name was Jim.

Later that same day, Parker learned about the murder from the news media and contacted the Brevard Sheriff's Office. He told them about the man he gave a ride and that the man had left a bloody shirt in his truck. Parker had found the shirt in his truck and threw it in a shopping center trash can. The shirt was yellow and had "SURF IT" printed on the front and back. The Brevard County Sheriff's Office retrieved the shirt and prepared a sketch of the man based on Parker's description.

As the investigation continued, Dillon became a suspect. It was suggested that the sketch of the hitchhiker looked like Dillon. It was reported to police that Dillon had bragged how he "rolled" homosexuals for money. Police were told that Dillon had a mustache that he recently shaved off and was dressing and acting differently after the date of the murder.

On August 22, 1981, Dillon was contacted and asked for an interview. At the interview conducted a few days afterward by Agent Thom Fair, Dillon said that he and Donna Parrish had spent the entire night of August 16 in Cocoa Beach at the home of Linda and George Plumlee. Dillon said that the next day, August 17, he and Parrish stayed with his friend Matt Bocci in Satellite Beach. Agent Fair said that Dillon had recently-healed scratches on his hands at the time of the interview.

Donna Parrish gave several different accounts of events. During Parrish's first interview, she stated at one point that she and Dillon spent the night of August 15 with Charles and Rosanne Rogers - but at another point she said it was the night of August 16. In a second interview, taken just a few minutes later with different investigators, Parrish said that she and Dillon went to the Bocci residence on August 16. Parrish subsequently gave many varying accounts of events, all of which must be discounted based on her unreliability. It was later disclosed that, following an interview of Parrish by Chief Homicide Investigator Charles Slaughter, he drove her to his residence and had sexual intercourse with her. The sexual encounter was reported by Parrish, who filed a complaint about it with the Sheriff's Office. Slaughter admitted the sexual contact and he was immediately suspended, demoted, and transferred out of the homicide unit.

Dillon also gave varying accounts of events. He agreed to take 2 polygraph tests, and the examiner concluded that Dillon

showed deception on both tests.

No fingerprints, blood samples, or hair samples taken from the crime scene were ever linked to Dillon. When John Parker was first asked whether he could identify Dillon as the hitchhiker, Parker was unable to make a positive identification. However, during one of Dillon's interviews, Dillon touched a piece of paper that was later given to John Preston, the handler of a scent-tracking dog. According to Preston, his dog then connected Dillon's scent on the piece of paper to the bloody T-shirt left in Parker's truck, indicating that Dillon's scent was also on the T-shirt.

Several people said that Dillon often wore a yellow "SURF IT" T-shirt like the one left in Parker's truck by the hitchhiker. Pictures of Dillon taken around the time of his arrest show him wearing a yellow T-shirt with "EAT IT RAW" printed on the front. The words "EAT IT" were on top and the word "Raw" was below. Dillon's "EAT IT" T-shirt could have been mistaken for the yellow "SURF IT" T-shirt.

Sometime after Dillon's arrest, Charles and Rosanne Rogers contacted the Sheriff's Office and said Dillon and Parrish had spent the night of August 16 with them in Cocoa Beach. Dillon also claimed to have stayed with the Rogers on August 16, although not until after the Rogers came forward with that account. Additionally, several witnesses, including Brevard County Sheriff Deputy George McGee, testified that Dillon was seen in the Canova beach area, at the Bocci house, and at the Pelican Bar on August 16 and the early morning hours of August 17.

After Dillon's arrest on August 26, 1981, he was placed in a jail cell with Roger Chapman. Agent Thom Fair met with Chapman at the jail and Chapman told Agent Fair that Dillon said he had "sucker punched" a guy at the beach and then beat him with his fists. Agent Fair said Chapman initiated the meeting. At the claim bill hearing held on November 2, 2009, Chapman testified that he had been coerced by Agent Fair to make up lies about Dillon or face harsh prosecution on his own charge of sexual battery. Chapman's charges were later dropped. Agent Fair submitted an affidavit in which he asserts that Chapman's statement was not coerced. The testimony of Chapman and Agent Fair on this point was not subject to cross-examination and is otherwise insufficient to resolve the conflicting claim about coercion.

Ultimately at Dillon's trial, the jury heard: Parker identify Dillon as the man he had given a ride and who left the T-shirt in his truck; Preston testify that his dog matched Dillon to the bloody T-shirt; Chapman testify about Dillon's "confession" to him when they were sharing a jail cell; testimony that Dillon often wore a yellow "Surf-it" T-shirt; and Parrish testify that she saw

Dillon at Dvorak's body. It is not surprising, therefore, that the jury found Dillon guilty of murder beyond a reasonable doubt.

However, long after Dillon's trial, John Preston the dog handler was discredited. It was established that Preston was falsely claiming that his dogs were matching crime scene evidence to suspects when in fact there was no match. Preston is the same discredited dog handler used in the wrongful conviction of Wilton Dedge who was compensated by the State in 2005.

At the time of the murder, Dillon was 22 years old and unemployed. Dillon's attorneys described his status as "between jobs" as a construction worker. His father said he was "destitute" and not working. Dillon was usually broke and spent his days and nights sleeping on the beach, in cars, or at the apartments of acquaintances or strangers. Dillon was often at the Pelican Bar, which is across Highway A-1-A from Canova Beach. A couple of weeks before the murder, he met Donna Parrish at the Pelican Bar and was spending a lot of time with her.

In addition to Dillon's loss of freedom and the many other deprivations caused by his incarceration, he testified to having been gang-raped while in prison. He also says he has dental problems due to the poor dental care he received in prison. Dillon had a good record in prison with respect to work assignments and general behavior. He now lives in Raleigh, North Carolina.

PROCEDURAL HISTORY:

Dillon was tried in the circuit court for Brevard County in December, 1981. He was found guilty and sentenced to 25 years to life in prison.

A week after the trial, Dillon's attorney moved for a mistrial because Parrish wanted to recant her trial testimony. A hearing was held before the trial judge to consider the motion. Parrish said that she had lied about seeing Dillon at the body of the murder victim. She said she lied because Sheriff's deputies told her that, if she did not lie for them, she would "rot in jail for 25 years." Following the hearing, the trial court denied the motion for mistrial, and Dillon was sent to prison.

In 2005, Dillon learned about the Wilton Dedge case and Dedge's exoneration for a rape conviction based on DNA testing. Dillon filed a motion for DNA testing. In 2007, staff at the Innocence Project of Florida saw an interview of Dillon, and subsequently paid for DNA testing of the bloody T-shirt by a private laboratory that used testing methods not available at the state laboratory. The results demonstrated that while there was evidence of DNA on the shirt from two different males and the blood on the shirt was that of the victim, Mr. Dvorak, Dillon's DNA was not on the shirt. The DNA of the unknown males was too deteriorated to check against any database for

identification. A motion for a new trial was granted in November 2008, and Dillon was released from prison. In December 2008, the State Attorney for the Eighteenth Judicial Circuit, Norman Wolfinger, decided not to pursue a new trial. In a letter sent to the Special Master, Wolfinger explained that "meeting the State's burden of proof was going to be unrealistic in light of the nine witnesses who are now deceased and another key witness who has substantial medical issues."

Based on the publicity surrounding this claim bill during the 2010 legislative session, the Brevard County Sheriff's Office ("BCSO") re-opened the 1981 investigation. The Special Master received a redacted version of a June 2011 report providing a great deal of further information on this case. On June 9, 2011, BCSO announced its conclusion that Dillon had not murdered Dvorak, and that the murder was committed by four men who had not previously been suspects: James Johnstone, Phillip Huff, Daryl Novak, and Eric Novak. These four men have not been arrested and charged with the murder, but the State Attorney for the Seventh Judicial District (the case was specially assigned out of Brevard County to avoid any charge of partiality) is preparing the prosecution. The four men are innocent until proven guilty in a court of law.

The investigators found a telephone memo for a call that had been received by BCSO in 1981 from someone who had overheard Johnstone and Huff talking about having beaten a homosexual man at the beach. The Brevard County Public Defender's Office received a tip in 2010 from someone who had read about Dillon's release from prison, reporting to have heard the two Novak brothers in 1981 talking about beating up and possibly killing a gay man at the beach. In 1981, all four men lived in Satellite Beach, near the scene of the murder.

All four suspects originally denied involvement when questioned. However, in February 2011, Huff confessed that he was involved in the murder of Dvorak. Huff, who was only 17 at the time, stated that he, Johnstone and the Novak brothers were smoking marijuana at Canova Beach when they were joined by Dvorak, who was a stranger to them. At some point, Johnstone and Dvorak walked off into a wooded area. Huff and the Novak brothers later went looking for Johnstone and Dvorak and found them on the ground having sex. Upon being discovered, the two got up, and Johnstone began punching Dvorak. Then the Novak brothers chased and beat Dvorak as he pleaded for his life. Huff had no explanation for why the Novak brothers "went into a rage." Huff said Dvorak was hit in the head with a tree limb. The BCSO investigators found Huff's story to be credible because the details matched the crime scene investigation.

Johnstone, Huff, and Eric Novak volunteered DNA samples and a DNA sample was obtained from Daryl Novak without his

knowledge. Johnstone's DNA matched sweat found on the yellow T-shirt that had been used to convict Dillon. At the time of the murder, Johnstone was 20 years old, 5 feet, eleven inches tall, of slender build, with brown hair and a mustache. Those features match John Parker's description of the hitchhiker with the yellow T-shirt that Parker picked up the night of the murder. Parker said the hitchhiker told him his name was Jim, which is James Johnstone's nickname. The hitchhiker told Parker he was looking for his blue Dodge Dart. Johnstone owned a blue Dodge Dart. Therefore, the evidence implicating Johnstone is very strong. The hitchhiker told Parker that he had left some people who were still on the beach, which provides a link to the involvement of the other men.

CONCLUSION OF LAW:

The original criminal prosecution involved unreliable witnesses, faulty memories, and official misconduct, making it difficult to sort out the events of August 16 and 17, 1981. The trial certainly has attracted much of the attention and is a large part of Dillon's case before the Legislature. However, the conduct at the trial is not the issue before the Legislature. Rather, Dillon's actual innocence is the threshold concern. Furthermore, the burden here is on Mr. Dillon to prove his innocence – not that the trial below was mishandled. Accordingly, the next issue is what standard of proof must be met in order to carry that burden.

Burden of Proof

In the 2008 Session, the Legislature created Chapter 961, F.S., to compensate victims of wrongful incarceration. The relief provided under Chapter 961, F.S., is \$50,000 for each year of wrongful incarceration; a tuition waiver for up to 120 hours at a career center, community college, or university in Florida; and reimbursement of court costs, attorney's fees, and expenses incurred in the criminal proceedings. Dillon is ineligible to seek relief under Chapter 961, F.S., because that law is only available to persons who have no felony conviction other than the conviction for which they were wrongfully incarcerated. Dillon has a felony conviction for possession of a controlled substance - a single Quaalude - for which he served no jail time, but paid a fine and served probation. However, if Dillon were eligible to use Chapter 961, F.S., he would not qualify for compensation unless he presented "clear and convincing evidence" that he "neither committed the act nor the offense that served as the basis for the conviction and incarceration" and he "did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense."

The requirement of Chapter 961, F.S., to prove "actual innocence" is substantially different than showing that guilt was not proved beyond a reasonable doubt. A jury's determination that a defendant is "not guilty" is not a determination that the defendant is actually innocent. Although the defendant is

presumed to be innocent in the eyes of the law, the jury does not determine actual innocence. In contrast, Chapter 961, F.S., does not presume innocence for the purposes of compensation, and so it is not enough for a claimant to show that the evidence was insufficient to prove guilt beyond a reasonable doubt. The claimant cannot be compensated unless there is clear and convincing evidence of his or her actual innocence.

On the other hand, Dillon's attorneys argue that a "preponderance of the evidence" standard should be applied (although they assert that the evidence of Dillon's innocence is also clear and convincing). They note that this is essentially a claim bill seeking compensation for damages arising from the tort of false imprisonment, and as a result should qualify for the usual *preponderance of the evidence* standard that is applied in other claim bills involving government torts.

Conclusion on the Burden of Proof.

There is no precedent to turn to in resolving the issue as to which standard to apply, because this is the first claim bill for wrongful incarceration since the enactment of Chapter 961, F.S. The Claimant's argument that the Legislature should apply a *preponderance of the evidence* standard is reasonable. However, the *clear and convincing* standard in Chapter 961, F.S., is a more relevant guide for legislative action on claim bills for wrongful incarceration.

Chapter 961, F.S., relates to wrongful incarceration, which is the subject of this claim bill. Chapter 961, F.S., applies the standard of "clear and convincing evidence" when an individual has no prior felony convictions. Thus, when an individual *does* have prior felony convictions, as is the case here, it should at least not counsel *lowering* the burden of proof, if Chapter 961, F.S., is to offer any meaningful guidance. Therefore, I believe the appropriate burden of proof should be "clear and convincing evidence" of innocence.

Applying the Burden of Proof.

Unlike the hitchhiker, credible evidence suggests that Dillon did not have a mustache. Parker described the hitchhiker as being about 6 feet tall. Dillon is 6 feet, 4 inches tall. The T-shirt left by the hitchhiker was a size "small." It is unlikely Dillon could have worn a size small T-shirt.

Additionally, it is clear that one must disregard the testimony of the dog handler, Parker's identification of Dillon as the man he gave a ride that night, Chapman's testimony that Dillon confessed to the crime in the jail cell, and all of Parish's testimony.

Further, it is clear from the BCSO investigation that Dillon is innocent of the murder of Mr. Dvorak.

I find that William Dillon has proven his innocence with clear and convincing evidence.

ATTORNEY'S/
LOBBYING FEES:

Dillon's attorneys are representing him pro bono. However, the Innocence Project of Florida reported \$27,611.85 of costs incurred in obtaining the release of Dillon from prison and assisting him thereafter. There is no lobbyist's fee.

OTHER ISSUES:

Should the Legislature find that Dillon was wrongfully incarcerated and entitled to compensation for the 27 years he spent in prison, I believe the amount should be similar to the amounts paid to prior claimants for wrongful incarceration and to the amounts provided in the statutory process of Chapter 961, F.S. Therefore, should the claim be awarded, the amount should be \$50,000 for each of the 27 years (a total amount of \$1,350,000). This payment should be in addition to the waiver of tuition and fees for up to a total of 120 hours of instruction at a state career center, community college, or university.

In addition, there are statements in the "whereas" clauses of the bill that go beyond facts supported by the record. Clauses of the bill alleging prosecutorial misconduct should be removed. There is not sufficient evidence in the record to support these statements and were not part of my consideration.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that with the suggested changes, House Bill 141 be reported **FAVORABLY**.

Respectfully submitted,

TOM THOMAS.
Special Master

cc: Representative Crisafulli, House Sponsor
Senator Haridopolis, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master