THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
11/1/11	SM	**Fav/1 amendment**
11/16/11	RC	**Fav/CS**

November 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 2 (2012)** – Rules Committee and Senator Mike Haridopolos
Relief of William Dillon

SPECIAL MASTER'S FINAL REPORT

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

FINDINGS OF FACT:

On August 17, 1981, the body of 40-year-old James Dvorak was found in a wooded area frequented by gay men at Canova Beach. Canova Beach is between Melbourne Beach and Satellite Beach in Brevard County, opposite the Eau Gallie Causeway. There were multiple fractures of Dvorak's skull. The medical examiner determined that Dvorak was beaten to death with fists and possibly with a blunt instrument. No murder weapon was ever found. It was estimated that the beating occurred between 1:30 and 3:30 a.m. on August 17 and that Dvorak died soon afterward.

John Parker drove to Canova Beach on August 17, around 1:30 a.m. or a little later. He observed a man walk up from the beach. The man appeared unsteady and upset. He wore shorts and no shirt, but had a shirt in his hand. Parker pulled his truck over to the man and asked what was wrong. The man told Parker that he could not find his car and asked Parker for a ride to the A-Frame Tavern, which was not far away. Parker later described the man as 21 to 27 years old,

about 6 feet tall, and having a mustache. The man said his name was Jim. He was sweaty and had blood smears on his leg and pants. When Parker asked about the blood, the man said he had been in a bar fight. Parker drove the man to the A-Frame Tavern.

The next morning, Parker found a T-shirt in his truck. The shirt was yellow and had "SURF IT" printed on the front and back. When Parker later heard about the murder at Canova Beach, he contacted the police and told them about the hitchhiker at Canova Beach and the T-shirt that was left in his truck. The Brevard County Sheriff's Office ("BCSO") obtained the T-shirt and prepared a sketch of the hitchhiker from Parker's description. Blood on the T-shirt was matched to the murder victim, Dvorak.

At the time of the murder, William Dillon was 22 years old, unemployed, broke, locked out of his apartment for not paying the rent, and was spending his days and nights hanging out with acquaintances or strangers, and "bumming" cigarettes, drinks, meals, and rides. Dillon was often at the Pelican Bar, which is across A-1-A from Canova Beach. A couple of weeks before the murder, he met Donna Parrish at the Pelican Bar and they were spending a lot of time together.

Unlike the hitchhiker, Dillon did not have a mustache, but someone told the BCSO that Dillon had tried to grow a mustache and had recently shaved it off. Parker described the hitchhiker as being about 6 feet tall. Dillon is 6 feet, 3 inches tall. Nevertheless, interviews conducted by homicide investigators in the Canova Beach area after the murder caused Dillon to become a suspect. Some people thought the sketch of the hitchhiker looked like Dillon. Parrish reported to police that the sketch looked like Dillon and he would rob gay men for money. Other people said they heard Dillon bragging about beating up gay men.

When Dillon was contacted by the BCSO and interviewed, he gave inconsistent accounts of his whereabouts on the night of August 16 and the early morning hours of August 17. Dillon said he was at home of an acquaintance, Matt Bocci, the evening of August 16 and never went out. He later told investigators that he had lied; he had left the Bocci residence the evening of August 16, but he did not go to Canova

Beach. The interviewer, Agent Thom Fair, said that Dillon had recently-healed scratches on his hands.

Dillon agreed to two polygraph tests. After the first test, the examiner concluded that Dillon showed deception when he was asked whether he was at Canova Beach at the time of the murder and whether he hit Dvorak. After the second test, the examiner concluded that Dillon showed deception when he was asked whether he had taken money from Dvorak.

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, but he later picked Dillon out from a group of photos.

During one of Dillon's interviews, the deputies got Dillon to handle a piece of paper that was later given to John Preston, the handler of a tracking dog. According to Preston, his dog 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. Three or four people said they had seen Dillon wearing a yellow "SURF IT" T-shirt like the one left in Parker's truck by the hitchhiker.

Donna Parrish also gave inconsistent accounts of where she and Dillon had been the evening of August 16 and the early morning hours of August 17. She said she called for Dillon at the Pelican Bar and talked to him at 2:00 a.m. on August 17; he got a ride to her home and arrived about 3:00 a.m.; Dillon was scared and depressed when he arrived and told her the "police would be after him." She said Dillon's hands were cut and he had dried blood on his hands. A week after Dillon's arrest, Parrish changed her story again. She said that she and Dillon were together at the Pelican Bar on the night of August 16; she left by herself at 1:00 a.m. on August 17 and Dillon left shortly afterward. They talked for a short while outside the bar and then Parrish hitchhiked home. She says she returned to the bar and Dillon was not there, but then showed up again and he had money to buy drinks for himself, Parrish, and some other people. A waitress at the bar also stated that Dillon had money that night, something she had never seen before. Parrish said she left Dillon and

hitchhiked home. She said Dillon got a ride to her house and told her that he had gotten into a fight and hurt someone. She said he later told her he had beaten someone "so bad he died."

A month later, Parrish changed her story again to say that she saw Dillon in the parking area next to Canova Beach just after midnight, talking with someone at a parked car. She later went looking for Dillon, taking the path to the beach, and came upon Dillon standing next to the naked and bloody body of a man. Parrish changed her account of events so many times that all of her statements, whether they helped or hurt Dillon, are subject to doubt unless they are corroborated by others.

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 with the Sheriff's Office. Slaughter admitted the sexual contact and he was immediately suspended, demoted, and transferred out of the homicide unit.

After Dillon's arrest, he was placed in a jail cell with Roger Chapman. Chapman asked to speak with deputies. Agent Thom Fair met with Chapman at the jail. Chapman told Agent Fair that Dillon said he had "sucker punched" a man at the beach and then beat him with his fists. 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 for lack of evidence. 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 claim about coercion.

Sometime after Dillon's arrest on August 26, 1981, Charles and Rosanne Rogers told deputies that Dillon and Parrish had spent the night of August 16 with them in Cocoa Beach. Dillon did not say that he had stayed with the Rogers until the Rogers came forward with that account. When Dillon was asked at his trial why he had not said earlier that he stayed with the Rogers on August 16, he said he had

forgotten their names. Several people said they saw Dillon at the Bocci residence on August 16 and several people said they saw Dillon at the Pelican Bar the night of August 16 and in the early morning hours of August 17. I cannot believe that all of these people were lying or mistaken. In addition, both Dillon and Parrish had given sworn statements that they were at the Bocci residence on August 16. The Rogers' account was not considered credible in 1981 and it is still not credible.

At Dillon's trial, Parker identified Dillon as the hitchhiker who left the yellow T-shirt in his truck; Preston testified that his dog matched Dillon to the bloody T-shirt; and Chapman testified about Dillon's "confession" to him when they were sharing a jail cell. There was testimony that Dillon often wore the same kind of yellow T-shirt. Parrish testified 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.

LITIGATION HISTORY:

Dillon was tried in the circuit court for Brevard County. On December 4, 1981, he was found guilty of first degree murder. He was sentenced 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." Parrish did not explain what crime she could have been prosecuted for that could cause her to be sentenced to 25 years in prison. Following the hearing, the trial court denied the motion for mistrial, and Dillon was sent to prison.

In addition to Dillon's loss of freedom and the many other deprivations caused by his incarceration, he claims to have been raped while in prison. He also says he has dental problems due to the poor dental care he received in prison.

Dillon's attorneys have claimed that his conviction was the result of prosecutorial misconduct, but the evidence for that claim is weak. The dog handler, John Preston, was discredited and shown to be falsely claiming that his dogs

were matching crime scene evidence to suspects when there was no match. However, he was discredited long after Dillon's trial. There is no evidence to show the BCSO knew that Preston was a fraud. The jailhouse snitch, Chapman, was not credible and he has recently recanted his recantation at the claim bill hearing. Chapman claims that the Innocence Project told him what to say at the hearing and he adheres again to his 1981 assertion that Dillon told him that he had beaten a man. Parrish also recanted her recantation of her testimony against Dillon. Parrish now says that she recanted her trial testimony due to being manipulated by Dillon's attorney. It is undisputed that a BCSO investigator had sex with Parrish during the Dvorak murder investigation, but swift disciplinary action was taken to demote and transfer the investigator and it was not shown to have affected the prosecution of Dillon.

Dillon had a good record in prison with respect to work assignments and general behavior. 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, an interview of Dillon was seen by staff at the Innocence Project of Florida. The Innocence Project got involved to assist Dillon and paid for DNA testing of the bloody T-shirt by a private laboratory which used testing methods not available at the state laboratory. The DNA testing showed that the sweat and skin cells on the T-shirt did not come from Dillon. A motion for a new trial was granted and Dillon was released from prison on November 18, 2008. 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."

The New Investigation

Following Dillon's release from prison, Sheriff Jack Parker ordered a new investigation of the murder of James Dvorak. On June 9, 2011, the BCSO announced its conclusion that Dillon had not murdered Dvorak; 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 the 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.

The new investigation disclosed some earlier criminal activity by Dillon:

Aug. 1978	Possession of stolen property
Nov. 1978	Possession of stolen property
Oct. 1979	DUI
May 1981	Furnishing alcohol to a minor

Dillon was prematurely discharged from the U.S. Army in 1979 after two years of a four-year enlistment. Dillon ended his military service by being "committed to the Commissioner of Health and Social Services to serve 90 days with 65 days of the sentence suspended" as a result of his possession of stolen property. He received a discharge "under honorable conditions," which is a lesser discharge status that is used when a person is found unsuitable for military service (which can be for petty offenses).

The 244-page report of the new investigation into the Dvorak murder ends with a conclusion that Dillon was not involved in the murder of James Dvorak. The conclusion also states: "Unfortunately, there are still lingering questions concerning the behavior of William Dillon on and about August 17, 1981. Based on witness statements, witness testimony, his previous pattern of conduct, and his inconsistent and untruthful statements, concerns and important unanswered questions remain relating to Mr. Dillon's activities."

CONCLUSIONS OF LAW:

The standard of proof to establish liability for a claim bill is preponderance of the evidence. However, when the Legislature created chapter 961, F.S., in 2008, to establish a statutory proceeding to compensate victims of wrongful incarceration, it included a requirement that the claimant demonstrate "actual innocence" by clear and convincing evidence. In addition, a person seeking the compensation provided by chapter 961 must have no felony conviction other than the conviction for which he or she was wrongfully incarcerated. The relief provided under chapter 961 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.

If a wrongfully incarcerated person could get the same compensation through a claim bill as he or she can obtain in a proceeding under chapter 961, but without having to demonstrate innocence by clear and convincing evidence and despite having other felony convictions, there would be no incentive for a claimant to ever use chapter 961. To preserve the intent of chapter 961, it would be logical and reasonable for the Senate to provide less compensation in a claim bill for wrongful incarceration, unless the claimant can meet the same conditions as are contained in chapter 961.

The evidence is now clear and convincing that Dillon is innocent of the murder of James Dvorak. However, Dillon has a felony conviction for possession of a controlled substance -- a Quaalude (and, apparently, a DUI conviction related to the same traffic stop). That makes Dillon ineligible for compensation under chapter 961. In a claim bill proceeding, it is a routine practice to consider all matters related to the character of the claimant, not just felony convictions.

There is no precedent to turn to in considering this issue of an appropriate award because this is the first claim bill for wrongful incarceration since the enactment of chapter 961. I believe the award proposed in SB 2 (2012) of $810,000 ($30,000 for each year of incarceration), plus tuition waivers, is reasonable under the totality of the circumstances.

ATTORNEYS FEES: Dillon's attorneys are representing him *pro bono*. There is no lobbyist's fee.

OTHER ISSUES: I recommend the deletion of the "whereas" clauses of the bill that allege prosecutorial misconduct by the BCSO. These assertions amount to legislative findings that crimes were committed by members of the BCSO, but there have been no charges filed, no determinations by a court, and there was insufficient evidence presented to the Special Master to support these allegations.

RECOMMENDATION: For the reasons set forth above, I recommend that Senate Bill 2 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Mike Haridopolos
Debbie Brown, Secretary of the Senate
Counsel of Record

CS by Rules on November 16, 2011:
Increases the amount of compensation to $1,350,000.