



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/16/14	SM	Fav/3 amendments
2/2/15	JU	Pre-meeting

December 16, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 46** – Senator Denise Grimsley
Relief of Clinton Treadway

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM IN THE AMOUNT OF \$350,000 FROM GENERAL REVENUE TO COMPENSATE CLINTON TREADWAY FOR HIS 7-YEAR WRONGFUL INCARCERATION.

FINDINGS OF FACT:

Clinton Treadway was arrested by the Polk County Sheriff's Office on July 2, 2005 and was subsequently convicted of four counts of uttering a forged instrument and four counts of grand theft. Uttering a forged instrument is a third degree felony offense as is grand theft. (*s. 831.02 and s. 812.014(2)(c), F.S.*)

The offenses were committed between March 3 and March 7, 2005 when four altered checks were passed for cash at three different branches of the MidFlorida Federal Credit Union in Polk County.

Mr. Treadway had a checking account at the Credit Union. His Florida driver's license was provided to the tellers at the Credit Union as identification in all four transactions. The transactions occurred at the drive-through lanes.

Two of the checks were made out to Clinton Treadway. The other two checks were made out to Clifton Treadway. The name (signature) "Clinton Treadway" appeared on the back of all four checks on the endorsement line. The total amount of cash stolen as a result of these transactions was \$2,365.

The checks were drawn on the MidFlorida Federal Credit Union account of Mr. Bonnie and Mrs. Leona Cameron. "Leona Cameron" appeared on the signature line of all four checks.

Mrs. Leona Cameron placed some checks in the outgoing mail in the Cameron's roadside mailbox on March 3, 2005. The checks were being mailed to pay various bills. Mr. Cameron noticed the mailbox flag was down later in the morning but the Camerons had not received any mail. Late that afternoon, however, there was mail for the Camerons in the box. It later became apparent that the outgoing mail, including the checks paying various bills, had been stolen from the mailbox.

Several days later Mrs. Cameron contacted two of the payees of the checks and found that neither had received the checks she had put out in the mailbox for them.

Mrs. Cameron contacted the Credit Union and discovered there was no money in the Cameron's account. With the help of a teller, she then completed a Claim of Forgery interview and form at the Credit Union on March 10.

The sworn statement on the forgery claim form indicates that Mrs. Cameron was able to pinpoint four checks that had been passed at the Credit Union for cash and four that were missing and not received by the payees as of March 10.

Mrs. Cameron reported the mail theft and was interviewed on March 11 by Inspector Watson from the U.S. Postal Inspection Service.

Inspector Watson passed the case to Detective Lyon of the Polk County Sheriff's Office on April 4 for investigation of forgery, uttering and grand theft.

Detective Lyon received checks, surveillance video and photographs from the drive-through lanes at the Credit Union branches, and teller affidavits from Inspector Watson.

Detective Lyon submitted six checks for fingerprint analysis but there were no latent prints on the checks.

Mr. Treadway's Trial

On January 11, 2006, Clinton Treadway was convicted of passing four of the missing Cameron checks for cash at the Credit Union branches. The only issue at the trial was the identity of the person who cashed the checks.

The check numbers, theft amounts, dates and approximate times the checks were passed, and the credit union branch at which the checks were passed are:

1576	\$ 375	March 3	6:46 PM	Auburndale
1577	625	March 7	4:50 PM	Central
1579	800	March 4	5:51 PM	Hollingsworth
1581	825	March 7	6:54 PM	Auburndale

At the trial of the matter, Mrs. Cameron testified as set forth above.

The four tellers who handled the drive-through transactions in the case explained the procedures and Credit Union rules for cashing checks that come through the drive-through. The Credit Union only cashes checks for drive-through customers who have accounts with the Credit Union, and then only with a photo identification. The drive-through tellers are expected to verify the customer's account and compare the face of the drive-through customer with the photo identification.

After the transaction is posted, the Credit Union account holder's account number, the teller's identification number, and the date and time of the transaction appear on the back of the cashed check.

If the photo identification number does not already appear on the check, tellers write the number on the check. In the case of the four checks in question the tellers wrote Mr. Treadway's driver's license number on the checks presented to them.

During the early stages of the investigation all four of the tellers filled out affidavits at the Credit Union. The affidavits memorialize the transactions from the teller's point of view including how they handled the checks.

Under the section of the affidavit "[t]his I know from having reviewed a copy of the check", is the question: Do you remember the transaction? Three tellers checked the "no" box. Regarding check #1579, the remaining teller wrote "I only remember the check."

On page two of the Credit Union affidavit is the question: Do you remember what the subject looked like who presented the check? All four tellers checked the "no" box.

All four tellers testified at trial that they had compared the driver's license photo with the person passing the checks and that they were the same person. Several testified that although they did not recall the particular transaction, they would not have cashed the check without positive identification. The tellers testified that the driver's license did not appear to be fraudulent or tampered with.

The teller who processed check #1579 testified as follows:

Q: Today, sitting here today do you remember anything about, physically, what the person looked like?

A: The only thing that I can remember, it was a young male, dark hair, with a slim face. (Trial transcript, pages 190-192.)

The teller's memory of the description of the person who passed check #1579 matches Mr. Treadway's looks.

This particular teller further testified that she remembered those physical features at the time she filled out the Credit Union affidavit but that her manager told her it "wasn't substantial...so not to write it down." (Trial transcript, pages 190-192.)

It should be noted that there is no video or still photo of this transaction (check #1579) in evidence. The other three transactions were captured on video from which some still photos were created.

None of the four tellers were asked if they could identify Mr. Treadway, from the witness stand, as being the person who cashed any of the four the checks. This is not surprising, at least as to three of the tellers.

However, the Special Master is left to wonder why the teller who handled check #1579 was not asked if she recognized anyone in the courtroom, and from where she recognized him.

Although it is mere speculation, one can only assume that she was unable to actually identify Mr. Treadway despite her seemingly good memory of the features of the person at her drive-through on March 4, 2005.

It is possible that during her preparation for trial she viewed a copy of Mr. Treadway's driver's license, which either refreshed or helped create a memory of the transaction. Perhaps the teller was not completely certain or comfortable with identifying Mr. Treadway in court regardless of her memory. At any rate, the teller's recollection of the features of the person who passed check #1759 must have carried great weight with the jury.

Testimony was offered at trial that what appears to be the same black pickup truck is seen in each of the three videos. It is not possible to see the truck tag in the videos.

The videos and some still photos from the transactions were admitted in evidence. The person cashing the checks is wearing a cap on his head and sunglasses on his face in some photos, in others there are no sunglasses.

Although he is not qualified as an expert in matters of identification or handwriting analysis, the Postal Inspector offered his opinion that the driver's license photograph matched the person in the videos. The Postal Inspector further opined that the signatures on the backs of the checks matched the signature on the driver's license. (Trial transcript, pages 140-148.)

Mr. Treadway did not testify at trial however a duly qualified handwriting expert demonstrated to the jury how he developed his opinion that the checks were not written or endorsed by Mr. Treadway.

The undersigned is not an expert in handwriting analysis any more than the Postal Inspector is such an expert. However, having performed a comparison of Mr. Treadway's "known" signature with the signatures on the backs of the Cameron checks, this Special Master is persuaded to a reasonable degree of certainty that Mr. Treadway did not make out or endorse the checks in question.

After the jury had begun its deliberations, the jury asked the judge to allow the jury members to review the video of the truck at the drive-through "with the close-up of the person". The review was done in the courtroom.

The jury found Mr. Treadway guilty on all eight counts, four of uttering and 4 of grand theft. He was sentenced on February 6, 2006 to 10 years in prison followed by 30-years probation. The statutory maximum possible sentence in the case was 40 years. The lowest permissible prison sentence as calculated on the Criminal Punishment Code Scoresheet was 12.3 months. Mr. Treadway's prior record is discussed below.

Statewide Prosecutor's Identity Theft Case

Unbeknownst to anyone involved in the Treadway case, on September 19, 2005 the Statewide Prosecutor filed an Identity Theft case against 4 co-defendants who had been operating in Polk and other counties.

One of the listed victims of identity theft in the case was Clinton Treadway.

The investigation of the case revealed that between December of 2004 and May of 2005, Keith Anderson, Wendell Anglin, Alesia Neely and Bridgette Yopp fraudulently used or possessed with the intent to fraudulently use the identification of at least 101 people.

The search of Anglin and Neely's house resulted in the recovery of Mr. Treadway's personal identification information along with approximately 100 others.

Keith Anderson admitted to investigators of the identity theft case that Wendell Anglin provided him with fraudulent checks and identification. Anderson also stated that Anglin recruited him to steal mail and to obtain bank account information.

The records provided from the Statewide Prosecutor's case do not mention the transactions at the Credit Union.

The undersigned has carefully reviewed the videotape and still photographs admitted in evidence against Clinton Treadway alongside Keith Anderson's booking photo. Having noted a striking dissimilarity to Mr. Treadway but an uncanny resemblance to Keith Anderson it is the conclusion of this Special Master that Keith Anderson actually made the transactions involving three of the four missing Cameron checks.

Mr. Treadway never received any victim notification of the existence of the Statewide Prosecutor's case, any related court dates, the recovery of his driver's license or other matters required by law.

Bridgette Yopp, one of the co-defendants in the Statewide Prosecutor's identity theft case, was sentenced to prison. When she was about to be released, the Department of Corrections sent Mr. Treadway notification of her approaching release because, according to the Department's records, he was a victim of the identity theft she and her co-defendants had committed.

Mr. Treadway's parents received the notice, dated December 13, 2010, and opened it. Mr. Treadway was serving his 10-year prison sentence at the time. His name on the notice and on the Statewide Prosecutor's case-related documentation was misspelled as "Tuadway".

Mr. Treadway's parents retained legal counsel to help their son.

Claimant's Evidence and Position

Mr. Treadway appeared with Counsel for the Special Master's hearing on the claim bill on October 27, 2014. During the hearing Mr. Treadway gave sworn testimony and presented evidence for consideration.

He explained that he had not testified at trial and did not speak up at sentencing because his trial counsel advised him not to do so. Mr. Treadway understood that at trial the fact of his prior felony convictions would become known to the jury and it would reflect poorly on him in the eyes of the jury. At

sentencing he was warned not to anger the judge by claiming innocence, so he just tried to keep his composure.

Mr. Treadway testified that he had either lost his driver's license or it had been stolen in late 2004. He was unsure exactly when he realized it was missing. He generally kept the license in his car. He did not report the license as "missing" to any law enforcement agency.

He explained in detail that his employer, the owner of a Beef O'Brady's restaurant in Lake Wales, had helped him order a replacement license on the office computer. The replacement was issued on November 19, 2004. Mr. Treadway presented a certified copy of his Driver Record verifying the issue date of the license.

Mr. Treadway provided vehicle title and registration information showing that Keith Anderson, the identity theft defendant who appears to be the person cashing three of the Cameron's checks, owned a Ford F-150 pickup truck during that time period. Anderson's truck was registered on October 24, 2004 and the registration was scheduled to expire on November 30, 2005.

Mr. Treadway testified that he was living and working two jobs in Lake Wales at the time the Cameron check-cashing crimes were committed. Mr. Treadway was employed at Beef O'Brady's and at a construction job. He was unable to provide an alibi for the specific dates and times the checks were cashed. During this time Mr. Treadway was driving a gold Acura and did not have access to a black pickup truck.

Additionally, Mr. Treadway testified that he had never met the 4 co-defendants in the Statewide Prosecutor's identity theft case, and he had no idea how they came into possession of his driver's license.

Since his release from the Department of Corrections in July of 2012, Mr. Treadway committed a relatively minor misdemeanor at a concert in Orlando. The charges were not filed by the Orange County State Attorney's office.

Mr. Treadway is currently employed by Bonnie Plants. He manages plant sales to over 30 stores. He indicates that he enjoys his job and that it is "more responsibility than he's ever

had.” He is renting his own home on several acres and has financed a four-wheeler which he enjoys riding in the woods.

Mr. Treadway denies any physical injuries from his time at the Department of Corrections, stating that his injuries were all mental.

Criminal History, Department of Corrections Disciplinary Records

At the Hearing on this claim, Mr. Treadway was candid about his criminal and disciplinary history. His testimony is borne out by the records reviewed by the undersigned.

Mr. Treadway began getting into trouble as an 11 or 12 year old and had several cases in the juvenile system.

Mr. Treadway indicates that in 2002, when he was 18 years of age, he was arrested in Polk County in possession of about 2 ounces of cannabis and was sentenced to 18-months probation.

Subsequently he was arrested twice in Putnam County in possession of cocaine. During the second arrest he “mule-kicked” one of the officers and was also charged with Battery on a Law Enforcement Officer. He pled guilty and was sentenced to 2 years community control and transported to Polk County where he admitted violating his probation on the cannabis charge. The Polk County court sentenced him to a year in the county jail with credit for the time he had served.

In April of 2005 Mr. Treadway was arrested in possession of a misdemeanor amount of cannabis and was sentenced to weekends in the county jail. On July 2, 2005 he was arrested on the case that is now the basis of this claim.

During the 7 years Mr. Treadway was in prison there seems to have been a pattern of misconduct. Reading the disciplinary reports, which describe unsophisticated non-violent conduct, one might conclude that Mr. Treadway “preferred” being in a segregation cell. Most of the disciplinary referrals involved possession of contraband, showing disrespect to correctional officers, theft, and having drugs in his system,

According to Mr. Treadway the only violent incident reflected in the records was a result of self-defense. The disciplinary report indicates that the other inmate would not cooperate in the investigation.

Pending Civil Lawsuit

Mr. Treadway has filed suit against the MidFlorida Federal Credit Union alleging negligence, false imprisonment and malicious prosecution. According to his attorney, the case is in the Discovery phase and will not likely be resolved for some time.

Postconviction Litigation; The State Attorney's Position

Counsel for Mr. Treadway filed a Motion for Postconviction Relief in the Polk County Circuit Court on June 29, 2012, based upon the evidence surrounding the Statewide Prosecutor's identity theft case. The Court vacated Mr. Treadway's convictions in the check-cashing case on July 3 and ordered a new trial.

On July 5, 2012, Mr. Treadway was released from the custody of the Department of Corrections.

To his credit, The State Attorney for the 10th Judicial Circuit, Mr. Jerry Hill, dismissed the charges on the same day the Court vacated Mr. Treadway's convictions which meant that the State would not pursue the matter further.

However, the State Attorney does not necessarily agree that Mr. Treadway was wrongfully incarcerated for crimes he did not commit.

The State Attorney correctly points out that Mr. Treadway's postconviction relief was based upon newly discovered evidence that would "probably produce an acquittal on retrial". (*Jones v. State*, 709 So.2d 512 (Fla. 1988)). Essentially this standard means that, given the evidence available to the prosecutor or to the defense, the State would not likely be able to present a case against Mr. Treadway that would result in a conviction.

The State Attorney acknowledges that the person driving the black pickup truck and cashing the checks on the three occasions with videos does not resemble Mr. Treadway.

However, Mr. Hill asserts that the teller's testimony regarding the remaining check #1579 weighs against a finding that Mr. Treadway's claims are fully backed by substantial and verifiable proof.

Again, the teller testified as follows:

Q: Today, sitting here today do you remember anything about, physically, what the person looked like?

A: The only thing that I can remember, it was a young male, dark hair, with a slim face. (Trial transcript, pages 190-192.)

The undersigned agrees with the State Attorney that the teller's trial testimony should weigh against Mr. Treadway's claims. The question is to what degree?

The undersigned finds it incredible to think that a teller at the drive-through of a credit union could recall the features of one person viewed for a few minutes during one transaction, even a few days later. The truth is more likely revealed in the teller's affidavit which states: "I only remember the check." (Check #1759)

Weightier is the fact that during the presentation of the teller's testimony, despite having given a general description of Mr. Treadway, she was never asked by the prosecutor whether she (the teller) saw anyone in the courtroom that she thought was the person who passed check # 1759. This indicates a level of uncertainty by the witness as to the issue of identity that perhaps the jury missed.

It is possible that the jury simply mistook the teller's testimony as an actual identification of Mr. Treadway. Hearing testimony is different than reading and reviewing a trial transcript. Whatever the case, it is obvious the prosecutor and the jury gave this teller's testimony great weight.

This Special Master has carefully considered the testimony of all the State's witnesses and the defense witness offered at trial.

The Special Master has many advantages in considering this claim that the prosecuting attorney did not have, however.

Evidence of the Statewide Prosecutor's identity theft case is known to the Special Master but it was not known to the prosecutor at the time the case against Mr. Treadway was filed.

The booking photo of identity theft defendant Keith Anderson, for comparison to the videos and photos offered as proof against Mr. Treadway, is an advantage to the Special Master not enjoyed by the State Attorney's Office at the time of Mr. Treadway's arrest and prosecution.

So, too, is the evidence that Mr. Treadway's driver's license had fallen into the hands of the identity theft ring—a fact known to the Special Master that was not known to the prosecutor.

The undersigned knows that the case against Mr. Treadway was a circumstantial case, no more and no less. These cases are especially hard to prove because no witness can identify a person they observed commit the criminal offense. Nonetheless, the case must be proven beyond a reasonable doubt, a high burden of proof for a prosecutor to meet.

Mr. Treadway's burden in a claim bill is a lower burden.

CONCLUSIONS OF LAW:

Generally the burden of proof for establishing liability for a claim bill is the preponderance of the evidence standard.

Chapter 961 of the Florida Statutes was created in 2008 to compensate wrongfully incarcerated persons who qualified for compensation under the law. The standard of proof under the statute is a higher burden of clear and convincing evidence.

If the prosecutor contests a person's petition for compensation, section 961.03(5), F.S. requires that:

Any questions of fact, the nature, significance or effect of the evidence of actual innocence, and the petitioner's eligibility for compensation under this act must be established by clear and convincing evidence by the petitioner before an administrative law judge.

One absolute statutory requirement is that the petitioner has no felony offense in his or her past, no felony was committed while incarcerated, or there was no concurrent felony sentence being served at the time of the wrongful incarceration. This requirement is often referred to as the “clean hands” provision. (s. 961.04, F.S.)

It cannot be said that Mr. Treadway approaches the Legislature with clean hands. His criminal history is discussed above. He would not qualify for redress under chapter 961. It is for this very reason that Mr. Treadway seeks the legislative grace of the passage of his claim bill.

Since the Legislature enacted chapter 961, a claim bill for the relief of William Dillon based upon a claim of wrongful incarceration was passed in 2012. Mr. Dillon had a felony in his criminal history so he did not meet the clean hands requirement of chapter 961.

The Special Master hearing the Dillon claim determined that if a person could seek redress for wrongful incarceration by meeting the lower preponderance of the evidence standard of proof in a claim bill and despite having prior felonies, there would be no incentive for a claimant to ever proceed under chapter 961.

This Special Master agrees with the Dillon Special Master as to the proper burden of proof in claim bills based upon wrongful incarceration. Utilizing the preponderance of the evidence standard would give this claimant an advantage over others who have clean hands and who should therefore follow the judicial procedures under chapter 961. The undersigned will not give Mr. Treadway such an advantage.

Having considered the evidence that is available at this time, the undersigned finds that Mr. Treadway's claim is supported by clear and convincing evidence as set forth in this report.

However, the undersigned is hesitant to recommend this claim bill favorably in the amount for which the bill is currently written. If the legislature passes the bill at the rate of \$50,000 for each year Mr. Treadway was wrongfully incarcerated (\$350,000) it is essentially awarding a claimant without clean hands at the same rate at which one who has clean hands is compensated under chapter 961.

The undersigned cannot ignore this incongruity. For this reason, it is suggested that Mr. Treadway be awarded at a lesser rate, perhaps the \$30,000 for each year of wrongful incarceration (\$210,000) as was suggested by the Dillon Special Master.

Recommended Amendments

This Special Master recommends that the “whereas clause” on lines 31-34 of the bill be deleted as it does not reflect State Attorney Hill’s position.

It is also suggested that the amount of the claim bill be reduced from \$350,000 to \$210,000 for the reasons explained above.

ATTORNEYS FEES:

Counsel for the claimant has submitted a somewhat confusing Contract for Legal Services. It appears that Mr. Treadway has agreed to pay the Firm the greater of two calculations; either 25% of the claimant’s gross recovery or any attorney’s fee awarded in the claim bill. “Gross recovery” may be interpreted to include the cost of the 120 hours tuition and fees in a Florida Career Center, college or state university awarded in Section 6 of the bill.

Given that the bill itself does not cap attorney’s fees the undersigned suggests that the bill be amended to incorporate the language from section 768.28(8), F.S. The inclusion of the statutory language should eliminate confusion on the matter of the amount of attorney’s fees that may be collected in the matter.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 46 be reported FAVORABLY but further recommends that the Senate consider the amendments suggested herein.

SPECIAL MASTER'S FINAL REPORT – SB 46

December 16, 2014

Page 15

Respectfully submitted,

Connie Cellon
Senate Special Master

cc: Debbie Brown, Secretary of the Senate