

BEFORE THE HON. GEORGE W. BUSH
GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES

In Re

RICHARD WAYNE JONES,

Applicant

**APPLICATION FOR REPRIEVE FROM EXECUTION,
COMMUTATION OF DEATH SENTENCE, AND CONDITIONAL PARDON**

**REQUEST FOR HEARING PURSUANT TO
37 TEXAS ADMINISTRATIVE CODE § 143.43(b)(3) AND
ADMINISTRATIVE PROCEDURES ACT § 2001.001 *et seq.***

**REQUEST FOR COMPLIANCE WITH TEXAS OPEN MEETINGS ACT
(TEXAS GOVERNMENT CODE § 551.001 *et seq.*)**

**REQUEST FOR COMPLIANCE WITH
ARTICLE 4, § 11, CONSTITUTION OF THE STATE OF TEXAS**

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ATTORNEYS FOR APPLICANT
RICHARD WAYNE JONES

A certified copy of the Indictment.

A certified copy of the judgment and sentence including the jury verdict.

A certified copy of the docket sheet.

A certified copy of the Order setting execution.

A certified copy of the death warrant.

Mr. Jones's execution date is set for August 22, 2000.

4. Statement of the Offense:

Richard Wayne Jones was convicted in Tarrant County, Texas, of murdering Tammy Livingston. As explained in much greater detail below, Mr. Jones maintains he is innocent of this crime.

5. Statement of the Appellate History:

Richard Wayne Jones was convicted of capital murder and sentenced to death in the 213th Criminal District Court of Tarrant County, Texas, in July 1987. The Texas Court of Criminal Appeals (hereafter "C.C.A.") affirmed, *Jones v. State*, 843 S.W.2d 487 (Tex. Crim. App. 1992), and the U.S Supreme Court denied review. *Jones v. Texas*, 507 U.S. 1035 (1993).

Mr. Jones sought post-conviction relief in state court, filing an application for writ of habeas corpus pursuant to former Art. 11.07 of the Texas Code of Criminal Procedure on November 1, 1993. After an evidentiary hearing, the trial court recommended that relief be denied; the C.C.A. adopted that recommendation on May 25, 1994, *Ex parte Jones*, No. 25,990-01 (Tex. Crim. App. 1994), and refused to reconsider that decision in an order dated June 28, 1994.

After obtaining new counsel, Mr. Jones filed a Petition for Writ of Habeas Corpus

A. Introduction

Richard Wayne Jones is scheduled to be put to death on August 22, 2000. Mr. Jones' case presents this Board and Governor with the final opportunity to correct a fundamental miscarriage of justice -- the conviction (and if no one has the courage to intervene, the execution) of a man who may well be innocent.

Governor Bush has repeatedly stated that he considers only two questions in determining whether to grant clemency to a death row inmate: (1) whether the inmate has had fair access to the courts to raise his legal claims; and (2) whether there is any question that the inmate might be actually innocent of the offense. Mr. Jones respectfully submits that if the Governor and the Board fairly apply the latter criterion, they should act to prevent Mr. Jones' execution.

B. Information Required by 37 TAC §143.42

1. Name of Applicant: Richard Wayne Jones

2. Identification of Agents Presenting Application:

William S. Harris, Attorney for Mr. Jones

Robert C. Owen, Attorney for Mr. Jones

3. Required Copies of Court Documents:

Attached as Exhibits to Application are:

in federal district court on August 12, 1994. Because several additional important issues had not been developed in state court, that court permitted Mr. Jones to voluntarily dismiss his case and return to state court.

Mr. Jones then filed his second application for state post-conviction relief, which was denied by the C.C.A. without a hearing on April 7, 1995, *Ex parte Jones*, No. 25,990-02 (Tex. Crim. App. 1995).

Mr. Jones returned to federal district court, filing a Petition for Writ of Habeas Corpus on April 10, 1995. Mr. Jones' case was referred to a U. S. Magistrate Judge, who eventually recommended that relief be denied. The district court adopted those findings and conclusions on October 29, 1998. Mr. Jones' motion to reconsider that judgment was denied on January 15, 1999.

Mr. Jones filed a timely appeal in the U.S. Court of Appeals for the Fifth Circuit. That court affirmed the district court's decision in an unpublished opinion issued April 7, 2000. *Jones v. Johnson*, No. 99-10169 (5th Cir., April 7, 2000). Mr. Jones has filed a petition in the United States Supreme Court seeking review of that decision. At the time of this writing, the Supreme Court has not acted on Mr. Jones' petition for review.

6. The Legal Issues Raised:

On direct appeal Mr. Jones contended: (1) The Court erred in refusing to admit the grand jury testimony of Yelena Comalander. (2) The Court erred by admitting evidence seized from the petitioner's home. (3) The Court erred by restricting the petitioner in his inquiries of the jury panel concerning factors they would consider in answering the punishment issues. (4) The Court erred in denying petitioner's motion in limine to prevent the state from informing the venirepersons of the effect of their answers

to the punishment issues. (5) The trial of petitioner after a mistrial declared during jury selection violated his right to avoid double jeopardy. (6) The Court erred by preventing petitioner from presenting evidence of the parole procedures that would be applied to the petitioner should he receive a life sentence. (7) The Court erred in preventing the petitioner from asking certain questions on voir dire. (8) The Court erred by preventing proof of witness Ruthie Amato's deferred adjudication probation for theft. (9)(10) The capital punishment procedure in Texas is unconstitutional because the state only has to prove probability of future danger and this is vague and indefinite. (11) The sentence is unconstitutional because the jury was not allowed to consider mitigating factors. (12) The Court erred by excusing for cause a qualified juror. (13) The Court erred for not allowing petitioner to explore on voir dire the effect parole law would have on the jurors if considering the lesser offense of murder. (14) The Court erred by excluding evidence about threats against petitioner's companion. (15)(16) The Court erred by permitting improper argument by the state. (17) The Court erred by denying petitioner's motion for a jury view of his cell. (18) The Court erred in permitting the state to introduce hearsay evidence of his identification as a suspect in this case. (19)(20) The Court erred by allowing identification of a blood sample by a witness who lacked first hand knowledge and admitting hearsay information on the blood sample. (21) The Court erred by allowing the state to prove the facts surrounding a prior conviction of the petitioner. (22)(23) The Court erred by admitting photographs that were more inflammatory than probative. (24) The Court erred by admitting an autopsy photograph that was cumulative and repetitious.

In his initial state application for writ of habeas corpus, Mr. Jones contended: (1) Petitioner is actually innocent and his execution would violate the constitutional guarantee of due process of law. (2) State intimidation of Yelena Comalander violated petitioner's right to due process of law and compulsory process. (3) Exclusion of the transcript of Yelena Comalander's grand jury testimony violated due process of law. (4) Petitioner's right to confront witnesses was denied by the Court's refusal to allow him to impeach Ruthie Amato with her deferred adjudication for theft which petitioner maintained demonstrated bias. (5) The introduction of petitioner's involuntary confession violated his right to due process of law. (6) The admission of several gruesome photographs violated the petitioner's right to due process of law. (7) Requiring the defendant to wear leg shackles during trial violated his right to due process of law. (8) Juror misconduct violated petitioner's constitutional rights when a juror described her personal knowledge of the scene of the abduction of the Tammy Livingston during the jury's deliberations on guilt. (9) The Court's denial of petitioner's request for psychiatric assistance violated his right to due process of law. (10) The Court's exclusion of evidence about the likelihood of petitioner's eligibility for parole if he received a life sentence violated his right to due process of law and his right to be free from cruel and unusual punishment. (11) The Court's failure to define reasonable doubt denied the petitioner due process and equal protection of the law.

In his second state petition for habeas corpus Mr. Jones raised the following additional contentions: (1)(2) Exclusion of the transcript of Douglas Daffern's and James King's grand jury testimony violated notions of fundamental fairness and Mr. Jones' due process rights. (3) Failure to address that exclusion on direct appeal constituted

ineffective assistance of counsel. (4) Failure to offer Yelena Comalander's grand jury testimony in a manner that preserved on appeal the error of excluding that testimony was ineffective assistance of counsel. And, (5) The failure to require an inquiry by the trial court into the appropriateness of the claim of privilege by Scott Christian constituted ineffective assistance of counsel.

In his federal Petition for Writ of Habeas Corpus, Mr. Jones contended: (1)(2) Exclusion of the grand jury transcript of the testimony of Douglas Daffern and James King violated his right to due process of law. (3) Failure to raise this issue on appeal constituted ineffective assistance on the part of petitioner's appellate counsel. (4) Failure of the trial attorney to offer the transcript of Yelena Comalander's and James King's grand jury testimony in a manner that preserved the issue for appellate review constituted ineffective assistance of counsel. (5) Trial counsel's failure to seek a review by the Court in camera of the legitimacy and scope of the claim of fifth amendment privilege by Scott Christian constituted ineffective assistance. (6) Exclusion of Yelena Comalander's grand jury testimony violated petitioner's right to be free of cruel and unusual punishment and his right to due process of law. (7) Executing petitioner without meaningful review of his claim of innocence violates due process of law. (8) Refusal to allow petitioner to show bias on the part of witness Ruthie Amato violated his right to confrontation of the witness against him. (9) Intimidation of Yelena Comalander by the state violated petitioner's right to due process and his right to compulsory process under the federal constitution. (10) Exclusion of evidence regarding petitioner's parole eligibility violated his right to due process of law. (11) The trial court's failure to define "reasonable doubt" denied petitioner's right to due process and equal protection of the law. (12) The admission of

petitioner's involuntary confession violated his right to due process of law. (13) The denial of petitioner's request for psychiatric expert assistance violated his right to due process of law. And, (14) the admission of numerous gruesome photographs of the deceased violated petitioner's right to due process of law.

On appeal to the U.S. Court of Appeals for the Fifth Circuit, Mr. Jones raised the following issues: (1) The district court erred in concluding that Jones' claim of actual innocence does not "state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying criminal proceeding." (2) Mr. Jones's trial counsel rendered ineffective assistance when they failed to seek an independent evaluation of the legitimacy of and scope of the assertion of the Fifth Amendment privilege by Scott Christian. (3) The district court erred in finding, without hearing evidence, that Jones' trial attorneys defaulted his challenges to the trial court's refusal to admit the grand jury testimony of Douglas Daffern and James King. (4) The district court erred in refusing to excuse Mr. Jones' alleged procedural defaults because he did not "demonstrate his actual innocence." (5) The trial court's refusal to admit the grand jury testimony of Douglas Daffern and James King denied Mr. Jones a fundamentally fair trial. (6) The trial court's refusal to admit the grand jury testimony of Yelena Comalander denied Jones a fair trial. (7) Trial counsel's failure to offer the testimony of Comalander and King in a manner that preserved the error of exclusion of the testimony for appellate review constituted ineffective assistance of counsel. And, (8) the district court erred in concluding, without hearing evidence, that Jones' confession was not coerced.

Mr. Jones is currently urging the following issues in the United States Supreme Court: (1) Is federal habeas relief precluded by *Herrera v. Collins*, 506 U.S. 390 (1993),

as the court below found, where a Petitioner shows that he is probably factually innocent of the crime but cannot prove that constitutional error tainted his trial, or may relief be granted in such circumstances, as the Ninth Circuit has held in, e.g., *Jackson v. Calderon*, 211 F.3d 1148, 1164 (9th Cir. 2000))? (2) The Fifth Circuit concluded that due process was not violated when the trial court excluded exculpatory prior testimony by unavailable defense witnesses, because their testimony was "not wholly reliable" and not "necessarily inconsistent" with Petitioner's guilt. Does that holding conflict with *Ohio v. Roberts*, 448 U.S. 56, 66 (1980) (testimony is assumed to be reliable if it satisfies a "firmly rooted" exception to the hearsay rule, such as the prior testimony exception); *Kyles v. Whitley*, 514 U.S. 419, 435 (1995) (exculpatory evidence need not be "necessarily inconsistent" with a defendant's guilt); and *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (state evidentiary rulings which seriously threaten the "fairness and reliability [of] the ascertainment of guilt" can violate due process)? (3) Did the Fifth Circuit impermissibly dilute both the Sixth Amendment right to counsel and the guarantee of compulsory process when it held that Petitioner's trial counsel provided effective assistance when he declined the trial court's invitation to conduct *in camera* questioning of a critically important defense witness who had decided to claim his Fifth Amendment privilege? (4) Did the Fifth Circuit err in finding Petitioner's confession voluntary, where that conclusion rested on the state trial court's decision to credit a police officer's implausible recantation of his earlier direct and unqualified admission that threats were made against Petitioner's girlfriend to induce him to confess? And, (5) Did the Fifth Circuit err in refusing to excuse alleged "procedural defaults" in state court under the "actual innocence" exception of *Schlup v. Delo*, 513 U.S. 298 (1995), where the Fifth Circuit's analysis completely ignored substantial extra-record

evidence consistent with Petitioner's innocence that was never heard by the trial jury, and instead consisted essentially of an assessment of whether the jury's verdict of guilt was supported by sufficient evidence?

7. Requested Length of Reprieve:

Because of the extraordinary nature of this case, Mr. Jones seeks a reprieve of at least 120 days.

8. Grounds for Commutation, and/or Reprieve:

- (1) Mr. Jones maintains that he did not murder Tammy Livingston.
- (2) Mr. Jones has demonstrated in his years on Death Row that he is a non-dangerous prisoner who can lead a meaningful life behind bars and need not be put to death in order to ensure public safety.

C. Why Relief Should be Granted:

1. Commutation or conditional pardon is appropriate because of enduring substantial doubts about whether Mr. Jones committed the crime.

a. Factual background.

The Offense

On February 19, 1986, sometime between the hours of 6:18 and 7:30 p.m., Tammy Burkhart Livingston was abducted in her own car from a store parking lot in Hurst, Texas.¹

Shortly before midnight that same evening, her burned body was found in a field by the Fort

¹ All of the factual assertions in this statement of facts are supported by either police reports, the trial record, the record on the first state habeas hearing, the various decisions of the courts that have reviewed the case, or witness statements gathered by the defense investigators. While petitioner use footnotes to designate the source of the various contentions, if any contention in particular is of interest to the Board, the petitioner will supply the source material if not otherwise noted.

Worth Fire Department when they extinguished a grass fire in east Fort Worth.² She had been stabbed seventeen times in the neck, upper chest, and face. Ms. Livingston's car was recovered one and a half days later, abandoned in the parking lot of an apartment complex in Fort Worth.³

The Police Investigation and Arrest

There were three eyewitnesses to the abduction of Tammy Livingston: a forty-one year-old woman and her two teenage daughters. The adult eyewitness, Ruthie Amato, called the police with information of the apparent kidnaping, but gave no information as to the kidnapper's description during the call. Two days after the incident, Amato met with police and described the perpetrator as a white male, early thirties, close to six feet tall, a medium build, and having reddish brown hair, clean cut, and wearing a red shirt.⁴ It should be noted that Richard Jones has blonde hair and was wearing a large mustache at the time of Ms. Livingston's murder. According to evidence submitted by the state at his trial, Richard was wearing a brown and gray plaid shirt the night of the murder.⁵

A witness who resided near the field where Ms. Livingston's body was found told police she had heard screams between 9:20 and 9:45 p.m. on the night of the murder.⁶

² 52 T.R. 712. (References to the trial record will be designated by volume, then the initial T.R. followed by the page number.)

³ 50 T.R. 237-238.

⁴ 49 T.R. 80.

⁵ 51 T.R. 443.

⁶ 49 T.R. 129.

The night after the discovery of Ms. Livingston's body, a nineteen year old woman named Yelena Comalander was apprehended while attempting to cash one of the victim's checks. It was later determined that Ms. Comalander and her boyfriend, Richard Wayne Jones, had used the victim's credit cards just prior to Ms. Comalander's arrest for possessing the checks.

The night of her apprehension for having the victim's check, Ms. Comalander told police she had obtained the checks from her boyfriend. The interrogation resumed the following morning, and Ms. Comalander was advised she was a suspect for a capital murder after the body found in the field had been identified as that of Tammy Livingston. After a morning of interrogation, Ms. Comalander signed her first written statement.⁷ In this statement Ms. Comalander admitted she was in the victim's car with Richard Jones, that they tried to use the victim's ATM card, and that they used the victim's credit cards. She allowed investigators to search her home, where additional items belonging to the victim were found, including a bag from the store Ms. Livingston had left just prior to being abducted. Ms. Comalander's second statement was described by police officers as being an "oral admission" during their ride to her residence, during which she implicated Richard in the murder. These oral statements were eventually reduced to writing. After having spent ten hours with police officers during which she was interrogated, signed her first statement, was present for the search of her house, and allegedly made incriminating oral admissions, nineteen year old Yelena Comalander signed her second statement implicating Richard in the murder of Tammy Livingston. Ms. Comalander admitted to defense investigators during

⁷ 50 T.R. 231-234.

Richard's appeal that at the time she signed the statement, she had been scared of the police and that during her interrogation the detectives changed what she said about the incident.⁸

During the evening Ms. Comalander was being interrogated about the murder of Tammy Livingston, Richard was met by police at the home of his parents as he came in from work. He was arrested and taken by the investigators to the police department for questioning.⁹ Thus began a police interrogation that was both intense and emotionally charged.

The first interrogation of Richard Jones lasted twelve hours, from 7:00 PM until he was finally taken to a jail cell at 7:00 the next morning.¹⁰ During these twelve hours, Richard was denied food, deprived of sleep, and was subjected to what can be described as psychological torture by police officers. He was provided photos of the victim's burned corpse and questioned extensively about the murder of Ms. Livingston.¹¹ Richard was kept overnight in a room referred to as "the pink room" with the lights on and police officers dropping in every few minutes to threaten him with physical harm of both himself and of his girlfriend. The detectives investigating Ms. Livingston's murder convinced Richard that both he and his girlfriend Ms. Comalander, who was at the time pregnant with Richard's child, would be going to death row; that their child would be born there and then taken from

⁸ Defense interview of Yelena Comalander.

⁹ 51 T.R. 388.

¹⁰ Interview with petitioner by defense investigators.

¹¹ 5 T.R. 252.

them; and that he and Ms. Comalander would be executed.¹² Richard repeatedly told the detective that he had obtained the victim's property from a man he called "Walt" and that he did not kill Ms. Livingston.¹³

Less than an hour after finally being taken to a cell the next morning, Richard was removed from the cell by an investigator on the case. After being booked and processed, Richard was placed in a line-up. Ruthie Amato, the eyewitness, identified Richard during the police line-up, even though her original description of the perpetrator did not match that of Richard.¹⁴ Her teenage daughter -- also an eyewitness to the abduction of Ms. Livingston -- failed to identify Richard during this same line-up, but this failure was deliberately omitted from the police report by detective Steffler.¹⁵

Richard then spent the day riding around with detectives to various locations associated with Ms. Livingston's abduction and murder: the parking lot from which she was kidnaped and the field in which her body was discovered. He took them to retrieve his knife and the clothing he wore on the night of the murder: denim jeans and a brown plaid shirt. During the drive, this detective and the two officers accompanying him continued to apply pressure with regard to Ms. Comalander, telling Richard how upset she was and that she might even lose their baby due to all the stress of the situation. They reminded Richard that the faster the case was resolved, the better off his girlfriend and their unborn child would be.

¹² 5 T.R. 272, and interview with petitioner by defense investigators.

¹³ *Id.*

¹⁴ 49 T.R. 96, 80.

¹⁵ 51 T.R. 527.

When they arrived at the crime scene, the investigator had Richard climb over the fence and walk through the field where the fire had been set and the body had been found. While there, the detective provided Richard details of how he thought the crime had occurred. The detective took Richard to a fast food restaurant on their way back to the jail that afternoon.¹⁶ This was Richard's first meal since he had had lunch the day of his apprehension, more than twenty-four hours prior.

Richard was returned to the jail and the interrogation resumed. After being in custody for twenty-one hours, Richard told the police what they wanted to hear, based on his conversations with the officers that same day at the various crime scenes. When Richard voiced second thoughts about signing a statement, the officers told him the only thing keeping Ms. Comalander in jail at that point was him not giving a statement.¹⁷ It is interesting to note that the details given in Richard's statement reflect only those details about the offense known by the investigating detectives at that time. Richard signed the statement, then was allowed to visit with Ms. Comalander for about twenty minutes.¹⁸ During this time, she told Richard the officers threatened her by saying Richard had left town after she was arrested., leaving her to take blame for a murder. As they had done during the interrogation of Richard, officers allegedly told Ms. Comalander that her child would be born on death row and immediately taken from her, and that she would eventually be executed for the murder of Tammy Livingston.

¹⁶ 51 T.R. 434-480.

¹⁷ Defense interview with Richard Jones.

¹⁸ 4 T.R. 180.

Richard was arrested, charged with capital murder, and lodged in the Tarrant County Jail. Yelena Comalander was charged with four felonies pertaining to having possession of and having used the victim's checks and credit cards, as well as capital murder.

The subsequent police investigation also revealed: there was a fingerprint left by Richard on the driver's side window of Ms. Livingston's car;¹⁹ there were two small spots of blood on the lower left leg of his denim jeans;²⁰ and a knife recovered from Richard's sister was consistent with the weapon that caused Ms. Livingston's stab wounds.²¹ The spots of blood found on Richard's jeans were determined to be consistent with the victim's blood type.²² There was not blood on his shirt.²³ Traces of blood found on the knife and on Richard's boots were so small that it was impossible to even determine if the blood was of human origin.²⁴

What the police investigation did not reveal was what had happened to Ms. Livingston during the two to three and a half hours between the time of her abduction and the time of her murder. In his statement, Richard does not describe what happened during those hours, because neither he or the police knew what had happened. Additionally, there was a great deal of blood around the body, which indicated Ms. Livingston was murdered while in the field. The fatal wound was a severing of her carotid artery, a wound from which

¹⁹ 50 T.R. 291, 360.

²⁰ 52 T.R. 680.

²¹ 52 T.R. 741.

²² 52 T.R. 680.

²³ 52 T.R. 684.

²⁴ 52 T.R. 688, 677.

a great deal of blood would have spurted.²⁵ Yet, Richard's shirt had no blood on it and his jeans were stained with only two small drops of blood.

Also of note is the physical and trace evidence taken from the crime scene and from the victim's car which did not match Richard Jones. Fingerprints and hair samples collected by police from the two scenes have yet to be matched to any person.

Richard Jones' Account of the Events of February 19, 1986

In February, 1986, Richard Jones was employed by a construction company and worked on a road crew for which his father was a foreman. On February 19, Richard got off work at approximately 6:00 p.m. After dropping some equipment in Haltom City, Richard and his father arrived at his parent's house at around 7:15 p.m.²⁶

After visiting with his family for a few minutes, Richard drove to the home on Avenue H where he lived with Yelena Comalander, his sister Karen, Karen's husband and their two children. When Richard arrived at the house, the adults were just sitting down to eat dinner.

After they finished eating, Richard went out to the backyard for awhile, where Yelena eventually joined him. When Yelena went inside the house, Richard went to the front of the house in order to lock up his car. As he was walking out to the front yard, Richard saw one of his sisters, Brenda Jones Ashmore, walking up the driveway. Richard and Brenda had been very close as children, but were somewhat distanced in recent years due to her very serious drug habit.

²⁵ 52 T.R. 733.

²⁶ Defense interview with Jones and affidavit introduced at first state habeas as Defense Exhibit 6.

Brenda asked Richard for a ride to a friend's house. When Richard pointed out that it was almost ten o'clock and that he had to get up early the next morning for work, Brenda pleaded with him to drive her to the friend's house, saying it was very important. During the drive, Brenda told Richard that she was in trouble because she and Walter Sellers had been involved in the robbery of a man and a woman. Brenda began crying, and told Richard that they had killed the man and woman.²⁷ Richard was not inclined to believe Brenda's story, because she was high and was prone to tell lies when she was on drugs. When they arrived at Brenda's destination, a house on Panola Street frequented by drug users and dealers, Richard entered the house with Brenda. There, he saw Walter Sellers, who more or less confirmed Brenda's story. He gave Richard some of what later turned out to be Ms. Livingston's jewelry to give to Yelena. He encouraged Richard to buy checks and credit cards from him, as they needed money for drugs for Brenda. Both Sellers and Brenda pressured Richard to help them, saying Brenda would go to jail if the crime were to be discovered and that he was the only person they could trust. Sellers offered Richard the victim's car in exchange for helping dispose of the bodies.

Sellers showed Richard the field where Ms. Livingston's body was, but did not actually show him the body. Sellers then took Richard to where the victim's car was parked. Richard returned home in this car, in order to pick up Yelena and a gas can. Richard and Yelena drove in the victim's car to retrieve his mother's car. After hiding Ms. Livingston's car at an area apartment complex, Richard drove his mother's car, with Yelena in the

²⁷ Richard does not know why Brenda said there were two victims rather than one.

passenger seat, to the field. He lit the body and field on fire while Yelena waited in the car. Then, they returned to their home.²⁸

Richard's version of the events on the evening of the murder is not inconsistent with the uncontroverted evidence. His fingerprint was found on the window of Ms. Livingston's car because he drove the car from the parking lot where Sellers had taken him to the apartment complex where the car was eventually located by police. The blood on his pants consisted of two very small spots, which could have rubbed onto his pants while he walked through the high grass surrounding the body as he set the fire. In the statement of Yelena Comalander, she noted Richard was shaking when he returned to the car after lighting the fire. This is a reasonable response for someone who has just viewed the body of a murdered woman, but not a reasonable response if one is also the murderer. It should be noted that Ms. Livingston could have been murdered by a woman: she weighed only ninety pounds and most of the stab wounds were shallow. And, the statement provided to police by eyewitness Amato does not match Richard in terms of hair color, being "clean cut" or the shirt he was wearing. It does, however, roughly match the description of Walter Sellers, who had brown hair and was clean shaven at the time of the murder.

The Grand Jury Process

During this stage of the State's investigation, several witnesses came forward with information that corroborated Richard's original claim that he had not killed Tammy Livingston and that he had obtained her property from Walter Sellers.

²⁸

Id.

Yelena Comalander told the Grand Jury that Richard had told her of obtaining the checks and credit cards they were using from Sellers, and that Sellers had asked him to burn the body. She also informed the Grand Jury of the reason she had signed a statement implicating Richard in the death of Ms. Livingston: she was fearful of being charged with capital murder herself, of giving birth to her child while on death row, and of being executed for something she did not do.²⁹

Douglas Daffern testified before the Grand Jury that a nervous and paranoid³⁰ Sellers had attempted to sell him credit cards, checks, and a car when he came to Daffern's room at an area motel Sellers was known to frequent. Daffern specifically recalled that the name on the checks was Livingston and that Sellers claimed he had killed two women. Daffern did not know Richard Jones. Even though Daffern provided information as to others who may have been present when Sellers made efforts to sell the victim's property, there appears to have been no effort by police to locate them.³¹

James King also told the Grand Jury of seeing Sellers with the victim's property. During the incident King described, Sellers came to a drug house both men frequented and offered to sell checks, identification, and a car to several people there. King specifically recalled Sellers appeared to have blood on his clothing.³²

²⁹ Trial Record exhibit, Defense Exhibit 16.

³⁰ Sellers was listening at the walls with a stethoscope to see if anyone in the adjoining rooms was listening. Trial Record exhibit, Defense Exhibit 17.

³¹ *Id.*

³² Trial Record exhibit, Defense Exhibit 18.

Scott Christian gave a sworn statement to police that shortly after the murder Sellers had come to his house on Panola Street, appeared upset and nervous, and was spattered with what appeared to be blood. Christian told police that Sellers had attempted to sell to him the identification and checks of a woman fitting the description of Ms. Livingston. This occurred prior to Richard Jones coming to the house. Additionally Christian said he witnessed Sellers sell the checks to Richard.³³

The Defense Pre-Trial Preparation

Richard was represented by two Fort Worth attorneys during his trial: Jack Strickland and Bill Lane. They hired private investigator Eric Delaughter to assist them with the trial preparations. Richard rarely saw any member of his defense team during the fifteen months between his arrest and his trial for the murder of Tammy Livingston. He had not even met Mr. Lane prior to the beginning of the jury selection process. It was obvious to Richard that his attorneys did not believe his claims of innocence.³⁴ And, unfortunately, Richard did little to assist their efforts to defend him. He did not confide in his attorneys or their investigator that he knew Walter Sellers through his sister Brenda, that Brenda had confessed to him that she was involved in the murder of Tammy Livingston, and that he set the field afire as a means of protecting his sister. Richard continued to "protect" his sister from being implicated in the murder, all the while assuming she would voluntarily come forward and clear him before he was convicted. Had his attorneys spent more time with Richard, a trust may have been developed that would have made him feel comfortable in confiding in them.

³³ Trial Record exhibit, Defense Exhibit 12.

³⁴ Defense interview with petitioner.

However, this was not the case and we will never know if Richard would have exposed his sister as a witness / participant in the murder or whether he would have intentionally risked the death penalty in an ill-conceived effort to allow Brenda to come forward on her own.

Due to the length of time that has passed since Richard's trial, and perhaps in defense of his own work on the case, the trial investigator has not been of assistance to attorneys who represent Richard on appeal. Because only a handful of pages of notes made by this investigator have been made available to the current attorney, little is known about the depth or comprehensiveness of the pre-trial investigation conducted on Richard's behalf. Even though the pre-trial investigative efforts were likely hindered by Richard's initial hesitancy to disclose the role his sister played in the offense, and his denial of setting the field afire, Richard's defense team could have worked around this obstacle by using information about Sellers made available to them by the prosecution. For example, Richard's defense team knew about the statements of Doug Daffern, James King, and Scott Christian. However, none of these men were interviewed by the attorneys or their investigator. If these men had been interviewed, Richard's defense teams would have learned the identities of additional witnesses to Sellers possessing and attempting to sell the victim's property prior to Richard having it. As all three of these men were incarcerated during a significant portion of the year between Richard's arrest and trial, the defense team should have had no trouble finding them.³⁵

Had the defense undertaken a comprehensive investigation with regard to Walter Sellers, the person their client claimed to be responsible for the death of Tammy Livingston,

³⁵ Defense investigation of jail records in Tarrant, Dallas and Denton Counties.

they would have learned several interesting facts. For example, during the years 1985 through the time of Richard's trial, Walter Sellers was arrested for six instances of auto theft, possession of drugs, and unlawful carrying of a weapon (a gun). Granted, none of his arrests were for violent crimes. However, he was known to trade in the same kinds of stolen goods that were taken from the victim and which Richard claimed to have bought from him. His criminal record certainly proves Sellers was on a crime spree during the months before and after the murder.

Additionally, Sellers was arrested one month after the murder with what was described by the police as "a dagger" in his possession. This knife was confiscated by the Fort Worth Police Department and was in their evidence locker room at the time of Richard's pre-trial investigation and at the time of his trial. It has since been destroyed, so no forensic testing may be conducted.

Another example of evidence that was available for the defense team to discover involves witness Doug Daffern, who testified before the Grand Jury and implicated Sellers in the murder. Daffern was incarcerated with Sellers in Denton County prior to the beginning of Richard's trial. Daffern maintains that during their incarceration together, Sellers, upon learning of the Grand Jury testimony, tried to convince other Denton County Jail inmates to kill Daffern.³⁶

A look at Sellers' crimes committed prior to the murder and during the year between Richard's arrest and trial reveals some interesting facts. He was arrested for several felonies during this fifteen month period, and seemed to have been favored with several "lucky

³⁶ Defense interview with Doug Daffern post 1995.

breaks” during this time. After each arrest, Sellers would be released on bond, even though he would later fail to appear in court again and again. Although he was on parole, it was never violated for any of these arrests.

The defense investigation did apparently make an effort to interview Walter Sellers, who was in custody on unrelated charges in Denton County. Based on notes made by Richard’s investigation, it appears that Sellers refused to speak to the investigator about the night of Ms. Livingston’s murder. Comments made by Sellers during the meeting with the defense investigator should have aroused suspicion, however. According to the hand-written notes, Sellers told the investigator that he had contacted a Tarrant County District Attorney investigator and asked for advice on how to handle the claims of Richard and other witnesses that he was involved with the murder of Ms. Livingston. The D.A. investigator had advised Sellers to get an attorney. If what Sellers told the defense investigator is true, he had initiated a contact with the District Attorney’s office, and but neither the police nor the D.A. had interviewed him with regard to his possible involvement in the Livingston murder.

Also of note is an odd event that transpired during the trial of Richard Jones. Thirty-one year old Michael Barton contacted the office of Jones’ attorney and confessed to the murder of Tammy Livingston. Barton, then an inmate at the Tarrant County Jail, confessed that he and Walter Sellers abducted a woman, took her car, and killed her. His description of the woman and of her car matched those of Ms. Livingston. Barton claimed to have been using drugs at the time of the offense and claimed he had just learned that Richard Jones had been charged with the murder. Barton told them he was having thoughts of suicide because he felt guilty about Ms. Livingston’s murder. He admitted to previous hospitalizations for

psychiatric problems. It is not clear as to how the defense team came to discount Barton's confession. It is clear that they did not present this information to the jury.

The Pretrial Hearing

A pretrial hearing was held and several pretrial motions decided on March 25 & 26, 1987. On the first day of the pretrial hearing, during the hearing on the motion to suppress the petitioner's statement, Detective L. T. Steffler admitted that Richard was threatened with the charging of his girl friend, Yelena Comalander (who was carrying Mr. Jones' child), with capital murder if the petitioner did not confess. He told petitioner that the baby would be born while Ms. Comalander was in custody and would be taken from her. The court recessed for the day and when Detective Steffler resumed testifying on the following day, he recanted his admissions saying that he had been inattentive the preceding day.³⁷ He admitted that he had been "talked to" about the effect of his testimony on March 25, 1987, by the prosecutors who had told him that his testimony created problems. Steffler obligingly changed his testimony. A review of the questions and answers from the preceding day reveals that both the questions and answers were relatively straight forward and Steffler's answers were responsive to the questions asked.³⁸

Subsequently, a second officer, Detective Pendergraf, who had also been present during petitioner's interrogation, said that he had told petitioner that Comalander would probably go to prison for forgery and that she would not be allowed to keep the baby, but he

³⁷ 4 T.R. 66-191; 5 T.R. 235-268.

³⁸ *Id.*

denied that he tied what happened to Comalander to whether petitioner gave a confession.³⁹ Interestingly, after Richard confessed, Comalander and he were allowed to visit, her bond was reduced, she made bond and, ultimately, she was placed on probation for her involvement in this case. Despite this improbable recantation and the admission by Pendergraf that a statement very similar to the threat that Steffler had originally admitted had been made, the trial court accepted the cleaned up version of the interrogation provided by the state on the second day of pretrials.

The Trial of Richard Wayne Jones

The case presented by the State of Texas during Richard's trial consisted of his having possession of the victim's property, his fingerprint on Ms. Livingston's car, the two spots of blood on his jeans, the similarity of his pocket knife to the murder weapon, the eye-witness identification and most importantly, Richard's confession.

The defense presentation consisted only of the testimony of Richard Jones.⁴⁰ As he had asserted at the beginning of the investigation, Richard testified to the jury that he had not killed Ms. Livingston, but that he had obtained her checks, credit cards, car, and other property from a man named Walter Sellers. Richard testified that Sellers, a friend of his sister Brenda, had sold him the car and other items the night of Ms. Livingston's murder. Richard testified that he was at the house on Panola Street because he had given his sister Brenda a ride there to meet Sellers. Richard also testified that during his visit to the house on Panola Street, he noticed Sellers had what appeared to be blood on his shirt and forearms.

³⁹ 5 T.R. 310.

⁴⁰ 53 T.R. 849-920.

Richard told jurors that his confession to the murder was a result of coercion by police and their threats concerning his girl-friend and unborn child.

Unfortunately, Richard's alibi for the time of the murder was not investigated by his attorneys. Furthermore, the substantial evidence that corroborated Richard's testimony was not presented to the jury when the evidence of the four most important defense witnesses was not allowed before the jury.

As a result of her testimony before the Grand Jury, which conflicted her signed police statement, Yelena Comalander had been charged by the State with Aggravated Perjury. When called as a defense witness during Richard's trial, Comalander invoked her fifth Amendment right against self-incrimination, out of fear that the State would charge her with an additional count of perjury for testifying at trial contrary to what was in her statement to the police.⁴¹ By charging Comalander with felony perjury, in addition to the other felony charges pending against her at the time of Richard's trial, the State had effectively cut off Richard's access to the crucial information Comalander could have supplied to the jury: more detail with regard to Richard's whereabouts on the evening of the murder, that he had told her he obtained the victim's checks and other property from Walter Sellers, and that the police had coerced her into providing a false statement implicating Richard. The Court misunderstood the law on the admissibility of the grand jury testimony, and disallowed it. Thus, the jury did not get to hear the non-hearsay parts of that information.

Richard's defense counsel claimed to be unable to locate either Doug Daffern or James King at the time of the trial. An effort to allow the jury to hear the Grand Jury

⁴¹ 53 T.R. 786.

testimony of these witnesses was unsuccessful, because the judge ruled the Grand Jury transcripts inadmissible.⁴² The jurors were not provided information that two witnesses had seen a blood-spattered Walter Sellers attempting to sell the victim's property at two separate locations prior to his meeting with Richard at the Panola Street house.

The fourth key defense witness, Scott Christian, also invoked his Fifth Amendment right against self-incrimination and so did not testify (1) as to his knowledge of a blood-spattered Sellers attempting to sell the victim's property before Richard came to Christian's house and (2) that he witnessed Sellers attempting to sell these items to Richard. At the time of Christian's original statements to the police and the District Attorney that implicated Sellers, he was under indictment for felony charges unrelated to the Jones investigation. During his statement about Sellers to the District Attorney, Christian made references to his prior drug dealing. When called by the defense to testify at Richard's trial, Christian feared being charged by the State as a result of his admissions to criminal activity, even though those admissions were totally unrelated to his knowledge of Sellers having possession of the victim's property. Because Richard's trial attorneys and the trial judge did not ascertain whether Christian's invocation of his right against self-incrimination was justified under the circumstances, the jury never heard his testimony.⁴³

Richard was sentenced to death in July of 1987. Although it is understandable why the trial jury determined him to be guilty (his confession, his possession of the victim's property, the as-of-that-time unexplained spots of blood on his pants, and the statement of

⁴² 53 T.R. 808.

⁴³ 53 T.R. 811-818; Affidavit of Scott Christian dated ***.

his girlfriend), it is clear the jurors were not presented with all available evidence of his innocence. And, given the fact that during guilt phase deliberations the jurors requested they be allowed to view a photo of Walter Sellers, it is apparent they were willing to consider Richard's version of the events that transpired the night Ms. Livingston died. Had they been provided the testimony of Doug Daffern, James King, Scott Christian, and Yelena Comalander, the verdict might have been different. The state repeatedly emphasized the lack of corroboration of defendant's story in their closing argument.⁴⁴ A lack of corroboration they had engineered.

Once Richard lost the opportunity to present the testimony of these witnesses to the jury, his only hope was to be granted relief on appeal and be granted a new trial during which he could present this crucial evidence of his innocence. But, due to errors made by his trial attorneys, Richard had lost the opportunity to win an appeal based on these issues.

Richard's Appeal: the State Process

On the direct appeal, the Court of Criminal Appeals ruled that the trial court erred in refusing to admit the non-hearsay portions of Yelena Comalander's grand jury testimony. However, because Richard's trial attorneys did not offer the non-hearsay evidence separately from the hearsay, any error was waived. The appellate attorneys for Richard did not raise the issue of the court's similar ruling excluding the grand jury testimony of Daffern and King, even though they were admissible (insofar as they were not relating statements by others) under the same rule that should have provided for the admission of Comalander's

⁴⁴ 54 T.R. 963, 998.

testimony. Mr. Strickland, Richard's lead trial attorney, and Mr. Alan K. Butcher were Richard's counsel on direct appeal. The Court of Criminal Appeals affirmed.

During the state-level habeas corpus review of a death sentence, the convicted person has the opportunity to document evidence that was not previously presented due to errors by the trial attorney. In the case of Richard Jones, it was his trial attorney, along with a new co-counsel from the direct appeal, who represented him at this crucial stage of the proceedings. Perhaps for this reason, the competency of his trial defense team was not scrutinized. To Richard's advantage, however, was the fact that his trial attorney had the assistance of an attorney working for the Texas Resource Center (TRC).

During 1993, Richard's defense team was comprised of his lead trial attorney Jack Strickland, Alan Butcher (who was co-counsel on direct appeal), an attorney from the TRC, and a private investigator. During the fall of 1993, Richard, who was facing an execution date, wrote a letter to his mother to be read after he was dead, explaining what had really happened the night of the murder.⁴⁵ Richard did not want his mother to ever believe he had killed someone. His TRC attorney read this letter, in which Richard for the first time detailed his sister's involvement in the murder and the fact that he did burn the field where the victim's body lay, as a means of helping his sister conceal the crime. After reading the letter and confronting Richard with his admissions, the attorney shifted the focus of the investigation and added more investigators to the defense team. A forensic scientist was hired to review the evidence presented at trial.

⁴⁵ 5 State Habeas Record (S.H.R.), Defendant's Exhibit 6.

By the time the state habeas petition was filed, in November of 1993, Richard's new defense team had learned several things previously undiscovered by Richard's trial counsel. They learned Walter Sellers had a history of stealing and selling checks, credit cards, and cars. They learned from several sources that Brenda would sometimes get high and cry about Richard being in jail for a crime he did not commit; she expressed guilt that he was there. And, they learned from a former inmate of the Tarrant County Jail that Sellers had all but confessed to the crime right after Richard's conviction. They also learned that the men who had worked on the construction road crew with Richard the day of the murder now had few memories about that specific date, due to the passage of time since it happened. Thus, even though his alibi might have been developed in 1986, when the events of that day were fresh, it could not be developed in 1993. Now, both of the potential alibi witnesses are dead.

In 1993 Richard was granted a hearing by the judge who had presided over his trial; the issue under consideration was his innocence. During the hearing, just prior to petitioner being called to testify as the last witness on his behalf, circumstances arose that caused Richard's attorneys to reconsider presenting his testimony and to petition to withdraw from the case. As a result, he was again denied the opportunity to present all available evidence of his innocence to the person deciding his fate. Worse, the petition to withdraw suggested to the trial judge, the trier of fact, that Richard's own lawyers believed he was about to perjure himself in his testimony.

The problem arose in this manner. Midway through the December, 1993 hearing, Richard's defense team received the results of tests conducted by their forensic scientist on the clothing Richard had worn the night of the murder. The test indicated the denim jeans Richard had worn had, at one time, been heavily spattered with blood but had since been

washed out. (The test procedure, done with the chemical Luminol, though accurate for proving an item was stained with blood prior to being laundered, cannot provide information necessary to determine if the blood is animal or human in origin.) Confronted with this unexpected physical evidence in the middle of their hearing, Richard's defense team failed to appreciate that those test results were consistent with Richard's version of the events and even substantiated it. During the trial, the State presented evidence that two small spots of blood on the lower leg of Richard's jeans was consistent with the victim's blood. Further, their expert testified that the pants had not been laundered after the apparent blood of the deceased had been deposited on them.⁴⁶ If this evidence was accurate, then it is impossible to believe the blood that was on his pants prior to them being laundered also belonged to Ms. Livingston. The fact that blood on Richard's clothing consisted only of two small spots on the lower leg is consistent with his admission of walking through the grass near where the victim was stabbed during his efforts to set the field afire. Had he stabbed Ms. Livingston, Richard's clothing would have been covered in blood.

Given the circumstances at the time of the December 1993 hearing, however, Richard's appellate attorneys were unable to calmly reflect on the significance of the Luminol testing and the blood evidence. Because they erroneously believed the results of Luminol testing was evidence of Richard's guilt, his attorneys attempted to withdraw from his case in a manner that suggested to the judge they believed Richard would perjure himself on the witness stand. So, the attorneys cut short the hearing and presented Richard's testimony by way of a written statement, an affidavit consisting of the letter he had written

⁴⁶ 52 T.R. 701.

for his mother in contemplation of his execution. What the defense team overlooked was the fact that their own investigators had already been given a plausible explanation for the blood that had been laundered out of Richard's jeans prior to the Livingston murder. Members of Richard's family had already informed investigators of Richard's participation in the slaughtering and cleaning of chickens at a ranch where one of his sisters lived, just a month or so before his arrest.⁴⁷

In addition to Richard's letter/affidavit, his attorneys presented the judge with statements of two women who claimed Brenda had told them her brother was innocent.

During the hearing, Richard's sister Brenda testified that she was not well acquainted with Sellers and denied knowing anything about Ms. Livingston's murder. Prior to her testimony, she had signed an affidavit for the State saying she had never been to the house on Panola Street and that she did associate with Sellers at that time. Although these statements could have been discredited by Brenda's own friends and acquaintances, Richard's attorneys did not present such witnesses at the hearing, other than by affidavit.

Richard's request for relief was denied when the judge signed the State-drafted proposed findings. In essence, the judge agreed with the prosecutor that Richard had failed to provide the court with credible information to support his claim of innocence. The judge ruled that Richard's letter/affidavit lacked credibility in light of its timing. The State opined that certainly Walter Sellers and Brenda Jones Ashmore were not involved in the murder. After all, both had signed statements prior to the hearing denying involvement in the murder

⁴⁷ Defense memorandum of interview with Sharon Juarez in October 1993.

of Tammy Livingston.⁴⁸ The D.A. was positive that Sellers' claim of non-involvement was credible, and besides, Richard's trial jurors had already rejected the "Sellers-did-it" defense theory. Neither the judge nor the state acknowledged the obvious: that it was unlikely that Walter Sellers would admit to having murdered Tammy Livingston, and that the jurors who rejected Richard's defense at trial were not provided the overwhelming evidence of Sellers' involvement. The trial jurors had only Richard's testimony that he had obtained the victim's property from Walter Sellers. They were not provided the testimony from other witnesses who saw a blood-spattered and anxious Sellers trying to sell Tammy Livingston's property and who saw him actually hand her possessions to Richard.

Richard's Federal Court Appeal

Upon reaching the federal stage of the appellate process, Richard was appointed a new attorney. William S. Harris began his representation of Richard in June, 1994. After filing an appeal in federal court, Mr. Harris realized that no issues relating to ineffective assistance of counsel had been raised during the state-level appeal, although the record suggested such issues existed. As all issues to be raised during the federal appeals process must first have been raised in state court, Harris took the steps necessary to return the case to state court.

During his representation of Richard in state court in early 1995, Harris pointed out the failure of the trial lawyers to preserve issues relating to the admissibility of the Grand Jury testimony of the four key defense witnesses. As a result of this ineffectiveness, no one in a position of deciding Richard's fate had been told what these witnesses would have

⁴⁸ It is ironic that the state is willing to accept such denials from convicted felons without independent investigation, but in this instance it suits their purpose to do so.

testified about Walter Sellers' possession of the victim's property and his possible involvement in the murder of Ms. Livingston. Richard's second habeas petition, the second one filed in state court, was denied, again after being reviewed by the same judge who had presided over his trial. At a conference to determine whether to grant an evidentiary hearing, the court adopted the states requested findings of fact and conclusions of law without even allowing petitioner's attorney an opportunity to read them before they were adopted.

Mr. Harris immediately filed an application for a writ of habeas corpus in federal court, alleging the same claims as had been previously heard in state court regarding the ineffectiveness of Richard's trial attorneys, among other things. Once again, the goal was to educate a new judge about the entirety of circumstances surrounding Tammy Livingston's death and the manner in which Richard Jones came to be in possession of her property. Mr. Harris again requested the court to determine whether it was error for the judge not to allow Richard's jury to hear the testimony of witnesses Yelena Comalander, Doug Daffern, James King, and Scott Christian, and whether it was ineffective assistance for the trial attorneys to fail to properly present the grand jury testimony and to fail to properly seek evaluation of the claim of privilege by Scott Christian.

Richard's trial attorneys, Strickland and Lane, signed affidavits for the State, defending their actions at Richard's trial. In Strickland's affidavit, he voiced resentment at the suggestion that he did not defend Richard adequately.⁴⁹

The federal court did not rule on this appeal for more than three years. During this time, the investigation on Richard's behalf resumed. No efforts to speed up the judge's

⁴⁹ These affidavits are attached to the state's answer to the petitioner's second petition for writ of habeas corpus in state court.

decision-making process were made by Richard's attorney, because the longer it took for the judge to rule, the more time was available for the continued investigation into the case (and more time was available for Richard to live without the burden of having an execution date scheduled).

The federal judge ruled against Richard in October, 1998. Soon afterward, Mr. Harris asked the court to reconsider.⁵⁰ Mr. Harris presented to the federal court a statement signed by a witness who relates that Walter Sellers told him, after Richard's conviction for Ms. Livingston's murder, that Richard Jones was in fact innocent of the crime. This witness, Terry Gravelle, was incarcerated with Sellers during the year following Richard's trial and death sentence. Sellers told Gravelle details about the abduction and murder of Ms. Livingston that suggest Sellers was intimately involved, although he did not admit direct involvement in the crime. According to Mr. Gravelle, Sellers told him Ms. Livingston had been taken to a motel and held there while attempts were made to use her checks and credit cards. However, problems of an unspecified type arose and Ms. Livingston was subsequently murdered. Sellers told Mr. Gravelle the victim's checks and credit cards were given to Richard Jones because they were "too hot" to use. Mr. Gravelle also disclosed having seen Richard's sister, Brenda, soon after Richard's arrest for murder. Brenda, who was searching for Walter Sellers, told Mr. Gravelle that she suspected Sellers had gone into hiding and that she knew he had killed the victim. Although Mr. Gravelle had provided this same information to a member of Richard's defense team during a 1993 interview, inexplicably no one at that time had taken his statement or subpoenaed him to the 1993

⁵⁰ Motion filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure *Jones v. Johnson*, No. 4:95-CV-245-Y, filed November 13, 1998.

hearing. When the investigation into Richard's case resumed in late 1996, the investigator initiated efforts to locate Mr. Gravelle. He was not located until right before the judge ruled against Richard in 1998.

In this same legal document, Richard's attorney addressed the fact that no one, prior to the statement given by Mr. Gravelle, had ever discussed the victim's whereabouts between the time of the abduction and the time her screams were heard. Although there are some inconsistencies with regard to the actual time Ms. Livingston was abducted, it is clear that a time interval of between two and three and a half hours had lapsed from the time of her kidnaping to the time witnesses heard screams. Then, another interval of approximately one and a half to two hours passed between the time of the murder and the time the fire department received a call regarding the grass fire.

The elapsed time between the abduction and murder is a factor inconsistent with Richard's police statement, in which he claimed to have driven Ms. Livingston directly to the field and killed her immediately following his abduction of her. The drive from one location to the other takes fewer than fifteen minutes, and there is no explanation in Richard's statement as to how he spent the remaining one and a half to three hours. However, Walter Sellers' statement to Mr. Gravelle accounts for this time, in that Sellers described Ms. Livingston being held at a motel for a time prior to being taken to the field and killed.

And, finally, in this same filing Mr. Harris again noted for the federal court the vast inconsistencies between the physical evidence and the State's theory of Richard's guilt. Contrary to the State's claim, the evidence is very consistent with Richard's version of the events. For example, the two small spots of blood on the lower leg of his pants are more

likely the result of him walking through the grass to set the field on fire than the result of having stabbed the victim seventeen times.

In their response to Mr. Harris' filing, the State again argued the evidence Mr. Harris presented was not credible and was not new evidence of Richard's innocence. Incredibly, the prosecution again opined that since Walter Sellers and Brenda Jones Ashmore had in 1993 denied involvement in the Livingston murder, the statement of Terry Gravelle must be a false one. The judge apparently agreed, and declined relief yet again.

In 1999, Mr. Harris appealed the federal judge's ruling to the United States Fifth Circuit Court of Appeals. The Fifth Circuit, comprised of a panel of three judges, listened to oral arguments from Mr. Harris and a representative from the office of the Texas Attorney General in November, 1999. In an effort to dissuade the Court from ruling in favor of Richard, the Attorney General filled in the gaps of the government's evidence against Richard with conjecture and speculation. For example, in response to the glaring inconsistency in the nature of the victim's wounds and the minuscule amount of blood found on Richard's clothing, the Assistant Attorney General suggested that after forcing Tammy Livingston into the field, Richard had disrobed, stabbed Ms. Livingston seventeen times, walked to a near-by stream to bathe the blood from his body, redressed himself, and then left the field.⁵¹

Since the filing of the Petition for Writ of Certiorari in the U. S. Supreme Court, investigators for the petitioner have found another person who heard Walt Sellers state that Richard Jones is not the killer of Tammy Livingston, and suggesting that he, Sellers, is either

⁵¹ Tape recording of oral argument before the United States Court of Appeals for the Fifth Circuit on November 1, 1999.

the killer or knows who the real killer is. Robert Dean Miller has given an affidavit, which is attached to this petition, in which he recounts that he and Walt Sellers were incarcerated together in the Dallas County jail sometime around 1987. A news show on television mentioned Richard Wayne Jones and his conviction in this case. Sellers began talking to Miller, not knowing that Miller had met Jones in the Tarrant County Jail the year before. Sellers said that Jones did not kill the girl, that he had not gotten the checks from her, and that he, Sellers, had had Livingston's checks. When Miller told Sellers that he knew Richard Jones, Sellers lost interest in talking to Miller. Shortly thereafter, Sellers was moved from that particular area of the jail.

In Summary: Evidence Inconsistent With Richard's Guilt

It is interesting to note that the only details given in Richard's confession mirror those details known by investigating detectives about the offense and that nothing is said about what happened with the victim between the time of the abduction and the time of the murder. According to evidence presented by state witnesses, there was an elapsed time span of between two and three and a half hours from the time of the abduction to the time of the murder. In his statement, Richard does not describe what happened during these hours, because neither he nor the police knew what had happened.

In addition to this, other evidence presented by the state at the trial is questionable. With regard to eyewitness Ruthie Amato, there were numerous inconsistencies between the description she offered police right after the event and the description she gave at Richard's trial, which occurred a year after the event. The jurors were not allowed to hear evidence that Amato was on deferred adjudication (probation) at the time of her identification of

Richard. And, it is unclear why her daughter, who had failed to identify Richard in a police line-up, was "unavailable" for the trial.

Most importantly, the fact cannot be overlooked that three witnesses saw a bloody and anxious Walter Sellers with the victim's property. One of these witnesses saw Sellers attempting to sell the property to Richard. A sale that ultimately took place.

And then there are the witnesses who had conversations with both Sellers and Brenda Jones Ashmore after the trial in which both made indirect admissions to being involved in the crime or knowing that someone other than Richard was responsible for Ms. Livingston's murder. There are five such witnesses at this time, all of whom describe separate conversations with Sellers or Ashmore. Their statements are attached to this petition.

When viewed in totality, this evidence suggests there was more to the abduction and murder of Tammy Livingston than was presented by the State when they sought the death penalty of Richard Jones. As is often the policy of prosecutors, there has been no attempt on the part of the Tarrant County District Attorney or the Texas Attorney general to revisit the police investigation. During the last thirteen years, when evidence has been presented to them that is inconsistent with Richard Jones being the murder, the prosecutors have made every effort to maintain their conviction of him.

Since his conviction in 1987, Richard Jones has been scheduled for execution five times. On a few of these occasions, Richard has come within a couple of days of dying before a judge would grant a stay of execution. Now he faces yet another date of execution.

This despite his unflagging attempts to point out to the government that he is innocent of this murder.⁵²

b. Argument

Governor George Bush has repeatedly stated that he considers only two questions in determining whether to grant clemency to a death row inmate: (1) whether the inmate has had a fair access to the Courts to raise his legal claims; and (2) whether there is any question that the inmate might be actually innocent of the offense. While the petitioner has had access to the courts, the combination of those court's unwillingness to look at the questions raised by the evidence regarding the petitioners guilt when viewed as a whole, and technical rules of procedural default that the courts have applied to petitioner have made his strong showing of innocence unavailing. The Courts have essentially held that the rulings that stripped the petitioner of his witnesses at trial were in error, but that the error, incredibly, was harmless.

The Court of Criminal Appeals ruled that the trial court was wrong in not admitting the grand jury testimony of Yelena Comalander, at least in so far as the testimony was not hearsay, but that the failure of the trial counsel to offer the testimony in a manner that separated the admissible from the inadmissible waived any error.⁵³ The 5th Circuit Court of Appeals held that the record supported the petitioner's claim that the grand jury testimony of King and Daffern was offered on the same

⁵² Copies of the affidavits of Richard W. Jones, Douglas Daffern, James King, Scott Christian, Terry Gravelle, Robert Dean Miller, Donna Davis, Carla Suzzann Smith, and Sharon Jones Juarez, are attached hereto and incorporated for all purposes. The originals of these affidavits, with the exception of the affidavit of Miller, have all been previously filed as a part of the record in various court proceedings.

⁵³ *Jones v. State*, 843 S.W.2d 487, 492-493 (Tex.Cr.App. 1992).

basis as that of Comalander, but that its erroneous exclusion was harmless. The 5th Circuit also agreed that the proper course for evaluating the 5th Amendment claim by Scott Christian was an in camera review of that claim, but also found that trial counsel's self-serving statements that he changed his strategy and no longer sought Christian's testimony was a legitimate strategic decision and thus protected from being classified as ineffective assistance.⁵⁴ This despite the fact that in the record, the trial counsel continued to vigorously pursue immunity for the witness in an attempt to get his testimony. (It was settled law in Texas at the time of trial that immunity could only be granted upon the motion of the state.)

The Board of Pardons and Paroles and the Texas Governor derive their clemency authority from the Texas Constitution. Art. 4 Sec. 11 (b) of the Texas Constitution provides:

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; and he shall have power to revoke conditional pardons. With the advice and consent of the Legislature, he may grant reprieves, commutations of punishment and pardons in cases of treason.

Ibid. This is their "exclusive" authority because the framers of our Constitution reserved this power only to the executive branch.⁵⁵ *See, Ex parte Black*, 59 S.W.2d 828 (Tex. Cr. App. 1933) (The power

⁵⁴ *Jones v. Johnson*, No. 99-10169, Unpublished Slip Opinion, pp. 12-13 (5th Cir. 2000).

⁵⁵ The Executive Branch necessarily includes both the Governor and the Texas Board of Pardons and Paroles. *R.R.E. v. Glenn*, 884 S.W.2d 189, 192-193 (Tex. App.-Ft. Worth 1994). Under our Constitution, the Governor may never grant a greater form of clemency than that recommended by the Board of Pardons and Paroles. *Ex parte Lefors*, 303 S.W.2d 394 (Tex. Cr. App. 1957). However, the Governor is empowered to grant lesser forms of clemency than that recommended by the Board. *Ibid.*

to grant clemency is reserved for the Governor). Under the separation of powers doctrine, neither the judicial or legislative branches of our state government may abridge or infringe upon the clemency powers vested in the executive branches. *State v. Flood*, 814 S.W.2d 548, 550 (Tex.App.–Houston [1st Dist] 1991) (“... [W]e find ... unconstitutional because only the governor, not the legislature nor the judiciary, has the power of clemency under the Texas Constitution.”); *Ex parte Giles*, 502 S.W.2d 774 (Tex.Cr.App. 1973) (Legislature may not exercise the power of clemency on its own and may not enact a statute which abridges or infringes upon the Governor’s power to grant clemency); *and, Sanders v. State*, 580 S.W.2d 349, 352 (Tex.Cr.App. 1979) (“Clemency powers embodied in the parole system are beyond the reach of interference by the judicial branch ...”).

There can be little doubt that this Board and Governor are aware of the great significance that clemency has recently acquired in our capital sentencing scheme. The United States Supreme Court found that clemency is likely the one element in our capital sentencing scheme which protects the constitutionality of the scheme, *Herrera v. Collins*, 506 U.S. 390, 113 S.Ct. 853 (1993). It is the ability of the executive branch to extend clemency that in part justifies statements in *Herrera*, *id.* that suggest that factual innocence is not relevant on habeas review.

Clemency has several forms. Our Constitution refers to the clemency powers as the ability to grant pardons, commutations and reprieves. Tex. Const. Art. IV, Sec. 11 (b). The Constitution does not define these terms. Blacks Law Dictionary defines “clemency” as:

Kindness, mercy, leniency. Used e.g. to describe act of governor of state when he commutes death sentence to life imprisonment, or grants pardon.

BLACKS LAW DICTIONARY, 228, 5th Ed. 1979 (emphasis added). This same source defines “pardon”

as

An act of grace, proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. . . .

BLACKS LAW DICTIONARY, 1002, 5th Ed. 1979 (emphasis added). *See also, Ex parte Lefors*, 303 S.W.2d 394 (Tex.Cr.App. 1957) (Pardons are “acts of grace.”); *Ex parte Graham*, 853 S.W.2d at 568 (Mahoney, J., concurring and dissenting) (A pardon is an “act of grace”); *and, Ex parte Rice*, 162 SW. 891 (Tex.Cr.App. 1913) (A pardon is an “act of grace.”). Webster’s New Dictionary of Synonyms 152 (1984) provides the following synonyms for clemency: “mercy,” “charity,” and “lenity.”

Historically, the concept of clemency, in any form, was tied to the concepts of mercy or grace.⁵⁶ Indeed, Blackstone, perhaps the most often cited legal commentator, “said that the Crown’s use of the pardon power *to ensure that justice was administered with mercy* was one of the great advantages of monarchy over any other kind of government, because it softened the rigors of the general law.” Daniel T. Kobil, *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 Tex. L. Rev. 586 (1991) (citing 4 W. BLACKSTONE, COMMENTARIES, at 388) (emphasis added). Thus, clemency in the earliest of times was a merciful concept and “served the salutary purpose of mitigating a system of criminal justice which was harsh and inflexible.” *Id.*, at 588.

There is no better opportunity for the Board and the Governor to exercise clemency than when an innocent man is facing execution. The overall circumstances surrounding the trial and conviction of petitioner are such that no fair and reasonable man can be confident that the proper

⁵⁶ Some commentators have traced clemency to biblical times. *See, Kobil, supra* at 572, n. 9, quoting: Ephesians 4:32-5:2 (“... be kind to one another, tenderhearted, forgive one another, as God in Christ has forgiven you. Therefore be imitators of God, as beloved children and live in love, as Christ loved and gave himself up for us”); *and, Matthew 5:7* (“Blessed are the merciful, for they will receive mercy.”).

result has been reached by the justice system in this case. If Richard Jones is put to death on August 22, 2000, a double injustice will occur. A man whose conviction is obtained through a judicial process so flawed as to lack reliability will die. At the same time, the real killer of Tammy Livingston will escape justice.

2. During his imprisonment, Mr. Jones has demonstrated that he can be a well behaved inmate, and he has formed lasting relationships with people who have come to care for him.

The petitioner has been on death row for more than thirteen years. During that time he has avoided major disciplinary actions and has only been punished for minor infractions. Many of these infractions, while understandably punished in a penitentiary setting would not be violations of the law in free society. A copy of Mr. Jones disciplinary will be added as a supplement to this petition.

Further, during his years on death row, petitioner has formed friendships with several people who have come to care for him. Many of these relationships began through correspondence, but have since lead to numerous visits to the prison by these friends. Many of these friends live in Europe and traveling to visit the petitioner involves substantial time and expense. Nevertheless, they have routinely visited Mr. Jones.

Additionally, these friends have invested their own money and time to circulate petitions which are attached to this petition asking for the favorable consideration of this petition. They have created a fund that has paid for Mr. Jones defense in the 5th Circuit Court of Appeals, before the United States Supreme Court and before this Board. Their substantial investment of time, money and love demonstrate their belief that the petitioner, as he is today, is a man worthy of love, concern and ultimately, of life.


D. CONCLUSION

This case demands courage. Courage to reopen the investigation of the death of Tammy Livingston. Courage to admit that the state has obtained a conviction by depriving the fact finders of significant evidence of innocence. Courage to admit an error that threatens to allow the true killer to escape justice.

At the same time, the facts of Richard Jones' life, and the positive contributions he has made to the lives of others since his incarceration on the present case in 1986, call for thoughtful consideration as grounds for the exercise of mercy. If Richard Jones's death sentence were commuted to a sentence of life imprisonment, it is doubtful that he would ever be released. As this Board knows well, the simple possibility of parole does not guarantee that release will occur. Additionally, Mr. Jones respectfully requests that the Board grant him a hearing, pursuant to 37 T.A.C. §143.43(b)(3) and Administrative Procedures Act §2001.001 *et seq*, and allow him to present evidence in support for his request for a conditional pardon, reprieve and commutation. He further requests the Board comply with the Open Meetings Act, §2001.001 *et seq* Texas Government Code, and with the Texas Constitution, Article 4, § 11 requirement that the Board give its reasons for its actions in granting or denying this application.

Respectfully submitted,

WILLIAM S. HARRIS
Attorney and Counselor at Law
307 West 7th Street, Suite 1905
Fort Worth, Texas 76102
(817) 332-5575; Fax (817) 335-6060
Email: wsharris@onramp.net
State Bar No. 09096700

By: 

William S. Harris
ATTORNEYS FOR PETITIONER

ROBERT C OWEN
Schonemann, Owen & Rountree
510 S. Congress Ave., Suite 308
Austin, Texas 78704
(512) 320-0334; Fax (512) 320-8027
Email: robowen@earthlink.net
State Bar No. 15371950

By: 

Robert C. Owen

BEFORE THE HON. GEORGE W. BUSH
GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES

In Re

RICHARD WAYNE JONES,

Applicant

COPY
Schonemann, Rountree
& Owen, LLP

**EXHIBITS
(VOLUME 1)**

**APPLICATION FOR REPRIEVE FROM EXECUTION,
COMMUTATION OF DEATH SENTENCE, AND CONDITIONAL PARDON**

WILLIAM S. HARRIS
Attorney and Counselor at Law
307 West Seventh Street, Ste. 1905
Fort Worth, Texas 76102
817-332-5575 voice
817-335-6060 fax
Texas Bar No. 09096700

ROBERT C. OWEN
Schonemann, Rountree & Owen, LLP
510 South Congress Avenue, Ste. 308
Austin, Texas 78704
512-320-0334 voice
512-320-8027 fax
Texas Bar No. 15371950

**ATTORNEYS FOR APPLICANT
RICHARD WAYNE JONES**

BEFORE THE HON. GEORGE W. BUSH
GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES

In Re

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512-320-0334 voice
512-320-8027 fax
Texas Bar No. 15371950

ATTORNEYS FOR APPLICANT
RICHARD WAYNE JONES

INDEX OF EXHIBITS (VOLUME 1)

- | | |
|------------|--|
| Exhibit 1 | Certified copies of court documents |
| Exhibit 2 | December 1993 affidavit of Richard Wayne Jones |
| Exhibit 3 | May 1986 grand jury testimony of Yelena Comalander |
| Exhibit 4 | June 1986 grand jury testimony of Douglas Daffern |
| Exhibit 5 | June 1986 grand jury testimony of James King |
| Exhibit 6 | January 1994 affidavit of Douglas Daffern |
| Exhibit 7 | March 1995 affidavit of James King |
| Exhibit 8 | June 1987 affidavit of Scott Christian |
| Exhibit 9 | March 1995 affidavit of Scott Christian |
| Exhibit 10 | October 1998 affidavit of Terry Gravelle |
| Exhibit 11 | July 2000 affidavit of Robert Dean Miller |
| Exhibit 12 | December 1993 affidavit of Donna Davis |
| Exhibit 13 | November 1998 affidavit of Carla Suzzann Smith |
| Exhibit 14 | March 1995 affidavit of Sharon Jones Juarez |

EXHIBIT 1

Certified copies of court documents
(Indictment, Judgment & Sentence, Jury Verdict,
Docket Sheet, Order Setting Execution, Death Warrant)

& HABITUAL

238
 NAME RICHARD WAYNE JONES
 ADDRESS 33923 AVE E
 FT WORTH TX 76185
 RACE W SEX M AGE 26 DOB 04-09-63
 CASE NO. 0276153 FILED: (DATE) 02-23-83
 PC HAS BEEN DETERMINED
 TRANSFER: COURT DATE
 OFFENSE CAPITAL MURDER
 DATE 02-19-83 J.P. NO. 0276153
 I.P. LIVINGSTON, TAMMY
 C.C.
 AGENCY FORT WORTH PD
 OFFENSE NO. 3112102 COURT J05
 INDICTMENT NO. 0276153

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS OF TARRANT COUNTY, TEXAS, duly elected, tried, empaneled, sworn and charged to inquire of offenses committed in Tarrant County, in the State of Texas, upon their oaths do present in and to the * * * * *

CRIMINAL DISTRICT COURT NO. 4 of said County that * *

RICHARD WAYNE JONES hereinafter called Defendant, in the County of Tarrant and State aforesaid, on or about the 10TH day of FEBRUARY 19 83, did

THEN AND THERE INTENTIONALLY CAUSE THE DEATH OF AN INDIVIDUAL, TAMMY LIVINGSTON, BY STABBING HER WITH A KNIFE, AND THE SAID RICHARD WAYNE JONES WAS THEN AND THERE IN THE COURSE OF COMMITTING AND ATTEMPTING TO COMMIT THE OFFENSE OF KIDNAPPING OF TAMMY LIVINGSTON;

PARAGRAPH TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT, THAT THE SAID RICHARD WAYNE JONES, IN THE COUNTY OF TARRANT AND STATE AFORESAID, ON OR ABOUT THE 19TH DAY OF FEBRUARY, 1983, DID THEN AND THERE INTENTIONALLY CAUSE THE DEATH OF AN INDIVIDUAL, TAMMY LIVINGSTON, BY STABBING HER WITH A KNIFE, AND THE SAID RICHARD WAYNE JONES WAS THEN AND THERE IN THE COURSE OF COMMITTING AND ATTEMPTING TO COMMIT THE OFFENSE OF ROBBERY OF TAMMY LIVINGSTON;

ENHANCEMENT PARAGRAPH ONE: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT, THAT PRIOR TO THE COMMISSION OF THE AFORESAID OFFENSE BY THE SAID RICHARD WAYNE JONES, ON THE 26TH DAY OF AUGUST, 1983, IN THE CRIMINAL DISTRICT COURT NO. ONE OF TARRANT COUNTY, TEXAS, IN CAUSE NUMBER 215523A, THE SAID RICHARD WAYNE JONES WAS CONVICTED OF A FELONY, TO-WIT: AGGRAVATED ROBBERY WITH A DEADLY WEAPON, TO-WIT: A FIREARM, AND SAID CONVICTION BECAME FINAL PRIOR TO THE COMMISSION OF THE AFORESAID OFFENSE;

ENHANCEMENT PARAGRAPH TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT, THAT PRIOR TO THE COMMISSION OF EACH OF THE AFORESAID OFFENSES BY THE SAID RICHARD WAYNE JONES, ON THE 13TH DAY OF JANUARY, 1979, IN THE CRIMINAL DISTRICT COURT NUMBER THREE OF TARRANT COUNTY, TEXAS, IN CAUSE NUMBER 11001, THE SAID RICHARD WAYNE JONES WAS CONVICTED OF A FELONY, TO-WIT: RECEIVING OF A HABITATION, AND SAID CONVICTION BECAME FINAL PRIOR TO THE COMMISSION OF EACH OF THE AFORESAID OFFENSES,

A CERTIFIED COPY

ATTEST: 7-31-00
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: [Signature]
 DEPUTY

AGAINST THE PEACE AND DIGNITY OF THE STATE.

[Signature of Thomas A. Wilder]

Criminal District Attorney
 INDICTMENT-ORIGINAL

[Signature of Foreman]

Foreman of the Grand Jur.

Filed (Clerk's use only)
 FILED
 J. W. BOWMAN, DIST. CLERK
 TARRANT COUNTY, TEXAS
 TIME: 11:30
 BY: [Signature]

NAME: RICHARD WAYNE JONES
 ADDRESS: 33323 AVE E
 FT WORTH TX 75105
 RACE W SEX M AGE 26 DOB 01-09-33
 CASE NO. 3275453 FILED: (DATE) 02-23-83
 PC HAS BEEN DETERMINED
 TRANSFER: COURT DATE
 OFFENSE: CAPITAL MURDER
 DATE 02-19-83 J.P. NO. 3275453
 I.P. LIVINGSTON, TAMMY
 C.C.
 AGENCY FORT WORTH PD
 OFFENSE NO. 3112102 COURT J05
 INDICTMENT NO. 3275453

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS OF TARRANT COUNTY, TEXAS, duly elected, tried, empaneled, sworn and charged to inquire of offenses committed in Tarrant County, in the State of Texas, upon their oaths do present in and to the * * * * *

CRIMINAL DISTRICT COURT NO. 4 of said County that * *

RICHARD WAYNE JONES hereinafter called Defendant, in the County of Tarrant and State aforesaid, on or about the 10TH day of FEBRUARY 19 83, did

THEN AND THERE INTENTIONALLY CAUSE THE DEATH OF AN INDIVIDUAL, TAMMY LIVINGSTON, BY STABBING HER WITH A KNIFE, AND THE SAID RICHARD WAYNE JONES WAS THEN AND THERE IN THE COURSE OF COMMITTING AND ATTEMPTING TO COMMIT THE OFFENSE OF KIDNAPPING OF TAMMY LIVINGSTON;

PARAGRAPH TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT, THAT THE SAID RICHARD WAYNE JONES, IN THE COUNTY OF TARRANT AND STATE AFORESAID, ON OR ABOUT THE 10TH DAY OF FEBRUARY, 1983, DID THEN AND THERE INTENTIONALLY CAUSE THE DEATH OF AN INDIVIDUAL, TAMMY LIVINGSTON, BY STABBING HER WITH A KNIFE, AND THE SAID RICHARD WAYNE JONES WAS THEN AND THERE IN THE COURSE OF COMMITTING AND ATTEMPTING TO COMMIT THE OFFENSE OF ROBBERY OF TAMMY LIVINGSTON;

ENHANCEMENT PARAGRAPH ONE: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT, THAT PRIOR TO THE COMMISSION OF THE AFORESAID OFFENSE BY THE SAID RICHARD WAYNE JONES, ON THE 26TH DAY OF AUGUST, 1983, IN THE CRIMINAL DISTRICT COURT NO. ONE OF TARRANT COUNTY, TEXAS, IN CAUSE NUMBER 215523A, THE SAID RICHARD WAYNE JONES WAS CONVICTED OF A FELONY, TO-WIT: AGGRAVATED ROBBERY WITH A DEADLY WEAPON, TO-WIT: A FIREARM, AND SAID CONVICTION BECAME FINAL PRIOR TO THE COMMISSION OF THE AFORESAID OFFENSE;

ENHANCEMENT PARAGRAPH TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT, THAT PRIOR TO THE COMMISSION OF EACH OF THE AFORESAID OFFENSES BY THE SAID RICHARD WAYNE JONES, ON THE 10TH DAY OF JANUARY, 1979, IN THE CRIMINAL DISTRICT COURT NUMBER THREE OF TARRANT COUNTY, TEXAS, IN CAUSE NUMBER 11102, THE SAID RICHARD WAYNE JONES WAS CONVICTED OF A FELONY, TO-WIT: BURGLARY OF A HABITATION, AND SAID CONVICTION BECAME FINAL PRIOR TO THE COMMISSION OF EACH OF THE AFORESAID OFFENSES,

A CERTIFIED COPY
ATTEST. 7-31-00
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: [Signature]
DEPUTY

AGAINST THE PEACE AND DIGNITY OF THE STATE.

[Signature]
Criminal District Attorney

[Signature]
Foreman of the Grand Jury

Filed (Clerk's use only)

FILED

J. W. BOERMAN, DIST. CLERK
TARRANT COUNTY, TEXAS

MAY 23 1983

Time: 11:00
By: [Signature] Deputy

Volume 3

CRIMINAL DOCKET

DETAINER _____ ARREST DATE _____
 (CRIMINAL) DISTRICT COURT _____
 TRANSFERRED TO _____



Right
Index Finger

1-26-93 Mandate Received, filed, Affirmed A8-511
 certified copy mailed to INTACT
 1-27-93 Bench warrant issued.
 2-3-93 Order Setting Execution Date filed in open court 44-307
 Execution set for Thursday, July 15, 1993 before
 the hour of sunrise.
 6-7-93 Death warrant issued.
 7-12-93 Motion to Vacate Order Setting Execution Date, or,
 in the Alternative, to Modify the Order Setting
 Execution Date filed.
 7-12-93 Order Staying Execution filed copy to INTACT
 8-10-93 Order Setting Execution Date filed in open court 46-107A
 Death warrant issued. 108A
 10-18-93 Motion for Pre-Filing Discovery in Post-trial proceeding
 States Motion to Dismiss for want of jurisdiction
 10-21-93 Bench warrant issued.
 10-26-93 Order Denying Motion for Pre-Filing Discovery filed
 12-16-93 Bench warrant issued.

DISPOSITION OF CASE:

1. Death
2. _____
3. _____
4. _____

State's Attorney Sharon Stilson - Bob Hill

On Probation Revocation _____

Defendant's Attorney Jack Strickland - Bill Lane

On Probation Revocation _____

Surety _____

Appeals Attorney _____

6-13-94 Order Setting Execution Date filed A9-420
 6-13-94 Death warrant issued.
 1-23-95 Order Setting Execution Date filed A10-200
 1-24-95 Death warrant issued
 5-9-00 Order Setting Execution Date filed A16-35MB
 5-9-00 Death Warrant Issued
 5-9-00 Order of Assignment By Presiding Judge
 filed
 5-10-00 Letter to Defendant with Order Setting Execution Date
 copy to MBT Hayes, Ann Kratz - 2222 A. Hwy., Sligo
 William Harris & Tracy Bennett - case

Thomas P. Hughes
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS

08-15-86 State's answer to defendant's motion for discovery and inspection.
 10-02-86 Pre Trials. State Announced Ready.
 10-17-86 Reset; Not reached this week.
 01-08-87 Prefrials. State Announced Ready.
 01-23-87 Reset; Not reached this week.
 02-05-87 State's brief regarding the discoverability of prior jury service filed.
 02-12-87 Defendant's motion to suppress statements and physical evidence filed.
 Motion for change of venue filed.
 1 Motion to suppress filed.
 02-26-87 Defendant's Motion to appoint expert, motion to quash indictment filed.
 Motion in limine to prohibit proof of prior convictions, extraneous offense and acts of misconduct and
 Defendant's motion to list state's witnesses punishment.
 03-09-87 Precept to serve copy of names of juror summoned.
 03-13-87 State's First supplemental answer to defendant's motion for discovery and inspection.
 State's first supplemental answer to defendant's motion to list state's witnesses.
 State's first supplemental answer to defendant's motion to produce inconsistent evidence.
 03-23-87 Motion for handwritten exemplars of the defendant.
 State's answer to defendant's motion for change of venue
 State's answer to defendant's motion to list state's witnesses.
 State's second supplemental answer to defendant's motion for discovery and inspection.
 State's second supplemental answer to defendant's motion to list state's witnesses (all persons contacted)
 State's second supplemental answer to defendant's motion to produce inconsistent evidence.
 06-22-87 Motion for continuance filed.
 Defendant's motion to rescue prosecutor.
 07-14-87 State's answer to defendant's motion to list state's witnesses.
 07-15-87 Bench warrant issued to Denton county.
 07-16-87 Assessment of punishment filed.
 State's request to fingerprint the defendant.
 Motion in limine Number one. Motion in limine Number two.
 07-16-87 Assessment of punishment filed.
 Jury seated and sworn. Defendant arraigned and entered a plea of Not Guilty to count one and paragraph two. Testimony began.
 07-22-87 Waiver of sequestration filed. Court's charge filed. Defendant requested special charge number one.
 Defendant's requested special charge number two.
 Defendant's requested special charge number three.
 Defendant's requested special charge number four.
 07-22-87 Jury Verdict: Guilty to Count number one.
 07-24-87 Court's charge on punishment filed. Jury Verdict: Death. Sentenced to Death.
 Special issue number one - yes. Special issue number two - yes. Automatic Appeal.

A CERTIFIED COPY
 ATTEST 7-31-00
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: [Signature]
 DEPUTY

RICHARD WAYNE JONES	THE STATE OF TEXAS vs. RICHARD WAYNE JONES	Sharen Wilson Attorney's Bob Gill STRICKLAND, JACK TIM CURRY Plt: Bill Lane Deft.	Offense CASE NO. 0276456 CAPITAL MURDER OFFENSE DATE 02/19/86 <i>Voluntarily</i>
Date of Orders	Orders of Court		
05/22/86	INDICTMENT RETURNED AND CAPIAS ORDERED. BOND SET AT		
MAY 22 1986	Transferred to District Court No. 213 Tarrant Co., Texas		
	<i>John Bradshaw</i> Presiding Judge, Criminal District Court #4		
03-05-86	Jack Strickland appointed.		
03-12-86	Defense Motions filed.		
05-19-86	Motion for investigator filed and granted.		
05-23-86	State's Announcement of Ready Filed.		
06-12-86	Pre Trials. State Announced Ready.		
06-23-86	Bill Lane appointed as Co-Counsel.		
06-27-86	Reset; Not reached this week.		
07-09-86	Motion to produce records of prior jury service and in the alternative to allow inquiry into prior jury service.		
	Defendant's motion to list state's witnesses.		
	Defendant's motion to designate location of physical evidence.		
	Defendant's motion requesting the prosecution to file a list of physical evidence.		
	Defendant's motion to list state's witnesses.		
	Defendant's motion to require answers in writing.		
	Defendant's motion to allow additional pre-trial and trial motion.		
	Motion to produce inconsistent evidence.		
	Motion to require law enforcement officers to maintain personal notes.		
	Motion to discover criminal records of witnesses.		
	Motion for discovery of agreements with any witnesses.		
	Motion for disclosure of grants of immunity, leniency or plea bargaining.		
	Defendant's motion to require the endorsement of name or witnesses upon whose testimony the indictment was found.		
	Motion for the production and inspection of grand jury transcript.		
	Defendant's motion for discovery and inspection.		
	Motion for investigative fees in excess of five hundred dollars.		
	State's answer to defendant's motion for disclosure of grants or immunity, leniency or plea bargaining.		
	State's answer to defendant's motion to require the endorsement of names of witnesses upon whose testimony the indictment was found.		
	State's Answer to defendant's motion to list state's witness.		
	State's answer to defendant's motion to discover criminal records of witnesses.		
	State's answer to defendant's motion requesting the prosecution to file a list of physical evidence.		
	State's answer to defendant's motion to designate location of physical evidence.		
	State's answer to defendant's motion to produce inconsistent evidence.		

A CERTIFIED COPY
 ATTEST: 7-31-00
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY TEXAS
 BY: Mark Stalder
 DEPUTY

THE STATE OF TEXAS vs. RICHARD WAYNE JONES		SHAREN WILSON BOB GILL JACK STRICKLAND	Attorney's BILL LANE	Pltf: Def.	Offense CAPITAL MURDER
Date of Orders	Orders of Court				
08-20-87	Motion for free statement of facts and affidavit of inability to pay filed. Order appointing attorney for appeal filed. Hon. Rick Alley appointed. Letter to attorney.				
08-24-87	Order for Court Reporter to prepare statement of facts filed. Motion for New Trial filed.				
08-27-87	Motion for New Trial heard and denied. Defendant to be transferred to Texas Department of Corrections. Order appointing attorney for appeal. Hon. Allan Butcher and Jack Strickland appointed.				
09-18-87	Designation of Record on appeal filed. <i>Thomas S. Kerley</i> Judge, 213th District Court				
10-29-87	Transcripts transmitted to Court Of Criminal Appeals.				
01-26-93	Mandate Received, Filed, Affirmed. certified copy mailed to IDTDCJ				
01-27-93	Bench Warrant issued.				
02-03-93	Order Setting Execution date filed in open court. Execution set for Thursday, 7-15-93 before the hour of sunrise.				
02-04-93	Death warrant issued with copy of Order Setting Execution. Order Returning Def. To Place Of Confinement issued.				
07-12-93	Motion To Vacate Order Setting Execution Filed. Order Staying Execution Of Def. filed. copy mailed to IDTDCJ.				
08-10-93	Order Setting Execution Date filed in open court. Death Warrant issued.				
10-18-93	Motion for Pre-Filing Discovery in Post Conviction Proceedings. State's Motion To Dismiss for Want Of Jurisdiction.				

A CERTIFIED COPY
 ATTEST: 73100
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: Thomas Stetale
 DEPUTY

A CERTIFIED COPY
ATTEST: 7-31-08

THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: [Signature]
DEPUTY

NO. 0276456D

THE STATE OF TEXAS

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

IN THE 213TH DISTRICT

VS.

MAY 09 2000

COURT OF

RICHARD WAYNE JONES

Time 10:27
By CA Deputy

TARRANT COUNTY, TEXAS

ORDER SETTING EXECUTION

The Texas Court of Criminal Appeals affirmed Richard Wayne Jones' conviction on September 23, 1992, *Jones v. State*, 843 S.W.2d 487, 497 (Tex.Cr.App. 1992), and mandate issued on January 21, 1993. The United States Supreme Court denied Jones' petition for *certiorari*. *Jones v. Texas*, 507 U.S. 1035, 113 S.Ct. 1858, 123 L.Ed.2d 479 (1993). Subsequently, in unpublished orders, the Court of Criminal Appeals denied both of Jones' petitions seeking state habeas corpus relief. Jones' federal post-conviction writ of habeas corpus was also denied and, in an unpublished opinion issued April 7, 2000, the United States Court of Appeals for the Fifth Circuit affirmed that denial. Richard Wayne Jones' conviction is final. Therefore, this Court enters the following order:

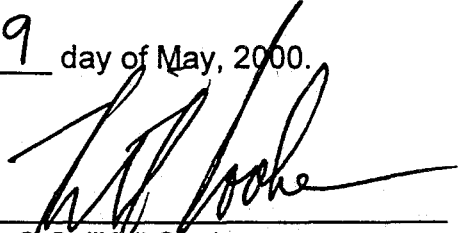
IT IS ORDERED that the Defendant, Richard Wayne Jones, who has been adjudged to be guilty of Capital Murder as charged in the indictment and whose punishment has been assessed by the verdict of the jury and judgment of the Court at Death, shall be kept in custody by the Director of the Institutional Division of the Texas Department of Criminal Justice at Huntsville, Texas, until Tuesday, the 22th day of August, 2000, upon which day, at the Institutional Division of the Texas Department of Criminal Justice at Huntsville, Texas, at some time after the hour of 6:00 p.m., in a room arranged for the purpose of execution, the Director, acting by and through the executioner designated by the Director as provided by law, is

commanded to carry out this sentence of death by intravenous injection of a substance or substances in a lethal quantity sufficient to cause the death of Richard Wayne Jones and until Richard Wayne Jones is dead, such procedure to be determined and supervised by the Director of the Institutional Division of the Texas Department of Criminal Justice.

The Clerk of this Court shall issue and deliver to the Sheriff of Tarrant County, Texas, a certified copy of this order and a Death Warrant in accordance with this Order, directed to the Director of the Institutional Division of the Texas Department of Criminal Justice at Huntsville, Texas, commanding the Director to put into execution the Judgment of Death against Richard Wayne Jones.

The Sheriff of Tarrant County, Texas, is ORDERED, upon receipt of the Death Warrant, to deliver the Death Warrant and a certified copy of this order to the Director of the Institutional Division of the Texas Department of Criminal Justice, Huntsville, Texas.

SIGNED AND ENTERED this 9 day of May, 2000.



Judge C.C. "Kit" Cooke
Presiding Judge Acting by Assignment
213th District Court
Tarrant County, Texas



JUDGE C. C. "KIT" COOKE
SENIOR DISTRICT JUDGE
18th JUDICIAL DISTRICT OF TEXAS

The State of Texas vs. Richard Wayne Jones
Order Setting Execution
Page 2

A CERTIFIED COPY
ATTEST: 7-31-00
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: [Signature]
DEPUTY

VOE: A 116 PAGE: 35B

THE STATE OF TEXAS

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§

IN THE 213TH DISTRICT

VS.

COURT OF

CAUSE NO. 0276456D

TARRANT COUNTY, TEXAS

RICHARD WAYNE JONES

DEATH WARRANT

To the Director of The Institutional Division Texas Department Of Criminal Justice, or in case of his death, disability or absence, the Warden of the Huntsville Unit of the Institutional Division Texas Department of Criminal Justice or in the event of the death or disability or absence of both the Director of the Institutional Division Texas Department Of Criminal Justice and the Warden of the Institutional Division Texas Department Of Criminal Justice, to such person appointed by the Board of Directors of the Institutional Division Texas Department Of Criminal Justice, Greetings:

Whereas, on the 22ND day of JULY, A.D. 1987, in the 213TH District Court of Tarrant County, Texas, RICHARD WAYNE JONES was duly and legally convicted of the crime of Capital Murder, as fully appears in the judgment of said Court entered upon the minutes of said court as follows, to-wit: Judgment attached and,

Whereas, on the 24TH day of JULY, A.D., 1987 the said Court pronounced sentence upon the said RICHARD WAYNE JONES in accordance with said judgment fixing the time for the execution of the said RICHARD WAYNE JONES for any time after the hour of 6:00 p.m. on TUESDAY, the 22ND day of AUGUST, A.D., 2000, as fully appears in the sentence of the Court and entered upon the minutes of said Court as follows, to-wit: Sentence attached.

These are therefore to command you to execute the aforesaid judgment and sentence any time after the hour of 6:00 p.m. on TUESDAY, the 22ND day of AUGUST, A.D., 2000, by intravenous injection of substance or substances in a lethal quantity sufficient to cause death and until the said RICHARD WAYNE JONES is dead.

Herein fail not, and due return make hereof in accordance with law.

Witness my signature and seal of office on this the 9TH day of MAY, A.D., 2000.

Issued under my hand and seal of Office in the City of Fort Worth, Tarrant County Texas this 9TH day of MAY, 2000.

THOMAS A. WILDER,
CLERK OF THE DISTRICT COURTS OF
TARRANT COUNTY, TEXAS

A CERTIFIED COPY
ATTEST: 7-31-00
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: [Signature]
DEPUTY

BY: Nancy Silliland, Deputy

RETURN OF THE DIRECTOR OF THE TEXAS DEPARTMENT OF CORRECTIONS

Came to hand, this the _____ day of _____, _____ and executed the _____ day of _____
_____, _____ by the death of

RICHARD WAYNE JONES

DISPOSITION OF BODY:

DATE: _____

TIME: _____

DIRECTOR OF TEXAS DEPARTMENT OF CORRECTIONS

BY: _____

A CERTIFIED COPY
ATTEST: _____

7-31-00
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS

BY: [Signature]
DEPUTY

THE STATE OF TEXAS	X	IN THE 213th
VS 0276456D	X	DISTRICT COURT
RICHARD WAYNE JONES	X	OF TARRANT COUNTY, TEXAS

J U D G M E N T

On July 16, 1987, this cause was called for trial and the State appeared by her Criminal District Attorney, Assistant District Attorney, Sharen Wilson and Bob Gill, and the attorneys, Jack Strickland and Bill Lane, for the defendant, Richard Wayne Jones, announced ready for trial; and, the State having made known that it would seek the death penalty in this cause and the Defendant having been heretofore arraigned; and, it appearing to the Court that the Defendant was mentally competent and the Defendant having been charged in the indictment with Capital Murder; thereupon, a Jury of good and lawful men and women, to-wit; James David Watson, Foreperson, and eleven others, was duly selected, impaneled and sworn, and the said Assistant District Attorney read to the Jury, Count One and Paragraph Two of the indictment herein, and the Defendant entered his plea of NOT GUILTY to Count One and Paragraph Two, hereto; and the Jury, after hearing the evidence, and being duly charged by the Court, retired to consider its verdict, and after deliberation, returned into open Court on the 22nd day of July, 1987, the following verdict, to-wit:

WE, THE JURY, FIND THE DEFENDANT, RICHARD WAYNE JONES, GUILTY OF THE OFFENSE OF CAPITAL MURDER, AS ALLEGED IN PARAGRAPH ONE OF THE INDICIMENT.

SIGNED: JAMES DAVID WATSON, FOREPERSON

And the Jury, having heard all the evidence, and being charged by the Court, retired to consider its verdict, and after due deliberation, returned into open Court, on the 24th day of July, 1987, their answers to the following issues, and their verdict:

SPECIAL ISSUE NO. 1

Was the conduct of the Defendant, Richard Wayne Jones, that caused the death of Tammy Livingston, committed deliberately and with the reasonable expectation that the death of the deceased or another would result?

ANSWER

We, the Jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "Yes".

A CERTIFIED COPY

ATTEST: 7-31-87

THOMAS A. WILDER
DISTRICT CLERK

TARRANT COUNTY, TEXAS

BY: [Signature]
DEPUTY

SPECIAL ISSUE NO. 2

Is there a probability that the Defendant, Richard Wayne Jones, would commit criminal acts of violence that would constitute a continuing threat to society?

ANSWER

We, the Jury, unanimously find and determine beyond a reasonable doubt that the answer to this Special Issue is "Yes".

VERDICT OF THE JURY

We, the Jury, return in open court the above answers as our answers to the Special Issue submitted to us, and the same is our verdict in this case.

SIGNED: JAMES DAVID WATSON, FOREPERSON

And the Court duly accepted the verdicts and ORDERED the same to be filed.

Upon receipt of the Jury Verdict, the Court then discharged the Jurors and then proceeded to sentence the Defendant, Richard Wayne Jones, as follows, to-wit:

The Defendant, Richard Wayne Jones, was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and the Defendant answered nothing in bar thereof:

The Court proceeded, in the presence of the said Defendant, Richard Wayne Jones, and his counsel of record, to pronounce sentence against him as follows:

It is the ORDER of the Court, that you, the Defendant, Richard Wayne Jones, who has been adjudged to guilty of Capital Murder as found by the Jury in Paragraph One of the indictment, it being mandatory that your punishment be death, it is therefore the ORDER of this Court that your punishment be Death, and that before the hour of sunrise on a date to be determined by this Court upon a Mandate of Affirmance issued by the Texas Court of Appeals, at the State Penitentiary at Huntsville, Texas, you be caused to die by intravenous injection of substance or substances in a lethal quantity sufficient to cause your death and until you the said Richard Wayne Jones, are dead; said execution procedure to be determined and supervised by the Director of the Texas Department of Corrections, and that the Clerk of this Court issue a Death Warrant in accordance with this sentence, directed to the Director of the Texas Department of Corrections or in case of his Death, disability or absence, the Warden of the Huntsville Unit of the Texas Department of Corrections, or in the event of the death, disability or absence of both such director and warden, then to such other person as is appointed by the Board of Directors of the Texas Department of Corrections for that purpose and to deliver such warrant to the Sheriff of this County of Tarrant, State of Texas, to be by him delivered to the said Director of the Texas Department

CERTIFIED COPY
TEST: 7-2-00
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: [Signature]
DEPUTY

of Corrections, together with the Said Richard Wayne Jones, and the said Richard Wayne Jones, is remanded to jail to await transportation to the Texas Department of Corrections at Huntsville, Texas, and the execution of this sentence.

8-12-87

DATE



Hon. C.C. (Kit) Cooke
PRESIDING JUDGE,
213th DISTRICT COURT
TARRANT COUNTY, TEXAS

A CERTIFIED COPY

ATTEST:

7-2-00
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS

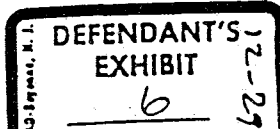
BY:

[Signature]
DEPUTY

EXHIBIT 2

**Affidavit of Richard Wayne Jones
(Introduced at December, 1994 state habeas hearing as
Defendant's Exhibit 6)**

On February 19, 1986. I went to work with my dad at 6 am. We arrived at about 6:30am on the job site, and went to work, I worked up til lunch time which is at noon, unless we are in the middle of putting lime on the roads. After lunch, I went back to work and worked up til about 5:00pm. When my dad pulled up in his truck, and yelled at me to come there, I went and he told me to go get another worker and come back, and so I went and got another guy and returned to see what he wanted. and he told us to go knock the lime off of the trucks and get them ready to move to our next job site, so we did, Then we drove over to the other job site in Haltom "or near by there" and we dropped off the trucks, My dad was following us, and we got in the truck with him, and he took the other guy back to the job site that we was working at, so he could get in his truck and go home, and me and my dad went home. I was riding back and forth with my dad. I meet him at him and my mothers home every morning and rode to work with him and back home with him in the evenings. We arrived at my parents home at about 7:15pm and me and my dad went in the house, I talked with my mother for awhile and had a few beers. and I got in my mothers car, and I drove home to my house on avenue H. When I got home, My sister Karen and my girlfriend Yelena had supper on the table, so I kissed my girlfriend "as always" and went in the bathroom and cleaned up and got ready for supper, sat down and ate supper. Then I went out side in the yard, and made sure all the chickens was in the pen, and I played around with my cafe, and Yelena came out there and she and I started wrestling. We played around for awhile, and she said she was going to go in and wash dishes and help Karen clean the kitchen, so when she went in, I put the cafe in the shed and made sure everything was locked up. and I walked up to the front yard to make sure the windows were rolled up and to lock up my mothers car. When I got to the front yard, my sister Brenda was just walking up in the drive way. And I asked her what she was doing, and she said that she needed a ride to a friend of hers house. I asked her where, and she said over there off Lancaster. I told her it was almost ten o'clock and I had to get up early and go to work. and she said Please Ricky. I need to get over there it is very important. So I said well let me tell Yelena where I am going. I started to walk off when she said just tell her you are going to the store. I just walked in the house and yelled, I am going to run up the street, I will be back shortly, and I got in my mothers car and took her over to her friends house. on Parola Street which is about two blocks off East Lancaster I think! On the way over there, She told me that she and Walt had Robbed this lady and man. And I said Bullshit. (Because she lies a lot.) but she said Really. So I asked her what they got, How much money.?. and she said she didn't count it. Then she started crying. and told me that they killed them. (Now you know how Brenda is when she is on that dope.). SO I just said yeah right. and she said she was not bullshitting. But I did



- 2 -

ot believe her. Until I got to the house, and she said wait for me, this will just take a minute. and so I sat in the car and waited, and just a couple of minutes went by and here she came with "Walt Sellers" They walked up to the door and Walt said. I hear you are looking for a motor for your truck. and I said Yes I am. And he said he had one for me and asked if I wanted to look at it, and I said yes, and he said come on follow me, so I got out of the car, and I walked with him about three or four houses down from where he and Brenda had just come out. And he opened the door to this station wagon. Got in it and started the car, and said. It runs good. and he got out of it, and we walked into the house. and he sat on the sofa and Brenda went in the back into a bedroom. and left Walt and me in the living room. And Walt asked me if I could still get into the ~~landfill~~ And I said Yes why, and he told me that he wanted me to do something for him. That if I would do it, He would let me have the motor out of that car. I ask him what he wanted me to do. and That is when Brenda called him to the back bedroom. He was gone a few minutes, and he came back in the living room carrying a purse " A hand bag " he sat down and started digging through it, and was saying, Brenda says you and Yelena are going to get married. I said Yeah we are planning on it. and he said I have just what you need. and he pulled out some gold Rings and showed them to me, I looked at them and he said, I have some checks and credit cards too. and I told him I haven't even used any. and he told me that it was easy. All I had to do was go in the store get what I want and lay the card down in front of the cashier. That they would not ask any questions. He said all he wanted was \$300.00 and I told him I couldn't. And Brenda came out of the room and sat down and started saying Come on Ricky. We need the money bad. And Walt said. Ricky you can make ten times that back with these cards and check. and I said I didn't have that much money. that all I had was \$200.00 and he said, I will take that for them. and so like a dumb ass I bought them. I mainly wanted the rings. But it was a packaged deal. And so I said, Hey I got to get home, I have to get up early for work, and I told Brenda that she knew how dad was and I couldn't be late, or he would leave without me. and I started to walk out of the house and Walt said, Do you want that motor?. I said, I can't afford it. and he said, Hey. I will let you have the car if you will take care of something for me. I asked him what. and he said bury something at the landfill for me. and I said What? and he said the man and woman they robbed. And I said, You killed them??. and he said yes we did. And I said WHY.? And he said that they fucked over them on a deal. And I said. I can't bury them. I can't get into the landfill they have changed locks and they have cameras and see everything that goes on from the time you get in the gate til you pass the weighing blocks. And Brenda started crying saying they where going to go to jail if the bodies wasn't buried, and she asked me to please help them. That they

-3-

didn't know anybody else they could trust. I asked them why walt couldn't bury the bodies and he said he didn't know how to run them machines. I said where are the bodies?. and they both said In a feild close to where you use to live! And I said Show me. So walt got in the station wagon and I said I will follow you. Brenda went in the house. So I followed Walt. And he drove down to East First Street and turned off at Randalmill Road, and stopped a little ways down the street, and I got out and walked up to the station wagon, and he rolled down the window, and pointed and said, See that gate. they are about 30 feet from the gate up in the woods. I told him I didn't know where to bury them or anything. and he thought about it for a few seconds, and said, Fuck it. Just set the feild on fire. That will burn them and everything else up. And he said If you do that, You can have this car. And I said, I will set the feild on fire, But I am not touching any bodies. And he said, Why don't you follow me up to where I have my car.? It is just up the road, and so I did, He drove to the Safeway. and parked the car. and got out and walked over to a brown car and got in it. And I said, Hey how am I going to get both these cars back?. If you was going to do this, You should have made Brenda come with us. I have to go to work in the morning. And he said. I don't know what you are going to do. and he pulled off. So I got in the station wagon, because it had more gas in it. and I drove to my house to get a gas can. When I drove up in the drive way, I seen Yelena look out the window, so I yelled for her to get dressed and come with me, When she walked out the door I told her to go get the gas can, and she did. And when she got in the car. I drove off back to the Safeway. On the way there, I told her I robbed and killed a lady and man. and said I killed them because they were fighting with me. I handed her the handbag I got from Walt. And told her to go through it. and as I drove to the Safeway, She went through the bag. I got to the safeway. And told her to get in my mothers car and follow me, and she did. I drove to some apartments behind the bank off Lancaster and parked the car. I took everything out of the car I thought was any good. and I got in my mothers car, and I drove off, She said there was a bank card in the handbag. and I said can you use it, and she said she knew how, So I stopped at the bank, she walked in and tried to use it, But came back and said it wouldn't work. So I drove to the feild parking the car on the road. I ran across the street, jumped over the gate, ran up in the feild where I thought to be 30 feet, and I was standing by a big log. and I started throwing the gas all over the place in front of me. and I started the fire. And when it lit up. I seen A body. and I turned and ran as fast as I could, jumped in the car and tried to drive off, but I was shaking so bad. I sat there just for a few seconds and drove off, and Yelena asked me what was wrong. why was I shaking so bad. And I said. The fire lit up all around me. Which I couldn't understand since I just poured gas on

- 4 -

field in front of me. When I seen that ladies body lying there. It scared me so badly. I couldn't talk, and I headed home. I got close to home and I asked Yelena if she got everything out of that bag, and she said yes, so I drove down a dark street where people dump their trash alot and I slung the bag into the ditch. and I headed home. ~~Yelena~~ Yelena that we would get Walt to write the checks and use the cards. And she said Why? I can write the checks, I can sign them just like they do, and I said Ok, if that is what you want to do. I just don't want you getting in trouble. We went home and Took a shower and went to bed. It was about 12:30am. I got up at 5:00am and got ready for work, drove over to my parents home and rode to work with my dad, worked all day until 6:30 rode home with my dad. Run in the house and spoke to my mother and I went home, went in the house took a shower and Yelena and I went to the mall and used them cards, and stopped at a store and bought some food and stuff, then we went to the Safeway. Where Yelena was arrested and taken to jail. For passing a forged check. I went home, and I thought about everything. and I got so mad, I went looking for Walt. Because I called my mother from the mall to find out what size boots my dad wears. And my mother asked me if I had seen Brenda. I said not today why? and she said that the police had found a females body in a field. That somebody had stabbed her many times and set her on fire. And she said she hoped it wasn't Brenda. That Brenda hadn't been around for a few days. I told my mother not to worry, that Brenda was ok, I would look for her. and I looked for her and Walt. I found Walt. He was walking up to the house on Panola. I stopped him and asked him where Brenda was. He said that the last he see her, That she was with some girl, and they were headed to the motel off 820 to score. So I asked him what the deal was about them people that was in the field. He asked me what I meant. and I said. Hey. They found a female body that was stabbed a number of times. They didn't say anything about finding any mans body. And he said. That there wasn't any mans body. It was just the lady. and that she wasn't stabbed a number of times, that she was just stabbed one time. that he had held his hand over her mouth till she wasn't moving. and Brenda stabbed her one time in the neck. I told him I didn't give a fuck about all that. That Yelena was in jail for passing one of them Checks. And I have to get her out of jail. And I told him that he was a real ass hole. That he had me driving that car. and running around using them cards and checks. Knowing that the guy would be out looking for her. And he said that he had called the number on the check right after he left from getting his car. And the guy answered the phone, and he had talked to him. And told him that he use to work with him and was just calling to see how he was. But the guy said that his wife was late from getting home. that he thought something was wrong and he needed to keep the lines open in case she calls. And I told him that he was full of bullshit and that I didn't want him anywhere

-5-

round me. That he had better hope I can get Yelena out of jail. I started to pull off, and he said. I hope you keep your mouth shut. You know what happens to snitches. and you know I know where everybody lives. And I said, Yeah, Fuck you, and I drove off. and went home. and I sat around waiting for time to go to work. and I drove to my parents home and went in and was waiting for my dad to get ready, When my mother called me into the kitchen and said Ricky. Yelena is in jail, she called, and said she would call around 6:00am. So I was waiting for her call, The phone rang and it was her, She told me that the police told her that the checks and check she was caught with, Belonged to a girl who had been missing for almost three days. and that if she shows up dead, she would be facing Capital Murder charges. I told Yelena, To tell the police I gave her them checks and stuff. That I bought them from Walt. She told me that she wasn't going to do that. because I was on parole. I told her to tell them anyway. and as we all know. When I got home from work. There was police everywhere. and off to jail I went. I am sitting in a room, police asking me millions of questions. Telling me how sorry I am. and how much trouble I am in and where I am headed. You're headed to the big house Richard Jones. Are you going to take Yelena with you? You know she can't keep that baby in prison. They will take it away from her. and neither of you will see it. So here I am. I am sure as hell not going to let Yelena take the blame for anything. I love her, she is carrying my little baby girl. So I am going to do anything and everything I possibly can to make sure she doesn't get blamed for anything. And Brenda is my sister. I am not going to tell them the truth. Or she would be sitting here on death row. Lord knows we don't want that. Boy what a sorry piece of shit I would be. So I sat there making up a story, that would free Yelena, Free Brenda, But still get Walt. All they would have to do is investigate. But shit no. That wasn't good enough. And so they put me in a little pink room, with just a little window on the door, cold, damp, no food, cigarettes, and every few minutes there was some police opening the window, yelling. Theres that sick mother fucker. You need to be killed. They spit in there at me. called me everything under the sun. When they pulled me out for anything, they pushed me around. Talked to me like I was a piece of dirt. They locked me up, Charged me with capital murder. I told them what they wanted to hear. Without bringing Brendas name in it or anything that would lead to her. And I told them I signed the checks. When I didn't sign shit. I thought there was no way that a jury in the world would find me guilty of capital murder. But I was thinking at that time that My sister would get up there and tell them Walt done it. I just knew she wouldn't let her brother be put to sleep like an old sick dog, For something her and her dope head friend done. But She made a believer out of me. Her little dope buddies life is more important to her than her own brothers. Because she knows I

don't like that dope business. But hey, that doesn't matter. And please don't think I want any of you to feel sorry for me. I was the stupid fool who made the choice to keep my mouth shut. And I can live with it. I just thought that every one of you that has gotten a copy of this letter should know the truth. I know that you all know, that there is no way in hell I would hunt a woman like that. And that is what matters. The truth is what matters. God knows the Truth. And we all know, He is the one and only true judge. So I ask you all. Do not hold it against Brenda. I made the choice to keep my mouth shut. The courts know nothing about what I have written in this letter. I have keep this to myself all these years. Because the people I love and my family mean more to me than life. Life means nothing to me anymore. Because the only way you would have gotten this letter is because I have been executed.

Brenda, you are probably reading this letter, and thinking to yourself, What a sorry mother fucker. Why couldn't he keep his mouth shut!! Well All I have to say, Is, I did. and that is why you are able to read this letter. But please, do not feel bad, or blame yourself. Just Thank God. That you had a stupid brother that thought more of you and the rest of our family, and your children than he thought about himself or his life!! Don't feel sorry for me. I am resting in peace.

This letter was written, July, 11, 1993. To all who have received a copy of this letter. I want you to know that I have written and sent this to you, Only because I feel you should know the truth. and out of respect and love. I have given you the truth!!.

With love, and respect and best wishes,
Richard Wayne Jones
Richard Wayne Jones

Executed on this _____ Day, _____ Month, _____ Year.

All these matters are true and correct

Richard Wayne Jones

.....:.....END OF LETTER.....

Signed & sworn to on Dec. 29, 1993

Shirley Paschall
Deputy District Clerk

EXHIBIT 3

**1986 Grand Jury Testimony of
Yelena Dean Comalander**

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NO. _____

THE STATE OF TEXAS

BEFORE THE GRAND JURY

VS.

OF

RICHARD WAYNE JONES

TARRANT COUNTY, TEXAS

TESTIMONY

OF

YELENA DEAN COMALANDER

DOROTHY CARPENTER, CSR
Official Court Reporter
Tarrant County Grand Jury

Friday, May 16, 1986

DEFENDANT'S
EXHIBIT
16-dm
7-21-87

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NO. _____

THE STATE OF TEXAS

BEFORE THE GRAND JURY

VS.

OF

RICHARD WAYNE JONES

TARRANT COUNTY, TEXAS

BE IT REMEMBERED that on the 16th day of
May, 1986, the above numbered and entitled matter came on
to be considered by the Grand Jury of Tarrant County, Texas
being Docket Numbers 457 through 462 on the docket of said
Grand Jury.

APPEARANCES:

TIM CURRY, Criminal District Attorney
By Sharen Wilson, Assistant District Attorney
200 West Belknap
Fort Worth, Texas 76196

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WITNESS:	PAGE
Yelena Dean Comalander.....	4
Reporter's Certificate.....	72

WHEREUPON,

YELENA DEAN COMALANDER,

was called as a witness and, having been first duly sworn by the Assistant Foreman of said Grand Jury, upon her oath, testified as follows:

EXAMINATION

BY MS. WILSON:

Q State your full name and spell all of it, please.

A Yelena Dean Comalander. Y-e-l-e-n-a D-e-a-n-C-o-m-a-l-a-n-d-e-r.

Q Ms. Comalander, my name is Sharen Wilson and I'm an Assistant District Attorney. You and I have never had a chance to talk directly, is that correct?

A Yes.

Q I think it was approximately a week ago when your mother came down here to Grand Jury with you, is that also correct?

A Yes.

Q This is the Tarrant County Grand Jury and they are investigating a capital murder of Tammy Livingston that occurred on February nineteenth of 1986 and Richard Wayne Jones is charged with capital murder in her death.

Do you understand what the questions will be about?

A Yes.

Q O.K. Prior to coming in here to the Grand Jury

1 room, you were in Criminal District Court No. 4 with your
2 court appointed lawyer, Brantley Pringle, in front of Judge
3 Joe Drago, is that correct?

4 A Yes.

5 Q And he explained to you that you had been granted
6 testimonial immunity for your answers to questions in here
7 and he has explained what that means, is that also correct?

8 A Yes.

9 Q You do understand that?

10 A Yes, ma'am.

11 Q O.K. At this time you currently have one pending
12 misdemeanor case. Do you know what that charge is?

13 A Tampering with evidence, I think.

14 Q Tampering with evidence?

15 A Yes.

16 Q O.K. You are really going to have to speak up as
17 loud as you can. O.K.?

18 You have made bond on that case and have moved to
19 Houston, or the Houston area, is that correct?

20 A Yes.

21 Q O.K. Where are you living now?

22 A In Porter, Texas.

23 BY A GRAND JUROR:

24 Q Porter?

A Yes, sir.

BY MS. WILSON.

2 Q And who are you living with?

3 A My mother and father.

4 Q And what are their names?

5 A Janis and Patrick Comalander.

6 Q I need an address and a phone number.

7 A P. O. Box 1191. The Zip Code is 77365. The phone
8 number is 713/254-3081.

9 Q And how long have you been living down there with
10 your parents?

11 A Since I got out of jail.

12 Q Do you remember what day that was?

13 A No, ma'am.

14 Q When did you move to Fort Worth?

15 A January, I believe.

16 Q What year?

17 A '86.

18 Q And have you graduated from high school?

19 A Yes, ma'am.

20 Q What high school?

21 A (Inaudible.)

22 Q And when did you graduate?

23 A In '85, May.

24 Q And what did you do between May '85 and January of
25 '86?

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I worked at a place in a mall for a little while and then I moved to Midlothian with my father and worked at a construction company.

Q Now, is this your father, Patrick Comalander?

A Yes, ma'am.

Q Did the whole family move to Midlothian or just--

A No. Just my father.

Q Was that for a particular job there in Midlothian?

A Yes.

Q So how is your father employed?

A Right now he is not.

Q O.K. Back in May how was he employed?

A In May?

Q O.K. I'm sorry. In January when you moved to Midlothian with your father, how was he employed?

A He worked at Metric Construction.

Q What did he do there?

A He was a concrete finisher.

Q O.K. What did you do?

A I was just a laborer and I worked in the office a little bit.

Q O.K. What kind of labor did you do?

A Right then we was filling dirt banks for the electrical crew.

Q Do you know the person that is charged in this

2 Richard Wayne Jones?

3 A Yes, I do.

4 Q What name do you call him?

5 A Ricky.

6 Q When did you first meet Ricky?

7 A In October.

8 Q Of 1985?

9 A Yes, ma'am.

10 Q How did you know him?

11 A We worked together.

12 Q Where was that?

13 A At Metric Construction.

14 Q When did you and your father first move to Mid-
15 lothian?

16 A Well, my dad, he moved there I think in August.
17 I'm not real sure--and then I moved there in October.

18 Q O.K. Earlier you said that you moved to Fort Worth
19 in January of 1986 and that was when you moved from Midlothian
20 to the City of Fort Worth?

21 A Yes, ma'am.

22 Q O.K. You were actually in this area since October
23 of 1985?

24 A Yes, ma'am.

25 Q Did your father know Richard Wayne Jones?

A Yes, ma'am.

2 Q Did he know him prior to October 1985?

3 A No.

4 Q You all met at the same time on the job?

5 A No. I met Ricky first.

6 Q O.K. What was Ricky doing?

7 A He is a heavy equipment operator.

8 Q Were you living with your father at a house or
9 apartment when you first met Ricky Jones?

10 A Yes.

11 Q Where was that?

12 A The Candleridge Apartments in Midlothian.

13 Q And what were you all building there in Midlothian,
14 what construction?

15 A It was a cement plant for box cars.

16 Q On 287?

17 A No, ma'am. I'm not sure of the address. I think
18 it's--

19 Q How did you and Ricky first meet?

20 A Just at work.

21 Q Do you remember the first time that you met him and
22 knew who he was?

23 A No, not really. It was just when I started working
24 there.

5 Q O.K. Did he come up to you and talk to you or did

1 you talk to him? I just want to know something about how the
2 two of you came to know each other.

3 A Well, we was working together, we was on the same
4 crew and we just started talking.

5 Q At some point in your relationship with Ricky, did
6 you move in with him?

7 A Yes.

8 Q When was that?

9 A It was in November.

10 Q Where was your father living in November of '85
11 when you moved in with Ricky?

12 A In the apartment with us.

13 Q So the three of you all were living there together?

14 A Yes, ma'am.

15 Q Were you and Ricky living together at that time?
16 By that I mean were you living together as husband and wife,
17 or having sex together at that time?

18 A Yes, ma'am.

19 Q Where was your mother during all of this time?

20 A She was in Porter.

21 Q Did your father approve of Ricky?

22 A Yes, ma'am.

23 Q Did either of you know anything about him or his
24 background?

25 A I knew a little bit.

Q What did you know?

1
2 A I knew that he was in prison before and that he
3 was out on parole.

4 Q O.K. Did he tell you what he was in prison for?

5 A It was a robbery.

6 Q Did he tell you anything about the details of that
7 robbery?

8 A No.

9 Q Did you ever ask him about it?

10 A No, ma'am.

11 Q At what point did you decide that you were in love
12 with him?

13 A When he moved in.

14 Q So about a month after you met him?

15 A Yes.

16 Q Are you pregnant right now?

17 A Yes, ma'am.

18 Q And how far along are you?

19 A Five months.

20 Q O.K. Do you know who the father of that child is?

21 A Yes, ma'am.

22 Q Is it Ricky Jones?

23 A Yes, ma'am.

24 Q Have you spoken with Ricky Jones since he was arrested
25 for capital murder?

1 A Yes.

2 Q How frequently?

3 A He calls every Sunday, or about every Sunday.

4 Q Were you aware when you moved in with him in Nov-
5 ember 1985 that he was married?

6 A Yes, ma'am.

7 Q Is it your understanding that he is still married?

8 A Yes, ma'am.

9 Q Is it also your understanding that he has two
10 children?

11 A Yes, ma'am.

12 Q How old are those two kids?

13 A I believe five and two.

14 Q Do you know whether or not he or his wife have
15 filed for divorce?

16 A He has.

17 Q He has filed for divorce?

18 A Yes.

19 Q Did he tell you where he filed for divorce?

20 A No, ma'am.

21 Q Has he indicated any plans for the two of your
22 futures?

23 A No.

24 Q Has he told you he wants to marry you?

25 A Yes, ma'am.

1 Q Do you plan to marry him in the future?

2 A Yes, ma'am.

3 Q When would that be?

4 A I don't know.

5 Q When he gets a divorce or when he gets out from
6 this?

7 A Yes, ma'am. When he gets a divorce.

8 Q So it's your intention to marry him while he is
9 in jail?

10 A Yes, ma'am.

11 Q Has he told you when he filed for divorce?

12 A No, ma'am.

13 Q Or what county or where he filed?

14 A No, ma'am.

15 Q O.K. Let's go back to November of 1985.

16 How long did you and your father and Ricky live
17 together?

18 A Since January of '86 and then my father moved back
19 to Midlothian.

20 Q O.K. When did he move back to Midlothian?

21 A I'm not sure. It was just in January.

22 Q O.K. So the three of you lived together in Novem-
23 ber through December until January and then your father moved
24 back to where?

25 A Midlothian.

1 Q Where were you and your father and Ricky living?
2 A We were living in Midlothian all together at the
3 apartment and then we moved to Fort Worth and then Ricky
4 got a house and we was renting that. My dad helped us get
5 that house.

6 Q On Avenue H?

7 A Yes, ma'am.

8 Q And how did your father help you get that house?

9 A He put down the deposit for us.

10 Q O.K. Do you remember when it was that you all
11 moved into that house?

12 A I don't remember the day.

13 Q What month?

14 A It was in January.

15 Q O.K. Let me see if I have got this straight.

16 November of '85 you and your father and Ricky moved in to
17 gether and then in January you and Ricky moved to Fort Worth?

18 A Yes, ma'am. My father was with us then.

19 Q O.K. How long did he stay with you there?

20 A Maybe a week or two.

21 Q Then what did he do?

22 A He moved back to Midlothian.

23 Q Why?

24 A Because we were having transportation problems and
25 Ricky was planning on getting a job with his father working

1 at a construction company.

2 Q When your father moved back to Midlothian, did
3 Ricky take a different job?

4 A No. He kept that job for a while and they kept
5 promising him a raise. He was due a raise and they kept
6 promising him one and they never gave it to him so he quit
7 and his dad gave him a job making better money.

8 Q O.K. When was it that he went to work for his
9 father?

10 A The last part of January, or early part of February.

11 Q O.K. Who was living with you all when you all
12 were living at that house?

13 A At first me, Ricky and my dad and his sister and
14 brother-in-law and their two kids.

15 Q And what is his sister and brother-in-law's name?

16 A His sister's name is Karen Martinez and his brother-
17 in-law's name is Bobby Martinez.

18 Q Do you know what the name of the company was that
19 Ricky's father had?

20 A He was foreman of it. His father was foreman. I
21 think the name of it was J. O. Bertram.

22 Q Bertram?

23 A Bertram or Berman.

24 Q Do you know where Ricky worked when he worked with
his father, what construction site?

1 A It was road construction is all I know. They
2 moved around quite a bit. It was at different places?

3 Q Were you working during this time?

4 A No.

5 Q When did you find out that you were pregnant?

6 A In February, I believe.

7 Q At that time, did Ricky make plans to divorce his
8 wife then?

9 A Yes.

10 Q Did he file for divorce then?

11 A No.

12 Q Do you know when he filed for divorce?

13 A No.

14 Q Have you seen any documents or anything to indicate
15 that he filed?

16 A Yes.

17 Q Has he sent those to you?

18 A Yes. I typed them up for him.

19 Q O.K. Do you know what court it was filed in?

20 A No.

21 Q Let me direct your attention back and try to help
22 you to remember February 19, 1986. You have already talked
23 to the police about this.

24 On that day did Ricky go to work as usual?

A Yes, ma'am.

1 Q What hours did he work?

2 A He left the house-- I usually woke him up around
3 4:30 and fixed his lunch and he left usually around 5:00 to
4 5:30 and I believe his dad-- He rode to work with his dad
5 and his dad usually left around 6:30 or 7:00.

6 Q About what time would he get home?

7 A Usually about 5:30 to 6:00.

8 Q Did Karen and Bobby that were living with you,
9 did either one of them have a job?

10 A Yes, ma'am.

11 Q So during the day did you take care of all of the
12 kids?

13 A Me and Karen stayed home. She took care of her
14 kids.

15 Q Do you have other family that lives in this area?

16 A My brother and my sister-in-law.

17 Q Was that your sister-in-law that was with you last
18 week?

19 A No. That was my sister.

20 Q O.K. Did she come up from Houston with you?

21 A Yes, ma'am. She lives in Porter.

22 Q Who is with you here today?

23 A Ricky's sister.

24 Q That's who picked you up at the airport?

25 A Yes, ma'am.

1 Q What are their names?

2 A Sharon Jones and I just know Janis. That's all I
3 know about her.

4 Q Who is Janis?

5 A She is just a friend.

6 Q A friend of yours?

7 A She's a friend of Sharon's. I met her occasionally.

8 Q All right. Back on February nineteenth when Ricky
9 got home from work--that was a Wednesday. What did he do
10 when he got home?

11 A He came in the house and then he left. He was
12 gone for quite a while. I don't know exactly how long.

13 Q When he came home from work, did he get home at
14 his usual time?

15 A Yes, ma'am.

16 Q Which was about what time?

17 A About five thirty or six, somewhere between there.

18 Q Did he eat anything or did you all do anything
19 when he got home that day?

20 A No, ma'am. I can't remember whether he ate, or
21 not,

22 Q Would it be more accurate if you told the police
23 back on February twenty-first that he did not eat, would
24 that be the truth?

25 A I don't know. He came in the house but I can't

remember if he ate or not. I don't think he did.

2 Q Did he tell you where he was going when he left?

3 A No, ma'am.

4 Q Did you ask him where he was going?

5 A No, ma'am.

6 Q Did you normally ever ask him where he was going?

7 A No, ma'am.

8 Q Was it normal for him to come home and then just
9 leave like that?

10 A No.

11 Q What did you do after he left the house?

12 A I watched TV for a while and then Bobby came home
13 so I went back in my room and read a little while and then
14 I went and took a shower and went back to bed.

15 Q What were you reading?

16 A It's a poetry book.

17 Q What poets?

18 A It's mixed up. They have all different kinds.

19 Q What time did Ricky get home?

20 A I don't really know. His sister told me it was
21 around nine thirty or ten, between there.

22 Q Were you still awake?

23 A Yes, ma'am. I had just laid down.

24 Q Did he come in as usual and come into the house,
25 or did he wait outside?

1 A He waited outside. He honked the horn but I didn't
2 know it was him and his sister went outside and she came
3 back in and she told me, "Ricky wants you."

4 So I went back outside and he told me to get
5 dressed. So I got dressed and then we left.

6 Q Did he tell you where you were going?

7 A No.

8 Q When you got ready to leave did he tell you to get
9 anything else before you left?

10 A No.

11 Q What did you all do?

12 A We just left in that car.

13 Q What car?

14 A The gray station wagon.

15 Q Had you ever seen that gray station wagon before?

16 A No.

17 Q Did Ricky have a gray station wagon?

18 A No.

19 Q As far as you know, did any of his family or friends
20 have a gray station wagon?

21 A No.

22 Q O.K. Where did you all go?

23 A We went to a parking lot.

24 Q Who was driving?

25 A Ricky.

1 Q What parking lot?

2 A K-Mart's I think.

3 Q Do you know which K-Mart?

4 A No.

5 Q Do you know if it was near any malls?

6 A I think it is.

7 Q Was it that K-Mart that is up in Northeast Mall
8 on Pipeline?

9 A I don't know what the malls are. I just know
10 when we left we went down the freeway to it.

11 Q Do you know what Loop 820 is?

12 A No.

13 Q O.K. When you all went to K-Mart's parking lot,
14 did you ask him where you all were going?

15 A No, ma'am.

16 Q Did you ask him why he was getting you up at ten
17 at night to go riding around?

18 A No.

19 Q Why not?

20 A I just didn't ask him.

21 Q Didn't it seem unusual that he would be coming to
22 get you in the middle of the night to go riding around?

23 A Yes, ma'am.

24 Q Did you ask him where he got the car?

25 A Yes, ma'am.

- 1 Q What did he say?
- 2 A He said it was Walt's.
- 3 Q Who is Walt?
- 4 A A friend of his sister.
- 5 Q Did you ever know a person named Walt prior to
- 6 this time?
- 7 A Yes, ma'am.
- 8 Q Had you ever seen him with this car?
- 9 A No, ma'am.
- 10 Q What did you all do when you got to K-Mart's park-
- 11 ing lot?
- 12 A He took me to his mom's car and I got in it and
- 13 drove it. I followed him.
- 14 Q What kind of car does his mother have?
- 15 A It's a yellow car.
- 16 Q What did he tell you about that car?
- 17 A Which one?
- 18 Q The yellow car.
- 19 A The yellow car? He just said it was-- I knew it
- 20 was his mother's. He didn't say nothing.
- 21 Q What did he tell you to do?
- 22 A He just told me to follow him.
- 23 Q Where did you all go?
- 24 A I followed him to that parking lot that was by
- 25 them big buildings back in Fort Worth. I don't know what

1 street it was. I'm not sure. I think it was Lancaster.

2 I'm not sure.

3 Q Do you know what kind of buildings they were?

4 A No. I'm not sure. They looked like apartments
5 but I'm not sure.

6 Q When Ricky came home on that day, on February nine-
7 teenth, when he came home from work and then left, did you
8 see what kind of car he was in?

9 A His mother's car.

10 Q Was it pretty normal for him to drive his mother's
11 car?

12 A Yes, ma'am. Well, when she allowed him to use it.

13 Q So he left in his mother's car and returned in
14 this station wagon?

15 A Yes, ma'am.

16 Q What did you ask him about his mother's car being
17 parked out on the K-Mart parking lot?

18 A I asked him how it got out there and he said that
19 Walt had taken him in the gray car, that he was with Walt.

20 Q Why did he leave the car out on the parking lot?

21 A He didn't say.

22 Q Did you inquire or try to find out?

23 A No, ma'am.

24 Q When you were in the station wagon did you notice
25 any property or anything inside the station wagon?

A I seen a purse.

2 Q What kind of purse was it?

3 A It was white, kind of white looking.

4 Q Did you say anything about the purse?

5 A I asked him whose it was and where he got it from
6 and he said Walt gave it to him.

7 Q Did he ever tell you he took the purse?

8 A No.

9 Q Do you remember telling the police on February
10 twenty-first that when you asked him where he got the purse
11 he said, "I took it"?

12 A No.

13 Q You don't remember saying that?

14 A I didn't say that.

15 Q Did he give you anything in the purse or the
16 purse, itself?

17 A He gave me the checks and some credit cards and a
18 few other things.

19 Q Did you look at the checks and credit cards and
20 figure out what name was on them?

21 A Yes, ma'am.

22 Q Who was it?

23 A Tammy Livingston.

24 Q Did you know any person named Tammy Livingston?

25 A No, ma'am.

1 Q Did you ask him about that person?

2 A Yes, ma'am.

3 Q What did he say?

4 A He didn't say nothing. He didn't answer me.

5 Q What did you ask him?

6 A I asked him how he got them and whose they were
7 and he said he got them from Walt.

8 Q Have you talked to Walt since this day?

9 A No, ma'am.

10 Q You didn't tell the police anything about him get-
11 ting this stuff from Walt, did you?

12 A No, ma'am.

13 Q In fact, when the police asked you what happened
14 you never told them that Richard said he got anything from
15 Walt, did you?

16 A Yes, ma'am.

17 Q You did tell them that?

18 A No.

19 Q O.K. You did not?

20 A No.

21 Q What is Walt's last name?

22 A I'm not sure. Last I heard it was-- Ricky told
23 me it was Strickmond, or something like that.

24 Q When did Ricky tell you that was his last name?

25 A Not too long ago.

Q Last Sunday?

2 A No. It was before that.

3 Q Did you tell Ricky last Sunday when you all talked
4 that you had been up here and you were coming back to the
5 Grand Jury?

6 A Excuse me?

7 Q Did you tell Ricky last Sunday when you talked to
8 him on the phone that you had been here in Fort Worth to the
9 Grand Jury?

10 A Yes, ma'am.

11 Q What did he say?

12 A He said, "Just do what you have to do."

13 Q What did that mean?

14 A Well, I told him what was said and that I could go
15 to jail and he said, "Well, I don't want you going up to
16 jail."

17 He said, "Stay out of jail. Just do whatever you
18 have to do."

19 Q After you picked up the car at the K-Mart parking
20 lot on February nineteenth and you testified that you drove
21 it to some buildings and left it--left the station wagon on
22 a parking lot?

23 A Yes, ma'am.

24 Q Did you follow Ricky to that parking lot, you driving
the yellow car and Ricky driving the station wagon?

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A Yes, ma'am.

Q After you stopped at the parking lot next to the big buildings that may have been apartments, what did Ricky do?

A He got out of the car and he got into his mother's car.

Q That you were driving?

A Yes, ma'am.

Q When he got into that vehicle was he the passenger or the driver?

A He was the driver.

Q And where did you all go?

A We went to a bank and tried to use the Pulse machine, or something.

Q Have you ever seen him with a Pulse card before?

A No.

Q Did you all have a Pulse account?

A No.

Q What was the name on that Pulse card?

A Tammy Livingston.

Q Have you ever been convicted of a felony in Texas?

A No, ma'am.

Q Have you ever been arrested for a felony or a misdemeanor prior to February 19, 1986?

A No, ma'am.

1 Q Including since you have been a juvenile?

2 A Yes, ma'am.

3 Q As a juvenile you were arrested?

4 A No, ma'am.

5 Q Did it occur to you that if he was using someone
6 else's Pulse card that that was probably against the law?

7 A Yes, ma'am.

8 Q What did you say to him when he started doing that?

9 A He didn't use them. I did. I told him I didn't
10 think it was a good idea to use them.

11 Q Did you know that when he gave you those Pulse
12 cards and told you to use them that Tammy Livingston hadn't
13 given you permission to use them?

14 A Yes, ma'am.

15 Q What did he tell you about the owner of those cards?

16 A He didn't say nothing.

17 Q You didn't ask him?

18 A No, ma'am.

19 Q Where did you think he got them?

20 A He said that Walt gave them to him, that he bought
21 them from him, or something.

22 Q You never told the police that Walt gave them to
23 him. When was it that Ricky told you that Walt--and gave
24 you his last name--I want to know when that was, last week
25 or--

1 A He gave me his last name a couple of weeks ago.

2 I don't know. I have a letter.

3 Q From Ricky?

4 A Yes.

5 Q And is it talking about Walt and how Walt committed
6 this crime?

7 A No.

8 Q What is it?

9 A He just told me what Walt's last name was.

10 Q Just out of the blue he said Walt's last name is
11 this?

12 A No. He was talking about Walt and he wished that
13 they would investigate it further so that they would catch
14 him, or at least investigate Walt.

15 Q For what?

16 A For the murder.

17 Q So I take it then that Ricky has been telling you
18 that some guy named Walt committed this murder and not him?

19 A Yes, ma'am.

20 Q And you believe that, I take it?

21 A Yes, ma'am.

22 Q When you left the station wagon at the apartment,
23 where did you go?

24 A We went to the bank and tried to use that Pulse
25 card.

1 Q And you tried that, yourself?

2 A Yes, ma'am.

3 Q And after leaving there where did you go?

4 A I'm not real sure because we went to a bunch of
5 different places. I know we went to a 7-11 and two other
6 places to try and--

7 Q O.K. All of these places where you stopped to use
8 the cards, did he tell you to use them yourself? He didn't
9 use them. He gave them to you to use them?

10 A Yes, ma'am.

11 Q When was it that he told you that he had gotten in
12 a fight with a man and a woman out in a field?

13 A It was sometime that night.

14 Q Was it when you all were using the cards?

15 A I'm not sure. It might have been.

16 Q O.K. When he told you about getting in a fight
17 with a man and a woman, did he tell you that that was where
18 the cards had come from?

19 A No.

20 Q And he told you about hitting the guy and possibly
21 knocking the woman out?

22 A No.

23 Q He didn't tell you that then, or--

24 A He didn't tell me that.

25 Q But he did tell you he had gotten in a fight with a

man and a woman?

1
2 A He said that there had been a fight. He didn't
3 say he had gotten in a fight.

4 Q What did he tell you?

5 A He just said there had been a fight.

6 Q That's all?

7 A Yes.

8 Q What did he tell you about the fight? When he told
9 you he had gotten into a fight, did you ask him where?

10 A No.

11 Q And you love him and you--

12 A I asked him why.

13 Q You asked him why?

14 A Yes.

15 Q What did he say

16 A He didn't answer me.

17 Q Isn't that when he told you that he had gotten the
18 cards from the man and the woman?

19 A No.

20 Q O.K. You understand that this Grant of Immunity
21 that you got in the courtroom only gave you immunity from
22 your testimony in your criminal cases, do you understand that?

23 A I think so.

24 Q O.K. You also understand that when you came in
25 here you took an oath to tell the truth and that the penalty

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for lying to the Grand Jury is perjury and that is two to ten years in the penitentiary where Ricky was.

Do you understand that?

A Yes, ma'am.

Q And you understand also that you do not have immunity from perjury charges?

A Yes, ma'am.

Q All right. Are you lying to the Grand Jury or did you commit perjury when you told the police that he told you he had gotten in a fight with a man and a woman?. Which one of those is a lie?

A He didn't tell me he had gotten in a fight.

Q He told you he got the cards--

A That there was a fight.

Q He told you he got the cards from a man and a woman he fought with so it was a lie when you told the police that?

A No. I didn't tell the police that.

Q When you all finished using all the cards where did you all go, or trying to use the Pulse cards, where did you all go?

A After we used all of the cards we never got nothing out of them, we went to his mother's house.

Q Which is where?

A On Taylor.

Q What did you do at his mother's house?

A He asked where Brenda was. That's his other sister.

Q Did he find her?

A No.

Q Why was he looking for Brenda?

A He was trying to find Walt.

Q Why?

A I don't know.

Q Now you never told the police that you went back to his mother's house to look for Brenda, did you?

A No.

Q They asked you all of these events about using the cards and where you went and you told them that after using the cards you went back to your own house to get gasoline, is that right?

A Yes, ma'am.

Q O.K. You didn't tell them about going to his mother's house to look for Walt?

A No, ma'am.

Q If it had been the truth in February of 1986, that Walt had given him the cards and that Walt had done the fight and Ricky was looking for Walt because he was the person who'd done this, wouldn't you have told the police that since it would get your friend and lover, Ricky, out of trouble?

I mean you don't want Ricky to get the death penalty.

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1 do you?

2 A No.

3 Q Well, if Walt was the person that had done it back
4 in February 1986, wouldn't you have told the police that?

5 You didn't tell them that, did you?

6 A No, ma'am.

7 Q All right. So you did not go to your mother's
8 house to look for Walt--or his mother's house?

9 A Not my mother. Yes, we did go to his mother's
10 house.

11 Q Who was at his mother's house?

12 A His mother and his father and Lynn and Sabrina.

13 Q Lynn and who?

14 A Sabrina. They are kids.

15 Q How long did you all stay there?

16 A Just ten or fifteen minutes.

17 Q O.K. After him picking you up at 9:30, going to
18 the apartments, going to 7-11 and the bank and then you went
19 to his mother's house and then where did you go?

20 A We went back home.

21 Q On Avenue H?

22 A Yes, ma'am.

23 Q When you got there what did you do?

24 A We went inside and Ricky ate something with Bobby
25 and him and Bobby talked a while and I was laying down. I

1 had a real bad headache and I was tired.
2 Then I went outside and was sitting on the ground
3 outside and Ricky come out there and Bobby and Karen come
4 out there.

5 Q What time of night is this?

6 A It was pretty late.

7 Q What happened after Bobby and Karen came outside
8 while you and Ricky were outside?

9 A I don't understand you, ma'am.

10 Q What happened next?

11 A After that, we just sat out there and we talked
12 a while and then he went inside and said he was going to take
13 a shower and get cleaned up.

14 Q Ricky did?

15 A Yes, ma'am.

16 Q Did you notice any blood on his pants that evening?

17 A No, ma'am.

18 Q Did you notice any spots on his pants? Did you
19 think it was grease, or something?

20 A I didn't notice anything on his clothes.

21 Q What were you all talking about outside while you
22 were sitting in the grass?

23 A Nothing. He just told me that he loved me.

24 Q Does he still tell you that?

25 A Yes, ma'am.

1 When he went inside and got cleaned up, then what
2 happened?

3 A Then we went-- He told me-- Well, he asked me to
4 go out to the garage and get that can of gasoline out in the
5 garage so I did.

6 Q Where was the can of gasoline?

7 A It was by the lawnmower.

8 Q O.K.

9 A Then we went--and I put it in the car. This was
10 after he took a shower and got ready to go and he got in the
11 car and we left.

12 Q Where did you go?

13 A We went to that field.

14 Q What field?

15 A It was just a field. I don't know. He drove down
16 a road all the way to the end of it and it was real dark and
17 everything and he made the block and he come back and stopped
18 and I asked him what he was doing and he said he had to burn
19 that field.

20 Q And he told you he had to burn the field because
21 that's where he had the fight with the man and the woman?

22 A He said that there had been a fight there.

23 Q How did he know about the fight?

24 A I don't know.

25 Q He was there, wasn't he? He told you that he had

1 the fight?

2 A No.

3 Q Who did he say had the fight?

4 A He just said there had been a fight.

5 Q Well, how else would he know about it if he wasn't
6 there? Can you imagine any way that he would have?

7 A No. I can't imagine any way.

8 Q When he stopped at the field what did he do?

9 A He sat there for a minute and he looked and we
10 talked about it. I asked him what he was going to do and he
11 said he had to burn that field.

12 I said, "Well, I don't think that would be a good
13 idea, over some fight."

14 He said, "You don't?"

15 I said, "No. I wouldn't do it."

16 He asked me--well, he said, "I have to."

17 I asked him why and he said, "I don't want to tell
18 you."

19 Q But after he burned the field he told you, didn't
20 he?

21 A No.

22 Q When did he tell you why he had to burn the field?

23 A He didn't. He just told me that there had been a
24 fight and he had to burn the field and I asked him why because
25 that was such a dumb reason and he said because he just had

1 to and then he got out of the car and went and walked over
2 the gate--well, he climbed over the gate and then he went
3 behind--well, there was a tree and it was--well, it wasn't
4 a tree but it was a real tall bush, or something and it was
5 real dark and he climbed over the gate and he went behind
6 that and I couldn't see him anymore after that.

7 I bent down and turned on the radio and when I
8 looked up the fire just went up, straight up in the air and
9 then it started spreading and then I seen Ricky coming so I
10 turned off the radio and then we left.

11 Q Then when he got in the car did you say something
12 about the fire?

13 A I asked him why. I said, "That's dumb."

14 I said, "That's dumb, you know, to light a fire
15 over a fight."

16 Q And that's when he told you that he had knocked
17 the girl out and tried to kill a man?

18 A No.

19 Q Do you remember giving a statement to the police,
20 a written statement, that you signed?

21 A Yes, ma'am.

22 Q O.K. Would you lie to those police officers?

23 A I did the first few times because I was so scared.

24 Q So you made up things that would get your boyfriend
25 in trouble?

1 A No, ma'am.
2 Q Now then if you were going to lie to the police
3 you wouldn't lie so that Ricky would get the death penalty,
4 would you?

5 A No, ma'am.

6 Q O.K. So you wouldn't lie to the police and say,
7 "I asked him why he set the field on fire and he said he
8 thought he killed that guy and that he knocked the girl off
9 and dropped her off somewhere"?

10 "I asked him why he set the fire and killed that
11 guy and he said he had to because we needed the money."

12 A I didn't make that statement, no.

13 Q You didn't make that statement?

14 A No. Not that.

15 Q What did you tell the police?

16 A I just told them that he had--that he started the
17 fire and he come back and he was shaking real bad and I said,
18 "Why are you shaking?"

19 He said, "Nothing." I asked him why he had started
20 the fire about a fight and he said he had to.

21 Q Because you all needed the money. You did need the
22 money, didn't you?

23 A Yes, ma'am.

24 Q Weren't you all broke?

25 A Well, not really. We were getting by.

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Q Barely?

A Barely.

Q You had four people living with you to help pay the rent on the house.

A No. We was just letting his sister and brother-in-law live with us because they had lost their house.

Q O.K. You all didn't have enough money. You weren't working. His sister wasn't working, is that right?

A I was looking for a job.

Q You weren't working, were you?

A No, ma'am.

Q Did you go out in the field with Ricky?

A No, ma'am.

Q Did you tell him you wanted to?

A No, ma'am.

Q Did he say anything to keep you from going out there?

A No, ma'am.

Q Let me ask one more question about this testimony about how the fire was started and who was in the fight out there.

Let me show you this statement first. Do you recognize your signature?

A Yes, ma'am.

Q And this is a two page statement?

1 A Yes, ma'am.

2 Q It contains your signature on both pages?

3 A Yes, ma'am.

4 Q Now then, in this statement it was typed up and
5 you signed it and the secretary was sitting there and she
6 signed it?

7 A Yes, ma'am.

8 Q And Detective Bennett was there. Do you remember
9 him?

10 A No, ma'am.

11 Q You were in the police department office?

12 A I know there was a detective there but I don't
13 know who it was.

14 Q And you had been arrested when this happened, hadn't
15 you?

16 A Yes.

17 Q Had they told you at the time you gave this state-
18 ment that Ricky could be charged with capital murder?

19 A Yes, ma'am.

20 Q In fact, they had already charged you with capital
21 murder, hadn't they?

22 A Yes, ma'am.

23 Q O.K. At that time would you have told the police
24 anything to have gotten Ricky in worse trouble than he was
25 already in?

1 A No.

2 Q You certainly wouldn't have lied to the police in
3 a way that would have gotten Ricky in trouble?

4 A No, ma'am.

5 Q You wouldn't have lied to the police and said any-
6 thing about Ricky talking about having a fight with people
7 if it didn't actually happen?

8 A I didn't say that he had a fight.

9 Q So you are saying to the police--look at this state-
10 ment--quote, I did not throw it out. I just put it in the
11 back seat, end quote, that being the gas can. Quote, I
12 asked him why he set the field on fire and he said he thought
13 he killed that guy and that he just knocked the girl out and
14 dropped her off somewhere. I asked him why he set the fire
15 and killed that guy and he said he had to because we needed
16 the money, end quote.

17 You are saying now that you didn't tell the police
18 that?

19 A No, ma'am.

20 Q Now then, you read this entire statement and put
21 your initials where there were corrections, didn't you?

22 A Yes, ma'am.

23 Q In fact, within that group of sentences I just read
24 to you, you put your initials?

25 A Yes, ma'am.

1 Q So you read this entire thing and swore that it
2 was true and correct?

3 A Yes, ma'am.

4 Q Do you want to go to the penitentiary for perjury?

5 A No, ma'am.

6 Q Do you want to have your baby in the penitentiary?

7 A No, ma'am.

8 Q Are you going to tell this Grand Jury the truth?

9 A I just did.

10 Q Which is?

11 A O.K. I asked him why he set the fire and he said
12 because there had been a fight out there and he was shaking
13 real bad. He didn't say that he got into a fight.

14 Q Well, then why did you sign a statement where it
15 says he got in a fight and killed the guy because you all
16 needed the money?

17 You signed a statement that says that he said to
18 you that he killed a guy because you needed the money, didn't
19 you?

20 A I don't remember that being in there.

21 Q You put your initials on it. You read it.

22 A But I don't remember that statement being in there.

23 Q O.K. Whether it is in there or not, do you remember
24 telling the police that that is what he said to you? It is
25 in this statement, isn't it?

1 A Yes.

2 Q O.K. And it hasn't been altered in any way. You
3 see your initials on it. This is a photocopy.

4 A Yes, ma'am. When that statement was taken I did
5 not have a lawyer and I asked for one.

6 Q Did your lawyer tell you what to say in here today?

7 A No. I had asked for a lawyer and I was denied one.

8 Q O.K.

9 A And I told them I didn't understand the way they
10 had written a lot of those things in there and things that
11 were in quotes and they said it didn't matter.

12 Q O.K. But you didn't change anything?

13 A No.

14 Q You changed all of the little typos and made marks
15 all through it but you didn't change that.

16 A They told me I could change those.

17 Q But they told you you could write on this and sign
18 it or not sign it?

19 A I asked them before I signed it to see a lawyer
20 before I signed it to go over it with me because I didn't
21 understand it.

22 Q O.K.

23 A And they said I didn't need one. It wasn't part
24 of my case.

25 Q O.K.

1 A And I asked them again for one and they would not
2 give me a lawyer.

3 Q O.K. They didn't give you a lawyer. Did you need
4 a lawyer to tell you whether or not you lied in this state-
5 ment?

6 A No, ma'am.

7 Q Has your lawyer told you what to say today?

8 A No, ma'am.

9 Q Did you need a lawyer to tell you that Ricky had
10 said that there was a fight and he killed a guy and he knocked
11 the girl out and he had to set the field on fire because he
12 killed a guy and you all needed the money?

13 A No.

14 Q Is it your testimony under oath today that he
15 never said anything to you about killing the guy or fighting
16 with the woman and having to let her out? Ricky didn't say
17 anything about that?

18 A No.

19 Q At no time has he ever said anything to you about
20 those statements that I have just read?

21 A He said something about the fight to me.

22 Q Exactly what did he say about the fight?

23 A He said that there had been a fight out in the
24 field. We had talked a lot and he told me first that there
25 had been a fight.

1 Then he said that he had been in it and then he
2 said that he wasn't in it, that he had just heard about it.

3 Q O.K. So now then he told you he was involved in
4 the fight?

5 A One time.

6 Q When was that one time? Was it when you were using
7 the credit cards, or when he was setting the fire?

8 A I'm not sure. It was during that night.

9 Q O.K. When he told you he was involved in a fight,
10 did he tell you who he fought with?

11 A No, ma'am.

12 Q The whole point is you have just testified that
13 you all talked a lot that night. You just said that.

14 A We talked some.

15 Q No. You just said you all talked a lot. Is that
16 the truth, or is that a lie?

17 A No. We didn't talk a lot. I mean there was a lot
18 of times that we was in the car that we didn't say nothing.

19 MS. WILSON: Ms. Carpenter?

20 (Portion referred to read back by
21 reporter.)

22 BY MISS WILSON:

23 Q All right. In all of these conversations when you
24 just testified that you talked a lot that night, when he
25 talked to you about what happened in the fight because he

2
admitted at one point that he had been involved, is that
right?

3 A Yes, ma'am.

4 Q You tell this Grand Jury under oath and under pen-
5 alties of perjury what he told you exactly about that fight
6 and who he fought with?

7 A He didn't say. I had asked him. I said, "What
8 fight?"

9 He said first that he had been in a fight and then
10 he said he wasn't in a fight later on that evening.

11 He never told me if he did fight with anybody or
12 not.

13 Q When you all finished with the field and the fire
14 was burning and Ricky comes back and gets in the car with
15 you, where did you all go?

16 A We went and got something to eat, I believe.

17 Q Where did you go?

18 A Taco Bell, I think.

19 Q Did Ricky eat?

20 A No.

21 Q Did you eat?

22 A Yes. A little bit.

23 Q What did you all have?

24 A I had a burrito, I think. Ricky ordered something
25 but he never ate it.

1 Q Did you ask him how come he wasn't eating?

2 A No. I just asked him, I said, "You are not going
3 to eat this?"

4 He said, "No."

5 I said, "Well, I'm going to eat the lettuce off
6 of it."

7 He said, "All right."

8 Q When you left the taco place where did you go
9 after that?

10 A I'm not sure if we tried to use some cards. We
11 may have, or may not have but we did go to a Safeway at one
12 time that evening and it was either around twelve, or after
13 twelve that we was there.

14 Q When you talk about using cards, do you mean the
15 Pulse money cards?

16 A Yes, ma'am.

17 Q What did you do after you went to the Safeway?

18 A We bought some groceries and we used one of the
19 checks to buy them.

20 Q One of what checks?

21 A One of hers, Tammy Livingston's checks.

22 Q The ones that Ricky told you he had gotten from
23 the woman?

24 A No. The ones he said he got from Walt.

25 Q Which you say now he got from Walt. You didn't

1 tell the police he got them from Walt?

2 A No. I never mentioned Walt before to the police.

3 Q When you all went to bed that night, what did you
4 do when you got up the next morning?

5 A I stayed home. He got ready for work. I fixed
6 his lunch and he went to work.

7 Q All day long you stayed at home?

8 A Yes, ma'am. I did at one point that week--I'm not
9 sure if it was Wednesday, Thursday or it might have been
10 Tuesday--I went and paid bills. Ricky had to take off one
11 day with me to go down and pay a bill.

12 Q O.K. Did you all have a television at your house?

13 A Yes, ma'am. We had one.

14 Q And you had radios at your house?

15 A Yes, ma'am.

16 Q Did you hear on the news that day about the body
17 found in the field where you all had set fire to the field?

18 A No, ma'am.

19 Q When was the first time you heard about the body
20 in the field?

21 A When we was in a store that night.

22 Q O.K. In a Sears store?

23 A His mother--we had talked to his mother.

24 Q Ricky called his mother, isn't that correct?

25 A Yes.

Q From a Sears store?

2 A Yes, ma'am.

3 Q Where you all had been using Tammy Livingston's
4 cards and forging her signature?

5 A Yes, ma'am.

6 Q And when he called his mother you asked him what
7 happened, isn't that correct?

8 A Yes, ma'am.

9 Q And he said they found the body of a girl?

10 A Yes, ma'am.

11 Q He told you that then?

12 A Yes, ma'am.

13 Q And you asked him the body of what girl and he said
14 the one I killed.

15 A No, ma'am.

16 Q What did he say?

17 A He said the one that was in the field.

18 Q Was that news to you? Was that the first time you
19 had heard about a body of a girl in the field?

20 A Yes, ma'am.

21 Q What did you say to him there at the Sears store
22 in front of the sales clerk and everybody--

23 A I didn't say anything.

24 Q When did you continue to talk to him about the
25 woman's body in the field?

1 A I didn't.

2 Q You just let it go, that he set fire to a woman
3 in the field?

4 A I didn't know how to take it..

5 Q What do you mean you didn't know how to take it?
6 He just told you he had set fire to a woman.

7 A I didn't know if he had known about it or not.

8 Q After you left the Sears store you went to the
9 Safeway store and forged a check and you were arrested,
10 isn't that correct?

11 A Yes, ma'am.

12 Q You also used a credit card that didn't belong to
13 you at J. C. Penney's and Sears, is that correct?

14 A Yes, ma'am.

15 Q At Sears you purchased a VCR, isn't that correct?

16 A Yes.

17 Q Who has that VCR?

18 A I don't know.

19 Q Does Sharon Jones have that VCR?

20 A No.

21 Q Does she know you had that VCR?

22 A That's what-- When I talked to Ricky after he was
23 arrested and I got out and he said that the police had picked
24 up all of that stuff.

25 I had asked him, I said, "Are you sure?"

1 He said, "Yes."

2 I said, "All right."

3 That was the last I heard of it, that the police
4 had everything that was bought.

5 Q Did you get to see Ricky Jones after he gave a
6 statement on February twenty-first at the police department?

7 A Yes, ma'am.

8 Q The policeman let you stand and talk to him,
9 didn't they?

10 A Yes, ma'am.

11 Q Did you ask him at that point, "Is it true that
12 you did it?"

13 A No, ma'am.

14 Q Did he tell you then that he did it?

15 A No, ma'am.

16 Q What did you all talk about?

17 A He said he was sorry that he got me into this.

18 Q That he had gotten you into this?

19 A Yes. That he had come and got me out of bed to
20 write those--

21 Q Is that what he said?

22 A Well, he said that he was sorry that he had come
23 and got me.

24 Q Now did he say he was sorry that he came and got you
25 or did he say he was sorry he had gotten you into this?

1 He said he was sorry he had got me into this and
2 that he came and got me.

3 He said he was sorry and I said, "Don't be."

4 He said, "No. I'm sorry I got you into this, that
5 I got you involved and I'm sorry I come and got you that
6 night."

7 He said, "I shouldn't have come and got you."

8 Q Have you seen him since this all happened?

9 A Yes.

10 Q When did you see him?

11 A It was a couple of weeks ago. My mom had a long
12 weekend and I had to come up here.

13 I had come up here for something with tampering
14 with evidence. I had to go to court and then I had left
15 and I asked my dad if I could stay and see Ricky and he said
16 he would bring me back up here Sunday to see him.

17 Q Have your parents, or your mother at least, encour-
18 aged you to tell the truth with all of this?

19 A Yes, ma'am.

20 Q Has your lawyer encouraged you to tell the truth
21 with all of this?

22 A Yes, ma'am.

23 Q Is there some reason then that you persist in lying
24 to this Grand Jury?

25 A I'm not lying.

1 Q Since you talked to Richard Jones up in the jail,
2 has he talked to you about the facts of this offense?

3 A Yes, ma'am.

4 Q O.K. What did he tell you?

5 A He said that he didn't do it. He told me that he
6 had gotten the stuff from Walt. He had told me that before.
7 He also said that he couldn't find Walt and that everybody
8 was looking for him and he told me that no matter what hap-
9 pened he wanted to make sure that I knew that he didn't do
10 that.

11 Q Did you believe him?

12 A Yes.

13 Q Because he is the father of your child and you
14 love him?

15 A Yes.

16 MISS WILSON: Do the Grand Jurors have
17 any questions?

18 BY A GRAND JUROR:

19 Q Where does Walt live?

20 A I'm not sure. The last time I seen him he was on
21 Panola. Well, he wasn't living there but he was staying with
22 someone there.

23 Q On Panola?

24 A On Panola. We had a hard time finding that street
25 one night. See, we was taking Ricky's sister, which I think

1 is Walt's girl friend, or used to be--she used to hang around
2 him a lot--and we was taking her over there and that's how
3 Ricky met him.

4 BY A GRAND JUROR:

5 Q You said that you believed that Ricky did not
6 commit this murder. When you went out to the field with him
7 and he set the field on fire and then you saw in the news-
8 paper or somewhere that a body was found out there, you
9 didn't kind of connect that, the fact that he burned this
10 field and a body was found there, that the finger was point-
11 ing to him because how else would he have known?

12 A No. I didn't think that he could do something like
13 that.

14 Q He burned the field, though, right?

15 A Yes. I didn't think that he had seen a body. I
16 mean I didn't think he knew that the body was out there.

17 BY A GRAND JUROR:

18 Q Was the area that you could see in the field that
19 was burning, how large was it? Was it about the size of the
20 floor there, larger or smaller, or what?

21 A It looked big. It went straight up and then it
22 spread over.

23 Q When it first started to go straight up, how large
24 did it look to be?

25 A It was pretty good size. You could see it, you

1 know, behind that tree. You could see the flames.

2 Q Could you estimate that in feet?

3 A I just know that it was big. It just went straight
4 up.

5 BY A GRAND JUROR:

6 Q When you talked to him, has he told you what to
7 say?

8 A No. He told me, he said, "Do whatever you have to
9 do. Stay out of trouble--," so I could take care of the
10 baby.

11 Q What do you think he meant by that?

12 A Well, he told me to tell the truth and that he
13 had two people to testify for him.

14 BY MS. WILSON:

15 Q Who are they?

16 A I don't know. I don't know their names. I know one
17 of their names is Sammy something.

18 Q What did he tell you about these two people that
19 are going to testify?

20 A He just said that Walt had gone to them first and
21 tried to sell them this stuff, the car and the cards and the
22 checks and everything.

23 Q So Richard bought the cards and the stuff that--

24 A I'm not sure.

25 Q Well, from what he told you before he must have

1 purchased them from Walt?

2 A That's what he is telling me now, that he bought
3 the stuff. I knew that he had gotten the stuff from Walt.
4 He had told me that before and then he told me that he had
5 bought it from Walt and the only thing Walt promised him to
6 do was to take the car and park it at that place. He didn't
7 take the car. He said, "Walt told me to park it there at
8 that place and to take the keys," and he did.

9 Q Who is it that Ricky has that is going to testify
10 for him in this case?

11 A I just know Sammy.

12 Q What did he tell you about these two other people
13 that are going to testify?

14 A That one of them's name is Sammy and he is going
15 to testify-- I know that he is in jail. Sammy is in jail.
16 I don't know him personally. I just know him if I see him
17 and I have never seen him before.

18 He told Ricky that he didn't know what Ricky was
19 in there for when he talked to Ricky at one point and he has
20 said that Walt had come to him--when they started talking
21 about the case, I guess--he said that Walt had come to him
22 with the cards and the car and all of that wanting to sell it.

23 Q This is the mysterious Walt that you never said
24 anything about before today, is that right?

25 A Yes, ma'am.

2 A I don't know.

3 Q What is he going to say?

4 A He just said about the same. That Walt had tried
5 to sell it to both of them.

6 Q What kind of drugs does Ricky use?

7 A None that I know of.

8 Q But you don't know what he did at work, or away
9 from you?

10 A No.

11 BY A GRAND JUROR:

12 Q When you were parked in the car out near the field
13 and he took the gas can and went into the field and you saw
14 him go back behind the bushes after he got over the gate or
15 the fence and then you turned on the radio and when you
16 looked up you saw the fire and then he comes back and then
17 where is the can? What did he do with the can?

18 A He gave it to me.

19 Q What did you do with the can?

20 A He told me to throw it away and I said, "What do
21 you want to throw it away for?"

22 I just threw it in the back seat and then later on
23 we put it in the trunk.

24 Q When you found out later that there was a woman's
25 body out there that had gotten burned, it didn't enter your

mind-- Did you think he just went out into the field just
2 to start a bonfire so you could roast some wieners, or
3 something?

4 Why did you think he was setting a fire when there
5 was nobody there?

6 A When he told me about the fire and about the woman's
7 body being found out there I didn't know what to say to him.

8 Q Before he set the fire, or after?

9 A After. When he had told me that the woman's body
10 was found out there where he had burned the field,

11 Q But that night when he came back with the empty
12 gasoline can, it didn't enter your mind what he was doing
13 out there unless there was something he was trying to hide?

14 A No. He just said that there had been a fight.

15 Q There had been a fight so he goes out and sets fire
16 to a field?

17 A That's what I questioned him about that.

18 Q Did he say what he was trying to hide? He was
19 trying to destroy something, otherwise he wouldn't have
20 built a fire, right?

21 A Yes, sir. I didn't know what it was. He had said
22 that there had been a fight and at first he had been in it
23 and then he said he didn't do it--that he didn't, you know,
24 have the fight and then he said-- When I asked him why he
25 started the fire about a fight, he never really answered me.

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Q Floy Jones?

A F-l-o-y.

Q What is her phone number?

A 534-5215.

Q And she lives on Hanger Street?

A Yes.

Q And he calls his mother and when he hangs up he says they found that girl, right?

A He said that they found the girl's body that was in the field.

Q And you said, "Well, what happened?" And he said that he killed her, Ricky said that he killed her?

A No.

Q That's a lie, too?

A He said that he had caught the field on fire where she was.

Q But he didn't admit killing her?

A No.

Q Did he admit to having sex out there with her prior to killing her?

A No.

Q Now he normally carries a knife. Is it a pocket knife?

A Yes.

Q Did he tell you about stabbing her sixteen times

1 In the throat with that pocket knife?

2 A No.

3 Q Did he tell you what the body looked like after
4 he set it on fire?

5 A No. At the time he set the fire he didn't tell me
6 anything about a body.

7 Q He didn't tell you that he had sex with her out
8 there in that field after he kidnapped her?

9 A No.

10 Q So he hasn't admitted that to you?

11 A No. He never told me about a body at all.

12 Q You just said that he did at Sears.

13 A But when he set the fire he didn't tell me about
14 the body.

15 Q But at Sears he told you about the body--

16 A Yes.

17 Q --and that he set it on fire and that he killed
18 her but did he tell you that he had sex with her?

19 A No.

20 Q Did he tell you that he had been to the peniten-
21 tiary not just once but twice?

22 A Yes, ma'am.

23 Q That doesn't bother you at all, does it?

24 A I understood that he went three times.

25 MS. WILSON: Does anybody have any other

1 questions of this witness?

2 (No response.)

3 MS. WILSON: You understand, for what-
4 ever this means to you, that the second part
5 of your oath is to keep secret the proceed-
6 ings of this Grand Jury. That means that you
7 are not to tell Ricky Jones, his lawyer, Jack
8 Strickland, or Bill Lane, your family, or his
9 sister or anybody in the world, what went on
10 in this Grand Jury.

11 Do you understand that?

12 THE WITNESS: Yes, ma'am.

13 MS. WILSON: You understand that you
14 can go to jail for that and it wouldn't make
15 Ricky happy if you had to go to jail, would
16 it?

17 THE WITNESS: No, ma'am.

18 MS. WILSON: O.K. You are free to
19 leave.

20 (Witness excused.)
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THE STATE OF TEXAS)

COUNTY OF TARRANT)

I, DOROTHY CARPENTER, Official Court Reporter for the Grand Jury of Tarrant County, Texas hereby certify that the above and foregoing seventy-two (72) pages contain a true, correct and complete transcription of all of the testimony of YELENA DEAN COMALANDER, a witness appearing before said Grand Jury in the above styled and numbered cause.

WITNESS my hand and seal of office this 23rd day of May, 1986.

Dorothy Carpenter
DOROTHY CARPENTER, CSR
Official Court Reporter
Tarrant County Grand Jury

Certification Number of Reporter: 436

Date of Expiration of Current Certification: 12/31/86

Business Address: 300 West Balknap, Fort Worth, Texas 76196

Telephone Number: 817/334-1608

EXHIBIT 4

**1986 Grand Jury Testimony of
Douglas Wayne Daffern**

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NO. _____

THE STATE OF TEXAS | BEFORE THE GRAND JURY
VS. | OF
RICHARD WAYNE JONES | TARRANT COUNTY, TEXAS

VOLUME II.
TESTIMONY
OF
DOUGLAS WAYNE DAFFERN

DOROTHY CARPENTER, CSR
Official Court Reporter
Tarrant County Grand Jury

Thursday, June 26, 1986

DEFENDANT'S
EXHIBIT
17-dm
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THE STATE OF TEXAS | BEFORE THE GRAND JURY
VS. | OF
RICHARD WAYNE JONES | TARRANT COUNTY, TEXAS

- - -

BE IT REMEMBERED that on the 26th day of
June, 1986, the above numbered and entitled matter came on
to be considered by the Grand Jury of Tarrant County, Texas,
being Numbered 457-462 on the docket of said Grand Jury.

- - -

APPEARANCES:

TIM CURRY, Criminal District Attorney
By: SHAREN WILSON, Assistant District Attorney
200 West Belknap
Fort Worth, Texas 76196-0201

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WHEREUPON,

DOUGLAS WAYNE DAFFERN,

was called as a witness and, having been first duly sworn by the Assistant Foreman of said Grand Jury, upon his oath testified as follows:

EXAMINATION

BY MS. WILSON:

Q Would you state your full name and spell your last name?

A Douglas Wayne Daffern, D-a-f-f-e-r-n.

Q I want to read your rights. You have the right to remain silent and not make any statement at all. Any statement you may make may be used against you at your trial.

Do you understand that the questions we will be asking you about do not have anything to do with this offense that you are charged with?

A Yes.

Q Do you understand that?

A Yes, ma'am.

Q Any statement you make may be used as evidence against you in court.

Again, we don't intend to question you about your own offense.

A Yes.

Q You have the right to have a lawyer present to

1 advise you prior to and during any questioning.

2 Do you understand that?

3 A Yes, ma'am.

4 Q In fact, you have a lawyer waiting outside and if
5 we ask you any questions that you prefer not to answer, you
6 can go out and talk to him.

7 Do you understand that?

8 A Yes, ma'am.

9 Q And his name is Paul Conner, is that right?

10 A Yes, ma'am.

11 Q And you have had the opportunity to talk with him
12 prior to coming in here this morning, is that right?

13 A Yes, ma'am.

14 Q If you are unable to employ a lawyer, you have the
15 right to have a lawyer appointed to advise you prior to and
16 during any questioning.

17 Do you understand that?

18 A Yes, ma'am.

19 Q Is Paul Conner hired or appointed?

20 A Hired.

21 Q You have the right to terminate the interview at
22 any time. Do you understand that?

23 A Yes, ma'am.

24 Q Now this offense of capital murder occurred on a
25 date in February and the person who is charged is Richard

1 Wayne Jones and he is charged with the murder of a female
2 whose last name is Livingston.

3 In connection with that, it has come to the atten-
4 tion of the Grand Jury and to me as Assistant District Attor-
5 ney, that you have information about a murder committed by
6 a person whose name might be Walt Sellers.

7 A Yes, ma'am.

8 Q Do you know Walt Sellers' full name?

9 A No, ma'am, I don't.

10 Q Did you know his last name was Sellers before
11 today?

12 A Yes, ma'am.

13 Q Would you describe Walt Sellers as best you can?

14 A Maybe six foot. One hundred fifty pounds. Maybe
15 one hundred sixty. Sort of thin and his hair is grayish, an
16 older man in his, maybe forties, early forties.

17 Q Did you have occasion to see Walt Sellers when he
18 had some property that belonged to a person by the name of
19 Livingston?

20 A Yes, ma'am, I did. He came to my room. I was
21 staying in room 129 at the Warren Inn.

22 Q Where is the Warren Inn?

23 A 820 and Denton Highway.

24 Q Do you recall when it was that he came to your
25 room?

1 A No, ma'am. I'm not sure. It was in February when
2 he came to my room, or maybe it was March.

3 Q Did you tell me that you thought it was probably
4 the last of February or the first of March?

5 A Yes, ma'am.

6 Q At that time how long had you been living at the
7 Warren Inn?

8 A I was there about two weeks.

9 Q Do you recall what name you were registered under?

10 A The room was registered under two or three differ-
11 ent names. First it was registered under my mother's name,
12 Laverne Ewers and then my name and then to Kelly Weaver.

13 Q Did all of you stay in that room?

14 A No, ma'am. Just myself. My mother put it in her
15 name.

16 Q Was your mother paying for the room?

17 A No, ma'am. The reason she put it in her name was
18 that I was out of town at the time and she went and got the
19 room for me and she had it put in her name.

20 Q Did you call Walt Sellers by some kind of name?

21 A Yes, ma'am. Skitzen (sic) Walt.

22 Q Why?

23 A He was a paranoid type person. He would always
24 listen to the walls in the adjoining room next to you and I
25 ran him out of my room. He was opening the doors and looking

1 out and all of that.
2 Q How long have you known Walt Sellers?

3 A I just met him in February.

4 Q Where?

5 A At the Warren Inn. He was staying with some people
6 that lived in the apartment part of the Warren Inn. I was
7 staying in the motel. The Warren Inn has apartments and is
8 a motel and he was in the apartments right behind me.

9 Q Do you know where he is at this time?

10 A The last time I seen him before I was released, he
11 told me he was going down for four three-year consecutive
12 terms.

13 Q When were you released from jail?

14 A June eleventh. He told me this probably on June
15 fifth or sixth.

16 Q When Walt came to you in late February or early
17 March, what did he have in his possession?

18 A A purse and also--when he took the stuff he had out
19 of the purse he had credit cards, checks, keys to a car and
20 what all--I.D. of two women.

21 Q Do you recall who the I.D.'s were?

22 A On one of them. Not the other one he had besides
23 Livingston. I really didn't pay attention. Most of the
24 stuff he was carrying was credit cards and stuff with Liv-
25 ington.

1 Q Do you remember the full name?

2 A I'm not for sure. I believe it might have been
3 either Shirley or Mary is all I can recall. I'm not posi-
4 tive on that.

5 Q Do you recall whether there were any photographs
6 of either of these two persons that he had the property of?

7 A I can recall one of the I.D.'s. The lady had sort
8 of medium length hair, dishwater blond, maybe.

9 Q Could you determine her age?

10 A Later thirties. Mid to later thirties.

11 Q What did he tell you about the reason he had for
12 having that property?

13 A What he came to my room saying was that he had just
14 got through shooting two people at a bar and he didn't know
15 if he killed them or not. He also had kept saying "he" at
16 first and then changed it to "they" and then he started
17 talking, "they had" and "we had" and he didn't know if they
18 had killed them or not.

19 Q Do you know what bar this was at?

20 A He told me. I believe it was either off of Lan-
21 caster or over off of Sylvania.

22 Q What time of day or night was it that he came to
23 your room?

24 A In the early morning hours. Maybe eight or nine
25 o'clock.

1 Q Did he ever mention to you who he was with when
2 they committed this offense?

3 A No, ma'am.

4 Q When he talked about shooting two people, did he
5 describe whether they were men or women?

6 A Both women.

7 Q Did he, in fact, have the property, credit cards
8 and stuff for two persons?

9 A Correct.

10 Q Two women?

11 A Correct. He did have. He had checks on both the
12 women. I can't recall the name of the other person. I re-
13 member seeing the name Livingston. I can't recall the full
14 name.

15 Q Do you recall what the purse looked like?

16 A It was gray, from what I recollect.

17 Q What kind of shape or form did it have?

18 A The type you unzip. Maybe a single pocket purse.
19 It had a strap on it.

20 Q Do you remember what day of the week this was?

21 A No, ma'am. I'm not positive on the date.

22 Q I mean like the day of the week rather than the
23 date?

24 A Not that I can recollect.

25 Q Have you talked to Brantley Pringle, or any other

1 person about this?

2 A No, ma'am, I haven't.

3 Q Have you given any kind of statement to any person
4 in jail about what you have just told us?

5 A No, ma'am, I haven't.

6 Q Did you see Walt Sellers at any time with blood on
7 his clothes?

8 A No, ma'am. Not that I can recollect.

9 Q Did he have any blood on his clothes when he had
10 those I.D.'s and checks?

11 A Not that I can recollect. He might have. I didn't
12 pay attention.

13 Q If somebody had blood on their clothes wouldn't you
14 have noticed it?

15 A Yeah. If they were covered with blood, or something
16 If he had any, it would have been little spots or something
17 and I really wouldn't have seen it or really paid attention
18 to it.

19 Q Do you know James King?

20 A Yes, ma'am.

21 Q Has he been in the same cell with you in jail?

22 A Yes. He was.

23 Q Have you and he talked about Ricky Jones and the
24 murder he was in jail for?

25 A Have I talked to Ricky Jones?

1 Q Have you talked about the murder of the Livingston
2 woman while you have been in jail?

3 A Not that I can recall.

4 Q You haven't talked about it?

5 A I haven't talked with James King.

6 Q Do you know Carey Gragle (sic)?

7 A No. Not that I can recall.

8 Q Larry, or Red, or Teresa Gragle?

9 A No.

10 Q Have you ever been to a house at 627 Harrison Lane
11 in Hurst?

12 A No, ma'am. I don't believe so.

13 Q Do you know a person named Jackie, a female?

14 A Yes, ma'am.

15 Q How do you know that person?

16 A She is a friend of James King. She came up to see
17 him is how I know her. He always talked about her, you know,
18 wanting to use my three-way line to call her and to call his
19 attorneys.

20 Q Have you been on the phone when James King called
21 his lawyers?

22 A I wasn't on the phone at the same time. I called
23 the number for him and he taken the phone.

24 Q Have you called this person named Jackie?

25 A Yes, ma'am.

1 Q Have you called Brantley Pringle?

2 A I'm not sure. Most of them I had my sister to
3 call the number for them and I would hand that person the
4 phone. I did that for several people upstairs.

5 Q Have you seen Walt with stolen checks in the past?

6 A Yes, ma'am.

7 Q Is that the way he made his living, so to speak?

8 A Yes, ma'am.

9 Q When he told you that he had killed two people in
10 a bar did you believe him?

11 A No, I did not.

12 Q Do you know anything about a murder of a woman who
13 was kidnapped off of Michael's parking lot and killed in a
14 field and her body set on fire?

15 A No, ma'am.

16 Q Have you heard anything about that?

17 A Yes, ma'am, but that was on the news. That's all
18 I have heard about it.

19 Q Do you recall when it was that you heard about it
20 on the news?

21 A I was up here, County Jail. I'm not absolutely
22 for sure when it was. I believe it was in March. It might
23 not have been the same deal. I just remember hearing about
24 them finding a girl in a field.

25 Q When were you in Jail in February? Do you recall

1 the date?

2 A In February? March twenty-second is when I came
3 to jail. In February I wasn't in jail.

4 Q Were you in jail in January?

5 A Yes, I was.

6 Q Were you present when James King was shot in
7 January?

8 A No, ma'am.

9 Q Were you in jail when James King was in jail in
10 January?

11 A No.

12 Q Do you recall your release date in January?

13 A Yes, ma'am.

14 Q When was it?

15 A January the twenty-ninth.

16 Q So from January twenty-ninth until March, what?

17 A March twenty-second.

18 Q You believe that you heard something about that
19 murder and the body being burned on the news while you were
20 in jail?

21 A One thing, I didn't make it back into Texas until
22 February third. I was in California.

23 Q Was that a violation of your probation?

24 A That's what I got my probation violated for. They
25 already know about that.

1 Q Do you know Terry Jackson?

2 A No, ma'am.

3 Q A guy from the north, a Yankee?

4 A No péople. Most people's names-- There were so
5 many I met that hung around with Walt and that group and I
6 tried not to really know them all.

7 Q You don't know Ricky Jones at all?

8 A No, ma'am. If I seen the person I might. I heard--
9 James King told me that prior to coming to jail he remembered
10 me but I don't remember him.

11 Q How many times did James King talk to you about
12 this Livingston thing?

13 A I don't recall talking with him about the Living-
14 ston, he might have. I might not have been paying attention
15 to it.

16 Really, when they start talking like that, I really
17 didn't pay much attention to them.

18 Q Before you came in here today and talked to me,
19 have you talked to anybody about the Livingston checks and
20 about Walt Sellers?

21 A About Walt?

22 Q Yes.

23 A I haven't really spoken with anybody that really
24 knew about the Livingston thing. When he came to my room
25 there was three other people in my room.

1 Q Who were they?

2 A Robert Burns, which he is in the Texas Department
3 of Corrections right now.

4 Q Who else?

5 A Kelly Weaver.

6 Q Is that a man or a woman?

7 A That is a woman--and Ronald--I don't know the
8 last name.

9 Q Who have you talked to about these checks, the
10 Livingston checks and the person named Walt?

11 A Nobody that I can recollect.

12 Q How do you think I found out about this?

13 A I have no idea.

14 Q Have you talked to Robert Burns, or Ronald, who-
15 ever he is, or who have you talked to since you have been in
16 jail about Walt and the checks?

17 A I haven't talked to nobody.

18 Q Not on the phone, or anything?

19 A Not that I can recall at all. Somebody that used
20 my line might be speaking about it, maybe James King. I
21 never spoke to anybody on the phone, myself, about it.

22 Q Did you tell James King you knew about it?

23 A No. Not that I can recall.

24 Q Did you tell James King before you got in jail
25 that you knew about this?

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A I never really spoke to James King that much until I came to jail. I spoke to him one time because I only met him one time prior to coming here.

Q If James King told us that he talked to you in jail and you told him about Walt and the checks, would he be lying?

A I can't say. I might have talked to him. I really don't recall.

MS. WILSON: Does the Grand Jury have any questions?

(No response.)

MS. WILSON: O.K. You can leave.

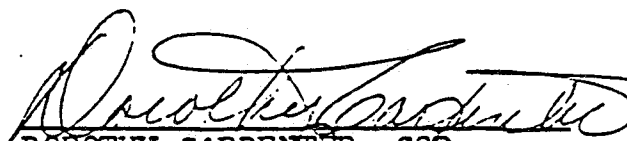
(Witness excused.)

1 THE STATE OF TEXAS)

2 COUNTY OF TARRANT)

3 I, DOROTHY CARPENTER, Official Court Reporter
4 for the Grand Jury of Tarrant County, Texas hereby certify
5 that the above and foregoing eighteen (18) pages contain a
6 true, correct and complete transcription of all of the
7 testimony of DOUGLAS WAYNE DAFFERN, a witness appearing
8 before said Grand Jury in the above styled and numbered
9 cause.

10 WITNESS my hand and seal of office this 28th
11 day of July, 1986.

12 
13 DOROTHY CARPENTER, CSR
14 Official Court Reporter
15 Tarrant County Grand Jury

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22 Certification Number of Reporter: 436

23 Date of Expiration of Current Certification: 12/31/86

24 Business Address: 300 W. Belknap, Fort Worth, TX 76196-0201

25 Telephone Number: 817/334-1608

This document is housed in the Capital Punishment Clemency Petitions (APAP-214) collection in the M.E. Grenander Department of Special Collections and Archives, University Libraries, University at Albany, SUNY.

EXHIBIT 5

**1986 Grand Jury Testimony of
James King**

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THE STATE OF TEXAS

|

BEFORE THE GRAND JURY

VS.

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OF

RICHARD WAYNE JONES

|

TARRANT COUNTY, TEXAS

VOLUME III

TESTIMONY

OF

JAMES KING

DOROTHY CARPENTER, CSR
Official Court Reporter
Tarrant County Grand Jury

Friday, June 27, 1986

DEFENDANT'S
EXHIBIT
18-dm
7-21-87

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THE STATE OF TEXAS		BEFORE THE GRAND JURY
VS.		OF
RICHARD WAYNE JONES		TARRANT COUNTY, TEXAS

BE IT REMEMBERED that on the 27th day of June, 1986, the above numbered and entitled matter came on to be considered by the Grand Jury of Tarrant County, Texas, being Numbered 457-462 on the docket of said Grand Jury.

APPEARANCES:

TIM CURRY, Criminal District Attorney
By: SHAREN WILSON, Assistant District Attorney
200 West Belknap
Fort Worth, Texas 76196-0201

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1 WHEREUPON,

2 JAMES KING,

3 was called as a witness and, having first been duly sworn
4 by the Assistant Foreman of said Grand Jury, upon his oath
5 testified as follows:

6 EXAMINATION

7 BY MS. WILSON:

8 Q Would you state your name?

9 A James King.

10 Q I have to read you your rights. You are charged
11 with a crime although you understand that the questions we
12 will be asking you about are not about a crime that you are
13 either suspect in nor are you charged with.

14 You have the right to remain silent and not make
15 any statement at all. Any statement you make may be used
16 against you at your trial. You understand you are not a
17 suspect.

18 Do you understand that right?

19 A Yes.

20 Q Any statement you make may be used as evidence
21 against you in court. Do you understand that?

22 A Yes.

23 Q You have a right to have a lawyer present to advise
24 you prior to and during any questioning.

25 Do you have a lawyer?

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A Yes, I do.

Q What is his name?

A Bob McCrarey.

Q And is he present outside of this room?

A Yes.

Q You understand that he has told you that if you have any questions or need to talk with him after we ask you a question and before you answer it, that you will be allowed to go out and confer with him, is that correct?

A Yes.

Q If you are unable to employ a lawyer you have the right to have a lawyer appointed to advise you prior to and during any questioning and your attorney, Bob McCrarey, is he appointed or hired?

A Appointed.

Q You have the right to terminate the interview at any time.

Do you understand all of those rights?

A Yes.

Q By agreement with me and your attorney, do you agree to answer the questions of the Grand Jury today?

A Yes.

Q You understand that the Grand Jury and I intend to ask you questions about a capital murder case where the accused and person in jail on that case is a man named

1 Richard Wayne Jones?

2 A Yes.

3 Q You know him by Ricky, is that correct?

4 A Yes.

5 Q And your name is James Richard King?

6 A Yes.

7 Q And you go by Sammie?

8 A Yes.

9 Q O.K. Do you know a person named Jackie, a female?

10 A I think so.

11 Q She made three-way calls to you--

12 A I'm not sure now.

13 Q O.K. Jackie is a friend of yours and a friend of
14 Ricky Jones?

15 A I must know her by some other name, or something,
16 because the Jackie I know ain't got a phone.

17 Q O.K. The Jackie I am talking about is a white
18 female approximately 25 to 30 with three kids.

19 A It's not Becky?

20 Q It may be Becky. What is Becky's last name?

21 A Jones.

22 Q Is she related to Ricky Jones?

23 A Yes.

24 Q His wife?

25 A His sister.